

## Journal of the Cork Historical and Archaeological Society

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Title: Trial of Rowan Cashell, Attorney (contd)

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*Journal of the Cork Historical and Archaeological Society*, 1904, Vol. 10, No 61,  
page(s) 36-47

Published by the Cork Historical and Archaeological Society

Digital file created: August 7, 2013

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## Trial of Rowan Cashel, Attorney, for Murder of Henry Arthur O'Connor, Tralee, 1816.

CONTRIBUTED BY JAMES F. FULLER, F.S.A., F.R.I.A.I.

[In Vol. VII. of this "Journal," pages 149 to 166, I gave an account of the above. See also note Vol. IX. page 69, in which I promised to return to the subject.]



REAT surprise was expressed at the result of the trial which acquitted the prisoner; and so strong was the feeling against Judge Day, that his retirement from the bench soon after was said to be caused by public indignation at his charge to the jury.

I came across, in a second-hand bookshop in London, a curious and interesting pamphlet, printed in Cork, but without author's or printer's name. It was published anonymously, obviously from fear of the consequences, and bears on title page the manuscript signature of T. Twiss—a name well known in the South, and a member of which family gave evidence at the trial. I take the pamphlet to have been written by Thomas Fitzgerald O'Connor, brother of the young man who was shot, and who was then reading for the bar, and was also a witness at the trial. I quote the "Advertisement" first:—

"The subject of this trial is certainly one in which the interests of society are deeply involved, whether it be considered with a view to securing the due and impartial administration of public justice, or to the preservation of human life, which the imperious code of honour may at some period compel the most peaceable man to expose to that fiery ordeal established by public opinion, and in a great measure sanctioned by courts of law in this country. Mr. Justice Day, before whom this trial was heard, is a native of the County of Kerry, and connected with some of the most ancient and respectable families in that county; this gentleman, who endeavours to reconcile in his person the sound politician and impartial judge, was at the time of this trial most actively employed in canvassing the County of Kerry for his grandson, Mr. Edward Denny (son to the Baronet of that name), whom he seeks to invest with that political consequence to which his family and fortune fully entitle him. Mr. O'Connor, father of the deceased, the prosecutor in this cause, is closely connected with, and firmly attached to an opposite interest. From these circumstances, as well as that the learned judge was both related to and connected with the prisoner, the prosecutor was anxious to relieve him from the embarrassing situation in which he (the prosecutor) thought he must have felt himself placed, were he to preside at the trial. The prosecutor, apprehensive lest the voice of slander should raise itself, and calumny, forgetful even of the dignity of the bench, should boldly

venture to assert that the sacred character of the judge had merged in the finesse of the petty politician, and the equally poised scale of justice sunk beneath the pressure of political venality, furnished his counsel with an affidavit stating the absence of several material witnesses, and moved to have this trial postponed until the following assizes; a proposal which, as it was calculated to relieve the learned judge from a situation unquestionably of great delicacy, he conceived would have been readily embraced. After some discussion, in which the counsel for the prosecution strongly insisted on the postponement, as an incontrovertible privilege of the crown, whilst the counsel for the prisoner urged the insufficiency of the affidavit, the court ruled it against the prosecution, on which the counsel for the prosecution declared to the court that they had never heard of such an application being refused at the first assizes, particularly when they made no objection to the prisoner being admitted to bail, and recommended to his lordship to consult with his brother judge on the propriety of such a refusal, as it would be but a mere mockery of justice to proceed to trial, and the inevitable consequence would be a failure of justice, by which a criminal would escape the penalties of the law. The court persevered, and was about to discharge the prisoner, when upon an application, it was with difficulty induced to grant time until the following morning, but positively refused to grant one day longer to prepare for the prosecution. Thus was frustrated the expedient which the prosecutor devised for relieving the delicacy of the judge, and promoting the ends of public justice; nor, were the anticipations of the prosecutor ill grounded, either in respect to the popular clamor from which he was anxious to relieve the judge, nor as to the event of the trial; for the county of Kerry now, *una voce*, exclaims, why did he not transfer this important trial to Mr. Justice Mayne, who having finished the civil business, was then employed in assisting him to get over the criminal calendar. Erroneous as the *vox populi* may be, and nothing is more liable to error, and shielded as the judge may feel himself in the integrity of his own views, the *mens conscia recti* steeling him against every malevolent insinuation, yet is the salutary precaution of our ancestors not destitute of merit, which guarded against any imputation of this nature by removing the cause of it, and ordaining that no judge should preside in his own county. The observations of Sir William Blackstone on this subject are as follows: "The prudent jealousy of our ancestors ordained that no man of law should be judge of assize in his own county, wherein he was born or doth inhabit, and a similar prohibition is found in the civil law which has carried this principal so far that it is equivalent to the crime of sacrilege to be governor of the province in which he was born or hath any civil connexion."—Blackstone's Commentaries, Vol. III., cap. 4. This ordinance founded on the frailty of human nature, must have had in contemplation some judge of a very different character from that of the highly respectable gentleman who presided at this trial: it must have been a barrier erected against any corrupt individual, who under the sanction of the judicial robe, may be disposed to sacrifice every consideration human and divine at the shrine of self-interest or ambition; any smiling sycophantic impostor, who, regardless of those laws which he has made his study, and of that justice which he has sworn impartially to administer, may be inclined to prostitute his sacred office to the base and unworthy purpose of intrigue; but modern refinement has abolished this principle, and consulting solely the dignity of the judge, has forgotten altogether the infirmities of the man. Hence it happens that it is now no uncommon sight to behold a learned judge of the most unquestionable

