



Title: Trial of Rowan Cashell, Gentleman, Attorney

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Journal of the Cork Historical and Archaeological Society, 1901, Vol. 7, No. 51,
page(s) 149-166

Published by the Cork Historical and Archaeological Society

Digital file created: December 22, 2013

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according to the same authority, for twenty years, his death taking place in 1708, when he must have been of a very advanced age.

In a tract published in 1708, and preserved in the Haliday collection in the Royal Irish Academy, there are some verses, entitled "An elege on the pig that follow'd Lord Chief Baron Hen and Baron Worth the Connaught Circuit, and so to Dublin." They seem to be allegorical, and to refer to the death of the Chief Baron's clerk, or registrar as he would now be called.

The late Mr. Thomas Rice Henn, of Paradise Hill, county Clare, long Recorder of Galway, was of opinion that the Chief Baron was related to the holders of the baronetcy, now extinct, conferred on Sir Henry Hene, recte Henn, of Winkfield, Berks, and believed him to be an ancestor of his own. As tending to prove the latter theory, it may be mentioned that the Clare property was granted in 1685 to a certain Richard Henn, and that the Chief Baron in the later years of his life as a judge always chose the Connaught, which brought him near that part of the country, as his circuit.

[Authorities:—"Carte and Essex Papers"; "Calendar of Domestic State Papers"; "Notes and Queries"; "Records of the Inner Temple"; Burke's "Extinct Baronetcy" and "Landed Gentry."]

Trial of Rowan Cashell,⁽¹⁾ Gentleman, Attorney,

For the Wilful Murder of Henry Arthur O'Connor, Esq.,⁽²⁾ late of Tralee, in a Duel, tried at the March Assizes of Tralee, 1816, before Mr. Justice Day.⁽³⁾

Contributed by J. F. FULLER, Esq., F.S.A., from a contemporary MS. in his possession, and to which he has added notes identifying the persons mentioned.

Counsel for the Prosecution, Messrs. Quin,⁽⁴⁾ Bennet,⁽⁵⁾ and Franks;⁽⁶⁾ for the Defence, Messrs. O'Connell,⁽⁷⁾ Rice,⁽⁸⁾ Pennafather,⁽⁹⁾ Day,⁽¹⁰⁾ King,⁽¹¹⁾ Lyne,⁽¹²⁾ and O'Loughlen.⁽¹³⁾



HE prisoner was arraigned upon the following indictment: That he, Rowan Cashell, did on the 7th day of August, in the 55th year of the King's reign, at Ballyseedy, in the county of Kerry, feloniously, wilfully, and of his malice aforethought, assault Henry Arthur O'Connor, Esq., and that he, the said Rowan Cashell, with a pistol charged with gunpowder and leaden shot, feloniously, wilfully, and of malice aforethought, did shoot and discharge

it, too, against and upon the said Henry Arthur O'Connor, and give him one mortal wound in and upon the right side of his body, of which he then and there instantly did languish, and languishing did live from the said 7th day of August until the 9th day of August in the said year, and then died, against the peace of our Lord the King, his crown and dignity.

The prisoner was permitted to remain in the sheriff's box, and having pleaded not guilty, the following jury was sworn :—

Daniel Mahony ⁽¹⁴⁾ (fore-	Stephen Gallwey. ⁽¹⁸⁾	John Eagar. ⁽²³⁾
man).	Myles Mahony. ⁽¹⁹⁾	Edward Purcell. ⁽²⁴⁾
James Lawlor. ⁽¹⁵⁾	Kean Mahony. ⁽²⁰⁾	Edward Morphy. ⁽²⁵⁾
Godfrey Leonard. ⁽¹⁶⁾	Carroll Goff. ⁽²¹⁾	
James Gorham. ⁽¹⁷⁾	Michael DeCoursey. ⁽²²⁾	

Mr. Quin, in a forcible and eloquent speech, stated the case for the prosecution, and the following witnesses were then examined.

Morgan O'Connell Busteed, Esq.,⁽²⁶⁾ examined by Mr. Franks.—I am a surgeon. Knew the deceased, and know the prisoner; deceased died of a gunshot wound. I attended him for two days; he died the 9th of August. I was within a few yards of him at Ballyseedy when he was wounded; the crowd prevented me from seeing by whom he was wounded. I heard shots before that. I saw Mr. O'Connor and Mr. Cashell placed on the ground. I did not see them armed, as when they were placed I retired. I quitted, and retired about twenty yards off; after the shots I saw Mr. O'Connor lying on the ground wounded. I examined the wound, it was in the right side, rather backward; it was the cause of his death. I at once saw it was mortal. On my approaching him, he said, "It is all over with me." During my attendance I consider he knew not his situation; but towards the end of his life he wished for a clergyman. The next day after he said he would prosecute Mr. Cashell at the assizes; he was then swearing informations, and I did not think that a person who knew he was to die would express himself so; he that evening was attended by a clergyman; he apprehended death on the ground, and said, "Mr. Cashell has dealt very unfairly by me, having taken aim at me after my shot was fired"; he was removed to Tralee to his father's house. I attended him there; he said then he would prosecute Mr. Cashell for an assault; from what I heard him say when he was swearing the informations, I do not think he expected he would die; the information was read for him, and he was sworn to it.

Cross-examined by Mr. Pennefather.—I heard two shots. I have no doubt one was fired by the deceased. I was not by when Mr. Cashell was struck by Mr. O'Connor, nor when Mr. Cashell was posted as a coward; there were a number of persons on the ground; there was an

interval between the two shots ; the last shot could have followed quicker than it did.

