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**Tipperary Historical Journal
2003**

The murder of Constantine Maguire, 1834

By W. A. Maguire

Introduction

The *Clonmel Herald* for Wednesday 5 November 1834 performed what it called the 'melancholy task of giving publicity' to yet another outrage in Tipperary – the murder of Captain Maguire of Kilmoyler, 'an inoffensive gentleman who had, within a few years, come into this deeply blood-stained county to reside on his estate'. According to what followed, on the previous Friday Maguire had auctioned off corn and other goods seized for unpaid rent and had got rid of some defaulting tenants.

Shortly after nine o'clock the next morning he had visited a 'necessary out-house' (privy), where he was attacked by two men armed with blunderbusses who fired at him, then dragged him outside and smashed his skull with the butts of their weapons before running off. One of the guns must have been broken in the process, for a piece of the stock was found at the scene. A magistrate arrived quite promptly with a party of police, who 'scoured the country but could not discover any clue to the murderous wretches'.¹

A rival paper, the *Clonmel Advertiser*, published the same day, carried a very similar news item, though its account varied in some details and was expressed in a more dramatic style. Headed 'Flagitious Murder', this too deplored having to report another outrage, the like of which 'may not possibly be found in the black catalogue of crime which has disgraced our county for many years'. The victim was praised as 'a gentleman of considerable property ... who possessed, in an eminent degree, every description of moral worth and excellence calculated to endear him to society'.

More delicate – or less well informed – than its rival, the *Advertiser* made no mention of the privy but explained that 'when walking in the lawn in front of his mansion, about eight o'clock on Saturday morning last [he] was pounced upon by two miscreants who fired two shots at him and lodged their contents in his body; they also mutilated his head and other parts of his person with the butt ends of their guns'. His lady companion, who had just left him for the purpose of ordering breakfast, rushed back when she heard the shots and 'to her indescribable dismay perceived the mangled corpse of her husband, weltering in gore'.

The likely reason for the crime was said to be the same in both accounts, but the *Advertiser* added a reference to Maguire's recent prosecution in the 'Petit Sessions Court' of some ruffians who had damaged a young plantation on his property. Another item mentioned, very briefly, the inquest 'on view of the body' that had been held by Captain Bradshaw of Peggsborough, at which a verdict of 'wilful murder, by persons unknown' had been returned.

The third Clonmel newspaper of the time, the *Tipperary Free Press*, an organ of Catholic emancipation and its champion Daniel O'Connell, adopted a somewhat different line from the *Herald* and the *Advertiser*. The difference was reflected in the heading 'Robbery and Murder of Constantine Maguire, Esq.'. The writer of course condemned the 'atrocious and revolting deed, which has robbed one of the most excellent gentlemen of life, an amiable family of its natural head and protector, and society of one of its most valuable members'. As advocates of the

popular cause, what caused the paper's owners to feel 'humiliated in the extreme' by the crime was 'to have thereby our dear and suffering country scoffed at by the pensioned calumniator as the land of the bloody and atrocious murderer'. Maguire's address, incidentally, was given as 'Tooreen House' rather than Kilmoyler Lodge. The main difference between this account and the others, however, concerned the likely motive of the perpetrators, which, the *Free Press* implied, was robbery.

It was said to be well known that Maguire often carried large sums of money on his person. About £40 was stolen from him by his murderers, as well as a gold watch and other valuables; and but for his having disposed of a large sum a few days earlier, we are told, there would have been even more. Not only did the *Free Press* argue a different motive, it also presented a different picture of how the crime might have been carried out. Ignoring what it called 'various rumours in circulation on the subject of the sad catastrophe' (there is no mention of the privy, or of bad relations with tenants), the scenario for the murder is described as follows:

It is thought that one of the fellows mentioned engaged his attention, whilst the other ruffian stole from behind, and with a blow of the butt end of a blunderbuss felled him to the earth, and deprived him of his senses.

The *Free Press's* account also differed significantly in saying there was no shooting: 'The murder was silently and promptly perpetrated – no shot was fired – no cry was heard . . .'. Like the *Advertiser*, the *Free Press* briefly reported the inquest.

Lastly, the news of the murder merited fairly substantial notice in the *Annual Register* (published in 1835). This was mainly based on the accounts given by the *Advertiser* and by *Stewart's Despatch*, the latter a neutral Dublin publication which seems to have been used as a kind of Press Association by local newspapers throughout the country. *Stewart's Telegraphic Despatch and Daily Advertiser*, to give it its full title at this date, was published by the proprietor, William Stewart, whose stated policy was 'not to guide public opinion, but to furnish facts, from which our readers may form their own conclusions. We will provide the news, the whole news and the latest possible news'.²

Headed 'Atrocious Murder', the *Register's* account (wrongly identifying the date of the incident as 24 October 1834) fixed upon the recent ejection of some tenants for non-payment of rent and the prosecution of the person accused of destroying the plantation as likely motives. 'For these offences', it went on, 'Mr. Maguire had become obnoxious to the self-elected legislators of Ireland and consequently incurred the penalty of death'. The time of the murder was said to be eight o'clock, the victim to have been 'walking in the lawn in front of his mansion' with his lady, who had gone back to the house to order breakfast when she heard shots and soon afterwards found her husband dead with his head beaten in.

The *Dublin Gazette* of 6 November carried the announcement, in the name of the Lord Lieutenant, of a reward of £200 'to any Person or Persons (except the Person or Persons who were principals therein) who shall, within six months... give such Information as shall lead to the apprehension and conviction of all or any of the Persons concerned therein'. Two hundred pounds appears to have been the standard upper limit for such rewards in cases of murder or attempted murder.

Apart from condemning the perpetrators of the crime, the immediate reaction of the Tipperary landowning establishment was to cast blame on the government in Dublin, which had recently refused to 'proclaim' the barony of Clanwilliam along with other parts of the county. In the same issue of the *Clonmel Advertiser* as the news of this latest outrage was a letter

from Lord Glengall, the Cahir magnate, to the Tipperary magistrates, urging them to press for an examination of all official correspondence about the government's decision and to make public the reasons for it; in his opinion the first consequence had been 'the atrocious murder of Captain Maguire'. The *Herald* echoed these sentiments, concluding: 'Had the prayer of the magistrates been attended to, there is every reason to believe that this murder would have been prevented'. The next issue of the same paper, on 8 November, carried a report of Glengall's continuing efforts in Dublin to persuade the authorities of 'the necessity of resorting to the coercion act, from his knowledge of the dreadful state of lawless and insurrectionary feeling amongst the peasantry of Tipperary'. This lobbying was highly successful. Three weeks after the murder the *Dublin Gazette* announced that the Privy Council had decided to extend the coercion act of 1833 – 'for the more effectual suppression of local disturbances and dangerous associations in Ireland' – to the barony of Clanwilliam.³

The 'Tipperary option' – violence against landlords and their agents who offended the shadowy figures the *Clonmel Advertiser* called 'our midnight legislators' – was a well-observed phenomenon, the reality of which is supported not only by much anecdotal evidence but also by official statistics. By any reckoning Tipperary usually came high in the table of Irish counties for agrarian crime. The mid-1830s, when anti-tithe disputes exacerbated bad relations between some landlords and tenants, produced a record level of 'outrages'.

