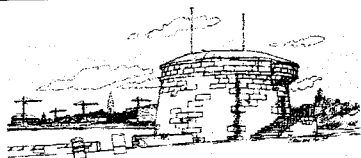


- Irish Heraldry in a Legislative Mess
- News, Views & Queries Received
- Official Opening of An Daonchartlann

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The Gene Gazette

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IRISH HERALDRY IN LEGISLATIVE MESS

Repeal Section 13 of The National Cultural Institutions Act, 1997

The appointment of the new Director of the National Library of Ireland and the possibility, that once again, the appointee will be also nominated as the new Chief Herald of Ireland, brings a new focus to the issue of the inadequate and somewhat shaky legislative basis for heraldry in Ireland.

"Seven Years On and Now in Limbo"

Seven years on since the passing of the National Cultural Institutions Act sections of that legislation remain to be implemented by the Minister for Arts, Tourism & Sport, Mr. John O'Donoghue, TD, especially, with regard to the governance of the institutions and the performance of the functions of the Chief Herald of Ireland. Indeed, exactly one year ago the Minister confirmed that funding was now in place to implement the legislation in full, including the establishment of the advisory committees on heraldry and genealogy following the appointment of the new Board of the National Library of Ireland. But since that announcement matters seem to have gone into some sort of limbo following the reported advice from the Attorney General that no legislative basis exists for the operation of the Office of the Chief Herald or for the granting of arms by the State.

"Legal Status of Grants of Arms"

This legislative mess surrounding the granting of arms may appear to be trivial to those who view heraldry as having no place in a modern republic. However, for grantees of arms from the Chief Herald of Ireland it poses some very serious questions, not least, on the legal status of the grants of arms issued since 1943. The 1997 legislation, it appears, erroneously assumes that a proper legislative footing for the granting of arms by the State existed from the time that the office was transferred to Irish control in 1943.

"Heraldic Authority Queried in 1943"

However, early advice on this point was ignored by the government of the day as a

memorandum of March 30th 1943 attests. This memorandum noted that "it was not clear whether legislation would be necessary to regulate the position and define the authority" of the heraldic functions of the office. Whilst, much of this confusion was based on the belief that the notion of "royal prerogative" existed in Ireland following the enactment of the 1937 Constitution of Ireland and that this prerogative had simply been transferred to the State. Back in 1988 in "*Webb v Ireland*" the Irish Supreme Court found that such prerogatives could not possibly have survived the enactment of 1937 Constitution.

"Neither Illegal nor Lawful"

Clearly during the debate on the National Cultural Institutions Bill in Seanad Éireann (Irish Senate), the Minister at the time, Mr. Michael D. Higgins, TD and his advisors were aware that an anomaly existed and needed to be addressed. However, the compromise reached in 1997 may just have compounded the anomaly in legislative terms. Clearly it is not illegal for the State to grant arms because there is no legislative or constitutional impediment to so doing, however, does this mean that grants of arms by the State are neither illegal nor lawful? This is a most unsatisfactory situation that has been ignored by the Irish government for years and indeed, no wonder that Section 13 of the Act is still in limbo awaiting a long-overdue decision by the current Minister.

"Far from Avoiding Doubt"

The wording of Section 13 of the National Cultural Institutions Act, 1997 sought to clarify matters in what was a fractious and, at times, acrimonious debate conducted both inside the Seanad and outside in the letter pages of the newspapers. Deciding against "abolition" and "establishment" or vice versa the status of the Genealogical Office and the Chief Herald of Ireland in Section 13 of the Act reads:-

(1) For the avoidance of doubt, it is hereby declared that the Genealogical Office is a branch of the Library.

(2) The Board shall, from time to time as occasion requires, designate a member of its staff to perform the duty of researching, granting and confirming coats of arms and such member shall use the appellation Chief Herald of Ireland or, in the Irish language, *Príomh Aralt na hÉireann* while performing such duties.

Clearly far from avoiding legislative doubt, the first paragraph erroneously assumed that some prior legislative basis existed for the Genealogical Office because this clause does not "establish" the office but simply recognizes its position in the National Library. So what, if anything, established the office and from where are its powers, functions and rights derived? The second paragraph provides for heraldic functions to be assigned to a staff member at the National Library of Ireland. However, again there is no legislative definition of "coats of arms" or of the powers, procedures and rights governing such functions. To say that this is sloppy drafting of legislation ignores the fact that this "compromise" was welcomed by nearly all commentators at the time, including this Society.