Lieutenant Richard Quill, R.N.,⁽²⁷⁾ examined by Mr. Bennet.—I knew Mr. O'Connor, and know the prisoner. I remember they had a difference on the 5th of August in the club billiard room about a half-crown bet. I was playing billiards with Mr. Cashell between 11 and 12 o'clock at night. I was backed by Mr. O'Connor for half a crown against. We were playing a rubber of three games. Mr. Cashell was eight to love of the first game, and offered to bet two to one, which bet I accepted, and lost that game. I won the two next, which ended the rubber. Mr. O'Connor then said to Cashell, "You owe me one bet." Cashell said not. O'Connor said he did. Cashell said he got quit by betting two to one. O'Connor asked me and the marker if we knew of the bet of two to one, observing if we said so he was satisfied ; neither of us knew of any such bet. Cashell still insisted that he won the bet ; O'Connor then offered to end the dispute by tossing up, whether it was a bet or not. Cashell refused, saying he had not lost. O'Connor insisted he did, saying, "By God, I must not be humbugged, and you must pay me or not play at this table." Cashell replied, "You are a brat of a boy, and not worth my notice. I will make this a business with your father." O'Connor then replied, "There is not such a difference between our ages that I would not fight my own battle ; and I must be paid." Cashell said he paid everyone. O'Connor said he did not know that, as he did not pay him, and he could only praise the ford as he found it. Cashell then said, "You are a brat of a boy ; I could gain no credit by bringing you before the county." O'Connor replied, "You are a damned forward fellow for telling me so." "By God," said Cashell, "if you were a man, or worth my notice, I would kick you out of the room."

Cross-examined by Mr. Pennefather.—I did not hear Cashell say he would complain to O'Connor's father. I had no conversation on the subject with the prisoner's brother, Mr. Robert Cashell. I was not on speaking terms with that gentleman for some time previous.

Lieutenant Arthur Morris,⁽²⁸⁾ examined by Mr. Quin.—I am a Lieutenant in the Kerry Militia. I knew deceased, and know the prisoner. I went in August last for the purpose of arranging a dispute between them. I went by O'Connor's directions. I met Cashell on the Mall, said I wanted to speak to him, put my hand under his arm in a familiar manner, and walked with him into the Green. I said to him, "There is a dispute between you and O'Connor—I wish it was arranged." Cashell replied he was too much of a boy, and he would have nothing to do with him. I replied, "If you offended O'Connor, surely you cannot treat him in that way." He persisted in saying he was a boy. I offered to leave

it to three or four gentlemen; he persisted in refusing to make any atonement to a boy, and I then went in quest of Mr. Quill; when I found him, I went back to the Green, where I found Mr. Cashell, his brother, and Mr. Dan McGillicuddy. Mr. Cashell still refused either to apologise or to meet a boy. I do not think I am bound to tell anything that may implicate myself (the Court ruled he was not). Mr. Cashell laid a whip he had in his hand on my shoulder, and said, "Take that as a horse-whipping." I walked off a few paces, when I was called back by Mr. Cashell's brother, and a reconciliation took place between us, I considering Cashell would arrange with O'Connor. After some conversation, in which he declined any accommodation with my friend, we disagreed, and he laid the whip on my shoulder again. (Court—Do you mean to say he laid the whip on you a second time? I do, my Lord.) I then left the Green, and I only again saw Mr. Cashell at a distance. I was at the duel in the next field. I saw Mr. O'Connor fall. I heard shots. I cannot swear as to the interval between the shots; my mind was too much occupied to ascertain the exact time between.

Cross-examined by Mr. Stephen H. Rice.—I believe O'Connor posted Cashell as a coward. I heard him say he would. I believe he followed the posting by striking him. After the posting, I heard him say he struck Cashell, to make him fight (to Mr. Bennet). I heard O'Connor say that, in consequence of Cashell's posting him, O'Connor, he struck him; all the posting was after the conversation in the Green.

Thomas Fitzgerald O'Connor, Esq., examined by Mr. Quin.—The deceased was my brother. I know the prisoner. I was with my brother on Sunday when he met the prisoner; the dispute was on Saturday night. On Sunday, the deceased walked, leaning with one arm on me and the other on my brother, James, for the purpose of shaking a whip over Cashell, in consequence of a notice he had posted. We came up with Mr. Cashell on the Parade, where he was walking with some gentlemen. My brother said "Mr. Cashell"; on hearing his name pronounced, he turned round and made a blow of a whip at my brother, on which my brother struck him. This was done before my brother made any attempt, or even disengaged his arms from us. Mr. Cashell is a member of the club. Here a paper was handed to witness, which was as follows:—"Notice. Arthur O'Connor is a boy not worthy of the notice of a man, and the Gentlemen of the County of Kerry are desired to take notice that I horsewhipped his friend, Mr. Arthur Morris, a Lieutenant of the Kerry Regiment. Signed, Rowan P. Cashell." I took that paper down off the wall of the club room on Sunday evening; this was after what took place on the Mall. I did not see it until I took it down. I was present when Mr. Daniel McGillicuddy delivered a message to my brother. I went to

