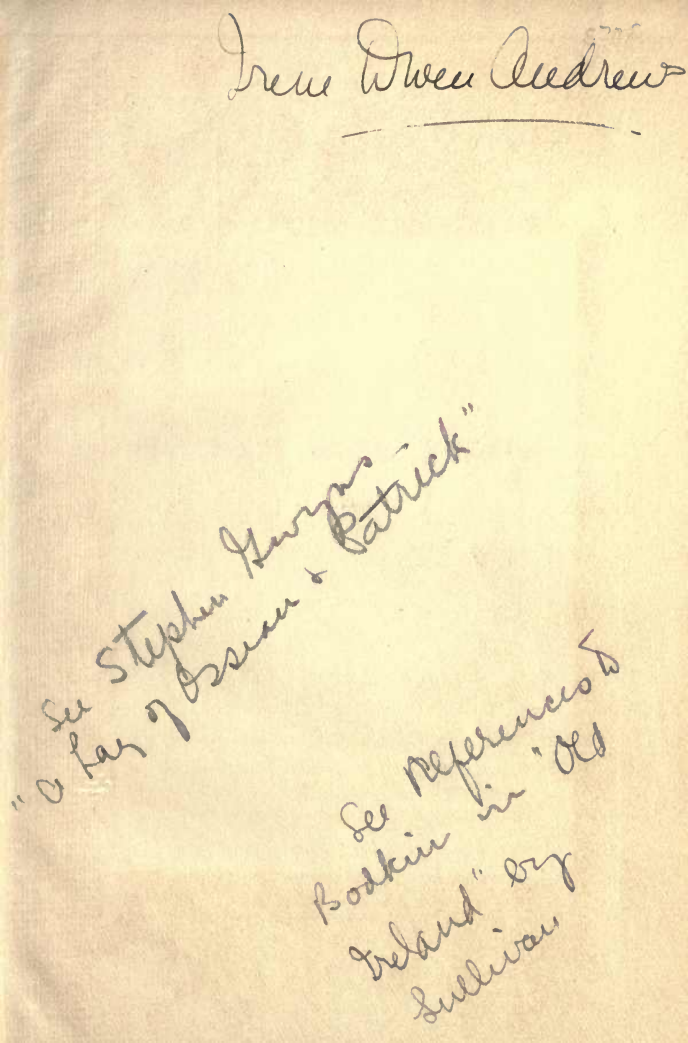
FAMOUS IRISH TRIALS

By M. McDONNELL BODKIN, K.C.


IRENE OWEN ANDREWS


Irene Owen Andrews
See Stephen Gwynn "A Day of Ossian & Patrick"
See References to Boston in "Old Ireland" by Sullivan

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BY M. McDONNELL BODKIN, K.C.

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TO

MY DAUGHTER AND SECRETARY

EMMA BODKIN

FROM WHOM I RECEIVED

MOST VALUABLE ASSISTANCE

CONTENTS

HOW AND WHY

When I accepted the invitation to write a book on famous Irish trials I did not quite realize the abundance of material available. I speedily discovered that there have been famous Irish trials enough to fill, not a book merely, but a book case full: when, embarrassed by the difficulty of selection, I consulted my friends I found, like the old donkey man in the fable, contradiction and confusion amongst my advisers. "Murders." counselled one, "there is nothing the public so love to read as a good, savage, sensational murder. A murder trial is always the most popular item in the newspapers, that's why detective stories are attractive, they generally begin or end with a murder."

"Take my advice, old man," advised another, "don't make a second-class Newgate Calendar of your book. Drop murders. The taste that sets people reading murder trials and visiting the Chamber of Horrors is morbid and oughtn't to be encouraged. Budge and Toddy in *Helen's Babies* deserved a spanking for their 'blugginess.' What you are after is innocent enjoyment for your readers, 'to give delight and hurt not,' and all that sort of thing. Pitch them some humorous cases with an honest laugh in them. Breach of Promises, or Libel, or Slander of the light fantastic description. You'll find lots of such trials if you hunt them up."

A grave adviser insisted on political trials, which he declared to be of surpassing importance. "They have as much fun and excitement as the others," he said, "and they are instructive as well. '*Omne tulit punctum*,'—you know the old tag from Horace, act on it, and you'll make no mistake. The history of Ireland, for more than a century is written in the evidence and verdicts of political prosecutions. Prosecution and reform—prosecution and reform—that's the political litany of Ireland, if you want to write a book worth reading or keeping, something better than a railway-stall catch-penny, stick to political trials."

What was I to do? I recognized that there was something to be said for each of the suggestions, and I compromised between the three. I have, though with some hesitation, included a couple of murder trials in the book, but I have selected them, not for the gruesome details of crime, but for the curious incidents or interesting illustrations of character that were brought to light at the trial.

The inclusion of an amusing Breach of Promise and an extraordinary Will case will, I trust, help to leaven the book with humour, but for its main interest I have relied on political or quasi-political prosecutions as at once more exciting in their progress and more important in their result than any other form of trial.

One other question somewhat perplexed me at the inception of the work. Should I begin at the beginning or near the end? Each generation has its own series of famous Irish trials, should I make my selection from all or one? After some hesitation I resolved to deal

mainly with our own time. There have been famous trials enough for my book in the present generation; trials of which old folk still gossip, and of which young people have vaguely heard, and to those I have, with a few noteworthy exceptions, confined my collection. In one or two of these trials I have myself played an humble part, and I venture to hope that writing with an inside knowledge of the details I have been able to enhance their interest for the reader.

FAMOUS IRISH TRIALS

A MAN OF MANY WILLS

LONGFORD *v.* PURDON

Early in the seventies of the last century there lived in a spacious mansion at Cookesborough, in the county of Westmeath, an eccentric old gentleman of over eighty years of age, named Adolphus Cooke, who was possessed of landed property worth something over £5,000 a year. In his youth he had been a soldier, and had served in the Peninsular War, but in later life he had settled down on his estate unmarried, and having no near relative, he devoted himself to literature, and amassed a library of over 8,000 volumes. Apart from current literature, in which he was well read, Mr. Cooke was a fine Greek scholar, and a little time before his death while confined to his bed he used to read the plays of Sophocles aloud with a quaint running comment on the context.

But eccentricity grew on him with declining years. He abjured Christianity, doubted the existence of God, and, as was alleged, professed his belief in the doctrine of Pythagoras. At one time he fancied he would be transmuted after death into an owl, at another time into a fox, and directed that the fox coverts on the estate should be prepared for his final reception. He gathered piles of stones to supply materials for crows' nests, and having faith in the inherent mildness of all animals he insisted on interviewing a bull, from which he was rescued by one of his servants when in imminent peril of his life. He was at one time anxious that he should be buried in a vault

in front of his own halldoor seated on a chair of white marble, though he was afterwards diverted from that project.

But his eccentricity chiefly displayed itself in will-making. In all he made about fifteen wills and codicils: in point of fact, went about, as it were, with this splendid estate of £5,000 a year in his hand offering it first to one person then to another as whim prompted, and revoking each disposal for the most trivial cause, or for no cause at all. The alleged cutting down of a tree, the refusal to subscribe ten shillings to some fund, or the witnessing a lease at his own request was pretext sufficient for the extrusion of one heir and the instalment of another.

There was a Warwick in this curious drama, a power behind the throne, who it was alleged exercised an overmastering influence over Mr. Cooke. The name of the alleged will-maker was the Rev. Mr. William Lyster, a rector in the neighbouring parish of Killucan.

First, Mr. Wellington Purdon, a distinguished and successful engineer, and Mr. Richard Purdon, a doctor of eminence in his profession, his nearest relatives, were the beneficaries under his will. They were ousted on various grounds, falsely, as it was alleged, urged against them by the Rev. William Lyster. Mr. Richard Cooke, a more distant relative and a nominee of the Rev. Mr. Lyster, was next installed as heir presumptive, but was deposed in his turn to make room for a new comer. At last Mr. Adolphus Cooke, once more in search of an heir, had his eyes directed (as it was alleged, by the Rev. Mr. Lyster) to the family of Lord Longford, who resided in the neighbourhood of Cookestown.

The following letter conveyed the welcome announcement to Lord Longford that £5,000 a year was coming his way:—

"COOKESBOROUGH,

"*August* 28, 1873.

"MY LORD—The day I visited Pakenham Hall it was not a mere ceremonial one. I was to communicate to you a matter of some importance which

was a wish on my part to select one of your sons as reversionary heir to this estate—say the youngest—as I have no family, and whose Christian name or names I should be glad to know. I am induced to make this offer conceiving the estate will receive important benefits by its passing into the possession of one of your offspring who will, no doubt, erect substantial cottages in lieu of those hovels around me. I have given details of how the estate is circumstanced, and am, my lord, your obedient servant,

"ADOLPHUS COOKE."

Lord Longford replied as follows without delay:—

"PAKENHAM HALL,

"*29th August*, 1873.

"MY DEAR MR. COOKE—I was much gratified by your visit to Pakenham Hall, and I should have been glad if you had been at home when I lately called at Cookesborough. I am sincerely obliged for your letter, received this morning. The whole of the Christian names of my youngest son are the Hon. Edward Michael Pakenham. In his name I gratefully accept your favourable dispositions towards him, and in his name I can assure you that any wish of yours shall be faithfully observed hereafter. My boy is now seven and a half years old, and can afford to wait a long time for his inheritance. I shall take an early opportunity of again visiting Cookesborough at an hour when I can hope to meet you, and I beg you to accept the grateful assurance of yours,

"LONGFORD."

Lord Longford having joyously accepted the offer, the will was drawn in favour of his son, and signed by the testator while sick in bed a year or so before his death. When Mr. Adolphus Cooke died in the year 1870 at the age of 86 years, Lord Longford entered into possession of the Cookestown estate as trustee for

his son, and burned a vast pile of documents, including the greater part of the diary of the testator.

Mr. Wellington Purdon, as heir at law, brought an action of ejectment, which was tried at the Assizes in Mullingar before the late Baron Dowse and a special jury. A brilliant Bar was engaged on either side:—

Counsel for the Plaintiff, Mr. Wellington Purdon, were—Mr. McDonagh, Q.C. (specially retained); Mr. Gerald Fitzgibbon, Q.C. (late Lord Justice Fitzgibbon), (specially retained); Mr. S. Walker, Q.C. (late Lord Chancellor of Ireland); and Mr. Carton (late County Court Judge), instructed by Mr. William Manly.

Counsel for the Defendant, Lord Longford, were—Mr. James Murphy, Q.C. (special); Mr. F. L. Dames, Q.C., and Mr. T. P. Law, instructed by Mr. R. Reeves.

For the Defendant—Mr. Lyster, Mr. Byrne, Q.C., and Mr. J. C. Ferguson, instructed by Messrs. Barlow and Law.

It chanced that while studying for the Bar I had assisted in reporting this remarkable trial for the *Freeman's Journal*. Naturally the sensational incidents, the extraordinary circumstances of the case, and the enormous stake involved in the litigation made a vivid impression on my memory.

The trial lasted nine days, and the excitement never flagged. Baron Dowse, whom I have alluded to in my *Recollections* as a "fellow of infinite jest and most excellent fancy," heightened the interest of the proceedings by many brilliant flashes of humour.

Mr. McDonagh, Q.C., who opened the case for the plaintiff in a speech of great power, censured the conduct of Lord Longford in accepting the execution of the will in favour of his son under the peculiar circumstances of the case.

Baron Dowse. There is no implication of any kind on the character or conduct of Lord Longford. He only did what any other man would do, took property when he got it. The question now is whether or not he is able to keep it.

Mr. McDonagh. I agree with your lordship as to the

last, but whether he should accept property so obtained I reserve my own opinion.

Baron Dowse. I would not trust yourself if you got the chance. (Laughter.)

Dr. Charles Purdon, brother of the plaintiff, the first witness examined by Mr. Fitzgibbon, deposed that he believed that at the time the testator, Mr. Cooke, made the will giving him a life estate he was quite competent and was subject to no outside influence. When Mr. Lyster was rector of Killucan he often dined with Mr. Cooke, and the old man usually took more wine than was good for him, and witness expressed his disapproval to Mr. Lyster.

Baron Dowse. Did Mr. Lyster take more wine than than was good for him?

Witness. Oh, my lord, Mr. Lyster could carry a good deal. (Laughter.) Mr. Lyster, Dr. Purdon swore, entertained ill-feeling towards him because of some dispute in which he had acted as magistrate. Witness detailed how he had been struck out of the will because a tree had been cut down without his or testator's knowledge. While witness was residing at Cookesborough Mr. Lyster told him that he was talking to Lord Longford, and he told his lordship that "Mr. Cooke had left his estate for life to witness." Lord Longford said, "I wish he would leave it to me." Mr. Lyster said, "It would be a nice thing for your second son," and Lord Longford said, "It would be a nice thing for my second son's papa." (Laughter.)

Mr. Richard Cooke, who was the heir under one of the wills, examined by Mr. Fitzgibbon, deposed that the old man had directed that he should be buried in front of the door sitting in an arm chair. Witness explained how he had been struck out of the will for witnessing a lease at the request of the testator, a lease which the testator afterwards regretted.

Mr. Wellington Purdon stated that on one occasion he had been asked by Mr. Lyster for ten shillings in charity and refused. Mr. Lyster had subsequently said that the refusal had cost him £5,000 a year.

Cross-examined by Mr. Murphy, he said that when he had been asked for ten shillings by Mr. Lyster he thought not that Mr. Lyster wanted to appropriate the money for himself, but that he wanted witness to refuse the money in the presence of Mr. Cooke; witness thought that at the time, and he thought so still.

Miss Kate Vance, examined by Mr. Fitzgibbon, said she remembered being with Mr. Lyster at Cookesborough. As they were driving past, Mr. Lyster pointed out a stump of a tree in the long avenue, and said that "only for that tree Dr. Purdon would have had the property."

Mr. John Mee, examined by Mr. Fitzgibbon, deposed that he had been gardener to Mr. Adolphus Cooke. He remembered Mr. Lyster coming into the garden with a present of vegetables. Mr. Lyster said to Mr. Cooke: "This garden would grow good vegetables if it was not cut up. Come here till I show you how the place was destroyed by cutting down the trees." When they came back Mr. Lyster said to Mr. Cooke: "Those Purdons will destroy the place if they get it. I will get you an heir without the Purdons."

Mr. Francis McNulty said on one occasion Mr. Cooke took him about the place to look at his improvements. He showed him a heap of stones which he had gathered for the crows to build their nests, and asked him if it was not a great improvement. Witness said it would be if the crows would use it. They met a tenant's daughter on the lawn and she spoke to Mr. Cooke about a promise to send her to America. Mr. Cooke said he would not, "for if she was on deck the wind would get under her crinoline and carry her away, and he would be tried for murder." Mr. Cooke seemed quite serious, he did not think Mr. Cooke of sound mind.

[To the reader this bit of evidence will probably suggest rather the possession of sly humour on the part of Mr. Cooke than the absence of testamentary capacity. It seems pretty plain that on that occasion he was pulling the leg of the unsuspecting Mr. McNulty.]

Mr. Benjamin Hannen, a country magistrate, examined

by Mr. Fitzgibbon, deposed "that on one occasion Mr. Lyster told him he had put Mr. Wellington Purdon out of £5,000 a year for ten shillings. Wellington Purdon had refused to give him ten shillings for the Widow McCabe, and the next time Mr. Lyster visited Cookesborough he mentioned it to Mr. Cooke in this way. He asked Mr. Cooke was a person who refused to give ten shillings in charity a proper person to receive £5,000 a year. Mr. Cooke said 'no,' and Mr. Lyster said 'the case is your own, you are going to leave £5,000 a year to Wellington Purdon, and he refused to give me ten shillings for the Widow McCabe.'"

Mr. Lyster also told him that on one occasion he said to Lord Longford, "whoever got the Cookesborough estate should take the name of Cooke, and that Lord Longford said he had no objection to taking it on that condition." A short time ago Mr. Lyster told witness publicly in a railway carriage that "he had got a few acres of land from Lord Longford, and that he expected to get more at Cookesborough when the case was over."

The Reverend George M. Dennis deposed he was a cousin of Mr. Cooke; he regarded him as very eccentric and destitute of religious belief. Witness once said to him in the library, you have got a fine library, but you have not got one book, the Bible. Mr. Cooke said he would as soon have the Koran.

Mr. Murphy, in his opening speech for the defendant, argued that the want of belief in revealed religion was no proof of want of testamentary capacity, and instanced Hume Gibbon and John Stewart Mill. Against the suggestion that the testator believed after death he would be turned into a fox, counsel put the fact that he subscribed to the county hunt. Was it, he asked, the plaintiff's case that Mr. Cooke, believing he would be turned into a fox, agreed wtih the foxhunting enthusiast that hunting was a good thing, because, "men liked it, the horses liked it, the hounds liked it, and if they could get the private opinion of the foxes it would be found they liked it to." (Laughter.)

Counsel disclaimed any undue influence on the part of Mr. Lyster.

Baron Dowse said there was often great difficulty discriminating between undue influence and the want of testamentary capacity.

Mr. Fitzgibbon. He may be led, my lord, but not driven, it is said in the books.

Baron Dowse. A good deal would depend on the strength of the cord. (Laughter.)

In concluding his speech, Mr. Murphy asked the jury to discard all prejudice, and by their verdict to wipe away the slur of slander which was sought to be cast on the character of Lord Longford. On the ground of simple justice he demanded their verdict for Lord Longford's infant son.

Mr. John Fox Goodman proved the due execution of the will in favour of Lord Longford's son, and the testamentary capacity of the testator.

Mr. Murphy objected to the form of some of Mr. McDonagh's questions on cross-examination.

Mr. McDonagh. Remember, I am cross-examining.

Mr. Murphy. Even in cross-examining there should be a little propriety.

Mr. McDonagh. Propriety! propriety comes well from you after the wilderness of nonsense through which we were compelled yesterday to wander.

Mr. Murphy. Pray do not get excited.

Mr. McDonagh. Observations have been made that I will not tolerate, and that ought not to be made.

Mr. Murphy. I say that statement is untrue.

Baron Dowse. I am sure that on consideration you would not characterize Mr. Murphy's speech as a wilderness of nonsense.

Mr. McDonagh. Those are days in which insolence thrives, but I will not permit it. My character——

Mr. Murphy. Nobody wants to take your character, your character is beautiful.

Mr. McDonagh. I will not tolerate this, sir.

Mr. Murphy. You wont tolerate it.

Mr. McDonagh. You should stop this, my lord.

Baron Dowse. How?

Mr. McDonagh. By telling both of us to sit down.

Baron Dowse. Then, both of you sit down.

Mr. Murphy. I hope we have now done with lectures on propriety.

Mr. McDonagh. I never hoped to teach propriety to you.

Baron Dowse. You have both let off sufficient steam, and I am sure Mr. McDonagh will withdraw the expression about Mr. Murphy's speech being a wilderness of nonsense.

Mr. McDonagh. It was an expression of belief, my lord, and I decline to withdraw it.

Mr. Murphy. I don't want it withdrawn. It might then be supposed that I cared a pin for what he says.

Mr. McDonagh (very excitedly). I am ready to maintain what I say either here or anywhere else you choose, if you are not satisfied.

Mr. Murphy. I would not fight you with bulrushes. If Mr. Cooke's will is to be set aside because he challenged a man to a duel, the same argument will now apply to Mr. McDonagh.

Baron Dowse. That will do, gentlemen.

For the defendant, Dr. Williams deposed that he was very intimate with the late Mr. Adolphus Cooke; he believed him to be perfectly sane, and did not think him easily influenced when his suspicions were aroused.

On cross-examination by Mr. Fitzgibbon, witness said he knew a Dr. Dennis. Mr. Cooke had told him that Dr. Dennis had stolen a saddle and bridle. He told him that he had sent a horse to Dr. Dennis to get rid of him, and that Dr. Dennis had kept the saddle and bridle; when Mr. Cooke charged him with having stolen the bridle and saddle Dr. Dennis offered to return them, and Mr. Cooke said, sir, you have added insult to injury; do you think I would become the receiver of stolen goods? (Laughter.)

Witness did not believe Dr. Dennis capable of theft. On one occasion Mr. Cooke said to him, "This is the

first time I remark my voice becoming that of a screech owl." He was very hoarse at the time.

Baron Dowse. A man may be as hoarse as a raven and not imagine he is going to be a raven.

Mr. Fitzgibbon (to witness). What did you say to Mr. Cooke? I said I was very fond of screech owls.

Baron Dowse (in great surprise). Are you really? Yes, my lord. (Laughter.)

Mr. Fitzgibbon. And did you think that Mr. Cooke then alluded to any change that was to take place after his death?

I did. I knew he held some peculiar opinions.

Did you believe that he alluded to his spirit passing into a screech owl when he died?

I did.

Baron Dowse. I do not think that in itself would affect his will. If he believed that he would become an elephant, I would not set aside his will on that account.

Mr. Fitzgibbon. But, my lord, we must consider the whole condition of the man's mind.

Mr. Murphy. Horace speaks of the feathers growing on his fingers when he was about to become a swan.

Mr. Fitzgibbon. Are you going to make out that poor Mr. Cooke was as great a poet as Horace? You have already shown him to be as great a philosopher as Hume.

Baron Dowse. Macœnas has a somewhat similar delusion. Do you think his will should be upset on that ground?

Mr. Fitzgibbon. I am really not acquainted with the law of wills at that period, my lord.

The story of the bull, witness continued, was the first that ever Mr. Cooke told him. He said the bull found him in the field, and knocked him down, and broke several of his ribs.

Did he tell you how it happened?

Yes, he said he was going to be put out of his own field by his own bull. (Laughter.)

A number of other witnesses were called, including a naval chaplain and a Catholic priest, to prove the testa-

mentary capacity of the testator. Dr. Stokes had for the last three years been attending Mr. Adolphus Cooke. He always considered him a very sharp, shrewd man with a will of his own. On one occasion he visited him he found him reading Sophocles in bed. He read a passage in Greek, and asked witness if it was not beautiful. Witness said it was.

Baron Dowse. It was pure Greek to you?

Witness. It was, my lord, but I did not tell him so. (Laughter.)

Lord Longford deposed to the perfect sanity of Mr. Cooke. After the receipt of the letter from Mr. Cooke (already mentioned), witness on the part of his son accepted the offer. On the 7th of September he visited Mr. Cooke and remained a quarter of an hour. Mr. Cooke spoke most formally and precisely. There was a pony in the yard, and he sent it as a present to his heir. He had always found Mr. Cooke perfectly sensible and capable.

Cross-examined by Mr. McDonagh, he admitted that long before he heard from Mr. Cooke of his intention to leave the property to his son he had a conversation with Mr. Lyster. He could not remember the terms, it might be that Mr. Lyster said it would be a good thing if the estate were left to his second son, and that he had said it would be a good thing if it were left to his second son's papa. He had had frequent visits from Mr. Lyster.

Then came a startling piece of evidence.

Pressed by Mr. McDonagh, witness admitted that since this case had begun he had given back to Mr. Lyster all the letters he had from him to the number of twenty.

Mr. McDonagh. Why, my lord, did you adopt that extraordinary line of conduct?

Witness. I had heard that there was an extraordinary charge brought against him which I could not understand, and which he could not understand, and I gave him the letters because he wanted to clear his character, and the dates and entries might be of use to him.

Mr. McDonagh called for the letters, which the counsel for the defence declined to produce.

On further cross-examination, witness admitted that he had recently taken into his employment as bailiff, a man named "Col" Clarke, who was married to Mr. Lyster's housekeeper.

Baron Dowse. Did you employ the husband of Mr. Lyster's housekeeper as your bailiff in order to reward Mr. Lyster for getting a will in favour of your son?

Mr. McDonagh. I hardly think it is right for your lordship to anticipate my questions, and attempt to blunt my argument.

Baron Dowse. The judge has a right to ask his own questions.

Mr. McDonagh. Yes, my lord, when his own time comes. (To Lord Longford.) Do you think, as an abstruse question, an estate should be left in the family of the proprietor?

Lord Longford. I decline to answer that question.

Baron Dowse. Do you think a man, who is able to make a will, should be allowed to dispose of his own property?

Lord Longford. Certainly, my lord.

Mr. Lyster had been conspicuous in court during the earlier days of the trial, but towards the end he disappeared. To the utter amazement of the court and the public, the defendant's counsel closed their case without calling him.

At the close of the evidence for the defence, plaintiff asked for a direction on the ground that undue influence had been proved on uncontradicted evidence, the defendant asked for a direction on the ground that testamentary capacity had been established, and there was no evidence of undue influence to go to the jury.

Baron Dowse refused both applications, and said he would send both issues to the jury.

Mr. Dames then summed up the evidence for the defence. He especially concerned himself with the disappearance of Mr. Lyster, and explained he had seen enough of the manner in which the case was conducted

to make him naturally reluctant to submit to a sensational cross-examination in which all the foibles of his life would be unsparingly opened; all the tumblers of punch which he had taken would be numbered, and all the careless and trivial conversations twisted to his disadvantage.

Mr. Fitzgibbon—then the most eloquent advocate at the bar—closed the case with a powerful speech for the plaintiff. He submitted, as he believed, with the sanction of the learned judge, that if they found the plaintiff was once influenced by fraudulent misrepresentation to the exclusion of his right heirs, no subsequent will, however duly executed, however deliberately and completely drawn by the soundest, clearest intellect could stand.

Baron Dowse. Precisely, provided the impression created by the undue influence was still in existence.

Mr. Fitzgibbon. I entirely accept your lordship's qualification.

Baron Dowse. Then you see how we will agree though you have fallen foul of me.

Mr. Fitzgibbon. I have not fallen foul of you; that must be a delusion on your lordship's part.

Baron Dowse. I think I will be able to show you by-and-by that I have sound testamentary capacity.

Mr. Fitzgibbon. I shall endeavour to influence your lordship, not unduly, I hope.

Counsel then detailed the various eccentricities of the testator as displaying a mind easily influenced, concluding with the exclusion of one heir for "the alleged cutting down of a tree," and another for "witnessing a lease." These things were trifles, but he asked the jury to consider the conduct of a man who must have known how these trifles would influence the mind of the testator, and that those straws which he set in his way were to him lions in his path. Counsel did not desire, like Mr. Murphy, to import poetry into the case, but to argue it upon the evidence; but he might remind his friend, Mr. Murphy, that his great authority had said: "Trifles light as air are to the jealous confirmation strong as proof of Holy Writ."

Counsel commented strongly on the disappearance of Mr. Lyster. They were asked what were the motives of the reverend gentleman in influencing Mr. Cooke against his relatives. Amongst them doubtless was that love of domination seldom absent from a gentleman of his cloth.

Baron Dowse laid down the law for the jury in a speech at once vigorous and humorous. Alluding to the evidence of belief, or the absence of belief, on the part of Adolphus Cooke, he said "that, thank God, was a question which could no longer in this country affect a man's testamentary capacity, though at one time the worshippers at the most ancient shrine of Christendom if they were not deprived of testamentary capacity were at least deprived of power of having anything to dispose of by testaments, which came to much the same thing."

He then dealt with the question of undue influence. Mr. Fitzgibbon would have them believe that "while Mr. Cooke was dancing before the footlights on the platform of testamentary capacity, Mr. Lyster was pulling the strings behind the scenes. The jury," he said, "were not to believe that Mr. Cooke was of unsound mind because he had made too many wills, for the same reason that 'the stars above are shining because they've nothing else to do.' An interesting novel had been written entitled *Japhet in Search of a Father*, and an equally interesting book might be called *Adolphus in Search of an Heir*. The testator was entitled to make wills every hour of the day, nor did such things as eccentricity of dress destroy his testamentary capacity. His lordship had a belt on yesterday while he had none on to-day, and he hoped the jury would not consider his testamentary capacity any the weaker to-day."

"As to Mr. Lyster," said the Judge, "the last character that could be assigned to him would be that of missionary. Nobody could accuse him when he went to Cookesborough of putting his ecclesiastical leg forward."

"Mr. Cooke," his lordship continued, "was proved to have read that book called *Froude's History*, in which

was to be found more fiction than perhaps in any other work dignified by the name of history, more especially in the three volumes entitled *The English in Ireland*, where it was proved that Henry VIII was an excellent member of society and an admirable husband. This many people would regard as a delusion, but it would be no ground for impeaching Mr. Froude's testamentary capacity.

"The estate of Cookesborough seemed to prey on Mr. Cooke's mind, and doubtless if he could he would do what the parish priest said he would wish to do with the cow about which his housekeeper and niece were fighting, when he was dying—to take it with him if there was grass where he was going. But Adolphus did not believe he was going anywhere, so that consolation was denied him.

"If a shut mouth made a wise head," continued the Judge, "Mr. Lyster would never have a wise head unless he had it manufactured in some other manner. He seemed to have been in all this case as light, as variable, as transparent, as a bubble that is blown from a pipe, and he had completed his similitude by vanishing into thin air at the conclusion."

Having fully dealt with the evidence of undue influence, his lordship exhorted the jury to give such a verdict as their conscience and the oath they had taken should direct.

Mr. Murphy again asked for a direction on the ground there had been no evidence of undue influence on the part of Lord Longford. His lordship declined.

Mr. McDonagh asked for a direction on the ground that there had been uncontradicted evidence of undue influence. Counsel referred to the restoration by Lord Longford of Mr. Lyster's letters since the trial commenced, and said it was a matter for which an ordinary man would be committed for contempt.

Baron Dowse. You never made such an application. I would deal with Lord Longford if the law required it as I would deal with Tom, Dick, or Harry.

Mr. McDonagh. I have merely observed that it was

an act for which an ordinary man would have been committed.

Baron Dowse. You never asked me to commit anyone, and I will commit no one without an application.

Mr. McDonagh said he only mentioned the fact as an indication of the grave importance of the act. Taken with the other facts it afforded uncontradicted and conclusive evidence that there had been undue influence, and that his client was therefore entitled to a verdict.

His lordship again refused to direct. Finally, the jury, after a long deliberation, being unable to agree on the second issue of undue influence, Baron Dowse said:—I must now direct a verdict on the second question for the defendants, that there is no evidence to go to the jury of undue influence as against the will under which the Earl of Longford claims. Find a verdict for the defendant, gentlemen, and sixpence costs.

A Juror. But, my lord, the majority of us were the other way.

Baron Dowse. I have not taken it out of your hands, gentlemen.

So the Earl of Longford won the first round, but the match was by no means over. A verdict in an ejectment action decides nothing finally. Unlike other verdicts, it does not prevent a defeated plaintiff instituting a new action next day if he be so advised.

Mr. Wellington Purdon, however, elected to transfer the litigation to the probate court by requiring Lord Longford to propound the will of Mr. Adolphus Cooke "in solemn form" before Judge Warren and a special jury. In addition to the counsel already engaged, Serjeant Armstrong, Q.C., was retained for Lord Longford, and Mr. Butt, Q.C., for the Purdons.

Serjeant Armstrong opened the case at great length for Lord Longford, who was now technically the plaintiff in the suit. In proof of Mr. Cooke's testamentary capacity he read several extracts from his diary, amongst them his comment on the suicide of Lord Castlereagh, who had passed the Act of Union, and was promoted to the title of Lord Londonderry.

"1823, N.B. Death of the Marquis of Londonderry announced to have taken place yesterday. Thus suddenly taken off: surely it ought to be an awful warning to ministers of state to seek the favour of God rather than the smile of princes, which were so eagerly coveted by the unfortunate deceased."

The evidence of the case ran in much the same lines as in the former trial. Lord Longford, having deposed to the perfect sanity of Mr. Cooke, was cross-examined at considerable length by Mr. McDonagh on his relations with Mr. Lyster.

Mr. McDonagh. Do you remember Lyster telling you that the name of Cooke should be taken by anyone who got the estate?

Lord Longford. I remember his mentioning that, as other persons mentioned it.

Mr. McDonagh. Did you say, I wish he would leave it to me. I would take the name of Cooke?

Lord Longford. I said, as a casual observation, if the estate was left to me I would take the name of Cooke, and I said more. I said for a consideration I would take the name of Buggins.

Did Lyster say £5,000 a year would be a nice thing for a younger son?

I dare say he did.

You told him you would take the name of Buggins for a consideration?—Yes.

Did you say you wished Mr. Cooke would leave the estate to you?

I said it as a joke, long before there was anything of this.

On re-examination, witness said he gave his letters back to Mr. Lyster "to enable him to meet a charge, but as the charge was not forthcoming Mr. Lyster was not examined."

Mr. McDonagh. Is it right or proper for Lord Longford to make that observation? I think it is very improper to say the charge was not forthcoming.

Judge Warren. Witness had better not make observations with his answers.

Mr. McDonagh opened the case for the defendants with a long, ingenious, and persuasive speech.

John Hines, the first witness for the defence, deposed that he had been engaged at different works on the Cookesborough property. Mr, Cooke once told him that Dr. Purdon intended to tatter up the land, and send "all the produce of his own to Jersey." Witness said it must have been an enemy of Dr. Purdon who said that, and Mr. Cooke said "no, it was Mr. Lyster."

Mr. Wellington Purdon deposed that on a certain occasion he and Mr. Goodman went together to Killucan, by Mr. Lyster's invitation, to spend the evening at the Rectory. Mr. Lyster took occasion to insult him saying, "you came here to impose on the people of Westmeath," pretending he was "a great engineer." . . . He added "you have not even sense enough to spend your own money judiciously much less that of other people, you have lost £5,000 a year by not giving me ten shillings for a charity," and, witness thought, he added two pounds for a school. Mr. Goodman apologized for him to a certain extent, for he said, "it is hard to put up with parsons."

At the close of the defendant's case, Serjeant Armstrong announced his intention of calling Mr. Lyster. Mr. McDonagh objected to the defendants being allowed to heeltap their case.

His lordship allowed the evidence for several reasons, "above all," he said, "for the reason that neither he nor any human being who had heard the case could be satisfied that it had been investigated in the manner in which truth and justice required unless Mr. Lyster was called."

The Reverend Mr. William Lyster was then called, and, in reply to Serjeant Armstrong, he contradicted all the evidence charging him with undue influence. He denied, emphatically, that he had ever used any influence of any kind with Mr. Cooke to induce him to make or unmake a will.

He was cross-examined by Mr. McDonagh for nearly three days, and on the whole came well out of the

cross-examination, though he contradicted himself more than once.

He believed he had lifted testator up in bed to sign the will in favour of Lord Longford. He could give no reason for the burning of documents after Mr. Cooke's death, but was sure nothing of any importance was burned. He was anxious, he said, to give his evidence in Mullingar, but counsel for Lord Longford otherwise decided.

[No notice seemed to have been taken at the time of the fact that this statement was in direct variance with Mr. Dames' explanation of the Reverend Mr. Lyster's non-appearance at Mullingar.]

A number of witnesses was called for the defendants to contradict the evidence of Mr. Lyster.

Bridget Clinton, servant maid, deposed she had heard Mr. Lyster say to Mr. Cooke, "If you don't make a will now in favour of Lord Longford, I will cease to visit you."

Philip McKeogh. On one occasion, when the gates of Cookesborough were locked against Mr. Lyster, he said, "Purdon has locked the gate," and he said he would "have the man who had locked the gate, so that he would not lock another gate at Cookesborough."

The Reverend Mr. Hutchinson swore that Lyster had said to him that Dr. Purdon had proved most ungrateful. Mr. Cooke had asked him to whom he would leave his property, and Mr. Lyster had suggested Dr. Purdon. Later Mr. Lyster said that he gave Mr. Wellington Purdon the chance of being heir to the Cookesborough property, and that he lost it through his own stinginess to him in not giving him something for his schools. He told witness that, in the presence of Mr. Cooke, he said to Wellington Purdon, "will you give me two pounds for my schools?" then Mr. Wellington Purdon shook his head in dissent. Mr. Lyster then said, "will you give me ten shillings?" and Mr. Purdon emphatically said "no." Mr. Lyster then told witness how Mr. Cooke came to leave his property to one of the sons of the Earl of Longford. He said that he (Mr.

Lyster) was frequently at Pakenham Hall, and that on his way there he always stayed at Cookesborough; it was that way the late Mr. Cooke's mind was directed to Pakenham Hall for an heir.

Mr. Benjamin Hannen, J,P., repeated his evidence that Mr. Lyster said he had thrown the property out of Mr. Purdon's hands for ten shillings. He explained that Mr. Purdon had refused to give him ten shillings in charity, and he had told it to Mr. Cooke, who said "Mr. Purdon is a hard man." Lyster had said to Mr. Cooke, "would you think a person who refused ten shillings in charity a fit recipient of £5,000 a year?" Mr. Cooke said "he thought not," and then Mr. Lyster said "the case is your own."

Cross-examined severely by Serjeant Armstrong, witness denied indignantly that the whole incident was an invention.

The Reverend Mr. Labotte who was announced amid much laughter as the last witness, deposed that Lyster had told him that on account of Dr. Charles Purdon having offended him he (Charles Purdon) had lost the Cookesborough estate, and as long as he lived, he said that emphatically, Dr. Charles Purdon should not inherit one acre of Cookesborough. He said Mr. Adolphus Cooke would leave the property as he (Mr. Lyster) wished, and that he might have it all himself, but that he didn't want it.

Cross-examined by Serjeant Armstrong, he indignantly denied he was ever drunk, though he might occasionally have taken a little more than was good for him.

Mr. Fitzgibbon, Q.C., spoke for the defendant, and Mr. Murphy Q.C. for the plaintiff. Judge Warren charged the jury for the best part of three days, and his charge was throughout strongly in favour of the plaintiff, Lord Longford.

The jury found that the will had been executed according to the statute, but that the deceased was not sound of mind, memory and understanding at the time, and that the alleged will was obtained by the

undue influence of the Reverend Mr. Lyster, and that the execution of the said will was obtained by the fraud of the Reverend William Lyster.

The trial opened on the 16th of January. The evidence closed on the 6th of February. The speeches of Mr. Fitzgibbon and Mr. Murphy filled up the time to the 11th of February, when the verdict was given.

Lord Longford had got what seemed a knock-down blow, but he came up smiling for the next round.

On his behalf an application was promptly made to Judge Warren that the verdict should be set aside on the extraordinary ground that he had himself misdirected the jury, and on the further ground that the verdict was perverse and was against the judge's charge and against the weight of evidence.

Serjeant Armstrong, in opening the case for Lord Longford, denounced the jury with what Mr. McDonagh described as "forensic ferocity."

"This," he said, "was a class verdict, bottomed on invincible prejudice, in defiance of reason, against light and understanding. He did not believe there was a man on the jury so stupid as to believe the verdict he found."

Judge Warren. You don't quite believe that.

Serjeant Armstrong. I am willing to make great allowances.

Judge Warren. It is one thing to say they were carried away by prejudice and feeling, and another to say you don't believe they are telling the truth.

Serjeant Armstrong. I am in the habit, my lord, of stating things plainly, sometimes, of course, I may give offence, but I am in the habit of stating plainly what occurs to my mind. I don't care twopence about any juror in the city of Dublin. I don't think if the jurors were polled individually they would have had the face of brass to give such a verdict. It is opposed to common sense and common honesty.

Later on Serjeant Armstrong said, "I have not the slightest doubt that some of the jury thought your lordship was a close relative of Lord Longford."

Judge Warren. Unfortunately that is not the case.

Serjeant Armstrong concluded by declaring "the verdict was grossly and palpably against evidence, and against the weight of evidence, an obstinate, unreasonable and unreasoned verdict."

Mr. McDonagh in his argument in support of the verdict had many tiffs with the judge.

"It was plain," he said, "that counsel for the plaintiff knew that an allegation of misdirection was perfectly hopeless, for his lordship's direction was entirely in favour of Lord Longford, and from beginning to end of the charge there was not a single sentence delivered in favour of the defendants. The jury," counsel said, "were the sole judges of facts. Lord Chief Justice Mansfield, in delivering judgment in a libel case against the Dean of St. Asaph's, quoted with approval an old ballad :—

"'For Sir Philip well knows
That his innuendos
Will serve him no longer
In verse or in prose;
For twelve honest men have decided the cause,
Who are judges of fact though not judges of laws.'"

