

How Custom became a Crime on the River Nore: Cot Fishing at Bennettsbridge

1837-95

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Writing in 1801, William Tighe of Woodstock, naturalist and landlord, commented on how the rivers of southern County Kilkenny were 'celebrated for their salmon' and that the right to fish was 'free by custom to the inhabitants of the shores.' However, he also pointed out that such freedom to fish was circumscribed by legislation which aimed to ensure a good supply of fish to the inhabitants. For example, legislation to protect salmon fry, or young fish, as they swam down river to the sea, had been passed in 1635, 1716, 1726 and 1778. So too, in 1758, was there legislation which established a 'closed season' during which fishing was prohibited. Tighe also noted that, unfortunately, such laws were seldom enforced. As a result, salmon fry were destroyed in mill weirs; weirs often did not have gaps to allow the fish to pass through; cots fished at all times; illegal nets were used; people fished out of season. The result, wrote Tighe, is that the 'quantity of salmon has very much decreased within the last forty years.'

In the decades after Tighe wrote, the decline of the salmon fisheries became a growing and 'general complaint' in the United Kingdom.² After 1825, the government increasingly intervened – passing new laws, introducing more bureaucracy and extending the role of the courts. The aims were to ensure that the salmon flourished – to satisfy the demands of sportsmen and the export market – and, then, to ensure that the people who fished obeyed the laws. In the inland waters of the river Nore, these interventions took three forms. First, more and more restrictions were placed on when and where it was legal to fish and on what equipment and tools could be used. Second, by restricting the times, places and tools, the laws gradually restricted who could fish. Third, these new restrictions were increasingly enforced – initially by private parties and, later, by the police who summoned people to the petty sessions court on charges of illegal fishing. The result was that, by 1884, the public right to fish had become a crime. How

had this happened?³

How the public's right to fish became a crime

Among the earliest concerns about the salmon fishing on the inland, non-tidal Nore was the illegal fishing which took place because numerous mill, salmon and eel weirs were being used to catch salmon in ways which the law had defined as illegal. Thus, people might fix nets onto the weirs to trap salmon; they might close the gap which had been built into the weirs to allow migrating salmon to pass or they might relocate the gap in an ineffectual place; they might set nets in the gap or frighten the fish to prevent them from passing through; they might fish, either by cot and snap net, or by rod and line, too close to the gap and, therefore, too close to where the salmon had to pass; they might fish their salmon weirs during closed times; or they might build a salmon weir without having a legal right to do so. The perpetrators of these breaches came from all social classes. This was because so many people were salmon fishing for sport, for profit or for both: landlords, gentlemen (millers, tanners, estate agents), farmers, shopkeepers, artisans, labourers and, of course, cotmen.

In 1837, a case was brought against Nicholas Coyne, miller, Bennettsbridge 'for having a net set for the destruction of fish.' The charges were brought by private water bailiffs who were themselves fishermen and who, when giving evidence, admitted to fishing illegally on occasion. One of them, when giving evidence, also admitted that he expected a portion of the fine as payment for his work in 'the business' of enforcing the fishery laws. The bailiffs sought a penalty of £5, 'as directed by the Act for such an offence' (Case 1).

Case 1: Nicholas Coyne, Bennettsbridge Miller, at the Petty Sessions in 1837

The first witness for the complainants was Philip Doyle. He stated that he, along with James Doolan and Edmond Bryan, went to Mr. Coyne's mill in the night of the 14th September last; witness crossed the river and got on the island where the net was set on the waste gate of the mill; he took it up and has it

now in Court; did not see Coyne after he took it up that night; the net was set to take all sorts of fish, for not even Salmon fry could escape; found about a dozen eels in the net when he took it up.

Cross-examined – Witness expects his portion of the fine, if inflicted, but is swearing to what he saw and is swearing in the truth; is not swearing for the purpose of collecting the money, but he expected part of the fine.

At this point, solicitor Scott, appearing for defendant Coyne, interjected that, because Doyle had a vested interest in the outcome, he 'was an incompetent witness, and ... was incapacitated by the Act.' On the bench, the resident magistrate, Joseph Greene, 'differed with Mr. Scott,' and said that his evidence was not excluded by the Act.

