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# Brothers at law: Chief Justice Frank Gavan Duffy and George Gavan Duffy\*

Patrick O'Callaghan, LLB (Dub) BCL (Oxon)<sup>†</sup>

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*The purpose of this article is to examine how the legal systems of Ireland and Australia were influenced by the presence of two half brothers, each of whom held high judicial office in their respective country: Chief Justice Frank Gavan Duffy of the High Court of Australia and George Gavan Duffy, President of the High Court of Ireland. The impact each had upon the nascent state brought into being, where they held the reins of power, is examined. So too, is the impact that the living environment in which each operated, had upon them.*

## INTRODUCTION

The thesis of this article is that a legal system is influenced by the people within them and by their values. Consciously or unconsciously, they give to the young state their view in life and how it should be lived. In this instance, the further idea is put forward that each judge was indirectly influenced by the rebel ideas and outlook of their father.

This examination is carried out against a unique canvas. Namely, the backdrop of two half brothers, each of whom attained high judicial office in different legal systems in their respective adopted country. Furthermore, each attained high judicial office at a time when the fundamental tenets of that chosen legal system were being laid down. Both had common roots.

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## BACKGROUND

Both men were the son of Sir Charles Gavan Duffy (1818-1903), a Young Irelander rebel in Ireland, who became an Australian patriot. The father's experience is remarkably different to that of his sons and it is useful to examine the father's experience, which had a profound influence on both his sons.

## THE FATHER: SIR CHARLES GAVAN DUFFY

In Dublin, as a young man, Charles Gavan Duffy,<sup>1</sup> the father of both judges, was an ardent nationalist, dedicated to the struggle for Irish Independence. In Melbourne, in middle age, he was a perceptive statesman who strove to bring about a federated Australia. Lastly, in Nice, in old age, he was a distinguished historian, recording the life he lived for the benefit of those who came after. Each of these different experiences are faithfully recorded in the father's autobiography, entitled *My Life in Two Hemispheres*,<sup>2</sup> a two volume work, which details his many experiences. It was the last of his published works.<sup>3</sup>

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\* This article is an edited version of a paper delivered at the annual Conference of the Irish Bar, which took place in Sydney, Australia on 14 August 2003, the 100th anniversary of the inception of the High Court of Australia. Thanks to both Professor Brian Fitzgerald, Queensland, and Michael Conlon, Dublin, for comments on this article in draft form.

<sup>†</sup> Barrister, Dublin.

<sup>1</sup> See O'Broin L, *Charles Gavan Duffy: Patriot and Statesman* (Dublin, 1967); Pearl C, *The Three Lives of Gavan Duffy* (University of New South Wales Press, 1979).

<sup>2</sup> Gavin Duffy C, *My Life in Two Hemispheres* (London, 1898; reprint Irish Academic Press, 1968).

<sup>3</sup> His other works were of an historical or political nature and included *Young Ireland* (1880 & 1883); *Four years of Irish History, 1845-49* (1883); *The League of North and South* (1886); *Thomas Davis* (1890); *Conversations with Carlyle* (1892).

Much of his final work was dedicated to setting out his own interpretation of Irish politics in the 1840s and 1850s and justifying the course adopted by him. This is chiefly a defence of his own policy of “independent opposition” and an attack on the approach adopted by the two other principal protagonists, Daniel O’Connell, the Home Ruler, and John Mitchel, the Young Irelander. The chief dispute with O’Connell concerned the conduct of the repeal agitation. Gavan Duffy believed O’Connell wished to abandon the repeal agitation in favour of an alliance with the English Whigs. The dispute with John Mitchel concerned Mitchel’s advocacy of the abandonment of constitutional agitation in favour of the use of physical force. Gavan Duffy’s own preference was for vigorous but constitutional agitation, whereby Irish Nationalists would build up a parliamentary party that would be truly independent of English parties and would gain their respect by its integrity. Sadly for Gavan Duffy, the one occasion when his preferred policy was tested, during the 1850s when he was leader of the Tenant League, was not a success. Gavan Duffy attributed this to personal differences with other persons involved in the process.<sup>4</sup>

In October 1855, after avoiding conviction in a series of treason trials, Charles Gavan Duffy set sail with his family, including the three year old Frank, for the recently established colony of Victoria. They arrived at Port Phillip on the *Ocean Chief* in early 1856. During his time in the State of Victoria, Charles Gavan Duffy served in three governments of Victoria as a Minister, including one term as Premier, and was knighted.