Counsel would ask that his lordship "should certify the state of his mind to the Appeal Court, and not certify it to himself, as in that case it would be an appeal from Philip drunk to Philip sober. The jury," counsel said, "had found a right verdict, and society, he believed, had ratified their finding, and the conscience of every upright man would say they ought to be proud to have such men to assist in the administration of justice."

On resuming his address the next morning, Mr. McDonagh asked that the case might be postponed for a day that Mr. Fitzgibbon, who was unable to attend, might be heard.

Judge Warren refused the application.

Mr. McDonagh. I will ask you to reconsider that, my lord, because I think it is a gross injustice to my client.

Judge Warren. Go on, Mr. McDonagh, I will hear

your application afterwards. As yet I have heard nothing new from you in point of law or fact.

Mr. McDonagh. I think you have, my lord. You have heard the correction of some of your lordship's errors.

Judge Warren. I will take down a full note of that.

In conclusion, Mr. McDonagh called on his lordship to accept the verdict of the jury. "If he did so he would recommend the decisions of his court to the confidence of the public, but if he decided to invade the province of the jury, and to declare the credit of witnesses was a matter for him, not for them, his decision would go forth without authority and come back without respect."

Mr. McDonagh again asked that the case should be adjourned that Mr. Fitzgibbon might be heard. He had a telegram that he could attend next morning.

Judge Warren refused the application.

Mr. McDonagh. It is a gross injustice not to allow Mr. Fitzgibbon an opportunity of being heard.

Judge Warren. Very well, Mr. McDonagh, that observation is quite of a piece with what I have heard from you throughout.

Mr. Murphy then addressed the court at great length for Lord Longford; in conclusion, he urged his lordship to have the courage to decide against himself that he had misdirected the jury. The law argument concluded in a somewhat unusual way with a poetical quotation. His lordship, counsel urged, should decide regardless of the opinion of the bar or the public. He would then be enabled to say:—

> "If I am traduced by tongues which neither know
> My faculties, nor my person, yet will be
> The chronicles of my doing—let me say
> 'Tis but the fate of place and the rough brake
> That virtue must go through. We must not stint
> Our necessary action in the fear
> To cope malicious censurers."

[The counsel did not, however, inform the learned judge that Shakespeare put those same lines into the mouth of Cardinal Wolsey in defence of outrageous oppression of the people.]

Judge Warren, after a month's consideration, set aside the verdict on all the grounds, including his own misdirection of the jury, and directed a new trial.

The case was immediately transferred to the Court of Appeal, but early in the proceedings it was announced that a compromise had been arrived at between the parties.

The terms of the compromise were not disclosed, but it was generally understood that Lord Longford's son was to retain possession of Cookesborough.

"A REVOLUTION"

THE GALWAY ELECTION PETITION, 1872

This famous case was the climax of a revolt of the tenant farmers of the County of Galway, led by the Catholic bishops and priests against the political domination of the landlords. The election was described as "a revolution" by the late Sir George Morris, one of the ablest witnesses examined on the petition in favour of the landlords; the description may be accepted as accurate.

The contest was between Captain John Philip Nolan, representing the tenants, and Captain William le Poer Trench, cousin of the Earl of Clancarty, representing landlord interests in the county.

Captain Nolan, some little time before the contest, had agreed to an award by three arbitrators for the purpose of restoring to their holdings the tenants of Port-a-Carron, whom he had evicted some time previously, and the Archbishop of Tuam, writing in support of Captain Nolan's candidature, declared:—

> "He has earned fresh claims to the support of the tenants, and it would seem to the enmity of the landlord class, by his noble conduct in atoning at large pecuniary sacrifices for some acts of landlord severity inflicted in his youth which might be traced, as often happens, to the cupidity of evil counsellors rather than his own."

The Archbishop was right in his anticipation that the "Port-a-Carron award," as it was called, would awaken the strong resentment of the landlord class, as a denial of the landlord's right of unrestricted eviction.

Captain Nolan's candidature was endorsed at a

meeting of the Deanery of Tuam, presided over by the venerable Archbishop, in a series of resolutions which clearly defined the issue to be—"a further extension of the very limited tenant-right conceded by the Act of 1870." The following resolutions were passed:—

1. Resolved: "That the land question having been brought, through many difficulties, to its present position, which may be regarded as an instalment of justice by the noble efforts and sacrifices of the tenant-class, who should not be satisfied without fixity of tenure, they now need only unanimity and perseverance to save them from a repetition of evictions for their votes, which have hitherto been so disgraceful to some of the landlords of Ireland and so disastrous to the people."

2. "That with lively recollections of former times, when the exercise of the franchise was not free from danger, the tenant-class could not be such foes to their own interests as now to court the reimposition of the old ignominous landlord yoke, when owing to the Land Act, however imperfect, they can exercise the franchise with entire security. They cannot therefore, fail, in their own defence, to return Captain Nolan, who, in a manner so peculiar and so unprecedented, has identified himself with the fixed and permanent interests of the tenantry, thus advocating tenant-right in the sound and generous sense of the term, not a mere paltry compensation, but a combined and reciprocal interest in the land representing the two sources from which the value of the tenancies arises, and awarding the injured tenant restoration to his holding, the only adequate compensation for the injury."

This ideal, it may be noted, was ultimately embodied in the Land Act of 1881.

The issue between tenant-right and landlord power was thus fairly knit, the landlords of County Galway

were prompt to accept the challenge, and the contest excited the wildest excitement through the length and breadth of the county. It was felt everywhere and by everybody. I remember well the boys in my native town, Tuam, paraded the streets, in rival bands, shouting, "Hi for Nolan," or "Hi for Trench," and violently assaulting each other when they met, without the least notion as to what it was all about.

The landlords had hitherto exercised an absolute and undisputed political domination in the county. They believed, as a prominent member of their combination declared, that "the landlords, not the priests, were entitled to return members of Parliament," and they acted on that belief. The tenants' votes were considered as much the landlord's property as his rent, and were enforced by the same penalty—eviction.

Lord Clanricarde, hitherto political dictator of the county, headed the landlords in the election contest, canvassing his tenants, and publicly declaring that he did not hold himself bound by the rule of the House of Commons, which forbid the interference of peers in elections. Each landlord, agent, and receiver canvassed the tenants on the estates on which he collected the rents, and his canvass was in the nature of a command. How absolute the landlord's right to the tenant's vote was regarded may be adduced from the naive evidence of Sir George Morris.

In his evidence he stated that he was receiver in Chancery of an estate of which Mr. James Lahiff was heir-at-law. He had canvassed, he admitted, the tenants of all the other estates of which he was agent or receiver, but, he added, "Mr. Lahiff had intimated to me through a friend that he would vote for Captain Nolan, and I did not think it right to ask for a vote on that estate." The landlord, he plainly assumed, was entitled to the votes on the estates, even where he was not entitled to the rents.

Archdeacon Butson was peremptory as the Kaiser. He wrote to his bailiff, Patrick Geoghegan:—"Geoghegan, I wish the tenants at Caltea to support

Captain Trench at the coming election. Please let them know this."

In his opinion to hear was to obey.

There were hundreds of similar cases. The tenants on one estate were warned that if they did not vote for Captain Trench they might not have the opportunity of voting again.

The son of the bailiff of Sir Thomas Burke informed his tenants that, "anyone that voted against Captain Trench might look out for compensation under the Land Act," which was in effect a threat of eviction. On the same estate the tenants were reminded that, "after the election they had no one but the landlords to look to for favour"—or punishment.

These threats were in many cases carried into effect after Captain Nolan's return, servants were dismissed and tradesmen boycotted by the disappointed landlords, and many tenants were arbitrarily deprived of rights of turbary which they had heretofore enjoyed. In other cases "the hanging gale" was called in or the rent was largely increased.

The cross-examination of Mr. Blake, Lord Clanricarde's agent, by Mr. McDonagh, fairly illustrated the penalties to which the tenants were subjected.

You called upon the tenants to pay up to November, a year-and-a-half's rent—was not that request addressed to the voters in consequence of the way in which they voted at the election?

I don't think so.

Did the circumstances of their voting against the wishes of Lord Clanricarde influence you in insisting on the whole year-and-a-half's rent at once?

In some instances it might.

In some instances did it not, on your solemn oath?

It did.

The bishops and priests on the other hand threw themselves with at least equal vigour into the struggle on behalf of Captain Nolan, and it cannot be denied the language of some few priests exceeded the limits of legitimate argument or persuasion, but the three bishops

involved, the Most Reverend Dr. McHale, Archbishop of Tuam, the Most Reverend Dr. McEvilly, Bishop of Galway, and the Most Reverend Dr. Duggan, Bishop of Clonfert, conducted themselves with admirable dignity and self-restraint.

In many cases, there can be no doubt, that the voters cunningly simulated terror of the priests in order to escape the unwelcome importunity of the landlord or his agent. One tenant told Sir George Morris that if he voted for Captain Trench he would be turned into a hare at the church door, and the rest of the congregation would be turned into greyhounds to hunt him. Sir George Morris, who was one of the shrewdest men in the county, never, of course, credited the voter with belief that the priest could or would rid himself of his congregation in this fashion, but there were violent partizans to whose credulity no absurdity was too monstrous for acceptance.

The nominal strength of the constituency was 5,346 voters, but after allowance had been made for deaths and removals, the true number was estimated at 4,686; of these Captain Nolan received 2,823, and Captain Trench 658. Captain Nolan was declared duly elected by the Sheriff, and a petition was filed to have him disqualified, and Captain Trench returned in his stead.

A general distrust and indignation was excited in the county when it was discovered that Judge Keogh was to try the petition. He had been elected for Athlone some years before as an ardent patriot and a fervent Catholic, courting the support of the priests and bishops. Some, even his admirers, had thought his language too violent, especially an allusion to "long nights and short days," which might readily be construed, by an excitable peasantry, as an incitement to crime. He pledged himself by oath on the platform that he would never take office until Ireland's wrongs were redressed, and when, after a brief membership of what was irreverently nick-named, "The Pope's Brass Band," of which the notorious Sadler was also a prominent member, the patriotic member for Athlone

accepted a judgeship, he became generally known in Ireland as "So-help-me-God-Keogh."

This was the judge who was called upon to hold the scales of equal justice between the landlords on the one hand and the tenants, priests and bishops on the other in the Galway Election Petition.

The trial lasted for fifty-seven days, from the 1st of April, 1872 to the 25th of March in the same year, when an extraordinary judgment was delivered. Between three and four hundred witnesses were examined, including an archbishop, two bishops, a marquis, several peers and baronets, and most of the priests and landlords in the constituency.

Upon Captain Trench's side at the trial were engaged, Serjeant Armstrong, Q.C., and James Murphy, Q.C. (afterwards Mr. Justice Murphy), and with them as junior, Mr. Persse, B.L., the solicitor being James Blake Concannon.

For Captain Nolan were Francis McDonagh, Q.C., and The McDermot as junior, the solicitor instructing being Thomas Higgins of Tuam.

It is not necessary to attempt the arduous task of a general analysis of the evidence which has already been sufficiently indicated, but room must be found for a brief summary of the testimony of the archbishop and the two bishops who were subsequently reported by Judge Keogh for having been guilty of a criminal offence punishable by seven years penal servitude.

The Most Reverend Dr. McHale, described by Dan O'Connell, as the "lion of the fold of Juda," and lauded by William Keogh, M.P., in the day of his patriotic fervour as "a great prelate," was at the time, perhaps the most popular and the most honoured of living Irishmen. At the date of the trial he was over eighty-two years of age, but still in full physical and intellectual vigour. My father had the honour to be his physician and friend, and as a boy in Tuam I remember him well. This is the picture that remains in my memory. Short in stature but erect and dignified, with a handsome face, piercing eyes and a nose like

the pictures of Cæsar. He was always very gentle and kind to us as youngsters.

The appearance of the venerable old man in the witness-box in Galway created a tremendous sensation, and it was noticed that he read without glasses all the documents and newspapers that were put into his hands.

To Mr. McDonagh, Q.C., on direct examination, he professed his complete accord with the resolutions adopted by the Deanery of Tuam, to which allusion has been already made.

It is charged, said Mr. McDonagh, that you and your suffragan bishops thought and resolved to make this county a pocket-borough, is there any truth in that?

Well, I think that the gentleman who uttered these sentiments drew more on his fancy and imagination than on the facts.

His purpose, he deposed, was "to inform the unenlightened mind, and also to strengthen the heart and conscience of the voters from temptation, from whatever quarter it came."

Did you, asked Mr. McDonagh, at this late election exercise any species of coercion by threat or hope addressed to your flock or to any clergyman on this question?

Certainly not, certainly not.

Serjeant Armstrong, reputed the ablest cross-examiner at the Irish Bar, suffered signal defeat from the aged Archbishop.

Am I wrong in thinking (asked the Serjeant) that you are the most influential man, and decidedly the most influential prelate or potentate in the province of Connaught?

Well, you know, it is in the sense that they would say that you are the very light of the Bar of Ireland—these are children's compliments.

Are you not a remarkably profound logical scholar?

No. I really look on these things as having no bearing on the question. I think it is trifling very much with the majesty of the court.

Would it have been a serious blow to your political importance if Captain Nolan had been defeated?

Not the least, and you may rest assured that I have little anxiety about my political importance. I am sure you have a great deal more concern for it, as it appears, than I have. I have no anxiety whatever about it, and you give me credit for an anxiety to rule which I never felt myself.

Don't you rule it (the county) in a political way?

No; our influence, whatever it is, is derived from our spiritual position and the confidence the people have in us. We are their instructors. They take our advice, for they found our advice to be disinterested, and not for our own selfish purposes to get a position here and there, or to get situations for our friends, and if we have influence in that way, and if we enjoy the confidence of the people—at least, I speak for myself—it is, I think, from that source that we derive our influence. In my long political career (as you call it) you will be very much surprised to learn that never so much as the situation of a man enjoying twenty shillings a year did I ever solicit, either from the government or from members of Parliament, or from the candidates.

Disappointment betrayed the Serjeant into a strange question regarding the interference of peers or prelates in Parliamentary elections, having regard to the attitude of his client's principal patron, the Marquis of Clanricarde, on the subject.

To the question: "Did not the word peers in the resolution of the House of Commons include prelates?" his Grace replied—We had no existence at the time. We came into existence since. Do you imagine they ever contemplated a Catholic bishop? Do you think it ever entered into their mind to take us into consideration?

The Most Reverend Dr. McEvilly, Bishop of Galway, deposed that he had never directly or indirectly conveyed to his clergy that they were to make use of altar denunciation, or that he had become a party to any conclave or conspiracy to retain in the hands of the

clergy the county of Galway as a pocket-borough. He urged the electors to vote according to their conscience, and to use every legitimate means for the return of Captain Nolan.

Against the Most Reverend Dr. Duggan it was sworn by a Fenian spy, named Carter, that, in a sermon at Ballinasloe, he had declared, with great excitement, that "Anathema would be hurled against any of his congregation who would vote for Captain Trench."

This was absolutely denied by the bishop, and by a number of his congregation, who had heard the sermon.

The Bishop swore—I told the electors that their conscience should be free from any external influence, lay or clerical. I never used the word anathema or anything equivalent to it. It is the very opposite of the truth to say I did. During the whole thirty years of my missionary life I never spoke a single word from the altar to hurt the feelings of any man.

To Serjeant Armstrong he said—I don't think I ever used the word anathema in my life.

The public interest in the trial, which had been intense from the first, reached its climax on the day the judgment was to be delivered. Here is a description from an eye-witness of the scene outside the court on the morning of the judgment.

"The opening of the court was fixed for eleven o'clock. At least two hours before, a crowd of several hundreds assembled at the courthouse entrance; amongst them were gentlemen of the county families, and many ladies in elegant toilettes. The police had stringent orders to admit no one, and though they executed their duty with great patience and good humour, they were more than once involved in a sort of rough and tumble.

At first the throng entreated and cajoled, but, finding these means futile to move the inflexible janitors they reproached and threatened. This expedient was equally in vain to secure admission, and, hoping to take the entrance by storm, they made a simultaneous rush against the barrier of constabulary. The charge was resisted, and a free fight ensued. Youthful belles dashed

upon stern policemen with their parasols, and the best blood of Galway joined in the forlorn hope. Never was there such a scene. Beautiful garments were rent and torn, and lovely combatants yielded to the terrible pressure, and were borne away fainting from the battle-field. When, at last, the doors were opened, the scene inside the court was equally exciting. The ladies scrambled with the gentlemen for places, and one young beauty was, in her eagerness to secure a seat, so carried away by excitement that she actually clambered from the body of the court up to the gallery with a liberal display of legs, and an agility that would have done credit to an acrobat.

"When the Judge arrived, accompanied by Lord Devlin, the aspect of the court was extremely animated. Half, at least, of the audience were ladies, whose ruffled plumes were smoothed, and whose violence had added fresh bloom to their beauty.

"The Judge, during the first few sentences, preserved at least a semblance of judicial calm, but in a little time he put away all pretence of impartiality. His wig was flung aside, and he raged furiously up and down the bench as he delivered what was assuredly the strangest harangue ever heard from a judge presiding in a court of justice."

In substance and in manner the judgment was equally remarkable. He found in the resolution of the Tuam Deanery conclusive evidence of a conspiracy in which the archbishop and the two suffragan bishops were involved to convert the county of Galway into a pocket-borough of their own, and "to defeat the free franchise of the electors." The fact that Captain Nolan refused "to speak to any gentleman in the county, even the Marquis of Clanricarde," until he had consulted the archbishop, is declared an absolute proof that "by him alone if necessary he was to be made representative of this great county."

The speech was liberally interlarded with digressions of all kinds, and full of irrelevant quotations; in a passage, reported by the Press, but excluded from the

official report, he described one gentleman as "not only beloved at the Bar, but as gentle as a girl of twelve years of age."

He extolled the landlords concerned in the election with long dissertations of the distinctions of their ancestry. He paid no attention to the instances of landlord intimidation. "It was an election petition, not rent cases," he declared, "he was there to try." He insisted that "no steadier, no safer, no more legitimate influence than the landlord's over his tenantry could be used."

The use of the word "renegade," by one of the priests, stung him to an extraordinary outburst.

"Then comes the Mount Bellew meeting, and then a new word is introduced into the resolutions. I rubbed my eyes to see if I were right, and it is so. I assisted my eyes with a glass and the resolution is this, 'That we deem every Catholic a recreant and a renegade who would support Captain Trench, the son of the most notorious enemy of the Catholic religion—Lord Clancarty, and the nominee of the bigots and anti-Catholics of the County.' What is the meaning of the word "renegade"? Every scholar knows it. Take the beauteous poem from the reading of which no one has ever risen without feeling the highest admiration for the exalted genius of the greatest modern poet of England—Lord Byron. I refer to the Siege of Corinth. When he who had betrayed his faith and had led the Ismaelite to storm the fastness of Corinth because of blighted love, meets in the last encounter the father of her whom he wanted to be his bride, he says:—

> "'Yield thee Mainotte, mercy take,
> For thy own, thy daughter's sake.'"

What is the reply?

> "'Never, Renegade, never,
> Though the life of your gift shall last for ever.'"

But it was for its unrestrained vituperation of the

Catholic priests and bishops that the "judgment" was chiefly remarkable. One priest was "*splendide mendax*," another was accused of "degrading the mystery of Calvary," another was "a miserable wretch, and an insane disgrace to his Church," yet another was compared to Theisites, "clothed in impudence." Father Lavelle had said that the result of the election "would sound the political death knell of Sir Thomas Burke," the judge illuminating the word "political" considered this a direct incentive to assassination. The two thousand and eight hundred odd electors who voted for Captain Nolan were "mindless, brainless, coward instruments in the hands of ecclesiastical despotism."

He taunted the Bishop of Clonfert with being "peasant-born." "Talk," he said, "of the horrors of the French Revolution because the people didn't follow the advice of their priests; that is not true, there were profligate priests, there were profligate curés, there were profligate abbes, aye, there were profligate bishops."

Father Conway in his evidence made allusion to some land in his possession. This was the comment of the judge:

"Some few acres, I suppose, which some landlord has been wise enough to give him to stop the clatter of his tongue, which must be infinitely more offensive to a rational creature than the dreadful lugubrious whistle which disturbed my rest for six days after I came into the town of Galway."

But most startling of all was his eulogium of Oliver Cromwell, whose memory is not unnaturally execrated in Ireland where his savageries, notably in the sack of Drogheda, equalled anything perpetrated by Germany in Belgium.

"I hope," said the judge, "I am a loyal man. I believe implicitly that no form of government that ever existed is so calculated to uphold the franchise and liberties of the people than is the mixed constitution under which we live, but if I were to lay my hand on any man for greatness of character, for splendid genius,

for everything that ennobles great men, I would say that the greatest sovereign that ever ruled in England was Oliver Cromwell, and that name is to be prostituted, as we have seen, on the vile tongue of an audacious priest."

Judge Keogh unseated Captain Nolan condemning him to pay the costs of Captain Trench. He reserved the question of Captain Trench's election for Court of Common Pleas, and he reported to the House of Commons for prosecution as guilty of criminal offences thirty-five persons, including Archbishop McHale, Bishop McEvilly, and Bishop Duggan, Captain Nolan, and his brother, and a large number of priests.

After judgment was delivered, Captain Nolan was chaired through the streets of Galway, and Captain Trench was escorted by the police and soldiery to his hotel.

The judgment created the wildest indignation throughout the length and breadth of the land. The *Freeman's Journal* wrote:—

> "The communication which we publish to-day gives some indication of the feelings excited in the county by the so-called judgment delivered by Mr. Justice Keogh in Galway last Monday. Never, in our experience, was there a manifestation of such intense and wide-spread indignation, never have we known so universal a condemnation of the conduct of any public personage; but one sentiment exists amongst all classes of men, a feeling of unqualified reprobation of the outrageous and unjustifiable attack on the prelates and priests and people of Ireland, and unmitigated disgust at the language in which Judge Keogh pronounced his indictment.
>
> "Protestants and Catholics, Liberals and Tories, entertain but one sentiment on the subject. Politics have been forgotten, aud sectarian differences for the moment laid aside in the face of this violation of official decency by a judge sitting in his judicial capacity in a public court. He has dared from the bench to characterize the Catholic bishops as

conspirators against the rights and liberties of the people, and has accused a Catholic priest of desecrating the noblest mystery of his religion and inciting to assassination, another Catholic priest as a deliberate perjurer, and another as a panderer to the vilest passions of the populace."

At the instance of the *Freeman* a public subscription was at once inaugurated to indemnify Captain Nolan against the cost of the election and petition, and over £20,000 was subscribed.

The English *Times* had a very characteristic article on the "judgment."

"So outspoken a denunciation of priestly coercion," it wrote, "has not been delivered for many years from the Irish bench, and we need hardly remark it comes with all the greater weight from the lips of a Catholic judge." But even *The Times* could not quite stomach the language of Judge Keogh. "If," it continued, "the judgment contains a few passages which strike the ear of an English reader as more forensic than judicial, we are not sure that such passages will not enhance the effect of the judgment on an Irish mind." In this anticipation *The Times* was certainly correct, but hardly in the sense which it intended. "No English judge," it went on, "would have considered it part of his duty to have defended the memory of Oliver Cromwell against 'the vile tongue of that audacious priest,' Father Conway, but we may safely assume that Judge Keogh knows his own countrymen, and that he has not adopted the racy phraseology of O'Connell without considerable foresight."

It is probable that neither *The Times* nor the judge quite foresaw the results of the remarkable judgment.

Finally, *The Times* makes it clear that any stick is good enough to beat a dog, and that any language, however vile, is good enough for the bishops and priests of Ireland.

"At all events we are much too grateful to Judge Keogh for his courage in dragging the arch-

conspirators to light to criticize with any severity the language he may have selected to characterize their conduct."

The question referred to the Common Pleas was decided in favour of Captain Trench, who was declared duly elected to represent the County of Galway, though he received less than a quarter of the votes of his opponent. The decision was made by Judge Morris, Judge Lawson, and Judge Keogh. Chief Justice Monaghan strongly dissented in an elaborate judgment. He protested against the disfranchisement of the 2,823 electors who had voted for Colonel Nolan, and ridiculed the notion that before the polling day it had been brought home to the knowledge of each one of them that the candidate for whom they had voted was legally disqualified.

Judge Keogh himself delivered a remarkable judgment on the occasion—"I now, sitting on this bench, which I am warned that I occupy at the will and under subordination to Powers other than my Sovereign, here declare that I have been obliged to consider this case, and to deliver judgment, viz.—that Captain William le Poer Trench is entitled to be declared representative of the County of Galway under many terrible denunciations both public and private."

Meanwhile the question had been taken up in Parliament;—on the one hand the Government had determined, out of the thirty-five persons whose names had been returned by Judge Keogh for prosecution, to prosecute twenty-one, including Bishop Duggan, but excluding Archbishop McHale, Bishop McEvilly, and Captain Nolan. On the other hand, Mr. Butt proposed in the House of Commons, and Mr. Michael Henry seconded, a motion for the removal of Judge Keogh from the bench, on the grounds "that he had delivered a violent personal and partizan address, inconsistent with his duty as a judge, that he had thereby created a great scandal in Ireland, shaken the confidence of the people in the administration of justice in Her Majesty's courts, and brought those

courts into contempt by reason of his misconduct, and in consequence his continuance on the bench has become inconsistent with the best interest of the public and the honour of the Crown."

To this resolution a very moderate amendment was moved by Mr. Pimm—"That this House regrets that Mr. Justice Keogh, when delivering a judgment in the trial of an election petition in the County Galway, allowed himself to diverge into irrelevant topics, and to make use of intemperate language inconsistent with the dignity which should be maintained by a judge, and therefore calculated to lower the court in the estimation of the people of Ireland, but, reviewing the whole circumstances, this House does not think the case calls for any action with a view to the removal of Mr. Justice Keogh."

The debate lasted two days and nights, with an adjournment of several days intervening. The character of the judgment was thoroughly exposed, with many more illustrations and quotations than I have been able to find space for, in powerful speeches by Mr. Butt, Mr. Michael Henry, Sir John Grey (all three Protestants), and a number of other Irish members. The result of the debate was a striking illustration of the consideration which Ireland had then to expect from the Imperial Parliament. The offences described in the moderate amendment of Mr. Pimm were conspicuous to anyone who even glanced at the judgment, "gross as a mountain, open, palpable," but Judge Keogh was defended, even eulogized, by English members. Sir Robert Peel expressed the utterly fatuous hope that "this judgment might lead to a better state of things in Ireland, and present to the eyes of Europe and all the world the spectacle of a harmonious and united Ireland."

Mr. Pimm's amendment was defeated by a majority of 125 to 23, and Butt's resolution was then withdrawn.

The prosecution, in February 1873, of the priests and bishops in Dublin was the next scene in the drama. It was urged on behalf of Bishop Duggan that he was

entitled to the earliest possible trial, but the prosecution was determined to put its best foot forward, and began with Father Loftus, who had certainly been the most violent-spoken of the priests at the election. It was sworn by one of the agents of Captain Trench that Father Loftus had declared from the altar that "any man who voted for Captain Trench would be branded with the brand of Cain." Several members of the congregation were produced to prove that the words used were "that any man who voted against his conscience." The jury after a long deliberation were discharged, being unable to agree to a verdict. In the case of Father Quinn the jury also disagreed, and the Most Reverend Dr. Duggan, Bishop of Clonfert, was then put on his trial. The interest culminated in this trial. The Court and great Central Hall of the Four Courts were crammed with an excited throng.

I can claim the honour of a long friendship with Dr. Duggan. I knew him from my boyhood as the gentlest and most kindly-natured man I had ever known. He well deserved the eulogium of Butt: "If I were to pick out one man as the perfect type of a missionary priest, at once religious and energetic, I should name Dr. Duggan." Bishop Duggan was beloved by all who knew him. As a young priest in the famine days he had surpassed even his colleagues in his unfearing and untiring devotion to the hungry and fever-stricken poor.

By a dramatic coincidence, in the interval between the denunciation of the bishop by Judge Keogh and the prosecution in Dublin, an address and valuable testimonial was presented to Bishop Duggan by his former parishioners to celebrate his elevation to the episcopacy. The chairman of the congratulatory committee was Mr. Robert Bodkin, one of the strongest supporters of Captain Trench, and by him the address was read.

It expressed "profound sorrow" for his loss to the parish; it recalled the time when "alone and unaided you administered relief with your own hands in wretched cabins, the abode of pestilence and death. May you

ever be guided," the address concluded, "in your new duties by the same spirit which directed your actions in your former sphere."

This was the man who was put on trial for a criminal offence on the recommendation of Judge Keogh, and on the sole evidence of a Fenian informer.

The spy, Carter, repeated his evidence as he had given it before Judge Keogh, that the bishop had declared that "*anathema* should be hurled at any one who voted for Captain Trench." The jury had not, as Judge Keogh had, the opportunity of hearing the convincing contradiction of the bishop. But the spy broke down utterly under the cross-examination of Butt, who compelled him to confess in detail his treachery to the comrades who trusted him. District Inspector McSweeney, who had relations with Carter in his capacity of informer, being asked if, from his knowledge of his character, he believed him a man unworthy of credit on his oath, declined to answer; finally, a large number of witnesses who had been present at the sermon flatly contradicted the informer.

Butt's speech was full of impassioned eloquence. It was the first great speech I ever heard, and even now the picture is fresh in my memory, how he dominated the court. In conclusion, he told the jury—"I envy you the privilege you are about to enjoy in giving the righteous verdict which will win back the people to that confidence in the law which has been so rudely shaken, and which will tell them there is a tribunal still existing in the country where justice shall prevail."

The jury promptly returned a verdict of "not guilty," and all the other prosecutions were hastily abandoned.

The result awakened the greatest enthusiasm in the city and the country, and it was with difficulty the bishop eluded a public demonstration of rejoicing.

The result of the election, of the Keogh judgment, the debate in the House, and the subsequent trials, was the complete collapse of landlord political domination, not merely in Galway, but through the rest of Ireland, while the alliance of the priests and people

was closer and stronger than ever in furtherance of Land Reform and Home Rule. At the next election, Captain Nolan, every farthing of whose expenses had been recouped by public subscription, was returned without opposition as member for Galway, and continued for over thirty-three years to represent the constituency.

THE YELVERTON CASE

Amongst the famous trials of the present generation the Yelverton case holds a foremost place. The greatness of the issues involved, the skill and fame of the advocates engaged, but, above all, the strange and thrilling story of passion, treachery, and desertion disclosed in the evidence, evoked a universal and unparalleled interest in the case. In Dublin, when it was tried, there was kindled a blaze of popular excitement that enveloped the entire city.

The chief reporter of the *Freeman's Journal*, Mr. Theophilus McWeeney, who had been one of the shorthand writers at the trial, loved, in his infrequent moments of leisure, to give us admiring youngsters of the reporting-room glimpses of this enthralling drama of the Four Courts, the eloquence of the advocates, the rigour of the cross-examiner, and the aspect of the witness under the searchlight. With that vivid mimicry of voice and gesture in which he excelled, he reproduced the scene to our excited imagination.

To the plaintiff (not the nominal but the real plaintiff), Theresa Longworth, a victory would ensure a coronet, wealth, and an assured position in society, defeat branded her as a dissolute wanton, and a perjurer. To the defendant, Major Yelverton, victory, however complete, brought no vindication of his character, his own defence proclaimed him a treacherous, a heartless libertine, but his defeat would convict him of perjury and bigamy, make bastards of his children, and land him in the dock. No wonder the public interest was so intense in the contest and the result.

Marriage or concubinage was the net issue between the parties, and this issue was five times tried with

varying results by fourteen different judges, two trials in Dublin, two in Edinburgh, and a final decision in the House of Lords.

In Dublin the trial took the form of an action by a Mr. Thurwall against Major Yelverton to recover the sum of £259 17s. 3d. for board and lodgings, and other necessaries, supplied to Theresa Longworth, otherwise Yelverton, wife of the defendant. The defence was a simple denial by the defendant that the lady was his wife.

I will begin with the trial in Dublin where the parties were brought face to face, their evidence subjected to the ordeal of a cross-examination whose brilliancy is still a tradition of the Irish Bar, and where the issue was determined by the verdict of a jury.

There were giants in those days at the Irish Bar, and they were ranged on opposite sides in this extraordinary trial.

There were engaged for the plaintiff, Serjeant Sullivan, Q.C.; James Whiteside, Q.C.; and Francis McDonagh, Q.C.; and for the defendant, Abraham Brewster, Q.C.; Serjeant Armstrong, Q.C; and John Ball, Q.C. Three of these afterwards rose to the position of Chancellor, namely, Sullivan, Brewster, and Ball; Whiteside became Chief Justice of Ireland, and though Serjeant Armstrong and Francis McDonagh never attained to the Bench, owing to some trouble about the Sligo constituency which they contested, they were for a generation later the acknowledged leaders of the Irish Bar. I remember Whiteside, Sullivan, Armstrong, and McDonagh as judges or advocates when I was first called, and have described them with amusing illustrative anecdotes in my *Recollections of an Irish Judge*. By a later generation their triumphs in the Yelverton case were even in my time still eagerly discussed in the Law Library.

Theresa Longworth, otherwise Yelverton, the real plaintiff in the case, was the daughter of a prosperous silk manufacturer in Manchester. Here is a description of her by an eye witness as she appeared in court:

"Mrs. Yelverton is still in possession of an exceedingly agreeable *personel*, and, without being positively handsome, she is most prepossessing and lady-like. Apparently not more than twenty-eight, her thoughtful, resigned, and almost melancholy features would induce a belief that she has lived a much longer life. She is of medium height, slight of figure, with an excessively intelligent countenance, bright and vivacious when animated, and almost sad in repose."

The defendant, the Hon. William Charles Yelverton had, a little time before the trial, by the death of an elder brother, become heir-apparent to the Avonmore peerage, and was a retired major in the Royal Artillery. The title to which he was heir-apparent, and to which he subsequently succeeded, was a Union peerage conferred on his grandfather, the son of a respectable wool-comber, who was for some time an obscure and unemployed member of the bar, but who eventually secured a seat in the Irish Parliament, where he was distinguished by his eloquence and vehement patriotism as a follower of Grattan in support of Irish independence. He speedily, however, changed sides and supported the court party, and in reward was made a Baron of the Exchequer and created a peer. Afterwards, contrary to the protest of Lord Portland, he was raised a step in the peerage, from baron to viscount, for his speeches and votes in favour of the Union. Of him Sir Jonah Barrington wrote—"In the common transactions of the world he was an infant; in varieties of right and wrong a frail mortal; in the senate and at the bar a giant; a patriot by nature, yet susceptible to seduction; on the question of the Union the radiance of his public character was obscured for ever. After having with zeal and sincerity laboured to secure the independence of his country, in 1872 he became one of its sale-masters."

This digression is not irrelevant, as it was from this noble son of a respectable wool-buyer that Major Yelverton derived his claim to "gentle blood," for which he showed himself so great a stickler in the progress

of the trial. The major himself is described as "about thirty-five years of age at the date of the trial, a good-looking man with dark, deeply-set brown eyes, and a resolute face." We read that he repeated the words, "so help me God," with special emphasis as he took the book, a proceeding which, my own judicial experience teaches me, is generally suggestive of subsequent perjury.

Theresa Yelverton's (or Longworth's) story, briefly told, was as follows:—She met the defendant on a steamer in August, 1852, when she was returning from a visit to Boulogne to her married sister in London. Acquaintanceship began by the major picking up and fastening on a shawl which was dropped. He was very attentive. They sat during the summer's night with his plaid over their knees, and together admired the sunrise, and he found a cab for her at parting. That was the last they saw of each other for three years, but neither seemed to have forgotten the other. About six months after the first meeting, Miss Longworth found herself in the south of Italy, where she was finishing her education, and being desirous of communicating with her cousin, a Royal Commissioner in Montenegro, she was advised by a banker in Naples that the letter should be sent to Malta, to be reposted there. Miss Longworth remembered Major Yelverton, and the letter was directed to his keeping. Thereupon a correspondence sprang up between the parties, developing in fervour as it proceeded during the period of nearly three years that elapsed before they next met.

This was during the Crimean war, when the British troops were so shamefully starved and neglected by a callous War Office and corrupt contractors. A body of the Sisters of Charity volunteered to nurse the wounded in the hospitals. They were joined by a number of Catholic ladies, who assumed the robe of the order, but without taking the vows. Miss Longworth was amongst those devoted volunteers, and spent six months of assiduous and effective nursing in the convent

hospital at Galatea, in Constantinople. She was there visited by Major Yelverton, who was on service in the Crimea. He met her still robed as a Sister of Charity, and (as she swore) professed his love, and proposed marriage. She accepted, but with a proviso that the marriage should be public, and should not take place until after the war. Subsequently she went on a visit to the Crimea to General Straubenzee and his wife, in whose house Major Yelverton was received as her fiancé, and when she left by steamer to return to Constantinople they parted on affectionate terms. Major Yelverton told her that, for the present marriage was impossible, on the extraordinary ground that an uncle who financed him was anxious to secure the peerage for his son, and had pledged the major to celibacy, his eldest brother being unmarried and in delicate health. The major, she declared, frequently urged a private marriage, which she resolutely declined. On one night, especially, when she was leaving on the steamboat from the Crimea, the major went down on his knees in urgent entreaties that she would consent to an immediate marriage at the Greek church in Balaclava.

The next meeting of the parties was at Edinburgh, where they were a good deal together. There they went through the form of a Scotch marriage. The major (so the lady swore) read the Church of England service, and at the conclusion declared that she was his wife according to Scotch law. She accepted this statement, but declined to live with him as man and wife until they had been married according to her own religion in a Catholic church. To escape his importunities she went to Ireland, where he eventually joined her, and after moving about for some time they were married by the Reverend Father Mooney in the Catholic church at Rostrevor, Major Yelverton at the time professing himself a Catholic. After the marriage they, for the first time, lived together as man and wife in Ireland, Scotland, and on the Continent.

The marriage was, however, kept secret, and it was

only when Mrs. Yelverton believed a child was about to be born that she disclosed it to her friends, and urged her husband to acknowledge her as his wife, but he persistently refused, and while he was writing to her in terms of affectionate endearment, he married a Mrs. Forbes, a lady of considerable fortune.

Major Yelverton's story varied in some vital details from that of the lady. There was no talk of marriage, he swore, at any time. From the first he had told her that the "one word marriage should never be mentioned between them." He admitted that he had kissed her and passed his arm round her waist at the hospital at Galatea, and that while she was staying at General Staubenzee's he was a visitor at the house as her fiancé, but with the intention of seducing her. On the night of her departure on the steamboat he swore that indelicate familiarities took place between them, but he emphatically denied there was any suggestion then, or at any time, of marriage. Subsequently he had avoided the lady, but she forced herself on him, and ultimately they cohabited in Scotland, and in Ireland, both before and after the ceremony in the Catholic church. He absolutely denied the Scotch marriage and the reading of the marriage service, and declared that the marriage ceremony in Ireland was never intended by either party to be binding, both knew it to be legally invalid, as he was, and always professed himself a Protestant, it was merely meant as a salve for the lady's conscience, and constituted her, in his own words, "his mistress-in-law."

In this conflict of testimony the correspondence must be searched for the truth, but here again extraordinary difficulties present themselves. Many of the letters on both sides had disappeared. As many as twenty, written by the lady after her Catholic marriage, were not forthcoming, and the major accounted for their absence by the statement that he had left them about, or had lit his pipe with them. Of the letters written by the major to the lady a large number also were not produced, and of those produced many had

bits cut or torn out of them. She declared that she had burned a large bundle of the letters at the major's request, and explained the mutilation by the statement that she had cut off bits of some of his letters and returned them to the writer. From the evidence it was plain that the lady engineered the renewal of the acquaintance, and from the beginning of the correspondence it would appear that the lady was the more eager lover of the two. Her letters grew in affectionate warmth before the second meeting in Galatea, but at the same time there was not a hint of impropriety in their affection; on the contrary, many of them, though slightly disfigured by tags of foreign languages, which were the fashion of the day, were so exquisite in style and sentiment that the reading of them evoked loud applause in court.