Cross-examination [of Doyle] resumed – Is a City Constable and should remain in the City at night, except when he obtained the liberty of the Magistrate; has been only one night out on 'the business' during the last six months; has often been absent in the day-time; cut off the net and brought it home with the eels; was in a public house that night before he left town and drank either a pint or a tumbler of beer, and took a glass of whiskey in another public house; he also drank some spirits out of a bottle at Maddoxtown. Mr. Coyne's was not the last he visited that night; prosecutes for the good of the public and for himself; he is a fisherman, and was asked three years ago to undertake this business; has cross-fished himself in the season; the net was about 20 yards off the mill wheel; the net was set in a rush of water.

Edmund Bryan examined – Didn't go across the river that night, but saw the net brought by the other two men; witness served the summons afterwards on Coyne for the offence; went to his house; met him in the mill-yard but did not then know him; Coyne asked what he wanted; witness told him and he made use of abusive language; witness then went to the dwelling-house and served the summons; when going away Coyne said if he had known when they were there before he would have peppered them well as had fire-arms well prepared.

Cross-examined – When witness undertook the business he had no promise of payment; he took up the business as a fisherman and for the public good; was never promised

payment, nor does he expect any part of the fine; never got more than his travelling charges; often cross-fished; believes it is contrary to Act of Parliament to do so.

James Doolan examined – Was with Doyle when he found the net on the waste gate of the weir; the net was so set as to catch either fish going up or down; the net was set in the strongest part of the current, and the salmon always face it.

Cross-examined – Is also a fisherman, and has often cross-fished but not in the prohibited time; does not act for the sake of the penalty; the net was not set immediately near the wheel; it was in another place. — Case closed here ... the Magistrates retired. On returning into the court the Chairman [Greene] stated that they were unanimously of [the] opinion that the case was fully proved. They considered the conduct of Mr. Coyne, after the notice he had received, and from the threats made use of by him, very reprehensible, more particularly as coming from a person in his rank of life; and therefore they were determined that the full penalty of £5 should be forthwith inflicted, and which they hoped would prove a salutary example to others."

Doyle, Bryan and Doolan were fishermen who had taken it upon themselves, for a share of the fine (Doyle), because Coyne was interfering with 'their' fish or because they had been hired by gentry anglers (Bryan and Doolan),⁵ to search out and prosecute both illegal weirs and those people, such as millers, who were using their legal weirs for illegal fishing. Thus, in 1837, numerous gentry, including the earl of Carrick (Mount Juliet), William F. Tighe (Woodstock), Sydenham Davis (Dangan, Summerhill), John Nixon (Brownsbarn) and Edward Hunt (Jerpont) were charged with weir violations. What this shows, of course, is how the different interests of people in different classes were colliding: weir owners or weir tenants (landlords, millers, farmers) were opposed by gentleman/proprietors who angled for sport and by cot fishermen (labourers) who netted for food and profit. Each believed that the others were taking too much fish and were likely doing so illegally.

The 1837 case also shows that the enforcement of the law

in the inland fisheries was the result of actions by private individuals who had vested interests in the fisheries. The constabulary, with their veneer of neutrality and respectability, were not yet involved. This meant that the magistrates at the petty sessions had to decide which private citizens were telling the truth in each case. Thus, the defence/Scott did not deny what Coyne had done but instead tried to exclude the witnesses (they were 'incapacitated' under the Act) or to discredit them (they were in it only for a share of the fine; were heavy drinkers often absent from their jobs; they were themselves poachers). This illustrates the absence of hard evidence in most cases and the importance of personal credibility. From early on, evidence in fishing cases was mainly the word of one against another.

Over the next few decades, major changes took place as the British government became increasingly concerned with preserving salmon stocks to ensure that a goodly supply made it to English markets. A parliamentary Act in 1842 attempted to do this. It placed severe constraints on when salmon fishing could occur: a 124-day closed season was made mandatory and, importantly, a weekly closed time was established, from Saturday night to Monday morning. The Act also had implications for who could fish. It did so by supporting a court decision (in 1768) that, in non-navigable, inland waters, the owners of the land owned the fishery: their private property extended to the middle of the river (that is, it was a 'several fishery'). In supporting this decision, however, the 1842 Act also stated that the public had a right to fish in such waters if they had enjoyed that right or custom during the previous 20 years. In legislating this, however, the Act failed to take account of an unusual situation in relation to three rivers in Ireland – the Nore, Barrow and Suir. These had been designated 'royal rivers' in 1537. Such a designation meant that these rivers belonged to the Crown and, therefore, according to the *Magna Carta* in 1215, the public had an absolute and unquestioned right of access and right to fish. The river Nore also provided another complication. Although the river above Brownsbarn was non-tidal (i.e. inland), it was navigable. This meant that, perhaps, the 1768 court decision, which gave a private, several fishery to the owner of the land on the banks of non-navigable, non-tidal/inland rivers, did not

apply to the navigable, albeit non-tidal, river Nore.