integrity seated on the judicial bench in the midst of his numerous friends and connexions, with smiles and blandishments soliciting judicial aggrandisement for his family. On such a tribunal, that attribute so truly characteristic of the Divinity cannot fail to attend in its most attractive and amplified forms: here the palliatives of every crime will be received with paternal solicitude, nor will even the bloodthirsty assassin be altogether excluded from its benign influence. To dismiss this subject, Mr. Justice Day, who was in Tralee at the time this melancholy occurrence took place, expressed the greatest indignation, and immediately issued warrants for the apprehension of the delinquent who had fled. The upright judge, however, in a short time after told the prosecutor (with whom he was on terms of intimacy) that he had received a letter from a lady of well-known political influence in that county, requesting he would take bail for the prisoner, which he refused doing; but told the prosecutor that numerous applications had been made to him to interfere, and that he wished he could be prevailed on to give up the idea of prosecuting, observing that mischief enough had been done, and that the bringing of the perpetrator of the crime to justice could answer no useful purpose. It is needless to make any comment on such language proceeding from a judge. He also told the prosecutor and everybody else that he would come that circuit in the ensuing Spring. Nobody can pretend to say that it was this declaration which induced Mr. George Cashel, brother of the prisoner, to register a batch of freeholders shortly after this fatal occurrence, he never having registered any before; but it is sufficient that he has done so, as will appear by a reference to the Registry of 20th August and 11th October, 1815, where it will also appear that similar exertions have been made by several other relations of the prisoner, for some unaccountable purpose, at the time the learned judge declared his intention of coming on this circuit—which he did several months before the assizes. Mr. O'Connor acquainted a number of his friends with his determination to postpone this trial, who all acquiesced in the necessity of it, and so conscious was the judge himself of some such interest, that he told a particular friend of Mr. O'Connor in the city of Limerick, when on circuit, that he had heard that Mr. O'Connor had an idea of deferring the trial, and that if he did so he should admit the prisoner to bail. In consequence of the resolution which Mr. O'Connor had previously formed, as well as from the security which such a declaration was calculated to inspire, Mr. O'Connor made no preparation whatsoever for this trial, not having summoned even his most material witnesses, and was thus obliged to bring it forward at a notice of a very few hours. The next circumstance which renders this trial interesting to the public is the useful lesson it is calculated to teach every gentleman of true honour and spirit, who may have the misfortune to be involved in a duel, as Society is infested with dastardly and base assassins, who, in the garb of gentlemen, outrage every social feeling and moral duty, whose characters may not be fully understood before some valuable member may fall a victim to their barbarity. It is peculiarly incumbent on every gentleman who undertakes the office of a second (being himself armed) to take care that the compact between the parties be strictly adhered to, since it is fully evident, on the face of this trial, that the deceased lost his life by a shot fired a considerable time after he had been unarmed, and contrary to the express agreement of the parties, which his second, had he been prepared, might have prevented."