The major started the correspondence in March 1853, and even at the start there was a hint of flirtation in the letter. "I cannot afford," he wrote, "to go without leave, so seeing you and Naples must go down in the list of disappointed desires. You may take that all for yourself if you care to do so, for I know Naples as well as I wish to."

The lady responded nothing loath, and an animated correspondence ensued. At the third letter the major dropped the "my dear Miss Longworth" for "my dear Theresa," and when he again reverted to Miss Longworth the lady complained.

"By what mischance or misdeed have I become Miss Longworth again? I never grumbled at being addressed by my own name, and only thought that having known me for one year you had exalted me from a mere acquaintance to a certain degree of friendship. I do not know what I have done to be turned out again."

When the major suggested that she should address him by his Christian name, in the next letter she wrote—"*Carissimo Carlo Meo*, does that suit you?"

It was the lady who first introduced into the correspondence the delicate topic of marriage by

announcing an intuition that he was in love and engaged. "I quite understand," she wrote, "and sympathize with you under the circumstances; if there is any excuse for neglecting ladies' epistles, it is certainly being so devoted to one as to neglect all the rest."

But the major does not rise to the fly so skilfully thrown. "I will tell you a little truth," he writes, "that you will not believe, I am fiancé to my arm-chair in the United Service Club. *L'amore*, as you understand the word (sentiment?) is not, never was, and never can be, my insanity, temporary or otherwise."

The lady's letters grow warmer and warmer as she proceeds. In one letter she tells him—"I just saw sufficient, and not too much, to enable me to construct upon you an exquisite ideal which has been to me far better than any reality it has been my fortune to discover."

"'The world's a stage, and men and women are but actors,'" she quotes Shakespeare from memory in the opening of another of her letters, "perhaps, *Carlo Meo*, our play may be in three acts, two of which the curtain has already fallen upon. 1st Act—Sunrise, steamer, private lunatic asylum, etc., etc. 2nd Act—Straggling, dreaming correspondence, but interest well sustained. Curtain falls amid much confusion. There is no hurry for the 3rd Act, for the public is fanning, criticizing, eating oranges, etc., etc. Between the 1st and 2nd Act there was an interval of ten months. I took that time to consider ere I raised the drop scene. If ever it rises again, you, *Carlo*, must do it. I give you twice the time to do it. *En attendant* the chorus strikes up and sings—

> "'Thro' the world, thro' the world,"
> Follow and find me,
> Search where affliction and misery dwell,
> I leave but a trace to affection behind me,
> And he who would find me
> Must first love me well.'"

"I want" she adds, "to pull you down from your

pedestal in my imagination, and pluck you to pieces to find out the secret mechanism and idiosyncrasies of your inmost character, the charm of your interior existence, whether you have any communion with all that is beautiful in nature—the heights, the sunshine, and the solemn shade."

She frequently reproaches him with coldness and neglect.

"*Crudelissmo Meo Carlo,* I am not a believer in the efficacy of reproach, and endeavour not to indulge in anything at the same time disagreeable and useless, but I may be permitted to suggest that the four months it usually takes the spirit to move you to write to me have expired, and my heart begins to fail me a little sometimes. . . . You say there is no *rnbicon* beyond which you do not intend to go, be it so I will never discourage you in anything, but do not come and shake me out of my pleasant dreams to a *semblance* of reality."

He suggests—"If there be that in your position that causes those letters to give you more pain than a cessation of your correspondence, I say with pain, 'let it cease.'"

She protests against any such decision. "Oh, when," she writes, "is the smallest hope of meeting again. . . . and so you are a 'chivalrous savage,' are you? *J'en suis enchante;* pray hear my definition of one: A man who has a sound mind and a warm heart, unclouded by sophism and subtle refinement, who sees the naked truth by the pure light God has given him, nor seeks to pervert it by false logic and time-serving philosophy—who is bold and brave, and gentle, and kind, stooping on the earth to none but the weak and helpless—who knows no other bonds but those of honour and affection—the protector of the feeble and the guardian of justice and honesty, too noble for a tyrant, too generous to be selfish, a man realizing the intuitions of the Creator, and worthy of the glorious gifts bestowed upon him. There is a chivalrous savage for you. Oh, it is a good joke. I have been in love with such a one from the age

of ten years, when I formed my first conception of an ideal man from Scott and Cowper."

It was indeed "a good joke" to have such a description applied to Major Yelverton as he revealed himself at the trial.

There followed the visit to General Straubenzee and the scene on the steamer at Balaclava, of which they give such divergent accounts. The lady's letters are certainly not wholly inconsistent with the gross description of the major.

"This time last Saturday night, *Carlo Meo*, was our second steamer scene. God grant the third be not far distant, and the consummation of all."

Again—"Why am I obliged to keep on trusting you when even you bid me not. Is it infatuation, my *kismet* (fate) or what is it? You know the superstition that when one is walking over our grave we feel a shudder creep over us, but we feel no shudder towards those who wantonly trample over our living happiness. Why did I not feel a shudder at your approach, if such be your course through life, if you must walk over me and crush my heart out with your steel-clad boots? I will feel no shudder, utter no groan, but my dying look will sink into your soul.

"I have received within the last three days two letters very different in purport. One the most perfect specimen of amatory diction I ever read, and it does me good after the humiliation received from you. I was feeling quite unworthy of any one . . . The delight of sympathy is to share everything good or bad, and as I know the length, depth, and breadth of your wickedness now you need have no fear of losing my good opinion. *Comprenez-vous?* To-day I have been running about, and found the bank of violets you were sighing for the other night entirely closed in by verdure. It overhangs the sea, impervious to human eye and ear; only a nightingale above would melodize our thoughts, too deep and sacred for mortal words to tell."

On the other hand, there are passages, even more

numerous, in her letters which seem to give the lie to the major's degrading suggestion. For example:—

"I have been reading all the old letters over again to see if I can detect anything wrong in them. I cannot. I always liked the tone of your letters to me. I thought you must have a nice mind. I have received letters from other men much more flattering than yours, but not so satisfactory on the whole. I do not find in yours a word that could not be read by the purest-minded woman. . . . I think woman's instinct in these matters are infallible guides. She does not reason, but feels her danger or her safety, and I feel that you are not after the model of most men. *Vous etes seul de votre espece.*"

But there can be no doubt at all of the frantic passion he kindled in the woman's heart.

"Have you not made me," she writes, "suffer the storms of Tantalus over and over again, have I not expressed to you that I have but one wish, and that if you would gratify that one I would never trouble you again in time nor eternity, only to see you once. . . . My *kismet* at present is to float around you in ambient air, to hover near you, unfelt, unseen, to rehearse Diana and Endymion, 'who touches the closed eyes of one who slumbering lies, as sleeping in the grove he dreamt not of her love.' But your waking sight will not behold me because, it is only love that can penetrate through every disguise, and you feel but apathy, you say, and have proved it. Oh, the very thought of meeting you makes my heart leap. Some few moments of happiness will at last be mine; there can be no harm in breathing the same air, in viewing the same scenes, in treading in your footsteps, in haunting you like a shadow, and clinging around your heart insensibly, for you must feel me."

In the Scotch court the "pursuer" is the quaint term applied to the plaintiff in a suit. The lady was certainly the "pursuer," during the greater part at least of this protracted affair, and the gentleman was the "defender."

The major returned from the Crimea, not through Constantinople, but by the Danube, for the purpose of evading a meeting with her, and told her so in his letter.

"*Cara Theresa Mea,*" he wrote from Miltown, near Dublin, "I am sorry I made a false promise, though I fully meant to keep it when it was made. The head became irresistible, and it was broken. Listen to the dialogue. Brain: Why are you going? Self: I promised. Brain: Why did you promise? Self: We wished to meet again. Brain: What for? To make a beginning of the end, or to add to the endless? Self: For my part the former. Brain: Fool! Then the end will be all of your making. Self: True, if there be one. Brain: That must not be. Self: No I will go back by the Danube or Moscow. Brain: A steamer starts for Odessa to-morrow. Self: H—m, a steamer for Odessa, to-morrow." So he returned by the Danube.

But nothing could damp the lady's fervour. She wrote—"I have written lightly but I feel deeply. No poor criminal ever awaited the life or death sentence of his judge with more intense anxiety, with more faint heart-sickening, and when the letter comes I shall not dare to open it. There comes a fire in my head, and for less than a second my heart stands still, as it did when I heard the word Danube. So I am to die, they say, in one of those mortal struggles of joy and pain, and if there is no joy for me, grant it may be now. I never feared death, and prefer it to misery. O God, why hast Thou given one mortal such power over another to abuse?"

Her letters culminate in a frenzy of passion. In May 1857, she wrote—"What is the use of saying 'you must keep quite' when I cannot trust, when trusting I may lose both life here and life hereafter, or at least the fruits of a life of patient suffering, for if you deceive again in that last not to be remembered point, the physical part would give way; on the other hand, my whole nature demands the risk, the trial to be

made, it has wound itself too closely about you to give you up now, even in writing about it I have little sharp, nipping pains in my heart. If I made my hand write farewell I would have a palpitation there and then. I shall die without you, is it worse to die by you?"

Again in September 1857—"I pine for thee, every sense of soul and body pines every instant of the long day, from the top of my head downwards is one absorbing desire; every shining hair longs undividedly to be stroked, the eyes yearn to see you; the ears are strained to catch the first sound of your voice or foot fall; the hands throb and tingle to touch you and feel you once more within their grasp, so on I could enumerate, but I come to the little feet which are kicking and stamping to have their boots laced. I want you! I want you!! I want you!!! As to there being conditions about the arrears of petting I am crazy, I must have it or I shall hate you."

But one extraordinary circumstance in connection with the correspondence cannot escape comment. The major swore, and the lady denied, that he told her that the word marriage was one that should never be mentioned between them. Certain it is that the word marriage was not mentioned in the letters that she preserved of the major, nor in hers till just at the close.

The one allusion to a possible marriage I find in the lady's letter July 1856.—"All these reflections lead me to think there is something more than the money difficulty which you have not the courage to tell me, *Carlo*. I cannot doubt your feelings towards me, but there may be family feelings, pride of birth, etc. If so I have only three words to say. For God's sake let this be the end. . . . If it is so we must not meet again."

Later, indeed, there is an allegation that in one of his letters, after the Scotch marriage, he addressed her as *sposa bella mea*. But this letter which would otherwise be the most conclusive bit of evidence in the entire trial was partially obliterated, and of that obliteration no sufficient explanation was forthcoming.

In September 1857, the major wrote from Ireland to the lady in Edinburgh, a short but affectionate letter, which ended "I will give you an account of my travels (D.V.) on Tuesday night, and many *baccie* and some (illegible), just struck two, *adio Carrissima filice nocte.*" The illegible words were alleged by the lady's council to be "petting *sposa bella mea,*" which reading would be an invaluable admission of a marriage, but the major's counsel alleged the words had been tampered with, and Frederick Penny, Professor of Chemistry in the Andersonian University, having made a complete examination with a microscope, satisfied himself that the words stood originally "petting *possibilmente,*" a suggestion that raises the gravest presumption against the lady.

A very curious circumstance occurred at the trial in regard to this all-important matter. At the close of the charge of Chief Justice Monaghan we read that, "Mr. Brewster asked that the letter of the defendant containing the word '*possibilmente,*' which was alleged to have been altered, should be sent to the jury.

Mr. Whiteside said he forgot to allude to that letter.

Lord Chief Justice. I also intended to mention it.

Mr. Brewster. Let all go before the jury.

It is certainly unfortunate that no version or explanation of this all-important letter was forthcoming, either from the counsel for the lady or the eminent judge by whom the case was tried.

If her letters appear occasionally to discredit the evidence of the lady, on the other hand the letters of the major are inconsistent with the story he told in the witness box.

It appeared that in May of 1857, after the date of the alleged Scotch marriage, the lady inadvertently slipped the wedding cards of a Mr. Shears into a love letter of hers to the major. Whereupon he, affecting to believe that she had herself married Mr. Shears, wrote her an affectionate congratulation.

"If ever a remembrance of me crosses your mind in your new sphere of duties and pleasures spare me a

place in your prayers, and believe me as one always ready to act towards you as a sincere and respectful friend."

The tone of this letter seems throughout wholly inconsistent with the major's evidence that the lady had been living with him as his mistress in Edinburgh. No wonder it evoked an outburst in reply.

"Are you mad or am I? The first reading of your letter brought me to a stop, mental and physical. My present weakness could not stand such a shock, my heart went still."

But even more significant is a letter written by him on Christmas Day in 1857, in reply to the lady who was then expecting the birth of a child. He quotes her words—"I told you my resolution in case certain events did occur. You were very angry, but it would be my duty, if I live I must do it." And he replied—"Your resolution is founded on false views. Where is your duty of keeping faith with me? . . . If I depart this life you may speak, or if you do, you may leave a legacy of the facts, but while we both live you must trust me and I must trust you. . . . Your duty lies this way, not that."

It is hard, indeed, to read these letters otherwise than as an admission of a secret marriage, and under cross-examination the major had no plausible explanation to offer.

Contradictory and confused as were the evidence and the correspondence, the law to which they were to be applied was scarcely less confused.

There were two distinct marriages alleged in the Irish trial. One in Scotland and one in Ireland, and the Scotch marriage was suggested in three alternative forms.

The pleading in the Scotch trial neatly summarizes the lady's claim to have been married in Scotland.

(1) The defender and pursuer were lawfully married to each other according to the law of Scotland by consent *de presenti* to become man and wife.

(2) In the circumstances of the case, a valid marriage

was constituted between the parties, as proved by cohabitation as husband and wife and habit and report.

(3) At all events, a marriage was constituted between the parties by the promise of the defender to the pursuer to become husband and wife, followed by carnal connection between them on the faith of such promises.

(4) In the event of the pursuer failing to establish a marriage in Scotland, then the marriage took place in Ireland on the 15th of August, 1857, being in all results a valid and legal marriage according to the law of Ireland.

The Scotch court was instructed in the Irish law by an eminent Irish lawyer, and the Irish court by two Scotch lawyers of distinction.

The only obstacle in the way of the validity of the Irish marriage was the statute 10, George II, chapter 13, section I, which provided—"Whereas the laws now in being to prevent popish priests from celebrating marriages between Protestant and Protestant, or between Protestant and Papist have hitherto been found ineffectual; for remedy therefore it is enacted by the King's most excellent majesty by and with the consent of thh Lords spiritual and temporal, and Commons in this Parliament, and by the authority of the same that every marriage which shall be celebrated after the first day of May, which shall be in the year of our Lord 1746, between a Papist and any person who had been or professed him or herself to be a Protestant any time within twelve months before such celebration of marriage, or between two Protestants if celebrated by a popish priest shall be and is hereby proclaimed absolutely null and void to all intents and purposes, without any process, judgment or sentence of law whatever." It was further provided that the priest celebrating any such marriage should be guilty of felony. Thus was the question to be decided concerning the validity of the Catholic marriage—"Was Major Yelverton a Protestant, or had he professed Protestantism at any time within twelve months

previous to the alleged marriage?" The Irish marriage was not seriously pressed at the Scotch trial.

The Very Reverend John Pius Leahy, Bishop of the diocese in which the Catholic ceremony took place, does not appear to have been examined in the Irish trial, but in the Scotch trial he deposed that "the lady having explained the circumstances of her relationship with the gentleman, he told her the relationship alluded to was a valid marriage in the sight of the Catholic Church. I then said I saw no use nor advantage in any other marriage ceremony."

"What did you instruct Father Mooney to do?"

"I gave him permission in words which I cannot recollect to have a ceremony performed such as was requested by the lady. I did this in consequence of being pressed by the lady to do so." The witness added—"I consider that the words 'marriage ceremony' and 'renewal of marriage consent' in the case to be equivalent, with this sole difference, that if there had not been a previous valid marriage between the parties it would have been to all purposes a valid marriage itself."

The most important witness on the question of the religion of Major Yelverton was the Reverend Bernard Mooney, who performed the religious ceremony, and who swore, both in Ireland and in Scotland, that when they appeared in church to be married the major said to him:

"Mr. Mooney, there is no necessity for this, it has all been previously arranged. I do it to satisfy the lady's conscience."

"I said, 'I am perfectly aware of that.' I then asked him what religion he professed."

"He said, 'I am not much of anything.'"

"I then asked him 'What do you mean by that? Are you a Roman Catholic?'"

"The defender said 'no.'

"The pursuer then said, 'Don't mind him, he has frequently attended places of Catholic worship with me, but he is not yet Confirmed.'"

"I then asked him again, 'What are you?' and he said, 'I am a Protestant-Catholic.'"

In regard to the Scotch marriage, the Scotch lawyers who instructed the Irish court differed somewhat on point of law, one holding that there could be no marriage by the consent *in presenti*, except in the presence of a witness, the other that there could; but here the question turned mainly on whether pursuer or defender told the true story of what had occurred in Edinburgh.

The trial was opened in Dublin on the 21st day of February, 1861, amid the most intense excitement. From the first day not merely the court where the case was tried by Chief Justice Monaghan and a jury, but the great circular hall of the Four Courts was thronged to its utmost limits by an eager crowd. The case for the plaintiff was eloquently opened by Serjeant Sullivan, then the leader of the Irish Bar, who set the lady's case in detail before the jury—"It was strange," he said in his eloquent peroration, "that a man who had plighted his troth should repudiate the woman to whom he had plighted it. The answer that the defendant would give that there was no marriage in that church on that occasion—that he took her in there merely to ease her conscience, to legitimize her relationship to him as his mistress! What would they say to such a man? He would be hunted from the court by the execration of every man if what he said was true, that he profaned the ceremony of marriage to make this woman his more confiding mistress:—

> "'Such an act
> As blurs the grace and blush of modesty
> Calls virtue hypocrite; takes off the rose
> From the fair forehead of an innocent love,
> And sets a blister there; makes marriage vows
> As false as dicers' oaths; oh such a deed
> As from the body of contraction plucks
> The very soul; and sweet religion makes
> A rapshody of words.'"

The lady, examined by Mr. Whiteside, proved

a superlative witness, displaying wonderful clearness and apparent candour. One dramatic incident at the opening of her examination served to enhance the effect of her evidence on the court and jury.

Here is a description of the scene by an eye witness:

"Early in her examination Mrs. Yelverton suddenly became confused and agitated, her eyes were steadily fixed on a gentleman who occupied a seat on one side of the benches immediately opposite the witness box. She fell back in an exhausted fainting state; the greatest compassion was felt for her by all present, and restoratives had to be procured and used before she appeared to recover. The solicitor for the plaintiff communicated with Mr. Whiteside. Counsel said:—

My Lord, I understand the agitation of the witness is caused by the presence of the defendant; I will, therefore, my lord, request that your lordship will ask the defendant to withdraw.

His Lordship. I cannot order him to do so, his presence is entirely a matter of taste and feeling.

Mr. Brewster. Of course, the defendant will withdraw.

The defendant then got up to leave, but delayed some time, the agitation of the witness continuing.

A Juror. We are of opinion, my lord, that the defendant ought to withdraw, seeing that his presence discomposes the witness.

The defendant then withdrew, but the witness was unable to answer Mr. Whiteside for some moments owing to her continued trembling.

In cross-examination she was still more effective than on the direct, explaining the doubtful passages in her letters with admirable ingenuity and captivating judge, jury, and auditors by her sweetness and apparent candour. Her case grew clearer and stronger as the examination proceeded, and over and over again she completely discomfited the most acute of cross-examiners, Mr. Brewster. In the end he was driven to desperate expedients almost incredible in a man of his experience and ability.

Did you ever, he asked the witness, tell the Reverend Mr. Mooney at Rostrevor, that Mr. Yelverton was a Protestant?

No.

Now I put it to you. Did you ever tell him so under the seal of confession? (Great expression of indignation, hisses and groans, in which nearly every person present appeared to join.)

Serjeant Sullivan. That is a most extraordinary question. We said we would produce the Reverend Mr. Mooney.

The *Chief Justice.* She may decline to answer it, but she is at liberty to answer if she pleases.

Witness. I will answer the question if your lordship wishes.

His Lordship. I have no wish on the subject, you may answer it if you please.

Mr. Brewster pressed the question.

Serjeant Sullivan. The question is pressed, my lord, I will release the seal as far as I can.

Witness. I have no objection to answer the question. I never did so in confession or otherwise. (Here there was loud and prolonged applause in court.)

Mr. Brewster. Well, my lord, if this is a Court of Justice. . . . !

Serjeant Sullivan. But when such a question as that is put.

Chief Justice. I confess I never heard before such a question put.

Mr. Brewster. I admit that, but in a desperate case.

Chief Justice. It may be a desperate case, but I never heard such a question put.

Mr. Brewster I would not ask such a question of a clergyman.

Chief Justice. If a clergyman is asked what was told him under the seal of confession, the rule is that he is not pressed if he declines to answer, and I think the same rule applies to penitents.

Mr. Brewster was, of course, bound by her answer, to

which contradiction was impossible. It was the climax of a long series of triumphs by the lady which evoked more and more interest and admiration throughout the entire city.

The *Freeman's Journal*, at the close of her cross-examination while the case was yet in full swing, came out with a flaming leading article in her favour, for which it would have been promptly had up for contempt of court in more modern times.

"Mrs. Yelverton is abandoned. The legality of marriage is denied, and it is alleged that, though married by a priest, in as much as Mr. Yelverton is a Protestant at the time the marriage is a nulity. We have endeavoured to put the legal point raised in a brief compass. The plea in fact amounts to this—that any Protestant libertine may pretend to any young and beautiful Catholic woman that he has become a Catholic, marry her as a Catholic, and at the end of a month, or of a year, or of three, cast her off and proclaim that the confiding woman who, in the purity of her heart, and before God, became his wife, was in law and in fact his mistress, the victim of his brutal lust, and of the more brutal code which abets his villiany. In fact, the issue before the court in the present case is not one of pounds, shillings, and pence. The issue is whether the law is such as the hon. Major Yelverton's counsel contends.

"Every attempt to cast a slur on the fair fame of Mrs. Yelverton has failed. The counsel for the defendant subjected her character yesterday to a cross-examination of such a character that a crowded court groaned him again and again to indicate the indignation which the questions briefed to him had created. We hope it will be the last time that a member of the Bar will subject himself to such a rebuke that must be felt with double force when he remembers the firm and dignified, yet mild and ladylike tone in which the woman set aside the unworthy attempt to cast an imputation on her honour.

"We cannot believe that any court will hold it to be legal for a man to affect to be a Catholic, entrap a Catholic lady into a marriage, and then with impunity turn on his victim and claim her as his concubine. If such be the law, the public virtue, the public conscience, the public will, which has the power of making and unmaking laws, must unmake this hideous code, trample upon it as an outrage against society, against morals and against religion, and must do so by the instrumentality of a jury."

From the judgment of the Chief Justice it seems plain that the infamy against which the *Freeman's Journal* protested was involved in the true construction of this monstrous statute.

"My opinion," he said, "is, that on the construction of the Act of Parliament, if a man comes here to-morrow, introduces himself to me as the suitor of my daughter, representing himself to be a Roman Catholic, though I act on the faith of that representation, I do not think, in point of law, there is an estopal against his showing that, in point of fact, he had been a believer and practiser in the tenets and practises of the Established Church within twelve months before, and, therefore, entitled to repudiate the girl whom he had fraudulently entrapped."

In opening the case for the defendant, Mr. Brewster made no effort to palliate the infamy of his conduct. He made it a rule, he said, never to conceal from others the opinions he entertained in reference to any matter whatever, and never to lay down a proposition in public, either upon fact or morals, which he did not entertain in private—he did not sell himself for money.

He certainly acted up to this remarkable declaration, for, after making out of the rather slender materials the best possible case for Major Yelverton, he thus referred to his client:—"If you suppose I am here to justify him for his acts you do me a grievous wrong. I am not called upon—I do not trust myself—to express the opinions I entertain upon the subject. If he were forty times my

client they would not be changed. I entertain them as a man. He had contracted an obligation in honour to this lady, which, in my judgment, he had no right to recede from. Gentlemen, he may have acted dishonourably, and done wrong in every respect; but if he were not married in the first instance, however dishonourable you may think his conduct, however you may brand him with shame and disgrace, if, in fact and in truth and on your oaths, you believe he was not a Roman Catholic, you cannot find, under the direction of his lordship, in favour of the Irish marriage."

The effect created by the unhappy lady's cross-examination was wonderfully enhanced by the cross-examination of Major Yelverton, which was the most sensational development of this sensational trial. The tradition of that cross-examination still vividly survives at the Irish Bar; for brilliancy and pitiless severity it has probably never been equalled, certainly never surpassed. The unhappy wretch in the witness chair had his infamy mercilessly exposed to the contempt and execration of the public. He passed through an ordeal of fire which no man of any feeling could possibly have survived. In the very first question he was caught on the horns of an intolerable dilemma from which extrication was impossible, no matter what might be his reply.

Serjeant Sullivan. Major Yelverton, did you ever love Theresa Longworth?

I did.

Did you ever love her purely and honourably?

(After a considerable pause.) Not entirely, sir.

I will repeat my question. Did you ever love Theresa Longworth purely and honourably?

No.

Then your love for her was always founded on dishonour?

Yes.

With the determination from the first to seduce her?

(Emphatically.) No.

Explain me that?

When I began to correspond with her I had no object, honourable or dishonourable.

And you continued to correspond without an object?

When I met her at Galatea I was carried away by passion, and then first conceived the desire of making her my mistress.

In the convent of Galatea?

In the convent.

She wearing the habit of a Sister of Mercy?

True, sir.

Did you sit with her in the little room of Galatea, she wearing the robes of a Sister of Mercy?

Yes, sir. . . .

Did you speak a little of love?

I did not give it that name, sir.

Did you make love to her?

Well, I kissed her, and passed my arm round her waist.

Had you known in the convent at Galatea that Theresa Longworth was an orphan?

She had told me.

That her mother had died in early life, that her father was dead?

The Atheist.

Chief Justice. Who said that?

Serjeant Sullivan. The witness adds that, my lord.

You wrote her letters, you knew she was an orphan and a lady, a gentlewoman?

I don't know what your definition of a gentlewoman is exactly.

Tell me what yours is?

A woman of gentle blood.

Serjeant Sullivan cross-examined the witness regarding his Catholic marriage.

Tell me, sir, did you at the altar, before the priest, take her to be your wedded wife?

I did.

Did she take you to be her wedded husband?

She did.

Did you take her for better or for worse?

(After a pause.) I don't recollect those words.

Did you take her for "better or for worse," upon your oath? (No answer.)

For richer, for poorer?

I don't recollect.

What did you say—did you repeat the words after the priest?

We did.

You repeated them?

Yes.

What did you repeat after the priest?

"I, William Charles, take thee, Maria Theresa, to be—what is it?—wedded wife."

Well, what are the other words?

I cannot recollect them.

Perhaps I could remind you. Listen, the priest said—"I, William Charles, take thee, Maria Theresa, to be my wedded wife?"

Yes.

"To love and to hold from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, till death do us part, if Holy Church will permit, and thereto I pledge my troth." By virtue of your oath did you say that at the altar?

I cannot recollect whether all those words were used.

But the substance of them?

The most part of them, at any rate.

And the best, too. You said the words kneeling at the altar before the priest. She took you to be her wedded husband, "to have and to hold, for better, for worse, in sickness and in health"; and did she pledge you her troth?

I cannot speak the words.

But did she in substance?

Something of that sort. I recollect her taking me for her wedded husband, at any rate.

And you took her to be your wedded wife?

Yes.

Upon your knees?

Yes.

Not less searching, not less damning, was the cross-examination regarding the letter which the major had written to the lady, when believing she was about to give birth to a child, she announced her intention of publishing her marriage.

Serjeant Sullivan. Attend again to your letter. "But, if the future proves that I have been deceived by others, that will not absolve you from your faith, the which if you break with me you will never, from that moment, have one of even tolerable content for the rest of your life." What does that mean?

Pledging her to secrecy.

What secret was she to keep—that she was your mistress?

That she was engaged, bound in this arrangement.

Serjeant Sullivan. Listen. "If I depart this life you may speak, or if you do you may leave a legacy of all the facts." What facts?

The facts that had taken place.

Showing that you had made her your "mistress-in-law." Is that it?

Very true, sir.

And that was the legacy you wished her to leave after she was in the grave?

Yes, sir.

Leave the legacy to the world that she was your mistress? Leave that legacy to posterity?

Yes.

Was not the true legacy that you knelt down with her at the altar and swore to Grd to take her as your wife?

Yes, sir.

(Sensation in court.)

Never was a man more exposed to universal contempt than the "honourable" Major Yelverton at the close of his cross-examination.

Again the *Freeman's Journal* interposed a leader which expressed the unanimous opinion of the public on the subject.

"Major Yelverton's evidence was perfectly damnatory, and while it condemned the defendant out of his own mouth, it confirmed in the minutest details the particulars of the evidence of Mrs. Yelverton. What a triumph for the virtuous wife, what ignomy for the dishonourable husband, the whole evidence of the man of 'gentle blood' excited the most intense disgust. Was it believed? We shall not, though we could, answer the question. His sole object from the moment he met Mrs. Yelverton on the Boulogne packet was her ruin. She was not of sufficient gentle-hood for his wife, but she was quite good enough to be his concubine."

Serjeant Armstrong had, indeed, a hard task before him when he came before a hostile judge, jury, and crowded court, to reply for his dishonoured client, and he accomplished that task with supreme ability. He did not indeed attempt the impossible task of whitewashing his client, but he made a tremendous attack on the lady, whom he describes as "a temptress"—"an erratic, clever adventuress," a bold, crafty, wayward, unscrupulous woman—a syren, who missed Yelverton in the Danube, sought him out at Leith, pursued him, inveigled him into the church, cast her wiles and charms around him, relying on the same talents and fascinations which served her well before. She attempted here in court to carry everything by her charms, her witcheries, and her falsehoods."

Then followed a speech from Mr. Whiteside that rivalled the cross-examination of Serjeant Sullivan, a speech that throbbed with passionate eloquence, and whose echoes were heard outside the court to the furthest corners of the United Kingdom.

In the course of the examination, the lady had complained that wrong interpretation had been given to some of the passages in her letters, and the emphasis put on the wrong words.

Mr. Whiteside. "That complaint is very true, but depend upon it, I will put the emphasis on the right

words." He fulfilled that promise in a speech of superlative eloquence to which no extracts can do justice.

"I ask you," he said, "to judge of that woman as she has appeared before you, and then say do you believe her? Trace her life up from the first hour she stood within the walls of the convent until the day she sat in that box to tell the story of her multitudinous sorrows. Ask yourselves what fact has been proved against her with any living man save the defendant? Her crime is, she loved him too dearly and too well. Had she possessed millions, she would have flung them at his feet. Had she a throne to bestow, she would have placed him on that throne. She gave him the kingdom of her heart, and made him sovereign of her affections. There he reigned with undisputed sway.

"Our affections were by an Almighty hand planted in the human heart. They have survived the fall, and repaired the ravages of sin and death. They dignify, exalt and inspire our existence here below, which without them were cold, monotonous and dull. They unite heart to heart by adamantine links. Nor are their uses limited to this life. We may well believe that when the mysterious union between soul and body is dissolved, the high affections of our nature purified, spiritualized, immortalized, may pass to the felicity unspeakable reserved for the spirits of the just made perfect through the countless ages of eternity. (Loud applause.)

"She gave him her affections—she gave him her love—a woman's love! Who can fathom its depths? Who can measure its intensity? Who can describe its devotion? She told you herself what that love was when she wrote to him: 'If you were to be executed as a convict I would stand beneath the gallows.' If he had taken that woman for his wife, misery would have endeared him to her, poverty she would have shared, from sickness and misfortune she would never have fled; she would have been his constant companion, his guide, his friend—his polluted mistress never!

"Therefore, I now call on you to do justice to that injured woman. You cannot restore her to the husband

she adored or the happiness she enjoyed. You cannot give colour to that faded cheek, or lustre to that eye that has been dimmed by many a tear. You cannot relieve the sorrows of her bursting heart, but you may restore her to her place in society. You may by your verdict enable her to say: 'Rash I have been, indiscreet I may have been through excess of my affection for you, but guilty never!' You may place her in the rank which she would never disgrace—you may restore to that society in which she is qualified to shine and has ever adorned."

The close of Whiteside's great speech was the signal for vociferous applause, nor was the enthusiasm excited by his eloquence confined to Dublin or Ireland. He was at the time the representative of Enniskillen in Parliament, and when he next entered the House all the members, without distinction of parties, rose in their places and cheered him, and voices were heard crying, "We are all proud of our Irish orator." A similar ovation, it will be remembered, was accorded to Parnell when he was acquitted of the disgraceful charges brought against him by the *Times*.

The Judge was clearly not exempt from the universal feeling of compassion for the lady, of utter loathing for the conduct of the defendant. "From the opening of the case to its conclusion," he said, "I felt and feel that it requires the greatest effort of a man's mind to divest himself of feelings that ought not to be entertained on the judicial bench. I can only say for myself that my great effort on looking over the evidence in this case is to endeavour to impress upon my mind and feeling that my judgment should not be guided in the lightest degree by my feelings, and that if in the course of the observations I make I should in any way betray my feelings, it will be attributed to human nature and not to any design or wish to express them."

In spite of these precautions it was plain that the man frequently mastered the judge on the bench, and while he laid down the law and stated the evidence with scrupulous fairness, he found it impossible to

suppress his strong predilection for the lady and his even more vehement reprobation of the defendant.

"The case for the defendant, the Hon. William Charles Yelverton," he said, "is this: Great as my delinquencies have been, dishonourably as I have acted, though I have acted a part that any man with a particle of feeling would blush to have exhibited in a public court of justice, yet that woman is not my wife; she is my mistress; she served my purpose and I am justified, if not in the eyes of Almighty God, in the eyes of the law in casting her forth."

Again the Judge declares—"I am not surprised, as much as I depreciate exhibitions of feelings in a court of justice, at the expression of indignation which the avowal of this man must have excited in the breast of every person with a particle of honour or virtue in his composition. This girl, who underwent one of the most searching cross-examinations I ever witnessed, and in whose conduct up to that moment (the meeting in Galatea) there does not appear to be anything to justify a person in imputing anything to her that would be discreditable or improper in any woman. She excited the admiration, love, and affection of this man as he tells us; but, my God, should not the garb in which she appeared, and the work of charity on which she was engaged, have had some influence on this man, and driven from his mind the idea which he says he entertained at the time. My God, gentlemen, all of us see, in this city, numbers of young and beautiful women who have engaged in this holy work of charity, and, though men may entertain different opinions as to the prudence and propriety of a convent life, there is not a man amongst you who would be capable of offering an insult to those young and devoted women as they go to and fro on their mission of charity. That, gentlemen, is the account that this gentleman gives of himself, and the idea he entertained at the time. He says that he loved and admired her, but that she was not of gentle blood, and that, therefore, he formed an idea or desire of obtaining possession of her person by dishonouring her.'

The jury, after the briefest deliberation, found in favour of both the Scotch and the Irish marriage.

A contemporary eye-witness attempts to describe the indescribable enthusiasm that took possession of the court on the finding of the verdict—"Hats and handkerchiefs were waved; the members of the Bar stood up and joined heartily in the public manifestations of delight; many of them actually took off their wigs and waved them with energy. Ladies seemed at a loss to show their feeling; they waved pocket handkerchiefs in the air; they clapped their hands, and then wept for joy, and looked a world of gratitude at the jurors, whose proud privilege it was, we are told, to right an innocent and injured woman. When Mrs. Yelverton emerged from the Four Courts, a great demonstration of popular enthusiasm took place. She was cheered by fifty thousand people frantic with joy, who had waited outside the gates to hear the result. The streets on both sides of the Liffey were packed with people, and were impassable for hours before the result was known. The cheering, which was commenced in the hall, was taken up outside, and again and again repeated. Hats were thrown into the air, and every external demonstration of delight was evinced by all present. Cars were to be seen rushing in every direction to carry the news which we are assured was awaited with interest in every part of the world."

Mrs. Yelverton was staying at the Gresham Hotel. Her carriage reached there through a cheering throng, and, we are told, she had the greatest difficulty in making her way from the carriage, through the dense crowd, into the hotel. In response to a universal call she came to the balcony of one of the drawingroom windows, and, when the cheering had subsided, she said—"My noble-hearted friends, you have made me this day an Irishwoman, by the verdict that I am the wife of an Irishman (vehement cheering). I glory to belong to such a noble-hearted nation (great cheering). You will live in my heart for ever, as I have lived in your hearts this day (tremendous applause). I am too

weak to say all that my heart desires; but you will accept the gratitude of a heart that was made sad and is now glad (loud cheers). Farewell for the present, but, for ever, I belong, in heart and soul, to the people of Dublin."

The lady's speech seems to indicate that she still clung to this idol of basest clay, that she still hoped for happiness as a wife forced upon him by the verdict of a jury after a shameless repudiation. He was the tie that bound her to the Irish nation, by his own account a mercenary, treacherous, heartless libertine, by hers a wanton perjurer and bigamist as well.

But the unhappy lady's singular triumph was not of long duration. It is true the verdict was held up on a bill of exceptions against the Chief Justice's charge, tried before Judges Christian, Keogh, Ball, and Chief Justice Monaghan. The court was equally divided in regard to the Catholic marriage, Christian and Keogh holding that the judge had misdirected the jury, but it was unanimous in holding that there was no misdirection in regard to the Scotch marriage, and the verdict was upheld.

Meanwhile, however, the proceedings in Scotland dragged their slow length along. The first proceeding in Scotland was on August 7, 1858, by Maria Theresa Longworth, otherwise Yelverton, for a declaration that she was the wife of the Defender, and relying entirely on the Irish marriage.

On June 8, 1859, an action was instituted by Major Yelverton to have it declared that he was free of any marriage with the defendant, and that she ought to be "put to silence there anent for all time coming."

The lady thereupon abandoned her first action, and, in June 1860, instituted a new proceeding, relying on both marriages, Scotch and Irish; the two surviving actions were joined, the lady as Pursuer, the major as Defender, and the joint action was tried before Lord Ardmillan, the Lord Ordinary, who, after a probate hearing, in 1860, delivered a lengthened and powerful judgment in favour of the Defender.

His estimate of the lady is interesting in contrast with the eloquent panegyric of Whiteside—"This judgment has been reached after much inquiry, and not without sympathy for the sad fate of the Pursuer, but with a clear conviction that it is according to the truth of the case. For the conduct of the Defender there can be no excuse. But he was not the seeker, the seducer, or the betrayer of the Pursuer. The story of the Pursuer. her charms, her talent, her misfortune, even the intense and persevering devotedness of her passion must excite interest, pity and sympathy. But she was no mere girl, no simpleton, no stranger to the ways of the world, no victim to insidious arts. She was not deceived, she fell by her own consent."

On appeal to the Scotch Court of Appeal, the judgment was reversed, and the lady again triumphed.

Of the members of the Court, Lord Curriehill and Lord Deas were strongly in favour of the Pursuer, the Lord President against. A passage in Lord Deas' speech deserves to be quoted for the clearness and cogency of its reasoning. He argued that the defendant's conduct in the Irish ceremony was a clear acknowledgment of a previous marriage.

Here we have the evidence that the defendant affirmed three things—(1) That there was no necessity for the proposed ceremony because of what had been previously settled or arranged. (2) That something had been settled or arranged which the Defender either assumed the priest to know or was prepared to explain. (3) That the whole use and object of what was to be done was to satisfy the lady's conscience.

Now, as regards each of these three things, I must ask a question. What could supersede the necessity of a marriage between those two parties who were to live and cohabit together except a previous marriage? I can suggest no answer to that question. (2) What did the Defender mean to represent as having been already settled and arranged between him and the Pursuer? Did he mean to convey to the priest at the altar that they had arranged to live together in habitual

illicit intercourse? I am not able to persuade myself that this could be the Defender's meaning. Yet it was the only one which the Defender's counsel suggested in answer to my question on the subject. (3) What was it the Defender meant to say was to satisfy the lady's conscience. She was a Roman Catholic, and of course looked upon the ceremony of marriage at the altar as a sacrament. Could it satisfy, or be supposed to satisfy, her conscience, to add the desecration of a sacrament to the sin and shame of concubinage deliberately resolved to be persevered in?