Whilst living these three different lives, the old patriot, Charles Gavan Duffy was married three times. His second wife was Susan Hughes – his first cousin. They married in 1847. Frank, the eldest son of that union, was born in 1852. Ironically, for a man who was to leave his mark on Australian society, Frank was born in Ireland. Susan Hughes was a highly cultured lady, who had studied music under Liszt and Chopin. Together they ensured that *The Nation* newspaper, which was the organ of Irish Nationalism of that era, was published clandestinely. For her, he wrote the poem and song “The Patriot’s Bride”, which indicates their love for one another and their joint concern for the Irish nation. In 1878, Susan died of tuberculosis.

Subsequently, in 1880, after he had finally returned to Europe from Australia, he married Louise Hall, a niece of his second deceased wife. George Gavan Duffy was the eldest son of this union. Ironically, for a man who was to leave his mark on Irish society, he was born in England at his maternal grandmother’s home, Rose Cottage, Rockferry, Cheshire on 21 October 1882. George and the three other children from that union were to see their mother die in 1888, when George was six years old.

## SIR FRANK GAVAN DUFFY

Sir Frank Gavan Duffy (1852-1936),<sup>5</sup> who subsequently became Chief Justice of Australia, was the eldest son of Charles Gavan Duffy’s second wife, Susan Hughes. Frank Gavan Duffy was born in Dublin in 1852. At the age of three, in October 1855, he emigrated with his parents to Australia. A few years later, he was sent to Stoneyhurst in England, to be educated. In 1869, he returned to Australia where he attended Melbourne University and studied law and arts. Subsequent to his graduation from Melbourne University, he was called to the Victorian Bar in 1874. In 1901, he became a King’s Counsel. Of high ability as an advocate, he is remembered by Chief Justice Dixon as a man who “could make bricks without straw in open court”.<sup>6</sup> He engaged in all the major cases, but was best suited to jury advocacy.

His judicial career began in 1913 when at the relatively advanced age of almost 61, he became the oldest person to be appointed to the High Court of Australia. Frank Gavan Duffy was appointed by WM Hughes, Attorney-General for the Fisher Labour Government of the day. He replaced Justice O’Connor, one of the three original appointments at the founding of the High Court of Australia, who

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Chiefly, the hostility of Ireland’s leading prelate, Archbishop Cullen and to the treachery of some of the League’s parliamentary allies. William Keogh and John Sadleir.

<sup>5</sup> See Fricke G, *Judges of the High Court* (Hutchinson, 1986) Ch 6.

<sup>6</sup> (1963-64) 110 CLR xiii.

had died in 1912. There is some suggestion, by Higgins biographer John Rickard, that one token Catholic was being replaced by another.<sup>7</sup> The appointment of the future Justice Gavan Duffy, was warmly welcomed by all members of the legal profession and was a popular appointment.

As a judge, his judicial quality won the highest praises. His judicial colleague, Mr Justice Starke, praises his "acute logical intellect which was responsible for so much of his success".<sup>8</sup> Sir Robert Menzies regarded Sir Frank Gavan Duffy highly, commenting that he:

enjoyed the Socratic methods of the High Court, freely questioned and answered counsel, and enjoyed the argument hugely, as became a born and experienced dialectician. If his judgments were usually brief and sometimes perfunctory, his activities in the argument had usually helped the judgment of others.<sup>9</sup>

In January 1931, the then Chief Justice Isaacs, retired to take up appointment as Governor-General. The honour of becoming Chief Justice of Australia was bestowed upon Justice Gavan Duffy by the Labor Government of the day. This was quite a surprise, given Frank Gavan Duffy's advanced age, of almost 79 years old. Subsequently, in 1932, he was appointed a Judicial Commissioner of the Privy Council and knighted. Guaranteed life tenure by the *Constitution*, he remained Chief Justice until 1 October 1935, when he retired. He died the following year, in 1936.

