

DUPLICATE

BUREAU OF MILITARY HISTORY 1913-21
BURO STAIRÉ ÉILÉATA 1913-21
No. W.S. 1,751

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COSANTA.

BUREAU OF MILITARY HISTORY, 1913-21.

STATEMENT BY WITNESS.

DOCUMENT NO. W.S. 1,751.

Witness

The Hon, Justice Cahir Davitt,
Dungriffan,
2, Sidney Parade Ave.,
Dublin.

Identity.

Circuit Judge, Republican Courts,
Dáil Éireann, 1920-1922;
Judge Advocate General, Irish Free State
Army, 1922-1926.

Subject.

First Judge Advocate General of the
Defence Forces of the Provisional
Government and afterwards of the Irish
Free State.

Conditions, if any, Stipulated by Witness.

To be placed under seal for a period
of 25 years as from 9th January, 1959.

File No 1,637.

Form B.S.M. 2

DUPLICATE

JUDGE ADVOCATE GENERAL.

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PREFACE.

Some few years ago, at the request of Colonel John Joyce, I wrote a memorandum upon the Dáil Court for the Bureau of Military History. I had kept no diaries for the years 1920 to 1922 and had very few records with which to refresh my memory of the events which I attempted to describe. The memorandum had therefore to take the form of reminiscences of my personal experiences as a Judge of the Dáil Courts. What follows is intended to be a kind of sequel to that memorandum and a similar record of my personal experiences as the first Judge-Advocate-General of the Defence Forces of the Provisional Government and afterwards of the Irish Free State. I kept no diaries for the years 1922 to 1926; and will have again to depend upon my unaided memory with occasional resort, in all probability, to the contemporary press and books of reference for the purpose of checking or ascertaining names or dates or the sequence of events. Nobody has requested me to write what will be in fact my recollections of this period. I cannot confess to any cacoethes scribendi; and my only excuse is the worst summer that I can ever remember. So far this long vacation it has rained almost every day; and there seems to be no prospect of any improvement in the weather. I have been forced to seek unaccustomed ways of spending the time and this is one of them. I celebrated my sixty-fourth birthday last Friday, and I suppose the tendency of old age to look backward instead of forward is already beginning to manifest itself.

I have sometimes felt that I would like to set down what I remember of my small part in the events of 1922-3; if only for the information of members of my own family. Some of them may have the patience and the perseverance to read what I propose to write and may even derive some entertainment or, perhaps, occasional amusement from doing so. So here goes!

Dun Griffan,
Sidney Parade,
Dublin.

Monday, August 18th, 1958.

DUPLICATE

Chapter 1.

BUREAU OF MILITARY HISTORY 1913-21
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I was called to the Bar, when I was a few months over 21 years of age, in January, 1916. In August, 1920, when I had just completed my 26th year, I was asked by Austin Stack, who was then Minister for Home Affairs in the Government of the Irish Republic, to accept a position as Circuit Judge of the Dáil Courts, as they came to be called. I did so and acted as such for a period of nearly two years, until shortly after the start of the Civil War in June, 1922, when the then Minister for Home Affairs, Eamon Duggan, purported to withdraw the Authority of these Courts and they ceased to function. My occupation was gone and I found myself with nothing to do. I cannot now recall whether I had made any decision or considered any plans about my future. The "British Courts", as we had been calling them, had been functioning in the King's Inns since the Four Courts had been seized and occupied by Anti-Treaty forces in the Spring of 1922. The administration of justice, and the whole machinery of these Courts, were among the functions transferred to the Provisional Government under the terms of the Treaty; and were now under our own control. There was no reason, therefore, why I should not resume, or at least attempt to recover, my practice as a barrister before these Courts. It was, however, the long vacation and there was no urgent need for me to come to any decision upon my future, when I received a telegram from Duggan dated August 3rd asking me to call to see him that afternoon at Government Buildings in Merrion Street.

I called that afternoon and Duggan told me that it was really Hugh Kennedy who wanted to see me, and he brought me over to Kennedy's office. Kennedy had been appointed Law Adviser to the Provisional Government. He told me that he had a proposition to make to me on behalf of the Government who were much concerned about the state of discipline in their military forces.

These were already being referred to as the National Army or the National Forces in contra-distinction to the Anti-Treaty forces who were being referred to as the Irregulars; though they styled themselves the Irish Republican Army or I.R.A. It was proposed to establish a legal section in the Adjutant-General's Department which would be responsible for the conduct of Courts-martial and to some extent for the administration of military law generally. Kennedy said that he was authorised to ask me if I would take charge of this section as Judge-Advocate General. I asked for a little time to consider the matter and this was readily granted.

The proposition did not appeal to me in the least. I knew very little about Courts-martial or military law, and realised that to accept would mean starting from scratch in every way. I would myself have to acquire in some way the necessary knowledge; and would also, presumably, have to organise the proposed section, with what personnel I did not know. I was aware that the National Army had been, and was still being, recruited to a large extent in haste to meet an emergency; and that it contained many diverse elements. I could envisage considerable difficulties in the way of devising and enforcing a system of discipline, without being able clearly to appreciate how far they might affect what I would have to do. I suppose also that I felt in a vague sort of way that while the Civil War could have only one conclusion it might be a long drawn-out affair; and that in course of time the Anti-Treaty forces would adopt guerilla tactics. If there were to happen that was a possibility, as in the case of the struggle against the British, that Military Courts would be set up to try individual members of these forces on charges of various kinds. In that event I realised that to the proposed legal section would fall the task of conducting such Military Courts. The prospect was anything but pleasing. I gave the matter a great

deal of thought and eventually came to the conclusion that I should regard the task offered me as a duty - a duty with possibilities of unpleasantness no doubt - but still undoubtedly a duty. I discussed the matter very thoroughly with my mother and decided to accept the Government's offer. I called at Government Buildings to tell Kennedy that I was prepared to undertake the duties of Judge-Advocate General. He expressed satisfaction at my decision and told me that I could expect to hear from the Military Authorities in the near future.

On August 15th, which was my 28th birthday, a military despatch rider delivered to me a note from G.H.Q. Portobello Barracks signed "C. Ó hUigin, Assistant Adjutant-General" asking me to come at once to the Adjutant-General's Office. On my arrival there I met Kevin O'Higgins. I had barely known him as a Student in University College, Dublin, in the years 1914 to 1917, when he was a Solicitor's Apprentice. He had never qualified as a Solicitor, as all his energies were devoted to the National Movement. He had become Assistant Minister for Local Government and later Minister for Economic Affairs in the Republican Government; and had spoken with marked distinction in the debate on the Treaty. He was at the moment lending his services to the Army. He told me that Michael Collins, who was then Commander-in-Chief, wanted to see me; and he brought me over to Collins's office where he introduced me to him as well as to the Adjutant-General - Gearóid O'Sullivan - and a man with whom I was going to be closely associated with for the next few years - George Pope Hodnett. Collins, whom I had never met before, and had seen only once or twice and then at a distance, impressed me as a powerfully built handsome young man in his early thirties, with a mass of dark hair, compelling eyes, and a markedly determined looking mouth and jaw. He wore a General's uniform, which looked to be badly in need of pressing, and sat

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uncomfortably at his desk, squirming once or twice and complaining of rheumatism. He told Hodnett and myself very tersely what he wanted us to do. Hodnett was a man of middle size, also in his thirties, with black hair, brown eyes and a ruddy complexion. He was a Solicitor and hailed from Youghal where the family business - a Solicitor's office - was carried on by himself and his brother, Rupert. He had served throughout the 1914-1918 war in the British Army, but I cannot now recall the regiment in which he served, or what rank he attained. I think he had been a Major. On the outbreak of the Civil War he had organised a local force of volunteers - mainly ex-service men - to hold the locality for the Provisional Government. He had encountered Collins in the course of military operations in County Cork and in the course of conversation had discussed the state of discipline in the Army, a matter which was giving Collins cause for some anxiety. It was partly as a result of this discussion that Hodnett and myself found ourselves in Collins's office. He told us that I was to take charge of the legal section in the Adjutant-General's Office, with Hodnett as my second in command; that we were without delay to draw up a code of discipline for the Army as well as rules of procedure for Courts-Martial; that we would be provided with an office in Portobello Barracks as quickly as it could be got ready, and that we were to recruit our own staff. He said that we were to start at once and that he wanted us to get into uniform as quickly as possible. Having thus received our riding instructions, we went back with O'Sullivan to his office.

I had never met O'Sullivan before - personally - though I had encountered him on one occasion. I had tried a case in which some members of the Volunteers - the I.R.A. as they were popularly called - had in some way been involved; and he had, as Adjutant-General of that force at the time, given evidence

before me. He had been, I thought, somewhat inordinately self-assured and indeed perky and I had not on that occasion taken any great fancy to him. We were, however, to become closely associated for the next couple of years, and I had no difficulty in the course of a very short time in forming a high opinion of his character and abilities and getting to like him immensely. He was of middle height and, at this time, slim, fair-haired, blue eyed and boyish looking. He was, I think, just past thirty years of age and looked extremely well in uniform. He had been a secondary teacher by profession. He told Hodnett and myself that pending the provision of a proper office we would be provided at once with two rooms in the Officers' quarters of the barracks; and that we would have the services of a typist. He told me that already a number of Courts-martial had been held in a more or less informal way in Limerick, and that the written records or "proceedings", as they were called, had been sent up to him. He said that I could begin by reading them over to see whether they called for any action on his part. This terminated our interview.

Hodnett I found to be very friendly and co-operative. I explained to him my comparative ignorance of military-legal matters and confessed that I would have to depend on him very largely to guide me, at least in the beginning, in the way I should go. He assured me that I could depend upon him to assist me to the best of his ability. He advised me to invest in the British Army Manual of Military Law which, he said, I would find invaluable. We parted, and I went at once to Eason's where I purchased the Manual, which I took home and studied that night.

I attended at the barracks the following morning to find that we had, as promised, been provided with two rooms equipped with tables and chairs and a typewriter and all the necessary stationery requisites with which to start our labours.

There was an outer and an inner room, originally designed no doubt to serve as a sitting-room and bedroom. It was agreed that I was to have the inner room as my office, while Hodnett was to share the outer room with the typist, who turned out to be a very pleasant girl called Eileen Murphy. I cannot say now what work they found to start on, but I know that I retired to my sanctum with the pile of Courtmartial proceedings which the Adjutant-General had given me, determined to study them carefully and to learn what I could in the process. The origin of these proceedings, which I discovered subsequently, is of some interest.

About, or shortly before, this time the main scene of military operations was in the Southwest, where Generals O'Duffy and Murphy were in command of the National Forces. I think Murphy was in command in Kerry under O'Duffy whose H. Q. were in Limerick. Murphy had served with distinction in the 1914-18 war, and had risen to command a brigade. Kingsmill Moore, now a Judge of the Supreme Court, was acting in the locality as a kind of special war Correspondent for the Irish Times. He had held a Commission in the British Air Force and was at this time a barrister of some three or four years standing. He and Murphy had met and become friendly, and, having some knowledge and experience of military law and Courts-martial, he had been requested by Murphy to lend some assistance with regard to these matters. He drafted certain forms of Charge-Sheets and Courtmartial proceedings in such a way that Officers without any knowledge of military law or procedure could conduct a trial with some degree of formality. With the aid of these forms certain trials had taken place, and the resultant proceedings were those on which I had been asked to try my "prentice hand". There was quite a pile of them; but I can, naturally enough, remember very little about them. Two matters only stick in my memory. One was

a case in which a soldier had been charged with the rather remarkable offence of "highly righteous conduct, in that he threatened to shoot his superior officer with a machine-gun". I could not say whether the spelling was that of the recording officer or of the typist, or whether the error might not have been due to a subconscious belief that perhaps the superior officer in question fully deserved the fate intended for him. I cannot recall whether the accused was required to pay the penalty of his highly riotous behaviour. The other matter was in a different category and appeared to be quite serious. Among the Officers attached to O'Duffy's H.Q. at Limerick was Colonel James Hogan, now Professor of History at University College, Cork. A man casually employed in some menial capacity about the barracks stole certain articles from the Officers' Quarters, including a pair of trousers belonging to Colonel Hogan. He was discovered, charged with the larceny of the articles, and tried by Court-martial. It was at once apparent on reading the Charge-sheet that the whole thing was irregular. The accused was not a soldier and could not be considered as in any way subject to military law. The Court had no right whatever to try him. They had, however, tried him and worse was to follow. I read the proceedings through and came to the finding and sentence. I was somewhat shocked to discover that he had been convicted and sentenced to three years' penal servitude, and to receive twelve strokes of the "cat" at the end of every three months of the first year of his sentence. What was still more shocking was that this fantastic sentence purported to have been confirmed by General O'Duffy as Confirming Officer, as evidenced by his signature to an endorsement upon the proceedings to that effect. I hastened over to see the Adjutant-General. I explained the matter to him and advised him to take steps to see that the absurd finding and sentence were at once nullified. He agreed

to do so, and I returned to my office to peruse the remainder of the pile of proceedings about which I can now remember nothing. I learned subsequently that no attempt had been made to carry out the sentence. Apart from any other consideration, no prison Governor would have been likely to receive the delinquent on foot of the Court-martial sentence; and it is quite certain that no such Governor would have carried out any flogging. I never learned how or why such a sentence ever came to be passed by the Court or confirmed by O'Duffy.

This incident gave me quite a lot to think about. The course of Irish history since the establishment of the Royal Irish Constabulary, and in particular the struggle for independence which resulted in the Treaty, made it quite impossible for any Irish Government to take over that body as a police force in the same way as the Dublin Metropolitan Police had been taken over, even if it had been prepared to have any armed police. The R. I. C., as they were invariably called, had been disbanded. Outside the Dublin Metropolitan District there was no police force at all. There were, moreover, no local Courts functioning. The Courts of Petty Sessions and Quarter Sessions had been supplanted by the Republican Parish and District Courts which, during the period from 1920 until their authority was withdrawn as has been already mentioned, had, with the assistance of sections of the Volunteers known as Republican Police, dealt with what I may call ordinary criminal offenders; and, particularly during the period from the Truce to the beginning of civil strife, had helped to maintain some degree of order and protection for person and property. That catastrophe put an end to their activities, and the position was that outside the Dublin area there was no such protection and no security other than individual self-protection or such as was afforded by the opposing military forces.

An unarmed police force, to be called the Civic Guards, was in process of being trained, and a system of District Justices, to replace the old Petty Sessions Courts and the Parish Courts, was in contemplation, but some time must elapse before these could materialise, nor could they be expected to function successfully in the midst of hostilities. It was clear that the only instrument at the immediate disposal of the Government with which to protect life and property was the National Army. The importance of maintaining it as a disciplined force could not be exaggerated. The legal basis for its existence was, however, a matter of some doubt; and it seemed obvious to me that most of its operations and activities would eventually have to receive ex post facto recognition and legislative sanction by means of an Act of Indemnity. In the meantime the only effective law was going to be what is popularly known as martial law which, as someone has truly remarked, is neither more nor less than the will of the Commander-in-Chief of the military forces in question. It was with these considerations in mind that I approached the task of drafting a code of discipline for the National Army.

The Army was, to speak very generally, organised by commands, brigades, battalions, and companies, under a Commander-in-Chief assisted by a General Headquarters staff. Each command area was in the charge of a G.O.C., usually a Major-General. Each brigade area was in the charge of a Brigadier or Colonel, while battalions were commanded by Commandants and companies by Captains. General Headquarters comprised the departments of the Commander-in-Chief, Chief of Staff, Adjutant-General, Director of Intelligence, Director of Organisation, and Quartermaster-General. I contemplated attaching to the Headquarters Staff of each Command a Legal Staff Officer who would, if possible, be a person professionally qualified as a barrister or solicitor, together with such other

additional and subordinate legal staff officers as might be found necessary. These latter were not necessarily to possess professional qualifications, but were to be selected from Officers who had some legal knowledge and experience of Courts-martial. Attached to General Headquarters as part of the Adjutant-General's staff I contemplated a Chief Legal Officer who would be a person legally qualified. All these Officers were to be appointed by the Judge-Advocate General in consultation with the Adjutant-General; and were to be subject to transfer and removal in the same way. This was the organisation of the Legal Staff as I contemplated it after many discussions and consultations with Hodnett and later with the Adjutant General.

As I have mentioned, Collins wanted Hodnett and myself to "get into uniform as quickly as possible", and clearly had in mind a Judge-Advocate General who would be an Officer in the Army, subject to military law, and as such bound to obey all lawful orders of his superior officers. Before I was under any necessity to give effect to his requirements in this respect he was killed in an ambush in County Cork on August 23rd. The whole of General Headquarters staff were plunged in gloom. Many officers had been close associates and personal friends of his throughout the struggle for independence; and those who had not shared the general sense of depression consequent on the loss of such a leader following so closely on the death of Arthur Griffith. His death, however, left me free to give effect to my own view as to what should be the position of the Judge-Advocate General. I was too fond of my civilian status to be ready to surrender it for that of a "person subject to military law" unless it was absolutely necessary to do so; and I could not, at the time, see any such necessity. I felt then that since his duties were to be mainly judicial in character, the Judge-Advocate General should be as independent

as possible, and not under any obligation to take orders from anyone. I contemplated, therefore, retaining my civilian status and becoming responsible for duties of an advisory and supervisory nature only; while making Hodnett, with military rank as an Officer on the Adjutant-General's staff, responsible under my supervision for the direction of the Legal Staff and the administration of military law generally in the Army. I gave effect to these ideas in my draft of the disciplinary code which eventually came into operation as The General Regulations as to Discipline.

These regulations comprised a preliminary section, ten parts sub-divided into one hundred clauses, and two appendices. The preliminary section contained certain definitions and a general provision that every person subject to military law who committed an offence specified in Part I should on trial and conviction by Court-martial be liable to suffer such punishment as was specifically provided therefor in Parts II and III. Part I contained in 14 separate clauses a list of 74 military offences set out under headings such as Offences in relation to Military Service, Mutiny and Insubordination, Desertion and Absence without Leave, Disgraceful Conduct, Drunkenness, Offences in relation to Property and so on. In addition to every type of military offence they included all offenses against the ordinary criminal law as to person and property. Parts II and III provided for appropriate punishments ranging downwards from death and penal servitude to a mere reprimand. It is hardly necessary to add that they did not include flogging. Part IV provided for the arrest and detention of military offenders; Part V for the investigation of charges and their summary disposal in certain cases by Commanding Officers; Part VI for the constitution and convening of Courts-martial, their jurisdiction and procedure; Part VII for the confirmation of their findings and sentences by confirming officers; and Part VIII for the execution of sentences. Part IX contained

certain supplementary provisions as to Courts-martial, while Part X, under the title Miscellaneous, included provisions as to the organisation of the Legal Staff on the lines I have already indicated, and as to the duties of the Judge-Advocate General, the Legal Officers, and the Legal Staff generally, together with two Appendices of Forms.

The duty of the Command Legal Officer was to advise the G.O.C. Command as to all matters of military law and generally as to all Court-martial matters; to direct and generally to supervise the administration of military law in the Command area; and to provide for the attendance of a legal officer at every Local Court-Martial held in the area. The duty of a legal officer at a Court-martial was to act as Judge-Advocate; to ensure, as far as legal advice could do so, that the trial was fairly and properly conducted in accordance with the regulations; to sum up the evidence for the assistance of the Court, and generally to render whatever legal advice or assistance should be required. The duties of the Chief Legal Officer were as already indicated. The duties of the Judge-Advocate General, in addition to those already indicated, were to advise the Commander-in-Chief and the Army Council as to all matters of military law and generally as to all Court-martial matters; to advise the confirming officers as to the confirmation or otherwise of Court-martial findings and sentences, and, after confirmation or otherwise, to preserve the proceedings of all Courts-martial.

I cannot say how long it took me to complete the draft of the General Regulations. I know that I was working at them for several weeks. They were in print in time to be made by the Minister for Defence, to be promulgated as a General Order by the Commander-in-Chief, and to come into force generally on November 1st, 1922. My impression is that I

completed my draft before the end of September. During the course of my work I became aware of the fact that Paddy McGilligan, afterwards Minister for Industry and Commerce, and later Minister for Finance and Attorney General, but then recently qualified as a barrister, had earlier in the year been for some time engaged on preliminary work of the same nature, at whose instance I cannot now recall. I got in touch with him, but I cannot now remember whether he made available to me any draft of his. He did lend me texts of the disciplinary codes of the French and United States Armies, as well as a collection of opinions given by the United States Judge-Advocate General. I found these very useful and instructive, but my draft was based mainly upon the British Manual of Military Law, with many adaptations and modifications, some borrowings from other systems, and a few original ideas of my own. I had at all stages the benefit of the maximum amount of assistance and advice from Hodnett. I cannot recall that I was required by the Department of Defence, or the Army Council or Adjutant-General, to make any alteration in my final draft before it was issued as the General Regulations as to Discipline. With the completion of my work upon the disciplinary code I may, I think, fittingly bring this first chapter to a close.