Over the next decades, the inhabitants continued to fish, even as additional interventions were legislated. In 1844, the constabulary was given more rights to interfere in fishing offences. In 1848, a new fisheries bureaucracy was created. Ireland was divided into seventeen regions and a fisheries board was established in each, including the Waterford Board of Fisheries for the tidal and non-tidal portions of the rivers Nore, Barrow and Suir and the Waterford estuary and coastline. It was empowered to pass by-laws to regulate the fisheries in its area, to require all fishermen to buy licences to fish and to use the funds raised from these licencing fees to enforce the fisheries laws and regulations by hiring bailiffs and bringing offenders to court. Members of the board ('conservators') were elected by those who held licences.

All these changes had an important logic underlying them. The government's concern with supplying the market with salmon meant that it aimed to protect and expand the tidal fishery – the place where the largest and majority of marketable salmon catches were made. To secure the tidal fishery meant that the spawning grounds and salmon passages on the inland rivers had to be improved. Who best to guard and maintain the inland waters but the landed proprietors who owned the fisheries? They were gentlemen who understood the logic of migratory salmon and, apart from a few inland weir owners, they were only concerned with having sufficient salmon for their angling sport.⁶ The *Kilkenny Moderator*, a voice of the local gentry, enthusiastically supported this logic as well as landed property. It therefore began a concerted campaign to remove all fishing from the upper, non-tidal waters except for the rods and lines of gentlemen sportsmen. In this campaign, cot fishers could be useful: they provided the evidence and know-how with which cases could be brought against inland weirs which were illegal and/or which fished illegally, as had happened in the case against miller Nicholas Coyne in 1837. At the same time, though, cotmen were fishing. They had a right to do so – in a royal river, as stated in the *Magna Carta*; inside private, several fisheries, according to the 1842 Fisheries Act; and in a navigable river, according to the 1768 court decision. The *Kilkenny Moderator* began a campaign

to change this. The invective which it used for this purpose was striking, as was the conflict which emerged as landed proprietors, in the decades after 1842, attempted to establish exclusive control over who could enter into, and fish on, what they perceived to be, and what the law defined as, their private property. From the proprietors' perspective, because cotmen entered their private fisheries, they were 'poachers,' even though the Waterford Board sold them licences. In any case, cotmen were poachers because their kind did not obey the fisheries laws. Equally important was the fact that cotmen, using their customary snap nets, were taking too many fish and depriving gentry anglers of the sport and the river of salmon. An 1853 editorial illustrates this logic and the ideas which the *Kilkenny Moderator* was disseminating (Case 2).

Case 2: An Editorial from the *Kilkenny Moderator* 20 April 1853.

'Complaints are of late becoming most numerous of the scarcity of fish in our rivers – in the Nore particularly. In fact, salmon or trout are scarcely to be met with, and it would only be surprising if they were, considering the extent to which poaching is, and has been for considerable time, permitted to be carried on. ...There are water bailiffs whom, we presume, are paid salaries, but it would appear to little purpose, for we scarcely ever hear of a prosecution being instituted for illegal fishing, and yet it is notorious that from one end of the river Nore to the other there are innumerable cot-owners whose sole occupation is the netting of trout and salmon. In the neighbourhood of Bennett's-bridge [sic] these poachers are particularly active. ...We are aware that the Inspector General of Constabulary recently issued a general order to the police, notifying to them that the protection of the rivers against poachers comes within the line of their duties. But as yet, in our county, this order seems little better than a dead letter. ...No subject has ever been more bungled or mismanaged by the legislature than that of the fisheries. People who know nothing about the matter are those to whom the framing of enactments is usually left. ...We know of no measure which would so

effectually put down poaching as the entire prohibition of the use of cots – a species of boat which is not required for fishing according to the law, but is made a most destructive engine in the hands of the poacher – not only aiding in the destruction of the fish, but actually supplying him with an easy means of baffling detection owing to the rapidity with which he can effect his escape on the approach of any suspicious person'.

