



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

LIBRARIES



40854 6











Howell's State Trials,

VOL. XXVII.

[BEING VOL. VI. OF THE CONTINUATION]

33—40 GEORGE III.....A. D. 1798—1800.



A
COMPLETE COLLECTION
OF
State Trials

AND
PROCEEDINGS FOR HIGH TREASON AND OTHER
CRIMES AND MISDEMEANORS

FROM THE
EARLIEST PERIOD TO THE YEAR 1783,
WITH NOTES AND OTHER ILLUSTRATIONS:

COMPILED BY
T. B. HOWELL, Esq. F.R.S. F.S.A.

AND
CONTINUED
FROM THE YEAR 1783 TO THE PRESENT TIME:

BY
THOMAS JONES HOWELL, Esq.

VOL. XXVII.

[BEING VOL. VI. OF THE CONTINUATION]

38—40 GEORGE III.....A. D. 1798—1800.

L O N D O N :

Printed by T. C. Hansard, Peterborough-Court, Fleet-Street :

FOR LONGMAN, HURST, REFS, ORME, AND BROWN; J. M. RICHARDSON
BLACK, KINGSBURY, PARBURY, AND ALLEN; BALDWIN, CRADOCK,
AND JOY; E. JEFFERY & SON; J. HATCHARD & SON; R. H. EVANS;
J. BOOKER; J. BOOTH; BUDD AND CALKIN; AND T. C. HANSARD.

1820.



1895

1895

TABLE OF CONTENTS

TO

VOLUME XXVII.

GEORGE THE THIRD, A. D. 1798—1800.

	<i>Page</i>
630. PROCEEDINGS on the Trial of JAMES O'COIGLY, otherwise called JAMES QUIGLEY, otherwise called JAMES JOHN FIVEY, ARTHUR O'CONNOR, Esq., JOHN BINNS, JOHN ALLEN, and JEREMIAH LEARY, on an Indictment, charging them with High Treason: A. D. 1798.—[Continued from the preceding Volume].....	1

TRIALS FOR THE IRISH REBELLION.

631. Proceedings on the Trial of HENRY and JOHN SHEARES, Esquires, Barristers at Law, for High Treason, A. D. 1798	255
632. Proceedings on the Trial of JOHN MAC CANN for High Treason, A. D. 1798	399
633. Proceedings on the Trial of WILLIAM MICHAEL BYRNE, for High Treason, A. D. 1798.....	455
634. Proceedings on the Trial of OLIVER BOND, Merchant, for High Treason, A. D. 1798	523
635. Trial of THEOBALD WOLFE TONE for High Treason, A. D. 1798	613
<hr/>	
636. Trial of JOHN VINT, GEORGE ROSS, and JOHN PARRY, for a Libel on the Emperor of Russia, A. D. 1799	627

TABLE OF CONTENTS.

	<i>Page</i>
637. Proceedings on the Trial of JOHN CUTHELL, for publishing a Seditious Libel, A. D. 1799	642
638. Proceedings on the Trial of an Information exhibited Ex Officio, by his Majesty's-Attorney General, against GILBERT WAKEFIELD, Clerk, for a Seditious Libel, A. D. 1799	679
639. Proceedings on the Trial of an Action brought by Mr. ——— WRIGHT against THOMAS JUDKIN FITZGERALD, Esq., sometime High Sheriff of the County of Tipperary in the Kingdom of Ireland, for Assault and Battery, A. D. 1799.....	759
640. The whole Proceedings upon an Information exhibited Ex-Officio, by his Majesty's Attorney General, against the Right Honourable SACKVILLE, Earl of Thanet; ROBERT FERGUSSON, Esq., Barrister at Law; GUNTER BROWNE, Esq.; DENNIS O'BRIEN, Esq.; and THOMAS THOMPSON, Esq.; for a Riot and other Misdemeanors, A. D. 1799	821
641. The whole Proceedings in the Case of BENJAMIN FLOWER, Printer, on a Commitment by the House of Lords, for a Breach of Privilege, in publishing a Libel on the Right Reverend Father in God, Richard [Watson] Lord Bishop of Llandaff, A. D. 1799..	986
642. Proceedings on the Trial of WILLIAM BYRNE, of Ballymanus in the County of Wicklow, Esquire, on charges of Rebellion and Murder, A. D. 1799	1078
643. Proceedings on the Trial of JOHN TUIITE, otherwise CAPTAIN FEARNOUGHT, for the Murder of the Rev. George Kaipe, A. D. 1799	1127
644. Proceedings on the Trial of JOHN DEVEREUX, Junior, of Shilbeggan in the County of Wexford, for Rebellion, A. D. 1799-1800	1138
645. Proceedings before the Court of King's-Bench at Dublin, in the Case of JAMES NAPPER TANDY and HARVEY MORRIS, Esquires, attainted of High Treason, A. D. 1800	1191
646. Proceedings on the Trial of JAMES HADFIELD, at the Bar of the Court of King's Bench, for High Treason, A. D. 1800. [Now first published.].....	1281

A D D E N D A.

Note to the words " meeting at Bond's," p. 558, l. 35.

" Upon one occasion, Reynolds saved him-
" self from the vengeance of those whom he
" had betrayed, in a way that was more
" creditable to his presence of mind. Before
" he had yet publicly declared his infidelity to
" the cause of the United Irishmen, as one of
" their leaders, Samuel Neilson, was passing
" at the hour of midnight through the streets
" of Dublin, he suddenly encountered Rey-
" nolds standing alone and unarmed. Neil-
" son, who was an athletic man, and armed,
" rushed upon him, and commanded him,
" upon pain of instant death, to be silent and
" to accompany him. Reynolds obeyed, and
" suffered himself to be dragged along through
" several dark and narrow lanes, till they had
" arrived at an obscure and retired passage in
" the liberties of Dublin. Here Neilson pre-
" sented a pistol to his prisoner's breast,—
" 'What,' said the indignant conspirator,
" 'should I do to the villain who could insi-
" 'nuate himself into my confidence for the
" 'purpose of betraying me?' Reynolds, in
" a firm tone, replied, 'You should shoot him
" 'through the heart.' Neilson was so struck
" by this reply, that, though his suspicions
" were not removed, he changed his purpose,
" and putting up his pistol, allowed the other
" to retire.
" This fact is given as related by an eminent
" Irish barrister, to whom it was communi-
" cated by one of the parties." 2 *Life of*
Curran by his Son, 135, note.

The following short Account of the Proceedings on Mr. Cuthell's appearing to receive Sentence was by accident omitted in p. 676.

The *Attorney General* having prayed the judgment of the Court, the hon. *Thomas Erskine* and Mr. *Rous* addressed the Court in behalf of the defendant.

The *Attorney General* expressed a wish that the punishment of this defendant might, on account of his most excellent moral character, as well as his most respectable one as a bookseller, be as lenient as the Court could order, consistently with their regard for the interest which the public has in the prevention of libels.

Lord *Kenyon* said, that the Court could not, upon the sudden, weigh all the arguments which had been urged upon this case; the defendant therefore must stand committed to the King's-bench prison. He wished that he should be brought up with as little delay as possible; but it was impossible for this to be earlier than next Wednesday.

STATE TRIALS,

&c. &c.

630. Proceedings on the Trials of JAMES O'COIGLY, otherwise called JAMES QUIGLEY, otherwise called JAMES JOHN FIVEY, ARTHUR O'CONNOR, Esq., JOHN BINNS, JOHN ALLEN, and JEREMIAH LEARY, on an Indictment, charging them with High Treason: 38 GEORGE III. A. D. 1798. [Continued from the preceding Volume].

MR. GURNEY.—May it please your Lordship; Gentlemen of the Jury:—It is now my duty to address you on the part of the defendant Mr. Binns; and notwithstanding the time which has already been consumed in this great trial, I am sure it is not necessary for me to apologize for trespassing upon your patience, when you recollect that I stand here for the life and the honour of a fellow-subject, to answer a charge which seeks his death and infamy—a charge, too, coming forward at a time, the most perilous for a prisoner to meet it, when the situation of the country, when the alarms which have prevailed, when the prejudices which have been created, when the passions of the people which have been generally inflamed, all contribute to give force and effect to the prosecution, and consequently to weigh down the person who stands at the bar accused.

These are circumstances, gentlemen, which might well depress and dismay even a firm mind: in many cases I am free to acknowledge they would depress mine; but in this I am not depressed, I am not dismayed, because I am confident that I am the advocate of an innocent man, and I recollect that I am addressing a jury of my country.

Gentlemen, it is not necessary for me now to say any thing to you on the enormity of the crime of high treason, with which the prisoner at the bar stands charged—it is confessedly the most heinous and the most atrocious crime that can be committed by man; and, gentle-

men, in proportion to the atrocity of that crime, your own minds and your own hearts will tell you, ought to be the clearness and the strength of the evidence. That which your own minds and your own hearts must tell you, is likewise told you by repeated acts of parliament, which have succeeded each other in a long series of ages, and which have provided for a person accused of high treason means of defence that are not given to a person accused of any other crime known to the law of this country. There are peculiar advantages given. He is allowed to have counsel to conduct his defence both as to matter of law and of fact—he is allowed a copy of the panel of the jury—he is allowed a list of the witnesses against him—and inasmuch as the crime with which he stands charged, is that which exists in the heart of him who commits it, the overt-acts, by which his secret intentions are supposed to be manifested, must be stated in the indictment; and unless they are proved, and proved in a manner I will state to you, a jury cannot pronounce a verdict of guilty.

In addition to all this, gentlemen, supposing you should be convinced by the evidence of any one man, the most respectable upon earth, that the prisoners were guilty of high treason, yet that evidence would be insufficient in a court of law; because of such importance has the legislature thought it to protect persons who are accused of this crime, that there must be *two witnesses*, either both

of them to the same overt-act, or one of them to one overt act, and the other to another overt-act of the same species of treason. The meaning of which is, if there should appear before you one witness to prove an overt-act of compassing the king's death, and another witness to prove an overt-act of adhering to the king's enemies, that would not be sufficient, because they are two distinct and different species of treason, and by law both the witnesses must be to overt-acts of the same species of treason.

Gentlemen, these acts of parliament giving prisoners in cases of high treason privileges of this nature and extent, were not enacted without the most imperious necessity for enacting them. Times have been when courts of justice (which I need not say were a disgrace to the name of courts of justice) have been made the means and instruments of *judicial murders*; for no other name do some of those *transactions* in past ages which bear the title of *trials* deserve than *judicial murders*, when the law was tortured for the purposes of oppression, and when juries, influenced either by the authority of the prosecutors, by the circumstances of the times, or their own passions and prejudices, shed the blood of innocence.

Gentlemen, such being the law of high treason, such the enormity of the crime, such the strength of proof which is requisite, let us come to the consideration of the case which is now before you. And what is the character which is given of this case by the attorney-general? The attorney-general in his opening said to you, with a seriousness and solemnity well becoming the occasion, that he should make out such a case against the prisoners at the bar, that he thought it was not within the compass of possibility for them to give such an answer to it, as to entitle them to a verdict of acquittal. Gentlemen, that language may be somewhat new to you, but it is not new to me. I have heard the same kind of language, from the same learned gentleman, delivered in the same solemn manner more than once, or twice, or thrice, or even four times; but I never yet knew that jury, in a case of high treason, who at the conclusion of the cause coincided with him in judgment. Therefore, gentlemen, you will not take it as any thing like a matter of course, that because a gentleman of his high rank, respectable character, and great talents, is very seriously convinced that he has an unanswerable and irresistible case, that therefore his case is of that description; because this is the sixth case of high treason that has occurred within the last four years, and upon all the five former, although he was equally confident, yet in every case the jury felt no difficulty in being of a contrary opinion.

Gentlemen, what is the outline of the case on the part of the prosecution? The charge is, that the five persons at the bar were engaged in a treasonable conspiracy, and that the ob-

ject of that conspiracy was, to carry a paper to the Executive Directory of France, the substance of which is stated in the indictment and is the main overt act relied upon—a paper to communicate intelligence and information to the Executive Directory of France, to enable them with more probability of success, to effect the invasion of this country.

Gentlemen, you have heard from the learned gentleman who has addressed you on the part of Mr. O'Coigly and Mr. O'Connor, a great deal of most important observation on the improbability and absurdity of that charge. In the first place it is demonstrated, that there was not that connexion subsisting between all the five persons who stand at the bar, which can impress upon you any reasonable belief that they could repose such a degree of confidence in each other, in a case in which the life of every one of them was at stake. Good men do not associate for good purposes without some knowledge of each other; never did the case yet occur of bad men conspiring for criminal purposes, especially purposes the most criminal and attended with the greatest danger, without the completest knowledge of each other, and the firmest confidence in each other. Therefore as far as that observation applies to any of the prisoners who did not know each other antecedently (and to some of them, especially to Mr. Binns, it applies most forcibly), it absolutely destroys the fundamental principle upon which the prosecution is founded—namely, that all the five prisoners were engaged in the treasonable conspiracy which is the subject of the indictment.

The improbability of five persons being engaged in such a treasonable conspiracy as this is charged to be, appears more and more glaring the more closely you examine it. If it were in the contemplation of any bad and wicked man in this country to send a paper of this sort to the Executive Directory of France, is it to be believed that he would not take some reasonable precaution as to the manner in which he would send it? If he wanted secrecy, would he prefer five men to one? Is it that which one man could not do? It is a single paper, of no weight, of no bulk; to the carriage of which one man was fully equal. Surely then that was an infinitely more eligible method of accomplishing the wicked purpose which is supposed to have existed in the mind of some man or other, than the mode now suggested. In reply to this, I know it will be said that there is always a certain mixture of folly in every crime, and that you must negative the existence of all crime, if you disbelieve a charge of crime, because you find it accompanied with folly. Undoubtedly, gentlemen, there always is some mixture of folly with crime, because it is as foolish as it is wicked for a man to be guilty of it; but where you find crime, you find that degree of caution and wariness which is adapted, or at least designed, to protect both the author and

the instrument from sure and certain detection, and from sure and certain punishment. It has already been observed by the learned gentleman, who preceded me, and I scarcely need repeat it, that if any thing is to be gathered from the contents of the paper (and when one part is made use of as evidence against us, surely we are entitled to avail ourselves of any part which affords a presumption in our favour), the paper speaks of but one person as the bearer, and it has not the least relation or reference to more than one. Upon former occasions, when the conveyance of papers was made the subject of charge against two persons, it was considered by the judges who tried those cases, that it was most important evidence against those two, that two persons were mentioned in the papers which were found in the custody of one.

Gentlemen, the same degree of caution which you may naturally expect from the author of the criminal purpose, you must expect from the agent, who is conscious of the criminal purpose he is executing. See how that agrees with this case—These five defendants are apprehended at Margate. All their baggage is seized. You find some things very carefully packed up: you find the money packed up in a very excellent box, evidently made for the purpose of containing money. You find the greatest degree of care taken of those things which are the most material; but where do you find the treasonable paper? Where do you find that which is the ground and foundation of the whole of this prosecution? Where do you find that paper which these five men are supposed to have conspired to carry to the Executive Directory of France?—Concealed about their persons? No.—Concealed in any part of their baggage—within a false bottom of a trunk, or any thing of that sort? No—nothing of that sort—not on their persons, not in their baggage, although their baggage afforded means of concealment, but in a pocket of a great coat, hanging upon the back of a chair, in a room, into which several persons, who are not here, had gone in and out before the coat was brought down stairs, and, as the witnesses say, the paper taken out; therefore you find that which cannot be attributed to the folly which is ever mixed with crime, but that which absolutely demonstrates, that all the persons who now stand at the bar (and more especially Mr. Binns, for whom alone I am counsel) were unconscious of the existence of a paper of that importance. Otherwise a paper of that importance, upon which they must know all their lives depended, they would not have suffered to be there, where a waiter coming in, might have taken it out, the consequence of which would be, they would find themselves the next day in gaol, and soon afterwards on their trial for high treason.

Another observation upon the improbability of this charge of treasonable conspiracy is, that there is no other paper found on the

person of any one of the prisoners, which at all corroborates that which is the foundation of the charge. It is more especially my duty to remind you, that no paper was found on Mr. Binns, which can give the least countenance to that paper.

Now, gentlemen, is there a pretence for saying, that you have not the whole case before you? The crown have given you every scrap of paper that was in the pockets of every one of them, even of the most private nature, so that you must perceive clearly from all the evidence you have heard, that their apprehension must have been unexpected to themselves; and therefore, no preparation was made for it by the destruction of any paper whatever.

Another observation I am intitled to make. Since the apprehension of these defendants, the Habeas Corpus act has been suspended, and a vast number of persons have been apprehended, upon whom busy, meddling, rumour has fixed a concern in corresponding with the enemy. Yet there is not a tittle of evidence before you, either that there does exist, or that there ever did exist such a body as this paper purports to come from. It purports to be an address from "The Secret Committee of England to the Executive Directory of France." That defect of proof, therefore, fortifies the observations which have been so forcibly made to you by Mr. Plumer, on the improbability and absurdity of the whole of this charge.

I come now, gentlemen, to the evidence, as it applies more particularly to my client, Mr. Binns. It is stated to you, and there is evidence to confirm the statement, that Mr. Binns left London, went to Gravesend, from thence to Rochester, Canterbury, and Whitstable, where he negotiated for the hire of a vessel; that then he went back to Canterbury, and afterwards to Deal, where he entered into another negotiation for the hire of a vessel, to take some persons to Flushing or to France. This is the outline of the case against Mr. Binns, and I do not feel myself called upon to encounter these witnesses, by calling witnesses to contradict them. But in this case, the question you are to consider is, not whether Mr. Binns is, or not guilty of a *misdemeanor*, but whether he is guilty of *high treason*: for that very act of parliament, upon which the last count in the indictment is founded, makes it an offence punishable with six months imprisonment to go to France, or even to go on board a ship with an intention to repair to France, without a licence. I intreat you, gentlemen, throughout the whole of this trial, to keep that constantly in your mind, because you will find, that that is the clue which will enable you to unravel that concealment, artifice, and mystery, which was necessarily resorted to by the defendants, and which is attempted on the part of the crown to be perverted into evidence of high treason.

I do not affect to deny that Mr. Binns conscious he was committing an

against the laws of his country, in hiring a vessel for persons to go to Holland, or to France, without a licence, but I beg you to consider what sort of an offence it is—not *malum in se*, not criminal in itself, but an offence merely because an act of parliament has made it an offence. If that act did not exist, it would be no offence for a man to go to France, but the act has forbidden it, and, therefore, it is an offence—not a moral offence but an offence created by act of parliament. When men are conscious they are committing an offence against the law, undoubtedly they use some concealment and mystery to prevent their design being discovered, because punishment follows discovery; and you will not wonder therefore, that Mr. Binns being engaged to hire a vessel for Mr. O'Connor to take him to the continent, should assume another name rather than his own, because he thought his own would make him liable to observation in consequence of his having been tried at Warwick assizes for sedition, although he had been acquitted. This is not a reason suggested now for the first time for the purpose of defence. For the witness (Mahoney I think) has told you, that Mr. Binns, at the time he informed him of his real name, assigned that reason for assuming the name of Williams.

A circumstance was very much relied upon by the attorney-general in his opening, that when the men at Whitstable urged the danger of being delayed at Flushing on account of the embargo, Mr. Binns said there was no danger of that sort, the vessel would come back soon, almost directly; and so certain was he of it, that he was ready to deposit 300*l.* to forfeit 100*l.* a month if the vessel should be delayed. You have some evidence undoubtedly of a negotiation of that description, but I appeal to you whether it is at all surprising when a man is set upon a favourite object, that he should say that which he thinks will remove the obstacles raised by the persons with whom he is treating. Is it not done every day by every man who hears me? What was the obstacle raised? the detention of the vessel. The idea that it would not be detained, was therefore necessary to be impressed upon them, in order to succeed in the object of his mission. I might remark here, that the witnesses who related this conversation, differed materially in the words which Mr. Binns is supposed to have made use of. But it is of little consequence, when you find that he only said that which was most likely to contribute to his purpose, by removing the obstacle that had been put in his way.

What is there in this or any other part of Mr. Binns's conduct, which proves that he was engaged in a traitorous design? What is there that proves him to have had any knowledge of that paper, which is said to have been in the great-coat pocket of Mr. O'Coigly? The attorney-general felt that it was necessary for him to prove a close connection between Mr.

Binns and Mr. O'Coigly, as a means of proving farther the connection between Mr. Binns and that paper; and the means by which he attempted to prove that was, that a French passport of Mr. O'Coigly's was found in a box belonging to Mr. Binns. No evidence of that sort has been given, no evidence has been laid before you to show where that passport, which has been read, was found. If the fact were proved as it was opened, the presumption would be but feeble, because a paper which has formerly belonged to one person may, as a matter of curiosity, be in the possession of another, without proving such a close and intimate connection as must be proved, in order to lay any foundation for the belief of the existence of a treasonable conspiracy between them: yet, even that presumption fails the prosecutors, because there is not a shadow of evidence to substantiate that part of the opening of the attorney-general.

Then, gentlemen, what is there in this evidence against Mr. Binns which at all connects him with that paper upon which all the overt-acts depend? two or three of the overt-acts in the indictment, namely, the treaties for vessels at Whitstable and at Deal, which are proved upon him, are acts indifferent in themselves, at least indifferent as to the charge of high treason. They must be made by the crown to receive their criminal complexion, colour, and nature, from the paper which is said to have been found in the great-coat pocket. You will never forget, I am sure, that the whole charge is founded in that paper, for if that paper did not exist, no charge could exist; and unless they are able to make out to you that the purpose of each and every one of the prisoners, was, to convey that paper to the Executive Directory of France, so far as they fail in proving any connection with the paper, so far they fail in proving their indictment.

Why then, gentlemen, what sort of evidence is there, that Mr. Binns knew any thing of this paper? Is it proved that there was any connexion between Mr. O'Coigly and Mr. Binns relating to this journey before the commencement of the journey? There is not a tittle of proof. The utmost extent of the evidence to show that they had ever seen each other before they met at the King's-head at Margate is, that they had lodged in the same house. There is nothing of intimacy or connexion, or even acquaintance proved to have existed, much less of consultation, or employment, or agency with respect to this journey. The evidence which is to fix on Mr. Binns a knowledge of this paper, and a criminal participation in the purpose of conveying it to the Executive Directory, falls short even of proving any connexion between him and the person whom the prosecutors charge with being the actual and personal bearer of it.