I may add that the Lord President, while giving his judgment against the marriage, concurred with the view of the other two judges, that the Defender had perjured himself in his evidence, that he had seduced the lady in Edinburgh.

The case at last reached its final stage in the House of Lords in June 1864, before the Lord Chancellor, Lord Westbury, Lord Broughan, Lord Wensleydale, Lord Chelmsworth, Lord Kingsdown. Sir Hugh Cairns was one of the counsel of the major. The Attorney-General, the Lord Advocate, Mr. Whiteside and others appeared for the lady. The Lord Chancellor and Lord Broughan were in favour of the marriage, Lord Wensleydale, Lord Chelmsworth and Lord Kingsdown against, so there was a final decision in favour of the Honourable Major Yelverton.

So ended this momentous trial. The decision of the House of Lords seems to have automatically set aside the verdict of the jury after a full ten days hearing of the case. The result is the more remarkable, as the only allusion I can find in the judgment of the law lords to the Irish Catholic marriage is a single sentence from the judgment of Lord Wensleydale.

> "I cannot feel any doubt that, according to law, this marriage was void. I have no doubt he was a Protestant within the meaning of the Act, and I am fully supported in that opinion by those of the learned judges Christian and Keogh."

It is to be observed that of the thirteen judges who at one stage or another took part in the trial, eight were in favour of the marriage and five against. The lady had moreover the verdict of a jury with the entire evidence before them. In the Scotch trial the parties themselves were not, it would appear, competent witnesses on their own behalf, they were neither examined nor cross-examined, and it was on the evidence before the Scotch tribunal that the House of Lords decided, while the Irish jury had the invaluable —one is inclined to say—the indispensable assistance of the evidence of the parties, tested by a most searching cross-examination, in arriving at their decision in her favour.

To the lay mind this result must seem unaccountable. To the lawyer the explanation is clear. In form the Irish action was for a sum of money alleged to be due by A to B. It was what the lawyers call an action *in personam*, not an action *in rem*. Though the only issue raised and tried was the marriage of Major Yelverton, the verdict only decided that Major Yelverton owed £259 17s. 3d. to Thurwall, "only that and nothing more." That verdict would not *estop* the major from raising the same point against a similar claimant. It could not even be given in evidence in a subsequent trial. It is not easy to understand why the eminent legal advisers of the lady elected to try the issue of her marriage in such an action which could by no possibility be decisive. In a suit for the restoration for conjugal rights the verdict of a jury would have been absolutely binding, and could not be set aside even by the House of Lords unless on the grounds of misdirection by the learned judge who tried, or on the absence of sufficient evidence to go to a jury.

So heartless profligacy triumphed. The unhappy lady lapsed into a miserable obscurity from which no corner of the curtain has ever been raised, while the Honourable Major Yelverton lived to adorn the Irish peerage as the fourth Viscount of Avonmore, a title which has since become extinct.

THE MANCHESTER MARTYRS

Some of the most famous Irish trials of the last half century were held outside Ireland. Of these the *Times* Commission, held in London, to investigate "the facsimile letters" implicating Mr. Parnell in the Phœnix Park murders, and the trial of five Fenians in Manchester for the murder of Sergeant Brett in the course of the rescue of the Fenian leaders, Deasy and Kelly, are very notable examples. Both these trials were remarkable alike for intense human interest, and for their wide-reaching results. For the report of the Manchester trials I am largely indebted to the file of the *Times*, for, strangely enough, this event, which was destined to powerfully influence public feeling in Ireland, received only the most cursory notice in the *Freeman's Journal*. The following account, which appeared in the *Times* of September 19th, 1867, is, so far as I have been able to investigate, a fairly accurate description of the rescue:—

"The Manchester police, about a week ago, arrested two men who spoke with Irish-American accents, and who were loitering about the streets in a suspicious manner at between three and four in the morning. The men gave names, which are supposed to be false, and claimed to be American citizens, but are quite unknown. They were supposed to be plotting the robbery of a shop, and on being taken into custody offered great resistance, trying to get their hands into their pockets, where each had a loaded revolver. They were brought up under the Vagrant Act and remanded. From communications with the Irish police, some of whom have visited Manchester, it is confidently believed that these men will prove to be the notorious Fenians known as Colonel Kelly and Captain Deasy. On being brought up at the

Manchester police-court they were again remanded for further inquiry, and were placed in a cell with a view to their removal to the city jail, Bellevue.

"Before the van started the police observed two men, whom they suspected to be Fenians, loitering in the neighbourhood, and succeeded in arresting one of them, and in consequence Kelly and Deasy were put in irons before being taken to the prison van. When the van left the city it had to proceed over Ardwick Green and along Hyde Road, a fine open street leading to the jail. It was drawn by two horses, there were two policemen on the box, seven guarding the van in the rere, and one named Brett inside.

"The van proceeded about half-a-mile up this road and when approaching the archway of the bridge which carries the London and North Western Railway across the street, with an open field at the right, a number of shots were fired at it. The police, not seeing where the shots came from, dropped off the van and spread themselves out wide. There was then a rush of about thirty or forty Irishmen on the police and the van. One man had a hatchet, a second a hammer, and a third a bayonet, with which they set to work to break open the van. One man took a revolver and fired it into the lock; ultimately men with large stones, some of them nearly a hundred pounds in weight, broke through the top of the van and the panels of the door, and set all the prisoners, including the Fenians, at liberty. . . . In the general chase across the country, which followed the rescue, it was noticed that Allen seemed to cling to Kelly, while Larkin kept close to Deasy, and thus the handcuffed fugitives were helped over obstacles such as walls and fences, but the pursuit became too hot for this plan to be acted upon to the last; the men separated, and, ultimately, Allen and Larkin were run down while the head-centres escaped.

"There is no trace of Kelly or Deasy further than their supposed entrance into a cottage near Bradford or Clayton Bridge, suburbs of Manchester, within

two miles from the place where they were rescued. It is thought that they would have got rid of their handcuffs, or, at least, break the connecting links, and that some friends may have been ready with disguises for them. Devoted friends they had, as the unscrupulous daring of Allen and his followers suffice to prove."

The *Times* expected the immediate re-arrest of the rescued men, but they were never captured again.

It is worthy of comment, though there was evidence of a large number of shots being fired, some of the witnesses set it as high as a hundred, only one revolver was captured by the police.

Immediately after the occurrence the Crown offered a reward of £300 for the arrest of Deasy and Kelly, subsequently pledging itself not to disclose the name of their informants, but Kelly and Deasy disappeared as strangely as if they had vanished into thin air and were never caught.

The Manchester Corporation, on its part, offered a reward of £200, "to be paid in such proportions as the Corporation might determine, to any persons giving information which would lead to the apprehension and conviction of the parties implicated in the rescue." Whether by reason of this reward or not a remarkable eagerness was displayed by the witnesses for the prosecution, and was strongly commented on by the counsel for the defence. The inquest on Sergeant Brett, the primary investigation before the magistrates, and the final trial before the Special Commission, extended over several weeks, and it would be, of course, quite impossible to reproduce the evidence in anything like detail. A brief summary of the testimony of the most important witnesses at the inquest, the investigation, and the final trial, is the most I can attempt.

One most unusual circumstance in connection with the preliminary police-court investigation, presided over by Mr. Fowler, R.M., is worthy of notice. The prisoners, twenty-six in number, were brought into

court heavily handcuffed, and remained handcuffed during the progress of the investigation.

Mr. Jones, instructed by Mr. Roberts for the defence, protested "against the prisoners being brought to court for preliminary examination with handcuffs on. At the trials of the Sessions and Assizes such a thing was unheard of." He had never known any such thing at any preliminary investigation. In 1848, when much more serious matters were under investigation, it was not thought of for a moment. It appeared to be discreditible to the administration of justice that men, whom the law presumed to be innocent until they were found to be guilty, should be brought into court handcuffed together like a couple of hounds. He appealed to have the handcuffs taken off.

Mr. Cottingham made a similar application.

"The judges of Assize," he declared, "would not tolerate such a thing, it would be regarded as an insult to the court. He had himself seen Baron Martin interpose when, after a man had been sentenced to death, the turnkeys were about to put handcuffs on him in the dock. Baron Martin ordered them to be removed, and insisted that no ironing should take place in the presence of the court. There was sufficient force to guard the court, and," he submitted, "while the witnesses were examined, the prisoner's handcuffs should be removed."

Mr. Roberts heartily joined in the application which had been made to the bench.

The presiding magistrate, Mr. Fowler—"I don't think it is a matter for me at all. We, as magistrates, have to enquire into the case, but the police authorities are the persons who are answerable for the safety of the court."

Mr. Jones argued—You are the superior authority, it is an indignity offered to the whole bench of magistrates. But Mr. Fowler persisted in refusing the application.

After lunch, Mr. Jones renewed his application to have the handcuffs removed. The prisoners, Allen

and Gould, had shown him their hands. The handcuffs were too small, and their hands were swelling under the action of these handcuffs. They said the pain so caused, and the indignity, prevented them from attending to the evidence and, therefore, making suggestions to counsel. In the interests of justice he requested that the handcuffs might be taken off the prisoners; another thing he might be permitted to say, as an officer of the court, which every member of the bar was, and as a citizen of Manchester, he thought it very unseemly that a part of the military force should be on the bench where the magistrates were sitting.

Mr. Cottingham and Mr. Bennet strongly concurred in the application.

Mr. Cottingham said that the prisoner Larkin had complained of the extreme pain he suffered for several hours owing to the pressure of the handcuffs.

In reply, Mr. Fowler insisted that he was only one of the magistrates.

Mr. Cottingham said—"You are the chairman presiding in this case, you are the *custos curiæ*. You are in the position of the senior Judge of Assize, and have authority to direct that the prisoner may be relieved from the pressure of those manacles. I am at a loss to know when before a Judge of Assize a man actually on trial for a capital offence was allowed to be brought into court manacled and chained. It is an insult to the court, and an aprolum to British justice. Why should they not have leg irons as well? . . . . You have a competent force in the court to subdue anything like an attempt at rescue, or any attempt on the part of these men to escape. I cannot see any pretence for it except to impress on the public mind that these are desperate men."

Mr. Bennet. And that we are a set of cowards, and contemptible cowards.

Mr. Fowler still refusing the application, Mr. Jones said he could not, as a member of the English bar, sit in any court where the police over-rode the magistrates, and with great regret returned his brief to Mr. Roberts.

At the conclusion of a protracted police investigation all the twenty-six men charged before the magistrates were returned on a charge of murder, and on the 28th October, Mr. Justice Blackburn and Mr. Justice Millor were sent down on a special commission to try them in Manchester.

The first five put upon trial were William Philip Allen, a boy under twenty years of age, Michael Larkin, Michael O'Brien, Edward Shore, and Thomas Maguire. The *Times* of that date described the preliminaries of the trial:

> "The removal of the prisoners from jail to the courthouse was accomplished under strong military escort. A troup of hussars with swords drawn preceded the van, in the immediate vicinity of which marched two companies of the 72nd Highlanders with fixed bayonets, and the procession was closed by another party of hussars. On front of the van five police constables were seated, and two police inspectors with cutlasses drawn stood on the steps behind. The *cortege* moved at a rapid pace, and the whole party bore the appearance of readiness for immediate action. In the vicinity of the courthouse careful precautions were taken against surprise, policemen patrolling in pairs, every second man with a revolver in his belt, kept persons as far as possible from loitering."

Justice Blackburn addressing the Grand Jury said:— "The principal crime they would have to inquire into was the death of the policeman Brett. They would see from the circumstances of the attack that a variety of crimes were committed in this successful attempt to rescue prisoners who were in lawful custody. . . . The ventilator of the van was forced open while Brett endeavoured to do his duty by keeping it closed, and the keys were demanded from him. In pursuance of his duty he refused to give them up, and in consequence he met his death by a

shot in the head. There was only one shot fired that was fatal, and only one man could have fired that shot. Yet, every one who aided and assisted in the attack was equally guilty of murder with the person who fired the shot. Whenever persons agreed amongst each other, either expressly or tacitly, to take part in the performance of an unlawful action, every person concerned in such unlawtul act was equally guilty of murder if the crime were committed with the person who fired the fatal shot."

"Upon the assumption," wrote the *Times* reporter, "that the whole of the twenty-six persons might be placed in the dock, and hence that considerable difficulty might be created in the minds of the jury as to which of the prisoners any witness was pointing out or identifying, stands or tall wands with numbers affixed to them were prepared and placed in the dock very much after the fashion in which prize seedlings are labelled at a horticultural show. These were subsequently removed."

Mr. Digby, Q.C., with Mr. Ernest Jones, appeared for Allan and O'Brien and Shore; Serjeant O'Brien and Mr. Cottingham for Larkin and Maguire. The Attorney-General prosecuted.

An application for change of venue to London was made on the affidavit of Mr. Roberts, solicitor for the prisoners, which set out amongst other grounds, "that great and increasing excitement prevailed amongst the inhabitants of Manchester and its vicinity. That the most exaggerated fears and rumours of impending outbreaks have been and still continue to be circulated in the districts from which the jurors are summoned. That the extraordinary precautions adopted by the Manchester authorities and guardians of the peace for the protection of the courts of justice and of the town are calculated to intensify the present feeling of uneasiness and alarm. That the comments of the local Press have tended to exaggerate the above-

mentioned feelings and to create a strong prejudice against the accused. That the prevailing feeling of the public mind has manifested itself amongst other ways in strong demonstrations of hostility to the accused during the hearing before the committing magistrates. That sufficient time has not elapsed since the commital of the offence charged to allow those feelings to subdue. For these and other reasons he believed there could not be a fair trial in Manchester.

Mr. Justice Blackburn peremptorily refused the application.

"Suppose," he said, "every word of the affidavit to be true, there is no reason whatever for removing the trial from the present commission."

For some reason which I am not able to understand counsel for the prisoners agreed to "join in their challenges," thus reducing the number to which they would be entitled from a hundred to twenty, with no counterbalancing advantage to the prisoners. Mr. Roberts, who appears to have been slightly deaf, does not seem to have understood this arrangement, for he persisted in challenging for each of the prisoners separately until Mr. Justice Blackburn interposed and said:—"As a matter of convenience the court had allowed the attorney for the prisoners to challenge, but as this appeared to have given rise to some irregularity, in future they could only recognize the direct utterance of counsel."

As soon as the next name ballotted was called out Mr. Roberts in a loud voice cried "challenge!"

Mr. Justice Blackburn said Mr. Roberts had been told he must not interfere, if he did so again he would be taken into custody. (Applause in court.)

Mr. Roberts. That remark is quite uncalled for.

Counsel for the prisoners endeavoured to quiet Mr. Roberts, but when the next name was drawn that gentleman called out as before: "I object on the part of Allen."

Mr. Justice Blackburn. Take that man into custody and remove him.

Here again there was a loud outburst of applause in court, and a police officer moved forward and took his place beside Mr. Roberts. Mr. Seymour hoped the court would reconsider its determination. "It was a strong measure to remove from court the Attorney of prisoners on their trial for murder."

Mr. Justice Blackburn. I will let him remain, but I will have him removed from court if there is any more disturbance.

The examination of the witnesses was then proceeded with. Police Constable George Shaw, examined by the Attorney-General, swore—On Wednesday afternoon I was on the prison van going from Manchester to the city jail along the Hyde Road. There were two of us sitting on the left-hand side of the driver, myself and Constable Yarwood; just before we got to the railway arch, on the Hyde Road, I saw a number of men standing about on the left-hand side of the road. I saw Allen before the van was stopped. He was the first man I saw, and he was standing on the footpath on the left-hand side of the road under the arch. He had a revolver in his hand. The van got about a dozen or fourteen yards through the arch before it was stopped. I got off the van directly it was stopped. I did not see Brett till he was lying on the floor. I did not see him fall out of the van. I saw him lying on the floor at the back part of the van. I was then behind the van, and at that time there were some men on top of the van trying to break into it, and there were others with revolvers standing between us and the van protecting the men who were breaking the van open. I saw Allen there with a revolver; he was the man who shot Brett. I saw him stand near the step and fire into the van; he discharged his revolver more than once. I saw him put his pistol to the door of the van, either at the keyhole or the airhole or ventilator a little above; but I think it was the keyhole, and I heard the shot fired. The moment the shot was fired someone called out from the inside of the van, "He is killed." The door was not open then. We were driven away from the van by the

men who were guarding it with revolvers, and directly afterwards I saw the door of the van open and Brett lying on the floor. I do not know whether Brett ever moved or spoke afterwards, but I should think he did not.

Cross-examined by Mr. D. Seymour—Could not say he knew any of the men before; could not say if there were revolvers in the hands of O'Brien or Shore; there must have been more than twenty or thirty shots; perhaps there were a hundred. He saw Allen fire towards the lock of the door, the same lock at which he had been hammering; believed he only fired once, if it were twice it was in very quick succession; immediately afterwards heard a voice inside say, "He is killed"; that was immediately afterwards Allen fired, as he thought, at the lock. His impression, at the time, was *that it was to burst the lock Allen fired;* at that time he was the nearest police officer to the van.

George Pickup, brickmaker, swore Allen fired five times through the ventilator or lock of the van; he heard Allen say to Kelly when he was escaping, "Did I not say I would lose the last drop of my blood for you"?

Charles Thomson deposed that Allen seemed to be the ringleader; he had a pistol in one hand and a hammer in the other, and he kept smashing the van with the hammer, and threatening the crowd with the pistol.

Thomas Barlow, labourer—I followed Allen and was the first to take hold of him. He had a revolver in his hand which another man took from him. While I was following Allen he fired his pistol into a field, but not to hurt nobody. After Allen gave up his revolver a man came and struck him on the head with a brick, and I got punched on the shins for saying it was a shame.

Emma Halleda swore—I was in the police van on the eighteenth of the month. There were five more besides myself. Sergeant Brett was there. I remember the van was stopped. I heard a sound like a large stone being thrown at the side of the van, then a pistol fired

like as it were at the horses' heads in front of the van. Then someone came back to the van on the outside and the trap-door was opened. It had been opened on the swivil all the time we were going. Brett closed the trap but did not fasten it. Someone came and began to knock at the back of the door. Brett looked through the ventilator and said, "My God, its these Fenians." The man outside then asked Brett to give him the keys. The trap was then shut; Brett was doing his best to keep it shut. When the man asked for the keys Brett said he would not give them up. I could not see who the man was. He asked for the keys again, and said he would do him no harm, but let two men out of the van. Brett said, "No, I will stick to my post to the last." Someone then got on top of the van and beat a large hole over where Brett stood. Two of the women seized hold of Brett and tried to pull him out of the way of the stones falling on him. The stones did not fall through. The women said to Brett as they were pulling him back, "You'll be killed." A stone was then forced into the trap, and Brett could not close it again. A man then came and put a pistol through the trap. Brett was looking through the higher part of the ventilator; I was looking lower down and I saw the pistol, and I pulled Brett away, and I said, "Charlie, come away, look there." I took hold of his coat and tried to pull him away. As I did his head came on a level with the trap, and the pistol was discharged. Brett fell in a stooping position against the door. The man in the light coat and blue necktie (Allen) was the man who fired the shot. Allen came to the door and asked for the keys; a woman then got the keys out of Brett's pocket and handed them through the opening. The door of the van was then opened, and all the women came out, I among the number. Brett fell out.

To *Mr. Cottingham* on cross-examination:

This was not the first time I had been sent to prison. I got out of prison last July. I had been in for six months for stealing. I had been convicted before that and sentenced to three months imprison-

ment. I did not know that for the third conviction I was likely to be sent into penal servitude.

Frances Armstrong swore—I was in the van with Brett when the van was stopped, the trap-door was pushed in, and Charlie tried to keep it to. They were firing at both sides of the van outside when Charlie was shot. On cross-examination she said she was a married woman, but didn't live with her husband, she had been in prison often for being drunk, and had got two years for stealing. She had seen the reward on a placard for evidence convicting the prisoner.

William Trueman (police officer).—I saw Allen shoot through the ventilator; before that Allen stood on the step and seemed to be conversing with someone inside.

George Mulholland, a boy aged twelve, swore to having seen Allen fire through the ventilator, and identified a number of the other prisoners.

Cross-examined by *Serjeant O'Brien*. You are a very smart lad indeed.

Witness (grinning). I'll be a lawyer some day.

Serjeant O'Brien. Did you say in your deposition as the horses got through the archway a man who came from off the bank fired at the horses and shouted out to the driver, "Stop, or I'll blow your brains out. Allen *is* the man"?

Witness (smiling). I might make a mistake as well as you.

He denied that he had signed his depositions, but admitted he had read the proclamation offering a reward.

Charles Thomer, a glazier, saw Allen hammer the door, and then put a pistol through the ventilator as if to take aim.

Cross-examined by Mr. Seymour, he confessed that before the magistrates he referred to Allen merely as having fired through the ventilator. I was not asked about Allen putting the pistol through the ventilator when I was before the magistrates.

Mr. Seymour. It did not strike you as important? No, it didn't, but still it was in my mind.

But you did not think it of sufficient importance to mention it?

I thought it would do somewhere else.

Therefore having it in your mind you kept it back.

Yes.

Mr. Seymour. Did you see the placard of a reward of £200?

Yes.

Did you read it through?

Yes.

From beginning to end, and you saw the £200 clearly and no mistake about it. Your memory has wonderfully improved.

A large number of witnesses were examined who identified the prisoners as having taken part in the rescue.

Inspector Gardiner deposed that he tore up the second warrant under which Kelly and Deasy were remanded. On cross-examination he admitted that he had never destroyed a warrant before.

Frederick Williamson, Chief Inspector of Police at Scotland Yard, deposed that he came down on the 18th September with a warrant, and saw the two men, Kelly and Deasy, under arrest as White and Williams. He got the warrant backed by a magistrate of Manchester. At the police court he made an application. He was sworn, but he did not produce the warrant, merely stated that there was a warrant. The magistrates remanded the prisoner on his application; his own warrant was for Kelly. A head constable of the Irish Constabulary held a warrant for Deasy.

The warrant was put in, and bore the date of the 31st of August, 1867, and authorized the arrest of Thomas Kelly as being an active member of the treasonable conspiracy called the Fenian Brotherhood, engaged in levying war against the Queen, and endeavouring to overturn the Queen's government in Ireland.

Thomas Welby, of the Irish Constabulary, produced a warrant for the arrest of Deasy, and stated he was at the police office when Williamson was examined.

His warrant was backed by a magistrate at Manchester on the 18th, but not until after the remand.

Mr. Seymour for the prisoner, argued the warrant for Deasy and Kelly was bad, and that as they were not in legal custody their rescuers could not be convicted of murder. He cited Hawkins' *Pleas of the Crown*, chapter 21, under the heading "Rescue."

> "Wherever the imprisonment is so far groundless or irregular that the party himself breaking the prison is either by the common law or by statute saved from the penalty of the capital offence, the stranger who rescues him is like excused."

Mr. Seymour argued that when the men White and Williams, otherwise Kelly and Deasy, were brought up on the 11th, it was under the local Police Act as vagabonds and on suspicion. The warrant was filled up, not by the magistrate but by the policeman, and not even for suspicion of felony, but for felony. There had been no taking for felony, there was no charge or evidence of felony, and therefore the warrant was clearly informal and inaccurate.

Mr. Justice Blackburn asked whether the counsel meant that the constable acting under the warrant was not to be protected?

Mr. Seymour apprehended that the constable was the mere accidental medium for conveying the men to prison, and could have no better title to his captives than the magistrates who committed them. The warrant of the 11th being unsupported by evidence on the 18th, there was another remand, when a fresh warrant was made out also for felony and equally unsupported by evidence.

Mr. Justice Millor said the second warrant was applied for and granted on the statement that warrants were in existence for the arrest of Kelly and Deasy. No doubt the warrants were at that moment unsigned and not produced, but the irregularity was one that occurred in practice every day.

Mr. Seymour said that when irregularities occurred they could only be cured by signal examples of their mischief. The warrants, strictly speaking, were insufficient, because they were not backed till after the remand was procured, but assuming even that the warrants were in existence, was it any justification of a remand by an English magistrate for felony that warrants existed charging men with being members of a treasonable conspiracy in Ireland. Mr. Seymour referred to a recent case reported in the Crown Cases Reserved, where a warrant having by mistake been delivered to a member of the county police instead of the officer to whom its execution ought properly to be entrusted, the convicting for cutting and wounding in attempting to escape was quashed. This case was a question of constructive murder or nothing, for there was no pretence for supposing that anyone entertained any emnity towards Brett. The whole question turned therefore on the original illegality of the warrant.

Mr. Cottingham referred to the case of the Queen *v.* Phelps, where one called to the aid of a constable engaged in securing a man charged with felony, was killed by the prisoner's friends, and it was held to be only manslaughter, inasmuch as the constable was acting in excess of his lawful authority.

Mr. Justice Blackburn said the court had considered the questions which had been raised, and it would be a question for the jury to decide whether the prisoners had a common purpose to rescue Kelly and Dease from the constable who had possession of the van, and for the purpose of that common design to use dangerous violence to those having the custody of Kelly and Deasy. If the jury were satisfied that one and all of them had a common design of using dangerous violence for the purpose of getting those men out of the van, and in consequence of that dangerous violence Brett met his death, the court was of opinion that the crime would be murder. Even supposing the custody in which they were placed was illegal and irregular, that the men were held upon warrants so informal that

they would be perfectly entitled before a judge to their discharge, and that there was no legal justification for detaining them in custody the court was still of opinion that such circumstances would form no excuse whatever if deliberately and with design third parties engaged in an attack on the police, and used dangerous violence such as had occasioned the death of Brett. He expressed no opinion as to what might be the provocation of illegal custody upon a man himself in reducing such an offence from murder to manslaughter. But the court were of opinion that in this case, though the warrant was to a great extent irregular and informal, still the custody was sufficiently legal. The court did not feel at present called upon to reserve any point, but on their return to town they would consult others in whose opinions they justly placed confidence, and if they felt that further facilities should be granted for considering the point they would take care that those facilities were afforded.

Mr. Seymour asked and obtained leave to submit further authorities on the subject to the court.

From the first Thomas Maguire, who was on the Naval Reserve, vehemently protested that he had known nothing of the rescue, but was identified by eight witnesses.

A number of witnesses were examined for the defence.

Elizabeth Perkins, a widow, examined by Mr. Serjeant O'Brien, said she lived at Preston's Court, and was sister to the prisoner Maguire. He had been a marine twelve or thirteen years. He lived with her when on furlough at Manchesrer. He had his uniform. On the 7th of September, the night before the rescue, the prisoner slept at witness's house. On the 18th he did not get up until half-past three because he was not well, he did not go out until near seven that evening.

Mary Ingham, a single woman, living next door to last witness, had known Thomas Maguire since he came home on furlough, nearly six weeks ago. On the 18th September she saw Maguire who spoke to her

through his bedroom window and asked if he could come with her to a party that was at half-past three. The party was at Mr. Copelands. He was in his shirt sleeves; he had no braces on.

The furlough of Maguire was produced, but Mr. Justice Blackburn said it was not of the slightest importance. There were six other witnesses who all deposed to seeing Maguire after three o'clock on the day of the rescue, and none in the least shaken on cross-examination.

The judge having delivered his charge, the jury, after a very brief consultation, found all the men to be guilty of murder. The prisoners being asked if they had anything to say for themselves why sentence of death should not be passed upon them, William Philip Allen said—"No man in this court regrets the death of Sergeant Brett more than I do, and I positively say in the presence of the Almighty and Ever-living God that I am innocent of it as any man in this court. I don't say this for the sake of mercy, I want no mercy, I'll take no mercy. I will die as many thousands have died for the sake of their beloved land, and in defence of it. I feel the righteousness of every act that I have done in defence of my country, and I am fearless of the punishment that can be inflicted on me, and with that, my lords, I am done."

Michael Larkin—"I have only got a word or two to say concerning Sergeant Brett; as my friend here has said no man could regret that man's death more than I do. With regard to the charge of pistols and revolvers and my using them, I call my God to witness that I had no pistol or revolver, nor any weapon that day that would deprive a child of life, much less a man. Nor did I go there on purpose to take life away. Certainly, my lords, I do not want to deny that I did go to give aid and assistance to those noble heroes, Deasy and Kelly. It is a misfortune that life was taken, and the man who has taken life you have not got him. I look to the mercy of God. May God forgive all who have sworn my life away as I, a dying man, forgive them."

Michael O'Brien declared he was proud of what he had done—"The service of man," he said, "is freedom, the Great God has endowed him with affections that he may use, not smother them, and a world that it may be enjoyed. Once a man is satisfied he is doing right and attempts to do anything with conviction he must face the consequences. Ireland, with its beautiful scenery, its delightful climate, its rich and productive lands, is capable of supporting more than treble its present population in ease and comfort, but no man, except a paid official of the government, can say there is there a shadow of liberty, that there is a spark of glad life amongst its plundered and persecuted inhabitants. How beautifully the aristocrats of England moralize on the despotism of the rulers of Italy and Dalmony. In the case of Naples with what indignation they speak of the ruin of families by the detention of its head, or of some loved member, in prison. But we have not heard their condemnation of the tyranny which would compel honourable and good men to spend their lives in hopeless banishment."

Mr. Justice Blackburn. I am sorry to interrupt you, and I do it entirely for your own sake. What you are saying cannot, in the slightest degree, prevent the sentence of law being passed on you, the only possible effect must be to tell against you with those who are to consider the sentence.

"Well, sir," responded O'Brien, "I prefer to go on. Look to Ireland, see the hundreds and thousands of its people in misery and want, see the virtuous, beautiful, and industrious women who, only a few years ago, aye, and even yet, are obliged to look at their children dying for lack of food. Look at what is called the majesty of the law, on one side, and the long deep misery of a noble people on the other side. Which are the young men of Ireland to respect. The law which murders or banishes their people, or means to resist relentless tyranny, and end their miseries under a Home Government?"

The prisoner Shore repudiated the charge of being

guilty of the murder of a man whom he never saw or heard of. "With regard to the unfortunate man who has lost his life," he said, "I sympathize with him and his family as much as your lordship or the jury or any man in court. I deeply regret the unfortunate occurrence, but I am as perfectly innocent of his blood as any man. I never had the slightest intention of taking life. I have done nothing at all in regard to the man, and I do not desire to be accused of a murder which I never committed. . . . I had no part in the rescue, but I hold my own opinion on the misgovernment to which my country has been subjected. If these men had been in other countries, occupying other positions, if Jefferson Davis had been released in a northern city, there would have been a cry of applause throughout all England. If Garibaldi, whom I saw before I was shut out from the world, had been arrested and rescued, the English would have applauded the bravery of the deed, but as it happens in Ireland it is an awful thing. I do not desire to detain your lordships, I can only say I leave this world without a stain on my conscience of wilful guilt of anything in connection with the death of Sergeant Brett. I am totally guiltless. I leave the world without malice towards anyone. I do not accuse the jury, but I believe they were prejudiced; but I do not accuse them of wilfully wishing to convict; prejudice has induced them to find us guilty, when otherwise they would not have done so. With regard to the witnesses, every one of them has sworn falsely. I never threw a stone or fired a pistol. I was never at the place. It was all totally false; but, as I have to go before God, I forgive them. They will have to meet me before God Who is to judge us all, and then it will be known who speaks the truth. Had I committed anything against the Crown of England I would have scorned myself had I attempted to deny it; but with regard to those men they have sworn what is altogether false. Had I been an Englishman, and found near the scene of the occurrence, I would have been brought as a witness to identify the prisoners; but being an Irishman it was

supposed my sympathy was with them, and on suspicion of that sympathy I was arrested, and, in consequence of the arrest and the reward which was offered, I was identified. It could not be otherwise. We have been found guilty, and, as a matter of course, we accept our death as gracefully as possible. I am not afraid to die."

The others cried out, "Nor I, nor I, nor I!"

"I have no stain on my conscience, and I leave this world at peace with all." He ended with an eloquent appeal for those yet to be tried. "I only hope," he said, "that those to be tried after us will have a fair trial, and that our blood will satisfy the craving that exists. You will soon send us before our God; I am perfectly prepared to go; I have nothing to regret nor retract. I can only say, 'God save Ireland!'"

Instantly, the prisoners, Allen, Larkin, and O'Brien, joined in chorus, "God save Ireland!"

Shore added, "I only wish to say a word or two more—there is nothing in the close of my career which I regret. I do not know of one act which would bring the blush of shame to my face, or make me afraid to meet my God or my fellow-man. I would be most happy to die on the field of battle for my country in defence of her liberties. As it is I cannot die on the field, I will die on the scaffold I hope, a soldier, a man, and a Christian."

Mr. Justice Millor then assumed the black cap, and proceeded to pass sentence of death on the prisoners.

"No person," he said, "who has witnessed the proceedings can doubt the propriety of the verdict. This is a crime which strikes at every foundation of civil society, and were it possible that it could be committed without bringing down condign punishment on its perpetrators it would deprive the subject of all sense of security for their lives and property, and completely throw us back into a reign of terror. I should be deluding you into a false sense of security if I should hold out any hope that your lives would be spared, or that you should derive any advantage from the points of law that were urged by your counsel. I beseech you,

therefore, with all diligence, to make your peace with God, prepare in penitence and prayer to the cross of Christ."

The closing scene was vividly described by the *Times* representative on the spot:—

> "Of the five men in the dock," he wrote, "four, at least, had sacrificed themselves to cover the escape of Kelly and Deasy, for it is no violent assumption that when two men handcuffed were able to get clear away, four men, with their limbs unshackled and heavily armed to boot, might have vanished if so minded. Whenever, in the course of speech, mention was made by any of the prisoners of the name of Ireland, then, on the part of all the rest, there was a subdued groan or chorus in that deep swelling undertone in which the Irish grief or passion so naturally vents itself. It was a sad, and, in the present day, an unaccountable circumstance, to see men of intelligence in such a position; but, on the part of all four, there was not a symptom of flinching."

In a leading article, published the day after the conviction, the *Times* protested against any mercy being extended to the prisoners.

> "The sentence pronounced," it wrote, "not only records the righteous doom of our law upon a conviction of murder, but will be sanctioned by the reason and conscience of the whole community. Whether the motive of those who slaughter their fellow creatures, who insult English law and declare in the dock their readiness to die for Ireland, are more or less wicked in the sight of the Almighty than covetousness, lust, or jealousy, we are not careful to enquire. Human justice deals not with motives, it deals and can only deal with actions. The prerogative of mercy cannot be invoked on behalf of the criminal, or rather a higher law of mercy demands that it be invoked in vain. It demands a stern and

speedy execution of the law, such as may convince all those who need the lesson that English law, though discriminating, is inexorable as the decrees of Providence."

The day after the conviction of the first five prisoners, another batch were put on their trial for murder, despite the protest of their counsel that the Crown should now be satisfied to arraign them for the lesser offence. There was a protracted trial, but the jury, after a deliberation of four hours, refused to convict for murder. The residue of the prisoners were then tried for the lesser offence, and seven were convicted.

Mr. Justice Blackburn, sentencing them, said :—"I have considered the case of each of you, and having come to the conclusion that the offence you have committed is as bad as it can possibly be, I thinkI must give you five years penal servitude, the maximum penalty which the law allows. . . ."

Later on, in accordance with the permission given to them by the court, the prisoners' counsel submitted to the judges cases and argument to show that the illegality of the warrant under which Deasy and Kelly were held reduced the legal offence of the condemned men to manslaughter, but the judges persisted in their refusal to reserve the point for the Court of Criminal Appeal. In publishing the case for the prisoners and the judges' reply, Mr. Seymour wrote to the *Times* :—"I will not pause at present to examine the ground of their lordships' decision, but, with the sincerest respect for their high authority, I must say that the consideration thereof and a calm perusal of the reasons alleged in its support, have not changed my matured and deliberate conviction that the opinion of myself and my learned friends is law. Were this not so it must occur to every lawyer, and indeed to every citizen uninfluenced by prior opinions or prejudices, that in a question of such solemn gravity, one of life or death, involving the fate of four human beings, an argument in open court on the point suggested would have been

more in accordance with the precedent and more consistent with the protective vigilance and impartiality which have always characterized the criminal law in England."

The first case on the subject cited on behalf of the prisoners was that of Sir H. Ferrers (*Crown Cases Reserved*, 371), who was arrested for debt, and thereupon Nightingale, his servant, seeking to rescue him as was pretended, killed the bailiff, but because the warrant to arrest him was by the name of Henry Ferrers, Knight, and he never was a knight, it was held by the court that it was at variance in the essential part of the name, and that they had no authority by that warrant to arrest Sir Henry Ferrers, Baronet, so it is an ill warrant, and the killing of an officer in executing that warrant cannot be murder.

There was also cited, amongst a number of others, the case of Hopkin Higget: Higget and three others pursued prisoner arrested by three constables, said the warrant was no warrant, and killed one constable. Twelve judges to eight delivered their opinion, no murder, sentence two months imprisonment.

In their reply, the judges, Blackburn and Millor, admitted that Kelly and Deasy would have been entitled to liberation on *habeas corpus*, but urged that the prisoners did not know of the defect in the warrant. "We think," they declared, "it monstrous to suppose that under such circumstances, even if the magistrates did make an informal warrant, it could possibly justify the slaughter of an officer in charge of the prisoner, or reduce such slaughter to the crime of manslaughter." They therefore declined to let the matter be argued on a case reserved.

The case of the condemned men excited vehement sympathy in Ireland and amongst the workingmen in England. "The International Workman's Association" and "The English Workingman's Club" held meetings, passed resolutions, and forwarded memorials in favour of a mitigation of the sentence. They even sent a deputation to the Home Secretary and to the

Queen, but were on both occasions repulsed by the attendants. Mr. Bradlaugh, at a greet meeting of the English workingmen, denounced the misrule of England in Ireland, and said "if the Government were strong it would pardon, if it were weak it would hang the men who were condemned to death."

A little time before the date fixed for the execution, the following announcement was published in the *Times* :—

> "There appears to Mr. Hardy (Home Secretary), to be good reason to believe that the defence made by Thomas Maguire was true, and he has therefore been recommended to Her Majesty for an unconditional pardon.
>
> "On a subsequent day came the announcement that Her Majesty was pleased to respite the capital sentence on the convict Shore, in whose favour it will be remembered that he was unarmed when apprehended, and was not proved to be armed during the fatal affray."

The *Times*, a little before the date of the execution, again deprecated mercy for the prisoners Allen, Larkin, and O'Brien. It urged that Fenian activity still prevailed at Manchester, which could only be quelled by severity. "One of those who had been tried," it declared, "had been heard to say that not only did he take part in the attack on the van, but he was one of those who took part in forming the first Fenian Association in Manchester. This man corroborates the story that the man who shot Sergeant Brett is at liberty; speaking of Maguire, who has been pardoned, he says that this man did not belong to the Fenians, and really took no part in the fray. If such a man is to be believed, this last statement is highly satisfactory to those who took part in procuring his pardon."

On the 23rd of November, 1867, Allen, Larkin, and O'Brien were publicly executed in Manchester before a crowd of twelve thousand persons, some of whom

applauded the execution. The *Times* gave a four-column description of the execution which, it declared, "had excited more interest than any event of its kind within the memory of living man. Barricades," said the report, "were erected by the authorities, and there was a large military escort, and two thousand special constables were sworn to keep the peace. The prisoners showed the same courage and self-possession as at the trial, all three praying fervently as they passed to their death.

"As far as can be known none left any other confession beyond that which in accordance with the rites of their religion they offered to their spiritual adviser. Of course, not even the tenor of this is known, nor is anything beyond what the warders always knew, namely, that each solemnly denied having shot Brett, and in reply to any questions as to planning the attack on the van simply stated that they would die martyrs for their country, in other respects they were all quite resigned to their fate.

"About the middle of the day the bodies were buried without any form of ceremony in the jail passage where Burrows the murderer is laid, the only other criminal who has suffered death in Salford Jail."