Frank took many things from his father, who spent much of his time in Australia engaged in politics. One of these is a love of poetry allied with an idealism, which was best given expression in that form. Very often the pragmatism, so necessary for political advance, was left to one side in the real world. His poem "A Dream of Fair Judges", first written in 1892 when Frank was 18 years at the Bar and later published in the *Australian Law Journal*,<sup>10</sup> echoes much of the idealism given expression in his father's poetry. Contrast the following verses of Frank's poem, *A Dream of Fair Judges* with those of his father's rebel song *Fag an Bealach*:

from *A Dream of Fair Judges*

And so I saw not him who left us last,  
Of whom men murmur with admiring stare,  
"Behold ideal justice, fair and fast" –  
But less fast were more fair. (to Mr Justice Hood)

from *Fag an Bealach*

Know, ye suffering brethren ours,  
Might is strong, but Right is stronger;  
Saxon wiles or Saxon Pow'rs  
Can enslave our land no longer  
That your own dissensions wrong her ...

## GEORGE GAVAN DUFFY

George Gavan Duffy (1882-1951),<sup>11</sup> by contrast, was the eldest son of Charles Gavan Duffy's third wife, Louise Hall. He was born in Nice, educated in France at the Petit Seminaire in Nice and at Stonyhurst in England, like his brother Frank. Academically, George was quite a success and he remained at Stonyhurst to complete their three year graduate course in Philosophy. Initially, he practised as a solicitor in London. In London in 1908, he married AM Sullivan's daughter, Margaret,

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<sup>7</sup> See Rickard J, *HB Higgins, The Rebel as Judge* (Allen & Unwin, 1984). Since that time, the number of Catholics on the High Court at any one time has expanded dramatically.

<sup>8</sup> (1935-36) CLR Preface.

<sup>9</sup> Menzies RG, *The Measure of the Years* (Cassell Australia, 1970) p 262.

<sup>10</sup> Gavan Duffy F, "A Dream of Fair Judges" (1945) 19 ALJ 43.

<sup>11</sup> See Golding GM, *George Gavan Duffy 1882-1951, A Legal Biography* (Irish Academic Press, 1982).

who herself came from a long line of a distinguished family, namely the last serjeant-at-arms of Ireland, Serjeant Sullivan.

His first contact with Ireland and the land of his father's birth was in 1916, when he volunteered to act for Sir Roger Casement who was on trial for high treason. Whilst this was clearly a step back into territory previously occupied by his father, it was particularly novel at the time for an English solicitor to become involved in the cause of Irish Nationalism. Subsequently, in December 1918, following election as an Independent candidate for the constituency of Dublin South, George Gavan Duffy became a member of the Sinn Fein Parliament and was one of the negotiators and signatories of the Anglo Irish Treaty in 1921, on behalf of the Government of the nascent Irish Free State. Subsequently, in January 1922, he became Ireland's first Minister for Foreign Affairs. Following re-election in June 1922, George's political career came to an end at the 1923 election.

Side by side with his political career George had developed his legal career. George had commenced practice at the Irish Bar in October 1917. In 1930, he became a Senior Counsel. His judicial career began as a Judge of the Irish High Court on 22 December 1936. For many years, he acted as a judge in Equity, given his ability and capacity in such matters. Subsequently he became President of the Irish High Court, the second highest judicial office in Ireland, in July 1946. The President of the Irish High Court is second in seniority among the judges, after the Chief Justice of Ireland. He died in office on 10 June 1951. As befitting a man who lived his life in a most devout manner, his funeral Mass was presided over by John Charles McQuaid, Archbishop of Dublin.