Ballyseedy with my brother. Mr. James Yielding⁽²⁹⁾ was my brother's friend. The arrangement made between the seconds was that both were to fire on pronouncing the words "Ready. Fire." Mr. Yielding was to give the word, and they were to fire together instantly; this was agreed to by both principals, but Cashell said he would prefer each should fire at his own discretion; this was not agreed to, and each well understood they were to fire upon Mr. Yielding's giving the words "Ready. Fire." The seconds were 12 or 14 yards from the principals. I saw Cashell and his second load three cases of pistols. Mr. Cashell loaded some himself. While he was so doing, the deceased and my brother, James, were walking at some distance. I heard two shots, one did not go off until some time after the other. I can describe what occurred; it was thus: When I saw the parties placed on their ground, I was walking away when I heard the words "Ready, Fire," distinctly, and instantly a shot. I turned round to see who fired, and I saw by the smoke of my brother's pistol that he had fired, and missed Mr. Cashell. I turned away, not wishing to witness the second shot, which I supposed would have followed at once; finding the shot was not returned, I faced about again, and directed in my anxiety my eyes towards my brother. I saw him standing with his pistol taken down from the present. I then saw him raise it (here witness described the elevation of the pistol), and while it was so poised in the air I heard the other shot, and saw him fall. I had time to observe all this between the shots. My brother had no pistol in his hands but the one he discharged. Cashell had, when placed on the ground, a case of pistols, which I then thought casual, as he charged them himself. It was when my brother raised his arm that Cashell fired, and my brother fell.

Cross-examined by Mr. O'Connell.—I am intended for the bar. I have served terms at the King's Inns. I do not know that in cases such as this counsel for the prosecution can address the jury, while for the defence they cannot; if such be the case, it would afford an advantage. I was, of course, very much interested in this affair. We formed the intention of horsewhipping Cashell on Sunday; it was the intention to make the insult as public as possible; this paper is in my writing; it would be very difficult to mistake the meaning of it. I made it as degrading as I thought the exigency of the case required. I believed if he had any feeling he must have felt it. The following was then put into witness's hand, and read by him:—"Having been grievously insulted by Mr Rowan Cashell, and having had recourse to that mode of redress usually resorted to in civilized society, I have been denied the satisfaction of a gentleman, for the very serious crime of not exceeding 18 years of age; in consequence of this, as well as the additional insult put upon

me by the outrage on my friend, I felt myself under the necessity of posting Mr. Cashell as a coward and a bully, and therefore unfit for the society of gentlemen. Signed, Henry A. O'Connor." I should not wait for a month after receiving such a paper. I cannot speak as to the duration of my resentment, but it would continue until I acquitted myself as a gentleman. Cashell was struck with a slight stick or switch. My brother and myself were with the deceased; one servant was there, but he did not come by our desire, nor did I prevent him to interfere; there may have been a huzza; my mind was too much occupied at the time; the blow was in consequence of the prisoner's posting. I would have rather that Mr. Cashell had put the offence in his pocket than that my brother's life should be exposed. I should have considered Cashell a degraded man if he did not fight, for from the extremities matters were driven to, I considered a duel inevitable, when every possible exertion for an amicable adjustment with the proper person proved ineffectual. We acted with that determination; we conceived we were bound to do so. I turned round when I heard the first shot; there were several gentlemen on the ground; my eyes were not on the parties from the time the word was given until my brother was shot. Mr. Yielding gave the word; he stood about the centre; the seconds walked towards each other, in order to keep the parties covered until they met, and then verged off to one side. I cannot say how much he either converged or diverged. I am not aware that my brother got any instructions as to any particular mode of firing.

James O'Connor, Esq., examined by Mr. Franks.—I am brother to the deceased. I am acquainted with the handwriting of Mr. Cashell (here the posting written by Mr. Cashell was handed to witness, and he proved it to be his handwriting). I was at the duel. I saw both on the ground. I hear the word "Fire" given. I saw my brother fire, on which Mr. Cashell turned round, stepped forward a bit, and took deliberate aim. I was on familiar terms with Cashell, he used to frequent my father's house, and dined twice there in the week the dispute occurred.

Cross-examined by Mr. Day.—There was a posting up on Sunday reflecting on Cashell; it charged him with cowardice. I would not feel easy under such a charge. I think he ought have taken notice of it. I would do so. I accompanied my brother for the purpose of horsewhipping Cashell; my other brother did the same. I never heard my brother Thomas say that everything was done to degrade Cashell before what he said on the table just now. I took no part in helping my brother to insult Cashell. I did not go to insult him. I went with my brother at the time he intended to horsewhip Cashell.

Samuel Morris, Esq.,^(3b) Provost of Tralee, examined by Mr. Bennet.—

Mr. Morris observed that, as a magistrate, he should claim the protection of the court before he could give his evidence.

His Lordship—I cannot answer for the consequences.

Mr. Bennet—My Lord, we shall be deprived of some of our best witnesses if some such expedient is not resorted to.

Court—They may be examined in such a way as will not implicate them.

Examination continued—I remember the morning of the duel. I was not on the ground, I was in an adjoining field at some distance. I heard two shots; there was an interval between them; there were three seconds. I heard the words “Ready, Fire,” and instantly after the word “Fire,” one shot.

Cross-examined by Mr. King.—I heard the words “Ready, Fire”; the first shot was instantly after the word “Fire” was given. The prisoner had time to change his position between the two shots.

Mr. Joseph O'Connor, examined by Mr. Quin.—I was at the duel on the 7th of August, about nine o'clock. I saw them on the ground; they were armed with pistols; the prisoner had two pistols, the deceased one. I saw them fire. I heard the words “Ready, Fire,” given distinctly. Mr. O'Connor fired on the word being given. I conceive his shot was simultaneous with the word “Fire”; that is, the shot went off as closely to the word “Fire” as possible; if it means otherwise or more than that, I do not know the meaning of the word; the shot went off almost instantly with the word; they stood sidelong. I saw them present their pistols. Mr. Cashell did not discharge his pistol at the word “Fire”; there were three or four seconds of time between the shots. I saw the prisoner change his position. I did not see him advance a step. They both stood in a similar position, side to side. After O'Connor fired, Cashell brought his body from that position to a square position thus (here witness squared his body), and fired; they both had levelled their pistols together.