The above is a heavy and scathing indictment of Judge Day; but

it does not end here. In "Observations on the Charge to the Jury," the writer says:—

"It is observable that the learned judge has omitted to state the only material part of Mr. Busteed's evidence, the declaration of the deceased when under the impression of death, viz., 'Mr. Cashel has dealt very unfairly by me, having taken aim at me after my shot was fired.' On the evidence of Mr. Quill, he points out very forcibly to the jury that the deceased had used the first offensive language. This arose, as has been proved before, from a mistake of this witness who misplaced the words, 'you must pay me or shall not play at this table.' It is surprising the learned judge did not advert to the previous conduct of the prisoner, which would have fully justified even this observation had it been made use of. The prisoner lost the bet, the marker, who in these cases is always the umpire, decided against him; the witness swore that he also decided against him, and although the deceased might then have insisted on being paid, yet so well inclined was he to accommodate, that he offered to toss up for the bet in dispute. All his efforts for peace were met with a taunting an insulting remark, 'you are a brat of a boy.' This, the learned judge observed to the jury, was not language of a very offensive nature; but could anything possibly have been said more likely to exasperate a young gentleman of 18 years of age? 'You shall not play at this table,' was not used by the deceased until the prisoner said, 'I will make this a business with your father.' There cannot be vestige of a doubt (although the learned judge inferred it might have meant a complaint to his father), that the prisoner meant a personal business; and this is evident as well by the acceptance in which it was taken by the deceased, who replied, 'I am able to fight my own battles,' as also by the reply of Mr. Quill to Mr. Pennefather, on his cross-examination, where he positively swears the prisoner said nothing about a complaint to the father of the deceased. In fact the prisoner bet with the deceased as a man, and won his money as a man, but when he in turn lost and should have paid the deceased, he was then a boy; he wrangled with this boy with a degree of inveteracy that ill bespoke his superiority as a man, and when he had told him, as is sworn, he would kick him out of the room, thereby giving him such an insult as he ought not to have given any young gentleman whom he would not meet as a man, he had again recourse to the subterfuge of his being a boy. The deceased being refused payment, very naturally observed, 'you do not now pay me, and I praise the ford as I find it,' here the learned judge states to the jury that upon this language (which he stigmatises with the epithet of insulting) being applied to the prisoner, he, the prisoner, said, 'you are a brat of a boy, and I will turn you out of the room,' the expression was not turn you out, as in the mild language of the judge, but kick you out; and on this gross insult no comment is made by the judge. When the reiterated exertions of Mr. Morris to procure an amicable arrangement are brought to recollection, his proposal to refer the dispute to Mr. Quill, who was present at it, or to the decision of any three or four impartial gentlemen, his mild and conciliatory conduct in every stage of this business, his patience under the grossest personal insult, the reconciliation to which he acceded, with the highly meritorious view of the preservation of the life and honour of his friend; when the manly and disinterested coolness of this gentleman of rank, consequence, and well known spirit are considered, it is rather surprising that they did not extort from the learned judge any other observation than that his object was "a laudable one," and it is equally astonishing that the outrageous and