Then if Mr. Binns does go to one place and to another for the purpose of engaging a vessel to go over to France, yet if you find that all

his conduct is clearly referable to one consideration, namely, to that of his consciousness that he was doing an act which if detected would shut him up within the walls of a prison for six months; when you find it referable to that which is the smaller species of offence, can you persuade yourselves to mount to the highest species of crime, without direct, manifest, demonstrable evidence, to convince you that he must have known of the existence of that paper, and that he must have been a party to a conspiracy to convey that paper to the Executive Directory of France, and consequently, that he is a man who has either compassed the king's death, or adhered to the king's enemies, or compassed the invasion of this realm by foreigners and strangers? This is a case which, of all others, requires the most plain, direct, and manifest proof, and you are called upon not on that plain and manifest proof, but on proof of conduct, which is referable to another motive in every part of it, to infer and to conclude from that, that he was guilty of the highest species of offence of which man can be guilty.

Why, gentlemen, this is not to be a trial of skill between the counsel for the crown, and the counsel for the prisoners, which is the acutest reasoner, which is the ablest logician, which is the most ingenious sophist. God forbid, that such a contest should be raised in a case of high treason. It is not whether the counsel on one side is able to state an inference more probable than the counsel on the other side, but whether the counsel for the crown, who are prosecutors here, have laid before you such clear, direct, and manifest evidence, that you have not a shadow of doubt in your minds, but that all the conduct of Mr. Binns in this matter is referable to high treason, and can be referred to nothing else. For if it becomes a matter of the smallest doubt in your minds, whether the conduct of Mr. Binns is to be referred to a traitorous purpose, or to the purpose for which I contend, namely, that of procuring a vessel for persons to go to Holland or France without a licence, it is your bounden duty to pronounce a verdict of acquittal.

Gentlemen, there is but one case that immediately presses upon my mind of any former trial for high treason, which bears any close analogy to the present case; and undoubtedly the evidence, upon which two persons were convicted in that case, cannot be mentioned at the same time with the evidence which is now before you, unless it be to contrast the weakness of this with the strength of that. That was the case, in the year 1690, of lord Preston and Mr. Ashton,* who were indicted of compassing the death of king William and queen Mary. They were apprehended concealed in the hold of a vessel, in the very act of passing over into France to convey letters and intelligence to king James the 2nd, who

you know had been but lately dethroned. Upon the person of Mr. Ashton were found letters from various persons in this country to king James, constituting unquestionably a treasonable correspondence. The guilty knowledge of their contents was fixed on Mr. Ashton by his being seen to conceal them in his bosom, by his denying the possession of them, and by his urgent solicitations to captain Billop, who had apprehended them, to destroy the papers: added to which, the papers themselves spoke of more than one person to be concerned in conveying them. The knowledge of lord Preston was proved by two seals of his lying along with the papers when they were taken up by Mr. Ashton and concealed in his bosom, by a paper or two contained in the packet being in his hand-writing, by one of the letters mentioning a lord as the bearer, and by his joining with Mr. Ashton in urging captain Billop to destroy the packet.

These two cases go infinitely beyond the present in strength of proof, but I would particularly call your attention to that of their companion Mr. Elliott, who was indicted with them. He was found in the same place of concealment, and he joined with lord Preston and Mr. Ashton in intreating captain Billop to destroy the papers. He repeated those intreaties again and again with great earnestness, and with offers of reward; by which he surely evinced some knowledge of their nature and tendency. Yet because there was no plain and direct evidence to connect him with the papers, the attorney-general of that time never ventured even to put him on his trial; and yet that was a period of great anxiety and of considerable alarm; it was only fifteen months after the Revolution, when no man doubted the existence of plots and conspiracies to restore king James, and when it was a point of infinite consequence to the then existing government to suppress them, and to make severe examples of those conspirators who should be detected.

Compare this case of Mr. Elliott who was not tried, with that of Mr. Binns who now stands upon his trial. What evidence have you that Mr. Binns ever saw that paper which is made the ground of charge against him? What consciousness of a knowledge of its existence has he ever betrayed? Can you be induced to conclude that he did know of it, and that he was a party to a conspiracy to convey it to the Executive Directory of France, from his conversation when treating for the vessel, endeavouring to remove the objection of the danger of its detention, in giving them hopes of its speedy return, and from the disguise he put on in assuming another name than his own, when you find that all this was natural, consistent and probable conduct for a man who was conscious he was committing a misdemeanor?

Gentlemen, I do think it would be a most dreadful precedent in a case of high-treason, for a jury, where conduct may be imputed to

* *Ant.*, vol. 12, p. 645.

either of two motives, to say it shall be imputed absolutely to that motive which is the most guilty—especially in a case where the charge is founded upon a supposed knowledge of a paper, and a concern in carrying that paper to the Executive Directory of France—where there is not a shadow of proof that Mr. Binns ever saw the paper, and where, subsequent to his apprehension, no witness is brought to prove any one word he has said, or any one act he has done, which has evinced the least consciousness of the existence of that paper.

But it is said, that subsequent to the apprehension of the prisoners, inconsistent and contradictory stories are told by some of them. It is not pretended that that can be imputed to Mr. Binns. The stories and accounts of the other prisoners are not evidence against him. But you cannot fail to observe, that those inconsistencies and contradictions are all capable of explanation by the consciousness which they had, that they had committed a misdemeanor, in negotiating for the hire of a vessel to go to France without a licence; whether they had or had not completed even that offence may be doubted, as they were not actually on board a vessel so destined; be that as it may, alarmed for the consequences to which they thought they had exposed themselves, they might naturally enough be induced to give different accounts in hopes of averting those consequences.

Gentlemen, the case standing thus on the evidence for the crown, I ask you why the prisoner at the bar, Mr. Binns, is to be called upon to give any answer to it?—Is his conduct mysterious? Is his conduct equivocal? Then let that mystery be cleared up by the crown, and let it be cleared up so as to establish a case of criminality, and of criminality commensurate with the charge, before he is to be called upon to give any explanation whatever. The learned gentleman who preceded me, enforced this topic upon you, as well as every other, so much at length, and with so much ability, that it is unnecessary for me to enlarge. If there is mystery in the case, as counsel for a defendant, I am intitled to say, mystery it may remain for me. Your charge is high treason, and your proof is mystery. Mystery is not high treason. I am not bound to clear up that mystery, to prove my client's innocence. The prosecutors are bound to clear it up so as to demonstrate his guilt.

The prisoner stands at the bar. He puts in his plea of not guilty, and it is to be presumed that that plea is true, unless it be torn up by the roots by the proof which the crown produces. Now, I ask you, is there that case laid before you on the part of the crown, which completely satisfies you, beyond all possibility of doubt, that he is guilty? If there is not, what has he to do with giving an answer to the charge? He lies upon his oars and says, I am not guilty, but I am not to prove myself not guilty, for I am to be pre-

sumed to be not guilty till you have proved me guilty—prove me guilty therefore.

But it may be said, you are here connected with Mr. O'Connor thus far at least, that you were the agent employed by Mr. O'Connor, for the purpose of procuring a vessel for him to go to Flushing. Take it to be so—what then? Is there any evidence that Mr. O'Connor had any treasonable purpose? Or if there be, is there any evidence that Mr. Binns was a party to that treasonable purpose?

Upon the evidence, which is now before you, therefore, I have no doubt you would, without difficulty or hesitation, acquit him of this charge. But every presumption in favour of Mr. Binns is fortified extremely, when the case of Mr. O'Connor is opened to you, and when it is stated that Mr. O'Connor found it necessary to quit Ireland, on account of prosecutions, for being supposed to have a concern in a newspaper, called "The Press." Having already suffered severely in his health, so as to endanger his life, from an imprisonment which he had endured in Ireland, an imprisonment of no common rigour and danger, he was anxious to avoid the repetition of that confinement from which, perhaps, he might not escape with his life, and therefore he came to England, thinking that here he should be perfectly safe from prosecution and persecution. But he was advised that even here he was not safe, for that upon any charge of an offence in Ireland, he might be apprehended in this country and be conveyed to Ireland; and, therefore, in order to preserve himself from being again injured in a prison, it was necessary he should quit England. Why then, gentlemen, if Mr. O'Connor was advised to do that, not merely by honourable friends who felt an anxiety for his safety, but if he was advised to do it by a great legal authority, who undoubtedly, upon this occasion, united his legal knowledge and advice with the friendship which he felt for Mr. O'Connor, whom he, as well as other gentlemen of high rank and unquestionable honour, have known and respected for many years; if he was advised to do that, and took measures that demonstrated his intention to comply with that advice, why are you to impute treason to Mr. Binns, who merely acted as his agent to procure the vessel in which he was to take his passage?

It is not at all wonderful that when there were charges against Mr. O'Connor in Ireland, he should be desirous of leaving that distracted country.—For if the state of that country be, as it is represented; if it be a country where society is disorganized, and all the bonds of social intercourse dissolved; where every gentleman's house is turned into a fortress, the doors and lower windows barricaded to guard against attack, and the inhabitants gaining access to it only through the upper windows by a ladder. If it be a country where the landlord is armed against the tenant, and the tenant against the landlord;

where too the people are oppressed by a licentious soldiery, the character of whom by their hate commander in chief,* is that they are 'formidable to every body but the enemy'†—a concise description of every species of enormity, an epitome of oppression, confusion, misery, and distraction—is it not the last country in which such a man as Mr. O'Connor, who had made himself obnoxious to the ministers there by his opposition to their measures, would choose to remain, and the last country to which he would choose to return, when once he had escaped from it? And if that be the case with respect to Mr. O'Connor, how strongly does it fortify the case of Mr. Binns? Because every thing, whatever, which contributes to prove the innocence of Mr. O'Connor's intention in quitting this country, tends still stronger to prove the innocence of Mr. Binns, who was acting merely as his agent.

Then it is considered a matter of great importance, on the part of the prosecution, to connect Mr. Binns closely with Mr. O'Coigly. The prosecutors would wish you to believe that from the commencement of his agency in this business, he was in close connexion with him. Look at the evidence—there is not any evidence before you that Mr. Binns even knew Mr. O'Coigly was to be one of the party which was to accompany Mr. O'Connor. It is not proved that he ever saw him before he arrived at Margate. Besides which, it will be proved to you in evidence that before the arrival of Mr. O'Coigly in London, very early in the month of February, Mr. Binns, at the instance of Mr. O'Connor, was employed in endeavouring to procure him a passage to a neutral port, and it failed only because the captain objected to take a person on board without a passport, and the applying for a passport would have been the very means of defeating the object he was so anxious to attain.

Then, gentlemen, what is the question which you have to consider? a plain, clear, naked question of fact, of which you and you only are the judges. There is no question of law involved in the consideration of this cause; but you are to say, by your verdict, whether you believe that Mr. Binns, the defendant, has either compassed and imagined the death of the king, or has adhered to the king's enemies, or has compassed and imagined the invasion of this realm of Great Britain, by foreigners and strangers, and has committed the overt acts charged in the indictment, or some one of them, in pursuance of that treasonable object.—It is a matter in which no legal knowledge can assist you, be-

* Sir Ralph Abercrombie, who succeeded the earl of Carhampton in the office of commander in chief.

† Vide the General Orders issued by sir Ralph Abercrombie, on the 26th of February, 1798.

cause you must believe the treason to have existed in his heart, and the overt act to be done in pursuance of that treasonable intention, before you can approach a verdict of guilty.

Gentlemen, so much has been said, and so ably said, by the learned gentleman who preceded me, upon the general nature of the conspiracy which is charged, and upon the defects in the evidence by which it has been attempted to be proved, so much has been said in observation upon the particular parts of the case, that I do not feel myself called upon to go minutely into all the circumstances, having furnished you with that which, I think, is the clue to unravel the whole—that all these little circumstances of concealment and mystery are to be accounted for, by referring the conduct of Mr. Binns, to the apprehension of being prosecuted for a misdemeanor in hiring the vessel.

Gentlemen, if the evidence which you have heard does not, in your opinion, fix upon Mr. Binns, clearly, and beyond all question, the guilt of that crime with which he stands charged, I am sure you will not hesitate a moment about the verdict which it is your duty to pronounce. You will not conceive, on account of the serious and awful situation of the country, that you ought to strain evidence against prisoners in a case of high treason. Because there are alarms, well or ill-founded, of an invasion, you will not imagine, that straining the law, or straining the evidence, against persons accused of endeavouring to co-operate with the enemy, is a means of defence against that enemy. Nor will you think the holding out that there are persons in this country, who are connected with the French, will contribute at all to produce that cordial and unsuspecting union of all ranks of people, which every good man must ardently desire when his country is threatened with invasion. Neither is it because there are rumours propagated either by weak or by wicked persons, that there are people of that description who are so connected, that you will at all endeavour to strain any part of the evidence, or any part of the law, for the purpose of involving persons in the guilt of high treason. You will rather be inclined to believe that which is the fact, that these are not persons who are so lost to every sense of virtue, so destitute of that love for their country which every man ought to cultivate, as to seek the invasion of their country by a powerful and formidable enemy. Neither, I am sure, will you be influenced by any prejudices which have been attempted to be created, by publications in newspapers, circulated with most malignant industry, for the purpose of impressing upon the mind of every man in this country, not only that there exists a conspiracy of the nature which is charged, but that the persons who now stand before you are persons who are engaged in that conspiracy. You will not suffer any thing of that sort to influence

your minds; but remembering the oath which you have taken, you will strictly adhere to it, and a true verdict you will give according to the evidence; and therefore you will not suffer any emotion, you will not suffer any passion, you will not suffer any prejudice, that may have been raised in your minds, to be turned, by any means whatever to the injury of the defendants.

You will consider, likewise, the infinite importance it is of, to preserve a distinction between crimes, and that it is not because any persons may have been engaged in that, which, if perfected, would have amounted to a misdemeanor, and that of a sort which is not a moral offence, that therefore you ought, without the most direct, plain, and manifest proof, to involve them in the guilt of high treason. You will consider the distinction between one crime and another, to be as important, even as the distinction between innocence and guilt; and therefore where the conduct of men can be referred to an offence of the slightest nature, you will not, unless the evidence irresistibly compels you, refer it to the most enormous crime, which the basest and wickedest of mankind alone can commit.

Gentlemen, Mr. Binns now stands before you for his character and his life—for the greatest stake for which any man can stand before a jury of his country—and you, I am sure, will true deliverance make between him and his accusers. If you should even think his conduct mysterious, which I trust you will not, because I conceive it to be sufficiently explained, you will not therefore take it to be guilty, and guilty in the extent to which it is charged—but you will say that that which is *mystery* is not proved, to your satisfaction, to be *high treason*.

Gentlemen, your verdict is of infinite moment, not only to the prisoner, who now stands on his deliverance, but to the people of England, whom you represent, and by whom it will be reviewed. It will be reviewed also by a long, long, enlightened, and severe posterity.—It will be the theme of praise, or of execration in ages to which the names of few of us would reach, but that this trial will confer on them an immortality of honour or of shame. It will confer an immortality of honour upon you; if, faithful to the sacred trust reposed in you by the constitution, you yield not to passion, to prejudice, to influence or authority—of shame and infamy, on the other hand, if you could allow the circumstances of the times, the influence of prejudice, or the authority of the prosecutors, to tyrannize over your judgment, and prescribe your verdict. I am sure you will fulfil the duty you owe your country with integrity and firmness, and you will experience, in so doing the gratitude of that country.

Mr. Justice Buller.—Mr. Gurney, you stated that it was not proved how the pass was found. I took it, it was produced by Mr. Ford as found in some of these packages,

Mr. Gurney.—I believe, my lord—
Mr. Dallas.—As I take the fact to be, it was found in a box, which they contended belonged to Mr. Binns, but they failed in proving that it did belong to Mr. Binns.

Mr. Attorney General.—I called a witness, of the name of Jones, to prove these facts, that he took a box from Evans's, the secretary of the London Corresponding Society; that the box was Binns's box; and that in that box the pass was found. Jones admitted the fact of his taking a box from Evans's, but he could not prove that that box was Binns's. The pass therefore stands only upon the evidence of O'Coigly's hand-writing being found upon it.

Mr. Ferguson.—May it please your Lordship; Gentlemen of the Jury:—I am of counsel for John Allen, one of the prisoners at the bar; and in the course which it has been thought fit to adopt for the conduct of this defence, it is allotted to me, in this stage of the business, to address you on his behalf. Gentlemen, alarmed and agitated as I am, to have in any degree committed to me, the defence of a man upon trial for his life; there is one thought which supports me under the weight of this charge, that the gentlemen with whom I am associated, in this cause, have had the necessity imposed upon them, in conducting the defence of their clients, of likewise conducting the defence of mine.

Gentlemen, I have none of those advanced stages of legal talent and experience which they possess. I have not even those common advantages which it has generally been thought that a counsel does possess in defending the cause of others.—I have heard it remarked, that there was a wide difference between the task which was imposed upon a counsel who was conducting the defence of a prisoner, and that which was imposed upon the prisoner himself, who was pleading his own defence; “there is a wide difference,” I have heard it said, “between the sportful combat of foils, and that which is seriously disputed with unbaited swords.”

Gentlemen, this cause is not to me the “sportful play of foils.” In the verdict which you are this day to give is involved the life of a man, with whom I have long lived on terms of the most endearing friendship. But to say to you, any thing upon his case, would be to run the risk of weakening that impression which I see has been made upon your minds, by the very able and eloquent opening which you have heard of his defence. I shall therefore strictly confine myself, as in my duty I am bound, to the case with which I am particularly charged.

Gentlemen, it will be necessary for me, shortly, to consider two distinct points; the first is with respect to the general nature of this charge; the second will be how far the person whom I am to defend is connected with that charge.—With respect to the law upon the subject, you all of you know that it

is founded upon the clearest and plainest words, which it is possible for language to convey; I mean the words of the great statute of treasons of Edward 3rd: in that, the only treasons which are applicable to this indictment are, compassing the king's death, and adhering to the king's enemies. Gentlemon, it certainly, in my opinion, was the original intention of our forefathers who framed this act, that the first branch, namely, that of compassing the death of the king should be confined, strictly and literally confined, to direct attempts upon the king's person.

With respect to adhering to the king's enemies, there are added words which will sufficiently explain what was the meaning of the framers of that statute, in that particular branch of it—the expression is, that whoever shall be adhering to the king's enemies, giving them aid and comfort, that is, gentlemen, according to what has been laid down by our best writers upon the subject, I mean lord Coke, and lord Hale, it is principally directed towards abetting our enemies, in, for instance, delivering up forts into their possession, in giving them any assistance in landing, or in giving them actual assistance in a foreign country, for the purpose of procuring an invasion, or facilitating a descent upon the country.

But it is unquestionable, gentlemen, that there have been constructions of these two branches of the statute, which deviate a little from that which I take to have been the original law. It has been conceived, and it has been laid down as law, in a variety of cases, that conspiring to levy war against the king, might be an overt-act of compassing the king's death; but in this construction no Judge that I know of, I am sure no good judge, has ever laid it down as law, that a conspiracy to levy war, could be a constructive compassing the king's death, unless the conspiracy to levy war, was for the purpose of a direct attempt upon the king's person, either for the purpose of putting him to death, or getting him into the power of conspirators, which it was naturally supposed would lead to his death and destruction. It was so laid down on the trial of the virtuous lord Russell, who certainly, however he might have complained of his jury, had no complaint to make of his judge. The judge, lord chief justice Pemberton,* laid down the law thus—the question, gentlemen of the jury, for you to consider, is not whether my lord Russell conspired to levy war, but whether he conspired to levy war with an intent to put and bring the king to death; and I conceive that no other possible, at least no other wholesome construction of this part of the statute can be given. There has certainly also been a construction that a conspiracy to procure an invasion of the country by a foreign enemy, and taking any steps for that purpose, the being found in

the way to a foreign country at enmity with ours—and being so found with treasonable papers in your possession, may, in certain cases, form a sufficient overt-act, not merely of adhering to the king's enemies, but also of compassing the king's death.

Gentlemen, that certainly was so laid down in the case which has been this day cited, and of which I shall have something more to say to you in the course of my address—It was so laid down in the case of lord Preston, and Mr. Ashton. The crime charged upon them, was going to France with treasonable papers, and this charge was laid as an overt-act of both species of treason, of compassing the king's death, and adhering to the king's enemies. But I beg you will remark, that in this case of my lord Preston, there was not a construction or inference, but a certainty, that this attempt of my lord Preston and Mr. Ashton, to go into France, was with a view not merely to depose, but also to bring the king to death. It was very shortly (I believe within the period of a twelvemonth) after the Revolution, when tyranny had been chased from this country, and when we had received our deliverer, king William; it was shortly after the Rebellion had been crushed in Ireland, when, I will not say half, but, I believe the majority of the country were in favour of the abdicated family; it was at that moment that lord Preston, and Mr. Ashton (lord Preston having been secretary of state to king James, and Mr. Ashton private secretary to the queen) were indicted for this treason; and it was specially laid in the indictment, that they were going to parts beyond the seas, for the purpose of procuring the deposition of the king, and of restoring the late king through a French invasion; the direct consequence of which would unquestionably have been, not merely the deposition of king William; but if James had succeeded, the former must have been attainted and executed as a traitor.

Now, with respect to this charge, if you are to admit a construction of this kind, you are at least to see that this construction is made out by the most plain, manifest and incontrovertible proof; it was so made out in the case of lord Preston and Mr. Ashton; and it is not for me to stand up in this court to object either to the verdict of the jury in that case, or to the opinions of such judges as my lord Holt, whom one of the judges upon this bench yesterday so highly and so justly praised—a man in the praises of whom I most heartily concur: for I am sure the fonder any man is of the liberties of his country, the more veneration he will have for the character of that great and constitutional judge. But what was the conduct of my lord Holt upon that occasion? He not only laid down the law, with the restriction which I have stated, but in arguing upon each particular case, he required that it should be made out that there was in the parties con-

* See Vol. 9, p. 635.

cerned privity and common design; and unless that had been directly, plainly, and clearly proved, the jury, upon his charge, never could have brought in a verdict of guilty.

But with respect to the general conspiracy which is charged in this indictment, and the facts as applied to it, I shall have little occasion, as I have already stated, to go into the evidence which affects the prisoners in general; for that has been very ably done, and will be again done with equal zeal and with equal ability, by the learned counsel who is to follow me—I shall only say, that you will require very plain and certain proof that this paper was found in the great coat pocket of Mr. O'Coigly; that it was concealed in that great coat, and put there by the prisoner O'Coigly himself; and that it was impossible in the nature of things, that, after the prisoners were arrested, *that paper could have been put there by others*—I do not say whether the thing is probable or likely; but I do say this, that if there is a possible supposition that such a thing could have been easily done in the shifting of hands, and in the different places in which they were, and from the circumstance of its being found in a public room, at a public inn—if, I say, gentlemen, from all these circumstances, there is a reasonable supposition, that such a paper might have been inserted into the pocket of this coat by others, you will hesitate, I am sure, before, upon such evidence as you have heard, you will pronounce against any one of the prisoners a verdict of guilty.—I shall remark very little upon the improbability of any man carrying a paper of this nature, the absurdity of which has been so well commented upon by my learned friend.

