

Fitzgibbon, Gerald

by Patrick Maume

Fitzgibbon, Gerald (1837–1909), judge, was born 28 August 1837 in Dublin, the eldest child of the two sons and a daughter of Gerald Fitzgibbon (qv), judge, and his wife, Ellen (née Patterson), who came from Belfast. He was educated privately and at TCD, where he enjoyed considerable academic success, winning a classical scholarship (1858) and the Berkeley gold medal for Greek (1859), and soon afterwards graduating as a senior moderator and gold medal winner in classics and as a junior moderator and silver medal holder in English literature, history, law and political economy. He won silver medals for oratory and English composition from the law society at TCD in 1861, and was regarded as the most brilliant of a brilliant generation produced by the college, which included Michael Morris (qv), David Plunket (qv) and Edward Gibson (qv). Having decided to pursue a legal career, Fitzgibbon was called to the Irish bar in 1860 and to the English bar at Lincoln's Inn in 1861, and, at the extremely young age of thirty-five, became a QC in 1872. He supported disestablishment of the Church of Ireland in 1869.

Fitzgibbon made his wider views known on a number of issues in Ireland by publishing booklets on themes such as *The land difficulty of Ireland, with an effort to solve it* (1869) (he disliked the tendency to equate defence of the union with landlord interests; as a meritocratic professional, he regarded landlords with considerable contempt and came to believe they were doomed by the working of long-term economic laws) and *Roman Catholic priests and national schools* (1872), in which he advocated non-denominational national schools. The latter was an offshoot of Fitzgibbon's activities as counsel for Fr Robert O'Keeffe (qv) in his 1873 libel action against Cardinal Paul Cullen (qv); his success in obtaining a verdict for O'Keeffe from a partly catholic jury was regarded as one of his greatest forensic achievements, although the verdict was overturned on the grounds of misdirection by the lord chief justice, James Whiteside (qv). This was not inconsistent with Fitzgibbon's support for disestablishment; many Irish conservatives (such as the editorial writers of the Dublin *Evening Mail*) argued in the years immediately after 1868 that, if religious equality was to be the order of the day, the state must intervene (in the manner of the continental Kulturkampf) to prevent the catholic hierarchy from securing a privileged position within the state by tyrannising its own followers. Fitzgibbon was not, however, opposed to denominational education in principle; he came to believe that, so long as the interests of TCD and of existing protestant educational foundations were safeguarded, state-subsidised denominational education offered the best prospect of preserving the union by detaching the catholic clergy from alliance with nationalism and by creating a catholic professional class with a stake in the status quo. He maintained personal friendships with some politically conservative catholic clerics, notably the celebrated wit Fr James Healy (qv) of Little Bray.

Fitzgibbon's political ambitions received a decisive setback (though this was not recognised at the time) in 1875 when he chose to stand down from a Trinity College by-election in favour of Alexander Millar, supported by Hugh Cairns, 1st Earl Cairns (qv), who promised to support Fitzgibbon for the seat when his protégé received higher office. Unfortunately for Fitzgibbon, Edward Gibson (qv) took advantage of a widespread resentment against carpet-baggers to stand successfully against the official candidate. In 1876 Fitzgibbon was appointed law adviser to Dublin Castle and was solicitor general in Ireland (1877–8) as well as a bencher of King's Inns (1877). The chief secretary, Sir Michael Hicks Beach (qv), admired Fitzgibbon's political abilities and wished to bring him into parliament at the following general election, but on 23 November 1878 Fitzgibbon accepted appointment as a lord justice of appeal.

Fitzgibbon was a dominant figure in Irish legal circles for more than a generation. His powers of persuasion as a barrister were formidable and he was well known for his success in virtually every case he took in the Irish courts. As a judge, moreover, he was said to combine lucidity of thought with common sense in reaching judgments. John Ross (qv) remarked that Fitzgibbon and Hugh Holmes (qv) embodied contrasting judicial philosophies; Fitzgibbon sought to decide what the just outcome would be and then used his formidable dialectical skills to provide legal justification for it, while Holmes believed that the letter of the law should be observed. More equivocally, Maurice Healy (qv) alleges that he was unrivalled at rationalising pro-landlord decisions in land cases even when the legislation had been drawn up specifically to exclude the interpretation which he arrived at.

Despite his acceptance of judicial office for personal and financial reasons, Fitzgibbon continued to be regarded as the political driving force behind his Dublin Tory circle, and for a time circumstances allowed him to influence the highest levels of British conservatism. In the late 1870s he befriended Lord Randolph Churchill, who was resident in Ireland during his father's lord lieutenancy. Their cynical and outspoken personalities proved congenial; Fitzgibbon became Churchill's lifelong friend and his political mentor on Irish questions, and for the rest of his life Churchill regularly attended Fitzgibbon's celebrated Howth Christmas parties. Fitzgibbon advised Churchill in the direction of a liberal unionism seeking to defend British interests and Irish conservatism by encouraging peasant proprietorship and reaching a deal on education with the catholic church. These intrigues reached their height during the first Salisbury government (1885–6), though at the same time Fitzgibbon was scathing about Lord Carnarvon's (qv) 'gushing' speeches and negotiations with Charles Stewart Parnell (qv). Gladstone's abrupt endorsement of home rule and public threats to Trinity's status by Archbishop William Walsh (qv) led Fitzgibbon to throw his weight behind Churchill's decision to play the 'Orange card' in 1886; though he was privately critical of Ulster protestant populism (the principal stumbling block to some of his schemes for recruiting catholics to the forces of conservatism), he liked to remind Churchill that, in a crisis, Ulster protestants were the only considerable popular element who would not if they could, sever the British connection one day and turn on the loyalist elite the next.