Cross-examined by Mr. O'Loghlen. I meant by the word “simultaneous” that the shot was as quick as possible after the word “Fire.”

William Collis, Esq.,⁽³¹⁾ High Sheriff, examined by Mr. Franks.—I was present at the duel; was not then sheriff. I had my back turned to the parties when put upon the ground. I heard two shots; there were about three seconds between them. I did not see who fired the shots.

Not cross-examined.

Francis Twiss, Esq.,⁽³²⁾ examined by Mr. Bennet.—I saw Mr. Cashell on Sunday, the 6th of August, come out of the club room with a paper in his hand; it was the posting, and I told him it was very improper to introduce the name of Arthur Morris. I was at Ballyseedy the following morning, and I heard the shots; you might count two between the shots,

as "One. Two." I think I could count three (to a juror). I think it may be possible that Mr. Cashell did not hear the word "Fire," but very improbable.

John O'Connell, Esq.,⁽³³⁾ examined by Mr. Quin.—I heard the shots fired on the morning of the 7th August. I heard the words "Ready, Fire," given; they were given in an audible voice; I heard them distinctly. I heard one shot immediately on hearing the word "Fire"; there was a pause between the shots; in my conception there was time enough to take aim. Some may take more time for aim than others.

Cross examined by Mr. O'Connell.—I saw the affair on the Mall. I saw a crowd and went up to it. I was walking on the Mall with some gentlemen, and saw Mr. O'Connor address something to Mr. Cashell; immediately Mr. Cashell struck Mr. O'Connor. I then saw Mr. James O'Connor hold Mr. Cashell whilst the deceased gave him a blow of a stick. There was a great ferment excited in the town by the affair. I saw Mr. O'Connor put a posting on the Castle gate. I heard a shout when Mr. Cashell was struck, and I saw Mr. Thomas O'Connor check a man who, I suppose, was their servant for attempting to interfere. From the provocation Mr. Cashell got, I believe the heat of blood may have continued until the firing of the shot. To the Court—I heard a noise on the Mall and I went up. I considered there must be unpleasant proceedings, I saw the deceased address the prisoner. I could not tell the words he said, but Mr. Cashell struck him; it was about five o'clock in the evening.

John Hurly, Jun., Esq.,⁽³⁴⁾ examined by Mr. Franks.—I was present at the duel between Mr. Cashell and Mr. O'Connor. I heard the shots; there was a lapse of time between them. I cannot be accurate as to the time; a person may have time enough to take aim, another person may take more time. I think there was time enough to take aim. I was outside the crowd in the ground. I thought that both shots were fired together when I heard but the one report. I stepped inside the crowd to see what happened, and on getting within the people I heard the other shot fired, and saw deceased fall (to a juror). I am a sportsman. I think that some men from practice or nerve take less time in taking aim than others.

Counsel for Prosecution.—My Lord, we close, although the prosecution is anxious to call more witnesses of the numerous catalogue before us.

THE DEFENCE.

The first witness called was Mr. William Mason,⁽³⁵⁾ examined by Mr. O'Connell.—I was at the duel; I heard the word given. I heard the word "Ready" given distinctly. I did not hear the word "Fire." Mr.

Yielding gave the word. I was nearer to Mr. Yielding than Mr. Cashell was. It was more likely I would hear it than Mr. Cashell as being nearer. The first shot was fired after the word "Ready," which was given in a confused manner; it was Mr. O'Connor fired that shot. Mr. Cashell fired in a short time after. I could count two between the shots. I think Mr. O'Connor's shot going off before the word "Fire" would be enough to disconcert Mr. Cashell. The word "Ready" was so distinct that I heard there was scarcely time to hear the word "Fire" before Mr. O'Connor fired. I did not see Mr. Cashell move on his ground. I observed no change of position. I thought the duel a fair one. I think that when Mr. O'Connor fired before his time Mr. Cashell had a right to take as much time as he chose. I cannot say Mr. O'Connor fired before his time.

Cross-examined by Mr. Quin.—I could count two between the shots. I heard the word "Ready." I did not hear the word "Fire." I cannot swear the word "Fire" was not given; but if given, it was said in a low voice. Mr. John O'Connell was there, and near me. If Mr. O'Connell swore the word "Fire" was given before Mr. O'Connor fired, I would believe it was, but I was as attentive as Mr. O'Connell; I will not swear the word "Fire" was not pronounced. There was a sufficient time between the word "Ready" being given and the firing of Mr. O'Connor's shot to admit the word "Fire" being pronounced. I swear that if one fired before his time, I considered the other justifiable in taking what time he pleased. The compact was that the parties should fire together after the words "Ready, Fire." Mr. O'Connor fired after the word "Ready"; the words are always given quickly, but there is a manner of giving them. The prisoner did take time after Mr. O'Connor's shot; he must have taken time, as O'Connor fired first. The prisoner is my relation, and I heard my father say so was O'Connor. I never told anyone that I can now recollect that it was not a fair duel. I never did, and if I did I told a lie. I spoke to many the morning after the duel. I did not speak to anyone in Abbeydorney. Upon my oath, I did not speak to anyone in Abbeydorney, for I had no acquaintances there; but I met Mr. William Day and Mr. Upton⁽³⁶⁾ there, and I told them of the melancholy business. I told them the way Arthur O'Connor was shot by Cashell. I do not recollect saying the duel was not as it ought to be. I told them of nothing but the meeting and the event. I might have told them of the prisoner's coolness of manner, and of his squibbing his own pistols, but I do not remember.