Chapter 11.

While I was engaged on the draft of the General Regulations, Hodnett was, of course, anything but idle. He had been given the rank of Colonel. In the absence of any general code the trial of military offenders had to be conducted in accordance with regulations and orders made ad hoc. Applications for the convening of Courts-martial were being made to the Adjutant-General from time to time by the Command G.O.Cs; and these were referred to us and taken in hand by Hodnett. Moreover, as soon as it became general knowledge that a Legal Section had been created in the Adjutant-General's Department, our advice was sought from all quarters upon various matters, not all of which were our concern by any stretch of the imagination. "Business" grew fairly rapidly. Hodnett found it necessary to get clerical assistance. Someone, I cannot now say who it was, recommended Louis Carrig as a person eminently suitable for our requirements; and so we found him to be. He had been a solicitor's clerk in some Dublin office, and was a typical Dubliner. I knew his brother, John Carrig, who was a solicitor and partner in the well known firm of Bourke and Carrig of Ballina, and was glad to have him in the office. He proved to be a real discovery; loyal, able, industrious, careful, reliable, and endowed with a truly photographic memory; he quickly had a satisfactory office system in operation. He was subsequently employed in the Chief State Solicitor's Office, and for many years represented that important official at all criminal trials in the Circuit and Central Criminal Courts, attending prosecuting Counsel and incidentally saving the State the expense of employing a qualified solicitor upon this work. He discharged these duties for many years with marked efficiency and success.

I had now to consider the question of recruiting our staff of Legal Officers. The first name which occurred to me was that of John Donovan. He was the second son of Professor Robert Donovan, leader writer for the Freeman's Journal and Professor of English Literature in University College, Dublin. I had known him as a student there before he left to take a Commission in the British Army. He had served with distinction in one of the Irish Regiments during the last two years of the 1914-1918 war, and had been demobilised, I think, sometime in 1919 or 1920. I had spent many a pleasant time with him during my frequent intervals of leisure when a Republican Judge, and was aware, from his talk about his military experiences, that he had some knowledge of Courts-martial by reason of having acted on occasions as prosecutor and prisoner's friend. I approached him with an offer, which he accepted, of employment on the Legal Staff. I told him I was on the look-out for other suitable candidates; and he at once suggested Charlie Casey. I had known him first as a fellow pupil for a short period at O'Connell School. He had joined the British Army as a private, later securing a Commission and serving as an officer throughout most of the war. On demobilisation he had decided to study for the Bar, and at this time was a law student at the King's Inns as well as at U.C.D. He also accepted my offer of employment. My next recruit was Thomas J. Coyne. I had met him also, once or twice, as a student in U.C.D. Casey told me that he had served for a short period in some capacity in the British Air Force, whether as an Officer or Cadet I cannot now recall; that he had been a fellow student with him at King's Inns, and that he had been called to the Bar at Easter. These three became my intimate personal friends, particularly Casey, with whom I maintained close personal relations until his

death six years ago. All three were men of ability, endowed, each in his own way, with a fund of wit and humour, and were in consequence the best of company. Their subsequent careers will bear mention here. Donovan became Assistant Secretary of the Electricity Supply Board. He died in 1950. Casey was called to the Bar in 1923, and developed a large practice as a Junior and later as a Senior Counsel. He became Attorney General in 1950, and a Judge of the High Court in 1951. Coyne resigned from my staff some time early in 1923 to take up the position of Private Secretary to Kevin O'Higgins after he had become Minister for Justice. He was later seconded to the Department of External Affairs, and spent some time in the Irish Legation in Rome. He returned to the Department of Justice and is now Secretary to the Department.

I cannot remember what work we found at first for our newly recruited staff, but I know that they were not idle. I imagine they found plenty to do in the way of office work, as well as functioning from time to time as Judge-Advocates or Prosecutors at Courts-martial. I can remember the first Court-martial held under our auspices. One Sergeant-Major Dixon, an old soldier in every sense of the term and an ex-N.C.O. of the British Army, was charged with mutiny. It appeared that he was one of a party of troops, under the command of a Captain Caprani, engaged in military operations against the "Irregulars" in County Cork. Caprani gave his men some order which Dixon considered to be in some way wrong or unreasonable, and which he refused to obey, advising some of the men to do likewise. On the return of the party to their headquarters some half dozen, including Dixon, were, on Caprani's complaint, charged with mutiny and insubordination and placed under arrest. There were no facilities for trying them by Court-martial in Cork, and it was decided to

send them to Dublin for trial. At this time railway communication between Cork and Dublin had been cut by the destruction of the Mallow viaduct. Road communications were difficult owing to trenching and bridge destruction, and in any event transport could not be spared, nor could an escort be afforded, to convey them to Dublin by road. It was decided therefore to send them unescorted by sea, which was at the time the most convenient method of communication. They were put on board ship at Cork, and, since it was deemed inadvisable to send them unarmed without an escort, they were allowed to keep their weapons. I do not remember whether any arrangements had been made to have them met on the ship's arrival in Dublin; if so the arrangements must have miscarried. What in fact happened was that one fine morning Sergeant-Major Dixon marched his merry mutineers through the streets of Dublin from the quays to Portobello; gave them the order to Ground Arms! and duly reported himself and his men under arrest to the Orderly Officer. Arrangements were made for a Court-martial, at which Hodnett acted as Judge-Advocate and Donovan prosecuted. I cannot remember much about the trial, not even the result. What I do remember is that Donovan told me that Dixon viewed the whole proceedings with a somewhat superior air of disapproval. He was not so much concerned with his own predicament as an accused facing a serious charge, nor did he for a moment suggest that he was not getting a perfectly fair trial. He was just a trifle hyper-critical of our general style of conducting Courts-martial, and was disposed to compare the trial somewhat unfavourably with others of which he appeared to have had personal experience during his service in the British Army. He thought that on the whole we had not done badly, but that we appeared to suffer from the lack of an element of "spit and polish" which, in his view, was a most essential characteristic of all military proceedings.

We were concerned with several other Courts-martial held around this time in Dublin and the Curragh about which I can remember little that is of any interest. There was one, however, of which I can recall more than a little; but with which I took good care to be concerned as little as possible. There was a man employed as a civilian clerk in the Adjutant-General's office. His name was I think .

It was known that he had a brother fighting with the Anti-Treaty forces, but such family divisions were common enough. Correspondence found on a prisoner clearly showed that someone who was employed at G.H.Q. was giving information to the enemy, and there were indications pointing to the Adjutant-General's office. Suspicion fell upon .

The Intelligence people took charge of the matter and a trap was laid for him. It was arranged that a telephone message, seemingly of great importance, would be sent to the Adjutant-General's office and that would be left apparently alone in the office to receive it, but that he would be in reality kept under observation so that his behaviour could be noted. The message was sent and received by him shortly before he was due to go off duty. He duly made note of the message on the appropriate pad, but also made another note which he put in his pocket. He was followed when he went off duty and arrested as he was leaving the Barracks. The note was found upon him and proved to be an accurate record of the telephone message. His explanation as to how he came to have it on his person was considered to be unconvincing and unsatisfactory. It was decided to have him tried by Court-martial and punished, if convicted, and the matter was referred to us to have the usual arrangements made. Hodnett and I at once came to the conclusion that this was a case with which we should have nothing to do, and I went over to the Adjutant-General to discuss the matter.

I found him in a very determined and obdurate frame of mind. He wanted _____ tried and, if convicted, shot as a spy. I reminded him of the case of the man in Limerick who had been convicted and sentenced to be flogged for the larceny of Colonel Hogan's trousers, and pointed out that this was an exactly parallel case. _____ was a civilian clerk; he was not a soldier; he was not subject to military law; and we had no right to try him by Court-martial. We argued the matter at length without getting anywhere. He said it was absurd that _____ who was clearly a spy, should be allowed to go unpunished. I said that he might be a spy, but that it was not going to be so easy to prove it. Much of what appeared to point to his guilt would not be admissible in evidence, being in the nature of mere hearsay; and the rest did not appear very convincing to me. If he had been allowed to go into town after leaving the Barracks, and had been followed and kept under observation, he might possibly have betrayed himself by giving the message to someone. Matters would then have been different, but the Intelligence people had acted precipitately, and, as it was, the case against him was by no means convincing. The strength or weakness of the case was, however, quite irrelevant; he was a civilian and we had no right to try him. The Adjutant-General was adamant in his determination to go on with the Court-martial. I was equally determined to have nothing to do with it.

A few days later a senior officer - I think it was a Colonel Dunne who was Director of Chemicals - came to me looking for advice. He said he had been asked to act as President of a Court-martial to try this man _____ ; and that he felt very uneasy about the whole business. I told him what I had told the Adjutant-General; and he went away feeling still more uneasy. Some days later Colonel Joe

Byrne came to see me on a similar errand. It appeared that Colonel Dunne had managed to extricate himself in some way, but that Byrne had been definitely nominated as President of the Court-martial. I gave him the benefit of my opinion and he departed looking very thoughtful.

The Court was constituted and was brought before it for trial. In accordance with the usual procedure he was asked if he had any objection to any individual member of the Court, and if so to state the name of any such member and the reasons for his objection. He replied that he objected to the President. He was asked on what ground? He replied that he believed that Colonel Byrne was prejudiced against him. He was asked to elaborate, and said that the previous night Colonel Byrne had come into his cell in the Guard Room and threatened to shoot him. Colonel Byrne said that he thought that in the circumstances it would be better if he did not act on the Court, and that in his opinion the objection should be allowed. The objection was accordingly allowed and the trial was adjourned to allow the Court to be reconstituted. This was the story told to me at the time - if my memory is accurate - but I cannot of course vouch for its truth. I believe that Colonel Byrne did, however, extricate himself from his difficult position in some absurdly ingenious way.

The Court was reconstituted and was tried on the charge of being a spy, found guilty, and sentenced to death. We had been kept informed of these events though I cannot remember how or by whom, and I decided to make another attempt to convince the Adjutant-General of the error of his ways. I told him that he had refused to take my advice as to the trial, but that so far no irrevocable harm had been done. If, however, he persisted

in ignoring my advice, and the sentence of death was carried out, then it was by no means impossible that everyone concerned might find themselves eventually facing a charge of murder. I told him he simply could not go on with it. We again had a long argument, but at length he agreed that the sentence could not be carried out. It was commuted to one of penal servitude for life and after putting in what was, I am sure, a very uncomfortable period of some months in a Detention Barracks, was eventually released on the granting of a general amnesty. I heard long afterwards that, on the advent of the Fianna Fáil party to power for the first time in the early thirties, he had been given a position in the service of the Government - as a Customs Officer on the Border. Whether this story had any foundation in fact I could not say.

We had enough in the way of ordinary business to keep us fully occupied but as yet my contemplated organisation had scarcely begun to materialise, and I had no legal officers with whom to staff the several Commands. The first phase of the conflict in which the Anti-Treaty forces attempted to maintain their hold upon towns or districts, or upon fixed positions which they had occupied such as barracks or mansions, was coming to an end. Whenever they vacated such a position they almost invariably destroyed it by fire or explosives to prevent its use by Government troops. To hamper troop movements railway bridges were blown up, rails lifted, and stations destroyed, while roads everywhere were trenched and bridges and culverts wrecked. Under the pretence of military necessity there was much senseless and indeed vindictive destruction of property both public and private. There were still clashes between opposing forces of some strength, but, as I had foreseen, the struggle was in

process of settling down into bitter guerilla warfare reminiscent of the toughest period of the fight against the British. The news which we have been hearing of late about events in Algeria and Cyprus will help towards some appreciation of what affairs were like. There were ambushes of military lorries of small parties of troops, individual killings thought to be "executions" by Anti-Treaty gunmen and widespread seizure and destruction of property on the one hand, and wholesale arrests, much interrogation of prisoners by "third degree" methods, and many acts of indiscipline, including individual killings thought to be "unofficial executions", on the other. The situation was, as I had vaguely foreseen, becoming ripe for the introduction by the Government of a policy of military courts; but the first inkling I got that any such policy might be in actual contemplation was in conversation, one September evening, at Paddy McGilligan's house, or rather his mother's house, in Leeson Street. There were several visitors there besides myself, including Ernest Blythe, who was then Minister for Local Government. In the course of conversation about the state of the country Blythe remarked that sooner or later drastic action would have to be taken to put an end to a state of affairs which, if it were allowed to continue indefinitely, would result in national ruin, economic and otherwise. I asked him what he meant by "drastic action". He said that he meant the severe punishment of those in arms against the Government, that when any 'Irregulars' were cornered they seldom if ever fought it out but usually surrendered tamely, knowing that the worst that could happen them was a period of internment during which they would be freely supported at the expense of the State. There was, he said, no element of deterrent effect in this. I asked did he envisage a policy of military courts and executions, and he

said he did. I observed that such a policy might well have an effect the opposite of that intended; might harden the attitude of the 'Irregulars', add to the bitterness of the struggle, lead to a counter policy of reprisals; and provide them with a number of "martyrs" to their cause in a way in which no casualties sustained in the course of the fighting could ever do. Several of those present joined in the discussion which, like most political arguments in this country, was warm, interesting, and of course entirely inconclusive. I went home quite convinced that my worst fears were about to be realised.

Within a few days I was told - whether by someone on behalf of the Army Council or by Hugh Kennedy on behalf of the Government I cannot recall - that it was proposed to ask the Dáil for special powers to deal with the situation, and that these would involve the establishment of Military Courts. Each Court would have to include a person of whose legal knowledge and experience the Law Adviser, Hugh Kennedy, was satisfied. The Courts were to have jurisdiction to try persons for offences such as attacks upon the National Forces, unauthorised possession of arms, ammunition or explosives, and the seizure and destruction of property. I was told to proceed as quickly as possible with the completion of my organisation by the recruitment of officers of the requisite legal knowledge and experience.

I set at once about my recruiting task. I had already in mind certain members of the Bar who, I knew, had had military experience. I was told that Kevin O'Higgins, who had now become Minister for Justice, had received quite a number of applications from barristers and solicitors for positions as District Justices to replace the old Justices of the Peace, and that there were more applicants suitable in

every way than there were vacancies to be filled. I called to see him, and he gave me the names of those whom he would have liked to, but could not, accommodate. He made special mention of John J. Hearne whom I had known in U.C.D. and later as Counsel appearing before me in the Dáil Courts. He was a Waterford man whose family had always been staunch supporters of John Redmond and the Irish Parliamentary Party. He had himself in the 1918 General Election ardently and eloquently supported John Redmond's son, William Archer Redmond, as candidate for Waterford in opposition to the Republican nominee, Dr. Vincent White, for whom incidentally my brother, Dr. Bob Davitt, then a medical student, had campaigned vigorously. O'Higgins told me that he would have appointed Hearne, of whose character and ability he had a high opinion, but that there had been opposition within the Government which he had been unable to overcome. He hoped that I would be able to find room for him on my staff. I said that I would be very glad to have him if he would accept the employment I had to offer. He did become a member of the legal staff and I may here make reference to his subsequent career. He resigned in September 1923 to take up a position as an Assistant Parliamentary Draftsman in the Attorney General's Office. He was subsequently transferred to the Department of External Affairs and held several important diplomatic positions abroad. He was until recently our Ambassador to Canada, and is now our Ambassador to the United States.

Furnished with the list of names I got from O'Higgins I wrote to several of the men included, keeping as far as possible to people whom I knew personally. I also wrote to certain others whom I had kept in mind for some time. I asked each to be good enough to call to see me, on a day I specified, at Government Buildings where a room had been

placed at my disposal for the purpose of interview. I said that I had a proposition to make which might be of interest. By this time General Mulcahy, who was now Minister for Defence as well as Commander-in-Chief, had asked the Dáil for the necessary powers; and on September 27th had been granted them by the Army (Special Powers) Resolution. I believe that most of the men to whom I had written called to see me as requested, or else got in touch with me later at Portobello Barracks. I explained matters to each and made my offer of employment. Some accepted and several refused. Some of those who did accept told me that they heartily wished that I had not written to them, but, that once they had been given the opportunity of serving the State when it appeared to be in some danger, they felt it to be their duty as citizens not to refuse it. There was one circumstance that struck me most forcibly. Not one of these men whom I interviewed made any inquiry as to remuneration, nor would I have been able to give them any information if they had asked. There was one incident that had an element of comedy. Sir Alfred Cope had been Assistant Under-Secretary to the Lord Lieutenant under the British regime, and was at that time, along with certain other higher Civil Servants, on loan to the Provisional Government. I did not know his appearance, and there were several of the men to whom I had written whose appearance I did not know either. Cope happened to come into my room by chance, and I assumed that he was a possible candidate for employment on the legal staff. We talked at cross-purposes for some moments before I discovered my mistake.

As a result of my recruiting efforts then or later I secured the services of the following:- Henry Conner, John J. Hearne, Joseph Kenny, Gerald McCarthy, Joseph J. Mooney,

Charles Wyse Power; Joseph Reidy, and Eugene Sheehy; who were all practising junior barristers, and J.J. Bergin, William Cahill, Trant McCarthy and William T. McMenamin, who were solicitors. Many others became members of the legal staff later, all of whose names I cannot at the moment recall. One of the last to join of those mentioned was Joe Mooney. He came to see me in Portobello in response to my invitation. After some discussion on my offer he said he would like some time to consider the matter. He came back later and told me he had asked the advice of Tim Healy, K.C., who was a family friend, and had been advised to accept the position offered provided the salary was not less than £800 a year. This was the first time that anyone had mentioned the matter of remuneration. I was still in receipt of my judicial salary of £750, while Hodnett had been allotted a salary of £600 which, I think, must have been fixed in relation to mine though I had no part in fixing it. Donovan, Casey and Coynes, if as yet on the pay-roll at all, were in receipt of something like ten or twelve shillings a day according to their rank as Captains. I told Mooney I would see what I could do about the matter of salary.

I had now to prepare and put forward for the approval of the proper authorities my proposals for the establishment of the legal staff. I discussed the matter first with Hodnett and then with the Adjutant-General and reached agreement. There were at this time I believe eight commands of which the names, General Officers Commanding, and Headquarters were as follows: - Eastern Command - G.O.C. Daniel Hogan - H.Q. Griffith Barracks, Dublin; Cork Command - G.O.C. Emmet Dalton - H.Q. Cork; Kerry Command - G.O.C. W.R.E. Murphy - H.Q. Tralee; South Western Command - G.O.C. Michael Brennan - H.Q. Limerick; Western Command - G.O.C. Seán McKeon - H.Q. Athlone; Northern Command - G.O.C. Joseph Sweeney - H.Q.

Stranorlar, and there were two other Commands the names of which I cannot remember with H.Q.s at Kilkenny and Roscrea and whose G.O.C.s were respectively Prout and Patrick Mulcahy. I proposed to assign Sheehy and Kenny to the Eastern Command, each with the rank of Commandant and a salary of £800 a year - Sheehy to be the Command Legal Staff Officer. The other proposed assignments with the same rank and salary were: - Power to Cork, Conner to Limerick, McCarthy to Kerry, Hearne to Athlone, McMenamin to Stranorlar, Mooney to Kilkenny, and Reidy to Roscrea. For the time being I made no appointment to the Curragh. Donovan, Casey and Coyne were to remain at G.H.Q. with the rank of Lieutenant-Commandant and a salary of £400. I believe I assigned Cahill as Assistant to Conner, and Bergin to Hearne. There were others who at this time or later were assigned as Assistants to the other Command Legal Staff Officers. Some of their names I cannot remember. I know that I assigned a young Solicitor's Apprentice called Fred Lidwell to assist Mooney in Kilkenny. When the Army was at its peak figure of some fifty to sixty thousand men, the legal staff at its maximum numbered some forty or fifty. My proposed establishment was duly and expeditiously sanctioned.

I had been furnished with the text of the Army (Special Powers) Resolution; and I was now instructed to draft regulations to be made by the Army Council and issued as a General Order providing for the establishment of the proposed Military Courts, their constitution, jurisdiction, and procedure, and for the trial of persons charged with any of the offences set out in the Resolution. These instructions I proceeded to carry out. I completed the draft of the General Regulations as to the Trial of Civilians by Military Courts in the course of a day or two, and they were in print in time to be made by the Army Council and issued as a General Order on October 2nd. I have not got a copy of these, but

they are to be found in the issue of the Iris Oifigiúil of November 21st. They provided that any civilian charged with any of the offences specified should, upon trial and conviction by Military Court, be liable to such punishment as was provided therefor. The specified offences were: -

- (1) Taking part in, or aiding or abetting, any attacks upon, or using force against the National Forces.
- (2) Looting, arson, destruction, seizure, unlawful possession, or removal of, or damage to, any public or private property.
- (3) Having possession without proper authority of any bomb, or article in the nature of a bomb, or any dynamite, or gelignite, or other explosive substance, or any revolver, rifle, gun or other firearm or lethal weapon, or any ammunition for such firearm.
- (4) The breach of any general order or regulation made by the Army Council.