In fact, it took another ninety years before cots and snap nets were banned from the non-tidal parts of the river Nore. Instead, incremental changes gradually altered public access to the salmon fisheries – changes which forced cotmen to become the poachers which the *Kilkenny Moderator* so denounced. In 1863, another Fisheries Act allowed for all illegal weirs to be destroyed, thereby clearing the inland rivers of many obstructions. Importantly, too, it banned netting at night – the best time, and perhaps the only productive time, for snap-netting from cots. This ban gave proprietors the impetus to hire more private water bailiffs and induced the constabulary to become more active in the pursuit of cotmen who, in following their customary method of night fishing, were now fishing illegally. The number of cases brought to the petty sessions court increased. So, too, did the general public's interest in attending the sessions to hear these cases and the newspapers' detailed coverage both of the hearings and of the growing violence between cotmen and bailiffs who confronted each other on the river at night. Thus, the *Kilkenny Moderator* described 'exciting chases after salmon poachers' – of fishermen in cots, in disguise, being followed by the head constable and groups of police and bailiffs who crept along wet riverbanks in the middle of the night. When caught and brought to the petty sessions however, it was often the case that 'nothing could be elicited from...witnesses.' Alibis became crucial: kin, friends and neighbours swore that the fisherman supposedly seen by a bailiff netting on the river at night was actually in a pub at the time, at home in bed or somewhere else on the river.

In 1867, the limitations on cot netting increased. A decision in a case from the river Barrow (*Murphy v. Ryan*) established

that a 'navigable' river must be tidal and that 'the designation 'royal' does not, more than the description of navigable, ... indicate a river of which the fishing is in the public.' It also stated that the public had no entitlement to remove anything profitable from private property such as, as had already been established, an inland river. A 'right of way...may be established by usage' but not taking a profit, such as fish.⁷ With this decision, two of the three props were removed which had thus far supported Tighe's 1801 description of the public's customary right to fish on inland waters: first, the 'royal' designation and, hence, the *Magna Carta* right and, second, the 1768 decision which allowed public rights in navigable waters. However, the 1842 Act remained. It allowed the public a right to fish on private property if the right had been held for 20 years prior to the Act. As such, it seemingly contradicted the 1867 decision. This contradiction was soon removed. It occurred in two steps. The first was a decision given in 1871 at the Thomastown Quarter Sessions which supported *Murphy v. Ryan* – that the public could not remove profit from private property – but stated that the 1842 Act also had validity – that the public had the right to fish. How to reconcile this? The chairman decided that it was not a 'crime' for fishermen to remove salmon from private property but that proprietors could bring 'civil' or private cases against fishermen if they so wished.

Soon after, some local proprietors, but certainly not all, hired bailiffs and prosecuted all whom they caught. These same proprietors also demanded that the bailiffs hired by the Waterford Board defend their private property. The result was an escalation of altercations on the river between bailiffs and fishermen alongside a growing campaign by the *Kilkenny Moderator* to stamp out 'an evil' by an 'organised system of repression' in the 'three great centres of poaching on the river, Inistioge, Thomastown and Bennettsbridge.'⁸

At the same time, most proprietors, as well as millers, shopkeepers, farmers, artisans and labourers, believed that local cotmen had been hard done by. They also wanted salmon for their tables – and local cotmen had been amply supplying such demands for a long time. In any case, from their local viewpoint, many of the complaints about the cotmen were coming either from absentee landlords or from 'blow-ins' who

merely rented the big houses along with the fishing. Such absentees and 'blow-ins' had not the right, as local people saw it, to interfere with local fishermen's need to earn a living.

In 1884, the second and final step not only ended the contradiction between the *Murphy v Ryan* and the 1842 Act but, also, finally extinguished the public's right to fish. A decision in a case against cotmen brought by a gentleman who was renting Brownsbarn House found that 'an action by a... proprietor...must succeed. [Therefore,] why...should the owner be put to the necessity of bringing civil action against trespassers?'⁹ In other words, the constabulary could now act on behalf of proprietors; cotmen, in their turn, now had to have permission from owner(s). Without it, cotmen were trespassing and, like all criminals, could be arrested.

In these ways, the inland river Nore was turned into private property and the state took on the obligation to defend such property. For people to exercise their customary right to fish had become a crime. What did the cotmen do? According to an observer in 1901, 'on the Nore, ...there are a band of fishermen at nearly every town from the tidal water upwards who, perhaps pay a pound...to the proprietors of one bank, and so get permission to net; ...once they get leave on 100 or 200 yards...they take the opportunity of...poaching for miles.'¹⁰

A Day at the Petty Sessions, June 1895: Fishery Cases from Bennettsbridge

By the mid-1880s, private property had triumphed and cotmen were so constrained and regulated that poaching was the only recourse. Cotmen therefore appeared regularly at the petty sessions, along with magistrates, bailiffs, solicitors, witnesses and members of the public – all of whom were drawn into the drama of the salmon fishery. On 8 June 1895 the *Kilkenny Moderator* reported on six fisheries prosecutions which were heard at the Thomastown Petty Sessions court earlier that week. The prosecutions came from charges of illegal fishing which had taken place along the length of the non-tidal, inland Nore – from Bennettsbridge to Brownsbarn. On the bench that day were Major J.H. Connellan (Coolmore) who chaired, Major W.L. Butler (Kilmurray) and W.T. Pilsworth (Grennan Mills, Thomastown).