Eusebius McGillicuddy, Esq.⁽³⁷⁾ examined by Mr. Rice.—I was on the ground. Mr. James Yielding gave the word. I heard but one word, and on that word being given Mr. O'Connor fired. I do not know what the

word was that I heard. I stood between the two; I was nearer to Mr. Cashell than to Mr. O'Connor. I think I had a better opportunity of hearing the word than Mr. Cashell had. I saw several duels, and my opinion is that this was a fair one.

Cross-examined by Mr. Franks.—I heard some word given; I do not know what the word was; on that word being given the deceased fired. I do not believe Mr. Morris is deaf, nor do I believe Mr. John O'Connell is deaf. I do not know where Mr. John O'Connell was. Mr. Morris, who heard the word so distinctly, was not in the field. (To a juror) I considered the duel a very fair one.

Here the defence closed.

THE CHARGE.

Gentlemen—The prisoner, Rowan Cashell, stands charged with the wilful murder of Henry Arthur O'Connor, and I shall now proceed to detail to you the evidence as I have noted it down. Beginning with that of Surgeon Busteed's, he states he was on the ground, and heard two shots fired, and from his evidence he will give you to understand that the second shot might be quicker than it was. That is as much as Surgeon Busteed's evidence amounts to. Mr. Richard Quill was in the billiard room at a difference that happened between the deceased and the prisoner; it happened about a bet of a half a crown, for which this unfortunate young man lost his life. You should be particular in observing that the first offensive words were used by the deceased, who said, on the prisoner's denying he had lost the bet, "You shall pay me, or (accompanied by an oath) you shall not play at this table," that is to say, gentlemen, he should be excluded from this society. To this language the prisoner made answer in terms of not a very offensive nature: "You are," said he, "but a boy, and I shall call upon your father," whether to complain perhaps of the conduct of deceased or not, but, however, that he would call upon his father. Deceased again demanded to be paid, insisting he won the wager, and the other denied, saying if he lost he would pay as he did everyone, to which deceased replied, "I don't know that; you don't pay me, and "I praise the ford as I find it." So you see, gentlemen, from a grain of mustard seed this dispute proceeded to a serious and angry quarrel, ending in the fatal consequences which followed. The prisoner, to whom insulting language was applied, used some expression as "If you were not," said he, "a brat of a boy I would turn you out of the room." This, gentlemen, is the substance of the evidence of Mr. Quill, Lieutenant Arthur Morris gives you an account of what took place next day; tells you that he (very laudably certainly) came to Mr. Cashell to make it up, met the prisoner on the Mall, and walked with him into the

Green; there he explained to him the nature of what he came about, and required of Mr. Cashell to arrange the business; proposed terms to Mr. Cashell, which he would not accede to, still saying "he was but a boy, and that he would have nothing to say to him." I do not see, gentlemen, that this was indicative of a sanguinary nature. Mr. Morris's object was reconciliation, Mr. Cashell still persisted he was but a boy. Deceased offered no apology for the adage used, "I praise the ford as I find it." Mr. Morris then went away, and afterwards returned and proposed to leave the matter in dispute to Mr. Quill; the prisoner refused—very unfortunately refused—to leave it to Mr. Quill, but proceeded to lay a whip on Mr. Morris's shoulder, saying that he meant it as a horsewhipping; "to take it as a horsewhipping." After this, Mr. Morris tells you he was called back and a reconciliation took place, between him and Mr. Cashell; this, unfortunately, did not continue long. Mr. Morris then said he was present next day, heard the shots, but could form no opinion about them. On cross-examination, he says the deceased posted the prisoner with a view to compel him to fight. Mr. Thomas O'Connor, the brother of the deceased, gave you in testimony that all three went to the Mall for the express purpose of horsewhipping Cashell; deceased offered no blow, but the witness says with a great deal of candour, they went for the purpose of horsewhipping Cashell. This horsewhipping, by the code of laws of honour, is not required to be an actual horsewhipping, but ideal, and amounts to the same. He tells you he took down a posting after the occurrence of the Mall affray, and after other postings had been made—these produced the duel. Mr. Yielding and Mr. McGillicuddy made an agreement that the parties discharge their pistols at the words "Ready, Fire"; the witness swears that he heard the words loud enough, the prisoner, he says, knew of the arrangement but said that he would prefer that each party should take his own time; there is no doubt, it appears, of the agreement being known; but did the prisoner hear the word? They were distant about twelve or fourteen yards (here Mr. Thomas O'Connor said: "My Lord, I did not say so. I said I thought the seconds were about that distance from the principals, but the parties fought at the distance of eight yards at the express desire of the prisoner's brother and his second, who refused to accede to the ordinary distance). Gentlemen, I must have misunderstood, but I do not think this observation can go to you now as evidence. The shots, he swears, were separate, one after the other; the witness on hearing his brother's shot instantly wheeled about, not wishing to witness a sight which must have been disagreeable to his feelings, did not keep his eye on his brother, but hearing no report of the second pistol turned round again and saw his brother; this, he says, he had time to do before the