The specified punishments were: - death, penal servitude, imprisonment, deportation, internment, and fine. Any of these could be imposed in respect of offences specified in (1), (2) or (3). In respect of the offences specified in (4) the punishment was to be such as the general order or regulation in question provided. The Court was to be convened by the General Officer commanding the Command area within which the offence was alleged to have been committed, and was to be constituted as follows: A President appointed by the Convening Officer with a rank not lower than that of Commandant; a Legal Officer nominated by the Minister for Defence and certified by the Law Officer to be a person of legal knowledge and experience; one other officer of rank not lower than that of Captain. A Legal Officer could be appointed to act as President. No person was to be tried until after the expiration of a period of 48 hours from his arrest. He was to be provided with a copy of the Charge-sheet and an abstract of the evidence to be given against him, not later

than 24 hours before his trial. He was to have every reasonable facility for preparing his defence, and could be represented by solicitor or counsel. He was to have the right to object to any member of the Court, except the Legal Officer, for cause shewn. The Court was to determine its own procedure; except that it was to be bound by the ordinary law of evidence; and was to have regard, as far as was practicable, to the procedure provided for Courts-martial by the General Regulations as to Discipline. On completion of the trial the Legal Officer was to sign and date the proceedings and transmit them to the Adjutant-General. Every finding and sentence was to be subject to confirmation by the Confirming Authority which was to be any two members of the Army Council. Upon due confirmation of finding and sentence the Convening Officer was to make provision for the execution of the sentence. Instead of convicting or acquitting an accused person, the Court could recommend his internment. The Regulations were to come into force on such day as the Army Council should determine and announce by proclamation. By Order of the Government dated September 28th the Army Council had been constituted as follows: - Richard Mulcahy, Commander-in-Chief, and Seán McMahon, Chief-of-Staff, with rank as Generals; and Gearóid O'Sullivan, Joseph McGrath, and Diarmuid O'Hegarty to be respectively Adjutant-General, Director of Intelligence, and Director of Organisation, with rank as Major-Generals.

Upon October 3rd the Government by proclamation offered an amnesty to all of those in arms against the State provided they surrendered their arms on or before October 15th. The following paragraphs merit quotation: -

1. Certain persons arrayed in arms against the State in an attempt to defeat by force the will of the people have created a state of armed rebellion and insurrection

in the course of which the lives of citizens and soldiers of the State have been taken, their liberty violated, and vast quantities of public and private property plundered and destroyed.

2. The Government, with the sanction of Dáil Éireann, has charged the National Forces with the task of suppressing the rebellion, of restoring peace and order, and of securing to the citizens full protection of life, liberty, and property; and for the better carrying out of this task the Government and Dáil Éireann have sanctioned and approved the exercise by them, under the Authority of the Army Council, of certain powers, including power to set up Military Courts for inquiring into charges against persons alleged to have participated in the said rebellion and the acts aforesaid, and to inflict punishment in respect of such charges if proved.

3. The Government, however, knows that many such persons have been forced to participate in such actions against their will and better judgment, while others have come to realise that they have in truth put their hands to the ruin of their motherland; and the Government, moved by the hope of restoring peace without further bloodshed and loss, has, therefore, decided that an opportunity be offered, even now, to those who are willing to throw in their lot with the majority of their fellow countrymen, to withdraw from this rebellion with immunity for themselves.

Following the appearance of this proclamation I was instructed to draft another to much the same effect, to be issued by the Army Council. I produced the following which was duly published on October 10th. As it explains matters fully I may be pardoned for quoting it in full.

Óglaigh na hÉireann,
General Headquarters,
Portobello Barracks,
Dublin.

TO ALL WHOM IT MAY CONCERN:

1. With a view to the speedy termination of the present state of armed rebellion and insurrection, and the restoration of peace, order, and security, the Government with the sanction of Dáil Éireann has sanctioned the doing by or under the authority of the Army Council of all or any of the following matters or things: -

- (a) The setting up of Military Courts or Committees for the inquiring into charges against persons in respect of any of the offences hereafter mentioned, provided, however, that every such Military Court or Committee shall include as a member thereof at least one person nominated by the Minister for Defence and certified by the Law Officer to be a person of legal knowledge and experience.
- (b) The inquiry by such Military Courts or Committees into the cases of persons charged with any of the offences following, that is to say: -
 - (i) taking part in, aiding, or abetting any attack upon, or using force against the National Forces;
 - (ii) looting, arson, destruction, seizure, unlawful possession or removal of, or damage to, any public or private property;
 - (iii) having possession without proper authority of any bomb, or article in the nature of a bomb, or any dynamite, or gelignite, or other explosive substance, or any revolver, rifle, gun, or other firearm or lethal weapon, or any ammunition for such firearm;

- (iv) the breach of any general order or regulation made by the Army Council;

and the infliction by such Military Courts or Committees of the punishment of death, or of penal servitude for any period, or of imprisonment for any period, or of a fine of any amount either with or without imprisonment, on any person found guilty by any such Court or Committee of any of the offences aforesaid, provided that no such sentence of death shall be executed except under the counter-signature of two members of the Army Council.

- (c) The removal under the authority of the Army Council of any person taken prisoner, arrested, or detained by the National Forces to any place or places within or without the jurisdiction of the Government, and the detention or imprisonment of any such person in any place or places within or without the area aforesaid.
- (d) The regulation and control of the sale, possession and transfer of, and dealing in, revolvers, rifles, guns and other firearms.

2. By regulations made the 2nd day of October, 1922, the Army Council have provided for the trial by Military Courts of civilians charged with the offences specified in the preceding paragraph and for the infliction upon any civilian convicted by a Military Court of any such offence, of any of the following punishments according to the nature and gravity of the offence:

Death
Penal Servitude
Imprisonment
Deportation
Internment
Fine.

3. It is provided by the said Regulations that they shall come into force upon, and shall apply as from, such date as the Army Council shall determine and announce by proclamation.

4. By proclamation published the 3rd day of October, 1922, the Government announced and proclaimed as follows:

- (1) Every person who is engaged in such insurrection and rebellion against the State as aforesaid, or in such armed opposition to the National Forces as aforesaid, or who has been guilty of any offence against the State, directly arising out of such insurrection, rebellion, or armed opposition as aforesaid and who, on or before the 15th day of October, 1922, voluntarily delivers into the possession of the National Forces all firearms, arms, weapons, bombs, ammunition and explosives, and all public and private property, now unlawfully in his possession, and quits all lands or buildings unlawfully occupied by him, and who, on or before the 15th day of October, 1922, voluntarily ceases to take part in, or aid or abet, such insurrection, rebellion, or armed opposition, shall be permitted to return unmolested to his house, and to every such person we hereby offer, assure and proclaim a full amnesty and pardon for all such insurrection, riot, rebellion, and opposition and offence as aforesaid.
- (11) Every such person may deliver any such firearms, arms, weapons, ammunition, explosives and bombs, and any such public or private property as aforesaid, to the Officer Commanding the nearest Military position or station, or to any such person as shall be nominated by him.

Know Then and It Is Hereby Announced and Proclaimed
as follows:

- (1) After the 15th day of October, 1922, We, the Army Council, will exercise all the powers and do all the matters and things in the first paragraph of this Proclamation mentioned, or any of them, according as the same shall to us seem necessary or expedient.
- (2) The said Regulations as to the Trial of Civilians by Military Courts made by us, the Army Council, on the 2nd day of October, 1922, shall come into force and apply as from the 15th day of October, 1922. Given at General Headquarters, Portobello Barracks, Dublin, and published this 10th day of October, 1922.

Signed on behalf of the Army Council,
Risteard Ua Maolcatha, General,
Commander-in-Chief.

All Command Legal Staff Officers were directed to proceed to their assigned posts at once. We at G.H.Q. had been provided with a new set of offices and living quarters in Portobello Barracks. Two large barrack rooms on the upper floor of a block of buildings near the Rathmines Road gate had been allotted to our use. One had been furnished in reasonable comfort as a combined dormitory and living room; and the other situated just on the other side of the stair-case landing had been fitted up and furnished as offices. There were, if I remember rightly, three apartments: a private office for me, an office for Hodnett and his subordinates, and a general office in which Carrig and the typist worked. We were directed

by the Adjutant-General to take up our quarters in the Barracks by October 15th. Sheehy, Donovan, Casey, Coyne and myself elected to share the dormitory. Hodnett preferred quarters which he had secured elsewhere. I believe we all moved in on the 14th.

Some weeks before this the G.O.C. Eastern Command, Dan Hogan, as he was usually called, had recommended to me for employment a solicitor from his own part of the country who had some military experience. I took him on but was not, after some trial of his capabilities, prepared to keep him at G.H.Q. When making appointments to the various Commands I took a certain malign pleasure in assigning him to Hogan's H.Q. Within a few days Hogan was over with me protesting virorously. It seemed that he knew far more about the man than he had seen fit to tell me when asking me to employ him. I told him it was his fault that we had the gentleman in the Army at all; and that the proper place for him was at Hogan's own H.Q. In deference, however, to Sheehy's wishes, rather than to Hogan's, I agreed to make a change and brought the officer in question back to G.H.Q. He solved all our difficulties as far as he was concerned by falling a few weeks later from the window of a private nursing home and sustaining fatal injuries. I sent Casey to replace him and in a very short time he and Hogan fell foul of each other in some way. Again Hogan came over to see me, this time in quite a temper. He had a gift for picturesque if somewhat crude language, and told me alliteratively that he was not going to have that, etc., etc. etc. at his H.Q. As a child Charlie had met with an accident and sustained a badly broken nose with the result that his features were more than somewhat flattened; and Hogan's description was to some extent justified. I told him, however, that I was not prepared to make any further change; that he had a first-class officer in Casey, and that if he could not get

to like him he would have to put up with him in any event. In a short time each came to recognise the other's good qualities and their relations became excellent. I told the others of Hogan's graphic description but it was a long time before I told Casey. We used to refer to him cryptically as very much to his mystification and eventually we had to tell him the origin of his mathematical nick-name. With Casey's assignment to Hogan's H.Q. and the establishment of good relations between them I may fittingly end this second chapter.

Chapter 111.

I cannot say whether any appreciable number of those in arms against the Government took advantage of the offer of an amnesty; nor can I recollect whether it had any significant effect on the course of the struggle which daily grew more bitter. The responsibility for determining who was to be brought to trial before the Military Courts rested upon the G.O.C.s of the various Commands; and it was some time before any Court was convened. The first one was held in Kerry where four men - Mathew Moroney, Thomas Devane, Cornelius Casey and Dermot O'Connor - were charged with one or more of the specified offences, tried, found guilty, and sentenced to death. I cannot recollect the offences with which they were charged; but in all probability they were attacks upon the National Forces or possession of arms. In due course the proceedings of the trial were sent over to me from the Adjutant-General's Office for my advice as to confirmation or otherwise. The proceedings were perfectly in order; the trial had been properly conducted in accordance with the Regulations; and I advised the Army Council accordingly. They confirmed the findings and sentences; and, through the Adjutant-General's Office, duly informed the Convening Officer, G.O.C. Kerry Command, of such confirmation. It then became his duty to provide for the execution of the sentences. All this happened at the end of October or beginning of November but, as will be seen, no execution ever took place.

On November 5th Ernie O'Malley, credited with being the Assistant Chief-of-Staff of the Anti-Treaty forces, was arrested at 36, Ailesbury Road, Dublin. This was the residence of Mrs. Humphreys, a sister of The O'Rahilly who was killed during the fighting in 1916. She was living there with her daughter, Sheila, and Madam O'Rahilly when the place was

searched by a small party of military. Documents were found which indicated that the house was being used as an "Irregular" H.Q. In the course of their search the party were proceeding to investigate what appeared to be a wardrobe when shots were fired from within which instantly killed one of the soldiers. There was an immediate exchange of fire in the course of which O'Malley was seriously wounded and Madam O'Rahilly and a domestic servant, Eileen Flanagan, were also hit but not seriously wounded. Mrs. Humphreys, her daughter, and Madam O'Rahilly were taken into custody along with O'Malley.

On November 8th the daily papers carried a proclamation over the signatures of de Valera and Stack purporting, as members of a reconstituted Republican Government, to declare the Provisional Government to be illegal. On that same day the second Military Court was held when four young men, all under 22 years of age, were tried at Griffith Barracks. They had all been arrested at night in a Dublin street when each was found to be in possession of a loaded revolver. They were charged accordingly, tried, convicted, and sentenced to death. The proceedings of the Court reached me in due course. They were perfectly in order and I advised the Army Council to that effect. These four men were: - Peter Cassidy and John Gaffney, stated to be of the Third Battalion "I.R.A."; and James Fisher and Richard Twohig, stated to be of the Second Battalion.

On the following day, November 9th, an attack was made on a section of the troops in Griffith Barracks. They were on parade in a barrack square which lay open to fire from the canal bank at the rear of the Barracks. Some "Irregulars", armed with rifles and a machine-gun, took up positions on the roofs of houses on the far side of the canal, and opened fire on the troops standing on parade in the square. Eighteen men were hit

in the first burst of fire, the remainder escaped by throwing themselves flat on the ground. The firing continued for some moments before any effective counter measures could be brought into play. The whole affair lasted some fifteen minutes and resulted in one soldier and two civilians being killed and seventeen soldiers wounded. There was a number of prisoners in a large building in the barracks with windows adjacent to the square on which the parade had been held. Some of the troops proceeded to "see red" and opened fire on these windows. Luckily the prisoners inside had had the sense to throw themselves on the ground, and the troops were got under control before anyone could be hurt. The affair aroused a great deal of indignation, and I heard it stated in G.H.Q. that during the fight against the British a plan for a similar attack had been discussed and turned down as being "too dirty".

The following night attacks were made on both Griffith and Portobello Barracks when they were subjected to bursts of rifle and machine-gun fire. The fire was returned and much ammunition was expended in an "engagement" which lasted some fifteen or twenty minutes. There were no casualties as far as I remember; and the opposing forces could, I believe, have seen little or nothing in the way of human targets to fire at. When the firing started we were in our quarters playing poker. When the alarm was sounded Casey and Coyne grabbed their revolvers and rushed out to report at the Guard Room. In the darkness one of them, I think it was Coyne, stumbled against the barbed wire defences and sustained some cuts and scratches. This was, I believe, the only thing that occurred in the nature of a casualty. Donovan, who was winning money from me at stud-poker, could see no necessity for withdrawing from his advantageous position. On the following morning came the news of the arrest of Erakine Childers.

According to the monograph in the Encyclopaedia Britannica, Childers was the son of Professor Robert Childers of London, and was educated at Haileybury and Trinity College, Cambridge. He served as a trooper in the war against the Boer Republics in 1900 while on leave, apparently, from his position as Clerk in the British House of Commons which he held until 1910. He was, I think, a relative of some kind of Hugh C.E. Childers who was Chancellor of the Exchequer in Gladstone's Ministry from 1882 to 1885; who was a convert to Home Rule even before Gladstone himself; who was responsible for the financial clauses of the first Home Rule Bill; and who, I think, was the author of a book dealing with the financial aspect of an Irish settlement. From 1910 to 1914 Erskine Childers was engaged in political work and published The Framework of Home Rule. He was an expert yachtman and in 1903 had published a novel The Riddle of the Sands which was based to some extent upon his own experiences sailing amongst the islands and sandbanks off Germany's Baltic coast. This became a 'best-seller'. With his yacht ASGARD he took part in the famous Howth gun-running episode when he brought 900 rifles and 29,000 rounds of ammunition from the Continent and landed them in Howth for the Irish Volunteers in July 1914. He served with distinction in the 1914-18 war, attaining the rank of Major and winning the D.S.C. with the Royal Air Force. He served on the Secretariat of the Irish Convention of 1917-18. Up to this time his opinion was, I think, that the best solution of the Irish question was on the lines of Dominion Home Rule. On his demobilisation from the Air Force he returned to Ireland and at some stage became converted to the Republican ideal. He was elected to Dáil Éireann as a member for Wicklow in May, 1921, and was appointed principal secretary to the Irish delegation who negotiated the Treaty, one of whom was his cousin Robert Barton. He spoke

ably against the Treaty in the Dáil debate thereon. On the outbreak of the civil war he joined the Anti-Treaty forces and was largely concerned with propaganda and publicity. He was credited by the Provisional Government with responsibility for much of the bitterness of the opposition to the Treaty in the months preceding the commencement of hostilities, and for much of the subsequent destruction of property by the 'Irregulars' in the South. According to Dorothy Macardle (The Irish Republic, 1951) he had been requested to come to Dublin to act as Secretary to the reconstituted Republican Government, and was making his way up through the County Wicklow when he made the fatal decision to stop the night of November 10th in the house of his cousin, Robert Barton, at Annamoe. Barton was at this time in custody. About five or six o'clock in the morning a small party of troops entered the house and seized him as he drew a small automatic pistol which, however, he did not fire. He explained afterwards that he had refrained from firing by reason of the presence of women whose lives might have been endangered in an exchange of shots. He was brought up to Dublin and lodged in the Guard Room at Portobello Barracks.

He was considered to be an Englishman interfering in an Irish quarrel and as such was regarded with much ill-feeling by some of the officers at Portobello. According to what I was told at the time, he was subjected to some rough treatment, though not to any serious ill-usage. He was deprived of some of his personal property including, I believe, his watch, and I do not know whether any or all of it was ever returned to his family. It is only right to say that this disgraceful conduct was confined to a few officers only. Steps were taken promptly by Command H.Q. to have him charged and tried by Military Court for the offence of possession, without lawful authority, of the automatic pistol. A Court was duly convened and sat,

I believe, at Portobello, to try him on November 16th or 17th.

was, I believe, the officer who served him with the Charge-Sheet and the abstract of evidence.

was the Legal Officer on the Court and

I believe, prosecuted. He was defended by Patrick Lynch, K.C., Michael Comyn, K.C., and Conor Maguire, then a junior barrister of about a year's standing. There was no controversy as to the facts and no real defence. They made the point that the Regulations related only to the trial of civilians by Military Court; and contended that he was not a civilian but an officer of the Anti-Treaty forces and that the Court had, therefore, no jurisdiction to try him. When the Court refused to accept this submission they withdrew from the trial. Childers was then convicted and sentenced to death.

Meanwhile the findings and sentences in the case of Cassidy, Gaffney, Fisher, and Twohig had been confirmed by the Army Council, and their execution was fixed for the morning of November 17th at Kilmainham Jail.

was detailed to preside at a Court of Inquiry, in lieu of an inquest, to be held immediately after the execution; and was detailed to attend the execution and give evidence as to its having been duly carried out. He told me subsequently what happened. The firing party and the Officer in Charge were all young and somewhat raw. They naturally disliked what they had to do and were somewhat upset. Three of the young men to be executed were killed instantly. The fourth was not though he was providentially rendered unconscious. It therefore became the unenviable duty of the officer in charge to administer the coup de grace with his revolver. According to he acted for a moment as if he were going to order the man to be taken to hospital. He recovered his poise, however, and the execution was completed. gave evidence

accordingly before the Court of Inquiry who found that the four men had been killed in due execution of the sentence of a Military Court.

The next trial by Military Court also took place in Dublin where, if my memory serves me accurately, three men - Joseph Spooner, Patrick Farrolly, and John Murphy - together with a youth called Mallin were tried. The circumstances, as I remember them, were as follows: A lorry of Government troops was being driven along the South Circular Road when it was attacked with bombs and revolver fire. I cannot remember if there were any casualties; but in the course of a round-up which followed almost immediately these four men were arrested in the vicinity and each was found to be in possession of a loaded revolver. They were in due course charged accordingly, tried, I believe in Griffith Barracks, and convicted and sentenced to death. The proceedings of the Court came to me in the usual way for consideration. I cannot say whether they had been tried together or separately. Mallin was much the youngest of the four and was a student at University College, Dublin. Although the only charge against him was that of being in possession of a revolver without lawful authority evidence had been given of the attack upon the lorry. This was on one view not strictly relevant to the charge on which he was tried and I seized upon it as a pretext for advising against the confirmation of the sentence in his case on the ground that, having regard to his youth, the Court in the absence of such evidence might well have seen fit to impose a less sentence than that of death. I advised that the sentence should be commuted to one of penal servitude. The proceedings were in other respects perfectly in order and I so advised in respect of the finding and the other sentences. In the course of a few days I was asked to attend a meeting of the Army Council. Mulcahy, McMahon, O'Sullivan and O'Hegarty

were present but I cannot recollect that McGrath was. I was closely questioned about my reasons for advising against the confirmation of the sentence in the case of Mallin. I could only reiterate what I had said in writing and adhere to what I had already advised. I was given no clue as to whether my advice was going to be accepted.