In 1834, as it happens, the figures for Tipperary were by a wide margin the highest for any county, both in the gross number of people committed to prison (3,977), and in the ratio per 1,000 of the population (9.9); the ratio for the country as a whole was 2.8.⁴ The figures fell quite steeply in the later 1830s, and did not reach a similar level again until 1849 (9.6). Furthermore, people accused of Class One crimes – offences against the person with violence, such as murder – constituted a larger proportion of those imprisoned and subsequently tried in Tipperary than elsewhere: 40 per cent or more in the mid-1830s, compared with a national average of about one-third.⁵

Both the statistics and the county's reputation have been examined in some detail by historians, not least in the pages of the *Tipperary Historical Journal*. Suffice it to say here that the reputation reflected the reality. Not only that; the chances of those accused of serious crime being convicted of murder appear to have been lower in Tipperary than elsewhere. County Clare, which in bad years vied with Tipperary, in 1832 for once headed the list of committals with 131. Of this number, 14 were found guilty of murder and another 12 of manslaughter. In the same year in Tipperary, when 120 were committed to gaol and 25 convicted, only one was found guilty of murder and executed.⁶ Captain Maguire chose an unfortunate time and place in which to exercise his proprietorial rights to the limit – especially perhaps because as a relative newcomer to the county he had no reserves of goodwill to draw on.

My purpose in this article is to explore and reconstruct what happened that morning in 1834; to set the murder and its associated events in their contemporary context; and to comment upon the wider repercussions of this local episode. As we shall see, the victim himself – his character and curious personal history – occupies a central place in the picture that emerges.

A long way to Tipperary

Constantine Maguire was the eldest of the three sons of Hugh Maguire of Tempo, Co. Fermanagh, the owner of a substantial estate dating from the Plantation of Ulster, and his wife Phoebe *née* Macnamara, daughter of George Macnamara of Cong, Co. Mayo.⁷ At the Revolution

in 1688 the then owner of the property, Cúchonnacht Mór Maguire, supported James II and raised a regiment of infantry which he commanded at the battle of Aughrim, where he lost his life. The Tempo estate was confiscated by the victorious Williamites but was later recovered from the forfeiture trustees. During the early eighteenth century the Maguires, long the only remaining Gaelic and Catholic landowning family left in Fermanagh, like many others conformed to the established church, nominally at least, in order to preserve their land and status.

'Cúchonnacht' as a forename was rendered as 'Constantine' in official documents thereafter. Hugh Maguire, father of our Constantine, even became high sheriff of the county in 1780. His extravagant lifestyle, added to the accumulated debts of his predecessors, forced him in 1799 to sell off most of what still remained of the property; it was therefore to a much reduced inheritance that Constantine succeeded the following year. Hugh also went off the rails morally in his declining years, turning out his wife Phoebe and living with a housemaid instead. His sons grew up wild: Constantine and his brother Brian, both of whom became crack shots, reputedly practised marksmanship by shooting apples off each other's heads.⁸

Constantine's military career began in 1799, when his father purchased for him an ensign's commission in the 27th Regiment of Foot (the Inniskilling Fusiliers). Two months later he got a lieutenancy in the 88th Foot (the Connaught Rangers). Between 1799 and 1802 this regiment saw service in India and Egypt. Following a period on half pay during the short-lived Peace of Amiens, he did not resume active service when the war with France began again in 1803.

Apparently his health had been affected: in 1828, shortly before he settled in Tipperary, he answered a War Office enquiry about his willingness to serve again by writing that he was 'afflicted with Sciatica and other severe Rheumatic affections caught while in the East Indies and Egypt.' The years 1803-16 had been spent as an adjutant in the Recruiting Department in Ireland, mostly based at Athlone; after 1816 he was on half-pay for the rest of his life. Though always styled Captain ('Captain Cohonny' to his Irish-speaking tenants at Tempo), he never rose above the substantive rank of lieutenant. He complained to the War Office in 1828 of being 'one of the oldest Staff Adjutants in the United Kingdom'.⁹

In 1807 Constantine married Frances Augusta Hawkins, née Maclean, a woman of good family and connections (her brother or half-brother was General Sir Fitzroy Maclean, 8th baronet). Mrs Hawkins had been for many years the mistress of John James Hamilton, 1st marquess of Abercorn. She met Maguire in 1806 while he was temporarily quartered in Derry and she was acting as chatelaine of Abercorn's Irish seat at Baronscourt, Co. Tyrone.¹⁰ Though as Mrs Maguire she apparently gave birth to several children, only one, a daughter named Florence, survived infancy.

In 1813 her husband took up with a younger woman named Gavan, whom he evidently meant to marry, for in 1816 he tried to have his marriage annulled. Mrs Maguire thereupon appealed to her former protector (he had left her well provided for, with an annuity of £400), whose agents soon thwarted Maguire's plan.¹¹ Maguire then went off to live with his mistress, and when he went to prison in 1817 rather than pay legal costs he had incurred in a chancery case, Eleanor Gavan went with him. His opponent in the court of chancery was probably his own mother, and the property in dispute included the estate in Tipperary where he was to meet his death many years later. 'Mrs Maguire and her son are not on terms', a Dublin lawyer informed William Tennent (the new owner of Tempo) in January 1817, after she had won this 'lawsuit of some standing'.¹² Maguire's imprisonment lasted more than seven years, in Kilmainham and the Four Courts Marshalsea, during which time five children were conceived and born. Released in 1824, after a reconciliation of some sort with his mother, Constantine set

up his second family in Mountjoy Street, leaving his legitimate wife to fend for herself and to pay the entire cost of educating and rearing their daughter.

So long as Maguire had little or no money, his wife knew there was no hope of getting him to contribute anything. As soon as his mother died in 1829, however, and he inherited her property, Frances began a suit in the ecclesiastical court for 'Divorce and Alimony' on the grounds of his adultery. Though his guilt on this charge was public and notorious – and was proved to be so when the case came to trial in 1833 – Frances failed in her attempt to get alimony. Thereafter she gave up and went to live in England.¹³

During his long sojourn in the debtors' prison, Constantine had inevitably neglected his estate at Tempo. Some of the tenants there took the opportunity to encroach at his expense. After his release from prison, he revived earlier hopes of somehow residing at Tempo, preferably in the manor house if William Tennent could be persuaded to sell or lease it. Nothing came of these schemes, however. In the summer of 1828, at a time when sectarian strife in Fermanagh was frequent (every Fair day in Tempo was an opportunity for Ribbonmen and Orangemen to confront and attack each other), Maguire turned up to re-establish his rights.¹⁴ Recruiting a mixed workforce of more than 200 spadesmen, he directed the work of fencing and ditching in the townland of Doon on 13 August. An armed party appeared from beyond the fence and began firing at his workmen. Two were wounded and the old soldier himself came under fire when he went to see what was happening. The police were sent for. Before they arrived the enraged workmen, armed with their spades, chased the retreating gunmen, some of whom they had recognised as Orangemen. Though a Protestant, Maguire had made himself unpopular with the more extreme of his co-religionists by consistently and publicly promoting the Liberal and pro-Catholic cause in the controversies of the day – so much so that Catholic leaders in Fermanagh considered choosing him as their parliamentary candidate at the next general election.