In his physical appearance, George Gavan Duffy is remembered as:

a thick set man of middle height, with a small well trimmed beard, fastidiously dressed, and had a cosmopolitan appearance. If seen without his wig and gown, he looked more like a wealthy savant of a continental university than an Irish lawyer. In the discharge of business, he was slightly formal in manner, but kind and, indubitably, of high mental calibre.<sup>12</sup>

Academic recognition of the decision of Gavan Duffy P have been many and he has many admirers. Chief among these are the sentiments of Professor John Kelly, who stated in the Dail on 14 February 1979 that "Judge Gavan Duffy was one of the greatest judge the State has seen. I believe that, were if not for him, the whole system of judicial review of the legislation here might never have got off the ground".<sup>13</sup>

## COMMON FEATURES

As befits two men who had a common father, there was much in common between the lives of Sir Frank and George Gavan Duffy. Both were the eldest son of, respectively, Charles Gavan Duffy's second and third wives. Both saw their mother die whilst still young. Frank's mother died when he was 16, whilst George's mother died when he was only six years of age. This undoubtedly influenced them greatly.

Their father chose a common education at the Jesuit College of Stonyhurst in England, despite their quite different upbringing. Stonyhurst is a well-known Lancashire public school with a Catholic ethos. Both were Catholic by birth and upbringing and remained so for the remainder of their lives. This found strongest expression in George Gavan Duffy.<sup>14</sup> Whilst a Judge of the High Court in Ireland, he created a sacerdotal privilege attaching to the priest-penitent confessional relationship in his decision in *Cook v Carrol* [1945] IR 515, upholding a priest's refusal to give evidence. The decision is additionally dubious, as both parties to the case, one of whom was the penitent to whom the privilege attached, wished the priest to give evidence. This over-zealous attachment to Catholic supremacy was probably<sup>15</sup> what led Judge Gavan Duffy into anti-Semitic comments in the celebrated

<sup>12</sup> Connolly, F (1976) Gaz ILS1 129.

<sup>13</sup> 311 Dail Debates 1109-1111.

<sup>14</sup> See *Roman Catholic Archbishop of Melbourne v Lawlor* (1934) 51 CLR 1 (judgment of Gavan Duffy CJ and Evatt J upholding a gift for a Catholic newspaper).

<sup>15</sup> See Golding, n 11, pp 129-142.

case of *Schlegel v Corcoran* [1942] IR 19, where he held it reasonable for a landlord to refuse consent to an assignment to a Jewish dentist.<sup>16</sup> This led one fellow judge, Mr Justice TC Kingsmill Moore to remark, to Gavan Duffy's judicial biographer, that Gavan Duffy's greatest contribution to Irish law was the protection of the liberty of the individual "except that he was a very devoted son of the Church".<sup>17</sup>

As befits the sons of a rebel leader, both men exhibit his great concern for the liberty of the individual. Sir Frank Gavan Duffy dissented in a series of decisions whilst Chief Justice of Australia, where it was sought to uphold the validity of state Acts. In *Attorney-General (NSW) v Trethowan* (1931) 44 CLR 394 he dissented from the majority, holding that the New South Wales Parliament could limit their own future legislative power by preventing abolition of the Legislative Council without a referendum. Similarly, in the *State Garnishee Case (New South Wales v Commonwealth [No 1])* (1932) 46 CLR 155), Justice Frank Gavan Duffy dissented from the majority who upheld legislation which created a drastic summary procedure for High Court "declarations" of state indebtedness to the Commonwealth to be enforced, without further judicial proceedings, by seizure of the revenues, including unpaid taxes, of the defaulting state. There was a similar concern by Justice George Gavan Duffy's part, in Ireland, to jealously guard against the over-zealous exercise of state powers, manifested in his decision in *Buckley v Attorney General* [1950] IR 67, the Sinn Fein Funds case. In that case, he struck down a 1947 piece of legislation which purported to grant all funds collected by the old Sinn Fein before the Treaty to a trust. His decision was upheld on appeal by the Supreme Court.

