

(later Judge of the Court of Exchequer) and it was his son Harold who donated to the Inner Temple a transcript of the trial which records faithfully the intransigent attitude adopted by the trial judge. It was generally believed that the attitude of the judge so outraged public opinion that sympathy was generated for those who had previously been rightly condemned for a brutal murder of two wholly innocent men.

The most colourful and distinguished of the judicial O'Briens was undoubtedly Peter O'Brien, invariably known as 'Pether the Packer' as a result of his successful empanelling of juries to secure a conviction in State trials. Although Peter O'Brien features in many of the anecdotes included in Maurice Healy's 'Old Munster Circuit', it does appear that he was a judge of considerable ability. He was ultimately rewarded by being made the first Chief Justice of Ireland and was created a peer of the realm for which he took the title Lord O'Brien of Kilfenora.

The portrait of Lord O'Brien which hangs over the fireplace on the left hand side of the dining hall in the King's Inns is interesting. It shows the judge in his scarlet and ermine robes but, unusually, without a wig. Many visitors are surprised to find that the portrait was painted by Casimir Markievicz, the husband of the

famous patriot Countess Markievicz. The portrait of Chief Justice William O'Brien FitzGerald is in marked contrast. His conventional black robes are less spectacular than those of his predecessor. But the artist, who painted the portrait from photographs some years after the death of the Chief Justice, captured much of his strength and charm – a feature that compensates for the lack of colour in the painting.

The portraits of Lord O'Brien and Chief Justice FitzGerald are reproduced here by kind permission of the Benchers of the King's Inns.

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On the Bench:

The O'Briens & the Fitzgeralds

4

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The legal professions and the public generally were greatly pleased by the appointment of William O'Brien FitzGerald S.C. as a judge of the Supreme Court in 1966 and his subsequent elevation in 1973 to the position of Chief Justice - an office which he held all too briefly due to his premature death in October 1974.

'Billy Fitz' – as he was widely known – was a leading lawyer and an outstanding advocate in a time when the Irish bar included in its number such outstanding advocates as Cecil Lavery, Richard McGonagal, Ernest Wood and Kevin Liston. Some say that his skills were equalled only by those of his half brother, John Mary FitzGerald who had died in 1946.

Whilst the clarity and logic of the judgements delivered by Chief Justice FitzGerald are incontestable it was obvious that there was a philosophical divide between those judges of the Supreme Court who favoured an innovative interpretation of the law - and in particular of the Constitution - and those who adhered to a more literal interpretation. Mr. Justice William O'Brien FitzGerald recognised that his views were those of the minority in the Supreme Court. This was confirmed in a typical passage between himself and Mr. Niall



*Chief Justice William O'Brien FitzGerald*

McCarthy, then a leading Senior Counsel, who in congratulating the Chief Justice on a baseball type cap which he had won as a modest prize in a Bar golf outing, said that the cap would cover Billy FitzGerald's nose – referring to the distinctive aquiline feature of the Chief Justice. The Chief replied at once that it would require a much larger cap to cover his noes, referring of course to his many dissenting judgments.

Billy FitzGerald combined not only great skill as a lawyer and as an advocate.

Within his name, he combined two great Irish surnames which recall the judges of the 19th century who had borne those names. In fact, the 'O'Brien' was not part of the family name but was conferred on Billy FitzGerald by his father – himself a successful solicitor and clerk of the Crown and Peace in Cork – in memory of another distinguished Cork man, William O'Brien, the famous politician, patriot and journalist.

In the 19th century, two Irish judges bore the name 'FitzGerald' and three the name 'O'Brien'.

John David Fitzgerald was appointed a judge of the Queens Bench in 1860. He was a masterly lawyer, if an affected one. His practice of presenting a finger as a substitute for a hand shake earned him the soubriquet 'Single-finger Jack'. This mannerism did not take from his ability as a lawyer which was well demonstrated in his defence of Parnell on the charge of conspiracy. His legal talents were recognised by his elevation to the House of Lords, the first Irish judge to be so appointed.

Mr. Justice Francis Alexander Fitzgerald had been appointed a Baron of the Exchequer in 1859 but resigned in 1882. He was a man of high principle. He declined judicial preferment on the grounds that promotion was as unacceptable as demotion. In 1882, he resigned his office on the grounds that emergency legislation, then threatened, would have involved the imposition of the death penalty without a trial by jury. Ironically, the threatened legislation was never enforced.

Mr. Justice James O'Brien has been described as a very able lawyer and a kindly and charming gentleman. The fact that the colouring of his face matched his flowing red robes earned him the nickname 'Judy'. He is also remembered as being the uncle of Lord Chief Justice O'Brien.



*Lord O'Brien of Kilfenora*

William O'Brien is particularly remembered as the judge who tried and convicted the Invincibles who had assassinated Lord Frederick Cavendish and Mr. Burke. As a barrister, William O'Brien was an experienced and successful State prosecutor in difficult times. However his conduct of the trial of the Invincibles was deplored. The request by the accused for an adjournment to enable counsel to be instructed was refused. Counsel, whom the accused sought to instruct, informed the court that to accept instructions in the circumstances would be a travesty of justice. Ultimately an adjournment of 24 hours was grudgingly allowed. The counsel for the State was James Murphy Q.C.