An Orangeman named Rutledge, the leading figure among the gunmen, was accused of the attempted murder of Maguire and several others were charged as his accomplices. The latter were quickly arrested, but Rutledge fled and took ship for America. The ship was wrecked off Newfoundland, and the survivors (one of whom was Rutledge), when rescued by an outward-bound vessel, were taken back to Cork. The news somehow reached Maguire, who sent for the Tempo bailiff. Together they tracked Rutledge down and had him arrested and sent to Enniskillen for trial. At the Spring Assizes in March 1829 he was found guilty of attempted murder and sentenced to death. A great petition to the lord lieutenant, to have the sentence commuted to transportation, was signed by many Fermanagh Protestants, including most of the aristocracy and gentry. Maguire was pressed to add his own name to the list but resolutely refused to do so. Rutledge was accordingly hanged outside the gaol in Enniskillen on 2 April.¹⁵

For those in the know there was a piquant twist to this tale. As a wild young man in 1798, Constantine had been involved – along with his two brothers – in an attack on some property belonging to the Church of Ireland curate of Tempo during which shots had been fired. Prosecuted on a charge of firing a gun with intent to murder, Constantine was indicted by the grand jury, found guilty and sent to prison for three months. In that hanging year he was very lucky to have got off so lightly; possibly the fact that his father had been high sheriff some years earlier carried weight. Several members of the grand jury, however, were unhappy about the outcome. Someone wrote in their official record book, 'He ought to be hanged'.¹⁶

The grand jury appear to have suspected him of being sympathetic to the United Irishmen. This was probably the case: twenty years later, when imprisoned in Kilmainham, Constantine wrote to William Tennent (once a United Irishman and state prisoner himself) on behalf of

William Putnam McCabe, a state prisoner and fellow inmate, who had been one of the most active and successful northerners in the movement.¹⁷ At any rate, in 1829 Maguire would do nothing that might help Rutledge escape the ultimate penalty for an offence very similar to his own. It was no wonder he never appeared in Tempo again. Instead, he settled on his recently acquired property in the south, along with his second family, for what promised to be a more comfortable new life. He was then in his early fifties, though he looks a good deal younger in the only known portrait, which must have been taken about 1830. It had been a long way to Tipperary.

Scene of the crime

Before attempting to reconstruct the event itself, it would be well to settle the topography of the murder, for there is some doubt as to where exactly the Maguire family lived at Toureen. Constantine's mother, Phoebe Maguire Butler as she called herself after gaining possession of the property from her Butler uncle in 1816, had never lived there (she lived in Dublin, at 47 Summer Hill). The modern townland of Toureen, part of the parish of Killardry or Killaldriff, lies on either side of the road between Cahir and Tipperary. Consisting partly of mountain and woodland, it is a large area, almost a thousand acres in extent, running northwards from a crest of the Galtee Mountains down to the banks of the River Aherlow.

The *Parliamentary Gazetteer of Ireland* (1844) describes the parish in somewhat unflattering terms:

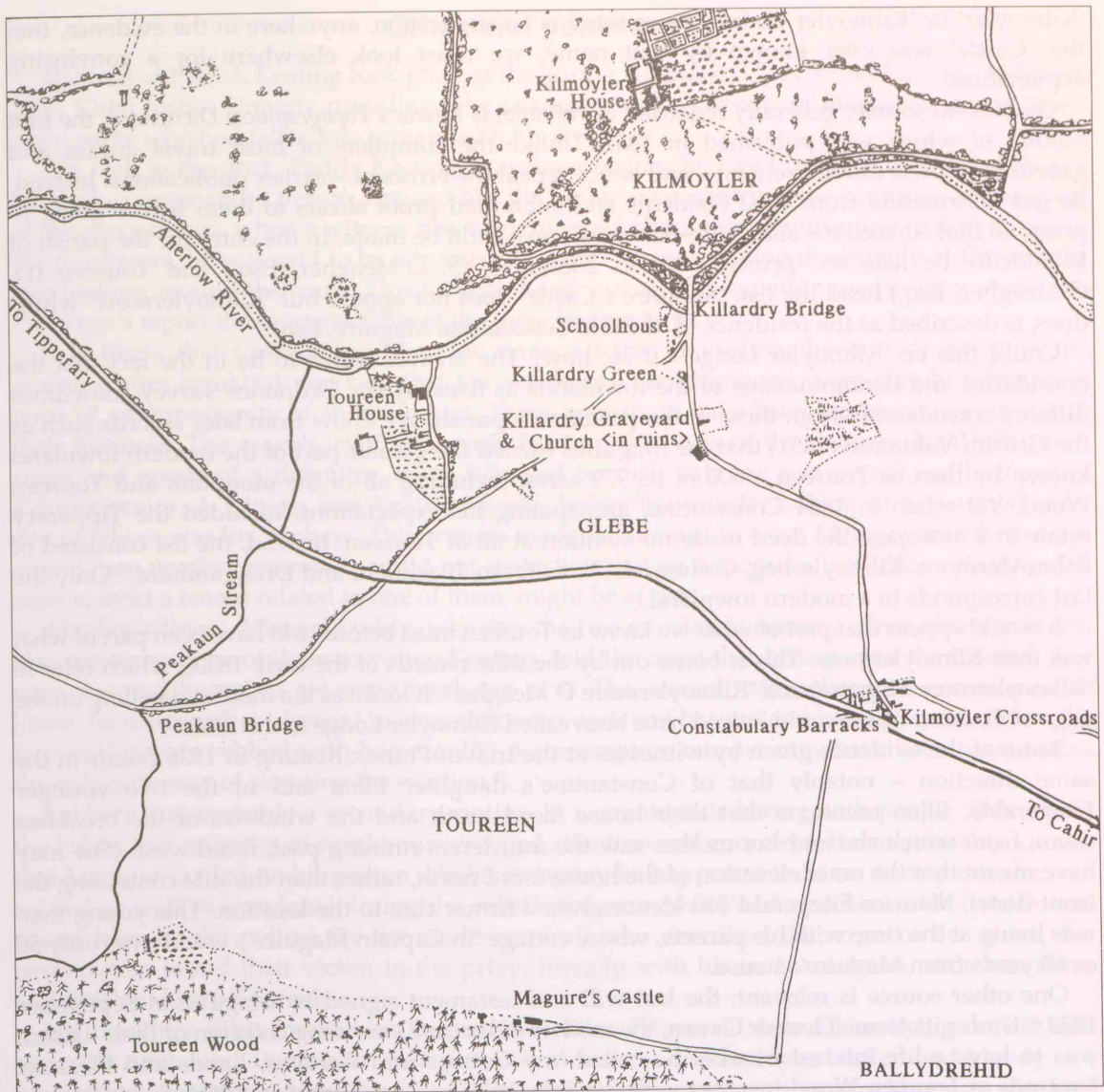
The surface lies at the entrance or expansion of the vale of the Aharlow, where the rivulet Aharlow, hitherto romantically picturesque, receives its voluminous affluent from the north, and moves away, in common-place style, to the Suir. The land, with the exception of a small portion, is of inferior quality.