Their father's love and appetite for writing was inherited by both sons and each was the author of one or more legal texts whilst at the Bar. In Australia, in 1886, Frank Gavan Duffy wrote a book with William Irvine entitled *The Law Relating to the Property of Women*. He furthermore was the founding editor of the *Australian Law Times*, in 1879. He also wrote an annotation of the *Transfer of Land Statutes*. With Henry B Higgins, he wrote a textbook on the Insolvency Statute. In Ireland, George Gavan Duffy compiled a new edition of O'Connor's *The Irish Justice of the Peace*,<sup>18</sup> wrote a text entitled *A Register of Administrative Law*<sup>19</sup> and compiled a summary of the statutes in Saorstát Eireann for the first 21 years of its existence.<sup>20</sup>

Given their father's deep identification with the Irish Nationalist cause, both sons engaged in the cause of Irish Nationalism, even when it was professionally disadvantageous to do so. In the biography of Justice HB Higgins, *The Rebel as Judge*, a judicial contemporary of Sir Frank Gavan Duffy at the Bar and subsequently, on the High Court of Australia, it is recorded, that upon the arrival of John Redmond to the Australian colonies in 1883, both attended Redmond's first rally in Melbourne.<sup>21</sup> However, prior to the fateful meeting, whilst dining at the Maison Doree, both gloomily pondered what effect their appearance would have on their careers at the Bar. For George Gavan Duffy, the professional effect of representing Roger Casement at his trial for high treason in 1916 was to have his employment as a solicitor terminated by his fellow partners.<sup>22</sup> This was a matter which he discussed at length in correspondence with his elder brother, who was concerned at the effect it would have upon both him and his wife, Margaret.

Both were men of great warmth. George Gavan Duffy is remembered for his "ready wit and friendliness" and his "friends of all shades of political thought among his colleagues at the Bar".<sup>23</sup> Similarly, Sir Frank Gavan Duffy is remembered, upon the retirement of Dixon CJ from the High

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<sup>16</sup> See the trenchant defence and explanation of this decision of Justice Gavan Duffy by his son Colum Gavan Duffy in *Dublin Historical Record* (June 1983), reprinted [2002] 2 *Judicial Studies Inst J* 1.

<sup>17</sup> Golding, n 11, p141.

<sup>18</sup> A digest of criminal and quasi-criminal law from the year 1914, written as a supplement to O'Connor J, *The Irish Justice of the Peace* (Dublin, 1925).

<sup>19</sup> Gavan Duffy G, *A Register of Administrative Law in Saorstát Eireann, including the Statutory Rules and Orders from December 6, 1921 to December 31, 1933*.

<sup>20</sup> Gavan Duffy G, *A Calendar of the Statute Roll for 21 Years* (lists all valid Irish statutes 1922-1943).

<sup>21</sup> Rickard, n 7, pp 64-65.

<sup>22</sup> Montgomery Hyde H, *Trial of Sir Roger Casement* (London, 1960) p 47.

<sup>23</sup> Connolly SC, T (1976) *Gaz. ILSI* 177 at 178.

Court of Australia, as having “an infinite gift of humour which he brought here” (to the High Court).<sup>24</sup> The judicial biographer of the High Court of Australia, Graham Fricke, similarly adds the title “Fair, Fast and Fun-Loving” to the chapter he devotes to Justice Frank Gavan Duffy.<sup>25</sup>

Each son took from his father a love of politics. Even Frank, whose career is not so overtly political as that of George (he had no prior history in party politics before his appointment), spent many of his years as Chief Justice of Australia engaged in the political disputes of the day, which arose from the travails of the Labor Government of the day.<sup>26</sup> He further ensured that his son was appointed a judge of the Supreme Court of Victoria, before he retired as Chief Justice of Australia, as a condition of him leaving office.

