

O'Byrne, John

by Gerard Hogan

O'Byrne, John (1884–1954), lawyer and judge, was born 24 April 1884, the fourth son of Patrick O'Byrne of Seskin, Co. Wicklow, and his wife, Mary Tallon. He was educated at the Patrician monastery, Tullow, Co. Carlow, and UCD. He graduated BA (RUI) in 1907 and MA (RUI) in mental and moral science in 1908. Immediately after his graduation he worked in the civil service in London, but he was soon transferred back to Ireland, to work in the Irish land commission. He thereby acquired an intimate knowledge of the land acts, something which was to stand him in good stead during the course of his later career.

O'Byrne enrolled in the King's Inns in 1908 and was called to the bar in 1911, where he practised on the Leinster circuit. Having served as a legal adviser to the dáil delegation in the negotiations leading to the Anglo–Irish treaty of 6 December 1921, he was subsequently a member in 1922 of the all-important constitution committee which drafted the Irish Free State constitution. He later served in 1923 as a member of the judiciary committee, whose report laid the basis for the subsequent Courts of Justice Act (1924). He became KC on 11 June 1924, immediately before his appointment as attorney general in succession to Hugh Kennedy (qv). As attorney general he invariably accompanied Irish ministers to meetings with British ministers called to discuss the work of the boundary commission, and, as attorney, appeared before the commissioners, arguing, unsuccessfully as it turned out, that article 12 of the Anglo–Irish treaty permitted the commissioners to recommend a far-reaching transfer of territory.

He was appointed a judge of the high court on 11 January 1926. His most notable judgment from this period came in *Re O'Duffy* [1934] (*Irish Reports* 550), when he ordered the release of General Eoin O'Duffy (qv) at the height of the Blueshirt controversy. This judgment embarrassed the government and delighted the opposition. Despite this, and despite his Cumann na nGaedheal background, O'Byrne was appointed by a Fianna Fáil government to be a judge of the supreme court, on 18 January 1940. His promotion was (probably correctly) described by the *Irish Law Times and Solicitors' Journal* as 'having given much satisfaction' within the legal profession. It came at a time when an exceptionally sensitive case was within a few days of being heard: the reference to the supreme court by the president, Douglas Hyde (qv), of the Offences against the State (Amendment) Bill (1940) for an adjudication as to its constitutionality. The court (by a majority) upheld the legislation.

O'Byrne delivered his most celebrated judgment in the Sinn Féin funds case on 31 July 1947 (*Buckley v. Attorney General* [1950] (*Irish Reports* 67)). This case had concerned the ownership of the funds of the original Sinn Féin organisation, which had been deposited with the high court following the civil war and the break-up of

the party. When the rump Sinn Féin organisation sought to recover these moneys, the oireachtas enacted the Sinn Féin Funds Act 1947. This act identified the pending litigation brought by Mrs Margaret Buckley, then president of Sinn Féin, and directed the high court to dismiss the action and to pay out the proceeds of the moneys to Bord Cisti Sinn Féin (the Sinn Féin funds board). This new board was then required to administer the funds for charitable purposes. When this legislation was found to be unconstitutional by Mr Justice George Gavan Duffy (qv) in the high court, the state appealed unsuccessfully to the supreme court. O'Byrne's elegant judgment for the supreme court demonstrated that the legislation, by expropriating the moneys without compensation, not only infringed the property rights of the claimants, but also infringed the separation of powers, by purporting to direct the courts as to how they should determine a pending case. Though this was not the first occasion on which an act of the oireachtas was found to be unconstitutional by the supreme court, O'Byrne's much-cited judgment is universally regarded as one of the cornerstones of Irish constitutional law. A very able judge with a fine and incisive writing style, O'Byrne must take a very high place among those who have been judges of the supreme court since its foundation.

In 1924 O'Byrne married Margaret (Marjorie), daughter of the retailer John F. McGuire (qv). There were five children of the marriage, Mary, Ann, Paddy (who later became a noted radio celebrity in South Africa), John and Michael. The family lived first at Stonehurst, Killiney, Co. Dublin, and afterwards at St Catherine's, Ballyboden, Co. Dublin. O'Byrne died 14 January 1954 and was buried in Deans Grange cemetery. After his death his widow commenced a major constitutional action (*O'Byrne v. Minister for Finance* [1959] (*Irish Reports* 1)), claiming that the taxation of her late husband's judicial salary during his lifetime was unconstitutional, on the basis that this amounted to a breach of article 35.5 of the 1937 constitution (which precludes the reduction of the remuneration of a judge during his tenure of his office). The supreme court, by a majority of three to two, ultimately rejected the claim on the basis that this provision in the constitution – designed to safeguard judicial independence – should be interpreted by reference to its ultimate purpose; the court found that this purpose was not compromised by making provision for the taxation of judges' salaries in common with all other citizens.

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*Irish Law Times and Solicitors' Journal*, lxxiv (1940), 28–9; lxxxviii (1954), 26–7; *WWW*; Gerard Hogan, 'The Sinn Féin funds judgment fifty years on', *Bar Review* (1997), 375; Gerard Hogan, 'The supreme court and the reference of the Offences against the State (Amendment) Bill 1940', *Irish Jurist*, xxxv (2000), 238–79; Ronan Fanning, Michael Kennedy, Dermot Keogh, and Eunan O'Halpin (ed.), *Documents on Irish foreign policy*, ii: 1923–1926 (2000); Kenneth Ferguson (ed.), *King's Inns barristers 1868–2004* (2005)

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