The entry continues:

The chief objects of interest are Maguire's-castle, Toureen-house, and Kilmoyler-house, – the last the seat of S. O'Meagher, Esq....¹⁸

'Maguire's Castle' is marked and named – if rather insignificantly – on the first Ordnance Survey (OS) map of the area (1840). It was located on rising ground at the lower edge of Toureen Wood. Some ruins, possibly associated with it, possibly not, remain; nearby is the dwelling now known as Toureen Wood House, which is not named on the first OS map. Toureen House, not to be confused with the house in the wood, stands at the northern edge of the townland, just across the river from Kilmoyler House. Toureen House and Kilmoyler House and their demesnes are marked and named on the first OS map. Both of them in the early nineteenth century belonged to the O'Meagher family. Described as a 'gentleman's house' by the OS reporters, Toureen House was the sort of place that might have been rented (if available) by Captain Maguire, if there was no suitable house on his own land. The fact that it is once or twice given as his address may suggest that he lived there.

An alternative theory is that he may have lived in the 'castle' that bore his name. There are difficulties about this, however. To begin with, such a name could not be of long usage. It could date back no farther than Phoebe Maguire's acquisition of the estate or – much more likely – only to the arrival of Constantine himself in the late 1820s. Secondly, though described in OS



Part of the towlands of Toureen and Kilmoyler, c. 1840. (From the 1st OS map (1840), redrawn by Deirdre Crone).

reports as 'a habitable Castle' and 'a Castle still inhabited', it does not appear to have been at all imposing; indeed the language used by the OS reporters makes it sound positively decrepit.

My own guess is that the name in 1840 was not only recent but quite possibly ironic, even derisive – a sly dig by local tenants at an unpopular landlord. Had the 'Castle' been a genuine one, and lived in by the Maguires, it is hard to believe that it would not have been named somewhere as their residence. Yet none of the numerous references during the mid-1830s mentions it. Instead, apart from a single 'Toureen Lodge' in a police report and a single 'Tooureen House' in a newspaper, the address of the murder victim is invariably given as

'Kilmoyler' or 'Kilmoyler Lodge'. Since there is no suggestion, anywhere in the evidence, that the 'Castle' was ever known by that name, we must look elsewhere for a convincing explanation.

One useful source, generally regarded as reliable, is Lewis's *Topographical Dictionary*, the first edition of which was published in 1837. Unlike the compilers of most travel guides and gazetteers, Lewis did not rely on – and hence repeat the errors of – earlier publications. Instead, he got information from local residents and submitted proof sheets to them before going to press, so that corrections and up-to-date additions could be made. In the entry for the parish of Killaldriffe he lists six 'principal seats'. Kilmoyler (S. O'Meagher, Esq.) and Toureen (D. O'Meagher, Esq.) head the list. 'Maguire's Castle' does not appear but 'Kilmoylermore' which does, is described as the residence of 'the late Constantine Maguire, Esq.'.

Could this be 'Kilmoyler Lodge'? If so, how? The answer seems to lie in the fact that the boundaries and denominations of the townlands as fixed by the Ordnance Survey sometimes differed considerably from those of the pre-Survey parish. We know from later records such as the Griffith Valuation (1851) that the Maguires owned the greater part of the modern townland known by then as Toureen – 600 of its 979 acres, including all of the mountain and Toureen Wood. Yet when in 1824 Constantine, anticipating his expectations, included the Tipperary estate in a mortgage the deed made no mention at all of Toureen. Instead, the list consisted of Kilmoylermore, Kilmoylerbeg, Coilmeask (?), Killbran, Blackfield and Dranganmore.¹⁹ Only the last corresponds to a modern townland.

It would appear that part of what we know as Toureen must before 1840 have been part of what was then Kilmoylermore. This is borne out by the tithe records of the early 1830s, which refer to 'Kilmoylermore Maguire' and 'Kilmoylermore O'Meagher'. It looks as if a modest dwelling on the edge of Toureen Wood could indeed have been called Kilmoyler Lodge in the 1830s.

Some of the evidence given by witnesses at the trial of Patrick Keating in 1836 points in the same direction – notably that of Constantine's daughter Ellen and of the two younger Fitzgeralds. Ellen mentions that their house faced north and the windows of the breakfast room, from which she and her mother saw the murderers running past, faced west. (She may have meant that the main elevation of the house faced north, rather than the side containing the front door). Maurice Fitzgerald's evidence gives a firmer clue to the location. This young man was living at the time with his parents, whose cottage 'in Captain Maguire's wood' was only 50 or 60 yards from Maguire's house.

One other source is relevant: the last will and testament signed by Maguire in September 1832.²⁰ Under its terms Eleanor Gavan, the mother of the five surviving children of their liaison, was to have a life interest in what he called 'my Cottage and Gardens, Lands and Pleasure Grounds at Toureen Wood together with the Cow Park and grazing of said Wood ...' She was also to have all the furniture, plate, linen, livestock, tools and personal chattels 'in and about my Dwelling House or Houses or Cottages in the County Tipperary'. Since the will also specified that the children were to live with their mother while growing up, it is clear that the 'cottage' in the wood must have been the family residence – Kilmoyler Lodge in fact.

It seems probable that this house was the predecessor of the present Toureen Wood House. The use of the term 'cottage' possibly means that it was thatched at that time. In their evidence at the trial, Ellen Maguire and Peggy Fitzgerald both give the impression that the Lodge was two-storeyed on one side but one-storeyed on the other, because built into the slope, like the present Wood House. Peggy describes rushing upstairs towards the breakfast room when summoned, only to be pushed down again by Ellen and her mother in their desperation to get out by the back door. The topography fits.

Crime and punishment

The trial of Patrick Keating took place at the Spring Assizes in Clonmel on Monday 14 March 1836, Chief Justice Doherty presiding. The accused was the nephew of Maguire's tenant of the same name who had fallen into arrears with his rent.