unparalleled conduct of the prisoner who, though he had been grossly the aggressor from the commencement, resisted every attempt at reconciliation, and added to the insult already given, one still more daring and unprovoked than the former, by horsewhipping the friend of the deceased, did not call forth any severer remark from the learned judge than that "the prisoner unfortunately (this is the term) refused to leave it to Mr. Quill." The learned gentleman, besides, observes to the jury, that the decided opposition of the prisoner to an amicable arrangement with a boy, was not an indication of a sanguinary nature; the learned judge will find very few to acquiesce in this. The alternatives for the deceased were, either to sit down for ever a degraded member of society, or to assert his right by an appeal to arms. This appeal he had a right to insist on, and the outrageous conduct of the prisoner ought not here to plead in his justification, as it is a maxim of law and justice that no man should profit by his own wrong. The learned judge has read for the jury the posting which the deceased had put up, and made very severe remarks upon it, but has not read or made any observation on that put up by the prisoner, which was much more inflammatory than the other, and which, by the unwarrantable observation made in it on Mr. Morris, produced this fatal consequence. He states to the jury that Mr. Thomas O'Connor said very candidly that had he been posted he would have felt much irritated, but this is the answer to a mere abstract question, and affords no sort of justification for the prisoner, who had brought it on himself, and who, if similarly circumstanced, must have himself done the same. The learned judge makes no remark upon the great interval between the shots, proved by Mr. Thomas O'Connor, but he proceeds to state to the jury that Mr. James O'Connor proved that the prisoner *rather turned his person, levelled, and fired*; but it appears from the testimony of this gentleman that the prisoner *completely fronted* the deceased, *stept forward a pace, and took a deliberate aim*. He also proved (not in the cold language of the learned judge) that he had been on familiar terms with the family of the deceased, and had been always treated with the greatest kindness and hospitality. The learned judge again reminds the jury of the very aggravated insult given Mr. Cashel, and dwells on the necessity of the prisoner fighting, although he had been the person who sent an hostile message, and who might have acquitted himself with honour by not firing at the deceased; he states that Mr. Samuel Morris heard the second shot in a short time after the first, but upon a reference to the evidence of this gentleman, it will be found that this short time was no less than three seconds (time sufficient to take aim at the smallest object). The learned judge attaches no weight to the prisoner equipping and charging his own pistols, lest they may not be properly loaded for the perpetration of this crime. On the evidence of Mr. Joseph O'Connor, he remarks that "this witness does not admit any change of position, but that the prisoner might have *squared a little*." It will be perceived that this witness proved that the prisoner *squared his person altogether*. The learned judge proceeds to state that he swore to an interval of three or four seconds between the shots, and that Mr. Collis, the high sheriff of the county, swore to the same, but refrains from making the slightest remark on this immense interval; he states that Mr. Twiss admits of an interval of time sufficient to count, "one, two," but appears to forget that this gentleman (when pressed to it) admitted that "three may be counted." The learned judge then tells the jury that Mr. John O'Connell, the next witness, does not admit that he was on the ground. It was not necessary to have impressed this on the minds of the jury, who knew that Mr. O'Connell, as a magistrate (in consequence of the prohibition of the Court),

could not be supposed to be present on such an occasion; this ought not to weaken any testimony he was permitted to give. The learned judge proceeds to state that Mr. O'Connell had deposed that the deceased repeated his blow *severely* which term was never used by this witness, and then states that Mr. Hurly swore that there might be time for aim but not *a deliberate aim*; but no such expression was used by Mr. Hurly; no remark is here made on the length of time this witness must have taken in getting from outside the crowd to see what had occurred within, before the second shot was fired. Here the learned judge came to the Defence, and it is remarkable what importance he has attached to the evidence of two such men as Mr. McGillicuddy and Mr. Mason; he recapitulated the evidence of Mr. Mason, and strange! passing strange! announced to the jury that he saw no inconsistency between both sides of the evidence. But the public cannot fail to see not only its total inconsistency with all the previous evidence, but what is still more glaring, its flagrant inconsistency with itself, as will appear by a reference to the evidence (which, should it be attempted to be denied, can be confirmed by the oath of the reporter). This witness being asked if the word was given quickly, said it was given in a confused manner, and when afterwards asked if the word "ready" (which was the only word he admitted he had heard) was given distinctly, he replied "so distinctly that I must have heard it," it remains for this witness to explain how the same word could be at the same time distinct and confused; he swore upon his direct examination that the word "ready" was scarcely pronounced or heard before the deceased fired, and, upon his cross-examination, he admitted that there was time enough between the word "ready" and the firing of the first shot to admit of the word "fire" being pronounced; and admitted that if Mr. O'Connell swore it was given, he (contrary to the evidence of his own senses) believed it was repeated; but observes that, if it was, it must have been done in a low voice. This respectable witness, who occupied so much of the learned judge's attention, swore most positively that he did not speak to anybody about the duel at Abbeydorney, or ever say that it was unfair (with a saving clause that, if he did, he told a lie); he afterwards admitted that he spoke to a Mr. Day and a Mr. Upton on the subject at Abbeydorney. This respectable gentleman has also advanced a most monstrous doctrine on the fairness of a duel. "If one man's shot," said he, "should happen to go off before the word, his adversary has a right to take as much time as he chooses," and thus coolly butcher him afterwards. Is this what the learned judge calls waiting for the time justly? In all this the only variation which struck the learned judge was that "some heard the word and others did not," and for this reason it was that he thus emphatically addressed the jury, "*but did the prisoner hear the word?*" It is strange what doubt the learned judge could have entertained on the subject. Several witnesses of the highest respectability in the county swore that they heard them very distinctly; they were given by an officer who was in the habit of giving them, and heard very distinctly by persons some hundred yards from the parties; yet these two virtuous witnesses (the one a sworn relation to the prisoner, and the other one of his most active partizans, whose son had been second to the prisoner, and who would have been tried for his life had the prisoner been convicted) were the only persons of some hundreds who were present who could be produced to swear that they had not heard the word "fire." The learned judge proceeds to state that it was impossible the prisoner's resentment could have subsided during the night, and that therefore it was that witnesses had sworn that the heat of blood had not subsided on the following