second shot was fired ; he says that the deceased's arm was down by his side, that he raised it, and then the prisoner fired. Deceased had but one pistol, the prisoner two. On cross-examination he states that he and brothers went to the Mall as the most public place to make the insult to be given to the prisoner as public as possible ; there was a posting made of the prisoner, the language of which was calculated to provoke, it was thus—"Having been grossly insulted by Mr. Rowan Cashell, and having been denied the satisfaction of a gentleman, I feel myself under the necessity of posting Mr. Cashell as a coward and a bully, and therefore unfit for the society of gentlemen. Signed, Henry Arthur O'Connor." This must have gone far in producing what was then done. A more exasperating thing was never written or made use of than was posted in the public places. Mr. O'Connor, the witness, allows with much candour and truth, that his feelings would be much irritated by such language if it was applied to himself, and says he rebuked his servant for shouting on the occasion. He does not know how many blows his brother may have given, but the posting was before the blows. He expected from the violence that there would be a fight, but he would rather there was not. He then adds that he considered a duel as inevitable, and that there were numbers on the ground. Gentlemen, it appears to me as if these kind of things were a pastime here. He states the posting by Mr. Cashell was before the affray on the Mall, but after the posting by deceased. Mr. James O'Connor, another brother, proved the handwriting of Mr. Cashell to the posting. He said the prisoner stepped a short step, turned his person, levelled and fired, and that the prisoner had been on terms of familiarity with their family. On cross-examination he agrees with his brother's evidence as to the aggravation given to Mr. Cashell, and that he could not help fighting ; he says the prisoner posted the deceased in consequence of the prior posting by the deceased. Samuel Morris heard two shots, the first as soon after the word as it could be fired, the next a short time after. The next witness was Joseph O'Connor. He appears as an amateur. He swore, gentlemen, that one had one pistol and the other two ; this, gentlemen, can be of no weight, as there was no intention of firing two shots for one. He swears he heard one shot, as he expresses it, simultaneously with the word ; but he after says he meant very quickly after the word, the second shot in three or four seconds after ; he described to you the position of the prisoner, that he did not observe him alter it, but that he might have squared a little, and that they levelled together. William Collis next proved much the same. Francis Twiss saw the duel ; there was about a second, as much as you may reckon one, two ; this was as much as Mr. Twiss's evidence amounted to. Mr. John O'Connell next sworn. He does not admit that he was on the ground,

but does that he heard the shots, that one was after he heard the word, the other after a lapse (a pause was his expression), such as he may take aim in; he says the day before the duel, on the Mall, he heard a buz, he went up to the crowd and heard the deceased address Mr. Cashell, the words he did not know, on which prisoner made a stroke at the deceased, when deceased gave prisoner a blow, and repeated the blow severely; this was on Sunday, the day before the duel. There was a great ferment caused by the posting put up by the deceased on the Castle gate. Mr. O'Connell does not hesitate to say on his cross-examination that there was heat of blood in the prisoner, that the blows received and the double posting continued in his mind until the next day, that the three young gentlemen came up very quietly, but certainly, gentlemen, not on a very quiet purpose, to flog the prisoner. Mr. John Hurly was present, heard the shots; but did not mark the interval; it might have been enough to take aim, but not a deliberate aim. He would come to no conclusion as to the time necessary to take aim; one man may take a longer time than another, but he does not know that the prisoner took more time than was necessary to take aim in, as he considers men will differ in that respect. Gentlemen, I will now proceed to the evidence for the defence. The witnesses were Messrs. Mason and McGillicuddy. The first, Mr. Mason, told you that he stood nearer to where the word was given than the prisoner did. He did not hear the word "Fire"; he will not say it was not given, but he says the shot may have been fired with the word—as another witness expressed it, simultaneously with it; the prisoner fired a short time after, as "one, two"; he observed no change of position on the part of the prisoner, and concludes by saying he thought everything was fair. On cross-examination he admits, as before, an interval between the shots, that he is a relative of the prisoner's; I do not know, gentlemen, that any such remark has been made on any of the witnesses on the part of the prosecution when the brothers of the deceased were examined; he does not say the word "Fire" was not given, but that if it was, it was in a low voice, and that if he, who was nearer the party giving it, could not hear it, it was no wonder Cashell, who was further away, should not; he also considers if one party fires before his time, it was reasonable the other should delay his fire. Here, gentlemen, according to Mr. Mason's idea, it would appear that Mr. Cashell delayed for the word justly, and if the other fired before his time Mr. Cashell's delay was an adherence to the agreement. Gentlemen, I observe a consistency between both sides of the evidence, except that some heard the words, others did not. Mr. McGillicuddy deposes that he heard but one word, and that then the deceased fired. He stood nearer to the deceased than to the prisoner,

and he was more likely to hear the word than the prisoner; that he is conversant in matters of this nature, and that the duel was a fair one. Here, gentlemen, the evidence closes, and I am here to explain to you that two persons meeting, armed with deadly weapons, to fight a duel, should homicide ensue it is legal murder. The questions put relative to the provocation given seemed to me an attempt on the part of the prisoner's counsel to extenuate in that way the act of the prisoner. It is impossible the treatment of the deceased to prisoner could have subsided in his mind during the night; if a falling out occurs overnight, the law says that the delay causes the heat of blood to subside; the irritability must still have remained. It is the duty, gentlemen, of the judge to state the law distinctly on duels; but as society is, unfortunately, governed by a code of its own—by the law of opinion, altogether discharging municipal law from it, there is scarcely an instance where juries will receive the law of the land, but conceive an allegiance to honour as the law to go by; but such provocation as this in a court of honour flesh and blood could not endure; it was on this the witnesses on cross examination proved the consequent heat of blood, and the contumacious language of the unfortunate deceased. The conduct of Cashell deprecated a mortal collision with the deceased, but, gentlemen, they met the next day; the treatment Cashell received must have degraded him in society; if a duel did not ensue, according to this code of laws of honour, he could not hold up his head in society after it. As a judge of the King's Bench, I must deprecate that this law should countervail the laws of the land, and that we, unfortunately, cannot oppose this despotic law, by which, if a gentleman deny to accede to, he must be stigmatised as a coward, and which they are pleased to endure in preference to such humiliating feelings and degradation. A man would rather throw himself on a jury than walk in society an isolated being; and, gentlemen, I would be unwilling to say merely that "one, two," was a deliberate pause to take the life of another (if in a court of honour), but by the law of the land the going out and a homicide ensuing, the law constitutes it murder.