The man in the dock, Paddy Keating, was described in the *Free Press* report of the trial as 'a tall dark-countenanced person, dressed like the humbler peasantry of the country'. At one stage of the proceedings, when a witness was being pressed about her identification of him as one of the murderers, he was said to be a 'passive looking' person, smiling doubtfully at the witness and looking around the court. This kind of detail, but also its superior composition, make the *Free Press's* report the most readable of the three known to us.

It is likely that Constantine Maguire made a habit of visiting the outside privy in the morning after breakfast; unlikely that his murderers, carrying guns, were simply loitering in hope of an opportunity of shooting him. There appears to have been a certain urgency about their business. The assault itself was made hard on the heels of the distress (legal seizure of crops and goods of a defaulter, to be followed by their sale for rent owed) on the farm of Keating senior. A witness saw Keating shortly before the murder talking to two armed men, one of whom was his nephew. This witness made no attempt to warn Maguire that there were armed men nearby; apparently it did not strike him that an unpopular landlord, who intended soon to evict a tenant related to one of them, might be at risk.

Another witness, Michael Luddy, who saw the two murderers running away afterwards and also recognised one of them as young Keating, told the court that he expected the eviction that very day and hoped to get some work out of it. The second man, whom no one seemed to know, he described as 'dressed in a coat between dark and brown' and having 'some dirt on his face as if it were rubbed with bog mould'. A pre-emptive murder may have been regarded as the only sure way of stopping the eviction.²¹

Robbery was certainly a secondary motive. In a countryside hiving with people, little about the habits and activities of neighbours escaped attention and comment. It was probably known that Maguire carried on his person whatever money he happened to have. At any rate, he was robbed as well as murdered, losing the substantial sum of £40 and also his watch (which was traced later by the police). By the evidence of all who described the scene of the crime, the perpetrators found their victim in the privy, literally with his trousers down, shot him there and finished him off outside.

His daughter Ellen found him 'quite dead'. Ellen Fitzgerald found him 'lying on his side against a ditch, and about two yards from the *necessary*, his head was broken and bloody ...'; his trousers were down about his feet.²² Other descriptions were similar. Mrs Maguire, who had run outside with her daughter and the servant girl Margaret (Peggy) Fitzgerald, was too overcome to approach the scene closely and afterwards could only remember clutching the girl in fright. (The court reporter later gave the only description we have of Eleanor Gavan: 'In deep mourning, very respectable in appearance, and like her daughter spoke well, and very distinctly...')²³ She was able to say that Constantine had had '£16 and the proceeds of the auction' in his pocket.

Another, accidental eye-witness was Margaret Edgar, who had come to the house in pursuit of 'pound money', the fee due for putting cattle seized from Maguire's tenants into the public pound. Going after Mrs Maguire, her daughter and Peggy Fitzgerald, she saw Captain Maguire stretched out and a man standing over him who looked at her with a kind of grin before he plunged off; he had a 'dark raggedy loose coat on him'. The witness explained that being in the

family way at the time she was nervous. Hearing Mrs Maguire scream out something about firearms she became alarmed. She told the court, 'In consequence of thinking there was a quarrel between Mr and Mrs Maguire, she feared the deceased might fire a shot'²⁴ – a very curious observation in the circumstances, but one that perhaps gives us a glimpse of Constantine's reputation in the neighbourhood and the dangerous nature that various people detected in him.

Far from being the 'inoffensive gentleman' referred to by the *Herald* in its first mention of his murder – a description he would surely have found offensive in itself – he was only too willing to take umbrage and not at all inclined to forgive or forget. In 1828 he even managed to provoke William Tennent, the Presbyterian banker who had bought the Tempo estate, into accepting his challenge. A duel was only prevented when the authorities found out and bound over both of them.²⁵ Maguire was then aged about fifty, Tennent sixty-seven.

Peggy Fitzgerald, as reported by the *Clonmel Advertiser* (though not the *Herald*), also met the grinning murderer, blunderbuss in hand, face to face; she did not think he was disguised but he had a dirty face and 'rather a long beard'. In the *Free Press* account, young Kitty Ryan is reported as saying that both men wore 'old caroline hats'.²⁶ Such hats would have made recognition at a distance quite difficult. Fitzgerald, the first to reach the victim, caused a sensation in court by her description of her master 'lying stretched dead'; he opened his mouth once and died!. This graphic detail appeared in both the *Advertiser* and the *Free Press*, though not in the *Herald*.

The mysterious second man was never identified or brought to justice. Presumably he was a 'Ribbonman', brought in from outside for the occasion; as one witness said, no one had ever seen him at Kilmoyler before or since. Michael Luddy, harvesting crab apples, had seen both men before they could see him and had hidden in a ditch until they had passed. Afterwards he went to the house (the 'great house' he called it) and heard the news of the murder; only then (he said) did he realise that he must have seen the perpetrators. However, he did not inform the authorities until two months later, having heard that there was a reward offered. Of course, as he said, 'it was not for that he came forward, it was for the love of justice'.

But when he identified Keating and, as second murderer, a man named Maher, both were soon released. Under cross-examination Luddy was asked 'Did you go to Kilmoyler Lodge immediately after the murder was committed, and see his widowed wife and orphan child, and yet keep your information for two months locked up in your breast?' He could only say 'Yes'. Since giving the information that helped to bring Keating to trial, after being twice released for lack of sufficient evidence, Luddy had been obliged to live in the barracks at Cashel under the protection of the police.²⁷

The intimidation of witnesses was the main obstacle in the way of mounting a successful prosecution. The most important of the witnesses against Keating was Peggy Fitzgerald. She had been the first to arrive at the scene of the murder, and had attended the inquest. She had subsequently seen the accused in the bridewell at Cahir, about eleven weeks later, when he was first arrested. She had also seen and recognised him at Kilmoyler Chapel. She had been summoned as a witness on the two occasions when he was released. She said she had 'often had a conversation with her family about it, but they would not let her speak of it for fear they should be murdered'. In the end she gave her information unknown to them, in response to pressure from Sub-Constable Smyth, who had heard her mention the matter in her father's house and had threatened to put her in gaol.

Once it was known that Peggy had informed, the rest of the family followed suit. Her mother had recognised Keating at the chapel, but only gave evidence because the daughter did so, and

of course not for the reward. Her father, it turned out, had seen the two men 'about twelve minutes before the murder, near some corn stacks', but had told no one. Her brother Maurice, having also seen the two Keatings and the other gunman before the murder, had gone home to shave and dress (the day was a holiday and most people went to Mass). In the course of his toilette, he said, he set out for Maguire's house to borrow shoe brushes, but then turned round lest the Captain see him, 'as he did not wish to see persons coming about the house', so the witness did not see him to warn him there were armed men about. After the murder he and the other members of his family had carried the corpse into the house. Hearing that his sister had given information he too had approached Constable Smyth, because he was 'afraid he might suffer'. Under cross-examination it turned out that he was already known to the police; he had been convicted of rape, escaping sentence only by marrying the girl. His wife had refused to come and live with him, however.²⁸

Constable Lalor gave evidence of having first arrested Keating in January 1835. The accused had been carrying banknotes and silver on him which, it was suggested, might have been stolen from the victim. The dairy farmer for whom he worked and two of his fellow workers were questioned about the money and also about having seen Keating at work and at mass on the morning of the murder. Though sympathetic enough, they could not provide him with a convincing alibi for the crucial time.