On the evening of Childers's trial his Counsel went to the house of Mr. Justice Charles O'Connor, Master of the Rolls, and applied ex parte for a conditional order for the issue of a writ of habeas corpus to have him brought before a Civil Court in order to have the legality of his detention and trial determined. They applied also for similar orders in respect of the other men under sentence of death whose names they did not know. The Master of the Rolls was not prepared to give them the order on an ex parte application but gave liberty to serve notice of motion for the order on the Chief State Solicitor as representing the Government. This motion came on for hearing on November 21st when Hugh Kennedy, K.C., Tim Sullivan, K.C., and John O'Byrne, then still a junior barrister, appeared on behalf of the Government and the Army Council. The matter was ably and exhaustively argued by Childers's Counsel. It would be out of place here to attempt to summarise their arguments; but they tried, upon every ground which their ingenuity could suggest, to establish their client's right to the order sought. Counsel for the State, in resisting the motion, based their case upon the broad proposition that the country was in a state of civic strife and armed rebellion; and that, in such circumstances, the Government was legally entitled to defend itself and to oppose force by force. It had a natural as well as a legal right to use its armed forces to suppress rebellion and restore order, and it was a legal principle well recognised and established that the Civil Courts would not interfere with, or seek to control, the Government's

military forces in their task of suppression as long as such a state of armed rebellion continued. The arguments concluded on November 23rd when the Master of the Rolls gave judgment. He said that Counsel for Childers had argued that a state of war had not been proved to exist; but apart altogether from the affidavits filed upon behalf of the State, which clearly showed that such a condition of civil war did exist, he was prepared, he said, to take judicial notice of its existence. He was sitting, he said, in a make-shift Court because the Four Courts had been blown up. He continued: "I also know that railways have been torn up, railway stations destroyed, the noblest mansions in the country burnt down, roadways made impassable, bridges blown up, and life and property taken in almost every county in Southern Ireland. If that is not a state of war, I should like to know what is". He said that the legal authority of the Provisional Government could not be questioned; that independently of any statute it had the right and duty to defend the subjects of the State from aggression; that when a state of war arises the Civil Courts had no power over the acts of the military forces; that the maxims *salus populi suprema lex* and *inter arma silent leges* applied with singular aptness to a state of affairs in which the ordinary law had been silenced by the sound of the bomb and the pistol shot. He refused the motion for a conditional order. He was then asked to stay the execution of the sentence, and said he had no power to do so. An application in the nature of an appeal to the Court of Appeal was under consideration when all further legal proceedings were forestalled by the execution of Childers by a firing squad at Beggar's Bush Barracks on the morning of Friday, November 24th.

After the first executions I had successfully objected to Officers of the Legal Staff being required to attend at or act on Courts of Inquiry subsequent to the execution of sentences of Courts with which they had been concerned. There was, therefore,

no member of the staff present at Childers's execution. What happened, however, was common knowledge. It had been fixed for an hour at which there proved to be insufficient light, in the opinion of the Officer in Charge, to carry it out properly, so that like the soldiers after the Battle of Aughrim in Moore's poem Childers had to wait "until morning's beam should rise and give him light to die". He smoked and chatted with the firing party, disclaimed any feeling of ill-will against anybody, and died bravely when the time came.

I had met him personally on two occasions. The first was when, as a student in University College I was Correspondence Secretary of the Legal and Economic Society of which George O'Brien, now Professor of Economics, was Auditor, and Childers was one of the Speakers to his inaugural address. The second was when, as Judge of the Dáil Courts, I held a Circuit Sitting of the Rathmines District Court in the Town Hall at which the other members of the Court were Childers and James Dwyer. In less than a month after Childers's execution Dwyer was shot dead in his shop in Rathmines by a gunman of the Anti-Treaty forces who made good his escape after the killing.

When I received the proceedings in the Childers's case the fatal pistol was included among the exhibits; and when the matter had been concluded I decided to keep it for my own use instead of handing it in to Stores; with a view of returning it eventually to his family as I did many years later. It was a .32 Spanish Automatic, No. 10169, which according to some of the Officers at G.E.Q. had been given to Childers by Collins. It was small and much more convenient to carry than the Webley .45 with which I had been issued. I had several adventurous experiences with it which it may not be out of place to recount here.

Some time early in 1923, after Eastern Command H. Q. had been transferred from Griffith Barracks to Collins Barracks and Sheehy, Kenny, and Casey had taken up their quarters there, I went to a dance in the Metropole, then newly opened. When it was over I secured a taxi to drive me home to Portobello. It was the last taxi available; and Dr. Matt O'Connor, then a Commandant in the Army Medical Services and now Professor of Pathology in the College of Surgeons, asked me for a "lift" to Collins Barracks where he had his quarters. For some reason which I cannot now recall, if I ever knew, the taxi driver took a circuitous route via Parnell Street and North King Street where we were stopped by a patrol of Government troops. I was carrying the automatic pistol and at once told the Corporal in charge of the patrol that I had it. I was in evening dress and had no means of identification. O'Connor was in the same plight except that he was not armed. We explained who we were; but the Corporal was naturally not prepared to take our word for it. The printing works of Patrick Mahon had been partially destroyed by fire a short time previously, and a military post had been established there to which we were now taken taxi and all. We both explained the position to the Sergeant in charge of the post and suggested that we would ring up Portobello or Collins Barracks and put him in touch with someone who could tell him to let us go. This did not work for some reason that I cannot remember. I then suggested that the Sergeant should accompany us in the taxi to Collins Barracks where we could be identified. He agreed to this course and, accompanied by a very dour-looking soldier who appeared to regard me with the gravest suspicion, got into the taxi with us. The soldier sat opposite me with his rifle between his knees and the muzzle pointing at my chest. I said several silent prayers that the trigger mechanism might be safe and that the taxi would not go over any bump in the course of our journey. We arrived safely at Collins Barracks where O'Connor

was identified by the Orderly Officer and I was identified by Sheehy, who had to be roused from his bed to do so. It was now about four o'clock in the morning and I decided to spend the night in Collins Barracks. I paid off the taxi man whose meter, I remember, registered fifteen shillings. I had for a moment thought of getting Casey to identify me. He was, however, very fond of a practical joke; and I was afraid that when I explained my predicament to him his sense of humour would get the better of him and urge him to deny all knowledge of me. I thought, somewhat perversely I confess, that I would punish him for what I assumed would have been his reactions to my misfortune and secured the co-operation of the Orderly Officer in what I proposed to do. We went to Casey's room and woke him up. He was, of course, astonished to see me. I explained that I had been at a dance and that when I got home to Portobello I had found a message awaiting me, to the effect that certain very important members of the Anti-Treaty forces had been captured and conveyed to the Curragh, that it was proposed to bring them forthwith before a Military Committee; and that he was to go at once to the Curragh to act as prosecutor. He was greatly disgusted and got up grumbling and muttering maledictions on all and sundry. I pretended to sympathise with him, but allowed him to wash, shave, and dress before telling him that my real purpose was to get identified, that I had now convinced the Orderly Officer that I was the Judge-Advocate General and had power to give him directions which he was prepared to carry out; that if I had simply asked him to identify me I was sure he would have denied all knowledge of me; and that he could now go back to bed. I then made my escape before he could brain me.

That was Adventure No. 1. Some weeks later I had been a guest at dinner at Judge Johnston's house in Lansdowne Road and took a taxi home to Portobello. I was wearing a big

overcoat over my dress clothes and was carrying the pistol in the right hand pocket. The safety catch must have been off and I must have been unconsciously fingering the weapon for, as we bumped over the railway level-crossing, there was a loud bang and I felt a violent blow on the front of my right thigh. The speed of the taxi increased very markedly, but I was glad to note that there was otherwise no reaction from the driver. I cursed myself whole-heartedly for being a fool, but was relieved to find on investigation that there appeared to be no traces of blood. When I was paying off the taxi-man at the barrack gate I explained what had happened, saying that he would probably find a hole in some part of his car and to let me know the damage so that I could pay for it. He said I could forget about that; that he had thought someone had taken a pot-shot at me, and that as soon as he heard the shot he had jammed his foot down on the accelerator. When I got to my quarters I found that there was a mark on the leg of my dress trousers where the bullet had removed the nap of the cloth without cutting or even fraying the fabric. There was a lump and a bruise on my thigh about the size of a shilling, and that was all the damage done. I thanked my stars that I had not had to pay the full penalty for my carelessness.

My third and final adventure with this unlucky weapon occurred years later. In the early thirties I had to try a succession of cases at the Dublin Circuit Criminal Court in which several prominent members of an "illegal organisation" including George Gilmore, Frank Ryan, and Seán Russell were charged with offences against the State. The Guards thought I required protection and I was again carrying this automatic pistol. One Saturday afternoon I attended a match at Lansdowne Road - I think it was the final of the Leinster Senior Schools Cup which was won by Presentation College, Bray - and after the

match adjourned to the members' bar in the Lansdowne pavilion. I was having a drink with Paddy Stokes, then Manager of the Dame Street Branch of the Munster and Leinster Bank, when I managed to repeat my performance of some ten years previously. I was wearing a light rain-coat and had my hand in my right-hand pocket where this wretched weapon was. Again there was a loud bang. Paddy Stokes, who was standing beside me, gave a jump and said: "My God! what was that?". I said nonchalantly: "Oh its only a car back-firing". I had in fact noticed a motor van stationed outside the pavilion so that the explanation was not as far-fetched as it seems. I knew, of course, only too well what had happened and, throwing an apparently casual glance downwards, noticed that there was a neat hole in the toe-cap of my right shoe. There was the usual babble of conversation going on and, strangely enough, nobody except Stokes had appeared to take any notice of the shot. I finished my drink, took my leave of Stokes; walked somewhat gingerly to the top of Lansdowne Road; and took a taxi to my mother's house at 21, Pembroke Park where I hoped to get my brother, Dr. Bob, to take a look at the damage. He was not there so I walked the few hundred yards to my own house at 5, Argyle Road where on investigation I found that I had drilled a hole neatly through my big toe. My wife 'phoned Dr. Frank O'Grady, who after an examination got Harry Barniville to have a look at me. They decided that no treatment was necessary beyond cleaning, dressing, and rest in bed. While I was having my drink in the members' bar I had noticed that Barniville was having one in the visitors' bar. He found it very hard to believe me when I told him that I had shot myself while standing not more than twenty or thirty feet away from him. He had heard no shot. It was agreed that some explanation other than the truth had better be offered for my mishap. At this time I was playing a good deal of Squash Rackets - some of it with

Charlie Casey. With his co-operation it was allowed to be understood that I had broken my toe in the course of a strenuous game with him. I spent some days in bed and some weeks hobbling about before my toe mended, leaving as the only permanent record of my adventure a scar and an ankylosed top joint. I had little pain at any time although the bullet had gone through the bone, shattering it somewhat in the process. I had again escaped without paying the full penalty of my stupidity which might well have been a shattered knee or ankle joint.

As already stated I eventually had the pistol returned to Childers's family. On November 4th, 1939, I wrote as follows to his son, who is now Minister for Lands and Fisheries: -

"Dear Childers,

In fulfilment of a promise made some time ago I am writing you this note to put on record what I have already told you with reference to the Spanish automatic pistol No. 10169 which is now in your possession.

As you are perhaps aware, I acted as Judge-Advocate General to the Free State Forces from August 1922 to November 1926. The proceedings of the Military Court which tried your father, the late Mr. Erskine Childers, were in the ordinary course forwarded to me for my legal advice as to the confirmation or otherwise of the finding and sentence. The charge upon which your father was tried by the Military Court was one of possession without lawful authority of an automatic pistol. As you are aware, he had been captured by a detachment of Free State troops at Annamoe; and on being called to surrender drew this automatic pistol but, in deference to the presence of ladies in the house, refrained from using it. The automatic pistol which he had in his possession

was attached as an exhibit to the proceedings of his trial. After his execution I retained the pistol in my possession until some few years ago when all licences for such weapons were withdrawn and the pistol was taken possession of by the Guards. It was subsequently returned to me and retained by me for some short period when I, for personal reasons, surrendered my licence and returned it to the custody of the Guards. I subsequently authorised them to deliver it to you. I can definitely assure you that the .32 automatic pistol thus handed you by the Guards, bearing the number 10169, is the identical weapon which your father had in his possession when captured, which formed the subject of the charge on which he was tried, which was attached to the proceedings of his trial, which was taken possession of by me after his death, and which continued in my possession for some eight or ten years thereafter.

Even at the risk of reviving unhappy memories I feel I must put these facts on record in verification of the authenticity of what you must regard as a treasured relic.

I cannot say what justification there may be for the story but at the time of your father's death it was generally accepted amongst the Free State Officers at G.H.Q. that the pistol had been given your father by Michael Collins.

Very sincerely yours,

Cahir Davitt".

Needless to say I was heartily glad to be rid of a weapon which in my hands was proving to be more of a danger than a protection. To mark the handing over of the weapon,

Childers, his cousin, Robert Barton, Senator David Robinson and I lunched together at the Stephen's Green Club of which Robinson and I were members. Robinson had been with Childers's father at Barton's house at Annamoe; and had been arrested with him. Fortunately he was not armed at the time. This, I am afraid, has been a very long digression and I had better now return to my proper narrative of events.

Sometime about the end of November I was asked to come over to a meeting of the Army Council. It will be remembered that the very first Military Court had been held in Kerry at the beginning of the month when four men had been sentenced to death. The sentence had been confirmed; but up to the time of the habeas corpus application in Childers's case had not been carried out and had then been stayed pending the decision of the Master of the Rolls. The Army Council were now considering whether or not to remove the stay and allow the execution to take place. One or two members were inclined to think that the period of nearly a month spent by these men in a state of suspense awaiting death was punishment enough. The rest favoured the view that, as the period was no longer than that which normally elapses between sentence and execution in the case of a conviction for a capital offence in an ordinary Criminal Court, there were really no grounds for a reprieve. I was asked for my opinion. I said that this was not a matter for legal advice at all but involved a question of policy. I was pressed for my view and eventually suggested that the men might be treated as hostages for the good behaviour, so to speak, of the Anti-Treaty forces in Kerry. I said that General Murphy could announce publicly that these four had been charged with whatever offences they had in fact been charged with, tried, found guilty, and sentenced to death; that the findings and sentences had been duly confirmed; but that execution had been suspended and that he would continue

continue the suspension as long as no attack was made upon the National Army in his Command Area. Some members of the Council thought that this would be unfair. Mulcahy asked them whether, if they were in the position of the four men in question, they would prefer to be treated as hostages in the manner suggested or shot forthwith, for these appeared to be the real alternatives. There could be only one answer to the question so propounded and it was eventually decided to adopt my suggestion. Before I made it I had not failed to notice that Murphy must have had a fortnight in which to carry out the sentence had he wished to do so. He must have had notice of the confirmation of sentence not later than the first week in November; and the application for habeas corpus with the consequent stay of execution was not made until the 17th. He had, however, taken no steps to carry it out. I had the feeling that for some reason he did not want to carry it out and this proved to be correct. Though he made his announcement about keeping the men as hostages, attacks on his troops did not cease. The executions were, however, never proceeded with so that my suggestion in fact had the effect of saving these men's lives.

On November 27th a letter was addressed by the Chief of Staff of the Anti-Treaty forces to "the Speaker of the Provisional Parliament of Southern Ireland", which, after making reference to many crimes alleged to have been committed against their prisoners by members of that body and of its armed forces, continued:-

"Finally you are now pretending to try I.R.A. prisoners before your make-believe Courts. You have already done to death five after such mock ceremonials. You now presume to murder and transport the soldiers who had brought Ireland victory when you, traitors, surrendered the Republic twelve months ago.

Next to the members of your "Provisional Government" every member of your body who voted for this resolution by which you pretend to make legal the murder of soldiers is equally guilty. We therefore give you and each member of your body due notice that unless your army recognises the rules of warfare in the future we shall adopt very drastic measures to protect our forces".

On November 30th, Spooner, Farrelly, and Murphy were executed. Mallin's sentence had been commuted to penal servitude. I thought at the time that it was solely due to my advice, but I was told years afterwards by Diarmuid O'Hegarty that it was mainly because he was the son of Michael Mallin executed in 1916. Shortly after this a copy of an order purporting to be signed by Thomas Derrig as Adjutant-General of the Anti-Treaty forces was found in the possession of a prisoner on his arrest. A copy was sent to me for my information. It was comprehensive and provided for the "execution" of all members of the Provisional Government, all members of the Dáil who had voted for the Army (Special Powers) Resolution, the members of the Army Council, and most if not all of the Command Legal Staff Officers. I noticed that the names of these last were set out in the same order as they appeared in a communication which I had received from the Army Pay Office notifying me that they had been placed upon the pay roll; and by way of further coincidence Joseph J. Mooney was down as Joseph J. Murray, a mistake which I had had to correct on receipt of the communication in question. This seemed to indicate that there had been some leakage of information from the Army Pay Office; and I brought the circumstance to the attention of the Army Intelligence Department. I was told subsequently, however, that the clue had led nowhere. We were generally sceptical as to whether this wholesale "execution" order was to be accepted at its face value when our doubts were tragically resolved on December 7th.

Seán Hales and his brother, Tom, had been prominent in the fight against the British in the West Cork area. I had met Seán on the occasion of holding a Court in Bandon in the period after the Truce, and had taken a liking to him. The impression he left upon me was that of a big fair-to-reddish-haired Corkman of the finest type. As was not uncommon in families at the time, he and his brother differed upon the Treaty issue; and on the outbreak of civil war they took opposite sides. Seán Hales was a member of the Dáil as well as being a Brigadier in the National Army and had voted for the Army (Special Powers) Resolution. On December 7th he was leaving the Ormond Hotel on the North Quays to attend a meeting of the Dáil, in company with Pádraic Ó Máille, another member who had also voted for the Resolution, and they had just taken their seats on an outside car when a party of six or seven men opened fire on them with revolvers. The driver drove at once to Jervis Street Hospital where Hales was found to be dead. Ó Máille was seriously but not fatally wounded.

That night I was playing cards with the others in our quarters when I was called over to the Adjutant-General's Office where there had been apparently a meeting of the Army Council. Mulcahy told me that they had decided to set up a system of Military Committees to deal summarily with persons arrested in possession of arms, ammunition or explosives, while retaining the Military Courts to deal with cases other than those of persons caught red-handed, so to speak, and where there might be a real and disputed question of fact to be decided. Any such person when arrested would be brought as quickly as possible before a Committee of Officers. They were to investigate the circumstances of his arrest, report to the Army Council whether he had in fact been in possession of arms, ammunition or explosives when arrested, and if so whether it was without proper authority; and to recommend

what punishment, if any, they considered proper. On receipt of their report the Army Council would decide what punishment, if any, to inflict. He wanted me to draft regulations for such Committees, and a proclamation to be issued that night or the following morning by the Army Council bringing them into effect. I said that, as far as I could see, the Committees contemplated were to be something in the nature of drumhead courts-martial. They would, however, lack any element of judicial function since they could decide nothing but only report and recommend. Their proceedings would not be a trial and I could see no necessity for rules of procedure or other regulations. To keep matters within the terms of the Army (Special Powers) Resolution each Committee would have to include an Officer nominated by the Minister for Defence and certified by the Law Adviser to be a person of legal knowledge and experience - in other words one of my Command Legal Staff Officers. He could be trusted to ensure that the Committee's investigations were properly conducted and its report properly presented. As a Military Officer his services were at the command of his superiors; but having regard to the unjudicial character of the proposed Committees I said that I would prefer that he should be requisitioned solely in his military capacity; and that neither I, nor the Legal Section as such, should be associated with, or have any responsibility for, the Military Committees. This was agreed to, but I was asked had I any objection to drafting the proposed proclamation. I had none and proceeded to do so. When I had handed the completed draft to the Adjutant-General I returned to my interrupted game of cards.

The press the following morning contained the proclamation. It was as follows:

Óglaigh na hÉireann,
G. H. Q.,
Portobello Barracks.

Proclamation by the Army Council.

To All Whom It May Concern.

A conspiracy exists to assassinate members of the Nation's Parliament and has already claimed two victims.

To safeguard the lives of the people's representatives, to safeguard the life of the Nation itself, the sternest measures are necessary and will be adopted.

It is Therefore Announced and Proclaimed as Follows:

- (1) Every person arrested in possession of any one or more of the articles or substances specified in the second paragraph hereof or in circumstances which point to the possession by him of any one or more of the said articles or substances, shall be liable to be brought forthwith before a Committee of Officers of the National Army and charged with such possession. Such Committee will investigate the charge and report in writing to the Confirming Authority (hereinafter defined) the result of the inquiry.
2. The articles and substances above mentioned are as follows:
 - A. Any bomb, portion of a bomb, or article in the nature of a bomb;
 - B. Any dynamite, gelignite, or other explosive substance;
 - C. Any revolver, rifle, gun or other firearm or lethal weapon, or any ammunition for such firearm.
3. The Confirming Authority will be any two members of the Army Command.

4. Upon consideration of the report of such Committee the Confirming Authority will, if satisfied that the person so charged as aforesaid had possession of any of the articles or substances aforesaid without proper authority, order such person to suffer death or such other punishment as they shall think fit.
5. Such Order will be carried out summarily.

Signed this 7th day of December, 1922.

Riataird Ua Maolcatha,
Commander-in-Chief.