The jury retired, and in a short time returned a verdict "Not Guilty."

Mr. Justice Day then addressed the prisoner nearly to the following effect:—Mr. Cashell, you have some very respectable friends and connections in this county, and I can assure you that you will be more likely by a proper attention to the duties of your profession to render yourself a useful member of society than by aspiring to the shocking and contemptible character of a duellist. I am sure you must yourself feel more sensibly than any other man the unfortunate occurrence that has taken place, and I would recommend you as a friend in future to avoid all such

places and societies as may have a tendency to produce such consequences. I trust that time will remove the affliction which has fallen on the family of the young man who has lost his life. The father has yet some very fine young men, two of whom have given evidence upon this trial, and I trust these very respectable young gentlemen will be a comfort to their family. It would be much to be wished that the unfortunate occurrence would be buried in oblivion, and that these families may be restored to the former friendly intercourse which subsisted between them. But perhaps at present this may not be possible ; they have lost a very fine young man, and as I understand a young gentleman of very mild and amicable manners, so that it is possible this can only be a work of time.

Sheriff—Is Mr. Cashell to be discharged, my Lord?

Judge—Oh, yes. Mr. Cashell, you are discharged.

Copy of Informaton of Henry A. O'Connor, the deceased, sworn on 8th day of August, 1815, states :—That in consequence of an altercation or dispute which took place between Rowan Cashell and Informant on Sunday, the 6th day of August, the said Rowan Cashell, on the evening of said day, sent Daniel McGillicuddy, Esq., of Tralee, to this informant with an hostile message to fight a duel with said Rowan Cashell on the following morning with pistols, which message he, the said informant, accepted, and on the following morning repaired to Ballyseedy, where and when the said informant met the said Rowan Cashell, armed with pistols, which he, the said Rowan Cashell, then and there loaded with powder and leaden balls, and informant and said Rowan Cashell having agreed to decide the dispute between them by the discharge of a case of pistols at one and the same time by word, that is to say, at the repeating of the word "Fire" by James Royce Yielding, Esq., of Tralee, according to the usage and manner of duelling between gentlemen. That although informant discharged or fired his pistol at the present instant the word "Fire" was repeated by the said Mr. Yielding, yet the said Rowan Cashell, with malice prepense and with the design of killing or depriving informant of his life, reserved his fire for a considerable time after the word "Fire" was given, until he had stépt forward a pace, levelled his pistol, and taken cool, deliberate, and premeditated aim at the body of informant. And this informant further saith, that perceiving the aforesaid deliberate aim he raised his pistol which had long been discharged with the intention to throw it at the said Rowan Cashell to deter him from the aforesaid aim, when the said Rowan Cashell maliciously fired and shot informant in the right side, informant being at the same time and for a considerable time before unarmed, and therefore not in a situation to put the said Rowan Cashell in any dread or terror of his life. And informant saith he is now

languishing and has no hope of recovery from the wound maliciously inflicted on him by the said Rowan Cashell, and therefore craves the redress of the law in his behalf. (Signed) Henry Arthur O'Connor.

NOTES.

(1) He was son of Francis Cashell, by his wife, Sarah Rowan, whose sister was mother of the first Lady Ventry. His name appears in Dublin registry, 1820, as having an office in Capel Street. He married first, 1816, Alicia, only child of William Lawrence, of Silvermines, county Tipperary, by his wife Mary Harden, and secondly, Henrietta Amelia, widow of Frederick Bennett.

(2) The O'Connor family owned then, and I believe still own, property near Causeway, county Kerry.

(3) Robert Day, member of a well-known Kerry family, judge of Court of King's Bench 1798 to 1818; M.P., for Tuam 1783 to 1790, and Ardfert 1790 to 1798; died 1841; married, first, Miss Potts, of London, and secondly, Mary, daughter of Bartholomew Fitzgerald, M.D., of Bandon. His only daughter (by first wife) married Sir Edward Denny, bart.

(4) There was a Thomas Quin a Bencher of King's Inns. George Quin was "called" about the same time, and another George Quin in 1815, probably father and son, as they both had same address in Leeson Street. I can't identify the counsel in this case.

(5) George Bennett was Crown Prosecutor Munster Circuit, and father of the Munster bar. He was "called" in 1800. Probably a brother-in-law of Pennefather (whose wife was Jane Bennett), and son of John Bennett, judge of King's Bench, by Jane, daughter of Jonathan Lovett, of Liscombe, Bucks. He married a daughter of Captain Toler Kingsley.

(6) Afterwards Sir John Franks, judge of Supreme Court, Bengal; born 1760; married three times—(1) Catherine, daughter of Thomas Franks, of Carrig, county Cork; (2) Jane, daughter of John Marshall; (3) Sarah Wollaston, daughter of Wm. O'Regan, barrister-at-law.

(7) The great Daniel O'Connell, the "Liberator," of Derrynane Abbey.

(8) Stephen Henry Rice, assistant barrister for Kerry.

(9) Probably Richard Pennefather, K.C., afterwards one of the Barons of the Exchequer, who married Jane Bennett. See note 5.

(10) Robert Day, of Lohercannon, near Tralee, "called" in 1802. He married Christian, daughter of William Marshall. He was nephew of the judge, and son of Rev. John Day, by Lucy, daughter of the Knight of Kerry.