In the first case, the Waterford Board of Fishery Conservators summoned Daniel Foley, jun., James Foley, Edward Foley and William Darcy, all cot-fishermen from Bennettsbridge, for having breached a regulation forbidding fishing within 200 yards of a weir, at Bennettsbridge weir, in early April (Case 3).

Case 3: Fishing Within 200 Yards of Bennettsbridge Weir

Mr. James Poe, solicitor, appeared for the conservators and Mr. M.J. Buggy, solicitor, for the defendant.

William Ireland, head water-bailiff, stated in reply to Mr. Poe that he was on duty on the river at Bennettsbridge on the night of the 8th and the morning of the 9th of April last; in the morning he saw cots being brought out from the back of the haggards at Bennettsbridge, where the defendants usually kept their boats; witness then went up and lay ambush on the bridge and saw the defendants fishing back towards the weir; it was at that time between four and half-past four in the morning; there were two crews fishing on the river that morning and they both were within 200 yards of the weir; the defendants fished right up to the bridge and he identified them; he was only a few yards from them at the time; he afterwards went and examined the boats in the haggard and took the name and number of them; both the boats were quite wet as if they had been out except the centre of the seats where the men would be sitting; he did not identify the second crew, as when he left the bridge to go down to where the defendants had put the cots he lost sight of them.

Mr. Buggy – You say that you were on duty all that night? – I was.

When did you leave your house? – I left it at about six o'clock on Monday evening.

At what time did you get to Bennettsbridge? – About half-eight o'clock. I first went and caught a crew that was fishing on another part of the river at about 8 o'clock.

Where were this crew? – At Ballyreddin weir.

Whose crew was it? – John Doyle's.

Chairman – I don't see what that crew has to do with the case.
Mr Buggy – I did not ask him about it until he volunteered the

statement. (To witness) – How many crews were on the river that night? – I believe there were three, but I only saw two fishing.

Why do you believe there were three? – From the number of boats I saw going up the river.

How many boats did you see? – I saw three or four.

What time did you see them going up? – It might be a few minutes after three o'clock.

Where were you standing at the time? – On Mr. Mosse's Inch, at the right-hand side of the river.

Up to that time had you identified anyone? – No, I had not tried as they were not fishing.

You got up on the battlements of the bridge then? – Yes, and lay there.

How long were you there? – I might have been there an hour or more.

How many crews were on the river then? – I only saw two.

Were both under you in the river? – One went under me and the other kept behind me.

Where were you when you saw them? – I was on the far side of the bridge lying on the battlements.

You say there was only one crew under you? – Yes, and the other might have been about 50 yards behind.

Were they both in the Queen's share [within 200 yards of the weir]? – They were.

Both of them? – Yes, but one did not fish up as far as the other, because there was a match struck.

Were both crews disguised? – Yes, partly; they had things over their shoulders.

And were you able to identify them with those things on? – I was.

Did you inquire from anyone how many crews were out that night? – I did not.

Were not their backs turned towards you when these men were going down the river? – They were turned every way.

Were they not going down the river in your direction and had not some of the men their backs turned towards you? – Yes.

Did you identify these men? – While their backs were turned I did not; I know who they were, but I did not recognise them.

How is that? – I know the crews that usually fish there.