Later that morning came rumours of dire happenings at Mountjoy Gaol followed by the publication in the evening papers of the following official announcement:

"The execution took place this morning at Mountjoy Gaol of the following persons taken in arms against the Irish Government: Rory O'Connor, Liam Mellows, Joseph McKelvey, and Richard Barrett, as a reprisal for the assassination in his way to the Dáil on the 7th December of Brigadier Seán Hales and as a solemn warning to those associated with them who are engaged in a conspiracy of assassination against the representatives of the Irish People".

I propose later on to make some observations on the execution policy in general and on this reprisal execution in particular; meanwhile I proceed with my narrative. Early in December a party of twenty-two Irregulars were surprised by Government troops near Leixlip; and surrendered after a short engagement in which some casualties were sustained. It was discovered that five of them were deserters from the National

Army. They were charged with desertion and treachery, tried by General Court-Martial, found guilty and sentenced to death. The sentence was carried out early in January. The remainder of the party were charged with unlawful possession of arms and taking part in an attack on the National Forces - they were tried by Military Court. I confess that my memory about this whole matter is not very clear but if it serves me accurately the circumstances were as follows: -

was the Legal Officer on the Court and prosecuted. The accused were defended by Ted Swayne, K.C. Just before the trial was about to commence, Swayne approached

and said that as far as he could see there was no possible defence to be made to the charges and that he was prepared on his clients' instructions to plead guilty.

reminded him that the charges were in respect of offences for which sentence of death could be imposed. Swayne said that he and his clients were of course only too well aware of that fact; but that they could see nothing to be gained by needlessly occupying the time of the members of the Court; and that he proposed to address them only on the question of sentence and to make an appeal for leniency. This course was adopted, his plea failed, and his clients were sentenced to death. When the proceedings were sent to me for my advice as to confirmation I was somewhat shocked at what had happened. At that time it was, I believed, a very rare occurrence for a Court to accept a plea of guilty on a capital charge. In such cases it was, I thought, the practice to make every endeavour to persuade an accused person who offered such a plea to withdraw it and put the prosecution to proof of their case. I sent for and remonstrated with them for allowing things to take the course they did. I said they should have refused to accept a plea of guilty. They replied, with

apparent reason, that such might have been the proper thing for the Court to do if the accused had not been professionally represented, but since they had in fact been represented by a very able and distinguished Senior Counsel it was hard to see how the Court could in the circumstances have reasonably acted otherwise than they did. I reminded them that the Regulations governing trials by Military Courts provided that they were to have regard as far as was practicable to the procedure laid down for Courts-martial by the General Regulations as to Discipline; and that Regulations 53 and 54 made it quite clear that a plea of "Guilty" could be entered only by the accused themselves and could not be entered by their Counsel. In advising the Confirming Authority I put before them the considerations I have mentioned and said that in all the circumstances I would feel much happier if the findings and sentences, particularly the latter, were not confirmed. I do not know what circumstances weighed with the Army Council but the sentences were in fact commuted to penal servitude. I have always wondered whether Swayne thought that this might happen and gambled upon it. He could hardly have expected to succeed in his plea for leniency; and it may be that he took the course he did in the slender hope that circumstances might turn out in the way I have described. I think on the whole he should be given the credit for the success of what would seem to have been a rather desperate gambler's throw.

On December 6th the Irish Free State had come into being when its Constitution was enacted by the Dáil sitting as a Constituent Assembly. The first Senate came into existence by being partly elected and partly nominated as provided by the Constitution and held its first meeting on December 9th under the Chairmanship of Lord Glenavy. There were no further "executions" of members of the Dáil, but the wholesale destruction of property proceeded apace, and business premises

and private residences of persons associated with the Government or the Legislature came in for special attention. On December 10th Seán McGarry's house in Philipsburgh Avenue was set on fire by a party of armed men who failed to allow the inmates sufficient time to reach safety. Mrs. McGarry and her two children received burns and in the case of one child the injuries proved fatal. On the same day J.J. Walsh's shop in Berkeley Road and Mrs. Wyse Power's premises in Camden Street were set on fire. A couple of days later attempts were made to fire the offices of two firms of solicitors, Messrs. Corrigan and Corrigan and Messrs. Reddin and Reddin, as well as the printing works in Yarnhall Street of Mr. Patrick Mahon. On the 18th the house of Gordon Campbell, Lord Glenavy's eldest son, was completely gutted and bombs were thrown at the offices of the Independent Newspapers Ltd. in Middle Abbey Street. On the 20th a party of armed men seized the Dublin to Belfast mail train, forced the passengers to leave, and set it on fire. They then compelled the driver to send it into collision with a train carrying Government troops and military stores. On the same day James Dwyer was shot dead in his shop in Rathmines as already mentioned; and two unarmed soldiers were fired on, one in Granby Row and the other in Parnell Street. The former was killed and the latter seriously wounded. Most of these events happened in Dublin; but press reports of similar happenings throughout the country were of daily occurrence. On December 20th also came the first news of an execution following an investigation by Military Committee when seven men were shot for unlawful possession of rifles, ammunition, bombs and explosives.

It was in such a joyous atmosphere of peace on earth and goodwill to men that this island of Saints and Scholars approached the celebration of the feast of Christmas 1922.

On Christmas Eve I was alone on duty in our office. Coyne was, I think, at the Curragh; Donovan and Casey were in hospital, one with influenza and the other with a septic throat. The others were on Christmas leave.

Late in the evening I got a message from Major-General Prout in Kilkenny telling me that Fred Lidwell, whom I had appointed as Assistant to Joe Mooney, the Command Legal Staff Officer there, had been accidentally shot dead. He asked me to be so kind as to inform his relatives. On inquiry I found that his mother, who was a widow, lived in Dún Laoghaire; and thither I set out on the pleasant task of telling her that her only son was dead. I called first at the Presbytery with the idea of enlisting the aid of one of the local clergy in breaking the news to her. There was only one priest at home and he could not come with me as he was on sick-call duty. He advised me, however, to call on Mrs. Roantree, Dr. Roantree's wife, who was a close friend of Mrs. Lidwell, and to get her to accompany me on my sad mission. She was very shocked at my news but told me that I had had my journey for nothing; that Mrs. Lidwell and her family had gone to spend the Christmas in the country with some friends whose address she gave me. I had after all to convey the sad news to her by telegram.

I learned subsequently what had happened. Two men, John Phelan and John Murphy, had been tried some days previously by Military Court in Kilkenny, and Joe Mooney had acted as Legal Officer on the Court. They were convicted on the usual charges and sentenced to death. Mooney was much upset, and this combined with the approach of the festive season was sufficient to start him on a drinking bout. He had got into trouble of some kind and had been taken to the Guard Room. Lidwell, as his Assistant, was sent for and requested

to take charge of him; and, while trying to persuade him to go to his quarters, was shot through the head by a stupid soldier who was carelessly handling his rifle.

When the proceedings in the case of Phelan and Murphy came to me for my advice as to confirmation I found them to be unsatisfactory. I cannot now remember what was wrong; but I know that, while technical, it was sufficient to induce me to advise against confirmation. My advice was not adopted, however; the findings and sentences were confirmed; and the sentences were carried out on December 29th.

On that same day Denis McCullagh's business premises at 56, Dawson Street were wrecked by an explosion. About the same time a party of armed men, who described themselves as acting on behalf of "the Authorities", called at the lodgings of a man called Francis Lalor and forcibly took him away. His dead body was found the following morning in the vicinity of Milltown Golf Course. This killing had all the appearance of being an "unofficial execution" carried out by some members of the Government's forces. It was in this fashion that we saw the old year out.

Chapter 1V.

The months of January and February 1923 were in my recollection no improvement upon their immediate predecessor; and events in general followed much the same melancholy pattern of burnings, shootings and executions. On January 8th the Army Council made an order extending the jurisdiction of the Military Courts so as to include a number of additional offences. On the 20th they issued a proclamation announcing the making of the Order and their intention to put it into effect at once. I must, presumably, have drafted both the Order and proclamation; but have now no recollection of doing so. One of the daily newspapers was professing to see some hopeful indications of an approaching return to law and order, but there seemed to be little justification for its optimism. A number of the new police force, the Civic Guards, had been sent out to stations in the country and this was taken as a symptom of hope. They were unarmed and became the easy victims, in some instances, of assaults by armed men who deprived them of their uniforms and other property. On January 11th one of their stations was blown up. The policy of sending them out did, nevertheless, gradually begin to pay dividends notwithstanding the occasional attentions of the Irregulars. Meanwhile the senseless campaign of destruction continued. Early in the month the country residence of Senator Bagwell at Clonmel was burnt to the ground and a few days later President Cosgrave's house was destroyed. At the end of the month the house of Michael Corrigan, the Chief State Solicitor, was blown up, and the residence of a Mr. Dennison, next to Professor Donovan's house in Lansdowne Road, was partially wrecked by explosives. The following day Sir Horace Plunkett's mansion, Kilteragh, at Leopardstown was completely burnt down. The attention paid to members of

the Legislature was not in all cases confined to their property. Ernie O'Malley, who it will be remembered had been seriously wounded in the course of his arrest at the beginning of November, was making a very slow but steady recovery under treatment in the Prison Hospital at Mountjoy. Those in command of the Irregulars in Dublin appeared to become worried about the possibility of his being brought to trial; and sought to secure hostages for his safety. On January 11th the General Council of County Councils was meeting in Parnell Square at the offices of the Dublin County Council. The meeting was interrupted by the entrance of a party of armed men who professed, with this object in view, to be looking for Frank McGuinness, Alec McCabe and Christopher Byrne who were members of the Dáil as well as of the Council; but who were luckily not present at the meeting. A few days later Dr. Oliver Gogarty, who was a member of the Senate, was kidnapped and taken to a house near Chapelized from which he escaped and then evaded his pursuers by swimming across the Liffey. On the same day a Mr. Dinneen was kidnapped; but was released on being able to convince his captors that he was not Senator Dinneen. Finally on January 31st Senator Bagwell, whose house in Clonmel had been burnt a few weeks previously, was kidnapped at his residence in Howth. Dan Hogan, G. O. C. Eastern Command, promptly issued a proclamation stating that unless Bagwell was released within forty-eight hours he would take punitive action against prisoners in his custody associated with those responsible for the kidnapping. Within the specified period Bagwell was at liberty. He had escaped or had been allowed to escape. There was, as far as I can recollect, no further kidnapping of Senators.

On January 18th Liam Deasy, the Irregular Deputy Chief of Staff, was captured while carrying arms. He was brought before a Military Committee who recommended the death sentence.

He had, it appeared, for some time been of opinion that the Anti-Treaty forces had no prospect of ultimate success; and that continuance of the struggle could result only in useless destruction and loss of life. He was considering the step of making his views known to his fellow leaders when his capture was effected. It probably was not very difficult in the circumstances to persuade him to make an appeal to his fellow leaders to agree to an unconditional surrender. This he did, addressing his appeal to his colleagues by name. His life was spared; but his appeal met with no response except a curt refusal from Liam Lynch, the Irregular Chief of Staff. Its psychological effect was, nevertheless, considerable; and it set many of those opposed to the Government thinking that it was time to put an end to a struggle that was becoming more and more tragically futile with each passing week. The Government took advantage of the opportunity to make another offer of amnesty which promised immunity to all who surrendered their arms by February 18th.

Dr. O'Higgins, father of Kevin O'Higgins, the Minister for Justice, lived at Stradbally, Laois, with his wife and daughter. Mrs. O'Higgins was a sister of Tim Healy, the recently appointed Governor General; and the Doctor's family connections made him an obvious target for the attentions of the Irregulars. One attempt had been made to set fire to his house and had proved unsuccessful. On Sunday, February 11th, a small party of armed men visited the place and, after setting fire to the hay in the haggard, succeeded in gaining an entry to the house. There, after exchanging some words with Dr. O'Higgins, one of them shot him dead in the presence of his wife and daughter. A man named _____ was shortly afterwards arrested in connection with the affair and brought before a Military Committee charged with the murder. He was identified by Miss O'Higgins as being one of the raiding

party, and the Committee reported that in their opinion he was guilty of the murder of Dr. O'Higgins and recommended the death sentence. The Army Council decided to act upon the recommendation and fixed his execution for a Monday morning.

was brought to Dublin and lodged in the Guard-room at Portobello. He tried to persuade one of his Guards to post a letter for him. The man accepted the letter but brought it at once to his superior officer. It was addressed to some friend in Laois, explained the desperate plight, and asked for some assistance in establishing an alibi. Though I had nothing to do with the matter I was aware of these circumstances. On the Saturday afternoon previous to the Monday fixed for the execution I happened to be alone on duty in our office when the Orderly told me that a Mr. Horace Turpin, Solicitor, wanted to see me. When he was shown in he explained that he had been instructed to act on behalf of _____ who, he believed, had been arrested for the murder of Dr. O'Higgins. He had a brief bag with him; and, opening it he took out a sheaf of documents which, he said, were affidavits made by a number of reputable people swearing to an alibi for _____ He said that he could get no information as to what had happened to _____ and that he feared that there was every possibility of a tragic miscarriage of justice; as he believed that his client was innocent and might be made to suffer for something which he could not possibly have done. He said that he had sought an interview with the Adjutant-General without success, and thanked me for consenting to see him. He asked me could I do anything to help him. I disclaimed all knowledge of the matter except as to the presence of _____ in the Guard-room and as to the incident about the letter. When I told Turpin about this he was very much taken aback; and, with a great air of

discouragement, proceeded to put the affidavits back in his brief bag, saying that there did not seem to be much prospect of their ever being of any use. I asked him to let me see them. I read them through and found, as he had said, that, if reliable, they did establish a complete alibi for his client. I asked him to wait in my office while I went to see the Adjutant-General. I had quite a long session with O'Sullivan. I told him about the affidavits and he reminded me of the letter _____ had tried to send out. I replied that of course the alibi might be false; but that it raised an issue to be tried; and that, quite apart from the alibi, the case depended upon visual identification by one witness only who could, of course, be mistaken. I said that all the classic cases in which justice was known to have miscarried were cases which depended on visual identification. I reminded him that Military Committees had been set up originally to deal only with persons arrested in possession of arms where there was no real question of fact at issue; and that while the Army Council's Order of January 8th had included murder among the additional offences which could be dealt with by either Military Court or Committee it could have contemplated a murder case being dealt with by the latter only where the offender had been caught red-handed and there was no real issue to be tried. I said that in my opinion this was not a case which should have ever been dealt with by Military Committee; and urged him strongly to cancel the order for _____ execution and to direct his trial by Military Court on the murder charge, when the matter of identification and the alibi defence could be fully tested. He eventually came round to my point of view; and I was able to go back to Turpin and tell him that there was no immediate cause for worry as his client would have every opportunity to make his defence before a Military Court.

At the trial _____ presided while _____ prosecuted and _____ was defended by Kingsmill Moore instructed by Turpin who was his uncle. The alibi witnesses fared rather badly under cross-examination and were, as _____ told me afterwards, _____ disbelieved by the Court, _____ was, however, acquitted as the evidence of identification was not considered to be sufficiently convincing. When O'Sullivan heard of the acquittal he was inclined to blame himself and me for what he said was a miscarriage of justice "the other way". I said that the finding of the Court was in my opinion the right one on the evidence; but that even if it were not we had still done the right thing in having the case fully and properly tried. He was not convinced and thought that it would have been better if we had allowed things to take their course and _____ as he said, to get his deserts. About a year later when Colonel Michael Costello had become Director of Intelligence he told me that on examining his file in the Dr. O'Higgins case, which by then included material information not available at the time of the trial, he was personally quite satisfied that _____ had not been present at the murder.

March was a bad month for the Anti-Treaty forces and they sustained many reverses. Following the death in action in mid-February of an important leader, Denis Lacy, Con Maloney was wounded and taken prisoner early in March. He had succeeded Liam Deasy as Deputy Chief of Staff. Large parties of Irregulars were captured in Connemara and Kerry. Government satisfaction at these successes was, however, marred by outrages committed by some of their troops in Kerry. The worst of these happened at a place called Ballyseedy Cross not far from Tralee. A tree had been felled so as to make a road block; and a trap mine was laid so that any attempt to

clear the road would explode it. The trap worked only too well; and three officers and two soldiers were blown to bits. As a reprisal nine prisoners were taken out and tied to the same tree; and eight of them were blown to pieces by a similar mine. The ninth was thrown into a ditch by the force of the explosion, but was not seriously injured and escaped to tell the dreadful story. No disciplinary action was, as far as I can remember, taken against those responsible for this and the other outrages.

About this time a scheme of Army reorganisation was in progress and certain changes had taken place in the Commands. Instead of eight there were now nine: Dublin, Athlone, Donegal, Claremorris, Limerick, Kerry, Cork, Waterford and the Curragh. Their G.O.C.s were respectively: Dan Hogan, McKeon, Sweeney, Michael Hogan, Brennan, O'Daly, Reynolds, Prout and McMahon. W.R.E. Murphy had been brought back from Kerry to G.H.Q. to act as Director of Training; and after a short period in that office had been appointed Chief Commissioner of the Dublin Metropolitan Police. He had been succeeded in Kerry by Brigadier General O'Daly. Emmet Dalton had resigned his Commission to take the post of Clerk to the Senate, and had been succeeded in Cork by David Reynolds. I thought this an appropriate time to have a meeting of the Command Legal Staff Officers and this was duly held in our office in Portobello. Although this Chapter and the last have been concerned to a large extent with Military Courts and executions the bulk of the work carried on by the Legal Staff was in connection with Courts-Martial and the legal aspects of the administration of the disciplinary code. Each Command Legal Officer had his own peculiar problems and these were fully discussed. I cannot now remember very much about the meeting but I do know that two matters were the subject of much comment.

One was the failure to bring certain military offenders to justice; and the other was the tendency of Courts-martial to be strict where the alleged delinquent was a soldier and entirely too lenient where an officer was concerned. The responsibility for bringing military offenders to justice did not, of course, rest with us but upon Commanding Officers generally and the Corps of Military Police. We could not therefore be blamed for failure to make amenable those responsible for crimes such as the Ballyseedy affair and the several "unofficial executions" carried out by some members of the Government's forces. I could only suggest that each Command Legal Staff Officer should, as best he could, endeavour to impress upon his G. O. C. the importance of a strict and impartial enforcement of military law.

After the meeting was over I asked _____ to remain behind as I had some particular matters to discuss with him. I had reason to be dissatisfied with his work generally, and the incident _____ (if indeed it could not be said to have led up to it) still rankled in my mind.

I took him to task about several matters and he resented my criticism. He said: "I suppose you want my resignation?" I replied: "I have not asked you for it". "Well" he said, "You can have it anyway". I asked him was that his final decision or would he like to reconsider it. He said it was final. I told him that if he sent in his resignation I would have it put through at once, and so we parted. I was not sorry that he had decided to relinquish a position for which he was not suited. This was one of the only two occasions on which I had any difficulty with any of my staff. Shortly before this I had reason to complain of the work which _____ was sending _____; and

his G.O.C., had told me that he wished I had given him someone else as a Command Legal Officer. I took to task over some particular proceedings and was amazed to receive a telegram from him stating that he had suspended all Courts-martial in the area pending personal discussion with me on the matter of my complaints. This placed me in a difficulty as I, holding no military rank, had no authority to give him orders. I consulted Mulcahy and, as a result of his advice, wrote to saying that so far our difference could be considered as a purely personal affair between ourselves; but that, unless he cancelled his suspension of Courts-martial forthwith and resumed work on a normal basis, I could assure him on the authority of the Commander in Chief that the next Court-martial to be held in would be his own. I tempered this severe reply in some way that I cannot now recall; and matters ended satisfactorily for the time being. I later had occasion to transfer to to replace , who had resigned and he remained there without noteworthy incident for the rest of his period in the Army.

April marked the beginning of the end of the Civil War. The month began none too auspiciously with three killings in Dublin which bore all the appearances of being "unofficial executions" by Government forces. A young dental student called Bonfield and two men named Kernan and Breslin were the victims. On April 5th General Mulcahy issued a special order of the day referring to allegations that Breslin and Kernan had been murdered by Government Forces and stating that the Army repudiated all such actions. He emphasised that it was the duty of any officer or soldier who had any information likely to establish the identity of the persons responsible for these murders to communicate at once with the Commander-in-Chief. This appeal did not, however, lead to anyone being made amenable;

and another murder of the same kind occurred at the end of the month when a man called Hogan was found shot at Gracepark Road, Drumcondra. On the other hand, achievements by the Irregulars included the burning of the Courthouse and looting of shops in Dromahir, County Sligo; the murder of two officers - Lieutenants Cruise and Kennedy - who had been kidnapped some time previously; the kidnapping of Civic Guards in Sligo; the burning of the interior of the Presbyterian Church at Duncannon, County Wexford; the blowing up of a railway carriage in Dublin; an attack on Headford Military Barracks, County Galway; the burning of Sir John Dillon's house at Lesmullen, County Meath, the house of the Sub-Sheriff Robert Thorp near Bagenalstown, County Carlow, and Tubberdaly House, the residence of Mr. Beaumont Nesbitt; as well as three other mansions; the burning and looting of a train on the Midland Great Western line; and the wrecking of the drapery premises of Messrs. Edward Lee & Sons in Rathmines. An Army Officer was shot dead in the street in Cork and a soldier likewise in Ennis.