The judge, Chief Justice Doherty, scrupulously pointed out some inconsistencies in the evidence presented. The jury, unimpressed, did not take long to find the prisoner guilty. He was sentenced to death, and executed almost at once. A brief notice in the *Herald* of 19 March 1836 recorded the occasion: 'The unfortunate Keating (the convicted murderer of Captain Constantine Maguire) expiated his crime on Wednesday last, in front of our county Gaol. He made no public confession of his guilt ...'. Somehow this news escaped the notice of Sir Bernard Burke, Ulster King of Arms and compiler of the famous *Peerage*, who included a chapter on the Maguires of Tempo in his series *Vicissitudes of Families*.²⁹

According to Burke no one was ever brought to justice for the murder in Tipperary. In fact there are official records to the contrary, as well as the press reports. One potentially interesting item, indexed but no longer extant in the National Archives, is a letter from Constantine's brother Brian protesting at the inadequacy of the reward offered. The police files for 1836 reveal that Major Miller, inspector general of the Munster constabulary, on 30 January sent £5 to Chief Constable Anderson of Cahir to pay two informants in the case.

Anderson replied on 21 February to say that he expected soon to be able to 'lodge such information as will in a few days lead to the conviction of one or both of the persons concerned in the murder of Capt. Maguire of Toureen Lodge'. Anderson wrote again on 2 March to report that he had 'sent some persons to Dr Fitzgerald [R.M.] who can prosecute Paddy Keating for the murder ...'.³⁰ As we know, Keating had already been arrested twice and twice released for lack of evidence. He was taken in for the third time on the night of 29 February and three days later committed (at Waterford) for trial at Clonmel.³¹

Whether or not Peggy Fitzgerald, her parents and brother – all of whom in the end gave information against Keating – suffered on that account we do not know. The long delay in bringing the accused to trial may have changed local perceptions in some way. At the same time it must have worked on the doubts of would-be informers. There may be a hint of this in Peggy's answer under cross-examination when she referred to her sister, who had heard her tell all to Constable Smyth, being in Scotland at the time of the trial. It is unlikely that her shifty brother Maurice, who had seen the gunmen and given no warning, was able to continue living comfortably so close to the victim's grieving widow and actually on her land.

Speaking ill of the dead

The Irish scholar John O'Donovan, who was working at the time for the Ordnance Survey, happened to be in Fermanagh when news of Maguire's death became known there. In a letter dated 4 November 1834 he wrote:

There is a report here that Constantine Maguire of Tempo was shot in the county of Tipperary. There was an attempt made at shooting him before near Tempo, but the aggressor was hanged; it is generally believed here that he was shot in Tipperary in revenge for the hanging of Rutledge.³²

Two days later, the news of the murder appeared in print in the Enniskillen papers, the *Enniskillener* and the *Enniskillen Chronicle & Erne Packet*. Writing to his friends in Dublin again on 10 November, O'Donovan reported, 'All the old Maguires here exclaim that the Tipperary men did not give Cohonny fair play!'³³

Ten days farther on, the *Enniskillener* – a very Orange publication – produced an interesting example of what is nowadays called spin-doctoring, on the one hand condemning the murder, whilst at the same time attacking the victim's views and reputation. Remarking that Maguire had chosen to live among the 'savage monsters' of Tipperary, in preference to his native soil, the writer went on:

Had this bloody deed been committed in Fermanagh, it would have been endeavoured to have fastened it on the Orangemen, for the *humanity* shown to poor Rutledge, the father of a small and helpless family, six in number, all incapable of taking care of themselves, who was prosecuted with unrelenting severity and, found guilty, hanged. Had this gentleman resided in this county he would have been safe.

Such an act, it was asserted, 'could not be done in Fermanagh, peaceable, loyal Fermanagh, to any individual, however humble in life'. Finally, the paper's readers were reminded that 'the ill-fated gentleman who has been basely murdered by Popish conspirators, was applied to sign a memorial in favour of Rutledge ... that his sentence might be mitigated to transportation; he refused, [Rutledge] being as he stated "a violent Orangeman" and that an example should be made for the peace of the County'.³⁴

The campaign denigrating Maguire went well beyond Fermanagh. The grapevine in Tipperary got to work almost immediately. Within three weeks of the murder the *Clonmel Herald* carried this little bombshell:

The female mentioned in the account of the murder of Captain Maguire in Tipperary as having witnessed the bloody deed, is erroneously said to have been Mrs. Maguire. The lady entitled to that name has been living with her family in England, and the party alluded to was but the *chere amie* of the deceased.³⁵

Another item in the same issue of the *Herald* consisted of a report, reprinted from the *Wexford Conservative*, of Constantine's close shave with the law in 1798. 'The late Captain Maguire' it began, 'was nominally a Protestant, but from his youth up professed those principles of falsely called liberalism, which have been so long a curse to the country'. According to the writer, whose information must have derived from a Fermanagh source, young Maguire 'always evinced the most deadly hatred to the Established Church and its Ministers – so much so that in 1798 he was tried and found guilty at the Assizes of Enniskillen for setting fire to a turf stack

and flax kiln the property of the Rev. Lucas Bell, curate of Tempo'. Had the writer known that Constantine had actually been found guilty on a far more serious charge, his denunciation would have been greatly strengthened. The article ended with a reference to Maguire's 'last and most noted act', namely prosecuting poor Rutledge.³⁶

Yet another demolition item appeared in the *Herald* of 22 November. This one, copied from the *London Standard* and described as 'tragi-comical', began as follows: 'The murder of Mr. Constantine Maguire was committed upon a gentleman who had distinguished himself, as far as his station in life would permit, by a most boisterous support of the Roman Catholic demands; and the distinction appears to have been hereditary'. It went on to rake up an episode dating from 1780 when Constantine's father, high sheriff that year, had allegedly enraged local Protestants by letting the law take its course in the case of a young Protestant convicted on a capital charge. The lad's co-accused, all of whom were Catholics, and all much older, were members of a gang of robbers. It was said that they had got the boy drunk and forced him to join them. The sheriff refused to act in a partisan manner when approached to seek clemency for the Protestant alone.

The consequence of the bad example set by their father, it was asserted, was that both Constantine and his younger brother Brian had become vociferous advocates of Catholic emancipation. Brian, the subject of a long passage in the *Herald* article, was a convenient source of damaging gossip, since he had not only behaved wildly in his youth but had also made his escapades known to the public by publishing his memoirs (1811).³⁷ By 1834, however, he was in the last stages of destitution somewhere on the outskirts of Dublin, barely surviving to succeed his late brother as head of the family and chief of his name before dying a pauper's death in 1835.