(11) I am unable to identify this man. There were three of the name "called"—one in 1795, one in 1802, and one in 1811.

(12) Cornelius Lyne, a Corkman and well-known wit of the Munster bar, familiarly called "Con of the hundred bottles."

(13) Afterwards Sir Michael, first Catholic Master of the Rolls after emancipation, and father of Sir Brian, present baronet, by Bidelia, daughter of Daniel Kelly, Esq.

(14) Of Dunloe Castle, near Killarney; married, 1787, Elizabeth, daughter of Patrick Creagh, Esq., by Margaret Trant.

(15) Eldest son of Martin Lawlor, of Castletlough, Killarney, by his wife, Mary Anne McCarthy, of Knocknagree, county Cork.

(16) He probably hailed from Listowel.

(17) Probably James Gorham, hotel proprietor, Killarney.

(18) He was agent to the Kenmare estate.

(19) He was of Castlequin; married, 1788, Mary, daughter of Jeffrey O'Connell, of Portmagee, and died 1822.

(20) Son of the above, born 1789; married Mary Ann, daughter of Daniel Cronin, of Park, Killarney.

(21) The identity of this man has baffled me. I am not certain whether the name is Goff or Gaff.

(22) He may have been Michael, son of Admiral De Courcey, by his wife, Ann, daughter of Conway Blennerhassett, Esq., of Killorglin, and brother of Lord Kingsale.

(23) This family had extensive ramifications in Kerry, so that it is not easy to identify this juror, but I take him to have been John, of Coumduff, Recorder of Dingle, who married a Miss Creagh, and died in 1840.

(24) A merchant in Killarney and Tralee.

(25) An Edward Morphy married Arabella, niece of Eusebius McGillicuddy—on whom see my note further on—but whether he was the juror I am not able to say.

(26) He was M.D.; born 1789; died, s.p., 1830; married, 1818, his cousin, Ellen, daughter of James Hickson. He was son of John Busteed, by his wife, Catherine, daughter of William Hilliard, of Listrim.

(27) He served in the "London," 98 guns, under Captain Sir Harry Neale. He married Elizabeth, daughter of Samuel Sealy, of Maglass, county Kerry, and was Nephew of Maurice Quill, surgeon, 31st Regiment, who died 1824, and on whom there is a most eulogistic notice in the "Gentleman's Magazine" of that date.

(28) Lieutenant Morris and Samuel Morris, Provost of Tralee, were of Ballybeggan, and members of an old Kerry family.

(29) James Royse Yielding, of Tralee, married Harriett, daughter of Christopher Hilliard, of Listrim. Only son of John Yielding, barrister-at-law, by Elizabeth, daughter of Thomas Henry Royse, of Nantenan, county Limerick.

(30) See note to Lieutenant Arthur Morris.

(31) Brother of Margaret Ruth Collis. See note to Francis Twiss. He married his first cousin, Catherine, daughter of Rev. Samuel Collis, and was, I believe, Customs Surveyor of Dingle.

(32) Son of George Twiss, High Sheriff of Kerry in 1802, by Honoria, daughter of William Meredith, of Dicksgrove. He married Margaret Ruth, daughter of Edward Collis, of Lismore, county Kerry.

(33) The "Liberator's brother." He was of Grenagh, and grand-uncle of the present head of the Derrynane family, Daniel O'Connell, D.L., J.P.

(34) Clerk of the Crown and Peace for Kerry. He married Anna Maria Theresa, daughter of Col. Hill, of Mount Hill, Armagh, by Elizabeth, daughter of Richard Kirwan, of Cregg Castle.

(35) William Mason married Agnes Eagar. He was of same Kerry family as Elizabeth Mason, mother of the patriot Robert Emmet.

(36) Query Thomas Upton, K.C., afterwards M.P. for, and Recorder of Derry.

(37) Of family of McGillicuddy of the Reeks, born 1754, married Anne, daughter of James Fitzgerald, of Ballyellen, county Carlow. He was son of Cornelius McGillicuddy, by Catherine, daughter of Richard Chute, of Tullygarron.

Eighteenth Century Trade Circulars and Invoices of Cork Traders.

By ROBERT DAY, F.S.A.



THE shop bills, trade circulars, and invoices of the eighteenth century are rarely met with. As a rule, when death occurs, they are consigned to the dustbin or kitchen fire, and are seldom laid aside and preserved. In many ways they are of much local historical interest as preserving merchants names and where they traded, and in throwing sidelights upon the wants, dress, and fashion of the period, of the prices then current of goods made in Cork, the manufacture of which has long ceased to exist. The comparative isolation of the city in the eighteenth century, made the citizens rely more upon their own resources for the supply of many articles, and industries grew up and manufactures were started that for many years continued to flourish and thrive and attain the highest excellence. Amongst these were art products, notably gold and silversmiths' work and cut glass, for both of which Cork was famous. Specimens of these are still eagerly sought after, and so much coveted by collectors that their price has steadily appreciated, and will continue to do so more and more in the future.

I have copied the following contemporary records of Cork-made glass from the "Overseer," a local paper, printed for Roderick O'Connor, January 11th, 1817:—"Waterloo Glass House. From his forming the Waterloo Glass House Company, which is now at work, and giving employment to over 100 persons, Mr. Dan Foley may take Lord Foley's arms of "ut prosum," to do good, and be really styled a Lord indeed. His workmen are well selected, from whose superior skill the most beautiful glass will shortly make its appearance to dazzle the eyes of the Public and outshine that of any competitor. He is to treat his men at Christmas