On April 11th Liam Lynch, the Irregular Chief of Staff, was wounded and captured in a fight in the Knockmealdown Mountains not far from Mount Melleray. It would seem that a meeting of Anti-Treaty leaders had taken place in the vicinity; and Government troops conducting a combing out operation had apparently come close to surprising them actually in session. The troops were fired on, probably by a covering party, and a fight ensued during which all the leaders (who were thought to include de Valera and Stack) got away with the exception of Lynch. He was found lying in the heather seriously wounded but conscious; and was brought to hospital in Clonmel by ambulance but died that evening. He had on two previous occasions at the commencement of hostilities been in the hands of Government troops; and on each occasion had been allowed

to go free under what circumstances I am unable to say. His attitude was at the time, I believe, somewhat indeterminate or perhaps ambiguous. He was credited with being responsible for the continuance of the struggle after other leaders had realised its futility; and his death was taken as marking the beginning of the end. A few days later, on April 14th, Austin Stack was taken. He was found to have no weapon in his possession but he had several documents indicating that a cease-fire order was being considered. One document was a draft which ran as follows: -

"We the undersigned members of the Army Council and the Executive and Officers of the Army do hereby call on and authorise the President of the Republic to order an immediate cessation of hostilities. Volunteers are requested to hand in their arms to pending the election of a Government the free choice of the people".

On April 17th troops operating in the Glen of Aherlow in Tipperary completely surprised a party sleeping in a dug-out. The party included Dan Breen, and Maurice Walsh. The latter was stated to have been Liam Lynch's Secretary. The dug-out was well stocked with rifles, revolvers, ammunition and bombs.

On April 27th de Valera published proposals for peace. They evoked no response from the Government; but Senators Andrew Jameson and James Douglas, to whom he had written, asked permission of the Government and were allowed to have several interviews with him. Nothing resulted from these talks. Two principles were held by the Government to be fundamental: that all political questions must be determined by the majority vote of the people's elected representatives;

and, as a corollary, that all arms should be under the control of the Executive Government responsible to the people through their elected representatives. They insisted, therefore, that before there could be any question of ceasing military operations or releasing the thousands of prisoners in custody these principles would have to be acknowledged by the prisoners themselves and all leaders of the Anti-Treaty forces; and that all arms would have to be surrendered. While apparently disposed to accept the principle of majority rule, de Valera proposed inter alia that the oath prescribed by the Treaty and the Constitution to be taken by members of the Legislature should be abandoned; and that the Government should assign certain suitable buildings wherein the arms of the Anti-Treaty forces could be stored under their own custody pending a general election, and could then be subject to the control of the Government elected. Neither of these propositions could be accepted. Coincident with the publication of the peace proposals on April 27th, Frank Aiken, who had succeeded Liam Lynch as Chief of Staff, had ordered the cessation of all offensive operations as from noon on April 30th, while directing his forces to take adequate measures to protect themselves and their munitions. When it became manifest that the proposals had come to naught it was decided to make no attempt to renew hostilities but to conceal all weapons rather than surrender them. A general order to cease fire and dump all arms was accordingly issued by Aiken on May 24th. On that same day what was probably the last significant military operation took place when troops operating from Clifden and Ballinrobe captured the entire H.Q. Staff of the Anti-Treaty 4th Western Division together with 58 rifles, 500 bombs, 6 cwt. of explosives and many rounds of ammunition. The last execution took place on May 30th when Michael Murphy and

Joseph O'Rourke were shot for the armed robbery on May 24th of the Athenry branch of the Munster and Leinster Bank. With the end of May came the cessation of hostilities; and two months later three Acts of importance, particularly to us, reached the statute book, whose enactment can be said to have reflected the Legislature's recognition of the fact that a state of war and armed insurrection no longer existed. These were: The Public Safety Act which inter alia provided for the arrest and detention without trial of suspected offenders; the Indemnity Act which sanctioned actions taken to suppress the insurrection; and The Defence Forces (Temporary Provisions Act) which placed the Army on a statutory basis.

The view taken by most people of the Government's execution policy was, of course, and will always be, coloured by their political opinions and particularly by their opinions upon the Treaty issue. There were some who thought that the Treaty should never have been made and that the Irish delegates had no right to sign it; that the Dáil had no right to approve of it or to appoint the Provisional Government to implement its provisions; that this body had no right to function or attempt to govern; that the only proper legislative power resided in the minority of Dáil members who voted against the Treaty; that the only legitimate executive authority was vested in the Anti-Treaty section of the Volunteers and later in the reconstituted Republican Government appointed by the Dáil minority. Persons who had these views looked upon the executions as murders. The majority of people held opinions which were the exact opposite of these I have summarised. They were in favour of the Treaty and thought that their elected representatives in the Dáil had every right and reason to reflect their views by approving of it. This fact was realised by many, if not most, of the opponents of the Treaty and openly acknowledged by some. There were

those, however, who were quite prepared to deny the people's right to give expression and effect to their views in a general election; and others who hoped that time and their own efforts would effect a swing in public opinion; and were anxious at all costs to delay a decision by public vote as long as possible.

As I have already stated in my memorandum on the Dáil Courts, I entertained no doubt about my own attitude from the day on which the terms of the Treaty were first made public. The main issue might become obscured by subsidiary issues, by arguments elaborated and over-elaborated ad nauseam, by the clash of personalities and the conflict of personal loyalties, and by mistake in minor policy made by the Provisional Government or individual Ministers; but it seemed reasonably clear to me. It was simply whether or not the people were to be allowed to have the Treaty if they wanted it. They had through their elected representatives approved of it. It was clear from the results of the Past Election that its opponents were in a minority. I had no doubt that the people did want the Treaty. The alternatives were not, as some pretended or seemed to think, whether we were to have an independent republic for an undivided Ireland or the limited freedom to manage our own affairs provided by the Treaty. It was whether we were to have that limited yet substantial freedom or be plunged back into the conditions which existed before the Truce. The Treaty to my mind represented the best terms which could have been secured in the circumstances. It would not have been signed by the Irish delegates if it were otherwise. But even if that were not so it had to be recognised as a fait accompli; and it was merely foolish and futile to argue as if it had never happened or could be undone.

It represented a reasonable compromise; and once its terms had been made public I came to the conclusion that nobody, no matter who he was or what his prestige or influence, would be able to muster more than a minority against its acceptance. I felt that most people would, as I did, realise that its rejection would mean the postponement of all prospect of reasonable self-government for at least a generation and perhaps longer, and the resumption by us of a bitter struggle with the British burdened as we would be with all the disadvantages of disillusionment, disunion, divided counsels and a greatly weakened morale. I could not keep thinking that those who appeared to cherish the belief that to realise all our aspirations we had only to "go another round with England" were indulging in foolish pipe-dreams inspired by the belief that the Truce had been sought by the British and could be interpreted as an acknowledgment of military defeat or frustration. This absurd fiction, which now appears to be growing into a legend, was part of the process of the glorification of physical force and the apotheosis of the gunman which seemed to have prepared so many to acquiesce in the assumption of executive power by that section of the Volunteers who were opposed to the Treaty.

About that assumption there could be no doubt whatever. They seized public and private buildings in Dublin and elsewhere, including the Four Courts; they seized large sums of money in banks and post-offices and commandeered other public and private property on a large scale for their own use; they attempted to stifle the expression of public opinion by proclaiming meetings in favour of the Treaty and tearing up railway lines and blocking roads to prevent people from attending them; they raided the offices of the Freeman's Journal and totally destroyed all its printing presses because it had dared to give

expression to opinions of which they did not approve. No Government worth its salt, if it had the power to prevent it, would have tolerated for more than a few days at most such open defiance and such arrogant trampling on individual rights and liberties. The Provisional Government, however, had perforce to wait until it had at its disposal adequate military forces to justify it in taking action; and so it was that this conduct was allowed to proceed virtually unchecked from March until nearly the end of June, 1922.

The leaders responsible for this course of conduct were the members of the Executive appointed by the Volunteer Convention held at the end of March. On the eve of that Convention, which was attended only by Volunteers opposed to the Treaty, Rory O'Connor had given an interview to representatives of the Press in the course of which he told them that the holding of the convention meant that they were repudiating the authority of the Dáil; and that there was no government in the country to which they owed allegiance. Asked if this meant that the country was to have a military dictatorship he replied: "You may take it that way if you like". The subsequent actions of the forces for whom he spoke were eloquent reminders of the spirit of that remark. The Executive numbered sixteen Volunteer officers and came to be known as the Four Courts Executive after they had established their headquarters in that building. They included: Rory O'Connor, Liam Mellows, Joseph McKelvey and Richard Barrett as well as Liam Lynch and Ernie O'Malley. What had finally brought matters to a head was an attempt made by their orders to commandeer a number of motor cars from Ferguson's Garage in Baggot Street. Leo Henderson, who was the officer in charge of the operation, had been arrested; and as a reprisal J.J. O'Connell, the Assistant

Chief of Staff of the Government forces, was kidnapped as he was walking unsuspectingly in the public street. The Government had either to act or to abdicate and they decided to act. The Four Courts was surrounded by Government troops under the command of Brigadier O'Daly who at midnight on June 27th, demanded the release of O'Connell and the evacuation of the building by 4 a.m. the following morning. His demand was not complied with and his guns opened fire. About midday on Friday, June 30th, the garrison surrendered after the building had been set on fire and wrecked by an explosion. They numbered over a hundred and included O'Connor, Mellows, McKelvey, Barrett and O'Malley. As these were being conveyed to Mountjoy Prison O'Malley succeeded in making his escape.

Like the majority of the people, I regarded the Provisional Government as being the de jure as well as the de facto government of the State. I believed that it was not only in its right but its plain and manifest duty to assert its authority and to protect the citizens in the exercise of their fundamental rights to the undisturbed possession and enjoyment of their property and the lawful expression of their opinions. I believed that in order to do this it was essential to suppress the opposition of the Four Courts Executive and to prevent the use and abuse by them of the power they had unlawfully usurped. I believed that for the purpose of doing so the Government had every right to use military force as well as all other legitimate means, including the taking of human life if necessary. Up to the 15th of October, 1922, when the period fixed by the Government's offer of amnesty had expired, the Anti-Treaty forces had in fact, though not expressly, been accorded belligerent rights. Whatever claim they might have had to such rights before that date they had, in my opinion, none thereafter. They wore no uniforms, carried

no emblems recognisable at a distance, and did not in general carry arms openly. Many attacks, in a sense all attacks, upon members of the Government forces were made by men whom those attacked had every right and reason to regard as civilians. The Catholic Hierarchy in a statement made from Maynooth in April had condemned the usurpation of power by the Four Courts Executive; and in a Joint Pastoral Letter of October 10th had stigmatised such attacks as being "morally only a system of murder and assassination". I have, I believe, already indicated that I was not in favour of the execution policy; but I never doubted the right of the Government to adopt and enforce it.

There were, in all, seventy-nine men executed. The number is usually given as seventy-seven, excluding the last two who were executed for bank robbery. Apart from Childers, O'Connor, Mellows, McKelvey and Barrett they were all, as far as I know, subordinate officers or ordinary volunteers. There was not among them one who could be classed as a leader. The Legal Staff had no responsibility whatever for the selection of persons to be tried by Military Court or brought before a Military Committee; and I was never aware of the principle, if any, on which the selection was made. Those executed were not the only persons who were taken in arms or who could have been charged with capital offences. The men whose names I have mentioned were the only leaders who paid the extreme penalty; yet they were not the only leaders who were captured. It was clear that it was not punishment which was the main purpose of the executions; and their justification as a policy had to be sought in their efficacy in helping to crush the insurrection. This, I think, must have been considerable; but I have no doubt that even without them the Anti-Treaty forces would have been completely defeated in any event;

though quite possibly it would have taken longer; and might have involved no less, and probably more, loss of life. The persons who were most responsible for bringing the curse of civil war upon the country were, in my opinion, clearly the members of the Four Courts Executive. I was not in favour of executing anyone if it could be avoided; but if anyone were to suffer death it was they who deserved it most as a punishment for bringing about the tragedy of fratricidal strife. The reprisal execution of O'Connor, Mellows, McKelvey and Barrett was not merely the most justly deserved of all the executions, it was also the most justifiable. As a drastic means of ending the incipient campaign of assassination of Dáil Deputies its success was immediate and conclusive.

As has been mentioned, Ernie O'Malley was a member of the Four Courts Executive. He had, as already described, been captured in November, 1922, when in the course of his arrest a soldier was shot dead and O'Malley himself seriously wounded. As also described he had in the early part of 1923 been making a slow but steady recovery from his wounds in the Prison Hospital at Mountjoy where he was under the care of Commandant Matt O'Connor as Medical Officer in Charge. As time went on and he maintained his progress, the question of his trial by Military Court was raised by Eastern Command H.Q. It will be remembered that the Regulations governing such trials provided that the Court was to have regard as far as was practicable to the procedure provided for Courts-Martial by the General Regulations as to Discipline, and Regulation 83 of these provided that no accused person was to be tried unless certified by the proper medical authority to be physically able and fit to stand his trial. In O'Malley's case the proper Medical Authority was O'Connor;

and periodical requests were made to him for the necessary certificate. They were invariably refused. Rumours of impending peace were in the air and we could be forgiven for suspecting that O'Connor was disposed to stretch a point in O'Malley's favour by continuing to consider him unfit. Whether or not we were justified in our suspicions the end of hostilities arrived without any certificate having been given; and O'Malley was never tried. It is permissible to speculate whether he would ever have been brought to trial even if a certificate had been available. I am inclined to think that his pre-Truce national record might have saved him in any event. How fortunate he was may be judged from the following circumstance. Sometime in April a street patrol of Government troops was proceeding in the town of Ennis to search a couple of men suspected of carrying arms, when the men drew revolvers and opened fire killing one of the soldiers instantly. I cannot now remember whether they were tried by Military Court or brought before a Military Committee; but apart from the two bank robbers already mentioned they were the last persons to be executed. They were shot on May 2nd.

Chapter V.

After Christmas 1922 I took ten days leave which I spent in Paris with Dr. Joe Algar. When I met him in London he asked me with characteristic foresight had I got my passport. I assured him I had; and took it out of my pocket to show it to him. I was somewhat shocked to discover that it expired that very day. It was a British passport which had been issued in Dublin in December 1920. Here was a pretty kettle of fish. Unless I could get a renewal quickly our holiday would be spoilt. We went to the passport office in London where I was told there would be no difficulty about renewal and given an application form to fill up which required the signature of a barrister, solicitor, clergyman, or Justice of the Peace to verify my identity. Algar said he had a relative living in London who came within the class of person required, though I cannot now remember exactly what he was. We called at his house and found that he was not available. This was nearly check-mate as I could think of nobody with the requisite qualifications whose address I knew. As we strolled along considering what to do we passed a Catholic Church with what was obviously the presbytery beside it. On the spur of the moment we decided to call and see if one of the clergy could do anything for me. We met a very pleasantly mannered priest who, when I had explained my predicament and produced some evidence of my identity in addition to the passport, signed the necessary declaration, saying that he felt sure he was taking no risk in doing so. Armed with the completed application form we went back to the passport office only to have our hopes dashed by the official who told me that as the passport had been issued in Dublin it was only there that it could be renewed. I said that

it was most important (as it was to me) that I should be in Paris by the following day; and that this would be quite impossible if the passport had to be renewed in Dublin. He said that he would be prepared to renew it if he got a letter from Dublin saying that it was alright for him to do so. I asked him would he act upon a telegram? He said he would if it were sufficiently authoritative. I put through a 'phone call to Dublin; and was lucky enough to get in touch with my old school fellow, John Duff, then an Assistant Principal Officer in the Department of Justice, to whom I explained the situation. He assured me that he would see that the necessary telegram was sent. After a good lunch Algar and I returned to the passport office having in the meantime received the all important telegram. We found quite a queue waiting to get in to see the passport officer. We did not feel in the mood for waiting very long, so, succeeding in catching the eye of a messenger of some kind, I slipped him a half-crown and asked him to give the telegram to the gentleman in question. He returned in a couple of minutes and addressing me in very audible tones asked would "Major-General Davitt step this way please". I was brought in ahead of the waiting queue and promptly issued with my renewed passport on the strength of Duff's telegram which read: "There is no reason why the passport of Major-General Davitt, Judge-Advocate-General of the Irish Free State Defence Forces, should not be renewed". It was signed: "Kevin O'Higgins, Minister for Justice". I was naturally delighted at the solution of my difficulties though somewhat puzzled at my military title. When I got back to Dublin Duff told me that O'Higgins, who was away at the time, was quite unaware of the freedom taken with his name. Duff had sent the telegram on his own responsibility; and, by way of added verisimilitude, had promoted me to high

military rank. It is only right to observe that had I got in touch with O'Higgins himself I am sure that he would have done me the same service. Moreover, these were the days when the State was in its early infancy. Duff's action would have been quite impossible, and indeed unthinkable, some months later.

Early in January the Government set up a Commission under the Chairmanship of Lord Glenavy, to advise it as to the establishment of Courts of Justice in accordance with the provisions of the Free State Constitution. Among the members appointed were Charles O'Connor, William Johnson, James Creed Meredith and myself. Glenavy had been Lord Chancellor; O'Connor was Master of the Rolls; and Johnson was a County Court Judge. They represented the Judiciary which was going to be replaced by the new system. Meredith and I represented the Dáil Courts whose authority had been withdrawn the previous July. Hugh Kennedy as Law Adviser represented the Government. The Commission was a fully representative one and included many others of whose names and identities I cannot now be certain. It met weekly, and sometime in May or June presented a unanimous report. Accepted by the Government this formed the basis of the Courts of Justice Act 1924, which set up the Courts as, strange to say, they exist at the present moment notwithstanding the Constitutional changes which have taken place in the meantime.

As I have said, work in connection with Military Courts formed a comparatively small portion of our labours which were concerned mainly with Courts-Martial and the various legal aspects of the maintenance and enforcement of discipline in the Army. There were many Courts-Martial and my routine work consisted chiefly in advising the Adjutant-General as confirming

officer, as well as giving advice generally on a multiplicity of matters submitted from all quarters. Naturally enough not many cases made any lasting impression on my memory. Of the few that I can recall the following may prove to be worth mentioning.

An officer named Andy Mulhall had got into trouble of some kind and had been sent for trial by Court-Martial. I cannot remember what the charge was but I know that it was not very serious and did not involve anything disgraceful. He was prosecuted by Charlie Casey and resented very much whatever Charlie had to say or do in the course of the case. He was a tough little Dubliner and a former I.R.A. man. After the trial had concluded he had an angry altercation with Casey in the course of which he threatened him, saying (as quoted by Charlie), "Don't think that I'm going to forget this. Months may pass; years may pass; but Christ will repay and so will Andy Mulhall". "See here" said Casey, "What you say goes in one ear and out the other". "Look you here" replied Mulhall, "What I'll put into you will go in one side of you and out the other". With this lurid promise of lasting remembrance Mulhall departed. Casey told me that many years afterwards in the course of some case in which he was employed as counsel he again came across Andy Mulhall. Andy had not forgotten, but was able good humouredly to share in Casey's amusement when recalling their previous encounter.

Another case which I happen to remember is one in which an N.C.O. was charged with "Abandoning his post which it was his duty to defend", and alternatively with "leaving his post without orders from his superior officer". He had been placed in charge of a guard upon a ship in the port of Dublin which contained some military stores. His tour of

duty was at night; and he had taken the chance of leaving his post to exchange courtesies of some kind with a lady friend who came to the quayside and called him. He was reported and sent for trial by Court-Martial. The offence was serious enough, as some ships had been recently raided and ammunition and other military stores seized. When the proceedings came to me for my advice as to confirmation I was surprised to see that the Court had convicted him on the more serious and inappropriate charge; and had imposed a sentence of seven years' penal servitude. I sent for the Legal Officer who had acted as Judge-Advocate on the Court. He told me that when the Court had closed to consider its finding one of the members said that he was convinced that the accused was an ex-member of the "Black and Tans". The Judge-Advocate advised them that there was no evidence whatever of this; and that in any event it was completely irrelevant. He told me that he was afraid his advice had had no effect; and that the Court's finding on the more serious charges, and the severity of the sentence, had to be attributed to the accused pre-Truce activities and not to his dereliction of duty as a soldier of the National Army. I saw the Adjutant-General and placed the facts of the matter before him. I said that the man should have been convicted on the less serious alternative charge; and that in my opinion neither the finding nor sentence could stand. He agreed; but said that it would be better in the man's own interest if he left the Army. I therefore deputed Hodnett to see the accused and to find out definitely whether he had served with the "Black and Tans". Hodnett interviewed him; and after some prevarication he admitted that he had been one of them. Hodnett told him that it was proposed to cancel the sentence; but that he must see that in his own

interest he had better accept his discharge from the Army and leave the country. He agreed; the matter was arranged accordingly and the case was disposed of in this way.