Similarly, George took a thorough and active part in politics at the inception of the Irish Free State and held one of the pre-eminent political positions as Ireland’s first Minister for Foreign Affairs. This was many years after his first involvement in Irish politics, when he was involved before independence with Sinn Fein, for whom he previously had been active for many years. By letter dated 1 October 1907 Arthur Griffith, writing from 17 Fownes Street in Dublin, requested George Duffy to come and attend the infamous North Leitrim by-election.

A Chara

Would it be possible for you to come over and spend a couple of days in Manorhamilton. The election is next Friday and both your skill as a Solicitor and your name would be of material assistance. Wire me to Fownes Street. If you could possibly manage to come I shall be delighted.

Subsequently, both formed part of the first Free State administration after Independence in 1922.

## FRIENDSHIP

Throughout their long lives, there was a high degree of contact between both brothers. This occurred both on a familial basis and in a working context. This continued throughout both their lives, despite the age difference between them. One gets the impression of a mentoring relationship being in existence between the elder Frank Gavan Duffy and the younger less experienced George Gavan Duffy. One sees this mentoring role adopted by the elder brother, in correspondence, at a crucial juncture in the career of his younger brother, namely, the trial of Roger Casement. There was clearly a relationship of admiration by the younger brother at the achievements of his elder brother.

By wartime, in a letter from Frank Gavan Duffy to George Gavan Duffy dated 16th October 1916, immediately after the conclusion of the Casement trial in London, one gets a sense of the relationship between, and the feelings between the two brothers in relation to the events then taking place in their respective lives.<sup>27</sup> It is written on the headed notepaper of the High Court of Australia, Judges Chambers, in the handwriting of Justice Frank Gavan Duffy. It reads as follows:

My dear George,

Your letter reached me in due course. The Commissioners’ fees seem very small but there is no chance of increasing them unless the commissioners themselves take some joint action. In such a matter, as I dare say you know, general silence exists as general conduct. J [the writer’s son] has just undergone a double operation for appendicitis and adhesion of the intestines. He had a bad time but is now recovering. He is at present in the Country Reformatory. I am glad that Desmond got an opportunity of seeing you and your Wife before we went abroad. He wrote us saying you had been kind to him, and of Margaret he wrote with the usual enthusiasm. I say “usual” because she has captured the affections of all my traveller sons one after the other. J [the writer’s son] wrote her [in] any case and thank her from my wife and myself for her goodness to our boys. Desmond tells me she was very busy with you on the

<sup>24</sup> (1963-64) 110 CLR xiii.

<sup>25</sup> Fricke, n 5.

<sup>26</sup> See Blackshield T, Coper M and Williams G (eds), *The Oxford Companion to the High Court of Australia* (Melbourne: OUP, 2001) p 297, “The Gavan Duffy Court”.

<sup>27</sup> See National Archives MSS 5581 No 80.

Casement Trial. I hope neither of you is the worse for the strain and anxiety which it must have necessitated. I confess that like LE I find the position in Ireland "hard to understand", but then even when I was with you in the flesh I could never understand what are the offences of the Redmond Party or at how anyone could mistrust the honesty of John Dillon. I do not for a moment suggest that you conducted the case of a defence for any publicity sake but it was, of course, inevitable that comment and criticism of all kinds should come of it. I am sure you embarked on the business because you thought it was your duty to do so and I trust that you will, on the whole, gain benefit rather than suffer loss in your profession from having done so. At this distance it looks as if the case was hopeless from the beginning but of course I know nothing of the details. Yesterday was Jack's (72nd) birthday, the family lunched together at my house and we talked of the war and of our people at the other side of the World. Good Bye. The best to you and your family.

Your affectionate Brother.

Frank.

It should be noted that the letterhead of George Gavan Duffy as solicitor recites the fact that he was a commissioner to take affidavits for the High Court of Australia and for the Supreme Court of Victoria. This explains the first half of the letter.