"Copyright Confusion"

In the next paragraph dealing with copyright this legislation is very unclear as to what rights of ownership and use are actually transferred from the Chief Herald on behalf of the State to the grantees of arms.

(3) The Board shall be entitled to any copyright subsisting in coats of arms granted or confirmed under this section.

Does this paragraph mean that should a grantee of arms from the Chief Herald have a problem with others using his arms without his consent, that the State would uphold and vindicate his rights by taking action on behalf of the grantee to protect the State's ownership of the copyright and to uphold its agreement with the grantee? Clearly this is a muddled situation that must

be addressed by legislation. Surely copyright must transfer to the grantee by Letters Patent. Indeed, the wording of such suggests that the rights to use the arms are transferred from the State to the grantee. If you don't acquire the copyright of your coat of arms on the payment of the prescribed fee and on receipt of your Letters Patent from the Chief Herald – what exactly has the grantee received?

“Are Rights of Grantees in Doubt?”

This very point of copyright transfer is but one of the serious anomalies produced by this legislation. It would appear from the reported advice of the Attorney General that the State had no right itself to grant arms as it had not given itself such rights in its legislation. Such powers don't emanate from “royal prerogatives” in Ireland as the notion of “monarchy” does not exist in our Constitution. So where does the State claim to have received the power to grant arms and indeed, to issue Letters Patent for such grants? Does this situation now mean that a grantee has no protection whatsoever for his grant of arms and that Letters Patent granting such are meaningless? Surely not as the costs associated with the obtaining of a grant of arms in Ireland can range from €5000 to €9000 depending on the status of the institution or corporate body and for individuals it starts around €3500. These are no small sums of money. Institutions, corporations and others rightly and understandably attach a great significance to their grants of arms displaying such on their buildings, promotional literature and products. Surely, any doubt as to the copyright of the arms or legal status of the Letters Patent received must not permit any open-season for the misuse of arms by others for whatever reason? Is the State ready to compensate grantees suffering any damage to their reputation or to their businesses flowing from the inadequacy of the legislative basis for the granting of arms by the State? The Minister must act now to protect the rights of grantees by amending legislation to include a retrospective legislative confirmation of the Letters Patent issued since 1943. Failure now by the Minister to act decisively on this issue will damage the image of Ireland and its cultural institutions internationally.

“So What Next for Irish Heraldry?”

Irish heraldry is an important cultural resource and should be protected, developed and promoted. The Office of the Chief Herald has provided an excellent heraldic service for over sixty years and the quality of their work is renowned worldwide. So what next for Irish heraldry? Well, the Minister has a number of options open to him to seek an urgent resolution of this legislative mess. He could bring forward a new “*Irish Genealogy & Heraldry Bill*” as advocated by this Society for many years. This would be a clean option tackling many

associated issues and ensuring that a proper legislative basis is established for the Office of the Chief Herald and its functions, duties and powers. But unfortunately it appears that such bold measures are not under active consideration by the Minister at the present time, therefore, it seems that tinkering at the edges of the problem is the most likely option to be chosen by the Minister. This may involve the implementation of Section 13 of the National Cultural Institutions Act, 1997 and placing the matter before a committee to be established under Section 13 (4) of the Act – as below:

(4) (a) The Board of the Library shall as soon as may be after the Library establishment day appoint a committee to be known as the Committee on Genealogy and Heraldry (referred to subsequently in this subsection as “the Committee”) to perform such of the functions of the Board, as in the opinion of the Board, may be better or more conveniently performed by it and are assigned to it by the Board.

This option is fraught with difficulty, however, it is in line with the tendency in Ireland over the past number of years to bury problems and issues in endless and often, meaningless and self-serving process. This has generated an industry thriving on the delivery of nothing more than “process” which should face a “value for money” audit by the Comptroller and Auditor General as the need for “product” seems to be constantly overlooked at the taxpayers expense. However, in the present context this “committee option” essentially ignores the fact that the 1997 legislation is flawed and needs to be repealed or significantly amended.