Gentlemen, I have only farther to observe to you, that, in all the cases which I have read, in which a treasonable correspondence with the enemy was charged, it has constantly been set up in proof, that such paper was in the hand-writing of one of the persons accused; and why? because if it is proved to be in the hand-writing of one of them, then there is an end of every idea that any other person might have fabricated it, and put it in the place where it was found, when the prisoners were taken into custody.

If this paper was in the hand-writing of one of the prisoners, and that hand-writing was made clear to you, not in the manner in which some papers have been proved in this case—and of which you will hear more when we bring our evidence; if it was clearly made out to be the hand-writing of one of the prisoners, then I do not see how, upon any principle of law or justice, if you were convinced he was going into France, that this paper was made and prepared as stated in the language of the indictment, and put and concealed there for the purpose of being conveyed to the enemy, I do not see how you could acquit yourselves upon your oaths, if against such prisoner you were to bring in a verdict other than that of guilty.

Gentlemen, I shall not detain you longer upon the general charge; I shall only state what particularly relates to the prisoner Allen—I find but one charge through the whole of the evidence which is attempted to be made out, and which was last night produced against Allen—it was, that he passed as O'Coigly's servant, and from that circumstance the prosecutor in this cause wishes to infer, and to convince you, gentlemen of the jury, that my client Allen was privy to the design upon which O'Coigly is stated to have gone, that he knew of this paper, knew of its contents, and approved of it.—You will observe by the very few points in the course of the evidence which have related to Allen, particularly by the evidence of Mrs. Smith, that my client was a poor and a distressed man; that even in the room where he lodged with two others of his countrymen, who were, like himself, driven from their country, there was but one bed, and that they paid together, for that room, seven shillings and sixpence per week!!

Gentlemen, the prisoner Allen fled from Ireland, as he did not conceive himself, for the same reason as the other prisoners, to be safe in that country; and he wished also to get out of England, from which it was possible for them to send him back to his own country; he therefore took advantage of Mr. O'Coigly's determination to go to France—there is no doubt he accompanied Mr. O'Coigly as his servant; and I will ask you, gentlemen, whether a person of the habits and the education of my client, a poor, ignorant, uneducated man, could be found in a situation which was more natural or suitable to his circumstances than as Mr. O'Coigly's servant; for if he had not passed as his servant, how should he have gone at all? Do you think Mr. O'Connor would have admitted Allen into his room—that he would have conversed with him—that he would have associated with him—that he would have sought or liked the company of Allen? Unquestionably not. I can conceive, then, nothing more natural than that Allen should go as the servant of Mr. O'Coigly.—And do you suppose that Mr. O'Coigly would tell to a person whom he took as his servant, and who was in a low situation of life, or that Mr. O'Connor, supposing any case had been made out against either of these two prisoners, which I contend is not done, supposing that they had any design of going to France, for the purpose stated in the indictment, is it likely that they would have communicated this paper, or their design, to Allen, as if he could be of any service to them? No, they could have but one reason for taking Allen with them—he was a distressed countryman, whom they were willing to protect, and put out of the reach of danger. I will not detain you one moment upon this; I am sure you must see the situation in which he stood as servant, was the only situation in which he

could be received into their company, and that which was natural for him in his situation of life.

I must again allude, gentlemen, to the case of lord Preston and Mr. Ashton, because it bears a strong similarity in some points to this case—lord Preston was, as is stated, secretary of state to king James; he had entered deeply into the designs which that prince had formed, previous to his leaving this country, for the subversion of its liberties—he was attached to his master, and wished to restore him to that authority which he had lost. Upon his trial they could have brought thousands of instances in which he had assisted the late king in the attempts which he had made upon the liberties of England; but in that prosecution, the counsel for the crown did not think that they could in any instance, bring the circumstances of a man's whole life, as a proof of the intention with which he committed a specific act, charged to be treason; because if a man commits treason, and it can be proved at all, it can be proved in the course of a short evidence—the proof of high treason, as it was well remarked, must lie “in the palm of a man's hand.” If a trial for high treason, goes on to the length of five, six, seven, or eight days, which the memorable trials of 1794 did, I myself, if I were a jurymen, and were not able to comprehend the mass of evidence, and to free my mind from that confusion which it had brought upon it, I should at once bring in a verdict of not guilty, because I should conceive if there was treason, it could be proved in a shorter manner—but to return to the case of lord Preston, some of the most treasonable papers were found to be in the hand-writing of his lordship, such as a memorandum of hints, which he was to use when he got to the court of St. Germain's; there was a list of several ships; in what condition they were; of the mode of attacking the country; in what manner the French fleet was to fight; and the declaration of king James, to be published when he came to this country—besides these papers, there were many others which were rank treason—there was the result of a conference for bringing in the Pretender; there were the heads of a public declaration, and a variety of papers needless for me to state—but how were these papers found? it is extremely material that you should attend to this case, for I am sure your verdict will be in a great degree guided by it.

Lord Preston and Mr. Ashton, were discovered going down the river in a smack, which had actually set sail for France: when the person sent to apprehend them, entered the vessel, he found, concealed under the hatches, lord Preston, Mr. Ashton, Mr. Elliot, and lord Preston's servant: he pulled them from the place where they were hid, and when he had them upon deck, he had made no discovery; but Mr. Ashton went down again under the hatches, where he had been

before, and put the bundle of treasonable papers into his bosom, Mr. Ashton returned upon deck, and one of the sailors, fortunately for the discovery of the plot, mentioned to captain Billop, who apprehended them, that Mr. Ashton had put something into his bosom; the captain asked him what he had in his bosom, he said his handkerchief, (and pulled it out, but captain Billop put his hand into his bosom, and pulled out the bundle of papers—and how were they made up? They were tied together with a piece of lead affixed to them, for the purpose of sinking, in case they were discovered—now this circumstance alone was sufficient, in my opinion, to have justified the jury, at least, in bringing in Ashton guilty, who had them in his bosom, and also lord Preston, in whose hand writing some of the papers were—besides, their whole conduct showed a consciousness of guilt. As they came up the river in a boat, they repeatedly asked captain Billop to dispose of this packet; Mr. Elliot particularly, who, although concerned in this, was not tried, and all historians agree that he was not because there was no sufficient positive proof against him; this gentleman wished captain Billop to take some indifferent papers, some letters of lord Preston's, which he had found in his pocket, and to say, that they were the papers he had found. When they found they could not prevail upon him by entreaty, they used threats and menaces, in order to induce him to comply with what they proposed; it is impossible to state any case stronger than that—but how is it applicable to this case? I mean the particular case of my client—it is applicable in this respect—that lord Holt, whom I have mentioned, that lord chief justice Pollexfen, and lord chief baron Ward, you find in the opinion of these three judges, who tried the cause, that privity was absolutely necessary to be proved, and I shall read one or two extracts of the opinions which the judges gave, which will be a perfect proof to your minds, that unless there can be made out a privity in the design with which Mr. O'Coigly was going to France, supposing this, his design, to have been made out, that still you cannot convict any other of the prisoners at the bar.

On lord Preston saying that he was not the bearer of the paper, that therefore they could not affect him: lord chief justice Pollexfen says, “here are three papers, that by three several witnesses acquainted with my lord's hand-writing, are testified, as they believe, to be his hand-writing; if so, then there is an end of all, for therein is a horrid deal of treason contained: if these instructions, these memorandums, these heads that were written down, were my lord's, and he did intend to go with these in a voyage towards France, that will be sufficient of itself, if there were nothing else in the cause, to maintain this indictment.” But he says farther, why they ought to condemn lord Preston—“but, gen-

teinen, you have in the rest of the papers that were taken, a great character of the bearer; that the bearer had done great things;—which was the case with respect to lord Preston—“that the bearer could inform them fully of every thing, and there should be full and entire confidence put in the bearer,” and a great many such phrases. “But,” says my lord, “I was not the bearer, it was Mr. Ashton that the papers were found about; it does not appear directly who the bearer was, and they were not found about me.”

“Now,” continues he, “pray let us look a little how this evidence stands: pray where was this bundle found? Even upon the gravel where my lord Preston and Mr. Ashton lay; there was it found, and my lord's own seal with it:” that is a circumstance which I forgot to mention, that upon the ballast, close to the papers, were found lord Preston's seal, which he had used when he was secretary of state to king James. “Besides, afterwards, when he is taken, and the letters taken with him in the same company, you hear what endeavours there were to suppress the truth, even by my lord's desiring to have the packet disposed of.”*

In the case of Ashton, in whose handwriting none of the papers were found, but the papers were found upon him in the handwriting of another prisoner, with all the suspicious circumstances which I have stated to you; on his trial, when he said that there were none in his handwriting, that he was not the bearer, though he put them in his bosom, they lying mixed with my lord's seal, though not his, in that case lord Holt says, “your being concerned, and importunately endeavouring to have them thrown overboard; the hiring the vessel to go with those treasonable papers to an enemy's country, and the papers found about you, is fact proved, and is left to the gentlemen of the jury to consider of.”†

Now, gentlemen, it is impossible that any case could have been more clearly made out than this case was, against lord Preston and Mr. Ashton; but Mr. Elliot was also arraigned along with the prisoners, and a great part of the evidence which went to affect lord Preston and Mr. Ashton, unquestionably went to affect Mr. Elliot; but the proof did not go to this extent, to show that Mr. Elliot was an active party in this conspiracy; it did not show that he was either the contriver of it, or that he was employed in carrying it on: it only showed that he had a general notion that they were going under suspicious circumstances; that he had a general notion that there might be danger, but it was not shown that he had any privity of the paper, and therefore, according to the unanimous testimony of all the historians of the time,

Mr. Elliot was not brought to trial, because there was no positive proof against him.

Gentlemen, I will not detain you any longer upon this part of the subject; and indeed I have little more to say to you.

My client, along with the other prisoners at the bar, fled from Ireland. It is not necessary for me to state to you what the situation of that country is. It is sufficient to be suspected, to be imprisoned; and it would be happy for them that it was sufficient that they were imprisoned to be tried; but this is not the case; they are imprisoned without a cause assigned, as in the case of one of the gentlemen at the bar, who was kept in close custody for six months, upon a charge of high treason; he was allowed afterwards to go out upon bail, and bail ought not to have been received, if a charge of high treason could have been made out against him; and still more, in the case of Mr. Roger O'Connor, he was imprisoned for six months in a dungeon in the gaol of Cork; he was some weeks ago acquitted, and no evidence whatever was produced against him. The witnesses were called upon the part of the crown, but none appeared. Mr. Roger O'Connor, upon the wings of brotherly affection, flew to this country, to comfort and assist his brother in the hour of peril. What was the consequence? To show you that it is in the power of the government of this country, or at least that that power is assumed, to send persons out of this country to Ireland, this unfortunate gentleman, who had been but one day in London, who had travelled seven or eight hundred miles, without sleep, and almost without refreshment, when he came here he was arrested by a warrant of the secretary of state, and sent back to Ireland; his evidence was material upon this cause, and the duke of Portland finding that it was so, sent a warrant that he might be brought back.

Gentlemen, I first propose to show you what the situation of Ireland is; and, secondly, that there is a power, either real or assumed, to send any person to Ireland, to be tried there, or to be imprisoned, if government does not think proper to bring him to a trial; but with respect to trial, the prisoners had an awful warning in that which lately took place, and of which you may have all heard, I am sure you have, of the fate of the unfortunate Mr. Orr.*

Mr. Attorney General.—Does your lordship think that the justice of Ireland is to be traduced in this manner?

Mr. Ferguson.—I am stating what I believe to be material to the defence of my client, to show that he would not have left Ireland, if in that country, from the situation in which it is,—I impute no blame to government,—I state the situation of the country to be such, that a person who is there, and who is sus-

* See lord Preston's case, *ante*, Vol. 12, pp. 741, 742.

† See Vol. 12, p. 813.

* As to the case of Orr, see the trial of Finerty, *ante*, Vol. 26, p. 901.

pected of any crime, may be imprisoned without any cause being alleged. I farther state the circumstances of a late trial, which cannot be objected to, because it shows the fate to which prisoners may be doomed if sent there. If your lordship thinks I ought not to proceed, I submit.

Mr. Justice Buller.—You are stating the particulars of a trial which took place in Ireland; whether the trial was right or wrong, we cannot enquire under what circumstances an indictment was preferred, and by what means it was tried.

Mr. Ferguson.—I meant to state, that such was the situation of that country, that jurymen, according to an affidavit which themselves made*—

Mr. Justice Buller.—That cannot be admitted.

Mr. Ferguson.—Gentlemen, I stand corrected by his lordship, who has prevented my going into that which my inexperience in cases of this kind made me think I had a right to do, which I conceived to be material to the defence of my client, but I certainly submit: however, there is no doubt that the situation of Ireland is such, without referring at all to any proceedings of the courts of justice, that the conflict of parties in that country is such, that any man who is active against the administration of that country, has great reason to fear for his life, I admit that on the other side it is the same; that, in fact, any person who has been forward, either in one party or another, is not now safe in that country; at least, if I were an Irishman, in that predicament, I should endeavour to leave it as soon as possible. You know that in Ireland, even supposing a prisoner is not brought to his trial, what the situation of a man who is merely suspected—

Mr. Justice Buller.—You are going too far; we cannot inquire into the law of Ireland.

Mr. Ferguson.—Nothing can be farther from my intention than to impute any blame to any court of justice in Ireland. In the case of Mr. Orr I meant to state a fact which happened after the trial, and which no ways related to the bench.

Mr. Justice Buller.—We cannot inquire into that.

Mr. Ferguson.—Gentlemen, a material part of the defence of my client is, as I conceive, that he left a country where he could not remain with safety; I attempted to show that he had a motive for leaving that country; I was endeavouring to show to you that he had a motive for leaving this country also, although that certainly is unnecessary, because it must appear to you in fact, that the counsel for the crown have made out no case whatever against him.

Gentlemen, I have done; I hope and trust, and am confident that no improper attempts which have been made, will influence you in

your verdict. I am sure I should be insulting you if I were to think that any one of you did not feel equal horror with myself; that his blood did not run cold, when he heard those monstrous doctrines which were promulgated in a letter addressed by a person of the name of Young respecting this trial;—that those attempts have been made—

Mr. Justice Lawrence.—It is no part of the evidence in this cause.

Mr. Justice Buller.—Nor can you produce it as evidence.

Mr. Ferguson.—Gentlemen, it is impossible for you I trust to return a verdict contrary to evidence, but I will ask you to guard against a prejudice, an unwilling and an involuntary prejudice, which perhaps may enter into the minds of men, anxious as you naturally are, for the independence of your country. The prisoners are accused of a great and horrid crime, they are accused of that treason which is the worst and the most detestable, as it is that which goes not only to the deposition of the king, but the subversion of the whole constitution and laws of your country, and that by a *foreign force*! the best of minds may find themselves a little biassed against any prisoners put upon their defence upon a charge like this. But do not, I beseech you, gentlemen, allow your minds to receive impressions of this nature. Take warning from what happened in a memorable period of the history of your country; you cannot have forgotten in the course of the last century, in the reign of Charles the 2^d, that monstrous fiction the popish plot: juries, unfortunately there, as it has been always admitted, brought in a verdict, which nobody has hitherto been able to justify. I am sorry also to say, that perhaps the best men of those times were to a certain degree concerned, at least, in endeavouring to raise a belief that such a plot existed; and I fear it cannot be denied, that the clamour raised by the popular leaders at that time, had too powerful and too fatal an influence upon the juries who tried the conspirators in that pretended plot. That there was a plan in those days to bring in popery and arbitrary power is certain, and in the zeal which men felt for the preservation of their liberties, they saw, in every idle rumour a plot, and in every accused person a conspirator.—The consequence was, that the blood of the innocent was shed, and verdicts were given which outraged every principle of humanity and justice. The times in which we live, bear in many points, too near a resemblance to those to which I have alluded. May they never resemble them in those dreadful judicial proceedings. If you should in this case return a verdict of guilty, my mind forbodes a train of dismal and melancholy events which await my country:—You will not be the first to open the scene of blood.

Mr. Scott.—Gentlemen of the Jury:—I am of counsel in this cause for that excellent and innocent young man, Jeremiah Leary;

* See Vol. 26, p. 922.

I am really at a loss to know, from the evidence which I have heard, and which you have heard also, what the charge is against that boy; he seems to me to have been most wickedly and wantonly thrust into this indictment. Gentlemen, Leary is the servant of Mr. O'Connor, and what evidence then can he (a poor servant) call to prove that which must be manifest to the whole world, his innocence? Gentlemen, it is impossible that he should have the opportunity of subpoenaing witnesses or calling any evidence at all. What then, is he to have no defence? Is he to sink under the weight of this accusation? No, gentlemen, he shall not fall a victim to the cruelty and inhumanity of this charge; and I am justified in calling this a cruel charge, because, in the whole history of the legal proceedings of this country, there never was an instance of a servant, under such circumstances, being put upon a trial for his life, for high treason. Gentlemen, I will, however, call evidence in this lad's defence, I will call such evidence as shall make his prosecutors blush; I do not mean the learned attorney, or any of the learned gentlemen by whom he is professionally assisted, but I mean the real authors of this indictment. Gentlemen, I call this very indictment, that evidence, which to their everlasting disgrace they have brought against him; and what does it prove? Look you gentlemen, and see what it proves—Why it proves that he was the servant of Mr. O'Connor; that he did as his master bid him; he packed up his master's things—he went with his master—and, in short, obeyed his master's orders. He knew nothing, and could therefore tell nothing. Good God! gentlemen, what is his crime? That he is a servant; and for this is that boy, now standing at your bar, trembling for his life.

Gentlemen, this is my case; it is very plain and very short; I think I see how you feel it, and I will press it no farther upon you; for to make a long speech would only be taking up your time, and giving an importance to this case which it does not deserve. The defence of the rest I cannot enter into, however I may feel disposed to do it, because that has been wisely entrusted to my learned friends, who are more able, more learned, and more experienced than myself, one of whom has done himself immortal honour already, and I am sure I know my friend Mr. Dallas too well, not to know that it is out of his power to do otherwise. All that I can say to you, gentlemen, is this, that if, upon the evidence which the crown has brought against him, this poor lad should be convicted (which I am sure is impossible) to my latest hour I shall never cease to think, that it was the cruellest murder ever committed in England.

EVIDENCE FOR THE PRISONERS.

Jeremiah Hasset sworn.—Examined by
Mr. Dallas.

What are you?—Keeper of the round tower of the Castle of Dublin.

Were you keeper of the tower in the month of July last?—Yes.

Do you remember Mr. Arthur O'Connor, now at the bar, being confined there?—I do.

Was he confined in close custody under your charge?—He was.

Was he suffered to see any friend?—Yes; Sir Lawrence Parsons and counsellor O'Brady.

How soon after his confinement did that happen?—Shortly after his confinement.

But, except them, were any other friends suffered to visit him?—No, no friends at all; Mr. Stevenson, constable of the Castle, or Mr. Asten Cooper, had permission to come.

But with the exception of the persons you have mentioned, no other friends were permitted to visit him?—No.

Do you recollect, during the time of his confinement, any shot being fired towards that part of the gaol in which he was confined?—I do.

When was that?—About the latter end of June.

Where were you when this shot fired?—Leaning over the parapet wall, at the top of the tower.

Where was Mr. O'Connor's apartment?—Two flights under me.

By whom was that shot fired?—By two Highland Fencibles.

Were the Highland Fencibles the soldiers who were then on guard?—They were.

At what hour of the day was this?—Between seven and eight o'clock in the evening.

Had you heard these soldiers challenge any person before this shot was fired?—No.

Were there one or two shots fired?—Two only, from the two different sentinels.

Were they fired nearly at the same time?—Yes, they were; the first man that fired turned about to the second man, and desired him to fire, and he did fire.

After this did you give any caution to Mr. O'Connor about appearing or not appearing at the window?—I did not, but he took it as a caution himself, and he did not wish to go to the window.

Mr. Garrow.—As this is no evidence in this cause, I will not ask the witness any questions.

——— *Stewart, esq.* sworn.—Examined by
Mr. Plumer.

Please to look at this letter: do you know whose hand-writing it is?—I wrote this letter.

Mr. Plumer.—My lord, that is the letter which Mr. Lane spoke to, and said was Mr. O'Connor's hand-writing. Was Mr. O'Connor privy to or did he know any thing about that letter?—I do not know.

Mr. Justice Buller.—You must know whether he was privy to it if you wrote it.

Witness.—He certainly was not.

Mr. Plumer.—Had he any knowledge of the letter at the time you wrote it?—Certainly not.

I believe you have known one of the gen-

lemen at the bar, Mr. O'Coigly?—Yes, I have known him about three years.

Where did he live in Ireland?—In Dundalk, in the county of Louth.

Do you know any circumstances that occasioned his leaving that country?—I heard from his father—

Do you know of there being a party in the place where he was, that were adverse to him and his family?—Yes, there were societies of Orange-men, originally Peep-of-Day-men; his father's house was racked I understand.

Did you see that it was?—I did not, but it was stated, with many other petitions that came before the grand jury, that it was.

I believe you are a magistrate of the county?—I am.

You did not personally see what was actually done by these people in that neighbourhood?—I did not; I saw a great deal of racking.

You know there were in fact, great outrages committed by those persons in the neighbourhood where he lived?—Yes.

During the time you have known Mr. O'Coigly what has been his general character and conduct?—I thought him a good moral character, as far as I knew him personally, and I never heard any thing to the contrary.

At what time are you speaking of these outrages being committed by the Orange party? how lately?—There have been persecutions of that kind for ten years past.

Down to what time?—It was going on when I left that country, about nine or ten months ago.

——— Stewart, esq. cross-examined by Mr. Garrow.

Perhaps you know of some other societies of persons in Ireland besides Peep-of-Day men?—Yes.

Do you happen to know any persons by the description of United Irishmen?—I have heard a great deal of them.

Do you know any persons who are members of that society?—I know a great number who have told me they were United Irishmen.

I am induced by the manner in which you answered my friend's questions, as to the knowledge of this letter, to ask you on what occasion you wrote it?—Mr. O'Coigly called upon me in London, and told me he was in great distress; he told me he was under the necessity of changing his name; I had been under obligations to him of a very particular nature; he said he was in distress, and asked me if I could accommodate him with some money; I told him it was not convenient to me, I had some Irish bills about me but could get little money for them here; that I expected remittances soon, and would send him some if it was convenient; and I did send him some.

That was the whole correspondence that you had with Mr. O'Coigly, in London; he asked you for a loan, which you with some inconvenience gave him?—Yes.

Mr. Justice Buller.—Do you know any of the other persons at the bar?—I know Mr. O'Connor.

Mr. Garrow.—You do not know any gentleman of the name of Binns?—I do not know his person.

You do not know any person of the name of John Binns?—No.

Nor ever corresponded with any person of that name?—No.