morning. The law says otherwise, but the learned judge would not believe the law on that subject, but says, "if the heat of blood even did subside, the irritability must have still remained." Did he mean this as a justification of the prisoner? What is this irritability (as the qualified phraseology of the learned judge expresses it) when the heat of blood has subsided; *is it not what the law denominates malice prepense*—the very essence of murder—a rancorous desire of vengeance, when the ordinary passions incidental to human nature have subsided? But what can be the object of the learned judge casting obloquy on the memory of the young gentleman deceased? He states to the jury that "flesh and blood could not endure the provocation given to Mr. Cashel"; he dwells on the contumeliousness of the unfortunate deceased, the reluctance of prisoner to a mortal collision; "Cashel must have been a degraded man in society"—"could not hold up his head after it"—"must be stigmatised as a coward"—must have been for the remainder of his life "an isolated being"—and pathetically tells the jury that the prisoner was better pleased to throw his life upon them than submit to such a humiliation. What could the learned judge propose by such an appeal? Were not all those observations more strongly applicable to the deceased, who must have been thus degraded had he permitted himself to be trampled on by the prisoner? Was not the deceased the gentleman really insulted? Was he not the person really disposed to conciliate? Were not all his efforts opposed with accumulated insults? Was he not posted and first struck with a whip? Was not his friend posted and twice horsewhipped? Finally, was he not the person insultingly challenged and treacherously killed? The learned judge gives the jury to understand that though he is a judge of the King's Bench, they are now in a court of honour. This judge of the King's Bench states the case very feelingly, and concludes by telling the jury that he would not mind a pause of "one, two," in this court of honour. Probably in such a court he would have thought but little of a pause of "ten." An interval of three or four seconds had been proved by some of the most respectable gentlemen in the county, who from their delicacy where the life of a human being was involved (some related to and all acquainted with the prisoner) estimated the lapse of time reluctantly and at the shortest possible calculation; this interval should have been the real subject for consideration in any court of either law or honour, nor could any court sanction the prisoner squaring his body, stepping forward a pace, and taking aim at an unarmed man. But says this gentleman (the judge) lest the time could not be in any way accounted for—"Did the prisoner hear the word?" Did not Mr. Twiss swear that it was almost impossible but he must have heard it? Did not the provost of Tralee hear it at a distance of some hundred yards? Did not Mr. O'Connell hear it? And did not everybody except those two witnesses hear it. Not an individual in court could refrain from a mingled smile of indignation and contempt, when these men were giving evidence.

This bitter attack on Judge Day appears to me to be fully warranted by the facts of the case; but strong as it is, it is not equal to the open letter which follows it, and which is acknowledged as coming from a brother of the unfortunate boy who lost his life. It runs thus:—

#### LETTER ADDRESSED TO MR. JUSTICE DAY.

Sir—In consequence of the great contrariety which appears between the evidence given by the witnesses, and that which is reported as detailed by you