“New Legislation Only Viable Option”

This legislative mess in to which Irish heraldry has tumbled was not unforeseen back in either 1943 or 1997 however the failure to fully appreciate the scope of the problem now is totally unforgivable. State agencies, boards, county, city and town councils, institutions, educational bodies and universities, academic bodies and societies, sports clubs and, of course many persons of note have paid handsomely for and duly received grants of arms from the Chief Herald of Ireland since 1943. Each believing that a particular status and legal protection is provided for their grant of arms and that they alone may use their arms protected by Letters Patent. If this situation is now in some doubt, then the onus is on the Irish government, in whose name the Letters Patent are issued, to urgently address these concerns. The rights of grantees as set forth in Letters Patent received from the Chief Herald must be upheld and the Minister must, as matter urgency, make a statement on this matter. Indeed, in any new legislation a schedule must be included of the names of all corporate, institutional and individual grantees that received grants of Arms from the Chief Herald since 1943. Their grants should be afforded protection and legal recognition by

any new legislation. A mere statement of retrospection would be totally inadequate.

“Irish Genealogy & Heraldry Bill”

In the lead article of the October 2000 issue of this newsletter, this Society called for the introduction of a comprehensive “*Irish Genealogy & Heraldry Bill*” to provide amongst other things, a sound legislative basis for the granting of Arms. As a corporate grantee of Arms, this Society has continuously sought the formal inclusion of the State's heraldic functions in statute law. In April and October 2002, October 2003 and again in this issue of the newsletter, the Society proposed areas for inclusion in an “*Irish Genealogy & Heraldry Bill*” and now it appears that the Attorney General's advice makes the introduction of such legislation an imperative for the continuance of the State's heraldic functions. The main points for inclusion in such a Bill are as follows:-

- Clear definition of genealogy and genealogical records / material / heritage
- Clear definition of heraldry and the nature of armorial bearings
- Designation of place of deposit for genealogical and heraldic records
- Establishment of the Office of Chief Genealogical Officer, based at the National Library of Ireland, to oversee the formulation, planning and execution of policy in respect of genealogy and associated records, especially, the public accessibility to such
- Establishment of a supervisory / advisory role for the Chief Genealogical Officer in respect of government departments, local government or State agencies holding such records
- Establishment of a National Inventory of Genealogical Records held by the State or by private institutions and the publication of such
- Establishment of a mechanism to underpin best practice in the storage and public accessibility to genealogical records in liaison with the Heritage Council
- Establishment of the “Principle of Public Ownership & Right of Access” to our genealogical heritage for persons in Ireland and the Irish Diaspora
- Recognition of the importance of records of Baptisms, Marriages and Burials held and maintained by ecclesiastical institutions in Ireland as part of the Nation's genealogical heritage
- Establishment of a Standing Advisory Committee on Genealogy to assist and advise the Chief Genealogical Officer with members from the commercial and voluntary genealogical organisations in the State.
- Establishment of a State acquisitions policy in respect of genealogical records in private hands whether at risk or not
- Prevention of the export of original material whether in State or private ownership
- Application of functions to the Office of the Chief Genealogical Officer in respect to the provision of educational and promotional material / programmes for genealogy
- Legislative establishment of the prerogative rights of the Office of the Chief Herald of Ireland
- Legislative protection for armorial bearings in the Republic

- Legislative regulation in the application for and granting of Arms and Letters Patent
- Legislative framework for fees charged by the Chief Herald of Ireland
- Protection of copyright in respect of armorial bearings
- Legislative regulation and requirements in respect of heraldic records
- Protection of rights to inheritance in respect of armorial bearings in the Republic
- Definition of types of grantee, i.e. corporation, individual, local authority etc
- Assure access to Arms for a greater number of our citizens by providing for the introduction of a "Certificate of a Grant of Arms" describing the details of the Arms granted, this would be a less expensive alternative to the existing Letters Patent presented on beautifully hand painted vellum.
- Rights of grantees to the free use of armorial bearings and protection of such
- Protection and defined use of the Arms of Ireland
- Establishment of a Standing Advisory Committee on Heraldry and Vexillology to assist and advise the Chief Herald of Ireland on such matters
- Legislative establishment of Office of the Chief Herald as the vexillological authority for Ireland
- Clear definition of vexillology and vexillological records / material
- Establishment of a "Vexillological Register" for Ireland and a mechanism for the granting of Letters Patent in respect of flags and emblems by the Chief Herald for State, local authority or corporate bodies
- Legislative protection for flags and emblems in the Republic, especially, the National Flag and the Presidential Standard
- Legislative regulation on the maintenance by the Chief Herald of a register of Irish Hereditary Chieftains as "national treasures" and as an embodiment of our ancient genealogical heritage, including, the requirement for the strict scrutiny by independent genealogical researchers of all applications for courtesy recognition of "hereditary chieftains"
- Provision for the awarding by Government of a Special Grant of Arms to individuals in recognition for services to the State, community, business, arts, sports or education, including Letters Patent outlining the reasons for the award.