You would have been surprised to have received a letter from any person of that name?—I should.

It was in London that Mr. O'Coigly called upon you; you never saw him any where else in this country, I take for granted?—No.

Had you been upon any intimate footing with Mr. O'Coigly?—I was.

Had he dined with you at any time?—Yes; he dined with me in London the day he came; I can hardly say he dined, he did not stay above half an hour.

What name did he pass by at your house?—Johnson, or Jones.

You addressed the letter in that name?—I addressed the letter to that name.

Where did he represent his quarters to be?—He told me in Plough Court.

And there you sent the letter to him?—Yes.

As you seem to be pretty accurately acquainted with the state of parties in Ireland, you can explain that paper [showing the witness the following printed paper found in the box mentioned in the evidence of John Jones; Vide Vol. 26, p. 1363.]

" CERTIFICATE.

" London Society of United Irishmen. No. 1.

" I hereby certify, that
" has been duly elected, and having taken the
" Test provided in the Constitution, has been
" admitted a Member of this Society.

" W. HUBARD, Secretary."

(Scal.)

" No. 9."

I never saw such a thing as that.

As you knew Mr. O'Coigly was a priest, how did you address him in your letter?—He said he went by the name of Captain.

How did you address him?—It is very likely that I addressed him as captain.

Or, my dear captain?—Yes.

Do you know how long this was before Mr. O'Coigly left London?—I believe it was about six or seven days.

He represented himself to you to be in distressed circumstances?—Yes; he asked me to accommodate him with twenty pound, or some such sum, till he could get remittances from Ireland.

When did you see O'Coigly last before you saw him in London?—I believe the last place I saw him in was in the county of Down, near the town of Downpatrick; I overtook him on the road, as I was riding from the assizes.

Was that the Summer assizes at Kildare?—No, the county of Down.

How long is it ago?—About a year ago.

Did you know from Mr. O'Coigly that he had been upon the Continent?—No, I never heard that he had.

The Right Hon. *Francis Rawdon*, Earl of *Moira** sworn.—Examined by Mr. *Dallas*.

Has your lordship any knowledge of Mr. O'Connor, now at the bar?—But very little.

Has your lordship ever had occasion to converse with him upon political subjects?—I think only once.

From the course of that conversation, did he appear to your lordship to be well or ill affected towards this country?

Mr. *Solicitor General*.—I submit to the Court, whether evidence as to general conversations by a prisoner, can be received?

Mr. *Justice Buller*.—They cannot ask to particular facts.—Lord *Moira* never saw him but once, therefore he cannot speak as to his general conversations. You may ask as to general demeanor, as to his general conduct in life.

Mr. *Dallas*.—I take it to be clear that it is competent to any witness to form his general opinion as to the loyalty of any subject of this country, upon conversations he has held with him from time to time. I submit that the objection is to the effect of the evidence, not its competency. My question to the noble earl is, whether, in the course of conversations he had with Mr. O'Connor, he had reason to believe him to be a loyal subject or otherwise?

Mr. *Justice Heath*.—You may ask lord *Moira* generally whether he thinks Mr. O'Connor a loyal subject.

Mr. *Dallas*.—Does your lordship believe, from Mr. O'Connor's general character, that he is a loyal subject?—I do not feel myself at all competent to speak to Mr. O'Connor's general character, from the little acquaintance I have had with him, but from a particular occasion—

Mr. *Garrow*.—His lordship cannot state any particular fact.

Mr. *Plumer*.—This subject was very fully considered on Hardy's trial† Every case in the State Trials was there collected together from beginning to end, and there are a great many cases in which the learned judges themselves not only put the questions but called upon the counsel for the prisoners to ask that question, and to prove it, if they could, by any persons who would state that they had heard the prisoner make use of any declarations expressive of his loyalty. I admit a single instance is open to this objection—a man may, for the purpose of representing himself to be what he is not, hold a conversation, with a view to its being given in evidence in his favour; but that goes to the credit, not to the competency.

* In 1816 created Marquis of Hastings.

† See Vol. 24, pp. 1066, *et seq.*

Mr. *Justice Buller*.—Suppose a man were indicted for murder, and he could bring a person to prove a particular act of humanity, you could not conceive that would be evidence.

Mr. *Dallas*.—Does your lordship know a person of the name of Dutton, a quartermaster in the artillery?—I have heard of him, I do not know him.

Does your lordship know what is his general character?

Mr. *Garrow*.—His lordship says that all he knows of Dutton's character is from hearsay.

Mr. *Dallas*.—I apprehend, that what Mr. *Garrow* states as a disqualification, upon the part of the noble earl, to give such evidence, is by no means so, when it comes to be accurately stated.

Mr. *Garrow*.—The constant practice, where character has been enquired into, has been to put the question thus:—are you acquainted with such a person?—From your acquaintance with him, what is his general character?—But I never heard that when a witness says, I do not know the person, but have heard of him, that then it was asked, what have you heard of his reputation.

Mr. *Dallas*.—I admit that hearsay would not be evidence of any particular fact. But Mr. *Garrow* seems to have forgotten, that not long since he himself stated that character was not fact, but a conclusion to be drawn from a great number of facts, which might have happened in a very long or a short life. Character, in my estimation of it, is no more than the reputation which a man generally bears among those to whom he is known; when, therefore, a witness is asked with respect to the character of any particular person, the very question shows that it is not confined to the fact; but that it goes beyond it; because he is not asked, from his knowledge of the person, would he believe him, but whether, from his knowledge of the character of that person, he would believe him. If character is therefore no more than the general opinion which is entertained of a person, by those to whom he is well known, nothing can be more clear than that it is the general estimation in which he stands—that general estimation to be collected from the course of his general conversation; I take it to be perfectly clear, that it is no objection in this case to an account of character, to say that it amounts only to hearsay; because, when one man gives the character of another, it must be that which he has heard from others, for it extends beyond his own knowledge, and the question is generally put to an extent beyond his knowledge. Upon these grounds, I submit that I am entitled to ask the noble earl what is the general character which this man bears.

Mr. *Justice Buller*.—Did you ever hear that asked when the witness said he knew nothing about the person?

Mr. *Justice Heath*.—It must be founded in personal knowledge.

Mr. Justice Buller.—I must tell the jury, that the noble lord says this witness is not to be believed upon his oath, but he knows nothing of him. Then they have a right, on the other side, to ask to particular facts;—then my lord Moira give us an instance. Suppose his lordship mentions his appearance at some court of justice in Ireland; that the evidence he gave there was not believed—the next question is, were you present, did you hear the trial, my lord?—No. Do you know that he swore it?—No.

Mr. Justice Lawrence.—The question is always put in this way—Do you know the witness?—Yes. Then, what do you know of him?

Mr. Dallas.—It is my duty to acquiesce; I have submitted my reasons.

Cornelius Kettle sworn.—Examined by Mr. Plumer.

Mr. Plumer.—I call this witness to speak as to a person of the name of Thomsett. Do you know Henry Thomsett?—Yes.

Do you remember seeing him after the prisoners were apprehended?—Yes.

Did you hear him say any thing respecting the prisoners?—Yes; I heard him say he conveyed them from Whitstable to Margate, and he interrogated them by the way as to their going out of the country.

Mr. Plumer.—After that conversation, what did he say respecting himself?

Mr. Attorney General.—What else did he say?

Witness.—That they made an agreement with him respecting the price to carry them to Margate, and the men satisfied him very handsomely, and on his return back he said he met a man that he called North; and this man was in pursuit of these men, according to his account, and he charged him (Thomsett) with being the person that carried these men, and he declared he knew nothing of them.

Mr. Plumer.—Did Thomsett say any thing about himself, or what he should get by it?—In a conversation after that, he told me it was a good job for him; he would not take a hundred pound for his job.

Are you sure you heard him say that?—Yes, certainly I did; it gave me an idea immediately that interest was his object.

Cornelius Kettle cross-examined by Mr. Gatton.

What are you?—A clock and watchmaker.

Where do you live?—At Offham, in this county, where Thomsett lives.

When did this conversation take place, and where?—It took place at Offham, I believe, about a week or so, where they are about after the prisoners were apprehended.

Where was it, at the public-house, or where?—I was coming up the street, he asked me to go and drink with him, and began telling me the circumstances of the story.

VOL. XXVIII.

What more did he tell you then?—That he positively denied to North that he had seen any such men, or carried them; that North insisted he must be the person, as he had had information he was the man. He said, perhaps it may be my brother; North insisted he must be the man; he denied it; that North said, these are dangerous men, or something, I do not recollect just the expression; and said he was in pursuit after them to take them; that he said, is there any reward or premium for taking them? He said, yes there was; he said he had conveyed some men through the country, he supposed they were half way to France by that time, but if he would let him have the bounty or premium, he might tell him where he could have them—the wind might blow them back; that North said he would; then he said, go along with me before a witness, and confirm this, that I shall have the bounty or premium, and I will endeavour to inform you where they are; and that after that, he informed the person where they were at Margate.

And that was all?—Yes.

This he told you without the least hesitation, soon after these persons were apprehended?—Yes.

Have you had several conversations with him since?—Several times.

Did he always represent it the same way?—He never mentioned it particularly since, but other circumstances respecting it; the second time I saw him after that, he entered into discourse about it, it was the common talk of the place; he said he had been to London, and there was rare living there; that good wine was a good thing in a man's belly.

Did he say any thing more?—And there was a coat, he said that was introduced; he told me before, that he was one of the principal evidences against these men, and their lives depended upon his evidence chiefly, on the great coat that was supposed to belong to some of them.

Did he mention the name of the person it was supposed to belong to?—I do not recollect that he did; I did not pay particular attention; if I had any idea I should be here, I might; this coat, he told me, contained matter of very great importance belonging to the prisoners, such as a printed letter or address to the French Directory; that this coat was produced; and he was asked whether he knew anything of the coat? Why, no, he could not swear to the coat he said. I do not know any thing more particularly.

Did he describe whether it was an English or a French stamp upon the printed paper?—He described no stamp at all, but that he was informed this coat contained a printed letter or something to the French Directory.

Who was the first person that you mentioned this to?—I do not know.

Perhaps you did not mention it to any person?—Yes, I did, I believe.

D

Try and recollect whom you first mentioned it to?—I mentioned many things he spoke to me, which I suppose was the instigation of my coming here.

Whom did you first mention it to?—I do not recollect; it was a public conversation.

He made no secret of all this?—I do not know that he made that public.

Mr. Justice Buller.—What do you mean by a public conversation; was this in the alehouse?—Yes.

Mr. Justice Buller.—Was any body else in the room besides?—Yes, but I do not know that they heard it.

Mr. Garrow.—You said it was a public conversation?—Afterwards, respecting other matters.

Did Thomsett make any secret of any part of this story?—He told it me.

Did he caution you to keep it a secret?—No.

When were you applied to first to attend here as a witness?—On Saturday last.

Who applied to you?—A person of the name of Bonney, I believe.

And not before, you are sure?—No.

Did he apply to you at your own house?—Yes.

Where is that?—At Offham, as I told you before.

Is that in the neighbourhood of Deal or Whitstable?—Nearer Town Malling.

You cannot recollect any person that you told this story to till you told it to Mr. Bonney?—I do not know at present.

Were there many persons in the room when he held the first conversation?—No.

Was it in the tap-room, or a private room?—In the tap-room.

The landlord and his wife passing backwards and forwards, I suppose?—Yes; but it is common, when a person gets upon such a subject, not to talk very loud; I suppose you have been in a public-house.

There was nobody else, as far as you heard or believe, that heard any part of it?—I believe not.

Was the second conversation in the same public-house?—Yes.

In the tap-room?—Yes.

Were there many people present?—There might be two or three.

Was it said in a low tone of voice, or publicly and openly?—In something of a secret manner.

So that you might hear it, and nobody else; nobody heard that second conversation?—No.

So there has been no conversation upon this subject with Thomsett that any body else heard?—No.

Upon this he was particularly reserved, and spoke in a low tone of voice?—He was not very loud, not so loud as you are at present.

Did Mr. Bonney subpoena you on Saturday?—Yes, as I told you before.

You had not told me that before; he subpoenaed you on Saturday, did he?—Yes.

He served you with the subpoena as soon as he came?—No, we had a little conversation first.

He brought the subpoena ready, and delivered it to you before he left you?—Yes, I am sure of that.

But you had a little conversation first?—Yes.

Now having taken some time to recollect yourself, I will put one question again; can you now recollect any person to whom you stated either of these conversations before Mr. Bonney applied to you?—No, I do not recollect them.

Cornelius Kettle re-examined by Mr. *Plumer*.

In the second conversation about which the gentleman has asked you did Thomsett say whether he knew this great-coat or not?—No, he said he could not swear to it; he told me, several times afterwards, that he could not swear to that great-coat.

Did he tell you whether he was allowed any thing or not?—Yes.

What?—That he was before Pitt, Dundas, and White, as he called them; he said he told them he was a smuggler; that Mr. White called him on one side, and said it was not proper he should repeat that in that place; and that in their conversation he asked him what he earned a week, and so on; that he said sometimes more, sometimes less, sometimes he got ten pounds; that they settled upon him six guineas a month till the trials were over, his expenses were to be paid; that he was to lay aside his business, and be at their call; he was to have six guineas a month till the trials were over; thinks I, poor man, they nurse you; I thought so to myself.

Mr. Garrow.—As this is a new fact, I am entitled, but shall not exercise my right, to cross-examine upon it.

Kettle.—I should not introduce any falsehood, if I knew it, upon such an important affair.

Sarah Jones sworn.—Examined by Mr. *Dallas*.

Do you know Henry Thomsett?—Yes.

Have you ever heard any conversation with him about the prisoners?—Yes.

When was it?—On the Monday that the prisoners were first arraigned.

Was it before or after they were arraigned?—Before.

Where was it?—At my own house.

Was there any person present but you and him?—There was a maid-servant who was in and out during the time.

What did he say to you in that conversation?—I sent for him; he asked me what I wanted him for; I said I had sent for him to ask him how his wife and children did; he said very well. I said, in the next place,

what do you mean to do with these prisoners, he said, hang them, to be sure; I said, I am sorry for that, I hoped he would show mercy; he said, he would hang them if they had a thousand lives.

Sarah Jones cross-examined by *Mr. Garrow*.

You sent for him: when he came, you said you sent for him to ask him how his wife and children did: he said very well; then you said, there was another thing you had to ask him; what do you mean to do with these people?—Yes.

Your servant was going backward and forward, and did not hear this, I take for granted?—She heard some words.

But not all that passed?—No.

Is she here?—Yes.

How came you to send for him to ask him those questions about the prisoners?—On account of his little boy; I saw him in the morning going down the street, he said his father was at the inn; he said I am very sorry, aunt, my father says he will hang the people, and if he does I wont live at home, for he will see their ghosts afterwards.

And lest he should see their ghosts you sent to admonish him not to assist in the prosecution. Whom, on the part of the prisoners, did you, in the course of that day, mention this to?—I cannot say in particular, I mentioned it first to my husband.

And then, in the course of that day, you communicated it to some friend of the prisoners?—I did not myself at all.

You desired your husband, perhaps?—I did not.

How then?—I knew nothing about it till I was subpoenaed.

When was that?—On Sunday last.

This conversation took place very soon after the prisoners were taken up?—I do not know how soon the prisoners were taken; to the best of my knowledge this was on the 9th of March.

It was the day upon which they were arraigned here, was it?—Yes.

And he was coming here to attend the trial?—I suppose so.

Do you know any gentleman at Canterbury of the name of Peck?—Yes, I do.

What is he?—A physician.

When did you see him?—I cannot say particularly.

Have you seen him lately?—No; I think the last time I saw him was last Friday.

Where did you see him?—I saw him pass by.

Had you any talk with him that day?—No.

When did you talk with Mr. Peck upon this subject?—I cannot say when I did.

It is not long ago?—Yes, I think it was soon after I saw my brother; we had some little conversation, but not much, relating to my brother.

Was it the day of the arraignment that you saw your brother, or the next day?—I cannot tell.

How long had you seen the doctor before you sent for your brother?—It might be a week or a fortnight, I cannot say.

Had you seen Mr. Peck after his relation, Mr. O'Connor, was taken up?—I cannot recollect, but I never had any conversation with Mr. Peck.

Mr. O'Connor.—I have no such relation as Mr. Peck, nor do I know that there is any such man existing.

Mr. Garrow.—Do you know Mrs. Peck, the doctor's lady?—I do.

Do you know, from her, whether she is related to Mr. O'Connor?

Mr. Plumer.—You cannot ask that question.

Mr. Garrow.—You do not know, of your own knowledge, whether Mrs. Peck is or not related to any of the persons here?—I only know I heard her say—

Mr. Garrow.—The gentlemen object to your stating what you heard her say.

Witness.—I know nothing of my own knowledge.

How soon after these gentlemen were taken up did you see Mr. Peck?—I cannot recollect.

Did Mr. Peck tell you you would be subpoenaed?—No.

Who did subpoena you?—Mr. Hesland.

Does he live at Canterbury?—Yes.

What is he?—He keeps a public-house.

Mary Morgan sworn.—Examined by *Mr. Dallas*.

What are you?—I am a calenderer.

Did you at any time live servant with Mrs. Jones?—Yes.

How long ago?—I live with her now.

Did you ever hear any conversation between her and Thomsett about any of the prisoners?—Yes, some words passed.

When?—On the 9th of March.

How many weeks ago?—I am not able exactly to say.

Mr. Attorney General.—The 9th of March was the day, was it?—Yes.

Mr. Dallas.—What conversation did you hear pass?—She asked what he had to say concerning the prisoners, and he said he would hang them; I left the room then.

Were you in the room all the time of the conversation between Mr. Thomsett and Mrs. Jones?—I was not in the room all the time.

The Honourable *Thomas Erskine* M. P. [afterwards Lord Chancellor Erskine] sworn.—Examined by *Mr. Plumer*.

You know Mr. O'Connor?—I do.

How long have you known him?—I have known Mr. O'Connor between two and three years, when he was last in England before this time; and I live a great deal with those with whom Mr. O'Connor lives much when he is in this country.

Give me leave to ask who those friends are?—Mr. O'Connor's friends, in this country,

are principally those persons who are my friends—

Mr. Attorney General.—The question put was, whether Mr. Erskine knew Mr. O'Connor.

Mr. Plumer.—Mr. Erskine said, he lived principally with his friends—I asked him, therefore, who those friends were?

Mr. Erskine.—I do not stand here to argue the admissibility of evidence, and you may depend upon it I shall strictly adhere to giving answers to questions. Mr. O'Connor has principally lived with persons of high rank in the public world—Mr. Fox, Mr. Grey, Mr. Sheridan, all that class of gentlemen with whom I have acted in public life in parliament, and with many other persons, too many for me to recollect at this moment.

Was that the case, this last time he was in England, as well as upon former occasions?—Certainly so; and in consequence of that I know Mr. O'Connor's character as well as I can be acquainted with the character of any gentleman who lives principally in another country, but whom I have seen frequently here.

Shall I beg the favour of you to state what that character is?—In my opinion, the best character that any man can possibly possess. I have a sincere regard and esteem for Mr. O'Connor, founded upon my opinion and belief that he is a man of the strictest honour and integrity—-a man not only capable of, but who has made, great sacrifices to what he thinks right; if there be any more prominent feature in his character than another, as far as I am acquainted with it, and I am much acquainted with it, it is a noble mindedness, and a high spirit of honor, and I therefore feel myself not only entitled, but bound upon my oath, to say, in the face of God and my country, as a British gentleman, which is the best thing any man can be, that he is incapable, in my judgment, of acting with treachery or duplicity to any man, but most of all to those for whom he professes friendship and regard; and I do know positively of my own knowledge, that he has been in the constant course of professing not merely regard, but admiration and enthusiasm for the persons whose names I mentioned.

Did you ever observe any change of that sentiment in Mr. O'Connor towards them?—So help me God, never.

As far as fell within your knowledge, did you know that he had any other connexions in this country, besides the gentlemen you have mentioned?—Upon my oath I had no reason to believe that he had.

Whether you ever observed, during the latter part of the time that you knew him, any difference either upon public or private subjects, between himself and you, or any other gentlemen with whom he associated here?—Quite the reverse. Recollecting the station which I hold in the law, I should be little desirous to urge upon the Court any thing

that could be at all questionable in point of evidence, otherwise I could, if the Court thought it right, state many many instances of his persevering in the same opinions, and in the same regards; this I may say generally, that upon my oath, I never had any reason to think that Mr. O'Connor's principles and opinions differed from my own.

Am I to understand that as well upon public subjects as private?—Certainly so.

Did you see Mr. O'Connor in the month of January last?—I did

Where did you see him?—I saw him at my own house.

Did you give him any advice upon that occasion?—Pursuing the same reserve, which I feel myself peculiarly bound to adhere to for the reasons I have given, I shall not, until I receive permission from the Court, state any representation that Mr. O'Connor made to me, and the more so, as I certainly feel a great deal upon the occasion, because Mr. O'Connor had very little to communicate to me that I was not already acquainted with, as matter of notoriety concerning his situation in Ireland.

Mr. Attorney General.—I take it to be clear that the fact may be given in evidence, that you either did or not advise him to go out of the kingdom, but I apprehend nothing more can be said about it, either as a reason for not detailing the circumstances, or in the way of detailing the circumstances, but that the question must be simply that.

Mr. Erskine.—I am obliged to Mr. Attorney general—I do assure the Court, that I might have been in another situation, where those objections could not have been made. I might have been defending Mr. O'Connor, as one of his counsel, but I felt my situation as a witness, so that I declined that. I shall answer the question; I not only advised Mr. O'Connor, but urged and importuned Mr. O'Connor, two or three days before the first day of Hilary Term, which commenced the 23rd of January, to leave this country any how.

Mr. Plumer.—You have no objection to state all that passed between you upon that subject?—Certainly not.

Mr. Garrow.—The law makes the objection, and we are to be governed by the rules of law.

Mr. Erskine.—I certainly have no objection whatever.

Mr. Attorney General.—We know you not only have no objection, but that you can have none if the question is put to you, therefore the question ought not to be put.

Mr. Plumer.—You say you are clear it was two or three days before Hilary Term, which began on the 23rd of January?—I will not take upon me to speak to the day but I will take positively upon me to speak to its being before the term.

Mr. Justice Buller.—And you think two or three days?—I think so.

The honourable *Thomas Erskine*, M. P. cross-examined by Mr. *Attorney-General*.

Have I taken you right, when I understood you to be sure that the advice was given in the month of January?—I am positively certain that it was before Hilary Term.

And I think you have said upon your oath, that you have no reason to believe that Mr. O'Connor had any other connexions?—I have no reason to believe, so help me God, that he had any other connexions.

The honourable *Charles James Fox*, M. P. sworn.—Examined by Mr. *Dallas*.

Do you know Mr. O'Connor?—I do.