There can be no doubt that in strict law any one taking part in a criminal offence, such as was the rescue, is, if death ensues, technically guilty of murder. It is laid down that if a man attempting to shoot and steal a domestic fowl, accidentally wounds a bystander, and the man eventually dies of the wound, the offence is technically murder. But in experience or in reading I can find no other case in which men were executed for this technical offence of constructive murder. Two of the men, Larkin and O'Brien, admittedly took no part in the killing. On the evidence it would appear that whoever fired the fatal shot merely meant to burst the lock, and had no intention of killing Brett, and it would further appear that the statement of Larkin was true, and that the man who accidentally fired the fatal shot was not arrested at all. True, Allen was sworn to by

several witnesses as having fired the shot, but it is clear that witnesses, whether confused by the excitement or influenced by the reward, swore very recklessly. Eight of them positively identified Maguire, who proved a conclusive *alibi*, and who it was afterwards admitted was not present at the rescue. It is indeed indicative of the excitement under which the trial was conducted that the jury should have convicted Maguire or the judges approved the conviction.

In regard to the law point raised, a very eminent Irish judge assured me that in his opinion it clearly reduced the crime to manslaughter, and he professed himself unable to understand why the judges could have refused to reserve the point for argument before the Court for Crown Cases Reserved.

The execution had the very opposite result to that anticipated by those who protested against the policy of mercy. It stimulated, not intimidated, disaffection in Ireland, where a feeling of bitter resentment was excited. There followed the explosion at Clerkenwell prison which Mr. Gladstone describes as "the Chapel Bill," heralding the disestablishment of the Protestant Church in Ireland, and the revolutionary reform of the Irish land laws.

The names of Allen, Larkin, and O'Brien, the "Manchester Martyrs," are held in reverence in Ireland, and a large number of Englishmen now share the Irish admiration for their devoted courage.

Their bodies were indeed buried without form or ceremony in the jail yard, but the anniversary of their death has been marked by a great funeral procession through the streets of the Irish metropolis. A stately tomb has been erected to their memory in Glasnevin. In Ennis and Kilrush, the two chief towns of County Clare, where I have the honour to preside as judge, two striking monuments commemorate their patriotism and death. Perhaps the most lasting memorial is the immensely popular ballad by the late Mr. T. D. Sullivan which concludes :—

"Never till the latest day
Shall the memory pass away
Of the gallant lives thus given for our land.
God save Ireland, said they proudly,
God save Ireland say we all,
Whether on the scaffold high
Or the battlefield we die
Oh, what matter if for Erin dear we fall!"

THE IRELAND'S EYE TRAGEDY

This case is commonly referred to as the Ireland's Eye murder. I cannot adopt that phrase. On a most careful consideration and collection of the almost verbatim reports of this extraordinary trial, published in the newspapers of the day, I am convinced that no murder was committed, that William Burke Kirwan, who was tried, convicted, and sentenced to death for the murder of his wife, Sarah Maria Louisa Kirwan, was wholly innocent of the crime. I will now state the admitted facts and the evidence in the case as briefly as may be.

The accused was a professional artist, apparently in good circumstances, residing at 11 Merrion Street, with the woman whom he was accused of murdering, and to whom he had been married twelve years before. Mrs. Kirwan was described by all the witnesses as a well-made and extremely good-looking woman of about thirty-five years of age. She was passionately fond of sea bathing, and a powerful and daring swimmer, as one witness declared the most venturesome ever seen at Howth.

In the month of June 1852, the accused took lodgings with a Mrs. Power in Howth, where he sketched and his wife bathed. On several occasions they visited the little island, Ireland's Eye, a short distance from Howth, for the purpose of sketching and bathing. On Monday, the 6th September, according to previous arrangement, at ten in the morning, they took a boat to Ireland's Eye, carrying with them a carpet bag containing Mrs. Kirwan's bathing dress, a basket of provisions, with two bottles of water and a sketch-book. They landed at Ireland's Eye, and the boatman left them with instructions to return at eight o'clock in the evening.

A Mr. and Mrs. Brue landed in the interval, and Mrs. Brue, when she was leaving about four o'clock, offered Mrs. Kirwan a seat in her boat if she cared to return, but Mrs. Kirwan refused, preferring to wait for her own boat at eight. From the time that the Brues left till the boat came about eight o'clock Mr. and Mrs. Kirwan were alone on the island. But a short time before their boat left Howth for the Kirwans a person named Hugh Campbell, who was leaning against the wall of the Howth harbour, heard a loud cry more than once repeated coming from the island. A woman named Alice Abernethy, who lived near the ladies' bathing place, heard about the same time cries of a similar kind. Another woman named Catherine Flood, who was standing at the open door of a dwelling house, also heard cries. A man named John Barrett also heard a cry, and coming down to the harbour to find the cause heard other cries coming from the island towards the harbour. In a boat which was returning from fishing, and which passed close to the island, were four men, of whom one, Thomas Larkin, was on deck and heard similar cries. All the cries seemed to come from a portion of the island named "Long Hole."

At eight o'clock the boat left the harbour at Howth to bring back Mr. Kirwan and his wife, there were on board four boatmen, Patrick Nagle, his cousin, Michael Nagle, Thomas Styles, and Edward Campbell. When they arrived, they found the prisoner alone on a high rock over the landing-place, and he said that his wife had left him after the shower (about six in the evening), and he had not seen her since. After a prolonged search by Mr. Kirwan and the two Nagles, one of the boatmen caught a glimpse of something white through the gathering dusk, and they found the body on a rock in the middle of the Long Hole. At the time the body was found the rock was quite dry, and the tide had receded six feet from its base. The dead woman was lying on her back on the rock with her bathing dress drawn up from her body.

When the prisoner arrived at the spot he rushed forward and threw himself on the body exclaiming, "Maria! Maria!" Then he turned to the boatmen and bade them go and fetch her clothes. When the boatmen returned, being unable to find the clothes, he said, "I will go myself." He then went away and returned after a short time, and said if they went to the rock close at hand they would find the clothes.

Patrick Nagle then went and found the clothes in a place where, as he swore, he had searched before without success. The boatmen returned to the landing-place, leaving the prisoner alone with the body, and after some time succeeded in bringing the boat round to the Long Hole. The body was then wrapped in a sail and brought back to Howth. There were scratches on the face and eyelids when the body was discovered, and blood was issuing from a cut on the breast, and from the ears. It was brought on a dray to the house of Mrs. Campbell, where the Kirwans lodged, and on the following day the inquest was held, in which the prisoner and the two Nagles, and a medical student named Hamilton, were examined, and a verdict returned—"found drowned," and the body was interred in Glasnevin Cemetery.

But, almost immediately after the burial, rumours of foul play began to get about, and it was whispered that Kirwan had been guilty, not merely of the murder of his wife, but of a number of other persons. These rumours were strengthened by the fact that for many years he had been living a double life, dividing his time between his wife in Merrion Street and Howth, and a woman named Miss Kenny, by whom he had seven children, and for whom he provided a home in Sandymount.

The rumours were greedily swallowed, and wakened a blaze of public indignation.

Kirwan was arrested and charged with the murder of his wife. The Grand Jury had no difficulty in finding a true bill, and he was returned for trial.

Every day that elapsed between the arrest and the

trial served to increase the public interest in the case, and further inflame public indignation against the accused, whose guilt seemed to be assumed.

We read in a contemporary report that on the morning of December 8th, the day before the trial:—

"Long before the arrival of the judges, the avenues leading to the court were thronged with a vast number of gentry seeking admission. However, by the excellent arrangements made by the sheriff, ample accommodation was secured by the bar and the public press. The galleries and the seats in the body of the court were densely crowded with an assembly amongst which we observed several ladies.

"Shortly after ten o'clock the prisoner, William Burke Kirwan, was summoned to the dock by the Clerk of the Crown. Intense anxiety seemed to prevail amongst all persons to catch a view of the prisoner, who shortly after issued, conducted by a deputy jailor from the lower part of the dock and ascended to the bar in front.

"The prisoner's demeanour was firm and collected. He was a good-looking man of about thirty years of age, with dark hair and eyes, dressed with evident care in a close-fitting *paletot* of fine black cloth, he wore a black satin stock and black kidskin gloves. On being called he presented himself in front of the dock and leant on the bar. The indictment charged the prisoner, William Burke Kirwan, with having murdered his wife, Sarah Maria Louisa Kirwan, on the 6th of September previously.

"At the moment of appearing first in the dock to stand his trial for his life, and subsequently during the address of counsel for the prosecution, and during the progress of the evidence, the prisoner seemed to preserve a calm and collected demeanour. To some of the evidence he paid the deepest attention, and seemed to watch eagerly its effect on the jury."

Judge Crampton and Baron Greene presided at the

trial. The prosecuting counsel were Mr. Smyly, Q.C.; Mr. Hayes, Q.C.; and Mr. John Penefeather. For the defence, Mr. Butt, Q.C.; Mr. Walter Burke, Q.C.; Mr. Brereton, Q.C.; and Mr. John Adye Curran.

On the application of Mr. Butt, the witnesses, except the professional witnesses, were excluded from court.

Mr. Smyly, who led for the prosecution in the unexpected absence of the Attorney-General, detailed in his opening speech the facts which have already been stated.

"It would be proved," counsel continued "to the satisfaction of the jury that, though the prisoner had been married to this woman twelve years ago, during the whole of that period he lived with another female by whom he had a family of seven children. The prisoner during each day was occupied in his profession of artist and anatomical draughtsman, but a great part of his time was spent at Sandymount with Mary Kenny, the female already alluded to, and the business was so well managed that it was not until the last six months that either of those women knew that the other had a claim on his attention. Mrs. Kirwan believed that she was the sole possesser of his affection, and Miss Kenny had the same belief up to a recent period."

I may here interrupt the learned counsel to say that I have vainly searched in what purport to be verbatim reports of the trial for the slightest scrap of evidence to support this statement, which had plainly an important bearing on the case. There was nothing in the evidence to show when, if ever, wife or mistress became aware of each other's existence, though there is strong ground for believing that each knew about the other almost from the first.

Throughout the opening speech there was no suggestion of the method by which the accused had accomplished the murder, but counsel laid great stress on the facts that the clothes were found in the place where Patrick Nagle had searched for them in vain, and

that a sheet was half under the body when it was first discovered.

Alfred Jones, engineer, examined for the Crown, proved the accuracy of a map he had made of Ireland's Eye, and the condition of the tide at the Long Hole at various hours during the day of the murder. The tide was full about three o'clock that day, at that time there was in the Long Hole about eight feet of water on the rock which was itself about a foot over the sea. At about half-past six o'clock, the time the prisoner said his wife left him to bathe after the shower, there were about three feet six inches over the rock; at seven, just before the cries were heard, there was on the rock about one foot nine inches of water. At half-past nine, the time the body was found, the water was about two feet lower than the rock.

Margaret Campbell proved that prisoner came to lodge with her. It was in the middle of June that she first saw the prisoner and his wife. They occupied one room, used as a sittingroom and bedroom. Mr. Kirwan did not sleep in the room every night; he slept there about three nights in the week. He used to be away in the city during the day, returning sometimes by the five o'clock, and sometimes by the last train.

The first month they lodged with her witness swore that she heard quarrelling between them, heard angry words from Mr. Kirwan to his wife. He miscalled her; heard him say he would make her stop there; heard him call her a——; and heard him say, "I'll finish you." On another occasion, heard Mrs. Kirwan say, "Let me alone." Next morning Mrs. Kirwan said she was black from the ill-usage she got. Heard no other dispute between them except a word now and then.

Mrs. Kirwan was in the habit of bathing. Witness was present when the body was brought to the house and the sail taken off; the deceased woman had a bathing chemise on. The body was stripped by three women; witness did not examine the body; observed nothing particular about the appearance of the body;

could not unless she was to examine it closely. Mr. Kirwan remained in the house that night; did not notice anything particular about Mr. Kirwan. He remarked that his feet were wet, and witness assisted him to change his stockings.

Cross-examined by Mr. Walter Burke, Q.C., witness admitted she might have said that Mr. Kirwan and his wife lived most unitedly and happily together; had no doubt she did say it. She remembered having made an information, but she was not sworn; would know if an oath were put to her; heard nothing of an oath, nor any mention of a book. The sworn deposition was then put in and read.

In it she swore she "never knew the prisoner and his wife to disagree except on one occasion; she did not know what caused them to disagree then, but except in that instance she always knew them to live happily together as could be."

Patrick Nagle, one of the boatmen, examined by Mr. Smyly, Q.C., swore to bringing Mr. and Mrs. Kirwan to Ireland's Eye on the day in question. "They had a bag and two bottles of water, Mrs. Kirwan had a reticule bag also. Mr. Kirwan had the kind of a stick called a 'slick stick.'"

The Court. What is that?

Witness. I mean a cane with a sword in it.

Witness deposed to the search and finding of the body as already described. Mrs. Kirwan had her bathing shift on; it was gathered up about her waist leaving the rest of her person exposed. There was a sheet under her back, and the sheet was wet and so was her bathing shift, and her head was lying right between two little rocks, her feet were lying in a little pool or hollow containing about half a gallon of water. Witness narrowly inspected the face and person of the deceased as well as he could, there was a cut under the right eye, and scratches on the cheek, and a cut upon the forehead. The cuts were such as might be made by a pin or some sharp instrument, blood was flowing from the cuts. Witness stooped down and

tied the sheet, which was under the deceased, about the neck of the body, and folded the other end round the feet. Mr. Kirwan came up and threw himself on the body and called out, "Oh, Maria! Maria!" Mr. Kirwan then told witness to go and look for the lady's clothes, and witness did so and could not find them; witness is now on his oath, and will swear that the clothes were not in the place where he searched, and where they were afterwards found.

When witness came back after his unsuccessful search, Mr. Kirwan rose up from the body and went to seek the clothes, and came back in a few minutes and told witness they were on the top of the rock; witness then went back and found them. The clothes were neatly arranged just as she had taken them off, the stockings were folded together. There were bathing shoes on the feet when the body was found.

On cross-examination witness mentioned that Mr. Kirwan almost lost his life during the search.

"Mr. Kirwan was very near being killed himself that evening when the body was found. If I had not called and caught him he would have gone over the rock; if he took a step further he would certainly have been killed. A horse would have been killed if it fell there." Witness admitted that he "did not know whether the stick Mr. Kirwan carried was a 'stick stick' or not, it was the stick he always carried. He had been examined at the inquest, but was made to draw back when he came to the part about the sheet."

Michael Nagle, examined by Mr. Hayes, Q.C., also described the search and the finding of the body.

"Mr. Kirwan went over," he said, "and threw himself down on the body, and began to moan and cry before witness had quite come up. Mr. Kirwan desired him to go and look for the clothes. Witness took the strand way; neither he nor Patrick Nagle found the clothes. When they came back Mr. Kirwan rose from the body and went up the rock. Soon after witness heard Mr. Kirwan say 'Here they are,' and then saw Mr. Kirwan coming down bringing something white in

his hand, also a shawl. He then told Pat Nagle to go for the clothes."

On cross-examination by Mr. Butt, witness swore he saw Mr. Kirwan bringing down the shawl and "something white like a sheet."

Mr. Brue deposed to his wife's invitation to Mrs. Kirwan to return with her earlier in the day. To Mr. Curran he said Mr. Kirwan was then engaged in sketching an old ruin.

Mr. Henry Campbell swore he lived in Howth, and on the evening the body was found heard cries from Ireland's Eye; witness heard three cries; he could distinguish no words. Second cry was about three minutes after the first, the third shortly after that.

Thomas Larkin, fisherman, returning in a boat that evening close to Ireland's Eye, heard cries when half way between the Martello Tower and the bay.

To Mr. Butt he said there were five or six minutes between the first and second cries.

Several other witnesses deposed to the hearing of screams.

Mr. Bridgeford swore that he was owner of a house in Sandymount.

"Mr. Kirwan lived in one of the four houses in Spafield of which I am the landlord. He resided there for about four years. I saw a woman there whom I always supposed to be his wife. I saw children in the house. I have notes from the woman, and I think she signed herself 'Theresa.'"

Catherine Byrne. I have lived with the prisoner at Sandymount as a servant. Mrs. Kirwan lived there; there were seven children in the house. Mr. Kirwan used to be there a good deal in the day time, he slept there with Mrs. Kirwan frequently at night. Her name was Theresa Mary Frances Kenny.

Mr. Hamilton, Medical Student, who made the examination at the inquest, deposed that there were no marks on the body that arrested his attention.

George Hatchel, M.D. and Surgeon, deposed to an examination of the body when it had been exhumed

from Glasnevin, thirty-one days after death. The season had been wet, and there was about two feet of water in the grave, the body was much decomposed. He discovered no internal or external trace of violence.

Mr. Smyly. From your knowledge of the place, the observations you made upon it, and from your observations of the body, are you able to form an opinion how the lady came by her death?

Mr. Butt objected to the question. He submitted that the inference drawn by the witness from what he had seen and learned ought not to be received in evidence.

Mr. Justice Crampton decided that the question was inadmissible.

Mr. Smyly then put his question as follows—From the appearance you observed on the body can you as a medical man form an opinion as to the cause of her death?

Witness. I am of opinion that death was caused by asphyxia or stoppage of the respiration.

Was there any appearance on the body which would enable you to say how the stoppage of the respiration was occasioned?

From the appearance, I should say that the stoppage of respiration must have been combined with pressure or constriction of some kind.

Would simple drowning cause the appearance presented?

Not to the same extent.

The witness was cross-examined at great length by Mr. Butt. He admitted that the appearance might be caused by the lady making efforts to save herself from drowning. He had been told of instruments having been run through the body, but could find no trace of that. Going into the water with a full stomach would be likely to cause a fit.

Mr. Butt. Do I understand you to say that the appearances presented were consistent with the fact of a person with a full stomach going into the water?

Witness. I think it probable.

Is it not probable that such was the cause of death ?

I am not prepared to say whether it was or not.

From your knowledge as a medical man is it not probable ?

Taking it *per se*.

Have you heard of a fit of epilepsy being caused by a person going into the water with a full stomach ?

It is possible. (To Mr. Smyly.) I have heard of persons falling in a fit of epilepsy giving one loud scream, I never heard more than one scream. (To Mr. Butt.) Frequent screams are not impossible.

Henry Davis, Coroner, in reply to Mr. Hayes, deposed to the holding of the inquest. In reply to Mr. Brereton on cross-examination he said he had been Coroner for twelve years. He had seen bodies that had been bitten by crabs. The marks on the eye-lids were like those marks, the nipples on the breasts had similar marks.

Mr. Butt, in a speech of surpassing eloquence, begged the jury to banish from their mind all the calumnies on the prisoner they had heard outside the court. He maintained that all the evidence was consistent with accidental drowning. He ridiculed the idea that the prisoner had first murdered the woman, and then undressed her, and placed her in the position in which she had been found. If the suggestion was that he had followed her into the water and held her under, then his arms and body must have been as wet as his feet.

Surgeon Rynd, examined for the defence, swore that in his opinion the appearance discovered by the *post-mortem* examination would be produced by an epileptic fit.

Mr. Justice Crampton. Without any concurring cause ?

Witness. Without any concurring cause. Epileptic patients often scream loudly. A patient in epilepsy might utter several screams. In the opinion of witness, as a medical man, sudden immersion in water with a full stomach might superinduce a fit of epilepsy.

Surgeon Adams had known people seized with epilepsy to scream violently more than once; the first scream is the most violent. (To Mr. Hayes, in cross-examination.) Putting a wet sheet over the mouth and nose would produce all the effects of drowning.

Mr. Brereton. If a wet sheet were put over the mouth and nose would it produce three loud screams?

Dr. Adams (smiling). That is not a medical question. (To the Court.) It would be impossible by the appearances described to distinguish between accidental and forcible drowning.

Mr. Hayes, in reply to Mr. Butt's challenge, suggested to the jury the theory of the Crown as to how the murder had been committed—"Let them suppose that the prisoner induced the deceased to bathe in the Long Hole. He meditated her death. It must have been about seven o'clock when she bathed, and at that time the water was two feet nine inches deep. Let it be supposed she was in this water, that the prisoner came into the hole with the sheet in his hand for the purpose of putting it over her head, that on seeing him approach in this manner his dreadful purpose at once flashed across the mind of the victim, might she not then have uttered the dreadful agonizing shriek that was the first heard on the mainland? If he succeeded in forcing her under the water, notwithstanding her fruitless struggles with all her youthful energy against his superior strength, might they not in that respect expect the fainter, agonizing, and dying shrieks, which both men and women swore they heard from the mainland growing fainter and fainter? It was for the jury to consider all the facts, and to say whether this (for the present suppositious) case was not the most probable."

After Mr. Justice Crampton had charged the jury they retired. At twenty minutes to eight they returned, and the foreman said—"I don't think we are likely to agree."

A second juror. There is not the most remote chance of our agreeing.

A third juror. There is not the smallest chance of an agreement.

Mr. Justice Crampton. It will be necessary for you, gentlemen, to remain in your room for the night.

The foreman then inquired what would be the latest hour at which his lordship would receive a verdict in case of agreement, and Judge Crampton said he would return to the court at eleven o'clock. At eleven o'clock the judge returned, and the foreman declared they had not agreed, nor were they likely to agree. The judge then stated that they must be locked up for the night without food.

A juror asked him to wait a little longer, and after about half-an-hour's further deliberation they returned with a verdict of "Guilty." The court then adjourned until the following morning.

A vast concourse of persons assembled at an early hour in front of the Courthouse. The doors were thrown open a little after ten o'clock, and in a few moments every available space in the court was crowded to its utmost capacity.

Great anxiety was shown to obtain a view of the prisoner. As on the previous day he was neatly, and even elegantly, attired. "His countenance showed no signs of affliction, and his manner was perfectly composed."

The prisoner on being asked if he had anything to say why sentence of death should not be pronounced, protested his innocence of the murder, and gave a long and detailed description of the occurrences on the island during the day. He said he had continued his sketching after his wife had left him in order to catch the sunset effects on the mountain, and referred to the sketch which had been given to the police in which these effects had been reproduced. He explained that his feet had got wet trampling after the shower through the long grass and ferns on the island in search of his wife.

He was interrupted by Judge Crampton, who pointed out that all those points had already been made by counsel.

Judge Crampton then passed sentence of death upon the prisoner. "Upon the verdict," he said, "it is not my province to pronounce opinion, but after what has been said I cannot help adding this observation, that I see no reason or grounds to be dissatisfied with it, and, in saying this, I speak the sentiments of my learned brother, who sits beside me, as well as my own. You have raised your hand, not in daring vengeance against a man from whom you received, or thought you had received, provocation or insult; you raised your hand against a female, a hapless, unprotected female, who by the laws of God and man was entitled to your protection, even at the hazard of your life, and to your affectionate guardianship. In the solitude of that rocky island to which you brought her on the fatal 6th September under the veil of approaching night, when there was no hand to stay and no human eye to see your guilt, you perpetrated this terrible, this unnatural crime. . . . No human eye could see how the act was done, none but your own conscience and the all-seeing Providence could develop this mysterious transaction."

During the delivery of this deeply impressive address, the prisoner continued leaning on the bar of the dock looking intently at the learned judge, and preserving a calm and firm demeanour, but when his lordship pronounced the final words of the awful sentence he appeared for a moment overcome, and dropping his head between his hands he gave utterance to a low suppressed moan, expressive of the deepest anguish of mind. But he almost instantly recovered the composure he had shown at the trial, and when the sentence was pronounced in a clear, steady voice, he said—"Convinced as I am that my hopes in this world are at an end, I do most solemnly declare in the presence of this court, and before the God before Whom I expect soon to stand, that I had neither act nor part nor knowledge of my late wife's death, and I state further that I never treated her unkindly, as her own mother can testify."

The extreme sentence of death was commuted by

Lord Eglinton, the then Lord Lieutenant, to penal servitude for life. Mr. Kirwan was early in 1853 removed to Spike Island, where he served no less than twenty-seven years. The last definitely known of him is that he was released on the 3rd of March, 1879, on condition of his going to live outside the British dominions.

There is a rumour current amongst the fishermen of Howth that a few years after his release Kirwan, then a decrepit grey-bearded old man, revisited the scene of the tragedy, but I can find no further confirmation of the rumour.

I had heard of a pamphlet dealing with the Ireland's Eye tragedy, but I knew nothing of its contents or purpose when I arrived at the conclusion that the accused was innocent solely on the evidence before the court. Murder seemed to me to be wholly disproved by the appearance of the body and the circumstances of the case. On the theory of murder the accused must have either smothered the woman and then undressed her, and placed her in the water as she was found, or as was suggested by the counsel for the Crown, followed her into the water and smothered her with a wet sheet. It is hard to say which suggestion is more absurd. It is wholly incredible that the prisoner could have strangled his victim without the least sign of violence to him or her. The marks of strangulation are vividly described by the greatest of poets:

> "But see his face is black and full of blood,
> His eye-balls farther out than when he lived,
> Staring full ghastly like a strangled man,
> His hands abroad displayed as one who grasped
> And struggled for life and was by strength subdued."

There was none of these signs on the pale, placid body of unhappy Maria Kirwan.

It was necessary on this theory, which seems to have found some favour with the jury, that the prisoner should have strangled his wife without any show

of violence to her or himself, stripped her, carried her to the water, put her clothes carefully by, put on her bathing dress, laced up her bathing shoes, and returned over half-a-mile of the roughest ground, between Long Hole and the landing place in the interval, less than half-an-hour, between the screams and the arrival of the boat to present himself calm and unruffled for the inspection of the boatmen on their arrival.

No wonder the Crown abandoned this theory as too absurd for credence, but the theory they pinned their case to was not less incredible. That the prisoner followed his wife and smothered her with a wet sheet. It was necessary on the evidence to suggest that the lady saw him approach, and divined his purpose; the screams, with an interval between the first and last, could not otherwise be accounted for. On their theory the struggle must have lasted six minutes. A man helplessly streeling a wet sheet in both hands through the water advances to strangle a vigorous woman, a powerful swimmer at home in the water, with all her limbs free to fight or fly, and he accomplished his purpose without the slightest show of violence, without so much as wetting his sleeves. The theory has only to be examined to make its absurdity apparent.

On the other hand, the theory of accidental drowning in a fit, induced by entering the water with a full stomach, meets all the facts of the case, and its probability was confessed even by the medical witness for the Crown.

That probability was for me at least confirmed by an incident that occurred when I was a law student at lodgings in Williamstown. I was then a strong swimmer, and my young ambition was to rescue someone from drowning. My ambition was realized in a very unheroic fashion. As I was walking one morning along the sea wall to Blackrock, I saw a young man bathing. He had scarcely entered the water when he threw up his hands, screamed violently, and fell in a fit. I dragged him out at no greater cost than wet clothes, the water was not more than two feet deep, and I succeeded by friction

in completely restoring him. It is no wonder I found it easy to believe a similar fatality happening to Mrs. Kirwan.

In view of the impossibility of the accused having committed the murder in any fashion that can be suggested, it is hardly necessary to refer to other weaknesses and discrepancies in the case for the Crown.

Counsel urged his wife's recent discovery of the prisoner's relations with Miss Kenny as an urgent motive for murder; there was no scrap of evidence that the discovery was recent. All the facts point the other way. The two women living in the same city, a mile apart, for twelve years, could scarcely fail to know each other. If, as it appears probable, the wife knew and acquiesced, the motive for murder disappears.

The stress laid on the fact that his feet were wet, which might happen from walking through wet undergrowth after the shower, or from stepping carelessly into the boat, only seems to emphasize the fact that his sleeves and coat must have been wet if he committed the murder.

The alleged presence of the sheet under the body, and the fact that Patrick Nagle did not find the clothes in the place he was told by Mr. Kirwan to look for them, were both strongly relied upon by the Crown. In the latter argument I can see no meaning at all, unless it was meant to confuse the jury. No reason was or could be suggested why Mr. Kirwan should send Nagle to look for the clothes in a wrong place. In regard to the sheet, it must be plain on an impartial reading of the evidence of Michael Nagle, that the prisoner himself had brought it down to cover the exposed body of his unhappy wife. Indeed every act of his that terrible night is suggestive of innocence, not the least his choosing to remain alone with the body in the long interval of the night while the men brought the boat round from the ordinary landing-place to Long Hole.

As I have written, I was convinced of the prisoner's innocence before I read the pamphlet (now very rare)

by J. Knight Boswell, published in 1853 by Webb and Chapman, Great Brunswick Street, Dublin, and entitled "Defence of William Burke Kirwan, Condemned for the alleged Murder of his Wife, and now a Convict in Spike Island, to which amongst other documents is appended the opinion of Alfred S. Taylor, M.D., F.R.S., the most eminent medico-legal writer in the Empire, that 'no murder was committed.'"

I venture to believe that no one after carefully reading that pamphlet can have the faintest doubts on the subject. It is somewhat clumsily compiled; gossip and sworn informations and undoubted facts are mixed together, and trivial and irrelevant incidents strongly insisted on, as for example the alleged fact that there was a third person on a different corner of Ireland's Eye at the time the murder was alleged to be committed. But the cumulative effect is absolutely conclusive.

The pamphlet declares that suspicion was first aroused against Kirwan by the information made on September 21, 1852, by a Mrs. Byrne, who always had a bitter grudge against the prisoner, and constantly strove to make trouble between him and his wife.

Amongst other things she swore that "having ascertained that the said Mr. and Mrs. Kirwan had left their residence about three weeks ago, she suspected that Kirwan had taken his wife to some strange place to destroy her, and had made inquiries as to where the parties had gone, and that she had no doubt in her mind that the said Mrs. Kirwan was wilfully drowned by her husband, and that she had strong reasons to believe that he (Kirwan) had made away with other members of the family under very suspicious circumstances."

Mrs. Crowe, the mother of Mrs. Kirwan, contradicted this information. "There could not be a quieter husband than Kirwan was to her daughter, who had a full supply for her every want," and she gave many illustrations of Mrs. Byrne's vindictiveness against Kirwan.

Mrs. Bentley, described as a "lady of the highest respectability," swore that to her knowledge as well as to that of several members of her family, Mrs. Kirwan was fully acquainted with Mr. Kirwan's intimacy with Miss Kenny within one month after her marriage twelve years before.

Miss Kenny's information contains a pitiful account of the persecution to which she and her children were subjected after Mr. Kirwan's conviction, driven from lodging after lodging, and subjected to threat and violence in the vain attempt to exhort a false confession that she had been married to Mr. Kirwan; but the only matter relevant to the trial is her statement that she and Mrs. Kirwan were all along aware of each other's positions.

Further informations were made by Mrs. Bentley; Anne Maher, who was a servant of Kirwan and his wife; Arthur Kelly, Thomas Harrison and his son, who all swore they were on terms of affectionate intimacy with the Kirwans, and all deposed that Mrs. Kirwan was subject to fits.

Her servant, Ellen Malone, swore—"On one occasion, about six months before I left Mrs. Kirwan's service, while she was sitting in a tin bath of lukewarm water, Mrs. Kirwan told me she felt her senses leaving her. I perceived her face suddenly turn pale, and she became insensible."

As illustrating the fantastic theories that operated on the minds of the jury, an extract is given of a letter witten by a juror to the *Freeman's Journal*, "That the jury believed that about five minutes past seven o'clock the unfortunate woman had been decoyed to the spot where her bathing cap had been found, and then thrown down, the damp sheet held forcibly on her face while the murderer knelt upon her belly. As soon as resistance ceased Kirwan stripped the body, attired it in a bathing-suit, and carried the body to Long Hole as far as the depth of his own knees."

In a letter to the newspaper, in reply to criticisms on the manner in which the inquest was held, the

Coroner, Mr. Davis, stated that the body was stripped, and was carefully examined by the medical student himself and the jurors, and that there were no marks of violence except those evidently made by crabs. He alluded, he explained, to the small green crab which frequents the strand, and is sure to attack a dead body, the eyes first. He added—"I have met with cases showing their marks in all stages from a body not an hour in the water having only the eyes touched up to the head completely deprived of all flesh."

The Coroner gave the lie direct to the statement of Pat Nagle that he was prevented from giving evidence about the finding of the sheet.

"What did occur was when Mr. P. Nagle, in his evidence, came to the finding of the body, he said she was lying with the sheet partly under her, whereupon Michael Nagle interrupted him and said—'No, Pat, the gentleman brought down the sheet.' Pat Nagle himself also gave direct evidence that Mr. Kirwan brought down the sheet from the rock to wrap up the body."

Alexander Boyd, foreman to the coroner's jury, also wrote to the same effect. "Pat Nagle," he said, "admitted at the inquest that he might be mistaken about the sheet"; the writer expressed his own unshaken belief that no murder had been committed.

Dr. Taylor, even to this day the standard authority on medical jurisprudence, in a long article in *The Dublin Quarterly Journal of Medical Science*, February 1853, minutely examines the evidence in the light of medical authority and example, and of his own personal experience, and concludes by declaring—"The theory of death assumed by the prosecutor is not only not proved, but actually disproved by the appearances on the body. . . . I assert as my opinion on a full and unbiassed examination of the medical evidence in this case, that so far as the appearance of the body was concerned, there is an entire absence of proof that death is the result of violence at the hands of another. Persons bathing or exposed to the chance of drowning

are often seized with fits which may prove suddenly fatal, though they may allow of a short struggle. The fit may arise from syncope, apoplexy, or epilepsy, either of the last conditions would, in my opinion, explain all the medical circumstances in this remarkable case."

"It is my opinion, as the result of twenty years experience in the investigation of those cases, that the resistance which a healthy and vigorous person can offer to the assault of a murderer intent on drowning him or her is in general such as to lead to the infliction of greater violence than is necessary to insure the death of the victim. The absence of any marks of violence or wounds on the body of Mrs. Kirwan, except such small abrasions as might have resulted from accident, may be taken in support of the only view which it appears to me can be drawn, that death was not the result of homicidal drowning or suffocation, but most probably from a fit resulting from natural causes."

Dr. Taylor's opinion is strongly confirmed by a certificate of a number of eminent Dublin doctors and surgeons.

William Jackson Porter, Professor of Surgery, Royal College of Surgeons, Ireland; Robert Graves, M.D., F.R.C.S.I.; Thomas Edward Beatty, Professor of Midwifery, formerly Professor of Medical Jurisprudence, Royal College of Surgeons, Ireland; J. Moore Nelligan, M.D., Physician to Jervis Street Hospital; Charles Johnson, M.D., ex-Master of the Lying-in-Hospital; Joshua Smyly, Examiner in Surgery, F.R.C.S.I.; Thomas P. Mason, M.B., F.R.C.S.I.; Thomas Rumley, Examiner in Medicine and Surgery, Royal College of Surgeons, Ireland; and Francis Rynd, A.M., F.R.C.S.I., who jointly certified that "the appearances on the body when found were compatible with death caused by simple drowning, or by the seizure of a fit in the water, and we deem it highly probable that the latter was the unhappy cause of death in this instance; for it appears on the sworn testimony annexed of Arthur Kelly and

Anne Maher that Mrs. Kirwan was subject to fits, and we are given to understand that her mother now alive derives her pension on the medical certificate, that her husband, the late Lieutenant Crowe, Mrs. Kirwan's father, died of a fit eight years ago in Irishtown in the County of Dublin."

Surely no one reading the evidence at the trial supplemented by the evidence in the pamphlet can have the faintest doubt of Mr. Kirwan's innocence, and it is amazing that the authorities did not grant him in the customary form "a free pardon" for the crime which he manifestly never committed. His only offence was against morality, and even here he was innocent of anything that savoured of cruelty. Strange as it may seem, both wife and mistress acquiesced in the arrangement, sharing his affection and attention contentedly as the wives of King Solomon or the ladies in a Turkish harem. But it was plainly prejudice, excited by the disclosure of this immorality, and the malignant and ungrounded rumours so set afloat that induced his conviction.

It is clear from the report, that in spite of popular prejudice, some at least of the jury were reluctant to convict. After many hours' deliberation they still held out against a verdict of guilty, and it was only on what amounted to a threat that they would be locked up all night without food that they were induced to convict. It is amazing that Judge Crampton should, in the circumstances, take such strong measures to over-ride the reluctance of the jurors. For it would appear that he himself had at least a reasonable doubt of the guilt of the prisoner.

In reply to Mr. Boswell, Mr. John Wynn, Secretary to the Lord Lieutenant, the Earl of Eglinton, wrote that "in commuting the death sentence passed on Mr. Kirwan, Lord Eglinton acted on the recommendation of Judge Crampton and Baron Green, with the concurrence of the Lord Chancellor, and he neither solicited nor received the advice of any other person whatsoever."

There could be no possible palliation for the crime if it had been committed. Either the prisoner had been guilty of a premeditated and atrocious murder or he was wholly innocent. If the conviction was right he should have been hanged, if it was wrong he should have been set free. The course adopted was wholly illogical and savagely unjust. Mr. Kirwan was entitled to his acquittal, and to freedom if there was (as the judges in effect confessed there was), "a reasonable doubt of his guilt." On a calm consideration of the evidence, there can be no reasonable doubt of his innocence, yet he was subjected to the terrible penalty of twenty-seven years of living death. I would be glad to believe that what I have written may help at least to rescue his memory from the undeserved disgrace which it has suffered so long.

The late Dr. P. O'Keife, formerly doctor of Spike Island prison, told a friend of mine that he accompanied Kirwan when, on his release, as the last prisoner on Spike Island (before it was turned to its present use), he proceeded to Liverpool, whence he sailed to America, with the intention of joining and marrying the mother of his children, whose name figured so prominently at his trial. Dr. O'Keife also told my informant that Kirwan, during his imprisonment, painted a series of artistic decorations for the prison chapel at Spike Island. A miniature of Kirwan, and one by him of his wife, were sold at the auction of his effects after his sentence, and passed into the hands of Mr. Charles Bennett, the well-known auctioneer of Ormond Quay. They are still, presumably, in the possession of his family.

THE FATHER OF THE LAND LEAGUE

TRIAL OF DAVITT, KILLEEN AND DALY FOR SEDITION

At a great meeting at Irishtown, County Mayo, in 1879, a land agitation was inaugurated by Michael Davitt, himself the son of a Mayo tenant, who, when Michael Davitt was himself a child, had been evicted from his holding and compelled to emigrate to England. The Land League was thereupon established, but the agitation was confined almost entirely to Mayo until Mr. Parnell, then rising into prominence as the leader of the obstructive policy in parliament, on the earnest solicitation of Mr. Davitt, gave his adherence to the movement, which derived increased strength from the failure of the crops, and an impending famine in Ireland. Mr. Parnell and Mr. Davitt gave two watchwords to the tenants; Mr. Parnell's "Keep a firm grip on your homesteads," and Mr. Davitt's "The land for the people." The agitation took such hold on the country, resulting in the non-payment of rents believed to be excessive, and in resistance to eviction, that the government resolved to stifle it by a criminal prosecution. Accordingly, on November 25, 1879, Michael Davitt, James Daly, newspaper proprietor, and James Boyce Killeen, barrister-at-law, were put on their trial at Sligo before a bench of magistrates, Arthur Maloney, R.M.; Alexander Gilmore, Moses Mans, Dr. Woods, Captain Pollinger St. George Robinson, Alexander Lyons, and Captain Griffith, on a charge of sedition in respect to speeches at a great meeting at Gurteen.

Mr. Rea, an eccentric solicitor from Belfast, represented Mr. Killeen; Mr. Davitt conducted his own defence; Mr. Daly was defended by Mr. London, instructed by Mr. Maloney, Sligo.

Mr. Rea, at the outset of the proceedings, protested against the prisoners being tried in jail or grand jury room. Neither he nor the prisoners, he said, would go voluntarily to the grand jury room, and if they were forcibly brought there actions would be taken against the gentlemen who brought them, and indictments sent up against them at the sitting of the next grand jury. They were accordingly tried in the courthouse.

Mr. John Monroe, Q.C., iustructed by Mr. Peyton, represented the Crown.

There were present in the court during the trial, Mr. Parnell, the Very Reverend Canon Brennan, P.P., who had presided as chairman at the Gurteen meeting, the Very Reverend Canon McDermott, P.P., the Reverend Dr. O'Hara, and Mr. John Dillon, who had spoken on that occasion.