"Appeal to Minister O'Donoghue"

Heraldry as an aspect of our heritage is all around us in Ireland from its use by state agencies, clubs and local authorities on everything from vehicles to wheelie bins – we cannot ignore the significance and presence of heraldry in Ireland. Failure to comprehensively deal with this matter now through legislation will permanently damage the Office of the Chief Herald of Ireland and undermine the heraldic excellence, expertise and international reputation built-up over sixty years delivering heraldic services to our nation and to the Irish Diaspora. The Society urges **Minister O'Donoghue** to urgently address the issues raised above and to bring forward at the earliest opportunity suitable legislative proposals to regularise Irish heraldry once and for all.

JAMES SCANNELL REPORTS.....

IRISH MILITARY HERITAGE The latest addition to the Maynooth Series of Research Guides published by the Four Courts Press which are indispensable source books covering all aspects of local and national history, is called '*A Guide to Irish Military Heritage*' written by Brian Hanley and commissioned the Military Heritage of Ireland Trust. This research guide provides a comprehensive listing of sources for research on all aspects of Irish military history with one section containing details of some relevant sites on the World Wide Web. Researchers will find this book a most valuable guide to trace the service record of an individual, the events in a particular locality or the history of campaigns or regiments.

"THE GREAT LEWIS" During Summer 2003 Dúchas - The Heritage Service, released the results of an underwater survey carried out on a wreck lying in Waterford Harbour near Duncannon Fort. The wreck has been identified as that of "*The Great Lewis*" a 17th century Cromwellian warship said to be part of a fleet that attacked Duncannon Fort in County Wexford. This was a relief ship for the fort which was then being besieged by Preston and the forces of the Leinster Army. Damaged by gunfire from the shore and masts blown away, this vessel drifted ashore and was wrecked. It's believed that if parts of this ship including its cannons and the personal effects of over 300 crew members can be recovered, they will provide many considerable additions to the collections on Irish military heritage.

GOLDSMITH REMEMBERED In April the largely unknown, unrecognised and secluded grave of Oliver Goldsmith, one of Ireland's foremost 19th century writers where he had lain since his death in 1774, was unveiled after restoration at a ceremony at the Middle Temple in the heart of London's famed legal district. In 2003, the grave was located by members of the Goldsmith Summer School which decided to restore the gravestone and to have the site appropriately marked. Oliver Goldsmith was born in Pallas, near Ballymahon, Co. Longford in 1728 and following his arrival in London in 1760, became a member of the select literary club headed by Dr. Johnson whose members included Garrick, Reynolds and James Boswell. Best known for his poem *The Deserted Village*, his other works included *She Stoops to Conquer* and *The Vicar of Wakefield*. The Oliver Goldsmith Summer School Committee was founded in 1985 and hosts an annual summer school in the Co. Longford / Co. Westmeath area and is dedicated to promoting and preserving the reputation of one of Ireland's great writers and in the past

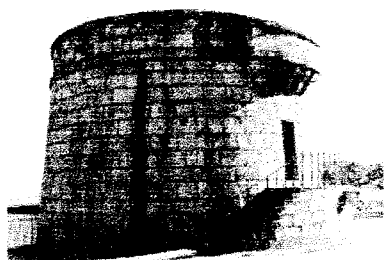
20 years has established itself as one of the most respected schools of this type. Over the years, all aspects of Goldsmith's life, society and writing have been explored in gatherings featuring a wide variety of renowned critics and academics from throughout the English speaking world. The restored grave was unveiled by **Dr. Dáithí Ó Ceallaigh**, the Irish Ambassador to the Court of St. James prior to a reception at the Irish Embassy for visiting members of the school and guest dignitaries. Following the unveiling of the restored grave, a spokesperson for the summer school said that Oliver Goldsmith has been universally recognised as a literary master and a genuine citizen of the world and that it was felt appropriate that his serious and historical significance should be recognised with the unveiling of the plaque at his gravestone in the Temple.