How long have you known him?—I think it is about four years; but whether three or four years, I do not recollect.

Have you had occasion to see him frequently in the course of that time?—It is something more than three years; frequently,

Have you conversed with him frequently upon political subjects?—Yes, frequently.

Who were the persons with whom he chiefly lived in this country?—He lived principally in the company in which I have the honour to live myself a good deal; he was very much with the leading members in the House of Commons and the House of Lords, who are sometimes called the Opposition, who are generally in the minority.

Those are the persons with whom he chiefly lived?—Principally, as far as my knowledge went.

Did he live upon terms of confidence and esteem with them?—I believe very much: certainly with me, for one, very much.

Did that esteem and confidence continue up to the time, when he went to Margate in February last?—Certainly so with respect to myself.

During the whole course of your acquaintance and of your conversation with him, have you had reason to suppose him a man well or ill affected to his country?—I always thought Mr. O'Connor to be perfectly well affected to his country; I have always considered him to be a very enlightened man, attached to the principles and the constitution of this country, upon which the present family sit upon the throne, and to which we owe all our liberties.

Are you acquainted with lord Edward Fitzgerald?—Very intimately, he is a very near relation of mine, and very much esteemed by me.

Whom did he marry?—He married a French young lady that was here with Madame de Sillery.

Do you know whether or not lord Edward Fitzgerald intended some time since to go to France?—I believe he did.

About what time?—I should think about two years ago; it was about the time he went

to Hamburgh, and I believe he was very anxious to go to France in order to settle some affairs there relative to his wife and her connexions; I remember the circumstance particularly, because in the present situation of things knowing that it was contrary to the law of this country to go to France, and if it were not, that it might not be prudent in a person in his situation to do so, I made him promise that when he went abroad, which he did, he would not go into the French dominions.

Were the affairs to which you have alluded concerns of property?—I believe they were; they were concerns relative to lady Edward Fitzgerald, and her connexions.

Have you from your knowledge of Mr. O'Connor, any reason to believe him to be a man of dissimulation?—Perfectly the contrary; I should describe him as a man of the openest carriage, one of them, that I know.

Is he cold and reserved, or ardent and affectionate in his friendship?—Very ardent and affectionate in his friendships, and totally without any reserve, I should think as much as any man I have the honour to be acquainted with.

The Honourable *Charles James Fox*, M. P. cross-examined by Mr. *Solicitor General*.

You mentioned Lady Edward Fitzgerald, I believe she is familiarly called Pamela?—She was before she was married.

Do you know Mr. O'Connor's hand-writing?—I have seen his hand-writing more than once, but I certainly never saw him write.

You mentioned that you conceived the political opinions of Mr. O'Connor, and those of your near friends, to be the same?—That was not exactly what I said, but if I am asked now I will answer that question; I said he lived principally with the gentlemen I have described, I believe his general principles were the principles of the constitution established at the Revolution.

I believe it was part of the wish of you and your friends that such measures should be adopted in Ireland as you conceived to have a tendency to conciliate?—Most certainly.

I believe you and your friends approved of the conduct of lord Fitzwilliam when he was there?—I certainly approved of all that it was understood lord Fitzwilliam intended to do.

Particularly as to the Catholics?—Particularly as to the Catholics; it may be necessary to add, that I was at that time, and have ever since been of opinion, that the concessions to the Catholics which are alluded to, would be in no degree beneficial, but, perhaps, even injurious, if they were not accompanied with an attention to the complaints of the Protestant and Presbyterian subjects of Ireland, as well as those of the Catholics, with respect to a reform of parliament.

Do you know of Mr. O'Connor's being in any manner connected with any of the prisoners at the bar?—I never heard of it.

Mr. Dallas.---Was it your opinion, that it was for the interest and the happiness of Ireland, that the Catholics and Presbyterians should be united, instead of separated and disunited?---Certainly.

In your conversations with Mr. O'Connor, did he appear to concern himself chiefly with English or Irish politics?---Almost wholly with Irish politics.

The Right Honourable John Earl of Suffolk and Berkshire sworn.---Examined by Mr. Plumer.

Does your lordship know Mr. O'Connor?---Yes, I do.

How long has your lordship known him?---It was eleven years ago when I first knew him, or rather later, it was about June or July, 1787.

Has your lordship known him from that time down to the present?---Certainly, but I have seen him on very few occasions since, and if asked upon that, I can specify the particular occasions upon which I have seen him.

I believe your lordship was acquainted with him in Ireland, as well as in England?---If the Court will give me leave, I will mention how I became acquainted with him in Ireland, because I think it material. I went to my regiment which was at Cork; I went first to Dublin, I was there four or five days; I inquired at Dublin my way to Cork, and the best way of going there; they recommended me to go the first thirty miles by water in a kind of passage boat, something like the style of the Dutch boats, that I should meet with a mixture of company, but with some very good company. I had no conversation with Mr. O'Connor as I recollect, but chiefly with Alexander Shortly; but upon the delay of the boat in passing through the locks, I walked by the side of the boat; it took up sometime to pass through them; I think Mr. O'Connor overtook me, we entered into conversation; I own I was struck both with his manner, which appeared to me extremely gentleman-like, and that kind of diffidence which I have always very much admired in his character; for that has always struck me as a material part of his character. I continued my conversation with him, during the remainder of my passage. After we returned to the boat, I found he was likewise going to Cork, where I was going to my regiment; it was much my wish that he should accompany me there, from what I had seen of him; and in order to induce him to it, I told him, Mr. O'Connor, I am going to Cork, I find you are going there, and that your friends live in that part of the country; I shall be extremely obliged to you, if you will take the place of my servant in my chaise, and in order to induce Mr. O'Connor to do it, I said you shall pay for the post horse he is to ride; I put it upon that footing, thinking he might otherwise object to it; he very readily accepted of the

offer; and you may suppose, gentlemen, that in a communication of three days and three nights, constantly together upon the road, that we were pretty well acquainted, and a very friendly communication it certainly was. I certainly did very much admire that manner which I found confirmed to me from that acquaintance, and likewise those principles which he then had occasion to mention. I remember particularly, that a great part of our conversation was about Ireland, of which knowing nothing (indeed I was born in it, but I left it at a very early period of life—

Whether from that time you had an opportunity of knowing and conversing familiarly with him, and discovering his political and public sentiments, as well as his private character?---Only once that I recollect, particularly since, and that is two years ago, when he lived in Grafton-street; I then had a conversation with him of about half an hour.

Did you live much with him in Ireland?---No, I remained at Cork, and he went immediately to his friends; I saw little of him afterwards in Ireland.

Mr. Justice Butler.---Does your lordship mean that a few years ago was the only time when you talked with him upon political subjects?---The politics of the present day, were out of the question then, it was upon the corruption of Ireland, that a great part of our conversation consisted during that journey.

Mr. Plumer.---Did your lordship see enough of his private character and behaviour, to observe whether he was a reserved man, or a man of an open disposition?---I certainly saw so much of him, that I have always told lady Suffolk, and the rest of my friends, that I had met, in that country, with one of the most extraordinary young men I ever had conversed with, both with regard to ability, and, as far as I could judge, for moral character, for I think I never heard purer principles uttered by any man in my life; he struck me to be at that time about twenty-one; what his real age is I do not know.

Did you observe any marks of duplicity or dissimulation about him or the reverse?---I wish to say quite the reverse, and so much so, that in the last conversation I had with him two years ago, I wished to introduce him to some of those persons in this country for whose character and abilities I have the highest respect, and if you please, I will mention the gentlemen, lord Moira, Mr. Sheridan, the bishop of Landaff (Watson), and Mr. Serjeant Adair.---They are persons for whom I entertain a particular regard, and you may judge from the mixture, that it was not a political party which I wished to introduce him to; but it was those friends for whom I have a particular respect.

Have you had any reason to alter your sentiments respecting him?---Quite the reverse; that was the last time I think that I saw Mr. O'Connor.

The Right Honourable John Earl of Suffolk and Berkshire, cross-examined by Mr. Attorney General.

Then you saw Mr. O'Connor eleven years ago, and two years ago?—I have seen him since between those periods, about six or seven years ago, when I carried him to the House of Lords, and I do not remember seeing him besides excepting that day two years ago, when he dined with those particular friends of mine.

Richard Brinsley Sheridan, esq. M. P. sworn.—Examined by Mr. Dallas.

Do you know Mr. O'Connor?—I know Mr. O'Connor very intimately.

How long have you known him intimately?—I think about three years.

During the course of that time have you had occasion to see him frequently?—Very frequently, whenever he was in England.

With what description of persons did he chiefly live in England?—I was particularly anxious for his society on account of his character, and the recommendations I received respecting him from Ireland. I never met him in any company but in the society in which I live myself, namely, those gentlemen who principally form the Opposition, and in the private society at my house where I was always most happy to see him, and in that society alone have I ever met with him.

Have you ever conversed with him confidentially upon political subjects?—I think most confidentially, because I treated him, and I think he treated me, with a confidence and unreservedness that might have been expected to have arisen alone from a much longer acquaintance; but from my opinion of his principles and character, and such communication that we had, and we did communicate without the smallest reserve whatever, upon all political topics relating to England or Ireland.

Is his general character that of frankness and openness in his conversation?—I think in the extreme.

Did he chiefly concern himself with the politics of England, or with those of Ireland?—I have talked with him upon the politics of both countries very unreservedly, or with the utmost frankness of communication upon political subjects, and the situation of both countries.

About which did he chiefly concern himself?—Respecting the affairs of Ireland, much more, certainly, than those of England; I have met him in circles where we introduced more the politics of England, about which he seemed not to concern himself; and I have said, in his presence, and in the presence of other gentlemen that live in our society, that Mr. O'Connor seemed to be occupied with what he conceived to be the oppressions and injuries inflicted upon Ireland; in which, I beg to add, I agreed with him. He seemed

grieved, and afflicted almost, that people in England should think they had any grievances to complain of.

Did your intimacy continue with him up to the time of his apprehension?—Till within a week; I think he was at my house within a week; my intimacy continued with him up to that time, and my respect and regard for him increased every hour to that moment.

Had you reason to know whether he considered it safe for him to continue in this country?—I had great reason to know the contrary, for I took the liberty to advise him not to continue here.

Do you know whether lady Edward Fitzgerald had any property in France?—I particularly know that she had, and that lord Edward Fitzgerald never had recovered it; he had endeavoured it. I do not know how far I may be permitted to state that; but from great intimacy with Madam De Sillery, with whom lady Fitzgerald was brought up, I had opportunities of knowing her and her connections very intimately, as previous to her going to France, she had spent a month at my house in the country, with lady Edward Fitzgerald, then called Pamela, and had consulted with me many times upon the subject of this lady's portion in France, which she wished to withdraw from France, and place upon securities here, or in the English funds; when she was driven from Paris at an hour's warning, I had a letter from her —

Mr. Garrow.—We cannot hear that; we take it from you that she had property in France.

Mr. Sheridan.—Lord Edward Fitzgerald has been in pursuit of the property, and it never has been recovered.

Richard Brinsley Sheridan, esq. M. P. cross-examined by Mr. Garrow.

Whether you happen to be acquainted with any friend of Mr. O'Connor's, of the name of captain Jones; or had Mr. O'Connor ever introduced such a person to you?—I must be allowed to state, that when I advised Mr. O'Connor to leave this kingdom, he urged to me that he was confident he should not be permitted. I advised him to go to Yarmouth.

Mr. Garrow.—My question is, whether it had happened that Mr. O'Connor had ever introduced to your acquaintance any friend of his, of the name of captain Jones?—He did not.

Whether Mr. O'Connor ever informed you that he was intimately acquainted with any person in England, of the name of captain Jones?—He gave me reason to believe, that in his attempts to leave England, he might form acquaintances that he would not otherwise do.

That is not an answer to my question. I must take the liberty of repeating it. Whether Mr. O'Connor ever informed you that he was intimately acquainted with any person in England, of the name of captain Jones?

--I cannot charge my memory; I cannot say that he might not mention captain Jones to me.

Did Mr. O'Connor ever introduce to your acquaintance any friend of his whom you knew by the name of O'Coigly?--Certainly not.

Or Quigley?--Certainly not.

Or Fivey?

Mr. *Sheridan*.--You mean personal introduction?

Mr. *Garrow*.--Yes, at present.

Mr. *Sheridan*.--Certainly not.

My question now is--whether he had never informed you that he was acquainted with any person in England, of the name of O'Coigly?

Mr. *Sheridan*.--Is the question confined merely to the name of O'Coigly?

Mr. *Garrow*.--Yes, my question is--whether you were ever informed by Mr. O'Connor that he was intimately acquainted with a gentleman whose name was O'Coigly, or Quigley?--I think not.

Or whose name was Fivey?--I think not.

Mr. *Justice Buller*.--Had you any reason from Mr. O'Connor to know that he was acquainted with a person known by either of those names?--I think none of the names were ever mentioned to me.

Mr. *Justice Buller*.--Whether in any of your conversations Mr. O'Connor gave you to understand that he had made an acquaintance with a person known by those different names?--If I am asked whether I have had an intimation from Mr. O'Connor, that he may have made an acquaintance with a person who might be the means of conveying him out of the kingdom, he being apprehensive that he should be stopt at any port if he went in his own name, I shall say he has mentioned such a person, but, upon my honour, and my oath, I do not recollect that he distinctly named who that person was.

Mr. *Justice Buller*.--Whether he gave you to understand that he had made an acquaintance with such a person?--I think most distinctly that he had. I meant to have stated that, if I had been suffered to go on with my evidence at first.

Mr. *Garrow*.--Are you at all acquainted with Mr. Binns?--I may have met Mr. Binns, and may have spoken to him, as I frequent popular societies very much, but I have not any recollection of him; I really will not be positive, because many gentlemen apply to me, as many persons do to those who are supposed friends to the popular cause, upon any subject which they think may have been of service; he may have been at my house; I do not know whether he has.

But my question is whether he is acquainted with you?--I may have been spoken to by many people whom I do not recollect.

Perhaps I may venture to suppose that Mr. O'Connor had never introduced Mr. Binns to you?--Certainly not.

Nor informed you that he was acquainted with such a person?--I beg in fairness to answer that question again; under the general intimation given to me by Mr. O'Connor, upon his rejecting my advice to go openly to Yarmouth, and to go under his own name to Hamburgh, he intimated to me that his dread of being shut up again in prison in Ireland was such, that he was endeavouring to use means to set his foot on the continent in any way that he could.

But did he make any communication which pointed to the prisoner at the bar, Mr. Binns?--By the name of Binns, I should think certainly not.

Nor descriptive of what Mr. Binns now turns out to be?--Certainly not.

In the last visit which Mr. O'Connor made to London, and the various respectable societies in which you met him, whether you met him by the name of O'Connor?--Never by any other name whatever.

Richard Brinsley Sheridan, esq. M. P., re-examined by Mr. *Dallas*.

Did I understand you rightly, that you advised Mr. O'Connor to take another name in going out of the kingdom?

Mr. *Garrow*.--No, quite the contrary: Mr. *Sheridan's* advice was, to go to Yarmouth in his own name, and from thence to Hamburgh.

Mr. *Dallas*.--Do you know whether Mr. O'Connor ever belonged to any political society in this country?--I have understood from Mr. O'Connor that he avoided all political societies in this country; and what particularly prepossessed me in his favour, was, that I never met with any man who was so determined in reprobating the idea of any party or body of men in this country, under any pretence of grievances whatever, encouraging the idea of French assistance. In my life I never met with a man more steady in that idea.

Mr. *Attorney General*.--When a question is asked--Do you know whether Mr. O'Connor ever belonged to any political society in this country, I should think the answer to that would be much shorter.

Mr. *Sheridan*.--With great respect to the learned gentleman, I thought I had unjustly and negligently omitted a circumstance in my general opinion of Mr. O'Connor's character, which I ought not to have omitted, and I took that opportunity of setting it right.

Mr. *Dallas*.--Did you ever observe any change in Mr. O'Connor's political sentiments and conduct?--Never in the slightest degree, excepting, if it may be called a change, that I understood, and with regret, that his apprehension of being apprehended and sent over a prisoner to Ireland, put him upon some schemes to get away, his friends very much lamented that he was driven to any such necessity.

Did he continue up to that time to live upon the same footing of intimacy and regard

with those friends with whom he had associated before?—Yes, and every one had the same feelings with respect to his endeavouring to get abroad by any means that were in his power.

The most noble *Charles*, duke of *Norfolk*, Earl Marshal of England, sworn.—Examined by *Mr. Gurney*.

My lord duke, are you acquainted with *Mr. O'Connor*?—I saw him at two different times about two years since.

In what company did your grace see him?—He came to see me one morning, and we had some conversation upon the subject of a speech he had made in the House of Commons in Ireland; * he came to see me from a wish expressed on my part to be acquainted with him.

Did you see him in any company afterwards?—I afterwards dined where he did, at the earl of *Suffolk's*.

Had you any opportunity, my lord duke, of knowing the character of *Mr. O'Connor*?—No farther than what might arise from those two occasions of meeting, and general report.

Then from what you know of *Mr. O'Connor*, what do you apprehend to be his character?—I cannot remember the particulars of any conversation, but I consider him as a gentleman acting warmly in the political line, and attached to constitutional principles in the same way as myself.

Michael Angelo Taylor, esq. M. P. sworn.—Examined by *Mr. Gurney*.

Are you, sir, acquainted with *Mr. O'Connor*?—I have been acquainted with *Mr. Arthur O'Connor*, I should think near three years, it was either from the end of the year 1795, or the beginning of the year 1796.

In what society have you generally met *Mr. O'Connor*?—I have generally met him, and indeed my first acquaintance with him commenced in the society of the persons, with whom, in political opinions, I have the honour constantly to act, I mean the society of *Mr. Fox*, the duke of *Bedford*, *Mr. Grey*, and a variety of other most honourable men, with whose political opinions I have always agreed, and shall continue to agree.

Had you an opportunity, from your knowledge of *Mr. O'Connor*, to know what his political opinions were?—I have; my opinion of his political opinions is, that he was attached to the principles upon which the opposition in this country is conducted; and I look upon those principles to be the true principles which seated our present king upon the throne, where, I hope, he will long continue.

Did you know *Mr. O'Connor*, down to the period of his being last in London?—I did not know *Mr. O'Connor* for the last six months during the time he was in England,

from an accidental circumstance, I was unfortunately laid up with a long illness, or I should most probably have done all I could to have regained his knowledge, and to have resumed his friendship.

Did you ever know of any change in the political opinions of *Mr. O'Connor*?—None.

Did you ever him state any principles at all adverse to the constitution of this country?—Far from it.

Any principles favourable to an invasion of this country?—From all I know of *Mr. O'Connor*, and I do declare it most solemnly, I should think him one of the last men to plan an invasion of this country, or to act in any manner basely to it.

Was *Mr. O'Connor* a man of an unreserved open character, or of closeness and dissimulation?—He appeared to be a man of uncommon openness of character, in all the conversations I ever had with him.

What did you conceive to be the nature of his friendships, cold or warm?—Exceedingly strong; I can only say, I beg to add, that I have looked upon *Mr. O'Connor* in private life to be a man of the most amiable manners and most honourable intentions.

The Right Honourable *Henry Grattan* sworn.—Examined by *Mr. Gurney*.

You are acquainted with *Mr. Arthur O'Connor*?—Yes.

How long have you been acquainted with him?—I have been personally acquainted with *Mr. O'Connor* since the year 1792; I knew him by character before, but have been well acquainted with him since that time.

Has your acquaintance with him enabled you to form a judgment of his political opinions?—Yes, I think it has.

Did you ever hear any opinion from him which led you to suppose he could favour an invasion of his country by the French?—No, rather the contrary.

What do you conceive to be *Mr. O'Connor's* private character?—A very good one.

I understand he was formerly a member of the Irish House of Commons?—He was.

Were you a member at the same time?—At the same time.

Had you any opportunity of knowing whether *Mr. O'Connor's* character was reserved or unreserved?—I think his character was unreserved.

And you have had an opportunity of forming a judgment of what his character really was?—I think I have.

The Right Honourable *Lord John Russell* [afterwards Duke of *Bedford*] sworn.—Examined by *Mr. Gurney*.

Is your lordship acquainted with *Mr. O'Connor*?—I am.

How long has your lordship been acquainted with him?—I had the honour of knowing *Mr. O'Connor* in the year 1796, and this year.

* See § Plowden's Historical Review of the State of Ireland, p. 521.

Has your lordship had opportunities of frequently seeing and conversing with him, and forming any judgment of his character?—I have been in Mr. O'Connor's company several times.

What has your opinion been of his opinions and character?—I have always had a very high opinion of Mr. O'Connor's principles and character; I conceive his principles to be the same as those which have always guided my own conduct, to be in favour of a sound, rational, and constitutional liberty.

Did you ever discover in Mr. O'Connor any sentiment favourable to an invasion of this country by the French?—Never.

Did Mr. O'Connor live in habits of intimacy with the same persons as your lordship?—He did.

Was that the case during his residence in England, in the present year?—Yes, I have been in his society three or four times in the present year, always in the society of those persons.

Was Mr. O'Connor received and treated on the same terms of intimacy and regard as he had always been by those persons?—Yes, he was.

I do not know whether you can inform the Court whether it is not the custom for persons abroad to travel in uniform; persons who are not military men?—It is the common practice, and I did it myself in the years 1793 and 1796, some time after I had quitted the army, and ceased to hold a commission from the king.

Your lordship took with you a military dress?—I did, and wore it at the time when I had ceased to be a military man; it is a convenient and a common practice.

The Right Honourable *Sackville* Earl of Thanes* sworn.—Examined by Mr. *Gurney*.

Is your lordship acquainted with Mr. Arthur O'Connor?—I am.

How long have you been so?—I was acquainted with Mr. O'Connor about three years ago.

In what society has your lordship generally known him?—I have generally known him in the society of my friends.

Will your lordship have the goodness to state who they are?—Mr. Fox, Mr. Sheridan, Mr. Grey, Mr. Francis, lord Robert Spencer; generally those persons who are in the opposition in both Houses of Parliament.

Mr. *Garrow*.—That need not be repeated by every witness; when asked if he has seen the prisoner, it will be taken for granted that it was in the most respectable circles.

Mr. *Gurney*.—Have you had an opportunity of forming an opinion of Mr. O'Connor's character and principles?—I have the highest opinion of Mr. O'Connor's character.

Have you been enabled to form a judgment of his political opinions?—I always understood

both from his conversation and from others, who were perhaps more acquainted with him than I was myself, that he entertained the same political sentiments as every one of the Opposition.

Have you ever observed any change in those principles?—Never.

Has your lordship ever observed any opinion or principle of Mr. O'Connor that could lead you to suppose he had a wish that this country should be invaded by the French?—Never.

Had you given Mr. O'Connor any invitation to your house?—Yes.