'How many crews are in Bennetsbridge? – Four crews.
'How did you know who these men were? – By seeing them.
'At the time you were standing on the bridge did you recognise them? I did, two of them, and I knew the other two.
'How did you know the other two? – Sure if I heard you speaking I would know it as you were there.
'Yes, but you did not tell me how you knew these men? – I believed it because I knew the men who were in the habit of fishing with the other two.
'Chairman: Who were the two you saw first? – Edward Foley and James Foley were the first two.
'Mr. Buggy – What was Edward Foley doing? – He was sitting in the end of one cot holding the net.
'What was James Foley doing? – He was paddling in the cot next to me.
'What do you mean by the cot next to you? – I was standing on the right side of the bridge and there was one man paddling and another holding the net in each cot.
'Was it the men who were paddling who had their face towards you? – One of the men paddling had his face towards me; Edward Foley was holding the net in one cot and he had his face towards me.
'Chairman – Had either Daniel Foley or Darcy their faces towards you? – No, sir.
'Mr. Buggy – Is it not really a fact that all you are swearing here is from suspicion? – It is not.
'When did you make out who the men were? – Immediately after I saw them.
'How many cots were in the haggard when you went round to it? – Four, and the four of them were wet.
'You say that two of the cots belonged to this crew? – Yes, and they were wet and the other two were wet also.
'The whole four were wet? – They were, and seemed as if they had been fishing.
'Did you see a crew and two cots there the whole time? – I did, four cots.
'Are you sure of that? – I am sure of it; the second crew were in the position for fishing; but I could not swear that they were fishing, as I did not see the net.
'Was this second crew close under the bridge? – No, they were

higher up.
'Where was the match struck? – I believe it was struck in Foley's haggard, and that is the reason the second crew did not fish up to the bridge.
'Where did the other crew go to? – I could not say as I lost sight of them when I went round to the haggard.
'Major Butler – How far is the bridge from the gap of the weir? – I suppose about 100 yards.
'Is there any fixed mark on the other side? – There is a fixed mark at the 200 yards' distance, and it was inside this mark I saw the second crew.
'How far inside were they? – I could not say how far.
'Chairman – Then you are sure both crews were inside it? – They were, sir.
'Mr. Poe said that closed his case.
'Mr. Buggy submitted that none of the four men were on the river on the morning in question. Unfortunately, they were not in a position to give evidence themselves, but if his instructions were correct he would be able to show by evidence that they were not fishing. Ireland saw some crews fishing on the river and he saw the cots wet, and because he saw the cots were out he came to the conclusion that the crew were out too. As regarded the probability of Ireland being able to identify the men, when he was standing on the bridge at three o'clock in the morning, the four men were disguised and two of them had their backs turned to him, but he came there and swore that he afterwards went round and identified the two who had their backs towards him. He submitted that Ireland's statement was most improbable. It would have been impossible for the men to be identified even if they were not disguised. It would be impossible for any man, much less a man with eyes like Mr. Ireland, to recognise the men as they were.
'John Doyle was then called and stated, in reply to Mr. Buggy, that he was a fisherman and he resided in Bennetsbridge; he remembered the morning of the 9th of April; he knew it because it was the morning after the case in Kilkenny.
'Mr. Buggy – Were you on the river that morning? – That's going too bare on the question (laughter).
'Well, did you see the Foleys on the river that morning? – The last crew that fished on the Queen's share about four o'clock on

that morning was not the Foleys.

'Did you see the Foleys at all that morning? - I did see some of them; I saw Dan Foley.

'Did you see the others? - Not at that time.

'Could they have been fishing at that time without your knowledge? - Indeed they could.

'Where were you that morning? - I won't tell you that at all; do you want me to say I was fishing?

'I only hope you will tell the truth. You see, your worships, I am dealing with a hostile witness, and I must ask leave to cross-examine him.

Mr. Poe - The witness is not bound to incriminate himself.

Mr. Buggy - If he was going to do so it is not you who should protect him. (To witness) - Will you tell me where you were that morning? - Indeed I won't.

'James Dunne was sworn and stated, in reply to Mr. Buggy, that he was on the river on the morning of the 9th April.

Mr. Buggy - What time were you there? - I won't answer that question.

'Did you see the Foleys there? - I was not there.

'What time were you there? - I suppose I was there about eleven or half-past eleven o'clock anyway.

'Were you there before six o'clock that morning? - I was not on Bennetsbridge pond that morning at all before six o'clock.

'Were you on the river before six o'clock? - I was.

'Were you there before five? - I was on it about four or five.

'What pond were you on? - I won't tell you that. Not the bridge pond.

'Did you see any of the Foleys there? - I won't answer you that either.

'Could they be there without your knowledge? - Of course they could.

'Did you pass through the bridge pond that morning? - Not till half-past nine o'clock in the day.

'Do you not live at a place they call the haggards. - Yes.

'And as soon as you put off your cot from there would you not be on the bridge pond? - Yes.

'Then how did you get your boat that morning? - It was not there at all.

Mr. Buggy - Now, sir, you see we have done all we could to show

you were not there.

Mr. Poe - You have proved our case.

Mr. Buggy - Not at all. We did what we could to show who was there, but it was no use. We were not there at all events.

Chairman - How long is it since any of this crew were convicted?