PARNELL SUMMER SCHOOL The theme for this year's Parnell Summer School which takes place at Avondale House, Rathdrum, Co. Wicklow from Sunday August 15th to Friday August 20th is Ireland Real and Ideal encompassing concerns about Irish lived experience both historical and contemporary. This strand will feed into the School's concern with the memory and legacy of Charles Stewart Parnell and the Parnell Family. It will also follow reflections on wider themes and problems, both historical and contemporary. Themes will include:- The Parnell Legacy; The Abbey Theatre - One Hundred Years; Filming Irish History; James Joyce and Parnell; Women and the Irish Revival; Celebrating Irish Forestry; The Undoing of Irish Catholicism; Reflection on the Northern Ireland Peace Process. Participants will include:- **Colm Tobin** (novelist); **Bernard Adams** (biographer); **Louise Fuller** (NUI Maynooth); **Lionel Pilkington** (NUI Galway); **Catherine Morris** (QUB); **Katherine O'Callaghan** (UCD); **Ben Levitas** (Goldsmiths College, London); **Derek Hand** (St. Patrick's College, Drumcondra). Further information & bookings from **Ms Deirdre Larkin** at Tel: +353-1- 285 2113 or by E-mail: secretary@parnellsociety.com Website : www.parnellsociety.com

VIKINGS IN IRELAND The Heritage Council is supporting calls for a full archaeological excavation to be carried on the site of the of early Viking period uncovered at Woodstown, Co. Waterford during work on the €300m Waterford bypass. So far upwards of 350 artefacts, including nails, weights, measures chains and bones have been recovered from the site which is believed to have been home to a 9th century Viking longphort from which they sailed up the Rivers Suir, Nore and Barrow on raids against the native Irish. Some conservationists have suggested that part of this bypass should be rerouted to avoid damaging the site but **Dr. Pat**

Wallace, Director of the National Museum of Ireland believes that altering the route is not a realistic option and that the priority should be to have the site excavated as speedily as possible. The National Roads Authority (NRA) has suggested that 2/3 of the site should be preserved for excavation while constructing the bypass over the remaining 1/3. Conservationists are of the view that this course of action would lead to the destruction of most of this historic site while the NRA believe that preserving the remaining 2/3 indefinitely could cost up to €13m in additional costs. Its expected that the Minister for the Environment, Heritage and Local Government, **Mr. Martin Cullen, T.D.**, will receive a briefing on the discovery from officials in his heritage division and a full decision is expected shortly.

AN DAONCHARTLANN



The refurbishment of Martello Tower at Seapoint is certainly moving very fast now in time for our official opening on Wednesday 15th September 2004. **Barry O'Connor**, FGSI designed and is constructing the service area on the first floor and the shelving / storage areas on the ground floor. The spacious research area on this floor is illuminated by stylish up-lights creating and the workbenches are all wired to receive the computers and microform readers. **Liam Mac Alasdair**, FGSI has overseen the completion of the installation of electric cabling to provide circuits for computers, heating and lighting throughout. The finishing touches to the ceiling downstairs are now in hand with specially designed lighting for the archive area. As always and, it's never too late, we invite our Members and friends of the Society to help with this **Phase 2** of the project. One way of helping is to become a sponsor. Each sponsor will be named in the *Commemorative Book* to be published for the official ceremonial opening marking the the two hundredth anniversary of the building of the Martello Tower. Patrons may have either their own name or that of a loved-one entered in this *Commemorative Book* and on a scroll that will be permanent memorial in the Tower. For just €100.00 (US\$125.00) per name, this is a special and worthy manner in which to remember an ancestor, to honour a friend or loved-one or to memorialise your family ties with Ireland. Another way of helping is to send what you can as donations no matter how

modest are all very welcome. Donations should be sent to the Hon. Secretary at the address below with details of the name or names to be entered on the scroll and published in the commemorative book to mark the official opening of "*An Daonchartlann*".