Aftermath and conclusion

Since nothing is known from the Enniskillen press to suggest that he was buried in Fermanagh with the remains of his ancestors (in one case, that of the victim of Aughrim, only the head, brought from the battlefield to be buried at Devenish Abbey), the likelihood is that Constantine was buried in the old graveyard of Killaldriff or Killardry at Toureen. Both his son Philip (in 1901) who inherited the estate and Philip's wife (in 1914) were brought from Dublin – where they went to live in the 1880s – to be buried there; their family of three sons and nine daughters were all born at Toureen. Constantine's elder son, Hugh, inherited the properties in Fermanagh and Queen's County (Laois).

Hugh (died 1866) had three sons – Constantine, Hugh and Philip – all of whom were mentally weak and none of whom married. When the last died in 1921, whatever property rights remained were inherited by one of the direct descendants of Captain Cohonny's younger son Philip, a number of whom now live in America. The Captain's eldest daughter by Eleanor Gavan – Ellen, who made such a favourable impression on the court reporter when giving evidence at Keating's trial – married a Dublin surgeon.³⁸

In one of his Ordnance Survey letters, written from Tempo shortly after the murder in Tipperary, O'Donovan lamented the sorry fate of the family:

I viewed Tempo house and demesne, which presents a sickening aspect; the house fast falling to ruin, the demesne neglected, the family extinct! All to be attributed to the carelessness and madness of Capt. Hugh, the father of Constantine, who took no care to settle his family.³⁹

The downfall of such old Irish families, O'Donovan asserted, had been brought about by 'war, women and madness'. Those three factors, which together cover a wide tract of historical causation, were certainly apt enough in the case of the Maguires. By 'downfall' O'Donovan meant not only loss of wealth but also an end to 'uninterrupted hereditary respectability', in which respect both Constantine and his brother Brian may be judged to have failed. Constantine's second, informal family, in the person of Eleanor Gavan's son Philip, proved to be vigorous enough, however, and was certainly respectable. Philip married the daughter of a naval officer from the Isle of Man. Most of his Tipperary estate was sold before the end of the century and became part of the Glengall (Charteris) property. Settling at an eminently respectable address in Dublin (Harcourt Terrace), he was unionist in politics and an active magistrate. The last part of the Tipperary land – 186 acres in the townland of Dranganmore – was sold about 1905 to the two sitting tenants, under the terms of the Land Act of 1903.

If the bequests listed in his will were matched by his assets, Constantine left a respectable legacy to his companion of twenty years and her children. Eleanor Gavan was to have an annuity of £400, plus the 'cottage' etc. at Toureen Wood. Each of the three daughters was to have £800 when she reached the age of twenty-three, with interest at 3 per cent for maintenance meantime. The boys were to have sums for their education and support of £50 a year each, rising at eighteen to £70; and the trustees (two Dublin lawyers) could spend up to £500 on each of them 'to advance them in trade, business or profession'. At probate, Constantine's 'effects' were sworn as 'under £780', so perhaps he was guilty of wishful thinking.⁴⁰

In conclusion, the drama of Constantine Maguire's chequered life and sudden death, though perhaps of no great significance in itself nevertheless illustrates – or at the very least touches upon – several interesting aspects of the history of Ireland during the early decades of the nineteenth century. One obvious focus, the local history of Tipperary and Fermanagh, was briefly overlaid by wider repercussions because the circumstances of the murder were particularly sordid and brutal; the entry in the *Annual Register* and the notice taken of it in newspapers outside the area attest a more than local interest in the case.

As we have seen, though in most respects an obscure and minor figure, 'Captain Cohonny' was far from typical of his class, especially in his political views. The conjunction of this with the fearsome reputation of Tipperary, his new home, made him an object of interest and comment – the more easily perhaps because his peculiar marital history had recently been exposed to public view by a suit for divorce and alimony and the publication of a pamphlet about the proceedings.

The tale of Constantine also illustrates the decay of the native gentry class (O'Donovan's 'Milesian families'), as well as the common yet remarkable vagaries of land ownership by which a man might suddenly – if seldom altogether unexpectedly – become by inheritance the proprietor of land in a strange part of the country and, if resident there, an absentee landlord in his accustomed place.

What W.S. Trench called the 'realities of Irish life' for such landlords or their agents in Tipperary were brought into very sharp focus at Kilmoyler in 1834. More obliquely, we are afforded some glimpses of the realities of life for a selection of humble people, otherwise invisible, who emerge hesitant or bold into the limelight of a trial for murder in which their evidence may cause a neighbour in that teeming world to be hanged in public. Indeed, how the police and the judiciary operated in practice may be gleaned in large part from press accounts of such occasions as the trial of Paddy Keating. In a more general way, the story told here illustrates some of the tensions that existed in rural society at the time.

Finally, while the military career of Constantine Maguire tells us something about the lower

reaches of the officer class of that period, his personal life – seldom edifying, but not in the broader sense unromantic – gives insights into other things. These include the operation of the laws dealing with marriage and divorce; debt, the consequences of debt and the astonishingly relaxed regime in the debtors' prisons whereby a flourishing domestic life could be lived with one's mistress and children; the world of a more favoured mistress and her aristocratic protector, whose care extended to a generous pension for life. One way or another, the incident at Toureen can yield valuable clues to the nature of that foreign country we call the past.

Acknowledgements

I wish to thank the following institutions for access to the sources credited to them and for permission to make use of the material concerned: Fermanagh County Library; National Archives, Dublin; National Library of Ireland, Dublin; Registry of Deeds, Dublin; Public Record Office, London; Public Record Office of Northern Ireland, Belfast. In addition to the individuals acknowledged in footnotes or captions, I am indebted to the Duke of Abercorn and Sir James Langham Bt for permission to make use of the Abercorn and Emerson-Tennent papers in PRONI; and to Charles Robert Maguire of Charleston, S. Carolina, for his courteous and helpful response to my enquiries. Thanks are also due to Pauline Dickson, Jean Farrelly (Dúchas), Joanna Gault, Professor Desmond Greer, Heather McClean, Justin Martin, Michael Martin and David Ronan.