William Ireland said that they were convicted once or twice last summer.

Mr. Poe - I think Edward Foley was up more than once.

Chairman - They were convicted before at all events, and we can't fine them less than 10s. a piece - the nets to be forfeited.

Mr. Poe said he did not think the defendants could be fined less than £2 according to the section.

Mr. Buggy - It has been settled that it was £2 for the whole crew.

Mr. Poe - Not at all. County Court Judge Fitzgerald held that it was £2 each. It was all threshed out a short time ago in Kilkenny. Mr. Murphy had the case.

Mr. Buggy - Anything he has is always threshed out, I admit, with the usual result.

Chairman - We will make a test case for you if you wish.

Mr. Poe said that it was settled that it was £2 each.

Mr. Chairman - Well, we have never held that view here, and will only give the 10s. each, with costs.

Mr. Poe - Will you give special costs in this case? I am instructed by the secretary [of the board of conservators] to apply, as there was a solicitor down the last day about it.

Mr. Buggy - The solicitor was down for other cases as well.

'The court only allowed the ordinary costs.'

The detailed questioning by solicitors and the evasions by both cotmen and bailiffs show clearly that the truth was intentionally shrouded with uncertainty. Both cotmen and bailiffs, when answering questions put by their respective solicitors, were trying to convince the magistrates that they were telling the truth and that the other side was lying. This uncertainty could be created because cotmen wore disguises; because the darkness made it difficult to identify anyone clearly; because bailiffs often deduced who was involved from

what they already knew about local fishing crews rather than from what they actually witnessed; because watchers on the shore signalled warnings to the cotmen which affected the cotmen's movements; and because the cotmen gave contradictory and confusing evidence and did so in a way which caused laughter among the audience, thus contributing to the uncertainty. Ultimately, though, the outcome of any case, still depended, as it had in 1837, on whom the magistrates believed; and this hinged, in part, on the recent, past history of the defendants. At the same time, even if the magistrates believed the bailiffs, they were unwilling to impose the most severe fines: they held onto their local autonomy, refusing to defer to the opinion of a Kilkenny magistrate on the issue and unwilling to allow the conservators any more than the minimum costs.

On the same day in June 1895, five other fisheries cases were heard. Three of them were for illegal fishing during the weekly closed time. David Morrissey, Ballyduff, was charged for illegally fishing at Kilmacshane. John Cody, Thomastown, and John Buckley, from Dysart, were charged with the same offence at Brownsbarn and Buckley was also before the court for the same offence at Dangan on another day. A fourth fishing case that day was brought against Thomas Dunphy, Thomastown, for 'having aided and abetted illegal fishing.' A constable claimed that 'he would have been able to catch the whole of the crew' at Dangan 'had the defendant not warned them.' Solicitor Buggy, in defence of Dunphy, maintained that 'the fact of Dunphy running up the bank and shouting could not be taken as aiding or abetting fishing.' The magistrates disagreed. Dunphy was fined 10s. and costs.

The final fishing case before the Thomastown Petty Sessions court on that day in June 1895 involved John Dunne, Patrick Foley, James Dunne and Michael Cranny who, like most of the other cotmen, were summoned 'for having fished during the weekly close season on Sunday morning, the 5th May, at Bennetsbridge.' Solicitor James Poe, jun., represented the Waterford Board of Conservators which had brought the charge. William Ireland, head water bailiff, gave evidence for the complainant/Board, stating that 'he was on duty the night of Saturday, the 4th, and the morning of 5th May last; he saw

the four defendants fishing with a snap-net; he did not speak to them. The defendants admitted the offence and asked to be dealt with leniently. Their worships fined the defendants £5: viz., £1.5s. each and costs, and ordered the net to be confiscated.' Such were the rules; and the magistrates followed them. Such was the outcome when the cotmen could not construct a case which might throw uncertainty onto the events which led to their being charged.

On that same day in June, at the same petty sessions, there were two other cases. Both were connected; both involved charges and counter-charges of abusive language which had their roots in the nature of cot fishing at the time. These cases thus illustrate how the events in the salmon fishery permeated everyday life along the inland river Nore and the way in which local inhabitants had become involved, largely as partisans for the cotmen who held informers and turncoats in great contempt.

Case 4: The Inhabitants versus Billy Arrigle

William Murphy, known as 'Billy Arrigle,' was a fisherman who had recently decided to try his hand at being a water bailiff. He lived on Ladywell, in Thomastown. On this court day, he 'summoned two boys named Samuel Lamphier and John Burris for having made use of abusive and threatening language towards him.'