The letter was written during World War One, when sons of Frank Gavan Duffy were engaged in the conflict "at the other side of the World". At this time of war, one sees the obvious parental concern felt by Frank Gavan Duffy. The following day his son, Charles (Leonard) arrived in France, for the second part of World War One.<sup>28</sup> He had previously served in the trenches in Gallipoli. A few short days previously, unknown to his father when writing this letter, Charles had suffered from gas poisoning at Poperinghe, on 5 October 1916. Another son, Frank (Brendan) was also in France on duty,<sup>29</sup> on that date, suffering from sickness and the horrors of war. There are several other letters on file in the National Archives of Australia, in Canberra, written on High Court of Australia notepaper, from Justice Gavan Duffy, concerning the welfare of his sons whilst in the service of the Australia army.

What is also clear is that throughout their lives both brothers identified strongly with the ideals laid down by their rebel father, Charles Gavan Duffy. One sees an Australian High Court judge advising a future Irish High Court judge in relation to the conduct of a case which took place in London – at all times against an assumed common identity of Irish Nationalism. This identification with the notion of Irishness must be juxtaposed with a strong sense of duty to the Crown, which included laying down one's life, in the cause of war. It should be noted that Frank Gavan Duffy also served the Crown as a Privy Councillor.<sup>30</sup>

## NOVEL FEATURES

Justice George Gavan Duffy will forever be remembered in Ireland for his contribution to the formulation of a native jurisprudence separate and distinct from that of England and Wales, which reflected the different social and economic ethos prevailing in the island. His famous pronouncement in the case of *Re Tilson* [1951] IR 1 at 15, which concerned a father's claim to the proper religious education of his children, bears repeating, as it is a rallying cry for the development of a native jurisprudence:

The strong language of these articles [of the 1937 Constitution of Ireland] arrests attention; it must have been chosen, of set purpose, because the grave subject-matter demanded that Ireland today should define her position in unequivocal terms. Thus, for religion, for marriage, for the family and the children, we have laid our own foundations. Much of the resultant policy is both remote from British precedent and alien to the English way of life, and, when the powerful torch of transmarine legal

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<sup>28</sup> Series B2455 SERN MAJOR National Archives of Australia.

<sup>29</sup> Series B2455 SERN 4870 National Archives of Australia.

<sup>30</sup> Series A432 National Archives of Australia.

authority is flashed across our path to show us the way we should go, that disconformity may point decisively another way.<sup>31</sup>

This approach rested easily with the Irish Nationalism bestowed upon the judge in childhood by his father.

By contrast, Sir Frank Gavan Duffy, who became Justice of the High Court at the ripe old age of 61 and Chief Justice at the even riper old age of 78, brought economy of effort to his position. Sometimes, he is derided for this economy of effort.<sup>32</sup> One commentator derided him as a “jovial Pickwickian character with a taste for stout-and-champagne”.<sup>33</sup> However, given his age and longevity, there is something to be learned there. Justice Frank Gavan Duffy gave possibly the shortest and most nebulous judgment in the history of the High Court of Australia in the decision in *R v Murray & Cormie; Ex parte Commonwealth* (1916) 22 CLR 437, where his “I say nothing” can still be revered for its originality, ambiguity and lack of classification. The issue being addressed – whether an application for leave to appeal could be heard, outside the time permitted for such appeals – seems to have reduced him to the least divisive pronouncement, given the lack of unanimity amongst his judicial colleagues. And the most economy of effort!

It is fitting that the postscript of his judicial colleagues should read:

He had a large acquaintance with men and affairs and did not allow the burden of his work to prevent a full enjoyment of life. He was welcomed in many circles for his quick wit and was well known for his great vitality.<sup>34</sup>

Give me stout and champagne!

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<sup>31</sup> Cited in Megarry RE, *A Second Miscellany at Law* (London, 1973) p 233.

<sup>32</sup> Blackshield, et al, n 26, pp 298-299.

<sup>33</sup> Tennant K, *Evatt: Politics and Justice* (Angus & Robertson, 1981) p 75.

<sup>34</sup> (1935-36) 54 CLR Preface per Starke J.