Mr. Daly was first put on trial.

Mr. Monroe, the law adviser of the Castle, in his opening speech, invited the magistrates to send the accused for trial on a charge of sedition. "The fact," he said, "that a charge of this kind was happily an unusual one would perhaps be his justification in venturing at the outset of the case to offer a very few observations on the nature of the charge, and the circumstances under which the executive government had brought it forward. Now, the charge of sedition, and it was well it should be thoroughly understood, was one of a very comprehensive character. It lay against all those who sought to raise or create disaffection amongst the people, or create ill-will amongst various classes of Her Majesty's subjects, or who seek to bring the laws into contempt."

He cited the definition of Mr. Justice Fitzgerald—"Sedition is a comprehensive term, and embraces all those practices, whether by word or deed or writing, which are calculated and intended to disturb the

tranquillity of the State. Its objects are to create commotion, and to introduce discontent and disaffection. The distance is never great between contempt for the laws and open violation of them. . . . Sedition being inconsistent with the safety of the State is regarded as a high misdemeanour, and as such is punishable with fine and imprisonment."

Mr. Monroe, continuing, said he "need hardly say that if this law was carried out in all its strictness it might seem in one respect to interfere with the liberty of speech or freedom of public discussion, and therefore it was that in carrying out the law a great deal must depend on the forbearance of the government, the discretion of the judge, and the protection of the tribunal by which the case must be determined. Now they were perfectly aware that for a very considerable period, more especially for the last twelve months, a very vigorous agitation had been going on for the purpose of bringing public opinion to bear on the state of the law regulating the relation between landlord and tenant. No person quarrels with an agitation which has that object, and so long as agitation is confined to fair and temperate discussion as to the different systems that prevail in different countries no one would seek to interfere with it. . . .

"But, at the same time, at large meetings if sometimes ignorant and excited people are taken advantage of for the purpose of creating disaffection, for the purpose of stirring up different classes of Her Majesty's subjects against each other, and for the purpose of attempting by violence and force to prevent the due administration of the law, then it becomes the clear duty of the executive government to interfere on behalf of the people themselves. He knew that when the country and the people were prosperous and contented it might be well to leave agitators alone, and as a general rule it was in such cases very unwise to interfere with them. . . . Unfortunately, at the present time this country was passing through a crisis. The people are to a very great extent in a state of

suffering, and if the government found that such a state of things was seized upon by agitators, and he used the word with no invidious meaning at all, if such a condition of affairs was to be seized for the purpose of preaching doctrines that the landlords are felons and that the payment of rent under any circumstances is immoral, that the people are to assemble in their thousands to prevent eviction, that, as self-preservation is the first law of nature, if a person be evicted no other person is to be allowed to take his farm, or, if he did, he would be held up to the just vengeance of an indignant people, when physical force doctrines were sought to be put forward and misguided people were sought to be led astray, it was necessary that action should be taken.

"Now, the proceedings which formed the subject of consideration were those which took place on November 2, 1879, at a meeting held in Gurteen, in the County Sligo; it was a meeting which was convened a considerable time before and was attended particularly by members of the tenant-farmer class. Altogether there were about ten thousand people present, some of whom came in quasi-military array, wearing green sashes with illegal mottoes, and carrying a sort of imitation pike. The meeting was addressed by a considerable number of persons with whose names he would not trouble them. With reference to Mr. Davitt, he wished to say that it would be better as one who had experience of the clemency of the Crown, if he had not again placed himself in a similar position. It was with sincere regret that he found Mr. James Boyce Killeen in that position. He seemed to have made up by the strength of his language for the lateness of his appearance in the agitation. He now proposed to lay before the magistrates evidence of the character of the meeting and the part Mr. Daly took in it. He would take that opportunity of saying he did not see why any person should be held up to public scorn or held up as an object of popular vengeance because he acts as a professional shorthand writer in taking down the language which may be

uttered by the speakers, and he confessed he was astounded to see recently that persons holding that position were so held up. He thought it was the boast of those speakers, and their anxiety, that what they had to say should be spread as wide as possible and brought to the attention of the government with a view to having the grievances of which they complained remedied."

Francis O'Neill, police constable, was examined by Mr. Monroe, and described the meeting; about 8,000 men and women were present.

Was there anything peculiar about the appearance or dress of those arriving?

Witness. Nothing, except they wore scarves and rosettes.

Describe the scarves.

Some were broad, green scarves, the breadth of my hand; they came across here (pointing to his chest).

Did you observe any devices, anything drawn on these scarves?

No. He further deposed to having seen five bands; there were three flags and four small banners; one of them was inscribed, "Down with land robbers," and another "Boyle to the rescue."

On cross-examination, witness deposed that the scarves were all green, trimmed with orange.

Mr. London. "Boyle to the rescue," was that a seditious expression?

Witness. I cannot say.

What is a seditious expression?

I don't know.

"Faith and Fatherland," was that a seditious expression?

Here the witness fainted, and there was a brief interruption of the proceedings. Several other witnesses described the character of the meeting. One constable swore that Mr. Daly said "there would be no peace in Ireland until the landlords or landlordism, he could not say which, was abolished."

Mr. Johnson, shorthand-writer, and one of the reporters of the *Daily Express*, read extracts from the

speech of Mr. Daly:—"Don't pay the landlord until you have some guarantee from him or from the government that they won't see your children starving. Preservation is the first law of nature, and if it is the case with you that the grain crop is worth very little more than the tilling and seeding of the land, how can the landlord expect that you are to pay the rack-rents that he hampers you with year after year? Will the landlord act as he should; will he reduce it to the actual value you get out of the holding? It is easy to praise up landlords, but I don't care how good they are, I say until the word landlordism is written out of the statute book as in France and elsewhere you will never be very contented nor prosperous. I give you this bit of advice, hold your farms. Let them serve you with notices to quit and ejectments, let them, if they like, proceed in the courts. Defend yourself and don't allow them to evict you."

Mr. London, on behalf of Mr. Daly and Mr. Davitt, repudiated in the strongest way the suggestion that any imputation had been cast on Mr. Johnson for note-taking at the meeting. "Mr. Daly," said Mr. London, "considers that Mr. Johnson is a gentleman who acted perfectly correctly through the whole proceedings."

A police shorthand-writer, named Jeremiah Stringer, afterwards very conspicuous in prosecutions, corroborated the evidence of Mr. Johnson. He was cross-examined at great length by Mr. London. He admitted he had represented himself as the reporter of a very Nationalist newspaper, *The Tipperary Advocate.*

Mr. London. Was that a lie?

Witness. It was not the truth.

It was a lie?

Yes.

Tell me, what is the nature of an oath?

To swear the truth, the whole truth, and nothing but the truth.

Is there any difference between a deliberate lie told without oath and a false oath?

I don't believe that in the face of God there is any

difference between the breach of an oath and the telling of a lie.

Did you state a deliberate falsehood?

Yes.

During the entire trial an *opéra bouffe* element was supplied by Mr. Rea, solicitor for Mr. Killeen, who described himself as an "Orange Whiteboy Fenian," and availed himself of the triple character to make himself objectionable all round.

His performances are described at length in the *Freeman's Journal* report of the trial:

> "Mr. Rea, who oscillated during the day between the courthouse and the street, where at intervals he addressed large and applauding crowds, complained that he had great difficulty in making his egress and entrance. A policeman, though in the uniform of a soldier, let him out, and when he was out he was locked out. He required to have the door of the courthouse left open. The court having refused his application, he said he would have the law adviser suspended if he had to send a memorial to Her Majesty the Queen on the subject."

Eventually Mr. Daly was sent for trial, and the case against Mr. Michael Davitt for the same offence of sedition was on the same day taken up, Mr. Davitt defending himself.

In opening the case, Mr. Monroe said—"Now, gentlemen, I shall direct your attention to the circumstances under which we ask that Mr. Davitt be returned for trial on the charge of sedition. Although Mr. Davitt cannot be said to be socially of a very elevated position, I look upon him as probably the most dangerous of those who have taken part in this organization. I do so for two reasons. I believe that Mr. Davitt is a man of very considerable ability, and I know this also, that Mr. Davitt was formerly found guilty of the crime of treason-felony, as having belonged to a secret organization for which he was sentenced to penal servitude for a period of fifteen years, but by the

clemency of the government he was released at the end of seven. In coming to read his speech, to which it will be my duty to call your attention, I find that it is probably one of the most dangerous that was delivered at that meeting. Dangerous in many respects, but especially dangerous because the real meaning of what he intends to convey is to a certain extent veiled, and because the natural outcome of the advice he was giving seems to me of a very dangerous character.

"You will recollect, gentlemen—I don't intend to repeat what I said yesterday—but you will recollect that one of the matters indicative of the crime of sedition is endeavouring to stir up different classes of Her Majesty's subjects against one another. . . . Now I will call your attention for a moment to a passage in Mr. Davitt's speech, on which the Crown rely in asking you to return him for trial. 'Why,' he said, 'should we be here to-day in the noontide of the nineteenth century of civilization protesting against this immoral system of land laws, which has been swept from the path of every other civilized people ? I deny that in this year of impending famine and dire misfortune before us you are bound to satisfy the greed and avarice of the landlords. I say look first to the necessity of your children, of your wives, of your homes; look to the wants and necessities of the coming winter, and when you have satisfied those wants and necessities, if you have a charitable disposition to meet the claim of the landlord, give him what you can spare and give him no more. I am one of those peculiarly constructed Irishmen who believe that rent for land under any circumstances, prosperous times or bad times, is nothing more than an unjust and an immoral tax on the industry of the people, and I further believe that landlordism as an institution is an open conspiracy against the well-being, prosperity, and happiness of a people, and I say that everything which is immoral, whether it be rent or the open conspiracy of landlordism, has to be crushed by the people who suffer it. . . .

"'Look from the purely commercial point of view,

how does it operate in this country? Say that the 600,000 farmers in Ireland earn on an average £1 10s. a week. Some earn more, but a considerable number earn a great deal less; however, we will put it down at £1 10s. as the average weekly earnings of the farmers of Ireland, and that would produce an aggregate sum of about £45,000,000. Forty-five millions a year earned by 600,000 at the rate of £1 10s. a week each. Out of the sum of £45,000,000 how much do you think 3,000 individuals called landlords exact for themselves every year? Mind, 3,000. About a third of the number of persons at this meeting. Well, the 3,000 landlords—a licentious and voluptuous life many of them lead, not in Ireland, but away in London or Paris—pocket the neat sum of £20,000,000, or nearly half the entire earnings of the entire 600,000 Irish farmers, but not only that, one of them never puts a foot to the plough or a hand to the spade to earn a penny of that money. The farmers must labour from morn till eve to support themselves and their children, when in steps Mr. Lazy, the unproductive landlord, and demands nearly half of the money. . . . I say that at last, in face of another impending famine too plainly visible, the time has come when the manhood of Ireland will spring to its feet and say it will tolerate the system no longer.'

"After pointing out," Mr. Monroe continued, "its immorality, and that it was a tax on the people and must be swept away, Mr. Davitt invites the people of Ireland to spring to their feet and say they will tolerate this system no longer; if that is not an invitation to the people as to the mode in which the scheme is to be carried out, I am at a loss to conceive what plain language can mean. . . . If language like that is to be tolerated I am at a loss to conceive how any government could be carried on, or the peace or prosperity of the country maintained."

In the course of his examination of the witnesses, Mr. Davitt desired to explain why he had not availed himself of professional assistance.

"In appearing here without legal assistance," he said, "I do not wish to appeal to the clemency of the bench. That word clemency reminds me of the opening remarks of Mr. Monroe, and I may here say that they were characterized by a moderation and a gentlemanly demeanour towards myself which I really could not look for from a gentleman representing Dublin Castle. He, in his speech, spoke of the clemency of the Crown, and implied that I occupied the position of an ingrate. It was very politic on his part to dwell on that word clemency, for there is no word in the English language that an Irishman repudiates more than ingratitude, and if Mr. Monroe could place me here in the position of an Irishman ungrateful for the clemency of the Crown he would indeed prejudice me in the eyes of any impartial tribunal. But in alluding to the clemency of the Crown he forgot to mention the vengeance of the Crown. He said nothing about seven years and eight months of imprisonment and forced association with the vilest dregs of humanity, the vilest criminals to be found in English prison establishments, and he did not say that the crime for which I was forced to undergo this imprisonment was no more or less than for loving Ireland as every Irishman feels he has a right to love her. He also forgot to say that the conviction he dwelt on to-day for treason-felony was brought about on the evidence of a man whom I can only characterize as a salaried perjurer, a man to whom I never spoke, whom I never met, never saw till he confronted me in the dock in London. I am sorry that Mr. Monroe's dwelling on the word clemency and representing me as a man holding no position but that of an ex-convict should make me commence my remarks with anything in the nature of a political speech. . . . If I thought that the movement now agitating Ireland would be the least affected by my committal to prison, or by my liberation, I would then avail myself of legal assistance, but knowing that the movement cannot be arrested or crushed by my being arrested and crushed I am not much concerned what my own fate may be on the charge

now brought against me. Therefore, knowing my own words used at Gurteen and my own motives I have a very easy task in defending both."

Mr. Davitt, before cross-examining Mr. Johnson, who swore to the accuracy of the extracts from the speech read by Mr. Monroe, complimented him on his honourable conduct throughout. "Mr. Monroe," he said, "yesterday declared with a flourish of trumpets that those agitators who are desirous of Ireland's grievances and impending distress being brought under the notice of the government should not throw obstacles in the way of the note-takers, leading to the impression that agitators like myself had obstructed Mr. Johnson, or other government reporters, in the discharge of their duties. Now the first question I will put to Mr. Johnson is this: Have you ever, sir, received any obstruction from me in the discharge of your duty as a government reporter?"

Mr. Johnson. Not the slightest. I received no molestation whatever at the hands of anyone. I came down with you in the same carriage in the train, and travelled with you on the same car to the meeting.

Sub-Inspector Thomas McClelland, on whose information the warrant was issued for Mr. Davitt's arrest, admitted on cross-examination that he was not at the meeting and only knew by hearsay that Mr. Davitt had been there. He described Mr. Davitt as a person having no fixed residence, because he believed it, but admitted he had made no inquiries as to where he lived.

Mr. Davitt. Now, you swear in your information that I "used certain wicked, malicious and seditious expressions at Gurteen." Having not heard me at Gurteen I presume you swore that on information you received?

Witness. Yes, and from the police reports.

Well, sir, I suppose I might as well ask you the legal meaning of wicked, malicious, and seditious, as ask you for a translation of the hieroglyphics on Cleopatra's Needle. Are you aware of any seditious disturbances or proceeding taking place since the Gurteen meeting?

None.

The other shorthand-writers having been examiued and cross-examined, Mr. Davitt addressed the bench and argued that, even admitting the accuracy of Mr. Johnson's report, there was no *prima facie* case made out which would justify the magistrates in sending him for trial. "If the whole case was looked at from a commonsense point of view, impartially looked at, his speech at Gurteen would amount to this—that he was more concerned for the existence of the people during the coming winter, threatened as they were with dire distress, than for the legal rights of well-to-do landlords who had nothing to fear from such distress. . . . He held that he was perfectly justified in showing a partiality for that class of the Irish people to whom he was not ashamed to say he belonged, the farming class; but he admitted he would not be justified in calling on that class to participate in any illegal proceeding, or in asking them to take part in any seditious movement against the government of the country. He denied that he had done anything of the kind at Gurteen or at any of the meetings he had addressed in Ireland for the last twelve months. The question then, from his unsophisticated point of view resolved itself into this, what was the impression which his language at Gurteen was calculated to make on the persons who had listened to it? Was it calculated to excite the people to deeds of violence, to breach of the law, or to illegal seizure of the property of others? The evidence to prove the language at the meeting seditious rested he did not know on whom, Mr. McClelland, a very promising and remarkably handsome young man, on whose information he was arrested in Dublin and brought down to Sligo, did not hear him at Gurteen. He could not say that he used any illegal or seditious language. He could not say anything as to the impression his speech was likely to make on the people. He admitted, however, as far as his knowledge went, no insurrectionary movement had taken place in the County Sligo, and he would not swear that any police case whatever had arisen in consequence of the Gurteen meeting. . . . Now that

comprised the extent of the evidence adduced against him to sustain the charge that he was guilty of wicked, malicious, and seditious expressions at Gurteen. As the point appeared to him to be what impression his language had made upon the multitude on that occasion he elected to examine there that day, gentlemen whose respectability, intelligence, and position in society was beyond question. He would respectfully ask the Reverend Canon Brennan, who was chairman of the Gurteen meeting, to do him the favour of taking the witness chair."

The Reverend Canon Brennan deposed that he was chairman of the Gurteen meeting when he met Mr. Davitt for the first time.

Mr. Davitt. You did me the honour, I believe, of listening to all the remarks I made on that occasion? Do you recollect, as chairman, calling me to order for any language used by me on that occasion?

Mr. Monroe. I object entirely.

Mr. Davitt. I would ask Mr. Monroe to quote authority as to why he objects?

Mr. Monroe. On the plainest possible principles I would object to that evidence being given before any tribunal.

Mr. Davitt. Well, of course, I have not the legal knowledge which would enable me to contend with Mr. Monroe, but I should certainly like an expression of opinion from the bench as to whether I am justified in asking the chairman of the meeting at which I spoke, and out of which the prosecution has arisen, what his opinion was as to the effect my speech would be calculated to have on the people.

Mr. Monroe said he did not know whether Canon Brennan was a sympathiser with anything Mr. Davitt had said or whether he was not, but he objected to anything being taken that was not material to the question.

Mr. Davitt. Do you believe that I uttered a wicked, malicious, or seditious expression.

Mr. Monroe objected, that was for the tribunal to decide.

Mr. Davitt attempted to put the question in different forms to Canon Brennan, Canon McDermott, Father O'Hara, and Mr. John Dillon, but in each case Mr. Monroe objected, and the objection was allowed by the magistrates.

Mr. Davitt, addressing the court, denied that he had used wicked, malicious or seditious language. "I admit," he said, "that at Gurteen and at other meetings I said that till landlordism is abolished by fair and open means, as it is abolished in other countries, Ireland will not have the peace, contentment and prosperity, that I think she is entitled to equally with other countries that enjoy the system of land laws known as peasant proprietary. The head and front of my offending is this, that I have advocated this system of peasant proprietary against the system that at present prevails in Ireland, and I think that instead of my being placed here to-day to answer charges brought against me of inciting the people to deeds of violence, that it is the system of landlordism, which I have denounced, which should be placed in the dock to answer for the crimes which are imputed to me in my open discussion of its effects on the people of Ireland."

The magistrates decided to send Mr. Davitt for trial.

Mr. Parnell asked if Mr. Davitt would be admitted to bail.

Mr. Rea (interrupting) advised Mr. Davitt to go to prison for the night. He did not see why Mr. Parnell should interfere, "he was not such a terrifically great man, he would be discarded by the people when they found out his real capacity, which was very small."

Mr. Davitt was admitted to bail, and left the court with Mr. Parnell.

Owing to the eccentric conduct of Mr. Rea, the trial of Mr. Killeen was protracted over several days. In the course of the proceedings, Mr. Rea boasted that he was a firm supporter of Lord Beaconsfield, Lord Salisbury, and his great school-fellow, Lord Cairns, and applied that Edward McCabe, Lord Archbishop of Dublin, whose evidence was stated by the Crown,

should be ordered by the court to attend, "which I am," he said, "willing to pay for, and put the whole of his Pastoral in evidence, in addition to that portion which Mr. John Monroe, with deadly, and almost satanic malignity, read in court against my client."

Mr. Killeen was eventually sent for trial, and refusing, on the advice of Mr. Rea, to give bail, was detained in prison.

A few months later the Government dropped the prosecutions, but not before they had given a most stimulating advertisement to the Land League. Mr. Parnell, in a tour through America, collected a vast sum for the organization. The pressure of the agitation ultimately compelled the passing of the Land Act of 1881, the *Magna Charta* of the Irish tenants, securing them fixity of tenure at fair rents, and paving the way by state-aided purchase to peasant proprietary in Ireland, and the abolition of landlordism.

AN UNPARALLELED MURDER

THE QUEEN *v.* MONTGOMERY

At four o'clock on June 29, 1871, a servant girl named Emma McBride, passing through the hall of the bank house of the Northern Banking Company, situated in the centre of the small town of Newtownstewart, County Tyrone, was startled to see blood issuing from under the closed door of the office. The alarm was at once given, and, the door being opened, there was found, stretched on the floor of the outer office, the dead body of the cashier, William Glass, a young man of twenty-five years of age. His head was covered with deep gashes, and a sharp-pointed copper file driven from ear to ear through his brain. The floor and door were splashed with blood, the safe was rifled and notes and gold strewn about.

The District Inspector, T. H. Montgomery, who was in charge of the district, was promptly at the scene of the murder, took charge of the investigation, and to the surprise of the other persons present suggested the likelihood of suicide. That evening he telegraphed to the neighbouring District Inspector, W. F. Purcell, of Omagh: "Please inform the Coroner that a death under suspicious circumstances has occurred, and I request his attendance as soon as possible here. . . ." On further consideration, he despatched a second message by train: "William Glass, bank cashier, murdered, and large sum of money stolen; please examine trains and lodging-houses."

In the presence of the ghastly corpse of the murdered cashier, who had been his intimate friend, District Inspector Montgomery displayed not the least agitation,

and the messages he sent were in beautifully clear and firm writing.

Montgomery meantime had been busy with his own head-constable and the local police searching the neighbourhood till considerably after one o'clock in the morning. He then told the constable that he felt fatigued, that nothing more could be done that night, and that he would go home to bed, but he told his wife he would be out all night. To no one did he mention that he himself had been in the bank that evening after three o'clock. That fact he kept locked in his own breast.

Inspector Purcell, on his drive from Omagh, found Montgomery at Grangewood at two o'clock in the morning at the very spot where he had been seen the previous evening after the murder. The two officers walked arm-in-arm into Newtownstewart talking over the affair. Montgomery explained that he had been requested by the authorities at Dublin Castle to keep a watch on the Great Northern Railway on account of the strike which had taken place. This was made to account for both his visits to Grangewood. It was the fact that such a request had come from Dublin Castle. He was of course too shrewd to give himself away to the other officer on meeting him at that particular hour of the morning; he said he was glad to see him—that he had expected him.

In his conversation with District Inspector Purcell, Montgomery asked a very significant question: "Could the last person coming out of the bank be convicted if he had no blood on his clothes?" and Purcell answered, "He thought not."

The significance of the question was apparent when it was discovered that Montgomery himself was the last person that had come out of the bank after the murder.

Three days later he was arrested and charged with the crime, and appeared to treat the charge with the utmost unconcern.

For a long time the most vigilant search failed to

discover the notes or the weapon with which the crime had been perpetrated. Nearly six months later, a young boy named Edward McPhilomy, wandering in Grangewood after a heavy shower of rain followed his dog into whin bushes, where he had gone in pursuit of a rabbit, and found some scraps of paper which proved to be a bundle of the missing notes washed out of their hiding place by the rain. A rigorous search was at once instituted, and the money to the amount of over £1,500 in notes, with £30 in gold, was discovered, the greater part concealed in a cavity under a great stone which had to be lifted with a crowbar. In another hiding place close at hand was found a bill-hook or pruning knife, heavily weighted with lead at the socket, with which it was supposed the murder had been committed.

At the July Assizes in Omagh, in 1871, a true bill was found against Montgomery for the murder of Glass, but at the instance of the Attorney-General, who prosecuted, the trial was postponed until the following Assizes.

There was published in the *Freeman's Journal* a very graphic and striking description of Montgomery as he first appeared in the dock:

> "A square-shouldered, dark-visaged man, with a full, black beard and hair. The prisoner looked a man of great physical power, his loss of flesh since his arrest only showing more plainly the great strength of his frame. His aspect and movements were watched by a thousand curious eyes, and a whisper ran round the court, 'How pale he is'; he was indeed deadly pale, and his first action was to grasp for a second the bar of the dock, as if to steady himself; scarcely had he touched it, however than, as if conscious or afraid that the action should be taken as a sign of weakness, he hastily withdrew his hand, and drawing himself up looked steadily round the court, pausing at some faces as if expecting or ready to offer a recognition."

The murder was described by Lord Justice Barry as "the most extraordinary case ever tried in this or any other country. In a small but still populous town, in the noontide of a summer's day, when the people—the population—were about and stirring, in a public bank, shortly opened in the district for the transaction of the business of life, the cashier of that institution is brutally murdered on the floor of the office, a large sum of money is abstracted, and the man who stands before you accused of that dreadful crime is not a common cut-throat or an ordinary robber. He is a gentleman filling the position of an officer in one of the Queen's most honourable services; he is, in fact, the Sub-Inspector of Police in charge of that district, there for the protection of the inhabitants and the prevention of crimes, and whose duty it would have been at the risk of his life to have arrested the malefactor and brought him to justice."

The first trial took place at the July assizes at Omagh, and not merely through the district, but through the whole country, the proceedings were watched with the most intense interest.

The courthouse was crowded to the doors. The *Freeman's Journal* reporter wrote:

> "An hour before the opening the courthouse was besieged by a throng of ladies whom the High Sheriff gallantly admitted to the galleries, both of which they completely occupied, their presence and their gay toilettes looking rather out of keeping with an event so full of dark associations."

The appearance of the prisoner is again described as showing "great strength and firmness of character, which his powerful form and broad jaw, hidden in a great black beard, indicated. As he entered the dock he for an instant shrank from the eager regard of the thickly-packed audience set upon him, but immediately with a movement perfectly repeated from his last appearance drew himself up, and fixing his eyes

on the bench set his face calm and impassive, and never afterwards looked to the right or the left." It is added that while in prison he spent most of his time in the study of euclid and algebra.

Judge Lawson presided, the Attorney-General led for the prosecution, and Mr. McDonagh, Q.C., for the defence. From the statement of the Attorney-General it appeared that the accused had been himself originally a bank clerk, who had passed the competitive examination which secured him the position of district inspector. On his marriage he had been changed to Newtownstewart, where he lived with his wife at a hotel, and grew to be very intimate with the cashier, William Glass, who was himself studying for the constabulary. It was urged by the Counsel for the Crown that this intimacy facilitated the murder of his friend.

It appeared from the evidence that some time before the murder the family of Mr. Grattan, the bank manager, had gone to reside at the seaside, and the bank house was occupied only by himself, his cousin, Miss Thomson, the servant-maid, Emma McBride, and a servant-man named Cooke. There were two offices, an outer and an inner, communicating by a door with the hall, and in these offices the manager and the cashier attended from ten to three, at which hour the bank closed. But it was the custom of the manager on every Thursday to attend at a branch office some distance away, leaving Newtownstewart at ten and returning at five, during which time Glass was alone in the office at Newtownstewart, and of this custom the prisoner was aware.

About half-past two on the day of the murder, Miss Thomson was in the drawing-room of the Bank House when a knock came to the door and the prisoner entered. He asked her would Mr. Graham come to fish with him, she said Mr. Graham would be disengaged about six that evening, and that he might call and ask, the prisoner then left, and she did not see him again till after the murder.

Meantime Glass was in the bank attending to the

customers. A girl named Miss Cole, who was one of the last there before the bank closed, deposed that when Glass went from the outer office to the inner office in reference to a charge of sixpence on a draft, she heard whispering inside. A little after three o'clock a man with a barrow of cockles came into the street in front of the bank, which was then closed, and the servant-girl, Emma McBride, went out into the street to buy some, closing the hall door on her return. Mary Anne Comers deposed that a little after three o'clock, when the cockle-man had left the street, looking through a window in Mr. McDonnell's shop, she saw a man open the door of the bank, look out and then go in again. She had never seen him before, but now identified him as the prisoner, he was dark-eyed, bareheaded, and good looking. The witness was cross-examined by Mr. McDonagh so severely in regard to discrepancies in her depositions that she fainted and had to be carried out of court.

Mrs. Harriet McDonnell swore that just after three o'clock she saw Mr. Montgomery open the bank door from the inside. He turned in again quickly leaving the door ajar. About two minutes later he came out again, closed the door very firmly, and walked away past the Bank Street corner. He had a round hat, dark clothes, and carried a waterproof coat doubled up on his arm. He also carried a stick when she saw him come out.

James Entricken, eleven years old, swore that while the cockle-man was in the street he heard a table fall, and a moan or a squeal from the inside of the bank. That was after Emma McBride went out for cockles.

Thomas Stewart, aged ten, heard groaning in the inside of the bank "like the noise of a cow."

John McDonnell proved that a short time before the murder prisoner had bought a quantity of lead from him; he said he wanted it to make bullets for his pistol. On a search of the prisoner's rooms no bullet mould was found, his pistol was loaded with cartridges. From the bill-hook with which it was supposed the murder

had been committed, nineteen ounces of lead were extracted.

Olivia Livingstone deposed to Montgomery calling at Glass's lodgings to see his room. Witness asked if it was true Glass had committed suicide, and prisoner answered in an angry tone of voice that there "was no doubt about it."

District Inspector Tully deposed that on one occasion the prisoner said to him that it struck him as very strange that no one attempted to rob a bank, and added it would be easily done by knocking the cashier on the head, and a person could be out of the country before the crime was discovered.

Mr. Gordon Graham, manager of the bank at Newtownstewart, swore on another occasion while he and the prisoner were at the bank, Mr. Montgomery asked what would hinder any one from coming in and murdering the man in charge and taking the money, and he went into the inner office, illustrating how it could be done. Witness took out a pistol and said such a man would get contents of that. Witness always took the pistol with him to Drumquin on Thursdays; there was no pistol in the bank on those days.

W. Scott swore that prisoner purported to believe that Glass had committed suicide.

John Burgoyne, assistant surveyor, swore that some time ago he dined at the house of Dr. Cowan at Plumbridge when Mr. Montgomery was present. There was a life-preserver hanging up in the room. Witness said the name life-preserver was a misnomer, and that in his college days it was called a skull-cracker. Mr. Montgomery asked the doctor where you should strike a person so as to render him insensible, and the doctor pointed to a certain part of his head.

A number of medical witnesses testified that it was quite possible for the murderer to commit the crime without having blood on his clothes. At the several trials a white plaster cast of a human head was produced with red gashes where the bill-hook had struck.

The skull was scored all over with these gashes, three of them reaching three-quarters the length of the entire skull. Dr. Porter fitted the blade of the bill-hook into the gashes demonstrating how each wound had been inflicted, and the reporter remarks: "During all that terrible process the prisoner was perfectly calm and imperturbable, occasionally leaning over the dock to examine the skull more closely."

Towards the close of the first trial a very curious incident occurred which is thus baldly reported: "The Attorney-General said he now proposed to prove that pecuniary embarrassment pressed on the prisoner at the time of the murder. Mr. McDonagh objected and the court rejected the evidence."

It is hard for any lawyer to understand why this evidence was rejected by a lawyer of the eminence of Judge Lawson. Proof of motive for a crime has always been held admissible.

In his great speech for the defence, Mr. McDonagh urged the absence of any compelling motive as one of the strongest arguments for an acquittal. The jury disagreed on the first trial nine, it was stated, being for a conviction and three for an acquittal.

At the second trial, six months later, Serjeant Armstrong was engaged to prosecute. The Serjeant and Mr. McDonagh, who again led for the defence, were then the rival leaders of the Irish Bar, and both strained their powers to the utmost in attack and defence.

Early in the proceedings, "The Big Serjeant," as he was affectionately known at the bar, secured a notable triumph.

In his opening statement he declared that he was prepared to prove that at the time of the murder the prisoner was in a position of difficulty and pecuniary dishonour. Mr. McDonagh objected. Serjeant Armstrong retorted such evidence was plainly admissible, and cited the case of the murderer Palmer, and a number of other precedents. After full argument, Lord Justice Barry said he had no hesitation in admitting

the evidence. It was then proved that the prisoner was in dire financial straits.

On October 28, 1870, he had received £30 from a constable named Robert Kenny, to invest in the Westminster and London Bank at five per cent., not a penny of which had been invested. Constable Kelly gave him £200 to invest at four per cent. in stock, but he had never invested it though he paid what purported to be interest to both. To the Reverend Mr. Bradshaw, father of his wife, he confessed to great losses, and borrowed from him some hundreds of pounds which had never been repaid. He was liable to be dismissed from the force if his dealings with the money of the constables had been discovered.

In his speech for the defence at the second trial, Mr. McDonagh urged the impossibility of the prisoner carrying the weapon and the immense bundles of notes from the bank and through the streets concealed about his person under the eyes of numerous spectators.

"If," he asked, "Montgomery was the murderer, what did he do with all that parcel of property, the bulk of which they had seen? If he was the murderer he must have taken that out of the bank. . . . It was plain he could not have concealed the weapon and the immense pile of notes under his coat. . . . He could not possibly put this enormous number of notes in his pocket or in his breast."

It was soon apparent that this argument made a powerful impression on the jury. Mr. Farrar, one of the jurors, insisted that the Crown should produce the clothes worn by the prisoner on the day of the murder or give some reason for the non-production. Serjeant Armstrong explained that the clothes were not produced because admittedly there was no trace of blood on them. The jury desired to see the clothes to ascertain if it were possible to carry off, concealed in them, the weapon and the great bundles of notes, and they were accordingly produced.

After the second trial the jury disagreed, the foreman

and Mr. Farrar, it was alleged, being in favour of an acquittal.

Serjeant Armstrong prepared a dramatic surprise for the third trial. He put up Constable O'Neill, a powerful man like Montgomery on the table, wearing the very clothes Montgomery wore on the 29th June coming out of the bank, the overcoat on his arm, the same notes tucked into his clothes, and the formidable weapon in his trousers pocket.

He was able to move quite freely, and no one could notice that there was anything unusual about him. Then he slowly took out the notes in bundles and placed them upon the table, laid down the weapon also, and the theatrical effect of the whole upon the jury destroyed the last hope of the prisoner.

Again Mr. McDonagh made a wonderful speech for the defence, concluding with the hope that the jury would "be guided by the Higher Power Who rules the world, and Who alone knew the truth."

Serjeant Armstrong, on the other hand, professed himself confident that "all men would read in their verdict the justice of God's Providence, and the certainty of the retribution for crime."

In less than half-an-hour the jury returned a verdict of "guilty," and a moment later their verdict was justified from the dock.

The prisoner being asked by the judge if he had anything to say on his own behalf why sentence of death should not be passed upon him, made the following astounding statement:

"I wish to say, my lord, at the time of the perpetration of the murder, and for twelve months before, I was in a state of complete insanity. In the month of June 1870, I was invited to Milecross, the residence of Mr. Bradshaw. At the time I was in the enjoyment of excellent health, and was there deliberately drugged and poisoned with the object of rendering me weak-minded. When I went to the doctor he told me I had only a few days to live, and that I could scarcely recover, and in that state I was directed and compelled,

and being weak-minded, consented to marry, and grew worse and worse. In the month of November I embarked on those foolish and ridiculous speculations, when I lost enormous sums of money, larger sums than have transpired in evidence, for some persons who gave me money have not come forward to say anything about it.

"I became vicious, and this mono-mania for attacking banks took possession of me. I stated repeatedly to several members of the constabulary, not only how this sort of thing could be perpetrated, but that I myself would do it. I told my own orderly on one occasion I went to Holywood, that I intended going to the bank and killing the cashier, and would carry the money to Cave Hill, and would build a house of sods for myself to live in. The man said I was mad, and followed me after that day. When I was in Newtownstewart I was in a state of complete derangement. The Head Constable meant far more than he said when he stated I frequently complained of my head. I never could get sleep unless I kept towels on my head. I never would have injured anyone if I had not been mad. Serjeant Armstrong called it a terrible murder, and there is no doubt it was a murder which no educated man or man of feeling could have performed. Why, a savage of New Zealand could have done nothing worse, but I was a demented being at that time and bereft of reason, and there is a very great difference between my case and that of a man who, knowingly and willingly commits an act of the kind. In my case I was entirely in a helpless state, weak-minded and silly, and I don't think an act of mine when in that state should be visited on me as an act of a wise man."

Lord Justice Barry, who had never before doomed a man to death, was affected to tears as he delivered the terrible sentence. "The excuse of your crime," he said, "which you offer at the bar was not before the jury, nor could it for one moment be taken into consideration. . . . Your victim confided in you as an officer of justice, whose duty it was to protect him and the

property committed to his care; he confided in you as his friend, and for base greed of gain you availed yourself of that confidence to take him unawares and basely and treacherously slay him, you sent him to his last account without a moment of reflection or preparation for that dreadful ordeal."

In conclusion, he held out no hope of a mitigating punishment, and urged him to appeal for mercy to God.

In the interval between the sentence and execution a deputation of the Dublin Press visited Montgomery in prison.

"Montgomery," they report, "received us kindly and said he would give us any information concerning himself or the tragedy in which he had been engaged *with much pleasure*.

"During the interview, the prisoner spoke of the details of the murder without the slightest sign of contrition or delicacy. He was, as matter of fact, as if he were conversing about an ordinary every-day occurrence.

"'The Crown were altogether wrong,' he said, 'in regard to their theory of murder. In fact, if the witnesses of the Crown had spoken truthfully I would not have been convicted, because the time I saw Miss Thomson, which was a cardinal point in the case, was after I committed the murder. I had the money on my person when I was speaking to Miss Thomson, and my hands were bloody. His coat and trousers,' he said, 'were covered with blood which he wiped off with a sponge.'

"'Poor Glass,' he declared, 'didn't speak at all after he was struck; *he had an easy death of it*.'

"He repeated his extraordinary statement that he had been drugged into insensibility by the man who had stood his steadfast friend throughout. Asked if he had any hope of a reprieve on the ground of insanity he replied, 'No, I don't think so.'

"*Reporter*. 'Have you anything to say to the public who naturally feel a deep interest in your case?'

"*Montgomery*. 'I wish I had the voice of a trumpet to make myself heard over the three kingdoms, to make

my case a warning that men don't discharge their duty to society who will not seize and detain men affected with insanity. When I was raving about robbing banks I should have been locked up for a month.'"

The reporter added, rather unnecessarily, that "Montgomery's statement must be taken *cum grano salis*."

The preposterous pretence of insanity was of course unavailing, and in due course Montgomery was hanged by the neck till he was dead for one of the most cold-blooded, treacherous, and savage murders in the black annals of crime.

IMPOVERISHING THE LANDLORDS

In 1879 and 1880 there was something approaching a famine in Ireland, and late in the year 1880 the Land League in Ireland had attained such influence and success that the Government was induced by the Irish landlords to institute a State prosecution. Information was accordingly laid by the Attorney-General against the chief leaders of the Land League to be tried at Bar before a full Court of Queen's Bench and a jury.

An application was made before the Court to postpone the date of the trial. Mr. McDonagh, Q.C., on behalf of the traversers, relied on the fact that when the date of the trial had been fixed for December the 28th, it was stated in the presence of the Attorney-General that Parliament would not meet. It now appeared that Parliament was to open early in January, and the postponement was asked for on the ground that it was important that those defendants who were Members of Parliament should be in their places when it re-opened.

Mr. Justice May, who presided, in delivering the judgment of the court refusing the application, said—

"I think Mr. Parnell and his associates hardly appreciate the position in which they stand. The facts are these: that for several months this country has been in a state of anarchy. The facts are these: that for several months in this country the law has been openly defied and trampled on. The facts of the case are these: that for several months a large portion of the community, urged on by members of this Land League, have practised a system of fraudulent dishonesty in refusing to pay their just debts. This country has been for months in a state of terror. It

has been tyrannized over by an unauthorized conspiracy. The people of this country are afraid to assert their rights, and it is not too much to say the law is defied, life is insecure, and the rights of property cannot be asserted. I do not think that the convenience of the traversers, or the importance of their attending Parliament, can for a moment be entertained. There is a higher and far transcendent duty on this court, on the application of nobody, to take care that this trial is brought to issue at the earliest moment, and to let it be decided once for all whether it is an innocent or criminal act to incite the tenants of this country to violate their contract, to impede the process of law in the manner in which we see it has been impeded, and the manner in which laws have been violated, and probably will continue to be violated. Let the trial proceed as speedily as possible, and if Mr. Parnell has to complain of anyone it is of himself and of the conduct of those associated with him. He has not thought proper to address his policy to the House of Parliament of which he is a member. He has endeavoured to carry out violations of the law by violent means—I mean, these are the accusations he has to meet."