At what time?—As near as I recollect, about the month of February last.

Your lordship has travelled on the continent?—I have.

Do you know whether it is a practice for gentlemen who are not military men, to travel in regimentals?—I had regimentals made myself, every body I was acquainted with also had regimentals.

I believe my lord you never were in the army?—Never.

The Right Honourable *Edward* Earl of Oxford and *Mortimer* sworn.—Examined by Mr. *Plumer*.

Whether your lordship is acquainted with Mr. O'Connor?—Perfectly.

What is the character of Mr. O'Connor?—That of a perfectly loyal man.

Was he a person much attached to his friends, or the contrary?—Perfectly attached to his friends.

Have you ever observed any marks of duplicity or reserve constituting his character?—Directly the contrary.

Did you ever observe the least appearance of his having any disposition favourable to the French?—No, directly the contrary.

The Right Honourable *Edward* Earl of Oxford and *Mortimer* cross-examined by Mr. *Attorney General*.

Your lordship saw Mr. O'Connor probably, in the month of February last?—I did.

Do you know any of the other prisoners?—I do not.

Do you know Mr. Binns?—I do not.

Did Mr. O'Connor mention to you any of the other prisoners?—He did not.

Samuel Whitbread, esq. M. P. sworn.—Examined by Mr. *Gurney*.

Are you acquainted with Mr. O'Connor?—I am.

How long have you been so?—I became acquainted with Mr. O'Connor in the beginning of the year 1796.

Has your acquaintance with him enabled you to form a judgment of his character and principles?—I think it has.

Be so good as state what they are?—I think Mr. O'Connor to be a man of amiable manners in private, and of an honourable and in-

* See his Trial, A. D. 1799, *infra*.

dependent mind; his public principles appeared to me to be the same as my own; from the conversations that I have had with him, and from those which he has had with other persons when I have been present, I collected that he was a friend to the constitution of this country, that he saw the existence of abuses as I did, and wished a reformation of those abuses, by the means of parliament.

Whether you ever heard any thing from Mr. O'Connor which could lead you to suppose that he could wish for an invasion of this country by the French?—Quite the contrary.

Mr. Plumer.—We have some more witnesses, but I could wish to save your lordship the trouble; my learned friends know, I believe, that there are several other gentlemen attending.

Mr. Garrow.—Your saying it is enough, Mr. Plumer.

Mr. Plumer.—Mr. Grey, my lord Lauderdale, and several other gentlemen attend to give the same testimony.

Mr. Justice Buller.—You have gone as far as character can go.

Mr. Plumer.—We have those persons willing and desirous to be called here to attest Mr. O'Connor's character.

Mr. Garrow.—We will take it so; it will be understood, from your stating it, that there are many more gentlemen equally respectable.

[The end of the evidence for the prisoners]

Mr. Dallas.—May it please your Lordship;—Gentlemen of the Jury:—The evidence with which it has been thought necessary to trouble you in support of the defence, being now closed, it becomes my duty to recapitulate that evidence, and to make some observations upon the whole of this case. And, gentlemen, I can with truth assure you, that the situation in which I now stand, has, for some time past, to the exclusion of almost every other thought, and to the extinction of almost every other feeling, occupied my waking, and, I may add, my sleeping hours.

Gentlemen, you will also give me credit when I say, that I rise to address you, already greatly exhausted by the length to which this trial has proceeded, enervated to a considerable degree by the anxieties which have unavoidably attended the progress of so important a case, and by other circumstances which it is unnecessary to state to you, and feeling, in common with every gentleman with whom I have the honour to be joined upon this occasion, a degree of solicitude beyond what I have ever yet experienced in the whole course of my professional life. Gentlemen, consult your own feelings, and you will find no difficulty in giving me the fullest credit for what I say, when you reflect, that I have to observe, in the last instance, upon a case of this magnitude, to consider the various evidence which has been given to support and to repel the charge, and that in this moment, in some

degree at least depends, upon my feeble efforts, the defence of the five several persons who now stand before you, charged with the highest crime which it is possible for subjects to commit, and doomed, in the course of a very short time, to hear from your lips a sentence of life or death.

Gentlemen, the charge of which they stand accused is high treason; not consisting in facts of that equivocal nature which, in the opinion of some men, may amount to treason, while, in the judgment of others, they may prove of a different quality—such as the trials that have been already alluded to in the course of this day, when the attorney-general, no doubt, honourably in the exercise of his office, thought it right to impute treason to those men, whom jurists acting no doubt as honourably in the discharge of their office, thought fit to acquit; not consisting, I say, in acts of this equivocal nature, but in facts of that sort, which if they are established by sufficient evidence, I agree with the attorney-general, must, in the opinion of every man who lives, be considered as amounting to treason, and if there be degrees in treason, to treason of the worst and of the highest sort.

Gentlemen, when I say this, it leads me to an observation that you have heard more than once in the course of this business; but it has been truly observed by a celebrated moralist, that there are some truths so important, that they never can become stale from repetition: and of this nature most undoubtedly are those truths, of all others, the most important, which relate to the administration of criminal justice, and which, in the administration of that justice, concern the life of man. You have been truly told, that in proportion to the magnitude of the offence, to the enormity of the crime, so ought the evidence to be plain and to be strong, and I trust there is no man among you, who, at this moment, is not fully satisfied, that nothing short of complete demonstration, by which I mean moral certainty, can justify you to your country, to the accused, to your consciences, and to your God, in pronouncing a verdict against them, or against any one of them, that is to have the effect of depriving him of his life.

This is not a rule of evidence drawn from the abstruse mysteries of law; it is not a maxim of artificial and technical refinement: it is the first rule of reason and humanity; it is the living principle of eternal justice; the volume in which it is written, is the heart of every man who has a heart of flesh and blood within his bosom. But fortunately for the honour of the law of England, happily for the administration of its justice, the written law of the land, the commentaries of the most enlightened lawyers, the decisions of the most respectable judges, all are but so many splendid comments upon this great and important principle. The statute upon which this charge is founded, bears it upon its bal-

lowed page, written in plain and indelible characters. Who shall be attainted of open treason? No man, says the law, except him who shall be thereof *probably* attainted of open deed by persons of his own condition. The word of the statute upon which this indictment is founded, is not *probably* but *provably*, and in what manner sir Edward Coke, the first authority upon every subject that relates to the law of England, has laboured the exposition of this important term, you have already heard so fully from my learned friend who has preceded me, and who made that address to you, which will, I am confident, not only do him immortal honour, but which, I trust, will prove in the event as beneficial an address as it was possible to make for those who are accused, that I shall not trouble you with much observation.

Gentlemen, in explaining this important word in the statute, sir Edward Coke desires that all persons who may have occasion to consult it, that is all men who should be placed in the situation in which you are now called upon to act, would take notice of the important distinction that there is in the statute, between the word *probably* and the word *provably*, applying to the manner in which the charge of high treason is to be established. Gentlemen, I have before me the words in which he expresses himself upon the subject. By *provably*, he says, is meant, that it is upon direct and manifest proof; not upon conjecture, or presumptions, or inferences, or strains of wit, but upon good and sufficient proof; and then he says, the reason why plain and direct proof is required—why inferences, why presumptions, why strains of wit are excluded, is, that the offence is punished in that manner so heavily, and so severely, as there is none other the like. As, therefore, the punishment is such, that there is none other the like, so says this great luminary of the law of England, ought the proof to be such, that it ought to be more full, more clear, more certain, than is requisite in any other case.

Gentlemen, this doctrine is not peculiar to the great judge to whom I have already referred you. I have before me the writings of another eminent lawyer, to whom upon subjects of this sort, we are peculiarly accustomed to look up for information and authority, I mean the work of Mr. Justice Foster, in his discourse upon the law of high treason; and in which, not speaking of this statute, but of another, but still of a statute which relates to treason, I mean an act which passed in the reign of queen Anne, by which it was enacted, 'that if any person or persons shall maliciously, advisedly, and directly, by writing or printing, declare, maintain, and affirm, that the queen was not the lawful or rightful queen of these realms, or that the pretended prince of Wales, who now stiles himself king of England by the name of James the third, hath any right or title to the crown of these realms, or that any other person or persons hath, or

have any right or title to the same, such person or persons shall be guilty of high treason.' Mr. Justice Foster, in commenting upon this statute makes this observation: 'In no case can a man be argued into the penalties of the act by inferences and conclusions drawn from what he hath affirmed, the criminal position must be directly maintained to bring him within the compass of the act.'

But, it may perhaps be asked, what is plain and direct proof as applied to a subject of this sort? It is said to be dangerous, and certainly it is at all times difficult to define, I will not therefore attempt it; but suffer me to endeavour, at least, to illustrate the subject by having recourse to the writings of an author, who has more thoroughly than any other, investigated the nature of the human mind, in order to ascertain the foundations upon which belief and judgment ought to depend. I mean the celebrated Mr. Locke, in his Essay upon the Human Understanding. Providence, he says, has for the most part, that is in matters of common concernment, afforded us only what he calls the twilight of probability; and, reasoning with the reverence that it became him to do upon this exercise of the divine will, he states, that it was probably adapted to the state of mediocrity in which we are placed here, that by being made every day sensible of our own short sightedness and liability to error, it might check our pride and restrain our arrogance; but he adds, there are some things which God has put in the broad day-light! Gentlemen, treason is not a matter of common concernment—whether the five persons who now stand before you shall live or die—live honourably or die ignominiously—this is not a matter of common concernment to be judged of by what Mr. Locke calls the twilight of probability—it is one of those things which, by the special ordainment of Providence, to be collected from the reason, and from the feelings bestowed upon man, must be put in the broad light of day; that is, the mind must receive the fullest assurance that it is capable of acquiring upon any human subject whatever.

Gentlemen, you will do me the justice to observe, that as far as I have hitherto proceeded, I have been extremely cautious, from respect to you, and from a regard to the persons who are accused, to state nothing to you from a person so insignificant as myself. When I have talked to you of the evidence by which the crime is to be established, which is as much a part of the law as the crime itself, I have in every instance referred you to authority, and I have stated to you the express words in which that authority is contained. I have referred you to the language of the statute, to the commentary of sir Edward Coke, to the doctrine of Mr. Justice Foster, and having now, as I humbly conceive, fixed and ascertained the great principles by which you are to proceed to the investigation of this cause, I will come immediately and directly to that which forms the subject of the charge.

Gentlemen, it seems to me that the whole of this case may be divided into three distinct grounds of consideration: the charge, the law upon which the charge is founded, and the evidence given in support of the charge, and of the defence. The indictment before you contains the charge, and it consists of different sorts of treason; but chiefly compassing the king's death, and adhering to the king's enemies. And I admit, that adhering to the king's enemies, is in point of law, compassing the king's death; upon this plain principle, that every man shall be presumed to intend that which is the probable consequence of the act he does; and it is a probable consequence of the act done, that is an adherence to the king's enemies for the purpose of invading the realm, that the death of the king may be thereby produced.

Gentlemen these treasons are material for your consideration, because you will find, that though the indictment states the supposed offence in different ways, yet still in sense and substance the whole of this case, as no doubt you have already perceived, will finally resolve itself into the main allegation of a treason consisting in an adherence to the king's enemies; that is, adhering to the king's enemies is the precise offence, which the indictment imputes to the several persons who are now upon their trial before you; it is that of which you must be fully satisfied before you can find them guilty of the crime ascribed to them by the charge.

But, gentlemen, this is not all. Every charge of this sort, besides specifying the particular species of treason, must allege the overt-acts, by which the intention of the mind is pretended to have been made manifest. This indictment, therefore, does allege certain overt acts of treason, and I am sure, that when I state to you, that none but these overt-acts of treason can be the foundation of your verdict, I shall have the acquiescence of the learned judges before whom this indictment is now tried.

Gentlemen, I do not mean to deny, that one overt-act of treason may be evidence of another. But what I mean to contend is, and I trust with the authority of the Court, that though they should establish any number of overt-acts of treason, other than those stated in the indictment as evidence of the acts stated in the indictment, still, if the acts stated in the indictment are not established by that evidence, you must put every other overt-act of treason entirely out of your consideration, so that the case is reduced to the simple consideration of those facts which are stated as the overt-acts of treason upon the face of the charge. All the other circumstances which have been given in proof before you, are no other than collateral facts made use of by way of testimony, in order to establish the existence of those overt-acts which are alleged in the body of the indictment.

Gentlemen, having therefore stated this for

the purpose of making you distinctly understand, in the outset of the few observations with which I mean to trouble you, what is the charge which you have to try, and what are the principles as applied to the evidence, and as applied to the indictment, by which your enquiry must be conducted—I come now directly to consider the nature of the overt-acts themselves.

Gentlemen, upon all occasions there is nothing that conduces so much to the investigation of truth as simplicity. It is impossible to do justice in a case which we do not thoroughly understand. I will therefore endeavour, distinctly and clearly, and in such a manner that not one of you shall, for a moment, be at a loss to comprehend what is the case that you have to try, to bring you now to a close and correct consideration of the indictment which lies open before me.

Gentlemen, upon this indictment the attorney-general has truly stated to you, that a great number of different overt-acts are alleged, the number being, for the reason which I shall presently state to you, perfectly immaterial. The overt-acts alleged, I believe, are, in number, seven, but whether more or less, is not material, as I shall hereafter explain to you, as to the purpose of the present enquiry. Gentlemen, the chief overt-act which is stated upon this indictment, and to which all the evidence applies, relates to a paper-writing of a certain description, and to which is imputed a specific quality, which I shall presently examine more at large. But before I proceed to analyse the substance of this overt-act, I will take the liberty of stating to you, that the other overt-acts which relate merely to the different attempts made for the hiring of a vessel, are subordinate and auxiliary; that is, they are charged as the means made use of to carry into effect the traitorous intention which is alleged in the count, which imputes to these persons the possession of a certain paper-writing, intending to convey it to France, and to procure an invasion of this kingdom.

Gentlemen, the count to which I allude, is that which states that the several persons at the bar, Mr. O'Connor, Mr. O'Coigly, Mr. Binna, and the two persons who stand behind, did conspire, consult, and agree to procure and obtain, and in their custody and possession conceal and keep a certain paper-writing. The indictment then sets forth the nature of that writing, alleging that it was of a sort to convey intelligence to the enemies of the country, and by means of that intelligence, and of the incitements which the paper contained, to exhort and to encourage them to an invasion of this realm, that is, of England. I say of England, as the evidence applies to the charge, because the term 'realm,' would otherwise include Scotland also, but as certainly excludes Ireland.

Gentlemen, you perceive therefore, that in this case, the overt act alleged is of a con-

sultation, conspiracy, and agreement, the nature of that conspiracy and agreement being alleged by the indictment to procure and obtain a certain writing, which it states, and then it goes on to allege, after specifying the contents of the paper, that the intent was, to convey it to the enemy, in order to induce them to make an invasion of England. In the intent, therefore, of inducing the enemies of this country being of a particular description, that is, the persons carrying on the government of France, by the description of the Executive Directory of France, to invade England, and acts alleged to have been done in prosecution of that intent, consists the whole of this charge.

Gentlemen, I state this because it is extremely important that you should be made fully sensible of it. And in order to illustrate it, I will put a strong case for your consideration: I will suppose, for the purpose of argument,—what is completely disproved, in point of fact, by all the circumstances in the cause,—that there existed in the mind of any one of the several persons now on trial before you, intentions of a treasonable nature with respect to Ireland—Nay, gentlemen, I will go farther, and I will suppose that it had turned out upon this occasion, by the clearest of all possible evidence, that these several persons were concerned in a conspiracy to induce the French to invade Ireland. Why, gentlemen, I say precisely for that very reason, that it did so clearly and certainly appear that they intended to procure the invasion of Ireland, for that very reason (if in point of fact this was proved beyond all doubt to be the case), you would be compelled to acquit them of this indictment, which imputes to them not an intention to procure an invasion of Ireland, to procure an invasion of England; and it is your bounden duty to say, whether they are guilty or not guilty of the particular charge. But I put this case for the sake of illustration merely, because by-and-by you will most fully perceive, that there is not the least ground for casting such an imputation, or any thing leading even to such suspicion, with respect to any one of the persons now at the bar.

Gentlemen, I have now stated to you the nature of the treason which this indictment charges, and the overt acts which are alleged as the means of carrying that treason into execution. And having thus explained to you, and I hope clearly and distinctly, the nature of the accusation, and the means by which it is to be made out, I will now come, without farther preface, to consider what are the facts of the particular case.

And, gentlemen, before I go into the detail of the evidence, I will take the liberty of stating to you what I conceive to be the general nature of this transaction. I admit that it does distinctly appear, from the evidence that has been given, that the several persons at the bar were, at the time when

they were apprehended at Margate, about to embark on board a ship, with the exception of one, whose case stands upon a different ground from that of the others, and which, by-and-by, I shall have occasion to explain to you. But, with the exception of Mr. Binns, it does appear, that the other persons at the bar, Mr. O'Connor, Mr. O'Coigly, Allen, and Leary, were about to embark on board a vessel at Margate, at the time when they were apprehended. And I farther admit, that there is evidence before you, that in a great-coat pocket, which is stated to belong to one of the persons now at the bar, was found a paper which has been produced in court, and is a paper of that description that will maintain the overt act stated in the indictment, provided all the other parts of that overt act can be made out; that is, that it was a paper in the actual possession of the person in question, by which I mean his conscious possession, a possession consisting in his knowledge of the fact of the paper being in his pocket; or, in other words, I admit, that if you are satisfied that the paper was found in the pocket of Mr. O'Coigly, if you are farther satisfied that he knew of its being there, if you are satisfied that he intended to convey it to the enemies of the Crown, and if you are satisfied that it was a paper of that description, namely, an invitation from persons calling themselves the Secret Committee of England, to the Executive Directory of France; then, in respect of all these circumstances, undoubtedly this overt act would be completely established as to him. But the case, with respect to the other persons, would stand upon a very different ground: for even the case attempted to be made upon the part of the prosecution, consists in this specific fact, namely, that the paper in question was found, according to them, in the possession of Mr. O'Coigly, and Mr. O'Coigly only. It is not pretended that there is any reason to believe that the great coat belonged to any other person; nor has it been endeavoured to be proved, nor even has it been suggested, that the paper was put into that pocket by the hand of any one of those other persons, or that there is any positive evidence that it was there with their knowledge, privity, and consent. The case, therefore, thus stated, will, as you observe, resolve itself again into very different grounds of consideration. For I am persuaded that it cannot have escaped your accuracy, still less that of the learned judges who preside on this occasion, that the case of these different persons stands, in some respects, upon grounds entirely distinct. It will therefore again be necessary, for the purpose of investigating the cases of the several prisoners, to present each separately before you, in order to enquire what part each may be supposed to have had in the transaction in question, as the evidence now stands.

Gentlemen, in this order of proceeding, the case which naturally presents itself the first

for your consideration is the case of Mr. O'Coigly. Now what are the circumstances under which Mr. O'Coigly appears before you? Gentlemen, it appears that he is a native of Ireland; that he was a priest there; that, for causes which do not distinctly appear, but the nature of which is immaterial, he was obliged to quit Ireland, it being unsafe for him to continue there. And you have it in evidence, as I shall by-and-by show by referring you to particular documents, that he continued in Ireland so late at least as the 14th of January, 1798. It is in evidence on the part of the prosecution, that on that day a letter was written by Mr. O'Coigly, to lord Edward Fitzgerald. This proves him to have been in Dublin upon the 14th of January, and it does not appear at what time he left it, subsequent to that day. Gentlemen, the case therefore of Mr. O'Coigly is not that of a person who had been usually resident in this country, connected with any one of the political societies which exist in the town of London, but the case of a person, a native of Ireland, and proved to have been there so lately as the period which I have already mentioned.

The first thing that will occur for your consideration, will be how happened it, that there was any acquaintance between Mr. O'Connor and O'Coigly. And we have heard a great deal of cross-examination from different quarters of the Court, some from my friend Mr. Garrow, who is absent, and some from the attorney-general, enquiring of those, who were the most intimate friends of Mr. O'Connor, whether he had ever introduced to them a person, as his friend, by the name of Captain Jones? Gentlemen, with respect to the origin of the connection between Mr. O'Connor and Mr. O'Coigly, Mr. O'Connor, who is now upon his trial, can give you no evidence; O'Coigly, who is now upon his trial, can give you no evidence; you must therefore collect it in the best manner you are able, from the circumstances which exist in the case, and I trust it will be deemed the least exceptionable manner of collecting it, on behalf of the accused, when I refer you to the evidence that has been given upon the part of the prosecution.

Gentlemen, by the evidence given for the Crown, it distinctly appears that Mr. O'Coigly was in the habit of acquaintance, familiarity, and intimacy, with lord Edward Fitzgerald; that lord Edward Fitzgerald was in the habits of close friendship with Mr. O'Connor; and you find, that upon the 14th of January, there was a correspondence, which is in proof, between Mr. O'Coigly and lord Edward Fitzgerald. It is also in evidence, that Mr. O'Coigly was obliged to leave Ireland for his own safety. He was not in England when Mr. O'Connor first arrived here. Then the natural presumption arising even out of the evidence given upon the part of the Crown, is, that lord Edward Fitzgerald, who was the

friend of Mr. O'Connor, was the person owing to whose introduction of Mr. O'Coigly to Mr. O'Connor, they were afterwards found in the situation which I shall have occasion to describe to you.

Now, gentlemen, Mr. O'Connor might or might not be acquainted with Mr. O'Coigly in Ireland, or he might receive a recommendation of him in the manner I have suggested. Which of the two, will turn out to be immaterial for the reasons I shall presently give. It is enough for me to state, that it is not proved on the part of the Crown, that there was an acquaintance, intimacy, or friendship whatever, between O'Coigly and Mr. O'Connor, before a time subsequent to the correspondence between him and lord Edward Fitzgerald. You find, then, that Mr. O'Coigly was obliged to leave Ireland, and that when in England, he intended to go to France. But before we come to the circumstances of the journey in question, you will recollect that it has been proved, and I admit the fact was so, that Mr. O'Coigly passed in London by the name of Captain Jones, and that Mr. O'Connor undoubtedly did, from time to time, address him by that name. Why, gentlemen, if you consider this circumstance accurately, you will be of opinion with me, that a person who was obliged to leave Ireland because it was unsafe for him to continue there, was precisely, on that account, not likely to pass by his own name in the town of London. The circumstance, therefore, of Mr. O'Coigly passing by the name of Captain Jones is accounted for, by the fact, that it was unsafe for him to continue in Ireland, and for the same reason he meant to be concealed in London. The cause therefore which induced the assuming a false name, was his wish to continue in concealment, and because he thought his situation unsafe, if he should be known, which might have happened if he had passed by his real name.

Mr. Solicitor General.—Mr. Dallas assumes, as a fact, Mr. O'Coigly being obliged to leave Ireland; we have no note of such evidence.