Footnotes

1. *Clonmel Advertiser*, *Clonmel Herald*, and *Tipperary Free Press* files for Nov. 1834 and March 1836 (National Library of Ireland, Dublin).
2. *Waterloo Directory of Irish Newspapers and Periodicals, 1810-1900, Phase II* (1986), p. 455.
3. *Dublin Gazette*, 20 Nov. 1834.
4. *Return from clerks of the crown ... of the several counties etc. in Ireland, of the number of persons committed to the gaols, 1834*, HC 1835 (295), xlv, 269. I am grateful to Dr W.E. Vaughan for his helpful advice on the subject of agrarian crime in Tipperary in the 1830s.
5. James W. Hurst, 'Disturbed Tipperary: 1831-1860', *Eire-Ireland*, vol. ix, no. 3 (1974). See also Denis G. Marnane, 'Land and Violence in 19th Century Tipperary', *THJ* 1988, and related articles. For a vivid first-hand account, from the point of view of the landlord class, see W. Steuart Trench, *Realities of Irish Life* (London, 1868); ch. 4, 'The Ribbon Code', deals with murders in the Cloughjordan area of Tipperary in 1838. But see W.E. Vaughan, *Sin, Sheep and Scotsmen: John George Adair and the Derryveagh evictions, 1861* (Belfast, 1983), p.17, for a critical view of Trench's 'highly coloured account of his own and his family's experience of managing Irish estates'; and his *Landlords and Tenants in Mid-Victorian Ireland* (Oxford, 1944), ch. 6, for a refreshing discussion on the general subject of agrarian crime in Ireland. See also Cormac Ó Gráda, *New History of Ireland*, vol. vv, pp 130-2.
6. See, as example, *THJ* 1988 (Denis Marnane), *THJ* 1989 (Fr. Christy O'Dwyer), and *THJ* 1992 (Gerard Moran).
7. *Returns from the clerks of the crown ... of the number of persons committed .. for trial in the year 1832*, HC 1833 (61), xxix, 89.
8. For the history of the Maguires of Tempo, see W.A. Maguire, 'The Lands of the Maguires of Tempo in the Seventeenth Century', *Clogher Record* vol. xii, no. 3 (1987); 'The estate of Cú Chonnacht Maguire of Tempo: a case study from the Williamite land settlement', *Irish Historical Studies*, vol. xxvii, no. 106 (1990); and 'Castle Nugent and Castle Rackrent: Fact and Fiction in Maria Edgeworth', *Eighteenth-Century Ireland*, vol. xi (1996).

9. John B. Cunningham (ed.), *John O'Donovan's Letters from County Fermanagh (1834)* (Belleek, 1993), p.63.
10. 'Services of Officers on Half-Pay, 1828', War Office papers W025/767 (PRO, London).
11. James Hamilton, jr. to Abercorn, various dates 1803-07 (Abercorn papers, Public Record Office of Northern Ireland, Belfast, D/623/A/97-98). See also references to Mrs Hawkins in J.H. Gebbie (ed.), *An Introduction to the Abercorn Letters* (Omagh, 1972).
12. Burgoyne to Abercorn, various dates 1816-17 (Abercorn papers, PRONI, D/623/A/120-131).
13. Fitton to Tennent, 1 Jan. and 18 July 1817 (Emerson-Tennent papers, PRONI, D/2922/H/6/12).
14. *A Report of the Proceedings in the Consistorial Court, Dublin, had on the 4th of May, 1833 ... in a suit for Divorce and Alimony, instituted by Mrs. Frances Augusta Maguire, against Constantine Maguire, Esq., for Adultery, etc. together with the Sentence of the Court, etc.* (Dublin, 1833).
 Prior to the Matrimonial Causes Act of 1857 and the establishment (for England and Wales, not Ireland) of a Divorce Court, only a private Act of Parliament could dissolve a valid marriage. What was called 'divorce' in the ecclesiastical courts (which dealt with all such cases until then) was divorce *a mensa et thoro* (from bed and board), the equivalent of a modern legal separation. If successful in such an action, a wronged wife could be awarded alimony for her maintenance. Both the award and its amount were at the discretion of the court. In *Maguire v. Maguire*, the judge evidently felt that the husband's counter-charge of adultery by the wife had not been adequately disproved.
15. For the details of the fracas at Doon in August 1828, see the account of the trial of Rutledge and his companions in the *Enniskillen Chronicle and Erne Packet*, 19 Mar. 1828. I am indebted to Margaret Kane of Enniskillen Branch Library for her help in making this source available to me.
16. *Enniskillen Chronicle*, 2 Ap. 1829.
17. Fermanagh Grand Jury Bill Book, 1792-1861; Lent Assizes, 1798. (PRONI, FER/4/8/1).
18. Maguire to Tennent, 2 June 1818 (Emerson-Tennent papers, PRONI D/2922/H/3/67). So far as W. P. McCabe is concerned I have benefited from the researches of John McCabe, generously made available.
19. *Parliamentary Gazette of Ireland* (Dublin, 1844), under Killaldriffe.
20. Mortgage deed from Constantine Maguire to Andrew Armstrong, reciting that Maguire was entitled to an Estate Tail in Tipperary expectant upon the death of his mother, viz. 'all the towns and lands of Kilmoylermore, Kilmoylerbeg, Coilmeask(?), Kilbran, Dranganmore and Blackfield' (Registry of Deeds, Dublin, 794.47.536382).
21. Last will and testament of Constantine Maguire, 'of Tempoe in the County of Fermanagh Esquire', 1 Sept. 1832 (National Archives, Dublin, T.9832a, 1835).
22. Trench, *Realities of Irish Life*, p. 51 describes similar use of bog-mould by Ribbonmen; and, p. 48, declares the main object of the Ribbon Society as being 'to prevent any landlord, under any circumstances whatever, from depriving a tenant of his land'.
23. *Clonmel Advertiser*, 16 Mar. 1836, evidence of Mrs Ellen Fitzgerald.
24. *Clonmel Herald*, 16 Mar. 1836.
24. *Clonmel Herald*, 16 Mar. 1836, evidence of Margaret Edgar.
26. *Belfast News Letter*, 5 Aug. 1828.
27. 'Caroline hats' were so called because originally made of beaver from Carolina, which was regarded as inferior in quality to Canadian beaver. The style remained popular in parts of rural Ireland until the early nineteenth century, by which time the hats were being made of cheap black felt. I am indebted to Elizabeth McCrum (Ulster Museum) for information about this and other costume matters.
28. *Clonmel Advertiser*, 16 Mar. 1836, evidence of Michael Luddy.
29. *Tipperary Free Press*, 16 Mar. 1836, evidence of Maurice Fitzgerald.
30. Sir Bernard Burke, *Vicissitudes of Families and other essays*, 3rd edn (London, 1859), pp 177-8.
31. Outrage reports, Co. Tipperary, 1836 (National Archives, 27/51 and 78).
32. Police report, dated 2 Mar. 1836 (National Archives, 27/97).

33. *O'Donovan's Letters 1834*, ed. Cunningham, pp 54 and 55 (note 2).
34. *O'Donovan's Letters, 1834*, p. 63
35. *The Enniskillener*, 20 Nov. 1834.
36. *Clonmel Herald*, 19 Nov. 1834.
37. *Clonmel Herald*, 19 Nov. 1834.
38. *Memoirs of Brian Maguire, Esq., late an officer in the Hon. East-India Company's Native Army in Bombay* (Dublin, 1811).
39. The marriage of Eleanor (Ellen) Maguire and William Henry Suffield MD, of Clifden, Co. Galway, took place on 1 June 1841 in St George's Church, Dublin.
40. *O'Donovan's Letters, 1834*, p. 69.
41. Will of Constantine Maguire.