On the formation of the second Salisbury government in July 1886 Churchill tried unsuccessfully to get Fitzgibbon rather than Lord Ashbourne (as Gibson had become) appointed lord chancellor of Ireland. After Churchill's mishandled resignation as chancellor of the exchequer (a post for which Fitzgibbon had thought his friend unsuited) in December 1886, Fitzgibbon continued to assist him, at one point participating in attempts to recruit conservative Liberals as well as Tories to an Irish programme of land purchase and limited devolution. Churchill's speeches on the Second Home Rule Bill were largely based on detailed memoranda by Fitzgibbon, who from his provincial position in Dublin was one of the last to realise that Churchill's declining health precluded any return to power. Fitzgibbon later assisted Winston Churchill's 1906 biography of his father by writing reminiscences of their relationship. (Extracts from these reminiscences, and from Lord Randolph's now lost letters to Fitzgibbon, are printed in the biography; Fitzgibbon's letters to Churchill are at Cambridge University Library.)

Fitzgibbon's lifelong interest in education was conducive to his appointments as commissioner of national education in Ireland (1884–9) and national commissioner, educational endowments, Ireland (1885–97). A standoff between him and the other judicial member of the commission, William O'Brien (1832–99), on the question of allowing part of the Erasmus Smith endowments to be used for catholic education, led to a major political controversy when Ulster unionists opposed the proposal of Gerald Balfour (qv) to reallocate the endowments by legislative enactment. T. M. Healy (qv) claims Fitzgibbon privately told him he would have agreed to a compromise on the issue if O'Brien had approached him privately before their decisions were finalised. He was appointed a bencher at Lincoln's Inn in 1901 and was chairman of the TCD estates commission (1904–5). In 1900 he was sworn of the UK privy council.

Fitzgibbon was the most eminent layman in the Church of Ireland, serving as chancellor of the united dioceses of Dublin, Glendalough and Kildare in 1896. He acted as a member of the diocesan court of Dublin, was a moving spirit in the Dublin diocesan board of education and in the church's training college, contributed to debate in the general synod for over thirty years, and helped the church to raise some £250,000 shortly before his death. He became a freemason in 1876, a governor of the masonic girls' school in Dublin in 1879, and president of the general chapter of prince masons in Ireland in 1908. He also appears to have been respected by many nationalists, to judge from the positive appraisals of his career in the *Freeman's Journal*. TCD awarded him an honorary doctorate in 1895. He died 14 October 1909 in Dublin.

Fitzgibbon married in 1864 Margaret Anne, the second daughter of F. A. Fitzgerald, baron of the court of exchequer, Ireland; they had three sons and four daughters. While his principal residence was 10 Merrion Square, Dublin, he had a house built in 1877 at Kilrock Hill, Howth, Co. Dublin, where he and his family tended to spend their summers and most of their other holidays; his (male-only) Christmas parties

were particularly famous as socio-political get-togethers. The novelist May Laffan Hartley (qv) was Fitzgibbon's first cousin once removed, and they appear to have had some social contact, though its extent is unclear.

Two portraits of Fitzgibbon were painted on oils by Walter Osborne (qv), one of which is displayed at the King's Inns. There is also a marble statue of him by A. Bruce-Joy (qv), which is located at St Patrick's cathedral, Dublin. His son Gerald (1866–1942) became the last of three successive generations of the Fitzgibbon family to serve on the Irish bench when he was appointed to the supreme court of the Irish Free State (1924–38), having already represented the University of Dublin as unionist MP (1921) and independent TD (1922–4).

Freeman's Journal, 15 Oct. 1909; *Ir. Times*, 15 Oct. 1909; *Times*, 15, 26 Oct. 1909; *WWW*; John Ross, *The years of my pilgrimage* (1924); J. G. Swift MacNeill, *What I have seen and heard* (1925); Ball, *Judges*, ii, 373; A. M. Sullivan, *Old Ireland: reminiscences of an Irish KC* (1927); T. M. Healy, *Letters and leaders of my day* (1928); Maurice Healy, *The old Munster circuit* (1939); A. B. Cooke and A. P. W. Malcomson, *A calendar of the Ashbourne papers* (1974); R. F. Foster, 'Lord Randolph Churchill and the prelude to the orange card', F. S. L. Lyons and R. A. J. Hawkins (ed.), *Ireland under the union: varieties of tension* (1980), 241, 242, 264, 285; R. F. Foster, *Lord Randolph Churchill: a political life* (1981); *ODNB*; Colin Barr, 'An Irish dimension to a British Kulturkampf?', *Journal of Ecclesiastical History*, lvi, no. 3 (2005), 473–95; Helena Kelleher Kahn, *Late nineteenth-century Ireland's political and religious controversies in the fiction of May Laffan Hartley* (2005)