in your charge to the jury on the trial of Mr. Cashel, in order to ascertain to whom this incorrectness is attributable, it was deemed necessary by my family to lay the report of their respective testimonies before the several witnesses who had been examined on the part of the prosecution, and to request that if any inaccuracy had occurred in the report they would correct it before it went to the press. It was my original intention to have published this certificate, but as some of the gentlemen who gave evidence expressed a reluctance to such a proceeding, if no attempt was made at contradiction, I have been induced at present to withhold this document; but if either for your satisfaction, sir, or that of the public, it should at any time appear necessary, I shall publish the certificate. Mr. John Hurly, jun., Clerk of the Crown, who has admitted the report of his evidence to be literally correct, has assigned so extraordinary a reason for not affixing his name to this certificate, that I think it but fair, sir, to apprise you of it. This gentleman observed that he had an important suit pending in the Court of King's Bench, and that he would be apprehensive, sir, of offending you by such a proceeding. I confess it appears very strange to me what objection this gentleman can conceive you, sir, can possibly have to the manifestation of truth; he has not been called on to give any opinion on your charge to the jury, of which I hope he entertains no favourable impression. I recollect perfectly, sir, that you told the jury, at the conclusion of it, that you would not mind a difference such as "one, two," between the shots; but, sir, if you had for that space of time a loaded pistol presented at your breast it might render you a little more alive to the difference. I assure you, sir, for my part, were I placed thus armed before you, serious as your apprehensions might be, I should be the last man in the community who would harbour a wish to deprive the world of so well cemented a mass of legal information and sterling integrity. In my mind, sir, the honour and incorruptibility of your character has nearly kept pace with the brilliancy of your wit, and transcendent lustre of your talents. You were, sir, elevated to the bench at an era of great national importance, on the union of this country with the sister kingdom; your exertions on which occasion were rewarded with the exalted and well merited rank which you now hold; and it was indeed a very happy coincidence, that an era fraught with such important consequences to the interest of two great Kingdoms should have been marked by the elevation of so distinguished a character. But it is not merely on those great and trying occasions when the vital interests of our country have called imperatively on that talent on which they have an undeniable claim, that you afford a brilliant example for the admiration of the present, and improvement of the rising generation. If following you from the bench of justice, we take a view of you in the more tranquil and sequestered scenes of social life, even here you will not fail to excite in the mind of every moral and intelligent observer a train of serious and instructive reflections; however, I shall here refrain from lifting up the veil of the sanctuary, and leave you, sir, to the uninterrupted enjoyment arising from the retrospect of a well spent life. There is no act of either your public or private life from whence some salutary lesson may not be derived; one grand principle appears to pervade the whole. If we contemplate the political horizon it will appear ever to have been the polar star; nor has its vivifying influence been less conspicuous in every act which emanated from you in your judicial capacity; and in regulating your intercourse in private life it has invariably been the *primum mobile*. I regret, sir, that the narrow limits I feel myself obliged to prescribe to these observations, should preclude the possibility of bringing to your recollection some of the principal acts and features

which have characterised your career in public life ; however, lest you, sir, or the public, may conceive that any self-interested motive had thus prepossessed me in your behalf, or that your conduct on the trial had at all biased me in your favour, I think it necessary to disclaim it. I assure you, sir, I feel under no obligation whatsoever to you upon that head ; I, on the contrary, think (for I will be candid with you) that your own good sense and delicacy ought to have suggested to you, circumstanced as you were in the county, and related to and connected as you were with the prisoner, the propriety of postponing this trial, or at least transferring it to Mr. Justice Mayne. I am authorised, sir, to state, from a most unquestionable source, that two days before this trial you read a letter in company with the Knight of Kerry and a select party of your political friends from Lady V——<sup>(1)</sup> (who had before solicited you to admit the prisoner to bail) informing you that Lord V——<sup>(1)</sup> (who could poll at least two thousand freeholders) had not as yet declared whom he would support. Lord V——, sir, you well know to be cousin german to the prisoner's father, and I ask you, in the name of wonder, how you could reconcile it to your nice discernment and delicate sense of propriety, to have insisted on presiding at this trial, and to have refused its postponement ? It is true you quoted a precedent from yourself, but it was one which you had established but a week before in the town of Ennis, and great an idea as I entertain of your judgment, I am humbly of opinion it would have better suited the dignity of your character to have sought a precedent from any other source. Sir, I do not (like several pretended friends of yours) refrain from an open avowal of my sentiments. I come forward with that candour for which you have more than once given credit to a member of our family in your charge to the jury ; I tell you that you have committed a very serious error ; and I am, I assure you, very apprehensive that those pretended friends and a censorious world will not be disposed to ascribe this inadvertant act to its genuine source. Sir, a generous mind, unsophisticated in deception, does not anticipate that malice which it feels conscious it does not merit. In the unsuspecting simplicity of an upright mind, whilst employed in the conscientious discharge of your duty, I regret to say you have imperceptibly armed the tongue of slander against you. The apprehension of fines, bolts and bars may deter many from giving publicity to their sentiments, but if they would but reflect how much more agreeable to you a manly avowal of those sentiments would be than thus to poison the public mind with mysterious inuendoes, they would have come forward, as I now do, and in a friendly manner have apprised you of your error. Had they sufficiently known you, sir, they would by such conduct have secured your gratitude and esteem ; for no person could, better than you, sir, have informed them that though pains and penalties may secure an exalted delinquent from being held up to public reprobation, yet that an innate integrity and self-approving conscience are the sweetest barriers against the voice of the traducer. The infliction of punishment may gratify a vindictive spirit, but can by no means acquit in the public estimation a dubious character ; those persons do not seem to be aware how much it would have raised them in your opinion had they, whilst they showed a prudent apprehension on the one hand, displayed a little knowledge of their rights and privileges as British subjects on the other, had they shown you, sir, that they were acquainted with the free air which they breathe, and that the constitution of which you, sir, are one of the main pillars, had by means of a free and independent press, put into their hands the means of dragging to public view and