Another Court-Martial which remains in my memory was concerned with a party of soldiers from Beggar's Bush Barracks who shortly after the cessation of hostilities in May 1923 decided to go on a spree. Some dozen or more succeeded in taking out a lorry without permission or authority and went on a drinking excursion around South County Dublin. When well primed they decided to visit Killiney strand. There were tents there, belonging to campers, which they found unattended and promptly looted. They visited Killiney village where they patronised several licensed premises, and then in a hilarious mood set off on their return journey to Dublin. When passing Killiney Castle - a large mansion which had been long unoccupied - they decided that they had better search it in case it might be a haunt of Irregulars. They were armed with rifles and proceeded to surround the building. When they had taken up their several positions one of them thought he saw a suspicious movement at one of the windows and opened fire on it. It happened to be the window of a large room which had a window also at the other end; and the bullets passed out through this over the heads of the soldiers on the other side of the house. They believed they were being fired on from the building and opened up with their rifles in reply. A spirited "engagement" followed in which every window in the building was shattered; and eventually the place was "taken by assault". Luckily they did not succeed in shooting one another; but having "captured" the place they managed in some way to set fire to a staircase; and, flushed with victory and whiskey, returned triumphantly to barracks where they were placed

immediately under close arrest and subsequently charged with a whole litany of offences. Their campaign had of course excited a good deal of attention; and the Fire Brigade was summoned in sufficient time to extinguish the fire in Killiney Castle before it had done a great deal of damage. I was amused when reading the proceedings of the subsequent Court-Martial to see that one of the delinquents in giving evidence had said that he saw nothing happen during the course of the expedition that was in any irregular "beyond the looting of the tents on Killiney strand and the burning of Killiney Castle"

The Court-Martial which is perhaps best worth recalling as a matter of interest is, if I may be permitted the bull, one which never took place. The circumstances were as follows: One day in June, 1923, in response to an urgent 'phone message, I called in to see the Adjutant-General. He seemed considerably annoyed and handed me a file with the remark: "This is the worst yet". It was a file sent over by the Department of Justice containing police reports in respect of a very disgraceful incident which had happened at Kenmare on June 2nd. On that night the house of a Dr. Randall McCarthy had been visited by three men in officer's uniform who assaulted his two daughters by beating them with the cross-straps of their Sam Browne belts and pouring dirty motor oil over their heads. The motive for this gallant behaviour appeared to arise from the belief that in the period prior to the Truce the girls had been friendly with some members of the British Crown forces. Investigation by the Civic Guards had led them to the conclusion that the three men concerned were officers from the H.Q. of the Kerry Command at Ballymullen Barracks, Tralee. The reports on the file set out the results in full of the police investigations, and named the three officers whom

the Guards believed to be concerned. They appeared to have very good grounds for their belief. One of the Officers was When I had completed my reading of the file O'Sullivan asked me what I thought of it. I said it looked very bad indeed and seemed to call for disciplinary action. He said: "Confound it! We can't try a for this sort of thing". I said: "We can't afford not to". We discussed the matter from every angle. I pointed out that this was a thing that could not, as I thought, be hushed up; that the Guards might prosecute or the Misses McCarthy might institute civil proceedings for damages for assault. If either of these things came to pass, and it became public knowledge that no disciplinary action had been taken by the military authorities, the effect on public opinion as regards the Army would be disastrous. Quite apart from these considerations it was our plain duty to take action. One of the main reasons justifying the commencement of the Civil War was the necessity to stop unlawful interference by force with the rights of ordinary citizens. Here we had a glaring instance of that kind of conduct inspired by the same sort of mentality. Much blood and money had been expended in putting down "Irregularism"; was it going to be tolerated in the Army itself? O'Sullivan did not dispute the force of these arguments; but he said that he found it impossible to believe that who was essentially a very decent fellow, could ever have brought himself, or could have been so stupid, as to be involved in the wretched affair; and that the Guards must be mistaken. He thought that they might be somewhat prejudiced, that there was a certain amount of ill-feeling developing between the Guards and the Army; and that this appeared to be reflected in cooling relations

between the Departments of Justice and Defence which the result of the trial of _____ had done nothing to improve. He asked me did we have to accept the results of the Guards' investigation as being sufficient to compel us to take disciplinary action. I said that the Guards appeared to have sufficient evidence to justify the initiation of a prosecution by them; but that our proper course would be to have our own preliminary investigation by way of a Military Court of Inquiry, provided that we were prepared to act on the basis of its findings should they establish a prima facie case against the Officers in question. This means of dealing with the situation for the time being was decided on; and in due course a Court of Inquiry, presided over by John Hearne as President, sat in Tralee to investigate what had come to be called "the Kenmare incident".

We awaited the report of the Court of Inquiry with very little hope that it would alter the situation in any way for the better; and our pessimism was fully justified. The report showed that the Court had collected evidence which, in my opinion, very clearly established a prima facie case against the three officers. I had another discussion with O'Sullivan. He agreed with me that there was a strong prima facie case; and that disciplinary action was inevitable. Having regard to the rank of one of the officers a General Court-Martial was indicated; and it was advisable that there should be a full Court of seven senior officers with a Major-General as President. We settled down to consideration of the question as to what officers should be detailed to act; and, after considerable trouble, and with much difficulty, succeeded in selecting seven officers who would, in our opinion, be free from bias one way or the other and could be counted on to make an impartial finding in accordance with whatever evidence would be adduced.

Some days later I got a message that the Commander-in-Chief wanted to see me, and I duly attended at his office. It was, as I expected, in connection with the Kenmare incident. The whole matter was again discussed; I reiterated the arguments which I had used with the Adjutant-General, and gave expression to the same opinions. Mulcahy asked me was I completely satisfied that there was a prima facie case against the three officers? - One which was sufficiently strong to make disciplinary action unavoidable? I said that I was afraid the answer had to be "yes". He said that he felt that [redacted] was innocent; that he knew him well and had a high opinion of his character; that he had interviewed him personally and asked him straight as man to man whether he had been concerned in the assault on the Misses McCarthy; and that [redacted] had assured him, on his word of honour, that he had not. Mulcahy referred to [redacted]'s distinguished and honourable military and national record; and said that it would be deplorable if he were put to the necessity of defending himself on such a charge before a Court-Martial. He was disposed to accept [redacted]'s assurance and to take no disciplinary action. I said that, while he personally might feel justified in taking [redacted]'s word and dropping all proceedings, the effect of such a course of action on discipline generally was bound to be bad. If [redacted]'s word was to be taken as sufficient to stop a prosecution where a strong prima facie case existed, why should not any officer's word be accepted in similar circumstances? Did he suggest that no action should be taken in the case of the other two officers? He replied that he realised that he was in a very awkward and unpleasant position; and asked me could I see any way out of the difficulty? I told him that the only thing I could suggest

was that he should seek advice from somebody else. He was not bound to accept my opinion. Why not consult Hugh Kennedy? Whether or not we in the Army took any disciplinary action, and irrespective of its result if it were taken, the officers concerned could be prosecuted for assault in the ordinary Criminal Courts, and the question whether any such prosecution should be taken would have to be decided by Kennedy as Law Adviser, or by the Government on his advice. The obvious thing for Mulcahy to do as Minister for Defence was to submit the matter to Kennedy and ask for his advice. He said that he would act on my suggestion; and I left satisfied that I had kept myself and the Adjutant-General right no matter what the outcome might be.

Not long afterwards O'Sullivan told me that there was going to be no Court-Martial or disciplinary action of any kind; that Kennedy had advised Mulcahy that the evidence against the three officers was not strong enough to justify their being put on trial. I was surprised - to put it mildly - but I was not shaken in my confidence that my own opinion was correct. The three officers were never proceeded against in any way. I was told that at a meeting of the Government at which the matter was discussed, O'Higgins expressed himself vehemently; and had some very bitter things to say about Kennedy and his opinion; but correct or not it sufficed to prevent a prosecution of any kind; and, since no civil proceedings were ever instituted by the Misses McCarthy, the disgraceful business never became public.

I have already made mention of the scheme of Army reorganisation which was in progress in the Spring of 1923 when the Commands were rearranged and increased to nine in number. The Curragh became a separate Command and I transferred Gerald McCarthy from Kerry to be Command Legal

Officer there. I had to make certain other readjustments in the Legal Staff; but I cannot now remember what they were. I expected McCarthy's duties at the Curragh would not be heavy enough to occupy all his time; and I wanted to have him readily available for work in drafting the new Defence Forces Act - a task which the Minister for Defence had assigned to us. One would reasonably have expected that, before there was any question of drafting legislation, some body would have been set up to prepare a scheme on which the legislation could be based - some body analogous to the Judiciary Commission, which would comprise persons representative of all interests likely to be concerned and would be prepared to consider what kind of military force would be best suited to the country's requirements. This was not done. We were given nothing in the nature of heads of a Bill and were left, as far as I can recollect, entirely to our own resources. No plan or outline of a scheme for the new Defence Forces was prepared by anyone, and we were told simply to go ahead and draft a Defence Forces Bill. I eventually brought McCarthy up to my office and assigned the task to him. General Headquarters had, sometime in the Spring, been transferred from Portobello to what is now the Ministry of Defence in Parkgate Street or, to be strictly accurate, Infirmary Road. There during the Summer months McCarthy laboured at drafting the 246 sections and 9 schedules which became the Defence Forces (Temporary Provisions) Act, 1923, and which occupies some 253 pages of the volume of statutes for that year. It was based naturally enough in the circumstances, largely upon the British Army (Annual) Act; though McCarthy also studied and made some use of the legislation providing for the establishment and maintenance of the military forces of Canada, Australia, and South Africa. The statute was to be

enacted for a year only and would then expire unless renewed by the Legislature. At the request of the Minister for Defence I attended him in the Dáil on the occasion of the second reading prepared with some trepidation, to render him whatever aid I could in dealing with queries or points arising in debate. Mulcahy recommended the measure somewhat cursorily, I thought in a very short speech. A few members spoke, but there was hardly anything that could be called a debate; and it seemed to me that most of those who did speak had not troubled to read the Bill. Johnson, the leader of the (Labour) Opposition deprecated what he called the class distinction preserved in the terms "Officer" and "Private Soldier", but did not as far as I can recall, make any suggestion useful or otherwise as to how it was to be dispensed with. The Second reading took less than an hour. The Bill passed through Dáil and Senate without amendment and became law on August 3rd 1923. It was re-enacted yearly until replaced by fresh legislation in 1954.

It was obvious that the Army would have to be drastically reduced in numbers with a consequent reduction in the Legal Staff. I could see no future for more than a very few of us; and had myself decided to return to the Bar whenever a favourable opportunity presented itself; which, I expected, would occur when the new Courts were established on the basis of the recommendations of the Judiciary Commission. The Command Legal Officers had become increasingly concerned about their future prospects; and in May they had addressed the following communication to me: -

To: -

Judge Advocate General

Now that the new organisation of the National Army is approaching completion, we the undersigned

Command Legal Staff Officers desire to place our positions before you.

- (1) Our original appointments were made on a temporary basis, and mainly to meet a National emergency;
- (2) At the date of our respective appointments we were practising members of the Bar with an average standing of eight or nine years, and on our appointment had to give up our professional avocations;
- (3) A Legal Staff has now been established in each Command, and the administration of Military Law in accordance with the Regulations is proceeding normally;
- (4) In view of the facts mentioned in paragraph (3), it is possible that the Army Authorities may wish, in a short period, to dispense with our service;
- (5) Now that the Civil Courts are resuming their normal functions, the present is a most opportune time for returning to the Bar.

Having regard to the above facts, we should be glad if you would definitely let us know whether the Army Authorities propose to retain our services permanently, and, if so, under what terms and conditions as to status, tenure, pay and pensions.

We have no wish whatever to embarrass you or the Army Authorities in any way but, having regard to the conditions now obtaining, we think we are entitled to know where we stand as regards the Army.

Dated the day of May, 1923.

Signed	<u>EUGENE SHEEHY</u> <u>Dublin Command</u>	C. L. S. O.
	<u>G. F. McCARTHY</u> <u>Curragh Command</u>	C. L. S. O.
	<u>CHARLES POWER</u> <u>Donegal Command</u>	C. L. S. O.
	<u>H. L. CONNER</u> <u>Limerick Command</u>	C. L. S. O.
	<u>JOHN J. HEARNE</u> <u>Athlone Command</u>	C. L. S. O.
	<u>JOSEPH REIDY</u> <u>Waterford Command</u>	C. L. S. O.

In response to this communication I called a meeting of the officers concerned. I told them that I could give them no hope, much less assurance, of any continuity of employment; that my own belief was that the Army would be eventually reduced to a strength of about six or seven thousand; that any Legal Staff must necessarily be very small indeed; that I was getting out myself at the first favourable opportunity; and that I advised them all to do the same. Within a few months they proceeded to take my advice. Hodnett and one or two others planned on staying on in the Army, but all the signatories to the letter and some others dropped out one by one. I cannot of course remember when each one went, but I myself left in August, 1924, and all of them were gone by that time. I know from letters which I have preserved that Power resigned in September, 1923, to take a position as an Assistant Commissioner of the Dáil Courts (Winding Up) Commission; and that Hearne left the November following to become one of the staff of Parliamentary Draftsmen in the Attorney General's Department. Sheehy returned to the Bar and later became a Circuit Judge, as did Power. Conner, Cahill and Kenny became District Justices. Reidy also returned to the Bar. Gerald McCarthy remained for the time being and went back to the Bar shortly before I did. Coyne, as already mentioned, left sometime in the Spring of 1923 to become Private Secretary to Kevin O'Higgins. Casey was called to the Bar in Michaelmas 1923; and I am not sure when he left. Donovan stayed on for some years.

I cannot now recall what dispositions I made to fill the vacancies occasioned by these several retirements. There were probably some transfers and promotions, or

else Assistants had to undertake the duties formerly discharged by the Command Legal Staff Officers. There was still plenty of work to do and I still had quite a numerous staff. My own position came under review in connection with the reorganisation scheme and it was decided that the Judge-Advocate-General should be a member of the Defence Forces. I had come round to the view - partly as a result of my difference with Power - that it was no longer essential to preserve my civilian status; and so, on June 13th, I joined the Army as a Major-General. John Duff's telegram had been prophetic! I would have been well content with a less exalted rank, but, as O'Sullivan said, there were dozens of them and, as he had become a Lieutenant-General and Hodnett was a Colonel, it was thought convenient to give me an intermediate rank. I was far more interested in the salary attached to the position. Hodnett's salary had been increased to £900 and mine was fixed at £1,200.

Chapter VI.

For the remainder of the year 1923, and for most of 1924 until I left the Army, my duties must have been of a routine nature only, and dull routine at that, for I can remember literally nothing of them. My recollections of the period are mainly those of a good time spent in pleasant company. It should not be assumed that my first twelve months as Judge-Advocate-General were in any personal sense a bad time. Notwithstanding the rather depressing catalogue of death and destruction contained in the preceding Chapters we on the Legal Staff at G.H.Q. managed to have a not unpleasant time on the whole. For some weeks after October 15th - until about the end of the year 1922 - we kept very much within barracks; and sought relaxation mostly in playing games of cards in our common room or in meeting friends in the Officers' Mess, with an occasional excursion to the Shelbourne Hotel for supper. Our visits to the Mess, except at meal times, were not very frequent or prolonged; and we were therefore lucky enough to escape being witnesses to a tragedy which I would not have mentioned except for an attendant circumstance which combined at one and the same time elements of the sublime and the ridiculous.

On the occasion of the ambush in which Collins was killed his escort included an armoured car. The machine-gun in this car jammed very shortly after opening fire and did not come into action again. The machine-gunner, a soldier named John McPeake, deserted some weeks later to the Irregulars, taking the armoured car with him. A "flying squad" of officers left Portobello in search of him and the car. They recovered the car which they brought back in triumph to G.H.Q. There was something of a celebration in the Mess

which went on until the early hours of the morning; when the tragedy I spoke of occurred. An officer was carelessly handling an automatic pistol when it was accidentally discharged and the Mess waiter, a chap who was known as "Bob" was mortally wounded. Somebody ran at once to rouse Father Concannon, the Barrack Chaplain, who came over at once clad in pyjamas and dressing-gown. Bob was lying on the floor in extremis with his head propped on somebody's knee. Just as Father Concannon knelt down beside him, and put on his stole preparatory to affording the unfortunate man the last consolations of religion, someone said: "Bear up Bob; you're all right now; here's Father Concannon to hear your Confession". Bob was very weak and barely able to talk; but Father Concannon could distinctly hear what he said. It was: "Tell Father Concannon to go and I'm a Protestant". Father Concannon, from whom I heard the story, told me: "I was, of course, shocked; but wasn't it a striking profession of the man's faith?".

According to Dorothy Macardle, (Irish Republic, 1951, p. 858) McPeake was arrested after the cessation of hostilities; and charged with the larceny of the armoured car. He was tried on this charge on indictment in the ordinary Criminal Courts, convicted, and sentenced to four years' penal servitude. I have no recollection of reading about this at the time in the press; but I do recollect at some period reading a newspaper paragraph about a McPeake who, I feel sure, was the same individual. He was brought, on some charge that I cannot recall, before one of the Liverpool City Magistrates who, on convicting him, proposed, as an alternative to sending him to gaol, to deport him back to his native country. McPeake made an eloquent plea, which was successful, to be sent to gaol in preference to being returned to his own people amongst whom, he assured the Magistrate, his life would not be safe.

Early in 1923 the Eastern Command H.Q. were, as I have mentioned, transferred to Collins Barracks; and Sheehy and Casey took up their quarters there. I think I transferred Coyne to the Curragh about this time also. Our dormitory and common room in Portobello was accordingly broken up. I was allotted two good rooms in the Officers' Quarters of the barracks; and I shared these with Donovan who was not so fortunate. We all started to move about more freely as the clouds of Civil War began to show signs of lifting. Casey frequently had the use of a car belonging to his uncle; and this proved of great service to us for excursions of various kinds. I resumed playing golf. Sheehy, Kenny, McCarthy and Casey were all keen; and we had many pleasant games at Hermitage, where most of us were members, as well as at Portmarnock, Dollymount, Delgany and the Curragh. After a while a car began to seem indispensable; and shortly after my salary was raised to £1,200 I purchased at second-hand a Prince Henry Vauxhall 30 h.p. open tourer. I did not drive myself, so I engaged a young chap called Johnny Bowden as my chauffeur. We had numerous friends in the Army Medical Services including Matt O'Connor, Sam Doyle, Tom Higgins, Frank Morrin, Vesty Boland and others. We spent many a pleasant week-end at the Curragh, as the guests of the hospital staff there, playing golf in the day time and poker at night. After G.H.Q. was transferred to Parkgate Street we discovered a hard tennis court which was in excellent condition; and Hodnett, Matt O'Connor, and I as well as a few others, frequently tested its capabilities.

In the late Summer of 1923 a series of Army Championship Competitions were organised and carried out with great success. They included competitions in athletics, boxing, football, hurling, golf and tennis as well as other sports. Apart from the athletics contest, which may have been an individual

competition, they were organised on a Command team basis; and G.H.Q. were allowed to compete as a separate Command. I presented a cup for the 440 yards championship, and played for G.H.Q. in the tennis competition. I have no clear recollection of being on the G.H.Q. golf team; and would have thought it unlikely having regard to my handicap, which was then 18. In fact I still have some doubts upon the matter notwithstanding the real evidence of a very handsome gold medal which bears on its back the legend: "All Army Golf Team Championship. 1923: Won by Maj. Gen. Cahir Davitt". Apart from the circumstance that this would seem to indicate that I was a one-man team representing nobody but myself I am not inclined to accept the evidence of the medal as being by any means conclusive, and for the following reason. I have a similar medal which states: "All Army Championship, 1923: winner Tennis Singles and Doubles - Maj.-Gen. Cahir Davitt, G.H.Q. Comd.". This inscription is even more misleading as to seem to proclaim that I won an individual singles championship as well as partnering some one else in a winning a doubles one; when, in fact, the circumstances were quite otherwise. The history of the matter may be thought to be of some little interest.