Mr. Justice Buller.—The evidence was no more than that the Orange party racked his father's house twelve years ago, that was by a single witness, Stewart.

Mr. Dallas.—Gentlemen, I certainly was endeavouring to state to you the effect of the evidence that has been already given; always submitting to you, subject to the correction of the learned judge, when the evidence comes to be stated hereafter, whether the observations I make upon the evidence are warranted or not. But you will understand me to be stating what I conceive to be the effect of the evidence; that effect to be made out by the observations which I submit to your consideration. It appears then to be clear, that Mr. O'Coigly was passing by the name of Captain Jones; and you have no evidence, that during the time that he continued in London, he did belong to any public society,

or connected himself with persons of any political description whatever. But you have this evidence from Mr. Bell, that he never saw Mr. O'Connor and Captain Jones together, till about ten days, I think, before the time when they set off in the Whitstable hoy, that is, on Sunday the 25th of February, when O'Coigly, in company with Mr. O'Connor, with the other persons, with the exception of Mr. Binns, embarked at the Tower, and arrived at Whitstable in the evening of that day.

Now, I would beg leave, gentlemen, to make this observation which appears to me to be material for your consideration. The case endeavoured to be established against Mr. O'Coigly is, the possession of this paper, and by possession, I mean that he knew it to be in the place in which it is stated to have been found, supposing the evidence which the officers from Bow-street have given to be true in this respect. Now to proceed by steps. It is perfectly clear, that there is no evidence upon the part of the Crown, of any antecedent delivery of this paper by any person whatever to Mr. O'Coigly; there is no proof of his having been seen in the possession of the paper; there is no evidence of his having read the contents; and the whole case is reduced in point of proof to the single circumstance of its being found in the pocket of a great coat, which great coat is stated at the time to have belonged to him.

Gentlemen, the first fact, therefore, for your consideration will be, to whom this coat belonged. For undoubtedly if it did not belong to Mr. O'Coigly, there is an end of the charge as it relates to him, and of course a complete end of the charge as it relates to all the other prisoners. With respect to the fact of the great coat belonging to him, here again if I recollect the evidence distinctly, it stands upon the testimony of one person only, and that is the witness Smith, who was master of the hoy, and who states that in the course of that day he saw Mr. O'Coigly wear a light great coat, with a black collar, which great coat I admit he has gone the length of swearing he believes to be that which was produced to him, and the great coat produced to him was that which the officer had proved to have been found in the inn at Margate.

Now I would pause here for a single moment. The evidence of this man is merely evidence of belief. He never had seen Mr. O'Coigly before; of course he had had no opportunities of observing his dress; he was on deck where there were the other persons occasionally, who are now at the bar; then I put it to you to say even if this man had sworn in the most positive manner that he knew the great coat to be the same, instead of having merely said, as I understood him to have said, that it was a great coat like that produced to him, but supposing him to have positively sworn that it was the same great coat, I ask you whether you would go the length

†

of believing a man who, having had no opportunity of particularly examining it, having made no mark upon it at the time, judging merely from its colour and cape, I ask you whether you would conclude in your minds, when the life of a man is at stake, that that evidence was such as you ought to act upon, or whether you would not conclude that it was swearing a great deal too much from so slight an observation as the colour of a coat, and the single circumstance of the collar being the same. As far therefore as any positive evidence is given from any living witness, it is clear it is not that which you can depend upon, as that sort of certain testimony, which proves the property of the coat in question, and when life is to depend upon the sort of proof.

But I admit the case upon the part of the prosecution does not rest here. They have undoubtedly given evidence to you of a paper found in the pocket of that coat, and among others, they have given evidence that the paper which forms the subject of this indictment was, among others, found there. The witnesses have undoubtedly sworn that the paper was found there. But no person has endeavoured to say by whom it was put there, and therefore whether the paper was there with the knowledge of Mr. O'Coigly, or without his knowledge, that also is a mere inference that you must draw from the circumstances of the case, because the case in that respect, as in every other, is totally destitute of any positive evidence. I do not mean to contend that it is not peculiarly a subject for your consideration from the facts that have been proved, but I say, that according to the nature of those facts, so ought the inference that you draw from them to be one way or other in favour or against the prisoner. What then is the nature of the facts proved? All that they have proved with regard to the great coat is, that in the pocket was found a paper which is the paper in question. They found also a pocket book in which there are different articles belonging to Mr. O'Coigly, and this great coat was found in the room of an inn, where it had continued all night, the prisoners having slept in a different apartment. Now this is the whole of the evidence that is given on the part of the prosecution in order to prove the possession of this paper by the prisoner, Mr. O'Coigly, with his own knowledge, and from which knowledge you are desired to infer the intention of delivering it into the hands of the enemy. Undoubtedly it is for you to draw the inference. I can only state the facts to you, and state them correctly, nor would I wish to push any observations upon this part of the case beyond that which it fairly warrants, because I feel that I should be rendering no service, either to the particular individual whose case is now under your enquiry, or to the other persons taking their trial with him. But the question for your consideration will be, whether under the evidence given on

the part of the prosecution,—no person having been called to prove this to be the dress he generally wore, no person being called to prove that he knew of this paper being in his pocket, no person having been called to prove that it is in the hand-writing of any one with whom he was acquainted, the great coat being proved to have been in the open room of an inn during the night,—it will be for you to say, whether, under all these circumstances, you are so completely convinced of the existence of this paper in the pocket of Mr. O'Coigly, with his knowledge, for the purpose stated in the indictment, that you must find with respect to him the allegation of the indictment fully proved, that is, that he had it in his custody and possession, and had it for the purpose of conveying it to the enemy in order to send them intelligence of the state of this country.

The circumstance of its being in the possession of Mr. O'Coigly, with his knowledge, becomes still less probable, if you consider the extraordinary fact that has been proved by one of the witnesses, who has been also called upon the part of the Crown. For I am sure you cannot have forgotten, that one of the witnesses from Whitstable expressly told you, that in a conversation which he had with O'Coigly, he mentioned to him that the people at Whitstable were in a state of distrust, which is, in other words, that they suspected them to be in the prosecution of some improper purpose. Now that conversation is extremely material in this respect, namely, that it does not profess to have been addressed to any of the other prisoners, because then O'Coigly might have heard it or not, but the conversation is addressed to O'Coigly, and not to the other prisoners; and yet the very person in whose ear the alarm is sounded, who is put upon his guard, who is told that suspicion is abroad, who has every reason to believe that a search will be made in consequence of that suspicion, what is the conduct of this man who is stated to be charged with an important paper for the purpose of conveying it to the enemy? Why his conduct is such as is repugnant to all observation furnished by common experience. Instead of increasing his caution in consequence of the intelligence he received, instead of concealing or destroying the paper, knowing that it was in his pocket, liable to be searched, he leaves it in the open room of a public inn, and has not the common caution to carry it into the room in which he slept! Gentlemen, again I put it to the candor of every one of you to say, whether this is a conduct that at all agrees with the observation you have made upon the manner in which persons generally conduct themselves, who are in the perpetration of deeds of guilt? And with this observation I leave this part of the subject, having now stated all that occurs to me with respect to the case of Mr. O'Coigly, with regard to the possession of the paper in question, that is, the

VOL. XXVII.

supposed possession, or the actual possession, with his knowledge, in the manner it has been endeavoured to be proved by the witnesses called on the part of the Crown.

I shall next proceed to the consideration of the case of Leary.

And, gentlemen, Leary's case is very important for your consideration, not merely as it relates to himself, but as it concerns all the other prisoners at the bar. Leary you have been told by Mr. Attorney-general, in his opening, is the servant of Mr. O'Connor, and what was stated to you by Mr. Attorney-general, has been proved by the witness whom he called. You will remember that Leary was not a person who was passing by a feigned name, or under an assumed character. For though Mr. O'Connor was passing by the name of colonel Morris, yet Leary still continued to act in that character which really belonged to him, that is, as the servant of Mr. O'Connor, passing by the name of colonel Morris. But Leary is included in this indictment. And in the opening of the Attorney-general, no distinction whatever was made between his case, and that of any other of the prisoners at the bar. I do not wonder at it. The Attorney-general would have been inconsistent with himself, according to the principles he has stated, if he had gone the length of distinctly admitting, what I shall distinctly prove, that it is utterly impossible for you, upon the sort of evidence that you have heard, to convict that boy of the crime of high treason, which is now imputed to him. In doing this, I say he would have been inconsistent with himself, for reasons which I shall presently explain.

Gentlemen, Leary, the servant of Mr. O'Connor, is not pretended to have had any particular connection with any one of the persons who are now upon their trial, excepting his master; nothing particular is alleged with regard to him as to the possession of this paper: his case therefore amounts to this, and this only, that he, the servant of Mr. O'Connor, who had been such for a great length of time, is found in the course of his usual employment, travelling with his master, his master (I admit, passing by a feigned name), and that which is made a question for you to consider is—whether, upon the whole view of this case, you think there is the slightest evidence to believe, that Leary was privy to the existence of any such paper, to the contents of it, or to the plot with which he, this servant, is charged, of having confederated with his master, and other persons accused, to commit high treason, by carrying this paper over to the enemy?

Why, gentlemen, I own I am astonished! If you were to be asked who was precisely the person, of all others, whom human imagination would point out as the last, and the least likely to be acquainted with the purpose of Mr. O'Connor, if his purpose were of a treasonable nature, I should say the very man

F

who stood in the relation to him of servant to master. Gentlemen, you know perfectly well, that we are not in the habit of communicating our plans, even upon ordinary occasions, to those who are in the capacity of domestics about us. You know, likewise, that if you were going upon any journey, and your servants were to enquire of you what the object of that journey was, you would consider it as a very officious and impertinent intrusion. In the case, therefore, of Leary, it is repugnant to all probability to suppose that his master would explain to him, or that he would ask an explanation of his master where he was going, or what was the purpose and object of his journey.

To what, then, does his case amount? To this, and this only—The servant of Mr. O'Connor, who had lived with him in Ireland, who knew the situation of affairs there, knowing that Mr. O'Connor, was about to embark at a sea-port town, Mr. O'Connor being a public man, knowing therefore that his master was passing by a feigned name, to be concealed, he is found in the course of employment by his master, attending upon him, and there is no evidence of any sort before you, that at the moment when all these persons were apprehended, this man even knew, from any communication made to him, or from any circumstance whatever, whether his master was going to Ireland, whether he was going to France, or, in a word, where he was going; and without any evidence to convince you that Leary knew whether Mr. O'Connor was going to one place or the other, without a word of evidence to connect him with the treasonable paper or purpose, you are desired to infer against this servant, from the mere act of his attendance upon his master, whom he had long served, that he not only knew that he was not going to Ireland, but that he actually knew he was going to France; and farther, that he knew he was going to France for the specific purpose of carrying a treasonable invitation to the enemy to invade England, and was co-operating with him in this intention and design!—Good God! Gentlemen, this is the length to which the doctrine of construction, of presumption, and of inference, is pushed upon the part of the prosecution; and I admit that it does not stop short of this extreme. For according to the reasoning of the Attorney-general, it would indeed comprehend the case of this man, for the same reasons that he states it to involve the case of the others. It is for you to say, whether these principles and doctrines can, in point of law, reason, or humanity, be maintained.

The case of Leary, therefore, I take for granted, for the reasons given, is much too clear to require farther observation. With one word only I will detain you farther. He is included in this indictment, for what reason I do not know, and because I do not know, I will not take upon me in this respect to condemn the conduct of the At-

torney-general. It is possible that he might have been originally put into the indictment from his exact situation not being ascertained; and as these persons were some of them passing by feigned names, and under assumed characters, it may have happened, that the Crown might not be in possession then, of complete evidence to ascertain the fact, whether he was that which he now turns out to be, the servant of Mr. O'Connor, and nothing more. But now this fact does distinctly appear, I am extremely mistaken if the Attorney-general will ultimately press you upon this part of the case for a verdict of guilty; but I am sure I am not mistaken, that if he should call upon you for such a verdict, he will do it in vain.

But before I finally dismiss the case of Leary, I will trouble you with only one observation more. You have been already referred to the case of lord Preston, Ashton, Elliot, and another person. There were four persons who upon that occasion were going to France. With respect to two of them, they were tried and convicted under the circumstances that have been stated. Elliot, who was the third, but not a servant, was not even brought to his trial, though put in the indictment. As to the fourth person, whose name also appears in the course of the proceedings, he was going as servant to lord Preston, and the crown, knowing this fact, did not even think it proper to include him in the charge; and yet his case was in that respect precisely the case of Leary. The servant of lord Preston, going in a state of concealment out of this country, which state of concealment might have suggested to the mind of a servant the idea of some improper or criminal purpose, at least precisely as much so as in the case of Leary—they are parallel cases, the circumstances of each suggesting an equal degree of suspicion;—but in that case the servant was not even accused, much less put upon his trial, and gravely pointed out as a fit object for a verdict of high treason. I now therefore quit his case, with the most entire and perfect confidence that it is impossible for you to hesitate one moment in saying that there is not the slightest pretence for imputing to this man any guilt whatever, much less that guilt which the indictment charges—the crime of high treason, in adhering to the king's enemies.

The next person who occurs, is the prisoner of the name of Allen. And with respect to him, his situation is in some degree ascertained, because you find, from a person of name of Smith, that Allen lodged in a house in Plough-court, Fleet, of the name of Evans. He had not known twelve days before Whitstable. The persons of Allen

you find, had not been long resident in London, because he is not proved to have lodged at any other place, and in the only place in which he did lodge, he is proved to have been there but a few days before the transaction in question, and nothing is given in evidence to you with respect to his connexion with Mr. O'Connor, nor with any one of the other persons, except Mr. Binns, and the only evidence of his connexion with Mr. Binns, and indeed Mr. O'Coigly, is, that he lodged in the same house in which they did. But who is Mr. Allen? Is he a man likely to be engaged in a treasonable plot against this country? Is he a person whom you can imagine to have been in the pay of the enemy? Is he a person whom you can for one moment believe to have received the wages of treason? Why, the evidence on the part of the crown informs you what is the miserable condition of this wretched man. You find, that after arriving in London, he was reduced to that state of distress and poverty, that he is proved to have lodged in this house, not in an apartment of his own, but that he, in company with two other men, all occupying the same room, paying for that room at the rate of seven shillings and sixpence a week, that he, thus situated and thus circumstanced, had lodged there for some days before he went on board this vessel with Mr. O'Coigly, for the purpose of going with him, I admit, to France. The evidence with respect to Allen is different from that of Leary, in respect of the peculiar circumstances of their different situations, because Allen, I admit, was not the servant of Mr. O'Coigly, but he was passing under a feigned character, in order to escape with Mr. O'Coigly, who was passing by the name of Jones; and it clearly appears he was a man in a state of miserable poverty and abject distress. But with regard to the paper, the point of the charge both with respect to him and Leary, there is not the slightest particle of evidence, on the part of the crown, to show that either of these persons knew of the existence of such a document in the possession of any man whatever, or had reason to suspect it, much less that they were engaged in the plot described. Then so far we get. Leary was the servant of Mr. O'Connor, and Allen a man in distress, passing as the servant of O'Coigly. Their case amounts to the same. O'Coigly is the master, and the other two are engaged in it being unsafe for him to be seen, and they are lodged in the same house, I admit, in the same room, and they have the same baggage.

none. The circumstantial proof leads to no such inference with respect to them; on the contrary, as far as it leads to any inference, it excludes the presumption, as it does also completely with respect to the others, as I shall next have occasion to show.

And this brings me to the case of Mr. Binns—he also is proved to be a native of Ireland. When his acquaintance with Mr. O'Connor commenced, does not exactly appear, nor can it for the reason that I have stated to you before, as to another part of the case, because he, as well as Mr. O'Connor, being now upon his trial, they cannot give evidence to explain it. But this I admit does appear. That sometime before all these persons left London, in order to go to France, Mr. Binns went to Canterbury, for the purpose of hiring a vessel; and, I admit, for I would not wish to attempt to mislead you, in the course of the observations which it is my duty to submit to you, I do admit, that in all the instances which have been spoken to by the different witnesses on the part of the Crown, there is no ground whatever, to impute to them any attempt to conceal the truth, or to misrepresent it, with respect to the fact of Mr. Binns having been in treaty with them, for the purpose of hiring a vessel in order to convey some persons to France. Now let us consider who the persons are, and the testimony they have given as to this fact. Mahoney and Claris, who live at Canterbury, are the two first witnesses who were called upon the part of the Crown. And the story that they tell you is, that Mr. Binns applied to them, to know if he could get a vessel, under the circumstances they have stated, and, that when he first applied to them, he told them that his name was Williams, and that in Canterbury he passed by that name, and that letters were so addressed to him.

Now, gentlemen, you will consider what the purpose of Mr. Binns was—clandestine I admit; but whether criminal or not, is a different consideration; and if criminal, to what extent is the precise point of inquiry? The transaction being clandestine, it required therefore concealment—and this will explain the first thing of which I have to satisfy you, namely, why Binns passed by another name than his own, the reason for which, I think, you will completely feel, from the single consideration, that if he had passed by his own name, being engaged in a clandestine attempt to hire a vessel in order to go to Flushing or France, he would have been thereby prevented from attaining that purpose. No man willfully so acts as to counteract his own purpose. He, at once, assumes the name of Williams. Was it for any other reason? You have that in evidence, from the testimony of the witnesses for the Crown. It was not from any consciousness of guilt in the transaction, still less could it be from the consciousness of treasonable guilt, because Mahoney, Claris, and three or four other witnesses,

have told you that both at Canterbury and Whitstable, though Binns passed at the post-office, and publicly, by the name of Williams, yet he told, to no less than five or six different persons, that his name was not Williams, but Binns. Nay, he went farther, and told them why he passed by the name of Williams, informing them that he was the person tried sometime before, and acquitted, upon a charge of having uttered seditious words, at Warwick. I am sure you will think a person going to a sea-port town in his own name, having been tried for seditious words not long before, was the most likely of all others to have his letters opened, and therefore the mere circumstance of that trial, induced the necessity of concealing his name, that he might not be interrupted in his purpose, and at once explains why he passed by the name of Williams, and not by the name of Binns. But any inference arising from this fact, that he was conscious of a treasonable design, is completely negatived upon the part of the evidence given by the Crown itself, because it is repugnant to all probability, that a man conscious of such a purpose, would, at the moment of attempting to carry it into execution, tell to a great number of persons, whom he had never seen before, that his name was Binns, whereas he might have remained in complete concealment by the name of Williams. The observation, therefore, seems to me fairly and strongly to arise, his passing by a feigned name is a circumstance that cannot furnish, in any degree, the presumption of a treasonable purpose; because a man with a treasonable purpose, would be uniformly cautious to remain concealed, whereas this man told his name, and who he was, though they would equally have treated with him under his assumed character. You find he applied to a great number of persons to engage a vessel, in order to convey the persons whom he mentioned to France. I admit it. The effect of that clandestine transaction I shall presently observe upon more particularly, but deferring it for the present, only attend to this one circumstance, which is most material, I mean, that Mr. Binns, in conversation with Mr. Mahoney, who was, I think, the man, by whom he was referred to some of the persons at Deal, distinctly told him, in the very first conversation, that he did not intend to go to France himself. I think I do not misrepresent the evidence, if I do I shall be obliged to the learned judge for his correction, and will thank you to correct me if you recollect it otherwise,—but Mahoney has said, I think, that in the conversation he had with Mr. Binns, when he first applied to him to assist him in hiring a vessel, he did distinctly and particularly inform him, that it was to convey some friends, whom he expected at Whitstable, but that he was not going with the vessel himself. Then so far, at least, we get. If the evidence upon the part of the Crown consists in the declaration made by

the accused, they must take that declaration altogether, and then it amounts to decisive proof, that Mr. Binns was not in the prosecution of that purpose imputed to him by this indictment, that is, an intention to go to France in order to convey this paper to the enemy, he not even intending to go to France for any purpose whatever. But, gentlemen, there is, I do not seek to conceal it, other evidence given upon the part of the Crown. It appears from one of the witnesses, whose name at this moment I do not particularly recollect, nor is it material, the substance of the evidence is sufficient, but it appears from one of the witnesses, that Mr. Binns told him, after the bargain had been concluded, that he would go with the vessel, but that he would return in three hours. Now, gentlemen, there again the evidence given by Mahoney is confirmed by the other witness, who is called upon the part of the Crown. And what is the progress of the transaction but this? When he first applies to hire a vessel, he says expressly, that he is not going himself, but his friends are going; when he finds it necessary to deposit 300*l.* to be forfeited in case the vessel does not return, then he distinctly informs the person that he will go with the vessel, and she will not be detained above three hours, and what? that he, Mr. Binns, would return in her. Then what does the case come to? The earliest evidence and the latest testimony both agree in this, that it was not the original intention of Mr. Binns to go to France in this vessel, and that when he did state himself to entertain that idea, it was not with an intention to continue in France, but to return to England with the vessel, he engaging, according to his notion, that the vessel would not be detained above three hours. I say again, therefore, that the charge is disproved completely with respect to the circumstance of Mr. Binns intending to go to France for the purpose of conveying this treasonable paper, his inducement to go to France not being to carry any paper, but with the special intention of remaining on board, in order to hasten the return. In every view therefore of the evidence, in every part of the testimony, as it relates to Mr. Binns, I think I state the result of the case fairly, when I assert it to amount to this, that instead of there being any proof of Mr. Binns being in a conspiracy to go to France, if this were an indictment for a misdemeanor for an attempt to go to France without a licence, you must acquit him even of intending that, because in order to establish that charge, you must prove that he intended to remain, not that he went with others for the especial purpose of hastening the return of the vessel, and not continuing there himself.

But there is one, and one other part of the case of Mr. Binns only, which requires some observation, and that is the conversation which he held with those different persons at the time he applied to them, in order to engage them to let their vessel to him. And

the Attorney-general has stated in his opening, that Mr. Binns alleged to these different persons that he had the means to insure her return. Now you will attend to that expression, and see how that accords with the evidence. Mr. Binns, says the Attorney-general, stated to these different persons, that he had the means to insure her return: but what is the evidence? Why, all the persons with whom Mr. Binns treated upon this occasion have told you, that he said, he thought it was probable she would not be detained; that he did not believe she would be detained; that he offered to deposit a sum of money in case she should be detained; and so far from his going the length of asserting that he had the means to insure her return, you find the transaction ended in his agreeing to deposit three hundred guineas, to pay one hundred guineas per month for the time she continued there, and in that proportion during the length of her continuance, the whole to be forfeited if she did not return at the expiration of the time. Instead, therefore, of his positively asserting, that he had any such means, all he stated to them was his own expectation of what might happen in case the vessel should carry the persons he expected at Whitstable; and the evidence on the part of the prosecution, instead of confirming the opening of the Attorney-general, disproves it,—only amounting to this, that Binns made use of assurances to several of these persons, as to the probability of what might happen by way of inducement, when anxious to procure, at all events, a vessel, in order to carry the persons to Flushing or to France, who were afterwards to go on board of her, not that he asserted, as a fact, that he himself had the means of insuring her return.