(1) Ventry.

general abhorrence the corruption and depravity of the most exalted public characters. A sound understanding and an extensive knowledge of the laws of your country, have acquainted you so well with the justice of these observations that it is needless for me to urge them. I shall here refrain from any comment on your charge to the jury, which is now before the public. You now, sir, have attained to a proud pre-eminence, you have accomplished what certainly no other judge on the bench could have effected, were they even capable of forming so bold a project. The very errors of such men as you have something in them so novel and dignified, that even where they fail to procure esteem, they are sure to command respect; there was a boldness in the design and a constancy in the execution visible in every feature of your conduct on this occasion; you showed the world how much you soared beyond vulgar prejudices and popular opinion. Sir, your extensive intercourse with society, and your deep knowledge of mankind, have taught you to look down with contempt on all principles of action guided by the torrent of popular opinion; but your less enlightened country friends blush for your conduct on this occasion; they openly declare that it exhibited a shameful outrage against all decorum and public sentiment; but you may depend upon it, sir, it is only their zeal and anxiety for your reputation, which has magnified this really unimportant occurrence to so unwarrantable an extent. If you had seen any real cause for shame, your conduct would have been more reserved and more disguised; but the very open, decided, and unreserved part which you acted operates as a sufficient demonstration that you had nothing to apprehend. I assure you, sir, nothing can equal the dismay of your simple relatives at the thoughts of this publication; they are literally working heaven and earth to give it every obstruction; but for your credit, sir, and the good of the community, it shall certainly be laid before the public. Your fame, sir, is too well established to suffer from any pitiful insinuations which may be thrown out against you, and I confess I have but one source of alarm, which arises from my apprehension that the British parliament, hearing these rumours, may through tenderness for your character deprive us of the pleasure of once more seeing you among us. Before I take leave of you, sir, I would wish for my own private information, to ask you one simple question—why did you not take the common precaution of obliging this man (whom you addressed in something like complimentary language) to enter into a recognizance to keep the peace in future? An homicide was committed, and one of no ordinary nature, and though, sir, he (Cashel) is your relation, and also connected with you, yet I am somewhat surprised that any learned judge of your time of life and experience should let loose on society a man who had fought no less than four duels, wounded one gentleman, and, to use the mildest term, killed another. You, sir, are too well acquainted with every family and almost every individual in this county not to have been perfectly aware that this man had personally insulted one half of the young men in it; and though always reduced to the necessity of making the most abject and submissive apologies, not having hitherto met with any gentleman whose age furnished him with a pretext to consign him to degradation or a premature tomb; yet that the danger arising to society from the intercourse of such a man was not of a nature so inconsiderable as to warrant you in discharging him without an observance even of common forms. There probably is not, sir, a gentleman of 18 years of age in the Kingdom whose family would not be better pleased to see dead than submit to the degradation of being told “he would be kicked out of a public room”; but I suppose, sir, you conceived that the peaceful sermon which you preached when discharging the