These observations of the Lord Chief Justice, as was perhaps not unnatural, created widespread indignation in Ireland, and there was a vehement protest against his presiding at the trial of men whom he had already prejudged.

The protest was not without its effect. On the opening day of the trial the Lord Chief Justice appeared on the bench with Mr. Justice Fitzgerald and Mr. Justice Barry, but before the proceedings began he said in allusion to these observations on the motion for postponement:

"In my opinion as Chief Magistrate, entrusted by the Crown with the preservation of peace in this country, it was my duty to speak the truth, and the whole truth upon that subject, and I adhere to everything I then stated. But it has been objected that I used language which imported that I considered

the traversers guilty of the charges contained in the informations in this matter. It occurred to myself that I might have used terms capable of such a construction, and I immediately corrected what I said, adding, 'I *mean* these are the charges and accusations which the traversers have to meet.' If they can satisfy a jury of their innocence let them be acquitted. When a speaker delivering an unpremeditated address corrects himself, if he had used expressions which did not convey what he intended, and in the same breath explains his real meaning, it is only just, and it is certainly usual, to accept his explanation. However, this language of mine has created very considerable excitement, and has been bitterly complained of. . . . I trust it is scarcely necessary to state that I am not conscious of favour in this case as between the Crown and the traversers. I feel that I should deal with the entire case with the impartiality which is the first duty of a judge. Still it has been suggested to me in the present trial, considering the critical state of the country, it is most important to every element which might tend to the calm and dispassionate consideration of the case, nor is it desirable that it should be open to those on trial upon serious charges even to suggest that the judge, whose duty it would be to bring the facts and evidence of the case before the jury, had already exhibited a prepossession against them.

He then bowed to the bench and retired, leaving Mr. Justice Fitzgerald and Mr. Justice Barry to conduct the trial.

Counsel for the Crown were the Attorney-General, the Solicitor-General, Serjeant Heron, Mr. James Murphy, Q.C.; Mr. A. M. Porter, Q.C.; Mr. John Nash, Law Adviser to the Castle; Mr. Constantine Molloy, and Mr. David Ross (instructed by Mr. William Lane-Joynt, the Treasury Solicitor).

Mr. Francis McDonagh, Q.C.; Mr, Samuel Walker, Q.C.; Mr. William McLoughlin, Q.C.; Mr. Peter O'Brien, Q.C.; Mr. John Adye Curran, Mr. Francis Nolan, Mr. Luke Dillon, Mr. Richard Adams, and Mr.

A. M. Sullivan (instructed by Mr. V. B. Dillon) appeared for the traversers:—Charles Stewart Parnell, John Dillon, Joseph Gillis Biggar, Timothy Daniel Sullivan, Thomas Sexton, Patrick Egan, Thomas Brennan, Michael M. O'Sullivan, Michael P. Boyton, Patrick Joseph Sheridan, Patrick Joseph Gordon, Matthew Harris, John D. Walsh, and John W. Nally.

There were nineteen counts in the bill of indictment originally laid, including charges of attempting to impoverish the landlords by preventing the payment of rent and the taking of evicted farms; but of those charges the nineteenth was the most comprehensive and the most important.

It charged that the traversers unlawfully and with intent to cause ill-will and hostility between landlords and tenants, did conspire to cause and create discontent and disaffection between different classes of Her Majesty's subjects, and to excite and promote feelings of ill-will and hostility towards the landlords of Ireland amongst the rest of Her Majesty's subjects in Ireland.

The general nature of the charges stripped of confusing technicalities will best be understood from some extracts from the speech of the Attorney-General in opening the prosecution:

"Supposing," he said, "the landlord failing to get his rent seeks what he is entitled to do if he does not get his rent, namely, to recover his land, then the traversers had to consider what was to be done under these circumstances. The landlord in that case instead of bringing an action for rent sues for the land and gets judgment for it. The device of the traversers then is to incite the people not to submit to that judgment of the Court which declares the landlord shall be put into possession, and, in defiance of the judgment of the Court, to reinstate the tenant. But suppose the tenant after being so reinstated is again evicted, the next stratagem adopted by the traversers is to take care that the land shall remain profitless in the landlord's hands. This is to be effected, we are told it again and again, by conspiring to prevent anyone being bold enough to

work for the landlord in case he endeavours to cultivate the land or make it profitable in any other way. Gentlemen, one of the statutes of this country declares that combination amongst tenants to prevent the landlords from setting their land is illegal, and two of the counts read for you are founded upon that enactment. The next step is, supposing anyone is bold enough or rash enough to take a farm from which another has been evicted, and a man may lawfully do such a thing, then, what say the traversers are we to do with him? We must drive him out, and accordingly the expedient they resort to is to form local combinations to drive out anybody who is bold enough to take a farm of that kind by socially excommunicating him and by holding him up to public scorn and hatred."

It may be noted in passing, the Attorney-General in his statement omitted to mention that the landlord had the legal right of eviction, not merely when the tenant was unwilling or unable to pay the full rent, but even in cases where the full rent was actually paid.

He defined the law of conspiracy for the jury, "when a plurality of persons (two or more) agree together to effect some unlawful purpose, or a purpose which may be lawfully effected, which may indeed be perfectly innocent, by unlawful means. . . . Here we have combination amongst a number of persons to injure another by stopping the payment of his rent. This if it were done by one only would be a civil wrong for which an action would lie, but if it is done by two or more persons in combination it amounts to the crime of conspiracy." He further explained that those joining the conspiracy, even after it has been some time in existence, "become each of them answerable for everything done before, as they are also answerable for everything done afterwards, in pursuance of the common design. By this law," he explained, "Mr. Parnell was responsible for the acts and words of every Land Leaguer alike the most violent, even though he were himself absent in America collecting money for the support of a famine-stricken people."

It would be impossible for me to attempt even a brief *resumé* of the evidence at the trial, which lasted twenty days, and of which the full report fills a huge volume of more than a thousand closely-printed pages. The evidence consisted almost exclusively of the reports of Land League meetings, at which speeches were delivered by the traversers and by others demanding substantial reductions in view of the failure of the crops, and urging resistance to eviction and the boycotting of land-grabbers. The witnesses, for the most part constabulary note-takers, were examined and cross-examined at great length.

In opening the case for the defence, Mr. McDonagh characterized the information as "a landlord's indictment against the tenants, nothing more or less. The four following characters," he said, "would give the prosecution their unanimous approval. First, the landlord of the worst type (there are good landlords); secondly, the clearance gentleman who becomes a vast grazier; thirdly, the emergency agent; and fourthly, the land-grabber. . . . My learned friend," he said, "endeavoured to catch the jury out by the argument that you must see that unless contracts are enforced, unless the stipulated rents were paid, it might come to the repudiation of other contracts. Gentlemen, impossible contracts never can be carried out. This bill of indictment wants that a contract should be carried out no matter how stringent, no matter how oppressive, no matter how much power one side had over the other in the point of dominion in entering the contract, no matter how much the other side was obliged to yield to oppression. That is not the doctrine of the courts of equity in our country."

He proceeded to deal with the question of wholesale evictions in Ireland.

"Gentlemen," he said, "in order to hasten not unduly to a close, and in order to give an outline of the case which I will expand fully before you, I tell you that in the county of Cavan alone seven hundred human beings were driven out. The crowbar brigade

pulled down the houses for two days successively. The people and their furniture were thrown out on the road under the pitiless rain. At two houses inhabited by people suffering from typhus fever, the crowbar brigade implored the agent to spare them; the houses were ordered to be unroofed and the sick people were now covered by a winding sheet. The houses were unroofed amid the wailing of women and shrieks of terror and consternation, and, gentlemen, on this occasion, to their honour be it spoken, the men and officers of the police cried like children at the dreadful sight. Gentlemen, in the County of Meath a hundred people were driven out of Sculagstown, and their furniture and effects cast on the roadside. Three hundred souls were evicted. In another place, in 1869 or 1870, the tenants were reduced to beggary, and no tenant on the place dared to shelter them. All the houses were levelled, and all the land turned into pasturage for bullocks. In the same county, on another estate, eleven families, eighty persons, were thrown out. Gentlemen, in the County of Limerick, the wholesale evictions were fearful. Go to the counties of Mayo and Galway. The village of Glenveigh was cleared; forty families, well-to-do, were swept to the winds, and the land let to one tenant. The landlord cleared out the whole of Louisburgh and six other villages, in all nearly two thousand families. Gentlemen, in the county of Mayo there was once a prosperous village called Dromana. There is no village at all there now. It is swept away, and a Scotch steward has taken the place of the people. Instances will be proved of the most shocking oppression and exaction. I am on the clearance question now, dreadful evictions. In Islandeady three hundred and forty families cleared out and their houses tumbled."

Mr. Justice Fitzgerald asked the date.

Mr. McDonagh. 1849, my lord.

Mr. Justice Fitzgerald. Do you think, Mr. McDonagh, that you can possibly on this trial enter into what occurred in 1849; there was a general exodus of the

people at that time. I am pointing out to you that this is entirely foreign to any issue we have to try.

Mr. McDonagh argued that the defence was that his clients had prevented, during the existing famine, a repetition of the clearances of 1849, and that by stopping evictions they had prevented crime.

Mr. Justice Fitzgerald said "the trial would take twenty-one years if we were to examine all that legion of witnesses whom I saw marching down here in frieze coats."

Mr. Walker, on behalf of Mr. Biggar, followed Mr. McDonagh in a speech of singular ability, and evidence was then offered on behalf of the traversers.

It was proved that twenty-eight bills introduced into Parliament for improving the law between landlords and tenants in Ireland were either withdrawn or rejected.

Mr. William O'Brien, who had been employed by the *Freeman's Journal* to investigate the condition of the people of Galway, Mayo, Clare, Limerick, and Tipperary, was examined by Mr. Richard Adams.

Can you state, from what fell under your personal observation while proceeding through those counties, what was the condition of the people as to food, etc., when you visited them?

The Attorney-General objected to the question.

Mr. McDonagh pressed the point.

Mr. Justice Fitzgerald. Really, Mr. Attorney, I see no objection to a general question of that sort.

The Attorney-General. I am anxious not to object where it is possible to refrain.

Mr. Justice Fitzgerald. In fact, we propose to take ourselves judicial cognizance that very wide-spread distress prevailed in all these districts in the summer and autumn of 1879, and, we may add, the winter of 1880; very wide-spread distress.

In reply to Mr. Adams, Mr. O'Brien said, "The people appear to me in a condition very little short of despair. There seemed to be nothing before them but starvation."

Dr. Sigerson proved the prevalence of famine-fever in 1879 and 1880 in the districts he visited on the

instructions of the Mansion House Relief Committee. It was quite plain the cause was due to the enfeebled condition of the people.

Mr. Curran. Now, I ask you, doctor, what was the condition of the people in those counties which you so visited?

Witness. To judge by the aspect of the cabins, which were devoid of food, except what had been given by charitable committees, and to judge by the physical appearance of the people themselves, and by the state of neglect in which those suffering from sickness were, I should say it would be almost impossible to exaggerate the danger those people ran from death by starvation. They would, I should undoubtedly say, have been starved unless our charitable committees had come to their relief in due time.

Doctor, in the course of your visits, seeing those people laid low by fever, did you come across many cases in which evictions were pending over them?

I came across cases in Ballaghadereen and Rosmuck.

Mr. Justice Fitzgerald. Don't answer that. These questions to a doctor are open to a hundred objections.

Mr. McDonagh said he now proposed to examine witnesses as to the relations between landlord and tenant. He reminded the Court that the Attorney-General spoke of the old gospel and the new. He spoke of the old gospel, and the peace and happiness that existed under it, and said that the author of the new gospel aimed at creating strife and discontent between landlord and tenant. He then read at length the nineteenth count of the indictment.

"That the traversers unlawfully, wickedly and seditiously devising, contriving and intending to cause and create discontent and disaffection amongst the liege subjects of our said Lady the Queen, to wit, between landlords and tenants in Ireland did unlawfully, wickedly and seditiously combine, confederate and agree together to cause and create discontent and disaffection amongst the liege subjects of our

said Lady the Queen and to excite and promote feelings of ill-will and hostility between different classes of Her said Majesty's said subjects, that is to say between landlords and tenants in Ireland, and to further excite and promote feelings of ill-will and hostility towards the landlords of Ireland amongst the rest of Her Majesty's said subjects in Ireland."

Mr. McDonagh said he would put his witness to the table and argue the point if objections were taken to his questions.

Nicholas Berry was then called, and having been helped on to the table, was sworn and examined by Mr. Walker.

How old are you?

Eighty-three next July.

Where do you now reside; where do you come from?

Castlebar; I got into the workhouse on the 19th of March.

Were you at one time a tenant on Lord Lucan's property?

I was, and my father before me.

Mr. Justice Fitzgerald. This I suppose is evidence of what took place in 1847 or 1848?

Mr. Walker. 1848, my lord. (To witness.) How many people did you yourself see put out?

The Attorney-General objected to the evidence.

Mr. McDonagh contended the evidence was relevant. We say that our design was innocent, that we endeavoured to stop evictions and in doing so stayed crime, and that we effected a good where even the Parliament of Great Britain and Ireland had failed.

After a prolonged argument, the Court held that it must receive the evidence as to the nineteenth count of the indictment, and thereupon the Crown abandoned the nineteenth count, and the evidence was then rejected.

The abandonment of the nineteenth count was a great blow to the traversers. They were determined to make their reply to the issue it raised a tremendous indictment to the whole system of landlordism in Ireland.

On the inauguration of the prosecution, commissioners had been dispatched to various districts in Ireland to take down from the lips of the surviving victims the details of the wholesale evictions. I was myself one of those commissioners, and I travelled through the whole of Connemara in a frosty mid-winter collecting evidence of extortion and eviction from the surviving sufferers.

From the north and south and east and west a crowd of witnesses moved into Dublin, each with his own tale of misery and wrong on his lips, each prepared to aver that the first light to his life, the first hope to his heart was given him by the men who were on trial for his salvation as for a crime.

Soon there were symptoms of terror in the camp of the enemy. Looks were cast askance at the ragged frieze-coated army that filled the hall of the Four Courts. Men, old before their time, backs bent and limbs twisted awry were waiting to tell their story in the witness-box. I myself, as I have said, compiled a large part of that evidence, and I will simply say that the crown were well advised in evading it by the abandonment of the nineteenth count.

As a specimen of the evidence which the crown thus evaded I may briefly set down what old Nicholas Berry was prepared to say if he got the chance. *Crimine uno disces omes:*

"I saw in 1848 three hundred persons sent out to the road by Lord Lucan. Lord Lucan offered work to the tenants in pulling down their own homes. My house cost seventy pounds; it had been built by my grandfather; my people had been in possession. The entire tenants were scattered through town and country, some went to England. I had education, and I was nearly as sorry for my books as my home. At that eviction there were no soldiers or police, and no resistance; there were many sick, and the poor people had to carry their sick away with them. My brother John died of starvation after the eviction, and many children also died, as there was no work and no

food. I was able to work and I got 2½d. a day from the overseer appointed over me by Lord Lucan."

After the rejection of Berry, no further witnesses were produced for the traversers. A series of speeches were then addressed by the counsel representing the various traversers of which, by universal consent at the time, the most powerful was the brief address of Mr. Richard Adams.

Mr. Justice Fitzgerald charged the jury, dealing strictly with the legal aspect of the case, elaborately explaining the law of conspiracy, which constituted an act, not criminal in itself, a crime if it were done by the agreement of two or more persons.

"If," he concluded, "a breach of the law were committed, apart from cause or motive, it was the duty of the jury to convict."

Mr. McDonagh took exception to certain passages in the charge, especially to the judge's exposition of the vague law of conspiracy, but his objections were over-ruled.

After five hours' deliberation, the foreman of the jury having repeatedly stated they were unable to agree, Judge Fitzgerald asked: "Is there a prospect that by continuing your deliberations further you are likely to come to an agreement?"

The Foreman. I think we are unanimously of opinion that we will not.

A Juror (Mr. Macken). I think we ought, my lord.

Another Juror. I think it is possible we might if we consider a little longer.

Another Juror (Mr. Hopkins). I think we might, perhaps, for there are ten, my lord. (Cheers in court.)

Mr. Justice Fitzgerald. Stop, stop, stop that at once. If this is continued it can only be with one view, that of influencing the jury.

Mr. Hopkins. I am sorry, my lord, that I made the observation.

Mr. Justice Fitzgerald. You should not have made it, sir. The jury answer by the mouth of their foreman,

and the foreman has told me there is no possibility of their coming to an agreement. I did not ask any question as to the number. . . . I asked the foreman was it likely, on further argument, that you should come to a unanimous decision. Mr. Foreman, is there a possibility of that?

Foreman. I don't think there is.

Mr. Curran. Several jurors stated there was.

Mr. Justice Fitzgerald. Don't interrupt, Mr. Curran, they did not say that.

Mr. Curran. Several jurors said they wished to retire.

Mr. Justice Fitzgerald. I do not require any assistance from you, Mr. Curran, and I do not desire it. (To the jury). Do you wish to retire again, gentlemen, to consider your verdict?

Several Jurors. We do, my lord.

Mr. Justice Fitzgerald. Very well, gentlemen, retire,

The Foreman said one of the jury wished a definition of the word intent.

Mr. Justice Fitzgerald. Well, gentlemen, the intent laid in the first counts of the indictment is an intention on the part of the defendants to impoverish the landlords, that is to say to impoverish them by preventing their rents being paid to them. . . . In ordinary cases, intention is a matter of fact to be inferred by the jury from the acts of the parties. . . . If the defendants did combine to prevent tenants paying their rents, if they did combine to prevent others taking farms from which tenants who had not paid their rents had been evicted, why, gentlemen, the necessary consequences from those acts would be to impoverish and injure the landlords.

Mr. McDonagh, after the jury had retired, objected to the formula laid down by his lordship. He contended that in criminal cases intent should be found as a fact not merely by inference from the necessary consequence of the defendant's acts. As, for example, he said the intention was wholly diverse, that the intention was to stay evictions and prevent oppression, and that as an incident, a mere incident, the impoverish-

ment of landlords might take place, that was not the governing intent. "I think it is well deserving your lordship's attention in all cases of great magnitude the primary intent was to achieve a good purpose, but incidentally the effect was frequently to injure those who profited by the abuses that were removed. The jury have not had presented to them a fair view of the governing intent of the defendants; the defendants wanted to stay evictions and to prevent the expatriation of their countrymen, and that they effected by acts which incidentally no doubt might tend to reduce the income of the landlords. I would ask your lordship to tell the jury if they have a doubt on their mind as to the primary intent they are bound to acquit the defendants."

Mr. Justice Fitzgerald. I shall not call out the jury for that purpose, Mr. McDonagh; and, expressing my own opinion, I may add that if there is one feature in this case which there is not the slightest doubt about it is that the intent was to impoverish the landlords, and in this way to bring them to their knees.

Eventually, late in the evening, the jury were discharged as being unable to agree to their verdict, the crown assenting; but the counsel for the traversers desiring that time should be given for further consideration. The result was received in silence in court, but when the traversers came out in the great circular hall, which was densely crowded from the centre to the circling walls, there was burst after burst of frantic cheering.

Mr. Parnell drove off on an outside car, which was followed by a long procession of vehicles all crowded with cheering passengers. The crowd grew like a rolling snowball as the procession passed. In Dame Street, Mr. Parnell's car moved slowly through a crowd that filled the broad street to overflowing, amid continuous cheering. The same year the Land Act of 1881 was passed, which provided for fixing fair rents and abolished the landlord's power of capricious eviction.

ELOQUENCE REWARDED

BLAKE *v.* WILKINS

A volume of famous Irish trials would, I felt, be incomplete without the inclusion of at least one breach of promise case, but I had much difficulty in making my choice from the abundance of the material at my disposal. Finally, I fixed on the Widow Wilkins case, tried, just a hundred years ago, at the Galway Assizes, as in many ways the most interesting and remarkable on record. In very few actions of breach of promise is the gentleman the plaintiff. In my experience I know of but one, Knowles *v.* Mulligan, in which a butcher recovered damages against the Countess Verschoyle after her marriage with a Mr. Mulligan. But I decided that the case of Lieutenant Blake against the Widow Wilkins was for several reasons more worthy of record. It is permanently interesting by reason of the famous speech of Mr. Phillips for the defendant, and the singular fashion in which his eloquence was rewarded by his client.

Mr. Phillips, who was then, though still a young man, in the height of his fame, was an orator of the flamboyant school of eloquence. I need not describe his style, it will be sufficiently illustrated by copious extracts from one of the most famous of his speeches, but it may be said that it was miraculously effective with jurors. On one occasion a trial was postponed that the jury might have a chance to pull itself together after a speech from Mr. Phillips. On another occasion the overpowering effect of his eloquence on the jury was made the ground for a new trial motion. His fame spread to the other side of the channel, and

The Edinburgh Review devoted an entire article to the consideration of a single speech of the great Irish orator. In the case of the Widow Wilkins, Mr. Phillips' startling eloquence was most conspicuously displayed.

The plaintiff in the case, Peter Blake, was a retired lieutenant in the Royal Navy. As a very young man he had seen service during the Napoleonic wars on the battleship, the *Hydra*, but after the battle of Waterloo the *Hydra* was docked, her officers paid off, and Lieutenant Blake, still under thirty years of age, retired to his native country to enter on a new engagement, less honourable, and more disastrous than any in which he had been heretofore involved.

The defendant, Mrs. Mary Wilkins, an old lady of sixty-five, had been a beauty in her day, and had not forgotten it. She was the widow of the Staff-Surgeon into whose arms General Wolfe fell dying at Quebec in the very moment of victory. After the Quebec victory, Surgeon Wilkins, who was himself an Irishman, returned to Ireland, where he wooed and wed the beautiful Miss Brown of Galway, who created a sensation in London, and, as was said, when presented, fascinated the unimpressionable George III by her beauty and intelligence.

On the death of her husband, in 1775, the Widow Wilkins, to whom he left the bulk of his fortune, returned to her home in Brownville, near Galway, where she lived in almost absolute retirement for nearly forty years, till the return of the adventurous Lieutenant Blake disturbed the even tenor of her way. Near the widow resided the lieutenant's mother and sister, with whom the idea of her marriage with the lieutenant seems to have originated. It is not necessary to record the singular wooing of the Blake family, which inveigled the widow into a promise of marriage, and which will be found vividly described in the speech of Mr. Phillips.

The promise of the old lady was withdrawn almost as soon as made, and Lieutenant Blake sought com-

pensation for his blighted feelings from a jury of Galway men.

The action, as might be expected, created a tremendous sensation in the City of the Tribes. Apart from the interest of the case itself, it was known that Dan O'Connell and Charles Phillips, the two most famous advocates of their day, were engaged for the widow. The whole county of Galway swarmed into the town, and, in those days, when travelling was no joke, the fame of the trial attracted visitors from the country around as far away as Dublin. By canal boat and mail coach they flocked into the city. On the day of the trial the spacious courthouse was crammed to its utmost capacity, and thousands were turned disappointed from the doors.

The case was tried on March 24, 1817, before Baron Smith and a special jury. Messrs. Vandeleur, K.C., Lynch, Jonathan Hern, and Crampton, for the plaintiff; Dan O'Connell, Charles Phillips, and Mr. Everard, for the defendant.

The damages were laid at £5,000.

The case for the plaintiff—the promise of marriage and its withdrawal—were very briefly stated and proved.

At the abrupt close of the plaintiff's case it was discovered that Dan O'Connell was suffering from a cold and the speech for the defendant was entrusted to Mr. Phillips. It may be reasonably suspected that Dan's cold was diplomatically assumed to allow his young colleague an opportunity of distinguishing himself, for Mr. Phillips' speech, with appropriate quotations, had all the marks and tokens of elaborate preparation.

"It has been left to me," he said, "to defend my unfortunate old client from the double battery of law and love which, at the age of sixty-five, has been unexpectedly opened upon her. Gentlemen, how vainglorious is the boast of beauty! How misapprehended have been the charms of youth, if years and wrinkles can thus despoil their conquests and depopulate the navy of its progress and beguile the bar of its eloquence! How mistaken were all the amatory poets from

Anacreon downwards, who preferred the bloom of the rose and the thrill of the nightingale to the saffron hide and dulcet treble of sixty-five."

At this stage the Widow Wilkins, who had been sitting in a conspicuous position opposite her counsel, rose abruptly and flounced indignantly out of court amid universal laughter.

Mr. Phillips, blissfully ignorant of the retribution that awaited him, continued his speech without paying the least attention to her abrupt departure.

"Royal wisdom has told us we live in a new era, the reign of old women has commenced, and if Johanna Southcote converts England to her creed, why should not Ireland, less pious perhaps, kneel before the shrine of the irresistible Widow Wilkins." It had been his client's happy fate, counsel declared, to capture members of the death-dealing professions of medicine and war; indeed, in the love episodes of the heathen mythology, Venus and Mars were considered inseparable. "I know not," he said, "whether any of you have seen a beautiful print representing the fatal glory of Quebec, and the last moment of its immortal conqueror; if so, you must have observed the figure of the staff-physician in whose arms the hero is expiring; that identical personage, my lord, was the happy swain, who, forty or fifty years ago, received, as the reward of his valour and skill, the virgin hand of my venerable client."

Having described the poverty-stricken condition of the Blake family, and the profuse liberality shown them by the Widow Wilkins, counsel continued: "During their intimacy, frequent allusions were made by Mrs. Blake to a son whom she had never seen since he was a child. In the parent's panegyric the gallant lieutenant was, of course, all that even hope could picture. Young, gay, heroic, disinterested, the pride of the navy, the hope of the country, independent as the gale that wafted, and bounteous as the wave that bore him. I am afraid it is somewhat an anti-climax to tell you he is the plaintiff in the present action. Mrs. Blake diverged at times into an episode of matrimonial felicities, painted the

joy of passion and the delights of love, and obscurely hinted that Hymen with his torch had an exact personation in her son Peter, bearing a match-light on Her Majesty's ship *Hydra*."

Counsel spoke of the plaintiff's abandonment of the navy from ill-health, and his mother's suggestion, "What a loss the navy had in him."

"Alas, gentlemen, he could not resist his affection for a female he had never seen. Almighty love eclipsed the glories of ambition, Trafalgar and St. Vincent flitted from his memory; he gave up all for a woman as Mark Antony did before him, or like the Cupid in *Hudibras:*

> 'Took his stand
> Upon a widow's jointure land,
> With trembling sigh and trickling tear,
> Longed for five hundred pounds a year.'

"Oh, gentlemen, only imagine him on the lakes of North America. Alike to him the varieties of the season or the vicissitudes of war; one sovereign image monopolizes his sensibilities. Does the storm rage? The Widow Wilkins outsighs the whirlwind. Is the ocean calm? Its mirror shows him the lovely Widow Wilkins. Is the battle won? He twines his laurels that the Widow Wilkins may intervene her myrtle. Do the broadsides thunder? He invokes the Widow Wilkins—

> 'A sweet little cherub, she sits up aloft
> To keep watch for the life of poor Peter.'

(Great laughter.) Alas, how much he is to be pitied! How amply he should be recompensed! Who but must sympathize with his ardent, generous affection; affection too confiding to require an interview; affection too warm to wait, even for an introduction."

Counsel related how, when the plaintiff first called upon the widow, she was sick in bed and unable to see him; he described the disappointment of the Blakes, mother and daughter. "Miss Blake," he said, "obtruded herself at Brownville, where Mrs. Wilkins resided, and remained two days, lamented bitterly her

not having appeared to the lieutenant when he called to visit her, and declared her mother had set her heart on the alliance, and that she was sure, poor, dear woman, disappointment would be the death of her. In short, there was no alternative but the tomb or the altar."

After describing the family conspiracy to ensure the marriage, counsel continued—"You will not fail, gentlemen, to observe that while the female conspirators were at work, the lover himself had never seen the object of his idolatry. Like the maniac in the farce, he fell in love with the picture of his grandmother. For the gratification of his avarice he was content to embrace age, disease, infirmity, and widowhood. Educated in a profession proverbially generous, he offered to barter every joy for money. Born in a country ardent to a fault, he advertised his happiness to the highest bidder, and now he solicits an honourable jury to become panderers to heartless cupidity.

"Harassed and conspired against, my client entered into the contract you have heard—a contract conceived in meanness, extorted by fraud, and sought to be enforced by the most profligate conspiracy. Trace it through every stage of its progress, in its origin, in its means, its effects—from the parent contriving it through the sacrifice of person, and forwarding it through the instrumentality of her daughter, down to the son himself unblushingly acceding to the atrocious combination by which age was to be betrayed and youth degraded, and the odious union of decrepitude and precocious avarice blasphemously consecrated by the solemnities of religion.

"Have you ever," counsel demanded of the jury, "witnessed the misery of an unmatched marriage? Have you ever witnessed the bliss by which it has been hallowed when its torch kindled at affection's altar gives to the noon of life its warmth and its lustre, and blesses its evening with a more chastened but not less lovely illumination? Are you prepared to say that this rite of Heaven, revered by each country, cherished

by each sex, the solemnity of every church, the sacrament of one, shall be profaned into the ceremonial of an obscene and soul-degrading avarice?"

Counsel described the Blakes' insistence that all the widow's property should be settled on the plaintiff. As a generous compromise, the lieutenant offered her eighty pounds a year out of her income of five hundred and eighty, and as a further inducement reminded her that as his widow she would enjoy a pension of fifty pounds a year from a grateful country—if, as counsel suggested, she lived to the age of Methuselah. He read a letter from the plaintiff's solicitor, Anthony Martin, to Mrs. Wilkins, in which he stated "that, the loss which Mr. Blake had sustained by means of your proposals to him makes it indispensably necessary for him to get remuneration from you," and wound up with the prophesy that, "a public investigation will ultimately terminate most honourably to his advantage and to your pecuniary loss." "I think," remarked counsel, "that Mr. Anthony Martin is mistaken."

"Ill-health," counsel urged, "and not a visionary love, had compelled him to resign the navy. His constitution was declining, his advancement was annihilated; as a forlorn hope he bombarded the Widow Wilkins.

> "And now he was returned, and war thoughts
> Have left their places vacant, in their room
> Come very soft and amorous desires,
> All prompting him how fair young Hero is."

"He first," gentlemen, "attacked her fortune with herself through the artillery of the Church, and having failed in that, he now attacks her fortune without herself through the assistance of the law." "Does the plaintiff deserve compensation," counsel demanded, "if he deserted at once his duty and his country to trepan a wealthy dotard? . . . Give me leave to ask you, gentlemen, is this one of the cases to meet which this very rare and delicate action was intended? Is this a case where reciprocity of circumstances, affection,

or of years, throw even a shade of rationality over the contract? Do not imagine I mean to insinuate that under no circumstances such a proceeding ought to be brought. Do not imagine, though I say this action belongs more naturally to a female that its adoption can never be justified by one of the other sex. Without any great violence to my imagination I can imagine a man in the very spring of life, when his sensibilities are most acute and his passions most ardent, attaching himself to some object, young, lovely, talented and accomplished, whose charms were only heightened by the modesty that veiled them. His preference was encouraged, his affection returned, his very sighs re-echoed until he was only conscious of his existence by this soul-creating sympathy—until the world seemed but the residence of his love, and that love the principle that gave animation to the universe, until before the smile of her affection the whole spectral train of sorrows vanished and this world of woe, with all its cares, and miseries, and trials brightened by enchantment into anticipated Paradise.

"It might happen that this divine affection should be crushed, and that heavenly vision wither into air at the hell-engendered pestilence of parental avarice, leaving youth, and health, and worth, and happiness a sacrifice to its unnatural and mercenary caprices.

"Far am I from saying that such a case would not call for reparation, particularly when the punishment fell upon the very vice in which the ruin had originated. But even here I am sure a sensitive mind would rather droop uncomplaining into the grave than solicit the mockery of a worldly compensation. But in the case before us, is there the slightest ground for supposing any affection? Do you believe the marriage thus sought to be enforced was one likely to promote morality and virtue? Do you believe that those delicious fruits by which the struggles of social life are sweetened, and the anxieties of paternal care alleviated, were ever expected? Do you believe that such a union could exhibit those reciprocities of love and endearments

by which this tender rite should be consecrated? Do you not rather believe that it originated in avarice, that it was promoted by conspiracy, that it might have lingered some months in crime, and then terminated in a heartless abandonment?

"Gentlemen of the jury, remember I ask you for no mitigation of damages. Nothing less than your verdict will satisfy me. By that verdict you will sustain the dignity of your sex—by that verdict you will uphold the honour of the national character, by that verdict you will assure not only the immense multitude of both sexes that thus so usually crowd around you, but the whole rising generation of your country, that marriage can never be attended with honour or blessed with happiness if it has not its origin in mutual happiness. I surrender with confidence my case to your decision."

The close of this extraordinary speech was followed by universal applause; the men shouted and clapped their hands, the women waved their handkerchiefs, even the jurymen "could scarce forbear to cheer," and the smiling judge made no effort to check the tumult.

The speech ended the action; at its close all the fight was knocked out of the plaintiff. It was a case of "Don't fire, colonel, I'll come down"; and the applause was again renewed when, after a hurried consultation, plaintiff's counsel requested that a juror should be withdrawn, the plaintiff undertaking to pay the costs of the proceedings.

Never was eloquence more successful than Mr. Phillips'; never was forensic triumph more complete! But pain and humiliation awaited the triumphant counsel, even in the moment of his triumph. Surely he, of all men, so apt at poetical quotations, should have remembered the hackneyed line, "Hell has no fury like a woman scorned!"

As he left the court, followed by the admiring crowd, he was met on the steps by the infuriated widow, armed with a horsewhip. A verdict secured by disparagement of her charms had aroused, not her gratitude, but her rage. The blows she rained about

his head and shoulders promptly convinced her insulting champion that if age had dimmed the beauty of her face it had spared the vigour of her arm. Taken utterly by surprise, while the applause was converted to laughter, he fled to the sanctuary of the bar-room, pursued to the door by his indignant client.

Surely never in the annals of the law was so strange a fee paid to a successful advocate!

THE FORGERIES COMMISSION

Early in the year 1887, *The Times* newspaper published, under the heading, *Parnellism and Crime*, a short pamphlet, now very rare, charging Mr. Parnell, Mr. Davitt, Mr. Dillon, Mr. Sexton, Mr. Healy, and other Members of Parliament with participation in outrage and murder, and declaring that in a more robust age their heads would have adorned the spikes at Charing Cross. "The Crimes Act," known in Ireland as "The 'Jubilee' Coercion Act," was at the time in progress through Parliament, and it was thought in some quarters that these articles were intended to facilitate its passage. But the pamphlet fell quite flat, and on Monday, April 18, 1887, the eve of the second reading of the bill, *The Times* published what purported to be a facsimile of a letter of Mr. Parnell, implicating him in the Phœnix Park murders:—

"In view," *The Times* wrote, "of the unblushing denials of Mr. Sexton and Mr. Healy on Friday night; we do not think it right to withhold any longer from public knowledge the fact that we possess and have in our custody documentary evidence which has a most serious bearing on the Parnellite conspiracy, and which, after a most careful and minute scrutiny, is we are satisfied, quite authentic. We produce one document in facsimile to-day by a process, the accuracy of which cannot be impugned, and we invite Mr. Parnell to explain how his signature became attached to such a letter:—

"*May* 15, 1882.

"DEAR SIR—I am not surprised at your friend's anger, but he and you should know that to denounce

the murders was the only course open to us. To do so promptly was plainly our best policy, but you can tell him and all concerned that though I regret the accident of Lord Cavendish's death I cannot refuse to admit that Burke got no more than his deserts. You are at liberty to show him this and others whom you can trust also. But let not my address be known; he can write to the House of Commons.

"Yours very truly,

"CHAS. S. PARNELL."

On May 3, 1887, Sir George Lewis, one of the Ulster Unionists most bitterly opposed to the Irish party, raised the question as one of privilege in the House of Commons. If, however, he or the Unionist party expected that Mr. Parnell or the Irish members would shirk the issue they had a woeful disappointment. Mr. Parnell and his followers at once availed themselves of the opportunity to vehemently demand a Parliamentary Committee to investigate the truth or falsehood of the charges. But the Unionists at once showed an equal eagerness to evade the inquiry.

It was in vain that Mr. Gladstone declared:—"I do affirm before this assembly, as an assembly of English gentlemen, that it is impossible to resist an immediate trial if the parties who are accused of the basest and vilest offences that can be committed by Members of Parliament against the House of Commons demand an immediate trial."

Mr. Sexton, on behalf of the Irish party, offered to accept a committee on which the government would have a majority.

The debate was adjourned to the following day, and meanwhile *The Times* in a leader wrote that it "did not think the House would be well advised in dealing with the question as one of privilege."

When the House reassembled, the government was found strongly against a Parliamentary Committee, but in the alternative it made the offer of a criminal

prosecution against *The Times*, offering to lend the Attorney-General (Sir Richard Webster) to Mr. Parnell to conduct the prosecution.

The generosity of this offer may be fairly estimated from the fact that Sir Richard Webster was, later on, chosen as the leading counsel for *The Times* in an action brought against it by Mr. Frank Hugh O'Donnell.

Early in July, 1888, Mr. Frank Hugh O'Donnell brought an action for libel against *The Times*, claiming that, as a follower of Mr. Parnell, all its strictures applied to him.

Sir Richard Webster, in a three days' speech, reiterated all the charges, and produced a number of additional letters purporting to be written by Mr. Parnell, Mr. Davitt, Mr. Egan, and other members of the party, amongst them the following:—

"DEAR E.—What are those fellows waiting for? This inaction is inexcusable. Our best men are in prison and nothing is being done. Let there be an end of this hesitency. Prompt action is called for. You undertook to make it hot for old Foster and Co., let us have some evidence of your power to do so.

"My health is good, thanks.

"Yours very truly,

"CHAS. S. PARNELL."

At the close of the trial, in which none of the Irish party were represented, the Attorney-General asked for a direction on the ground that none of the charges applied to the plaintiff; the direction was granted, and the plaintiff's action was accordingly dismissed.

A few days later, Mr. Parnell in the House of Commons, while indignantly denying the truth of the statement in *The Times* and the authenticity of the letters, again demanded a Special Committee of the House.

This time the Government did not offer him the services of Sir Richard Webster, but suggested a Special

Commission of three judges to be chosen by themselves on a reference which the Government should determine. Mr. Parnell was invited to say, without debate, whether or not he would accept the offer.

Mr. Smith, in reply to a question of Mr. Parnell in the House of Commons, said—"We are willing to propose that Parliament should pass a bill appointing a Commission to inquire into the allegations made against *Members of Parliament* in the case of O'Donnell *v.* Walter."

But, as Mr. Parnell pointed out two days later, the Government having in the meantime had the opportunity of receiving a friendly hint at the Cabinet Council from the counsel for *The Times*, and perhaps the advantage then, or subsequently, of an interview with Mr. Walter, had extended the inquiry by the addition of the words "*and others*" which, as he pointed out, gave the Commission an unlimited scope.

The random shot of Mr. Parnell went home. Mr. Smith, subjected to a pitiless cross-examination, was at last constrained to confess that he had an interview, not merely with "his old friend" Mr. Walter, the proprietor, but also with Mr. Buckle, the editor of *The Times*.

Mr. Parnell, commenting on the conduct and intention of the Government, remarked that the hon. gentleman (Mr. Smith) "declared the other day that he had brought this matter forward to give us an opportunity of clearing our character and he repeats that statement to-day. I say he has not brought it forward in response to my request or for any purpose I claim, but for the purpose of casting discredit on a great Irish movement, in endeavouring to traduce a people whom you ought to be ashamed and tired of traducing, and attempting to find a means of escape for his confederates from the break down of the charges which he and his confederates know full well will break down. We are told now that these letters are only secondary evidence, and even if it were proved up to the hilt that each of those letters were bare-faced forgeries the case for *The Times* would not be affected."

