

# A legal travesty?



**Dr Niamh Howlin** examines the evidence in Roger Casement's London trial — the only full court hearing afforded one of the rebels



**A**FTER Roger Casement's capture on Banna Strand he was brought to London. During his interrogation on Easter Monday, news of the Rising filtered through, and by the end of the week, English public opinion of Casement had plummeted. He was presumed to have been the instigator of the Rising, although in reality he had come to Ireland to try to prevent it. While their first instinct had been to try him before a court-martial, the British government ultimately opted for the public spectacle of a full civil trial. Casement, however, would have preferred a court-martial like the other rebels.

Solicitor Gavan Duffy offered to arrange the defence. A number of leading barristers, fearing contamination by association, refused to represent Casement. Eventually, Duffy's brother-in-law, Alexander Martin Sullivan agreed to take the case. Well-established as a lawyer in Ireland, he viewed this as his opportunity to make a name for himself in English legal circles. With him was Artemus Jones, Professor JF Morgan, an expert in constitutional law, and American lawyer Michael Francis Doyle. They were pitted against the attorney-general for England and Wales, Frederick Smith (a strong opponent of Irish nationalism); Archibald Bodkin (later the Director of Public Prosecutions) and Travers Humphreys.

The four-day trial at bar took place in the King's Bench, before not one but three senior judges, as well as a jury of high-ranking individuals. A trial at bar was quite the public spectacle, often used in serious cases such as high treason. Many Irish nationalists had been tried in this manner in the past, including Daniel O'Connell and Charles Stewart Parnell.

Casement was charged with high treason, defined under a 1351 statute as "levying war against the King or being adherent to the King's enemies in his realm, giving them aid and comfort in the realm or elsewhere." Sullivan's defence was that Casement had not "adhered to the King's enemies" in the realm; all of his treasonable acts had taken place before he had set foot on British soil. In other words, he did not deny the treason, but argued that as it had taken place outside the jurisdiction, the 1351 Act did not apply.

This was a fairly novel argument, and not one with which Casement was particularly comfortable. Helped by George Bernard Shaw, he had intended to use his defence as an opportunity to make a very public declaration of Ireland's cause. His friends, however, did not think he ought to testify at trial at all, and were of the view that he would be unable to stand up to a gruelling cross-examination by the prosecution. Such a cross-examination was also likely to bring squarely into the public domain the personal diaries (known as the Black Diaries) which had been discovered among his possessions. If, however, he went along with Sullivan's more technical argument, he would not have to testify under oath at all.

Sullivan did not, realistically, expect that his defence would actually succeed. It was a highly academic argument and there were legal precedents against it. Casement's best hope, in the view of many, would



**Above: Gavan Duffy, with Professor Morgan, at Bow Street, London, for the defence of Roger Casement.**



**Above right: For the prosecution, Archibald Bodkin and Travers Humphreys.**

**Right: Roger Casement is escorted to the gallows of Pentonville Prison, London after being found guilty of high treason.**

**Inset, top left: a drawing of Casement in the dock.**

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be a conviction followed by a reprieve.

After the prosecution case consisting of testimony from Limburg POWs and witnesses from Banna Strand, Sullivan set out his argument. His motion to quash the indictment was, predictably, refused. He had staked everything on this line of defence, and could not now change course and call witnesses.

Casement was allowed to make a brief unsworn statement, then both sides addressed the jury in turn. In his speech, Sullivan began to shift his defence towards that which had been suggested by Casement and Shaw, drawing parallels between the actions of Casement and those of the Ulster Volunteers. However, he was rebuked by the bench and could not continue with this line of argument. Chief Justice Reading charged the jury before they retired, and

in less than an hour they returned with the unsurprising verdict of 'Guilty'.

Having been convicted, Casement could then make a speech from the dock. This was his opportunity to explain and justify the Rising, and he read out an eloquent speech, contextualising the events of the previous three years. When he concluded, the judges donned the traditional black caps and passed the sentence of death.

He was sent to Pentonville Prison until his appeal began on July 17, 1916 in the Court of Criminal Appeal. The five senior judges heard more than a day's worth of argument from Sullivan, but it was not considered necessary for the Attorney General to address the court at all. The judges rejected the appeal. Leave to appeal to the House of Lords was refused, because the Attorney General would not certify

that the case concerned a point of law of exceptional public importance.

Even at this late stage in proceedings, Casement and his supporters still had hope: there was the possibility that a reprieve might be granted by the Cabinet. Usually, the more influential individuals and groups that supported a petition for clemency, the more likely it was to be granted. There was significant international pressure brought to bear, and George Bernard Shaw, Arthur Conan Doyle, Douglas Hyde, John Dillon, Eva Gore-Booth, Cardinal Logue, Alice Stopford Green and William Butler Yeats were among those who supported Casement's appeal for clemency.

Many others refused, however, either because of their abhorrence at Casement's betrayal, or because of the rumours of his homosexuality. These were fuelled by the circulation of parts of the Black Diaries. Ernley Blackwell, the Home Office's legal advisor, was largely responsible for the leak, and also prepared a memorandum for the Cabinet referring to the diaries and emphasising that Casement's sentence should be carried out. The stigma of homosexuality had a devastating effect on public support for Casement. No reprieve was granted, and Casement was hanged on August 3.

Was the Casement trial a travesty of justice? There was a certain inevitability about the verdict. It was extremely unlikely that any English jury would have failed to find him guilty. In fact, during his speech from the dock, Casement lamented the fact that he had not been tried before an Irish jury: "With all respect I assert this court is to me, an Irishman, not a jury of my peers... I have a right, an indefeasible right... to be tried in Ireland, before an Irish court and by an Irish jury."

Casement would have had a very strong chance of acquittal by an Irish jury; however, had he been tried in Ireland it is unlikely that the authorities would have been prepared to risk this. He would either have been court-martialled like the other rebels, or tried in a juryless civil court following the suspension of jury trials during Easter week.

One striking omission from the trial was any mention of Casement's real reason for landing in Ireland. The prosecution sidestepped this issue because it would have weakened (or at least complicated) their case; Casement avoided mentioning it because he did not wish to appear disloyal to the rebels, especially in the aftermath of the executions. In any event, it probably would not have helped his defence, because his treasonable acts were said to have been committed while he was in Germany.

There were other dubious aspects to the trial, such as Smith's oblique references to 'a diary' before the jury, and Casement's unhappiness with Sullivan's defence.

Although there were certainly defects in Casement's trial, the fact that he received a full jury trial at least afforded him the opportunity to make his speech from the dock; something denied to those who were summarily convicted in the immediate aftermath of the Rising.

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