prisoner would answer the same purpose. You very kindly observed that there were some of our family still left, and that we ought to feel perfectly content, and even renew habits of intimacy with the prisoner, who had been so good as not to extirpate us altogether; we certainly, sir, feel a due sense of the obligation; but I am somewhat surprised that a degree of apprehension for your grandson, for whom you are now canvassing this county, and who is about the same age, did not induce you to take this precaution. If his youth should be made the pretext for treacherously depriving him of his life, I scarcely think your feelings would be quiescent. Sir, as I have happened to speak of canvassing, I should wish to learn from you how I am to reconcile what appears to me and several others in this county a most unaccountable absurdity in your political conduct. As I take a lively interest in everything that concerns you, I wish that you would furnish me with the means of silencing the clamours of your enemies on this topic. You have ever professed yourself a most steadfast supporter of the Government of the country; you have received numerous favours from the present administration, to whom you have declared an inviolable attachment. You are daily renewing your applications for repetitions of those favours; and under these circumstances, how is it reconcilable to common honesty that you should be at this moment exerting all the influence you can muster to exclude from the representation of this county a strenuous supporter of the present administration, and to establish in his stead a gentleman who (though of considerable talent and merit) is diametrically opposed to the party to whom you profess to adhere? Your enemies loudly exclaim that you are acting a treacherous and perfidious part; that whilst you make a show of supporting the Government, you are privately straining every nerve to fill the benches of opposition. Great an advocate as I am for you, sir, I am sorry it is not in my power to offer a word in your defence; on the contrary, one of your letters which I have got in my possession, and which I here subjoin, would seem to sanction these observations, which I hope you will be able to refute at the Castle, or I should apprehend a speedy termination to all your political influence. Sir, from the very exalted opinion I entertain as well of your honour as of your understanding, I should suppose there must be something in this business not generally understood; and as you are certainly canvassing the county as well for this gentleman as for your grand-son, I can only conclude that you have changed your political sentiments, and that you do not now intend to support the present Government. Believe me, sir, with the most profound respect for the robes with which you are invested, your very obedient and humble servant,

A BROTHER OF THE DECEASED.

COPY OF A LETTER FROM MR. JUSTICE DAY TO A GENTLEMAN  
FREEHOLDER OF THE COUNTY OF KERRY.

1815.

My Dear Sir—My grandson, Edward Denny,<sup>(1)</sup> has declared himself a candidate for the county at the next general election, and has already canvassed with the most

<sup>(1)</sup> Afterwards Baronet. He was son of Sir Edward Denny, by Elizabeth, only child of Judge Day, and was at this time nineteen years of age. He was sheriff of Kerry in 1827.

flattering success: my zeal for Maurice Fitzgerald <sup>(2)</sup> is not less, and I solicit my friends for both. May I request your support and friendship for my grand-son, upon the express condition only, that it shall not injure our friend, the Knight (of Kerry). I am sure we shall not find in you a cold or lukewarm friend, and that you will sustain our united cause with all your heart, and give it your cordial and strenuous support.—I am, with sincere regard, my dear Sir, very truly yours,

(Signed) ROBERT DAY.

To

Whether the retirement of Judge Day, which took place soon after, was the result of this scathing exposure we cannot now tell; but in all probability it was; such, at all events, was the general impression, and it can hardly be denied that there was not good grounds for the belief. His charge to the jury in the Cashel trial might not have hurt him much, taken by itself, in the estimation of the Castle authorities; but his political tergiversations were not likely to be overlooked by the Government in those days. At all events, the fact remains that he quickly retired into private life.

Rowan Cashell, or Cashel (for the name is given both ways), was a practised shot, and had fought several duels before this fatal one. It is related of him that when about twenty years of age he was one day practising with pistols at the North Bull, when Maguire, the noted duellist, commonly called "Bully Maguire," came up, and asked him whether he would fire so steadily if he had a man before him. Cashell's answer was a prompt "yes"; whereupon they paced their ground, Maguire counted, gave the word, "one, two, three—fire," stood Cashell's shot, and then discharged his pistol in the air, declaring that "it would be a pity to stop so promising a hand." After the death of young O'Connor, Cashell gave up his propensity to duelling, and never fought again.

<sup>(2)</sup> Son of the Right Honourable The Knight of Kerry, D.L., Privy Councillor, Commissioner of Customs, Lord of the Treasury, and Admiralty, and Vice-Treasurer of Ireland. Maurice Fitzgerald, like Edward Denny, was in his teens at this time. His mother was a La Touche. He died a lieut. in Rifle Brigade in 1836.