GSJ SPRING JOURNAL

The **Spring 2004** issue of the Society's quarterly journal - **Vol. 5 No. 1** is now available. Articles in this 64 page issue include: Adam Smyth (1875-1918) - Post Office Sorter on Royal Mail Steamer "Leinster". From Dublin to Devon in Search of a Maritime Past. Quirky Entries from The Cork Mercantile Chronicle. The Death of Thomas Bewley in an 1889 Dublin Industrial Gas Accident. A Note on Cornelius Fennessy, O.S.A. James Terry's Legacy (Terry was Athlone Pursuivant at the time of King James II's defeat and exile to France). The Gentleman Soldier (families mentioned Dillon, Suffield, Cramer, Tandy, D'Arcy, D'Esterre and Guinness - amongst others). James Gunning - A Dalkey Man in Her Majesty's Navy. Royal Hibernian Military School Extant Records. The Anglo-Norman Origins & Genealogy of the De La Launde Family. Price €5.00 (members €4.50) Copies available via the Society's Website www.gensocireland.org

DIARY DATES

Tuesday June 8th 2004

Evening Open Meeting, 20.00hrs
Dún Laoghaire College of Further Education,
Cumberland Street, Dún Laoghaire
Bus: 7, 7A, 46A, and 75.
DART Monkstown/Salthill Station.

Speaker: **Mr. James Robinson**

Topic: "*Oscar Wilde's Friend & Benefactor, Helen Carew (1856-1928)*"

Tuesday July 13th 2004

Venue as above
Topic: "*Members' Research Queries*"

Weds. June 23rd & July 28th

Morning Open Meeting 10.30hrs
The Port View Hotel
Marine Road, Dún Laoghaire
Discussion Group on Family History

*Contribution of €3.00 at each meeting
Coffee/Tea served at Morning Meetings*

ANNUAL MEMBERSHIP FEE

Irish based Members living in either the Republic or Northern Ireland are reminded that their Annual Membership Fee fell due on January 1st 2004. The Annual Membership Fee for Irish based Members (ROI & NI) is just €20.00. For overseas Members the Fee due on the anniversary date of joining is now €25.00. Membership renewals may be made via the Website by Credit Card (VISA or MasterCard) or by Cheque to the address below.

QUERIES RECEIVED

JOAN BRIGGS, MGSJ, Campions, Stocksbridge Lane, Combe Bissett, Salisbury, Wiltshire, SP5 4LZ, England. Write:- **BRANAGHAN**, James, my maternal great grandfather was born in 1841 in Ireland. Father: Patrick. Mother died in a riding accident. He served in the British Army in India until circa 1866, was adopted, or changed his name to **BEYNON**, married and settled there. He was a canal engineer, later a brewer. Brother or uncle, Samuel Bynon. Any information appreciated. I have details of his descendants and a photograph.

TOM PIERCE, MGSJ, 1241, N. 18th Avenue, Apt. 201, Sturgeon Bay, WI, 54235, USA Write: Seeking information on John **PIERCE** living in Chicago, Illinois during 1902 when my father was born. In 1917 or 1915, John and his younger brother, Dennis F. **PIERCE** obtained a grant of farm land from the US government. Their younger brother Michael set up an electrical business in Rochester, Minnesota, USA. A younger sister Johanna came and lived with Dennis on the farm. From Cork and emigrated to the USA before 1900. Any info. most appreciated.

VERONICA WILLIS, 5/41 Oxley Avenue, Jannali 2226, New South Wales, Australia. Write:- Seeking information on the **O'BRIEN** family / families of Lismore, County Waterford, especially my uncles who emigrated from Ireland in 1917/18 to Boston, Massachusetts, USA. Any information on this family and any connections most appreciated.

GRAPHIC FAMILY TREE SERVICE

VISUAL ARTIST & GRAPHIC DESIGNER OFFERS THIS SERVICE AT REASONABLE AND AFFORDABLE COST

Artist based in Dún Laoghaire will work with you to produce a beautiful graphic presentation of your Family Tree in full colour, with all your photographs of family members included. All you have to do is complete a standard family tree chart or Birth Brief and send all relevant photographs, clearly identifying the individuals as per the chart. Each person will be framed, and the complete document printed on a textured background, with Crests and any text you may require - you decide the level of information to be included. We will work in close consultation with you at all stages of the project. Costs are based on the number and quality of the images involved. Confidentiality and security guaranteed. We also specialise in Photographic Restoration. CONTACT **Frankie Lee** on 087.782 0932 or E-mail: frankiezee@eircom.net for more information.

US & UK CURRENCY

The exchange rate for check or cash in US dollars €1.00 = US\$1.25 and for British pounds €1.00 = 0.70p. These rates apply to all purchases and membership subscriptions transacted in the currencies concerned. Alternatively why not pay by Credit Card - MasterCard or VISA via the Website?