Murphy told the court that 'for the last 4 months his wife could never go down the street without having a lot of chaps following her and shouting at her and hopping stones off her back; she never even could go down the street for a loaf of bread, and he had always to go himself.' On the day in question, 'he was going down the street and a whole crowd of chaps followed him shouting and calling him 'bailiff' and a lot of other names; they threw stones at him and one of them nearly cut the ear off him; he saw the two defendants in the crowd.' Both Lamphier and Burris 'denied having abused the complainant or having thrown stones at him.'

The police sergeant told the court 'that he knew that the complainant [Murphy] was given a lot of annoyance. He had

made several complaints about the conduct of a lot of boys living in his locality.

'Chairman - There is no doubt these boys were in the crowd and that they did follow the complainant and shout at him. They will be fined 6d. each, with costs, this time, but if any more of this thing goes on they will be made an example of.'

'Bridget Burris, mother of one of the previous defendants, John, summoned William Murphy, the previous complainant, for having made use of abusive language towards her' four days before her son allegedly harassed Murphy. Mrs. Burris informed the court that 'her child was in the street' and that Murphy 'came up and caught it.' She told Murphy 'to stop and then he began to abuse her; he told her that he would spill blood in the place and that he would kill her.'

In response, 'Murphy said that he did catch some boys in the street on the evening that they had abused him.'

Mary Brennan was then sworn and said that Bridget Burris 'was sitting at her own door and Murphy came up and abused her, and told her that he would pull the brains out of her. 'Murphy - Are you not ashamed to tell such a lie (laughter). Please, your worships, I never abused the woman at all.'

'Chairman - There is no doubt you abused her, but I think you got a good deal of provocation.'

'Murphy - Why did she not keep her son away from me? He is the biggest 'lad' that could be found (laughter).

The defendant [Murphy] was fined 2s. and costs.'

Conclusion: Custom and Crime on the Inland Nore

The fishing cases brought before the Thomastown Petty Sessions on 8 June 1895 reflected the outcome of a long process through which the right of local inhabitants to fish for salmon on the inland river Nore, with only minimal restraint, was abolished. The process resulted from state policies, parliamentary legislation, case law, market exigencies, administrative priorities and a good deal of politicking and political 'pull' by the owners of the landed properties which lay along the river. The process was one in which accumulating restrictions on when, how and where salmon fishing could take

place led to severe limitations on who had the right to fish. As restrictions expanded during the nineteenth century, as a result of laws, by-laws and court decisions, so too did the techniques of enforcement. Personal enforcement by privately-hired bailiffs gave way to public enforcement by boards of conservators and the police. The results were that inhabitants were expelled by proprietors; cots and snap nets were displaced by rods and lines; labouring fishermen lost out to gentlemen anglers; unlimited fishing became constrained by rules establishing closed times (weekends, nights), enclosed spaces (weirs, gaps, private property) and illicit technology (gaffs, fixed nets).

Notes

1. William F. Tighe, *Statistical Observations relative to the County of Kilkenny made in the years 1800 and 1801* (Dublin 1802) 149-53.
2. British Parliamentary Paper. IUP 1824 [427] vii, 145.
3. More detailed descriptions of this process are found in Marilyn Silverman, 'From Fisher to Poacher: Public Right and Private Property in the Salmon Fisheries of the River Nore in the Nineteenth Century' in Marilyn Silverman and P.H. Gulliver (eds), *Approaching the Past: Historical Anthropology through Irish Case Studies* (New York 1992) 99-141. Also Marilyn Silverman, *An Irish Working Class: Explorations in Political Economy and Hegemony, 1800-1950* (Toronto 2001).
4. *Kilkenny Moderator* 18 October 1837.
5. They were hired by the Society to Protect the Fisheries of the River Nore, founded in 1835, by 'inland proprietors (not being weir owners)', *Kilkenny Journal* 28 February 1835.
6. On the Nore, the legal weirs in non-tidal waters were located at Mount Juliet, Newtown Jerpoint, Dangan, Dysart, Ballygallon and Rockview.
7. The case was *Murphy v. Ryan*, argued before the Court of Common Pleas in 1867, reported in the *Irish Reports - Common Law Series* (1867) 143-55.
8. *Kilkenny Moderator* 11 August 1875.
9. *Reg. [Morrissey] v. Justices of Kilkenny*, reported in *Law Reports (Ireland)*, 14 (1884) 349-52.
10. British Parliamentary Paper. HC 1901 [Cd. 448] xii, 137.