I was one of a small sub-committee appointed to run the tennis competition; and we organised it, in the same way as most of the other championships were organised, on a Command-team basis. We assumed, or were given to understand, that medals would be available for award to the members of the winning team. Each match was to consist of two singles and one doubles; and each Command could enter a team of two, three, or four players. G.H.Q. won, beating Claremorris Command, represented by Michael Hogan and Michael O'Connor, in the final. I believe our team was Hodnett and Matt O'Connor with myself as playing Captain. To wind up the All

Army Championships there was a general field day at Croke Park culminating in the presentation by President Cosgrave of cups and medals awarded to the winners. I was seated on the stand awaiting my turn to go out on to the field to receive my medal when I was told by some member of the General Committee in charge of the Championships that someone - I think it was Colonel Hutchison-Poe - a retired Colonel of the British Army and a member of our Senate - had generously donated a very handsome and valuable silver cup for the individual tennis singles championship; and was actually on the ground expecting to see his cup presented. I explained that this was the very first that I, or any other member of the tennis sub-committee had heard of such a cup; that the competition had been a team competition; that there was no individual champion and no one to whom the cup could be presented. I was asked could I not go out and receive the cup - as Captain of the winning team? I said that all the officers who had played in the tennis competition knew that there had been no individual singles championship; and that I would feel quite absurd in going out there in front of them and receiving a cup which they all knew well I had not won. I flatly refused to go out. Shortly afterwards I was told that the Commander-in-Chief wished to see me. I went down to him and he told me that the position was very awkward; that there had obviously been a slip-up somewhere; but that we could not let the Army down by allowing that to be known; and that Colonel Hutchison-Poe would certainly be hurt and offended if he came to hear the way matters stood. I explained my position, and said that I felt I would be placing myself in a completely false position if I did what I was being asked to do. I said I simply could not do it. Mulcahy said: "Well I'm afraid you'll have to; and you can take that as an order".

This was the only time I ever did get anything in the nature of an order from a superior officer and I can't say that I liked it. However, there was no way out; and so in due course I went out and was presented with the cup to which I was not entitled and was, I believe, congratulated by the donor. I duly received my medals also and may in the circumstances be forgiven some doubts as to whether I was entitled to them either. I retained the cup for no longer period than the time taken to walk off the field and hand it over to some member of the general committee. I wonder what its history has been since.

In October, 1923, I took a fortnight's leave which I spent in Paris and London with Joe Kenny. Shortly after our arrival in Paris we met, quite by accident at the Café de la Paix, Jim Doyle and Major General Tom Cullen. Jim had been Manager of the Gresham Hotel which was destroyed by fire in the course of the fighting in Dublin following the attack on the Four Courts; and was at the time occupying the position of major-domo to the Governor-General under the title of Controller of the Household. Cullen was one of the two senior A.D.C.s to the Governor-General, the other being Major-General Liam Tobin. One could not help being somewhat astonished at the number of Generals in the Army; and Tim Healy is credited with the caustic remark, to someone who commented on the fact, that it was not to be wondered at as perhaps in some cases their mothers had been "generals". Kenny and I joined forces with Doyle and Cullen and spent a pleasant few days with them. They had had a successful visit to Goodwood Races and had come over to Paris to try their fortunes on some of the French courses. We went to Maison Lafitte and Auteuil, and all won quite a large number of francs which, unfortunately, did not mean very much in the way of

purchasing power. Cullen left us after a few days; but Doyle remained on and proved a very entertaining companion for the remainder of our holiday. Back in Dublin, exhausted rather than refreshed by our period of leave, Kenny and I resumed our routine at Dublin Command H.Q. and G.H.Q. respectively. Assiduous dredging of the depths of my memory has completely failed to bring to light any subsequent incidents worth recording until the events leading to the Army crisis of March, 1924. About most of these I have no first hand information; and what follows is mainly derived from the Report of the Army Enquiry Committee of June, 1924, and from the files of the contemporary press.

This crisis was brought about by a course of conduct and a series of acts amounting to mutiny on the part of a number of officers in the Army. Among them were many senior officers including the Governor-General's two A.D.C.s: Major-Generals Tom Cullen and Liam Tobin. Some of them had been closely associated with Collins; and several had been members of that section of the Dublin Volunteers, known as the Active Service Unit or A.S.U., mainly responsible for carrying out street ambushes of British Crown Forces and other operations of a hazardous nature. They included men of conspicuous courage and daring whose intelligence and general ability were not in all cases commensurate with their undoubted intrepidity. Many of them were dissatisfied with their positions in the Army and even more so with their lack of influence. They did not agree with the general policy of the Government, particularly with regard to the interpretation of the Treaty, which they thought was not in accordance with ideas and principles which they attributed to Collins. They formed an organisation of their own within the Army; and this, for the sake of easy reference, I will call the "Old I.R.A." group. The purpose of this organisation

was to get control of the Army and use it to further their objects which were partly political and partly personal. They did not regard it as the obedient and non-political servant of the State; but contemplated using it to compel the Government to mould its policy according to their views. They regarded it as essential that the Army should, as far as possible, be officered by members of their own organisation or at least by men who shared their views or were in general sympathy with them. They disapproved in particular of officers who had held commissions in the British armed forces. They made their views known to the Minister for Defence and attempted to influence policy as regards Army administration, especially with regard to demobilisation. This was a difficult problem. The Army had to be drastically reduced in strength, the number of officers required could be only a fraction of those who had been commissioned and the question of who was to go and who was to stay was a ticklish one indeed. The "Old I.R.A." group wanted to ensure that whoever went the right people from their point of view would remain. In view of subsequent events it would seem to be of some significance that several prominent members of the group were officers of the Army Intelligence Department whose Director had been Joe McGrath. They formed a sort of class apart and were not remarkable for being amenable to discipline.

There was another organisation within the Army. The I.R.B. had become more or less derelict after the Treaty; and Seán Ó Muirthile, the Q.M.G., had reorganised it under the effective control of the Army Council with the object, as he explained to the Army Enquiry Committee, of preventing it from falling into the hands of the Irregulars. No member of the "Old I.R.A." group was allowed any share in its control; and they began to suspect that its purposes were

antagonistic to their objects and interests; and that it could and did exercise improper influence with regard to appointments and promotions and the selection of officers to be demobilised.

Demobilisation represented a really difficult problem. A new scheme of Army reorganisation was in progress which provided for a force of 1,300 officers and 18,000 men in four Commands: Eastern, Western, Southern and The Curragh. This meant a drastic reduction from the Army's maximum strength, involving the demobilisation of 2,000 officers and 27,000 men. It involved reductions in rank for a number of officers which, incidentally, included myself and Hodnett. I was to become a Colonel and Hodnett a Major. I was not disposed to be surprised if certain officers resented being demobilised; and attached no particular significance to the fact that a number of officers at The Curragh refused to accept their demobilisation papers. They were charged with insubordination, convicted by Court-Martial, and sentenced to dismissal. The proceedings reached me in the normal course; but I have the vaguest recollection about the whole matter. I know that there had been a slip-up of some kind; and that, on some technical ground which I cannot remember, I had to advise the Adjutant-General to refuse confirmation and order a new trial. This was done; but the new trial did not take place. The insubordinate officers were persuaded and allowed to accept their demobilisation papers and depart quietly from the Army. I cannot remember whether this course was the result of a decision by the Adjutant-General or by the Army Council, or whether I was consulted or not. Looking back on the matter now it has to be recognised as a bad decision. The new trial would inevitably have resulted in a conviction and, in all probability, in a similar sentence. The decision allowed the insubordinate officers to

"get away with it" and must have had a bad effect on discipline in any event. With the state of tension existing as the result of the two rival organisations within the Army the effect was intensified. I was blissfully unconscious of the existence of these organisations or of any state of tension. I was sensible of an atmosphere of antagonism, hardly amounting to hostility, on the part of some officers towards the Legal Staff and the Medical Services, and towards the Adjutant-General's Department as a whole of which these sections formed parts. I attributed this merely to the fact that officers in these professional services enjoyed higher salaries than those in other sections, and that many of them had held Commissions in the British forces. I was accordingly in no way prepared for the somewhat startling events which now took place.

On March 6th Major-General Liam Tobin and Colonel Charles Dalton addressed a communication to the Government on behalf of the "Old I.R.A." group of officers. It was in the nature of an ultimatum and demanded an immediate conference with the Government to "discuss the interpretation of the Treaty on the following conditions: (1) Removal of the Army Council; (2) Immediate suspension of demobilisation". The Government's natural reaction to this outrageous document was to order the immediate arrest of Tobin and Dalton who, however, succeeded in evading apprehension. On the following day 900 officers were demobilised and accepted their papers without protest. Certain officers who had not been demobilised proceeded however to leave the Army in their own peculiar way. Two deserted from Gormanston Camp, taking with them a Crossley tender and a quantity of rifles, ammunition and equipment; three left Baldonnell with another Crossley and three Lewis machine-guns; two more deserted in similar circumstances from Roscommon; while twenty-five men deserted at Templemore. Mulcahy had at

this time, I think, ceased to be Commander-in-Chief although he was still Minister for Defence. Eoin O'Duffy had left the Army sometime in 1922 to become Chief Commissioner of the Civic Guards. The Government recalled him to the Army with the rank of General and appointed him G.O.C. the Defence Forces. In case this should not suffice to give him authority and control over the administrative departments at G.H.Q. they made him Inspector General as well, to the intent that he should intervene, so to speak, between the Minister for Defence and the Army Council. On receipt by the Government of Tobin's and Dalton's ultimatum McGrath had resigned his position as Minister for Industry and Commerce not, as he explained, because he had any sympathy with these officers but as a protest against what he called the muddling of the Department of Defence which, he said, had led to the situation that had developed. On March 11th President Cosgrave made a statement in the Dáil upon the Army situation in which he said that events called for an enquiry which the Government was prepared to hold. This evoked a public statement from Tobin and Dalton expressing satisfaction at the prospect of an enquiry. McGrath was apparently regarded as an intermediary between the Government and the "Old I.R.A." group; and on March 17th Cosgrave wrote to him saying that if all officers who had deserted, or were absent from their duties without leave, returned and submitted to arrest, restoring whatever military property they had unlawfully taken away, they would be released on parole pending the result of the proposed enquiry.

On the night of March 18th a meeting of officers of the "Old I.R.A." group was in progress in an upper room in Devlin's licensed premises, Parnell Street. A party of troops under the command of Major-General Hugo McNeill surrounded the area and their surrender was demanded. There was a certain

amount of parleying, and some shots were fired, but no one was hurt. McGrath appeared on the scene and was allowed to confer with the officers in Devlin's. Ten of these submitted to arrest and the remainder made good their escape.

Some days later I was playing golf at Hermitage when I got a message that the Adjutant-General wanted to see me urgently. I was driven back to town at once and to Portobello where I found O'Sullivan and Ó Muirthile in the latter's quarters. They told me that the Government had asked for the resignations of the three members of the Army Council; that they had discussed the situation with the Chief-of-Staff; and that he was disposed to refuse. They asked me what I thought. I said that there was no point whatever in refusing their resignations; that if they did not resign they would be dismissed; and that a refusal would place them almost in the same category as the officers who had refused to accept demobilisation, and would have a very bad effect on discipline and on public opinion as regards the Army. We discussed the matter very fully over several bottles of champagne and reached complete agreement. They decided to tender their resignations. I don't believe they ever had any intention of doing anything else; and have the feeling that I was summoned, not to advise them what to decide, but to endorse a decision already made. Their resignations were, of course, accepted; McMahon refused to resign and was dismissed. Though relieved of their positions they all retained their rank. Mulcahy, on learning of the request for their resignations, resigned his position as Minister for Defence.

I was not conversant with all the relevant facts and thought that the Government had acted capriciously and unintelligently in condoning mutinous behaviour and unfairly penalising the Army Council for taking definite action to

suppress a mutiny. It was not until some days later, when I read in the press the report of a debate in the Dáil, that I was able to appreciate the Government's point of view. O'Higgins had opened the debate by reviewing the sequence of events and stating the Government's position. He said that Cosgrave's letter to McGrath of March 17th had been written as the result of a Government decision taken at a meeting of the Executive Council at which Mulcahy had been present; that it was a clear indication of Government policy in relation to the mutinous officers and with regard generally to the Army situation; and that the Government considered the situation to be delicate and possibly dangerous. The raid on Devlin's had been directed by Mulcahy after consultation with O'Sullivan; and cut directly across a clear line of Government policy. It might have had serious repercussions. That action had been taken without informing or consulting General O'Duffy or the Executive Council. The resignation of McMahon, O'Sullivan, and Ó Muirthile had been demanded not so much on account of the raid on Devlin's as because the Government felt that, in all the circumstances, they were not the personnel best fitted to deal with the mutiny. The circumstances were not such that one could truthfully say that one side was 100% right and the other 100% wrong; or that the mutiny was one occurring in a normal situation in a normal army.

O'Higgins's statement was delivered with his accustomed ability and forcefulness; and undoubtedly presented a strong case in support of the Government's action; yet I could not help feeling that it betrayed some evidence of personal animus and opportunism; and that he had shown that the Government had been more than considerate to the mutineers

and less than just to the Army Council. I thought that the general effect on the Army would be deplorable. I was proved to be quite wrong in this. The Army accepted the whole matter with admirable aplomb. The mutiny had been confined almost exclusively to senior officers and to a very small proportion of them. They were eventually allowed to resign and the whole affair petered out quietly.

McGilligan succeeded McGrath as Minister for Industry and Commerce; Peadar McMahon succeeded his namesake as Chief-of-Staff; Hugo McNeill became Adjutant-General; and Felix Cronin Q. M. G. An "Army Enquiry Committee" was set up to "Enquire into the facts and matters which have caused or led up to the indiscipline and mutinous or insubordinate conduct lately manifested in the Army". It consisted of James Creed Meredith as Chairman; McGilligan, Gerald Fitzgibbon, K. C., Captain Bryan Cooper who had held that rank in the British Army; and Denis Gorey. All except Meredith were members of the Dáil. They were appointed on April 3rd; held 41 sittings commencing on April 7th; examined 27 witnesses; and made their report on June 7th.

I was told that I would be required to give evidence and attended one of the early sittings. There was nobody to undertake the presentation of any case to the Committee or to act, so to speak, as prosecutor. Mulcahy, McMahon, O'Sullivan, and Ó Murithile were more or less in the position of defendants and were represented by Counsel; Mulcahy by Martin Maguire and the other three by Cecil Lavery. I explained that while willing to give evidence I did not know what I was required to give evidence about, or how to prepare myself so as to be able to give whatever assistance was desired. I did not know what files to look up, or which to bring with me. Meredith asked me could I not bring all my files. I said I could, with the assistance

of an Army lorry and a few men to bring them in. I suggested that the Committee should furnish me with a questionnaire setting out the information which they required from me; that I could give written answers; and that I could then attend with the necessary files and give oral evidence as to the matters covered. In due course I got a questionnaire consisting of nine main questions and a number of subsidiaries. It showed that there was really very little that I could do to help the Committee in the enquiry. I answered the queries as best I could; but in a number of instances I could only confess ignorance of the matters in question. I propose to quote only one of the queries. This was No. 5 and was as follows:

Are you aware of any instances in which manifest zeal in the matter of investigating or endeavouring to secure the punishment of offences against discipline was followed by the removal from one area to another of the person manifesting such zeal or by any prejudicial action against such individual? If so give particulars.

I left this query unanswered. A few days later I was notified to attend as a witness before the Committee and did so with a couple of dozen files. I was questioned as to the matters raised in the questionnaire and gave evidence, I'm sure, to the best of my ability and recollection. I cannot now remember much about it. One matter on which I was questioned closely was the Kenmare incident of which I was able to inform them as fully as I have dealt with it in these pages. I was asked to leave my file in relation to this case with the Committee and did so. It included the report of the Court of Inquiry presided over by Hearne. I was also asked to leave some half-dozen other files and of course did so. At the

conclusion of my evidence Meredith said: "Colonel Davitt, I notice that there is one question in the questionnaire that you did not answer. Why did you not reply to No. 5?". I said: "I felt in a difficulty about the answer to that question. I was afraid that the only answer I could give might be considered as savouring of insubordination". As I intended, this at once commanded the interested attention of all five members. I added: "I'm not sure that I want to answer it now". "Oh come," said Meredith, "I'm afraid we will have to press you for an answer". "Well", said I, "the only instance of which I am aware, in which manifest zeal in endeavouring to secure the punishment of offences against discipline was followed by prejudicial action against the persons concerned was that of Generals McMahon, O'Sullivan, and Ó Muirthile who were relieved of their posts for arresting a number of mutinous officers". Meredith gaped in a way that was characteristic of him and said: "Ah" with a long exhalation of breath; McGilligan looked at me bleakly without a smile; while the other three burst out laughing. "That will do, thanks", said Meredith. "We are much obliged for your assistance and will not require you any further". I was the last witness examined at that particular session; and I remained for a while chatting with O'Sullivan and Ó Muirthile. Gerald Fitzgibbon came up to me and said: "You might like to know that we carefully examined your file in the Kenmare case and are agreed that you were perfectly correct in your opinion. I completely fail to understand how Kennedy ever came to give the opinion he did".

The Committee in their Report found the facts which led up to the mutiny to be very much as I have summarised them. They found that the state of discipline in the Army was fairly satisfactory and showed steady improvement from the formation of the Army to date. This was, perhaps, faint praise; but it was by no means damning. They found that the existence

of "Secret Societies, factions and political organisations" in the Army did affect discipline among officers, especially by undermining their confidence in the impartiality of their superiors. Paragraphs 26 and 27 are worth quoting and were as follows:

26. It was suggested that the late Adjutant-General condoned or connived at insubordination by failing to punish it in the case of highly placed officers. The principal instance was the Kenmare case. In dealing with that the Adjutant-General strictly followed the advice of his legal adviser the Judge-Advocate-General. He put the case in train for a Court-Martial, and he was no party to dropping the proceedings.....

27. General Mulcahy accepted full responsibility for the decision to drop the Kenmare case. In our opinion this was a grave error of judgment on his part. It did not contribute to the mutiny, but it did militate against discipline generally by encouraging suspicion in the minds of officers and others that the Army Authorities were disposed to hush up charges against persons in high authority.

There were numerous other findings which I need not refer to. I have always wondered who it was that suggested that the Adjutant-General had condoned or connived at insubordination, especially in the Kenmare case.

I had now come to the conclusion that the time had arrived for me to leave the Army. The work had fallen off so much that there was little for me to do; and I found it hard to occupy the time that we were required to spend in our offices. The Courts of Justice Act had become law on April 12th 1924;

its several parts were being brought successively into operation by Statutory Order; and the new Courts were in process of being established. I wanted to get back to the Bar. I was of course loth to give up a salary of £1,200 a year; but I realised that it could not last much longer and that there was no future in the Army for me. I hoped to be allowed to resume my civilian status while continuing to hold the position of Judge-Advocate-General on a part time basis at a reduced salary. I cannot remember now with whom I discussed the matter. It would normally have been the Adjutant-General and the Minister for Defence; but I have no recollection of talks on the matter with either Hugo McNeill, or with President Cosgrave who had taken over the Defence portfolio from Mulcahy. I do remember several interviews upon various matters with Hugh Kennedy in the course of which I told him what I wanted to do; and allowed him to see that I was not seeking or expecting any appointment under the Courts of Justice Act. However it happened, or whoever fixed it up, I got what I wanted. I was allowed to resign my Commission while retaining my post on a part-time basis. I was told to see Mr. Tom Gorman, the Army Finance Officer, to fix up the matter of salary. It was arranged that any work I would have to do as Judge-Advocate General could be done in my own home and in my own time. I saw Gorman and had no difficulty about settling the matter of salary. He asked me would I consider £500 a year sufficient; and I said that I thought it was generous. I accordingly resigned my Commission; ceased to be a "person subject to military law"; and regained my freedom with a sigh.

Some time later I got a message that the Attorney General wanted to see me. I called in to John O'Byrne, who had succeeded Kennedy on the latter's appointment as Chief Justice, and he told me he wished to have some matters clarified.

He said he did not think that it would be proper for me as Judge-Advocate-General to appear as Counsel in any case against the State. I agreed; and said that I hoped that I would not be precluded by my position from appearing as Counsel for the State. He said: "Of course not". At that moment President Cosgrave came into the room and greeting me said: "Well, Davitt! Have they settled up matters to your satisfaction?" I replied that everything was most satisfactory. "By the way", he said, "What salary are they going to give you?" I said "Five hundred pounds". "How much were you getting as Dáil Judge?". "Seven hundred and fifty". "Well, said he, "I don't see how we can very well give you any less now. I'll look after the matter", I thanked him most heartily for his kindly interest and generosity; and things were finally arranged on this basis, I returned to the Bar, generously subsidised; and could not have wished for a more satisfactory ending to my adventures since I had left just four years previously.

My work as part-time Judge-Advocate-General during the next two years was pure routine; the work was light and did not occupy very much of my time; I cannot remember anything in connection with it that is worth recording. My other activities during the period can be dealt with in a sentence or two. I succeeded in acquiring a practice as a junior barrister which, with my subsidy, brought me in an income of nearly £2,000 a year. I got married; our first son was born on October 21st 1926; and three weeks later I was offered the position of Temporary Assistant Circuit Judge in Dublin, with a promise of being made permanent at the first opportunity. I accepted; and was appointed Circuit Judge of Dublin City and County in the following

January on the sudden and unexpected death of Judge Drumgoole. On my appointment as temporary Judge the previous November I had, of course, resigned my position as Judge-Advocate-General and closed a period of my life which I can always look back upon with interest qualified by few regrets and not unmingled with amusement.

Signed: _____

Date: _____

Witness: _____
(Investigator)

