

BOOK REVIEW

Oonagh B. Breen, and Noel McGrath (eds), *Palles, The Legal Legacy of the Last Lord Chief Baron* (Dublin and Chicago: Four Courts Press 2022)

Author: Mr Justice Max Barrett

Christopher Palles (1831-1920) was born in Dublin, the son of a resolutely Catholic family. He later studied at Trinity College Dublin, taking a degree in mathematics. But – like Lords Denning and Mackay of Clashfern after him – he forsook a career in mathematics and opted for a legal career instead. He eventually served as attorney general for Ireland in Gladstone's first administration and was appointed chief baron in one of Gladstone's last acts as prime minister after losing the 1874 election. This book comprises a series of essays that between them consider, in a highly readable manner, the making of that appointment and the remarkable 42-year judicial career that followed.

Professor Breen and Dr McGrath provide the opening chapter, offering an overview of Palles' career, identifying some issues that can present in assessing a judge's career, and seeking to gauge Palles' international significance, a point to which they return in their concluding chapter. I was struck by the difficulties they describe, and enlightened by the guidance they offer, as regards undertaking the writing of judicial biography, a much-neglected field of scholarship in Ireland (with Delany's long-ago biography of Palles being a notable exception).¹

Dr Cope provides a fascinating insight into the mechanics of Palles' appointment, the manoeuvrings which preceded it, and the (difficult-to-understand) hesitation Gladstone showed in making the appointment. It is striking when one reads Cope's chapter how little in some ways the judicial appointments process has evolved since the 19th century and how the pre-Independence Irish bench might so greatly have been diminished had Gladstone not overcome his initial hesitation.

Dr Hamill examines Palles' reaction to the Judicature Act of 1877 and its fusion of legal and equitable jurisdiction. What is interesting to me as a judge is how much 'at sea' Palles and his colleagues appear to have been in wrestling with the opportunities the Act presented, preferring (even after the Act) to view common law and equity as two separate fish swimming in a common stream of justice. Hamill's chapter puts in mind the challenges that contemporary judges face in wrestling with the different but not dissimilar opportunities and challenges that present in terms of evolving the justice system in a highly technological age.

Dr McGrath considers Palles' judgments in the area of company law, pointing to the unvarying pragmatism that Palles brought to the various company cases he decided. I noted with interest McGrath's suggestion that Palles might well be unimpressed by the ongoing 'doctrinaire refusal' of our contemporary courts to allow directors to represent impecunious companies before the courts.² The needs of the poor, I submit, require constant attentiveness from judges; for the rich can afford to look after themselves.

Professor Dooley's chapter on Palles and the Irish land question is a gripping read. As a lawyer I was struck by Dooley's intimations as to the importance of legal history to a person seeking a rounded view of yesterday's world and by his observation that Palles does not

¹ See Vincent Thomas Hyginus Delany, *Christopher Palles, His Life and Times* (Dublin: Allen Figgis & Co. 1960).

² Oonagh B. Breen, and Noel McGrath (eds), *Palles, The Legal Legacy of the Last Lord Chief Baron* (Dublin and Chicago: Four Courts Press 2022) 69.

feature in any of the major survey histories of the 19th century. Even a great judge may not (it seems) cut so great a figure on the wider historical stage.

Professor Breen addresses Palles' significant impact on charity law here in Ireland and also in the wider Commonwealth. One cannot but be impressed by Palles' willingness to evolve his thinking in this area (to the point of reversing his own judgment in *AG v Delaney* (1875) IR 10 CL 104 in the case of *O'Hanlon v Logue* [1906] 1 IR 247). Implicit in this reversal, it seems to me, was an understanding that there is rarely an unerringly right answer to the issues that judges decide.

Dr Coen brings the reader on a memorable journey through Palles' application of the laws of contempt and the striking eloquence of Palles' observations in the late-19th century case of *Ex parte Tanner*³ on the substance and rationale of the law of contempt. I was struck also by the simple humanity of how Palles dealt patiently with a barrister who (sadly) appears to have become mentally unsettled and was prone to making wild applications to the courts – and by how great a model of forbearance Palles still provides for modern judges in this regard.

Professor Costello (well known to judges for his book on the law of *habeas corpus*) deals with Palles' extension of the writ (and relief) of *certiorari*. The longer I am a judge, the more I wonder whether judicial review is not an area in need of significant reform, and whether, even in the High Court, a three-judge court as standard would be preferable to the despatch of cases by a solitary judge. Palles, Costello observes, sought ever 'to expand the reach of judicial review'.⁴ But there is no reason such reach cannot be coupled with refinement and reform.

Professor Howlin considers Palles' contribution to the law on compensation for criminal injuries, focusing initially on the misfortunes of a Mrs Barrett (who naturally has my sympathies). She got up one morning to find that the windows of her shop in Tralee had been vandalized and later sought to receive compensation for this injury. She failed but – doubtless of little comfort to her – Palles' judgment in her case prompted later reform of applicable law. Striking to me was the tightrope Palles so often had to walk in this area, juggling law, justice, and social concerns: *plus ça change, plus c'est la même chose*.

Professor Ryan considers Palles' role in evolving the law on vicarious liability and the non-delegable duty of care. I was intrigued by how Palles' decision in *Hegarty v Shine* (1878) 4 LR Ir. 288 was recently revisited by the Court of Appeal (in *McDonald v Conroy* [2020] IECA 239) for its potential relevance to a tort of grooming – a wrongdoing most 19th century people likely did not understand to exist. Truly when one puts a judgment 'out there', one has no idea what use may be made of it in the future.

Professor Hedley highlights the pioneering and significant role of Palles as an architect of Ireland's modern law of torts. In particular, Palles played a critical role in evolving the law on nervous shock. I laughed aloud at Hedley's re-telling of the 1820s anecdote about the Irish lord chancellor, Lord Manners (1756-1842), asking a barrister how certain he was of a particular proposition and being told that it was the law a half-hour previously but that the packet-boat (and hence news of the latest judgments from the English courts) had yet to arrive.

Last but far from least comes Professor O'Dell's sparkling account of Palles' role in the modern law of defamation. O'Dell's chapter tells almost as much about defamation as it does

³ *Ex parte Tanner*, MP, *Judgments of the Superior Courts (Ireland)*, p343 (Exch Div, 1889).

⁴ *ibid* 139.

about Palles and is a useful read for any judge who wants an informative account of the origins and direction of Ireland's law of defamation. O'Dell's concluding remarks involve perhaps the highest praise that can be given to any judge. Thus, he writes:

Palles CB's judgments are astonishingly modern. It is not just that his judgments are often the first statement of principle of the current law; it is more than that. At a time when legal procedures and writing styles were convoluted Palles judged and wrote with meticulous precision and accessible clarity. His longevity on the bench has bequeathed to us a rich legacy of case law, as important for its legal wisdom as it is notable for its crystalline prose.⁵

This is a stimulating read by skilled authors about a singular judge. I commend it highly to anyone with an interest in law and/or history. It deserves the widest readership.

⁵ *ibid* 209.