He challenged the Attorney-General to say if he had made any inquiry into the origin or authenticity of the letters before he made an infamous charge against a brother member, and the Attorney-General did not answer even by a motion of his head. "The object of this widely extended Commission," continued Mr. Parnell, "is clear. *The Times* and the Government know that the case of the forged letters is going to break down. Therefore they wish to direct the inquiries of the Commission into other channels." He concluded by demanding that the words "and other persons" should be struck out, and the names should be given of the Members of Parliament against whom allegations were made,

Mr. Chamberlain, in reply, said that he had at one time friendly relations with Mr. Parnell, but hinted that his suspicions were aroused by Mr. Parnell's reluctance to go before a British jury, which always could be trusted to give an impartial verdict. If the words, "other persons," were omitted from the reference it might, he said, be impossible to prove that the Irish party consorted with criminals, and he therefore voted against Mr. Parnell's amendment.

Mr. Healy sardonically reminded Mr. Chamberlain that in the case of the Manchester Martyrs a British jury had in five minutes convicted a man of murder, who it was conclusively proved had never been near the scene of the rescue, and twitted him with having dropped his action against Mr. Mariott, Judge Advocate for England, who accused him of adopting dishonourable methods of crushing his rivals in the screw trade. In conclusion, he declared that he would sooner tear his stuff gown from his back than be guilty of the unprofessional and dishonourable conduct of the Attorney-General in the case of O'Donnell *v.* Walters.

Still more deadly was Mr. Parnell's reply, when he took the opportunity, as he said "of thanking the member for West Birmingham for the kind reference he was good enough to make to him." "My principal recollections of the member for West Birmingham,"

he said, "before he became a member of the Cabinet, was that he was always most anxious to put me forward, and to put my friends forward to do the work which he was ashamed to do himself. After he became a Minister my principal recollection of him was that he was always anxious to bring to us the secrets of the councils of his friends in the Cabinet, and to endeavour, while sitting beside those colleagues, and in consultation with them, to undermine their counsels and their plans in our interest, and if this inquiry is intended to include these matters, and I don't know why it should not, I should be abundantly able to make good my word by documentary evidence not forged."

The Government eventually forced their own scheme unamended on Mr. Parnell and the Irish party. The three judges selected by the government to preside at the Commission were Judge Hanen, Judge Smith, and Judge Day, two of those judges were Conservatives and one a Liberal-Unionist; all three, as Mr. Gladstone put it, "deliberately and determinedly opposed to Home Rule and to the Irish party." But it was only to Judge Day that special objection was taken. He had sat on a Commission in Belfast with Judge Adams, and Judge Adams wrote a letter to Mr. Morley, which was read in the House, in which he declared that Judge Day "railed against Mr. Parnell and his friends, he regards them as infidels and rebels who have led astray a Catholic nation. He abhors their utterances and their acts; he believes them guilty of every crime."

In spite of the protest of the Liberal and the Irish parties, the Government insisted on retaining the name of Judge Day on the Commission. Ultimately the bill was carried by closure and without any amendment.

The bill empowered the Commission, consisting of Judge Hanen (presiding), Judge Smith, and Judge Day to inquire into the charges and allegations made against certain members of Parliament (sixty in all), and other persons referred to by the defendants in the recent trial entitled O'Donnell *v.* Walter and another.

It gave full power to the Commission to compel the attendance of witnesses, and withdrew from witnesses all privileges, including the right to refuse to answer questions criminating themselves, but entitled all witnesses who answered fully to an indemnity against civil or criminal proceedings.

On October 17, 1888, the Commission opened its proceedings.

Mr. Chamberlain in the House of Commons had said—"I agree that the letters constitute a principal, if not the principal of the charges. If those letters are shown conclusively to be base forgeries the whole of the rest of the case would be so prejudiced that the public would not pay much attention to anything else."

But the Attorney-General, as leading counsel for *The Times*, from the first evaded this issue. He read at interminable length from the note-books of government reporters smatterings of speeches at Land League meetings, mixing ingeniously together patriotic exhortations by priests and Nationalist leaders and incitement to violence by obscure or disreputable agitators.

One remarkable admission, however, he made in his opening speech. In the trial of O'Donnell *v.* Walter, he had declared, "though it should cost *The Times* the verdict in this case, we will not reveal the name of the person who supplied us with these letters, nothing would induce us to produce them." The statement showed the wisdom of Mr. Parnell in not at once appealing to a jury when the forgeries were first published. Plainly, the policy of *The Times* then was to produce the letters and rely on the evidence of experts that they were in the handwriting of Mr. Parnell, while suggesting that the person who supplied them would be in danger of assassination if his name was mentioned, confident that by such tactics they could secure at least a disagreement of the jury, if not a favourable verdict.

But in the interval between the first publication and the sitting of the Commission, it leaked out that Mr.

Parnell and his friends had a shrewd suspicion as to the author of the letters, and the Attorney-General felt it expedient to change his tactics. "In all probability," he confesses, "the names of the persons who are connected with the obtaining of those letters will be mentioned."

There followed a long procession of Irish police witnesses repeating from their note-books the evidence already given in the Coercion Courts in Ireland.

In the second week of the proceedings, Mr O'Shea, an intimate associate of Mr. Chamberlain, was examined and swore that he believed the signatures of the letters were in the handwriting of Mr. Parnell. Thereupon, Sir Charles Russell, who led for Mr. Parnell, pressed for an immediate investigation of the entire question of the letters, but the court refused to interfere with the discretion of the Attorney-General, who still persistently evaded that issue.

It happened at that time, that in the absence of Mr. O'Brien (for the greater part of the time in prison), I acted as editor and chief leader writer of *United Ireland*.

On December 15, 1888, I wrote a leader in *United Ireland* under the heading, "Somewhat too Much of This," from which the following are extracts :—

"The time is come for very plain speaking on the Forgeries Commission, which has now been sitting for twenty-seven days in London, without getting one inch nearer to the subject which the public understands it was specifically appointed to investigate. So far, the evidence has been a meaningless parade of eight-year-old outrages, from all participation in which the victims themselves examined for the 'Forger,' concur in emphatically exonerating the League. . . . We have no intention of waiting till the 'Forger' gives us leave to speak. With all respect for the Court, we do not care twopence for the opinion of the three judges specially selected in the teeth of justly indignant Liberal protests by the 'Forger's' friends and accomplices. Assuming—and it is a large assumption in the judge's favour—that the Coercion Government which specially

selected them for their partiality were deceived, their judgment is still beside the question. This is not a matter of judicial decision at all, but of intelligent public opinion. The public is entitled to have the vital facts extracted from beneath the mass of rubbish in which the 'Forger' would fain hide them. The Commission was appointed, it will be remembered, many months ago, to investigate the truth or forgery of certain letters attributed to Mr. Parnell, and containing direct incitement to assassination. Mr. Chamberlain declared in the House of Commons, with the approval of all parties, that if these letters were proved to be forgeries, the public would care very little for the rest of the charges and allegations. If these letters were genuine, on the other hand, no further charge is needed to damn the character and career of the Irish leader. The Commission has now been sitting, with brief intermission, for some months, and it has never been let even to approach the one subject which the public regards with intensest interest, and on which Mr. Parnell has a right to claim immediate investigation and prompt decision. . . .

"We should have no reason to complain of this display of impotent malignity. But it is so ingeniously wrapt up in vast volumes of dull, irrelevant evidence, that it is very likely, if comment be silenced, to escape the notice of the reader, who is not prepared to wade through two dull pages of newspaper per day. Besides, it is too dearly bought in time and money. We desire the cheaper, more sudden, definite and overwhelming exposure. The policy of vague malignity and shameless evasion must not last for ever. The country as well as the accused, is entitled to call on the Court to compel the 'Forger' to come to the point."

In the same issue I published a cartoon entitled, "Smothering the Commission," in which was depicted a long train of Irish constables wheeling up barrow-loads of rubbish in which the three judges were covered up to their necks, while the forged letters were buried away in a corner.

As I anticipated and intended, the article was made the subject of an application by the Attorney-General for contempt of court against *United Ireland* and a conditional order secured.

Meanwhile I had an interview with William O'Brien, and begged, as a personal favour, that I should be allowed to take the defence of the article I had written on my own shoulders. I assured him that I had written it with the hope of proceedings and with a view to its defence. The gravamen of the charge was that *The Times* had been called the "forger," and the letters "forgeries," in anticipation of the decision of the Commission. But I argued *The Times* was guilty of equal contempt of court in constantly alluding to the letters as "facsimiles" of original letters of Mr. Parnell's.

I urged in vain. It was impossible, O'Brien said, that he could allow anyone but himself to take the responsibility for *United Ireland*.

Mr. O'Brien's first idea was to treat the whole proceeding with contempt. "Another imprisonment," he said, "will make very little difference to me."

But I urged that we had so admirable a defence it would be a pity to waste it, and that the publicity would compel *The Times* to come to the point.

After the adjournment, Mr. O'Brien appeared in court to answer the charge of contempt. He eloquently vindicated the article, and the conditional order against *United Ireland* was discharged.

The result was a unanimous demand from the English Press that *The Times* should come to the point. The Attorney-General rashly suggested that the letters would be reached within a week. The President of the Court expressed his approval, but the Attorney-General retorted, "It is only a hope, my lord, it depends on others besides myself."

The case still dragged on for a time, but the pressure of public opinon proved irresistable.

In February 1889, *The Times* took its courage in both hands, and at last brought the question of the letters before the Court.

Mr. Soams, solicitor for *The Times*, proved that the letters were first brought to him by Mr. McDonnell, *The Times* manager, and he took steps to compare them with the genuine handwriting of Mr. Parnell. Some time prior to the O'Donnell and Walter trial, Mr. McDonnell informed him that the letters were obtained from Mr. Richard Pigott, and that they were given to *The Times* by a Mr. Houston of "The Irish Loyal and Patriotic Union."

At this stage Sir Charles Russell demanded that Mr. Richard Pigott, who sat modestly ensconced behind a curtain, should be put out of Court, and the demand was acceded to.

Mr. Soams admitted many payments to Mr. Houston, the first was for £1,000 on May 4, 1887, and that other cheques to the amount of nearly £2,000 followed as additional facsimile documents were furnished.

Mr. McDonnell, manager of *The Times*, deposed to receiving the letters from Mr. Houston. On cross-examination by Mr. Asquith, then junior counsel for Mr. Parnell, he admitted that, though he gave Mr. Houston £1,000 for the letters, he had not been told, nor had he asked where they came from. It was just before the O'Donnell and Walter trial he learned they were supplied by Pigott.

At the close of O'Donnell's cross-examination the Attorney-General desired to examine the expert, Mr. Inglis, who was prepared to swear to Mr. Parnell's handwriting in the incriminating letters. Sir Charles Russell demanded that Mr. Houston should be examined; the Attorney-General persisted in his refusal until the President, after consultation with his colleagues, declared that they were of opinion that the natural course of the inquiry, as it had now developed itself, would be to take evidence as to the source from which those letters were obtained, and the Attorney-General reluctantly called Mr. Houston.

In reply to the Attorney-General, he said that Pigott supplied him with materials from which the pamphlet, *Parnellism Unmasked*, was compiled. He asked Pigott

to procure him some documentary evidence against Parnell and others. Pigott consented, but said he would get no evidence in Dublin; he should go to Paris and elsewhere. Subsequently Pigott said there were compromising letters in Paris, but that he should go to America to get the consent of a certain man to receive them. Pigott went to America and brought back, as he said, a letter of authority from J. J. Breslin. Pigott then got the letters, and Houston sold them to *The Times*.

Cross-examined by Sir Charles Russell, he confessed that after he had been subpœnaed on behalf of Mr. Parnell, he had, at Pigott's request, destroyed all the letters he had received from Pigott, and Pigott had destroyed his.

Sir Charles Russell. At the time of this performance you were aware that it was imputed to Mr. Pigott that he was the fabricator of the incriminating documents?

Witness. I was, but I had Mr. Pigott's sworn statement that the letters were genuine.

You regard this as a serious charge against Mr. Parnell?

I do, distinctly.

Did you consider it fair to him that contemporary written communications relating to the circumstances under which it was alleged these documents had been obtained should be destroyed during the trial?

I did not consider that Mr. Parnell's position appealed to me for consideration at all.

Now, I understand; your object was to fix the charge on him without any regard to him?

Well, considering that I had been assisting *The Times* in making certain charges and allegations against him, I do not think you can imagine I would go out of my way to assist the other side to disprove what I said was a fact.

He then detailed how he and Dr. Maguire went to Paris to obtain possession of the letters.

You mentioned having borrowed some money; kindly repeat the names and figures.

I borrowed £850 from Dr. Maguire for the special purpose of the purchase of these letters and incidental expenses.

Who was the other person from whom you borrowed?

Private friends.

Who?

I got from Sir Rowland Blennerhasset £70; I got from Lord Richard Grosvenor £450; I got from Mr. Jonathan Hogg, of Dublin, £250.

Now, you and Dr. Maguire went to Paris together?

Yes.

What was your object in bringing Dr. Maguire.

He knew I was going for the letters, and I think he displayed anxiety to accompany me, and I brought him.

What did you go to Paris to do?

To obtain the letters.

What hotel was Mr. Pigott staying at?

I think he was staying at the Hotel St. Petersburg.

What hotel were you staying at?

The Hotel du Monde, nearly opposite.

Did you telegraph to say when you would arrive, and where you were staying?

I think I telegraphed when I would arrive.

Did he call on you?

He called upon me on the day of my arrival.

Was it on the day of your arrival you received the letters?

It was.

When he called on you had he the letters, or did he require money to go and get them?

He had the letters with him.

That you are quite sure about?

Perfectly certain.

Then he did not require payment of this considerable sum of money in order to obtain possession of them?

No.

He got possession of the letters without having been required to pay the price?

I understood the people who had possession of the letters did not really let them pass out of their possession, and were waiting for him to return.

Did he not produce them?

He produced them from a black bag in my room.

Then I should say he was in possession of them. How long did that interview last before you paid him the money?

Not very long, because I took the letters to Dr. Maguire in another room; I asked him was he prepared to take them, and allow me to use his money for the purchase of them, and he said yes.

Did the interview last five minutes?

I should think a quarter of an hour. I delayed him while I looked through the letters with Dr. Maguire.

And Pigott told you that there were some people downstairs, and if he did not bring back the letters he should have to bring back the money?

Yes.

Did you go down to see whether anybody was waiting for him?

I did not, because as I explained before, my procedure was governed by a desire to keep altogether apart from these men.

Did you not ask him who the men were?

I said no.

And you did not ask him because you wanted to keep yourself in ignorance?

Yes.

Of what?

Of who the particular men were who had given up the letters.

Did you or did you not think that the quarter from which the letters came might become very material upon the question of their authenticity?

Not so far as I was concerned.

Does that mean so far as you are concerned you had done all you cared about, provided *The Times* were willing to take them and pay for them?

I had no arrangement with *The Times* at this time.

The arrangement of Dr. Maguire was that if *The Times* did not take them he would use them for publication in a pamphlet. My part was done without securing, in the event of a question of their authenticity, any means of testing Pigott's statement, if he made any, as to where they came from.

Or without securing at any future time, independent proof of where they came from?

I understood it would be useless, and that if I attempted to prove it, I could not make a complete case, and I would be handicapped by only knowing a little or small portion of it.

By a complete case you mean a complete case against Mr. Parnell?

Yes Mr. Egan was equally incriminated.

But would you consider him equally important?

Well, I don't know.

What did Pigott say to you about these letters?

He expressed his strong belief that they were genuine. I don't think he entered into a lengthened conversation at all, because he produced the letters and left them to me to decide what I would do with them.

Well now, Mr. Houston, will you tell my lords in your own way, without interruption from me, all that Pigott told you from the beginning in reference to this first batch of letters.

I think I have informed my lords as fully as I can.

Do it again. Just tell all that you alleged Pigott told you in reference to this first batch of letters, not only what he told you in that particular interview, but in connection with that batch of letters.

I understood from Mr. Pigott that the letters were left in a bag in a room where I think Frank Byrne or a man named Kelly was arrested, and this bag was subsequently taken possession of by certain Fenians in Paris. These Fenians held possession of them, and they being in communication with certain persons in America, refused to give them up until they got the sanction of these people in America, and I sent him to America, as I understood, to get the sanction. But he

returned, and informed me he had with him a letter addressed to a certain person or persons in Paris, and he subsequently travelled to Paris two or three times, and on the morning in question brought me the letters. That is the whole thing.

Did you take any steps to test the truth of any part of that story?

I had largely to depend on the reports furnished to me as he proceeded of what happened in connection with his inquiry, and I had no other means afforded me of testing the accuracy of his statements.

Then I take it you did not, in fact, test any one link in the chain of that story?

I had no means of testing it.

Sir Charles Russell. What sum did you pay Pigott that day?

Witness. Five hundred for the letters, and a hundred guineas for himself.

He said he had agreed to pay £500 for the letters, and you gave him a hundred guineas for himself?

Yes.

That was in addition to the guinea a day?

Yes

Did you get that money from Dr. Maguire?

Yes.

On Saturday, February 23, 1889, came the exciting climax of the Commission, when Richard Pigott was at last forced into the witness chair. An eye-witness thus vividly describes his appearance in Court.

> "The Courthouse was all agog, and necks were craned forward towards the point at which the mysterious Pigott was to arrive. There were several moments during which the excitement was intense. At last there was a movement of curtains, and the theatrical entrance of a greasy man with a dirty grey beard, and an enormous bald head like a brass helmet, who followed the usher towards the witness box. An eye-glass dangled from a black string, puffy red cheeks overhung the ragged beard and sensual mouth."

Pigott made an elaborate bow to the Court, and in a smooth, gentle voice answered the questions of the Attorney-General, and detailed the finding of the various batches of letters, including the "facsimile" documents of Mr. Parnell, and compromising letters from Messrs. Egan, Davitt, O'Kelly, and others.

The scene changed when Sir Charles Russell rose to cross-examine the witness.

Never in forensic history was there so crushing a cross-examination. Counsel had ample material, and he worked it with consummate skill. No bullying, no brow-beating; calm, gentle, sardonic, he "sounded him from the lowest note to the top of his compass, and plucked out the heart of his mystery."

Handing him a sheet of blank paper, Sir Charles asked Pigott to write a number of words including "hesitancy," which had been misspelled "hesitency" in the forged letters, He then cross-examined him at length regarding the purchase of his paper, *The Irishman*, by Mr. Parnell, and the various letters he received on the subject from Mr. Parnell and Mr. Egan, and also regarding the several occasions, beginning so far back as 1873, in which he had offered to sell valuable information, amongst others, to Lord Spencer and Mr. Foster.

Sir Charles Russell. Is it your letter? (handing letter to witness). Tell me if it is your letter? Do not read it. (Witness still examines letter.)

Sir Charles Russell. Is that your letter, sir?

Witness. Yes, I think it is.

Have you any doubt about it?

No.

Sir Charles Russell. My lords, it is from Anderton's Hotel to the Archbishop of Dublin, and dated March 4, 1887, three days before the appearance of the first series of articles (reading):

"*Private and Confidential.*

"My Lord—The importance of the matter about which I write will doubtless excuse this intrusion

on your attention. Briefly, I wish to say that I have been made aware of the details of certain proceedings that are in preparation with the object of destroying the influence of the Parnellite party in Parliament."

What were the certain proceedings that were in preparation?

I do not recollect.

Turn to my lords and repeat the answer, "I do not recollect." You wrote on March 4, and stated that you had been made aware of the details of certain proceedings that were in preparation with the object of destroying the influence of the Parnellite party in Parliament. That is just two years ago, and you do not know what that referred to?

I do not know.

Did it refer to the incriminating letters amongst other things?

The letters had not be obtained at that date.

Sir Charles Russell. I don't want to confuse you.

Mr. Pigott. Would you give me the date of the letter?

Sir Charles Russell. It is March 4, 1887. Is it your impression that the letters had not been obtained at that date?

Oh, yes, some had been obtained.

Did that passage which I read refer to them amongst other things?

No; I rather fancy it had reference to the forthcoming articles.

I thought you told us you did not know anything about the forthcoming articles?

Yes, I did.

Then how did you refer to what you did not know?

I find now that I must have been mistaken, and that I must have known something about them.

Pray do not make the same mistake again. (Again reading from Mr. Pigott's letter to the Archbishop of Dublin.)

"I cannot enter more fully into the details than to state that the proceedings referred to consist in the publication of certain statements purporting to prove the complicity of Mr. Parnell himself and some of his supporters with the murders and outrages in Ireland, to be followed up, in all probability, by the institution of criminal proceedings against these parties by the government."

Who told you that?

I have no idea.

Did that refer, amongst other things, to the incriminating letters?

I don't recollect that it did.

Do you swear it did not?

I would not swear it did not.

Did you think that these letters, if genuine, would prove Mr. Parnell's complicity with crime?

I think they were very likely to prove it.

And you are of the same opinion still?

Yes.

Reminding you of that opinion, I ask you whether you did not intend to refer, not solely, but amongst other things, to the letters as being matter which would prove, and purport to prove, complicity?

Yes, I may have had that in my mind.

Sir Charles Russell (again reading from the same letter of Mr. Piggott). "Your Grace may be assured that I speak with a full knowledge, and am in a position to prove beyond doubt or question the truth of what I say." Was that true?

Witness. It can hardly have been true.

Then you wrote that which was false?

I suppose it was in order to add strength to what I had said. I do not think it was warranted by what I knew.

Oh, you added the untrue statement in order to add strength to what you had said?

Yes.

Very well. You believe these letters to be genuine?

I did.

And do at this time?

Yes.

Sir Charles Russell (reading)—"And I can further assure your Grace that I am able to point out how the designs may be successfully combated and finally defeated." If these documents were genuine, and you believed them to be such, how were you able to assure his Grace that you are able to point out a way in which the designs may be successfully combated and finally defeated?

As I say, I had not the letters actually in my mind at the time. I do not recollect that letter at all—my memory is a perfect blank as to it.

You told me a moment ago that you had both on your mind?

I said it was probable I had, but the thing has completely failed my memory.

I must press you—Assuming the letters to be genuine, what were the means you were able to assure his Grace by which you could point out how the designs might be successfully combated and finally defeated?

I cannot say.

Supposing, for instance, you happened to know that the letters were concocted, that would be a means?

I think that it does not refer, as I said, to the letters at all.

What were the means which you were able to point out as to how the designs might be successfully combated and finally defeated?

I do not know.

You must think; not two years ago you knew. (No answer.)

What did you mean?

I cannot tell you, really.

Try.

I cannot tell you.

Try.

(After a pause.) I really cannot.

Try.

It is no use.

Am I to take it, then, your answer to my lords is that you cannot give any explanation?

I really cannot.

Later on the witness confessed that he thought some of the Parnell letters were not genuine.

Sir Charles Russell Which of the Parnell letters did you think were not genuine?

Mr. Pigott. None of them, because I could not recognize the handwriting of the body of them.

Then you say you believed none of them to be genuine?

No, none of the Parnell letters.

And the Egan letters you say you did?

I did.

Is that your answer?

My answer at the present moment.

Will you swear that you ever, in any shape or form, communicated to the Archbishop of Dublin that you believed the Egan letters were genuine?

My strong impression is I did.

Will you swear you did?

I will, to the best of my belief.

Not believing the Parnell letters to be genuine, did you think it right to communicate that belief to Mr. Houston?

I did not state that I believed the letters not to be genuine. (Laughter.) I said that they might possibly be forgeries.

Oh, you said more than that, Mr. Piggott; well, at all events, you were in a state of doubt about it?

I was.

Did you tell Houston your doubt about the genuineness of the Parnell letters?

No.

Never?

Never, beyond stating that I could not identify them.

As genuine, you mean?

I could not prove them.

Did Houston ever express any doubts to you about them?

No.

Are you sure?

Quite sure.

Did you not at this time offer to get back the money?

No.

And never said you did?

No.

What about this letter: "In conclusion, your Grace will do me the justice of believing that I am not the fabricator of the published letters as has been falsely asserted and circulated to my great annoyance and injury." Who was the fabricator?

I don't know.

Did you believe there was a fabricator?

No, I did not. (Laughter.)

After cross-examining the witness in regard to the identity in date and phrase of genuine letters he had received from Mr. Egan, with criminatory letters alleged to be Egan's, found in the black bag.

Sir Charles Russell continued—Now, I will call your attention to another matter. One of these alleged forged letters is dated 11th March, 1882:—

"DEAR SIR—As I understand your letter, which reached me to-day, you cannot act as directed unless I forward you the money by Monday next. Well, here is £50, under existing circumstances what you suggested, etc." Then, here is the genuine letter which you have admitted on the 11th March, 1881, Rue de Rivoli, there is the same date, the same month, the only alteration being the year. Do you notice?

Yes.

Curious? No answer. (Laughter.) The exact wording too:

"SIR—As I understand your letter, which reached me to-day" . . . in both of them, very extraordinary, is it not—word for word.

I do not see anything extraordinary in it. (Laughter.)

A little later Sir Charles Russell put into the hands of witness copies of the genuine letters written to him by Mr. Parnell, and pointed out that the phraseology closely corresponded with the forged letters.

Sir Charles Russell. Assuming the copies are genuine, Mr. Pigott, how would you explain the coincidence?

Witness. It is not infrequent that people would write in different letters the same words and phrases.

Sir Charles Russell. But supposing you wanted to forge a document—(laughter)—would it be a help to you to have a genuine copy of a letter by the same person?

Witness. Of course it would. (Laughter.)

Sir Charles Russell. How would you use it?

Witness. Copy it. (Laughter.)

How would you proceed to use it; now, Mr. Pigott, I want to know.

I cannot say.

But give us your best idea how you would proceed?

I do not pretend to have any experience in that line.

Well, say how you think you would begin to use the genuine letter, supposing you were called upon?

I decline to put myself in that position.

Well, theoretically?

I do not see any use in discussing the matter.

Let me suggest. Would you put a delicate tissue paper over it and trace on it? How would you proceed then? (Laughter.)

I don't know.

Never mind, Mr. Pigott, we will get along. You will find out?

I don't know how you would proceed.

I cannot tell either. With your help we will get on the way. (Laughter.) Supposing you had a genuine letter and wanted to copy it, and supposing you put a delicate tissue-paper over it, would it enable you to trace it?

Yes.

But how would you do it?

I fancy I would do it without tracing.

Sir Charles Russell. That would be an advanced stage of skill. (Laughter.) It would take a greater expert. (Laughter.)

Witness. Yes.

In fact the tissue paper would be easier than that. Don't you think so, Mr. Pigott?

I do. (Laughter.)

And why, now, Mr. Pigott, do you think it would be much easier; have you tried? (Laughter.)

No, I have not, but apparently it would be to anybody.

Sir Charles then adverted to the words which he had asked the witness to write at the beginning of his cross-examination.

You were good enough yesterday, Mr. Pigott, to write down the spelling of certain words, and amongst them there was the spelling of the word "hesitancy." Is that a word you are accustomed to use?

I have used it.

You noticed that you spelt it as it is not ordinarily spelt yesterday?

Yes, yesterday I fancy I made a mistake in the spelling of it.

What was the mistake?

Using "a" instead of "e."

Vice versa?

I cannot say.

You cannot say, but you have a general consciousness that there was something wrong?

Something wrong?

You spelt it with an "e" instead of an "a." You have spelt it "hesitency"; that is not the recognized spelling?

I believe not.

Have you noticed the fact that the writer of the body of the letter of January 1882—the forged letter—beginning "Dear Egan," spells it the same way?

I have heard that remark made about the letter. My explanation of my misspelling is—having that in my mind I got into the habit of spelling it wrong. (Laughter.)

My lords, did you get the last answer? (To witness.) You saw a long time ago in the alleged forged letters, beginning "Dear Egan," that the word "hesitancy" was misspelt?

Yes.

And you fancy having had your attention called to the fact that the word was misspelt you got it into your head, which accounts for your misspelling it yesterday?

Yes. I heard so much about it, and really I never met anyone who spelt it rightly. (Laughter.)

It had got into your brain somehow or other?

Somehow or other.

Who was it called your attention to the misspelling?

It was a matter of general remark.

You think that but for the fact of your attention being drawn to it in any way you would probably have spelt it rightly?

Yes, but for that.

You got it into your finger ends.

Yes, I suppose so. (Laughter.)

Sir Charles Russell handed witness an admitted letter of a date long antecedent to the date on which he alleged the forged letter had come into his possession.

Sir Charles Russell. Is that yours?

Witness (examining letter). Yes, that is my letter.

The wrong spelling had not got into your brain or fingers then?

No.

But it began to operate. Do you notice that "hesitancy" is spelt in the same way with an "e."

No, I did not notice that.

Well, look at it.

Witness (examining letter). There appears to be an "i" in that.

The President asked to see the letter which was dated June 8, 1881.

Sir Charles Russell (to witness). How do you account for the misspelling in that letter? Your brain had not been affected in the matter of orthography at the time.

I cannot say.

Do you account for it on the disturbance of brain theory?

Certainly not.

Does that strike you as being a remarkable coincidence or not?

Oh, I think not.

Again Sir Charles Russell examined him as to the similarity of the forged letters to the genuine letters of Mr. Parnell in his possession.

Let me ask you whether this is not a remarkable thing; there are two forged letters, both dated June 16, alleged to be signed by Mr. Parnell?

Yes.

And you are aware that the date of the letter of Mr. Parnell, of which you sent a copy to the Reverend Mr. Maher and the original to the Archbishop, was June 16, 1881?

Yes.

So that the two alleged forged letters of June 16, 1882, so far as the date is concerned, correspond with the original letter, with the alteration of the one into a two?

Yes.

Do you notice that in the first letter of June 16 the phrase occurs, "I have always been anxious to"?

Yes.

Do you notice that the same phrase after the formal acknowledgment, "I am sure you will feel," occurs in the second letter of June 16, 1882?

(After a pause.) Yes.

Does that strike you as an extraordinary coincidence?

It appears to be horribly stupid. If I were doing a forgery I am certain I would not make a mistake like that. I think I would not repeat so many words, I am very sure I would not.

Not intentionally with your eyes open?

I would consider myself stupid if I did that.

You would be rather ashamed of yourself?

No.

You do not feel ashamed of yourself?

Witness. I must object.

Sir Charles Russell (sternly). Do you feel ashamed of yourself?

I do not.

You do not?

I do not, and I think it scandalous to be so questioned. I affirm distinctly . . .

The President (resolutely, to witness). We are the judges of how counsel shall proceed.

Witness. I beg pardon, my lord. I think I ought to be allowed to say at once that I distinctly deny that I forged these letters.

The President. Very well.

Witness. And if I did I would not be here.

Sir Charles Russell. Not if you could help it. (Laughter.)

Witness. Why could I not help it?

Sir Charles Russell. You will hear presently, I think, Mr. Pigott.

But Pigott never lived to hear. Next day when he was called he failed to appear, and *The Times*' counsel could offer no explanation of his disappearance.

Later it transpired that at the rising of the Court Mr. Pigott expressed his desire to make a confession to Mr. Labouchere and George Augustas Sala.

After a sharp altercation with the President, Sir Charles Russell declared there was a foul conspiracy behind Pigott, and insisted on the confession being read in open court:—

Saturday, 23rd February, 1889.

"I, Richard Pigott, am desirous of making a statement before Henry Labouchere and Georgue Augustas Sala; and I make this of my own free will, and without any monetary inducement, in the house of the former. My object is to correct inaccuracies in the report of my evidence in *The Times*, and also to make a full disclosure of the circumstances connected with the fabrication of the "facsimile" letters published in *The Times*, and other letters attributed to Mr. Parnell, Mr. Egan, Mr. Davitt, and Mr. O'Kelly, and produced by *The Times* in evidence. I stated that after I disposed of my newspapers in 1881, I continued in touch with the I.R.B.; that is not true. I also stated that to my own knowledge Egan and others continued

to be members of the I.R.B. after the resignation of the positions held by them on the Supreme Council of the organization. In my account of my interview with Eugene Davis at Lausanne I stated that I made rough notes in his presence of the conversations that took place between us, which were embodied in the statement read in Court. That is not correct, I made no notes. The statement was written by me on the following day from my recollection only. Davis made no statement on his own authority; we merely gossiped. I am now of opinion that he made no reference whatever to a letter of Mr. Parnell, which I stated was left in Paris with the other documents by a fugitive Invincible. I gave the statement to Houston as heads of a pamphlet, which I stated Davis could write at a future time. He did promise to write a pamphlet against the Land League, but not founded on the contents of the statement. I agreed to pay him £100 for the pamphlet. The circumstances connected with the obtaining of the letters as I gave them in evidence are not true. No one save myself was concerned in the transaction. I told Houston that I had discovered the letters in Paris. I grieve to have to admit that I simply myself fabricated them, using genuine letters of Mr. Parnell and Mr. Egan in copying certain words and phrases, and the general character of the handwriting. I traced some of the words and phrases by putting the genuine letter against the window, and placing the sheet on which I wrote over it. Those were the genuine letters from Mr. Parnell, copies of which have been read in Court, and four or five letters of Mr. Egan, which were also read in Court. I destroyed these letters after using them. Some of the signatures were, I think, traced in the same manner, and some I wrote. I then wrote to Houston, telling him to come to Paris for the documents. I told him that they had been placed in a black bag with some old accounts and scraps of paper. On his arrival I produced the letters, accounts and scraps, and after a brief inspection he handed me a cheque on Cook for

£500, the price that I had told him I had agreed to pay for them, at the same time he gave me £105 in bank notes as my own commission. The accounts put in were the leaves of one of my old account books, which contained details of the expenditure of Fenian money entrusted to me from time to time. These are mainly in the handwriting of David Murphy, my cashier. The scraps of paper which I stated were found in the bag were taken from an old writing desk of mine. I do not recollect in whose handwriting they are. The second batch of letters was also written by me. Parnell's signature was imitated from that published in *The Times*' facsimile letter. I do not now know where I got the Egan letter, from which I copied the signature. I had no specimen of Campbell's handwriting beyond two letters from Mr. Parnell, which I presumed might be in Mr. Campbell's handwriting. I wrote to Houston, stating that this second batch was for sale in Paris, having been brought there from America. He wrote, asking to see them. I forwarded them accordingly, and in three or four days he sent me a cheque on Cook for the price demanded, £550. The third batch consisted of a letter imitated by me from a letter written in pencil to me by Mr. Davitt, another letter, copied by me from a very early date, which I received from Mr. James O'Kelly, when he was writing on my newspaper; and as to the third letter ascribed to Egan, some of the words I got from an old Bill of Exchange in Egan's handwriting. This third letter has been called the Bakery letter. £500 was the price paid to me by Houston for these three letters."

After the reading of the confession in Court, the Attorney-General confessed that after all that passed, "they were not entitled to say the letters were genuine, and expressed what was, no doubt, the sincere regret of *The Times* for having published them. But even then he could not bring himself to confess that they were forged.

"I claim, however, to remark," he said, "that some

words used by Sir Charles Russell did not escape our attention. He said that behind Pigott there had been a foul conspiracy. I desire emphatically to say if a foul conspiracy existed those whom we represent have no share whatever in it."

Sir Charles Russell retorted—"I did hope for a stronger statement at this juncture from my learned friend. But whatever my learned friend may be instructed to say will in no way alter the course my clients will take; and that is that they will not only go into the witness box and submit themselves for examination, but also they will ask your lordships' assistance, as far as it can be extended, to enable them to see whether this young man, Houston, the alleged journalist, the Secretary to the Loyal and Patriotic Union, went into this venture on his own account solely. It is in that direction that I pointed when I spoke of the conspiracy between Pigott and Houston. I cannot but believe that it would be your lordships' wish to now make a prominent expression of your lordships' opinion that these letters, as they stand on the evidence, are clearly forgeries, and if it would be within your lordships' power I would further ask your lordships to relieve one man particularly who has suffered beyond what may be conceived, what is difficult to describe, who has held an important public position, and who has suffered an unmerited wrong, and who has been lying under this grievous accusation for such a length of time. I ask that he may be speedily relieved by your lordships, so far as it is in your power to relieve him, from such a gross and such an unfounded imputation."

The wretched Pigott committed suicide by blowing his brains out on being arrested in Madrid, and it was a curious coincidence that Dr. Maguire, who had been so intimately mixed up in the business of the letters, on the same day that Pigott shot himself, died suddenly in London.

The sensation caused by the dramatic exposure of the forgeries was tremendous. Mr. Parnell was enthusiastically cheered in the House of Commons, the whole

Liberal party, including Mr. Gladstone and many Conservatives, joining in the demonstration. General indignation was expressed at the attitude of *The Times*, the Government, and especially of Sir Richard Webster. His retirement was vigorously demanded by the Liberal Press.

It is hardly necessary to add that Sir Richard Webster was not required to resign either his office or his seat, but, on the contrary, he was awarded by the Government for his services by the high position of Lord Chief Justice of England.

By many it was thought, and is still thought, that on the exposure of the forged letters, Mr. Parnell should have refused any further participation in the Commission, but a different view prevailed. The Commission, "like a wounded snake, dragged its slow length along." The dreary proceedings were enlivened only by a brilliant speech from Sir Charles Russell, who exposed the whole system of mis-government in Ireland.

When at last the Commission closed its report was received with universal indifference. The declaration that the letters were forgeries was a foregone conclusion. The verdict of public opinion was delivered when Pigott broke down under the searching cross-examination of Sir Charles Russell and confessed his forgeries.

The proceedings of the Commission began October 17, 1888, and ended November 22, 1889. They are contained in eleven volumes, averaging six hundred and fifty pages each, exclusive of the index.

The report was issued on the 13th of February, 1890.

On the main issues the Commission found:—

"That there is no foundation whatever for the charge that Mr. Parnell was intimate with the Invincibles, knowing them to be such, or that he had any knowledge direct or indirect of the conspiracies which resulted in the Phœnix Park murders.

"We find that all the letters produced by Pigott are forgeries, and we entirely acquit Mr. Parnell and other respondents of the charge of insincerity in their denunciation of the Phœnix Park murders.

"The story told by Pigott as to the manner in which he obtained those letters (the story accepted by *The Times*), was entirely unworthy of credit, and before his cross-examination concluded he absconded and committed suicide."

The costs of the defence at the Commission were borne by a public subscription in Ireland. The still more colossal costs of *The Times* almost bankrupted its proprietors; it never recovered the blow to its reputation until it was ultimately purchased by Lord Northcliffe. It has been recently converted into a powerful advocate of Mr. Parnell's policy of Home Rule.

The Commission and its findings were amongst the chief factors in securing the return of Mr. Gladstone and the Liberal party to power at the next general election, and the passage of his Home Rule Bill through the House of Commons.

ERRATA

Author's corrections made after the book had gone to Press

Page	*line*	*for*	*read*
4,	18,	Law	Orr.
7,	30,	Stewart	Stuart.
10,	27,	Macoenas	Macaenas.
30,	7.	March	May.
34,	15,	Devlin	Delvin.
36,	6,	Theisites	Thersites.
36,	9,	illuminating	eliminating.
40,	6, 27, 36,	Pimm	Pim.
40,	22,	Michael	Mitchel.
40,	22,	Grey	Gray.
45,	5.	Thurwall	Thelwall
78,	22,	,,	,,
46,	35,	1872	1800.
48,	1,	Galatea	Galata
49,	14.	,,	,,
67,	4, 7, 11, 19	,,	,,
77,	19,	Broughan	Brougham.
83,	23,	aprolum	opprobrium.
84,	4,	Millor	Miller.
104,	22	Bill	Bell.
107,	27, 28, 33,	Nagle	Nangle.
108,	9,	,,	,,
110,	40,	,,	,,
113,	36,	,,	,,
125,	1, 14, 17, 18, 23,	,,	,,
128,	17, 24,	O'Keife	O'Keefe,
148,	18,	Grattan	Graham.
173,	18,	Hern	Henn.
182,	11,	*for* Sir George Lewis	*read* Sir E. C. Lewis.
186,	17,	,, Judge Hanen	,, Judge Hannen,