Gentlemen, I have stated to you, as far as I have now proceeded, all that seems to me to relate to the distinct circumstances of Leary, of O'Coigly, of Allen, and of Binns, and I now come to consider the case of Mr. O'Connor. But, before I proceed to the consideration of the case of this gentleman, I would take the liberty of again recalling to your consideration, very distinctly, what is the nature of the present charge.

Gentlemen, the indictment imputes to Mr. O'Connor, to Mr. O'Coigly, and to all the other persons, that they had a paper of a certain description in their possession, and you will recollect the words—*in their possession*—because, before you can find any one of those persons guilty of that which this indictment imputes to them, you must be satisfied, as honest men, in the exercise of the important and awful duty now cast upon you, that you can look every one of these persons in the face, and with your hands upon your hearts, on the solemn obligation of your oaths, and in the presence of that just God in whose name you are sworn to administer justice, say, You had this paper in your possession, with the criminal intent alleged by the indictment, at

the time you were taken into custody. To this length you must proceed; because the main allegation of the indictment, from which all the other facts alleged follow as consequences merely, is, the possession of all and each of those several persons of the paper in question; and unless they have proved that possession by such evidence as the law requires,—instead of having failed, as they have, to prove it by any evidence of any sort whatever, then, I say, you cannot hesitate, for a single moment, in declaring, with the exception of Mr. O'Coigly, whose case stands upon a different ground, as I have stated, that all the other prisoners are not guilty of that which this indictment imputes to them, that is the possession of this paper, at the time they were arrested, with the intention of conveying it to France, in order to deliver it to the enemy. Now, let us examine, in what manner the Attorney-general has endeavoured here to make out the case. There is no positive evidence pretended to exist. For that any one of these persons ever saw the paper, or heard the contents of the paper, or even knew of the existence of any paper, there has been no testimony attempted to be given upon that part of the Crown, but you are desired to infer their knowledge of the existence of the paper from the single circumstance, that they say it was found in the possession of one of the party, that is, O'Coigly.

But upon what ground is it that the Attorney-general argues the case to this extent?—Why he states it thus:—That when any number of persons are in the prosecution of a common purpose, the act of one is the act of all, and I agree that the Attorney-general states the law correctly in this respect, but the enquiry for your consideration is as to the common purpose; what was the common purpose, in the prosecution of which all these persons were associated? What was it which they conspired to do? Which they consulted to do? and which, therefore, constitutes the common purpose, as to which they were engaged.—This is the point, and the only point for your consideration. Without denying, therefore, the law, as stated by the Attorney-general, I say, that if he means to apply that law to the present case, by alleging that these persons were in the prosecution of a common purpose, and that it was a treasonable purpose, and, therefore, that the act of one is the act of all; in so alleging, he begs the question, for before he can make the act of one the act of all, he must prove the common purpose a treasonable purpose, and the treasonable purpose charged by the indictment. But if he does not show this, then, according to the doctrine of the Attorney-general himself, there is no ground or colour for imputing the alleged possession of Mr. O'Coigly, of a particular treasonable paper, to the other persons, if the common purpose had no reference whatever to that paper, and therefore they would not be liable for any act done by him,

even if the paper was in his possession and custody with his knowledge, because engaged with him in the prosecution of a common purpose of a different sort.

I will explain my meaning a little more distinctly. These persons were, I admit, in the prosecution of a common purpose, and that purpose undoubtedly was going to France; that, I state, was the only common purpose; and being in the prosecution of this common purpose, I do admit that the act of Mr. Binns, in applying to different persons to hire a vessel in order to carry them to France, is evidence against all those other persons of an endeavour made to go to France. But the question is, whether they meant any thing beyond this? or to state the case in this way—If one of these persons, who was going to France with the others, had, unknown to the others, this paper in his possession, and this paper being in his possession constitutes an act of treason, then, I say, that such ulterior purpose being unknown to the rest, is not the common purpose, and the act of this man cannot be ascribed to the rest, so as to involve them in his guilt; for nothing can be more clear than that if five persons agreed, for different purposes, to go to France, it is utterly impossible you can say that you must therefore infer the knowledge of each of these persons of every paper that might be found concealed upon the person of any one of them. Therefore this case, after all, will come round to the great question, which I originally stated, not whether these persons were concerned clandestinely in going together to France, but whether they were going to France in the joint prosecution of carrying this paper to the enemy; for if the others were merely going to France, and knew nothing of this paper, then a possession by O'Coigly is no evidence against them; and how much soever it might operate against him, it cannot touch their case, or affect them in the slightest degree. I hope, therefore, as far as I have proceeded, I have made myself distinctly understood, and if I have, I trust you will agree with me, that the observations I have hitherto made, are fairly warranted by the facts of the case.

Now, gentlemen, we come to the important question in the cause, and that is, whether this paper (no matter, for the purpose of the present argument, how it found its way into the pocket of Mr. O'Coigly), was there with the knowledge of the rest. And here, I will assume, for the purpose of the argument, that the paper was in the possession of O'Coigly, with his knowledge; and I will assume, for the purpose also of the argument, what, I trust, will not be the conclusion to which you will come, that it was there for a treasonable purpose; but assuming all this, the case of the other persons differs from that of Mr. O'Coigly in this material respect, that the paper, in this view of the subject, is actually found in his possession, but in his exclusive possession, for it is not in the possession of

any other person; therefore the circumstance, in respect of which alone, if you could be disposed to convict him of this offence, the possession of the paper, that circumstance is wanting in the case of every one of the other persons accused; nor is there any evidence either positive or circumstantial, that they knew the paper to be in his possession, or of the existence any where of any such paper.

Upon this part of the case I beg that I may be distinctly understood; and let it not be supposed for a moment that I mean to make the attempt to mislead any one of you. When I talk of possession, which is what this indictment alleges, I will explain myself accurately. And here again, that I may state nothing to you in point of law that is not perfectly correct, I will state what I mean, inviting the animadversion of the learned judges, if I state it in an improper or an incorrect manner. The indictment has alleged the possession of this paper by all the several persons at the bar, and from the fact of possession the prosecutors allege their knowledge, and infer their criminal intention. Now see to what this case results. First, they infer the possession of the rest from the fact, as they allege, of the possession but of one; then they infer their knowledge from such their constructive possession; and lastly, they infer the treasonable intent from their constructive knowledge, founded on their constructive possession; so that instead of this being a case, as the law requires, established by plain, direct, and manifest proof, it is precisely the case of all others in which the pith and substance of the charge, the gist and essence of the indictment, is all inference, is all conjecture, is all common argument, is all presumption. But is it necessary there should be an actual possession? No; for I admit that possession may be of two sorts. It may be actual, or it may be constructive. And by actual possession, I mean where a paper is in the personal possession of any man, with his own knowledge; as, for instance, if you should be of opinion that this paper was in the possession of O'Coigly, he knowing it to be in his pocket, that would be the actual possession of O'Coigly, but it could not be the actual possession of any one of the other persons. Then their case must be reduced to a case of constructive possession. And here again, I admit that possession may become constructive, or be inferred from the conduct of the parties. For if all the circumstances of the case show that it was in the possession of O'Coigly, with the privity and consent of the others, in order to be conveyed by him to France, they co-operating with him in that purpose, then I admit that his possession would be their possession, upon the principle correctly stated by the attorney-general, that where they all unite in the prosecution of one common purpose, the act of one is the act of all. Therefore, in order to make out the constructive possession in this case, it is necess-

sary that the crown should establish—which they have not attempted by any positive evidence, and which they have not only failed in doing by any circumstantial evidence, but they have by circumstantial evidence established directly the reverse—that this paper was in the actual possession of O'Coigly, with the knowledge of Mr. O'Connor, or with the knowledge of the other persons at the bar, for the purpose of being made use of as the indictment states.

But let us examine still more closely what are the circumstances on which they rely. The paper is found, they say, in the pocket of O'Coigly. Why, my friend has truly told you, that that which is found in a man's pocket, is generally supposed peculiarly to belong to himself. But I go farther, and beg your attention to this, that if the place in which the paper was deposited, was the pocket of O'Coigly, it was precisely that, of all others, in which it was least likely to be known to Mr. O'Connor, unless you can suppose that this gentleman, after the character and the account that you have heard of him, was a man of such a description, that he was likely to put his hand into the pocket of another person. Its being therefore in the pocket of O'Coigly, would not merely prove that it was in his possession, and his possession exclusively, but would go the length of proving that it was deposited in that place, in which, of all others, any gentleman travelling in his company would be the least likely to find it, because no gentleman is likely to put his hand into the pocket of any other person.

What are the means by which knowledge of a paper is ordinarily established? Knowledge of a paper, I admit, is to be inferred from the possession of the paper. Again, if any evidence had been given that this paper was in the hand-writing of any of these persons, that would be evidence of their knowledge. If any evidence had been given that they had heard it read, that would be evidence of their knowledge. If any evidence had been given that they had told the contents of it to another, before it was found, that would have been evidence of their knowledge. But none of these circumstances (which are the only facts in respect of which you can raise the question of constructive possession, for to be actually or constructively possessed of it they must know of its existence,) are to be found in the present case; but you are desired, from the mere circumstance of their going to France in company with O'Coigly, to infer their guilt to the full extent of the charge; are to take upon yourselves, on your oaths, to declare, without, I assert it, a syllable of evidence, positive or circumstantial, leading to such a conclusion, that the single fact of a paper being found in a place of concealment, to which they had no possible access, fixes the full criminality of this paper upon Mr. O'Connor and the others, though they are not proved ever to have known of its existence, though

they are not proved to have heard it read, though they are not proved to have told the contents to any other person, and though it is absolutely inconsistent, as I shall show, with all the other circumstances of the case, all but impossible I might say, that he or they could have any knowledge of this paper having been, up to the moment when it is stated to have been found. For consider who these persons are, the circumstances which attended the discovery, and the evidence which has been given.

You find that Mr. O'Connor had a great number of packages belonging to himself; that he had papers of his own in those packages, under lock and key; I ask, then, can you believe it of a man like Mr. O'Connor, who has been accustomed to the business of the world, who has long lived in public life, who has acted a great part upon the political theatre, who is represented to you to be a man of a mind uncommonly acute and intelligent, can you suppose it possible that he could prove such an idiot and driveller, that having knowledge of a paper of this treasonable sort, though he had concealed with the most cautious care others, of a nature which they have not ventured to allege even as overt acts in this indictment, though he had hidden every other scrap of paper that belonged to him, can you, I say, all this being proved, believe, that knowing the existence of this paper, when discovery must prove so fatal, he would have trusted it to the possession of O'Coigly, to be found in a loose cover in his pocket, in an open great coat, in the common room of a public inn?

Such is the sort of intelligent mind Mr. O'Connor is proved to possess! and this you are desired to believe was his conduct when plotting the downfall of a state. According to them, he went out of this country expressly to invite the French to invade it, by the possession of a paper, which paper he knew, if discovered, would lead to his certain destruction, and which, however, turns out to be the only paper which at all concerns him, which is proved not to have been under his own charge, or in his own custody, secured in his own packages by his own key. It is impossible to come to such a conclusion. Reason revolts at the idea! feeling sickens at the thought! It would be nothing short of a judicial murder, according to the light in which I view this case, if it were possible for any man to convict Mr. O'Connor, and the others, of the possession of this paper, under the circumstances I have fairly stated. When I say this, it does not arise from any distrust of you, either on my part, or on the part of the prisoners at the bar. Quite otherwise. Next to him in whom we are chiefly taught to put our trust, their firm reliance is upon you, in this, the awful hour of their deliverance. But I am a plain man, speaking to plain men, and it is necessary to speak plainly when the lives of men are at stake. Plainly, therefore,

sultation, conspiracy, and agreement, the nature of that conspiracy and agreement being alleged by the indictment to procure and obtain a certain writing, which it states, and then it goes on to allege, after specifying the contents of the paper, that the intent was, to convey it to the enemy, in order to induce them to make an invasion of England. In the intent, therefore, of inducing the enemies of this country being of a particular description, that is, the persons carrying on the government of France, by the description of the Executive Directory of France, to invade England, and acts alleged to have been done in prosecution of that intent, consists the whole of this charge.

Gentlemen, I state this because it is extremely important that you should be made fully sensible of it. And in order to illustrate it, I will put a strong case for your consideration: I will suppose, for the purpose of argument,—what is completely disproved, in point of fact, by all the circumstances in the cause,—that there existed in the mind of any one of the several persons now on trial before you, intentions of a treasonable nature with respect to Ireland—Nay, gentlemen, I will go farther, and I will suppose that it had turned out upon this occasion, by the clearest of all possible evidence, that these several persons were concerned in a conspiracy to induce the French to invade Ireland. Why, gentlemen, I say precisely for that very reason, that it did so clearly and certainly appear that they intended to procure the invasion of Ireland, for that very reason (if in point of fact this was proved beyond all doubt to be the case), you would be compelled to acquit them of this indictment, which imputes to them not an intention to procure an invasion of Ireland; and it is your bounden duty to say, whether they are guilty or not guilty of the particular charge. But I put this case for the sake of illustration merely, because by-and-by you will most fully perceive, that there is not the least ground for casting such an imputation, or any thing leading even to such suspicion, with respect to any one of the persons now at the bar.

Gentlemen, I have now stated to you the nature of the treason which this indictment charges, and the overt acts which are alleged as the means of carrying that treason into execution. And having thus explained to you, and I hope clearly and distinctly, the nature of the accusation, and the means by which it is to be made out, I will now come, without farther preface, to consider what are the facts of the particular case.

And, gentlemen, before I go into the detail of the evidence, I will take the liberty of stating to you what I conceive to be the general nature of this transaction. I admit that it does distinctly appear, from the evidence that has been given, that the several persons at the bar were, at the time when

they were apprehended at Margate, about to embark on board a ship, with the exception of one, whose case stands upon a different ground from that of the others, and which, by-and-by, I shall have occasion to explain to you. But, with the exception of Mr. Binns, it does appear, that the other persons at the bar, Mr. O'Connor, Mr. O'Coigly, Allen, and Leary, were about to embark on board a vessel at Margate, at the time when they were apprehended. And I farther admit, that there is evidence before you, that in a great-coat pocket, which is stated to belong to one of the persons now at the bar, was found a paper which has been produced in court, and is a paper of that description that will maintain the overt act stated in the indictment, provided all the other parts of that overt act can be made out; that is, that it was a paper in the actual possession of the person in question, by which I mean his conscious possession, a possession consisting in his knowledge of the fact of the paper being in his pocket; or, in other words, I admit, that if you are satisfied that the paper was found in the pocket of Mr. O'Coigly, if you are farther satisfied that he knew of its being there, if you are satisfied that he intended to convey it to the enemies of the Crown, and if you are satisfied that it was a paper of that description, namely, an invitation from persons calling themselves the Secret Committee of England, to the Executive Directory of France; then, in respect of all these circumstances, undoubtedly this overt act would be completely established as to him. But the case, with respect to the other persons, would stand upon a very different ground: for even the case attempted to be made upon the part of the prosecution, consists in this specific fact, namely, that the paper in question was found, according to them, in the possession of Mr. O'Coigly, and Mr. O'Coigly only. It is not pretended that there is any reason to believe that the great coat belonged to any other person; nor has it been endeavoured to be proved, nor even has it been suggested, that the paper was put into that pocket by the hand of any one of those other persons, or that there is any positive evidence that it was there with their knowledge, privity, and consent. The case, therefore, thus stated, will, as you observe, resolve itself again into very different grounds of consideration. For I am persuaded that it cannot have escaped your accuracy, still less that of the learned judges who preside on this occasion, that the case of these different persons stands, in some respects, upon grounds entirely distinct. It will therefore again be necessary, for the purpose of investigating the cases of the several prisoners, to present each separately before you, in order to enquire what part each may be supposed to have had in the transaction in question, as the evidence now stands.

Gentlemen, in this order of proceeding, the case which naturally presents itself the first

for your consideration is the case of Mr. O'Coigly. Now what are the circumstances under which Mr. O'Coigly appears before you? Gentlemen, it appears that he is a native of Ireland; that he was a priest there; that, for causes which do not distinctly appear, but the nature of which is immaterial, he was obliged to quit Ireland, it being unsafe for him to continue there. And you have it in evidence, as I shall by-and-by show by referring you to particular documents, that he continued in Ireland so late at least as the 14th of January, 1798. It is in evidence on the part of the prosecution, that on that day a letter was written by Mr. O'Coigly, to lord Edward Fitzgerald. This proves him to have been in Dublin upon the 14th of January, and it does not appear at what time he left it, subsequent to that day. Gentlemen, the case therefore of Mr. O'Coigly is not that of a person who had been usually resident in this country, connected with any one of the political societies which exist in the town of London, but the case of a person, a native of Ireland, and proved to have been there so lately as the period which I have already mentioned.

The first thing that will occur for your consideration, will be how happened it, that there was any acquaintance between Mr. O'Connor and O'Coigly. And we have heard a great deal of cross-examination from different quarters of the Court, some from my friend Mr. Garrow, who is absent, and some from the attorney-general, enquiring of those, who were the most intimate friends of Mr. O'Connor, whether he had ever introduced to them a person, as his friend, by the name of Captain Jones? Gentlemen, with respect to the origin of the connection between Mr. O'Connor and Mr. O'Coigly, Mr. O'Connor, who is now upon his trial, can give you no evidence; O'Coigly, who is now upon his trial, can give you no evidence; you must therefore collect it in the best manner you are able, from the circumstances which exist in the case, and I trust it will be deemed the least exceptionable manner of collecting it, on behalf of the accused, when I refer you to the evidence that has been given upon the part of the prosecution.

Gentlemen, by the evidence given for the Crown, it distinctly appears that Mr. O'Coigly was in the habit of acquaintance, familiarity, and intimacy, with lord Edward Fitzgerald; that lord Edward Fitzgerald was in the habits of close friendship with Mr. O'Connor; and you find, that upon the 14th of January, there was a correspondence, which is in proof, between Mr. O'Coigly and lord Edward Fitzgerald. It is also in evidence, that Mr. O'Coigly was obliged to leave Ireland for his own safety. He was not in England when Mr. O'Connor first arrived here. Then the natural presumption arising even out of the evidence given upon the part of the Crown, is, that lord Edward Fitzgerald, who was the

friend of Mr. O'Connor, was the person owing to whose introduction of Mr. O'Coigly to Mr. O'Connor, they were afterwards found in the situation which I shall have occasion to describe to you.

Now, gentlemen, Mr. O'Connor might or might not be acquainted with Mr. O'Coigly in Ireland, or he might receive a recommendation of him in the manner I have suggested. Which of the two, will turn out to be immaterial for the reasons I shall presently give. It is enough for me to state, that it is not proved on the part of the Crown, that there was an acquaintance, intimacy, or friendship whatever, between O'Coigly and Mr. O'Connor, before a time subsequent to the correspondence between him and lord Edward Fitzgerald. You find, then, that Mr. O'Coigly was obliged to leave Ireland, and that when in England, he intended to go to France. But before we come to the circumstances of the journey in question, you will recollect that it has been proved, and I admit the fact was so, that Mr. O'Coigly passed in London by the name of Captain Jones, and that Mr. O'Connor undoubtedly did, from time to time, address him by that name. Why, gentlemen, if you consider this circumstance accurately, you will be of opinion with me, that a person who was obliged to leave Ireland because it was unsafe for him to continue there, was precisely, on that account, not likely to pass by his own name in the town of London. The circumstance, therefore, of Mr. O'Coigly passing by the name of Captain Jones is accounted for, by the fact, that it was unsafe for him to continue in Ireland, and for the same reason he meant to be concealed in London. The cause therefore which induced the assuming a false name, was his wish to continue in concealment, and because he thought his situation unsafe, if he should be known, which might have happened if he had passed by his real name.

Mr. Solicitor General.—Mr. Dallas assumes, as a fact, Mr. O'Coigly being obliged to leave Ireland; we have no note of such evidence.

Mr. Justice Buller.—The evidence was no more than that the Orange party racked his father's house twelve years ago, that was by a single witness, Stewart.

Mr. Dallas.—Gentlemen, I certainly was endeavouring to state to you the effect of the evidence that has been already given; always submitting to you, subject to the correction of the learned judge, when the evidence comes to be stated hereafter, whether the observations I make upon the evidence are warranted or not. But you will understand me to be stating what I conceive to be the effect of the evidence; that effect to be made out by the observations which I submit to your consideration. It appears then to be clear, that Mr. O'Coigly was passing by the name of Captain Jones; and you have no evidence, that during the time that he continued in London, he did belong to any public society;

or connected himself with persons of any political description whatever. But you have this evidence from Mr. Bell, that he never saw Mr. O'Connor and Captain Jones together, till about ten days, I think, before the time when they set off in the Whitstable boy, that is, on Sunday the 25th of February, when O'Coigly, in company with Mr. O'Connor, with the other persons, with the exception of Mr. Binns, embarked at the Tower, and arrived at Whitstable in the evening of that day.

Now, I would beg leave, gentlemen, to make this observation which appears to me to be material for your consideration. The case endeavoured to be established against Mr. O'Coigly is, the possession of this paper, and by possession, I mean that he knew it to be in the place in which it is stated to have been found, supposing the evidence which the officers from Bow-street have given to be true in this respect. Now to proceed by steps. It is perfectly clear, that there is no evidence upon the part of the Crown, of any antecedent delivery of this paper by any person whatever to Mr. O'Coigly; there is no proof of his having been seen in the possession of the paper; there is no evidence of his having read the contents; and the whole case is reduced in point of proof to the single circumstance of its being found in the pocket of a great coat, which great coat is stated at the time to have belonged to him.

Gentlemen, the first fact, therefore, for your consideration will be, to whom this coat belonged. For undoubtedly if it did not belong to Mr. O'Coigly, there is an end of the charge as it relates to him, and of course a complete end of the charge as it relates to all the other prisoners. With respect to the fact of the great coat belonging to him, here again if I recollect the evidence distinctly, it stands upon the testimony of one person only, and that is the witness Smith, who was master of the boy, and who states that in the course of that day he saw Mr. O'Coigly wear a light great coat, with a black collar, which great coat I admit he has gone the length of swearing he believes to be that which was produced to him, and the great coat produced to him was that which the officer had proved to have been found in the inn at Margate.

Now I would pause here for a single moment. The evidence of this man is merely evidence of belief. He never had seen Mr. O'Coigly before; of course he had had no opportunities of observing his dress; he was on deck where there were the other persons occasionally, who are now at the bar; then I put it to you to say even if this man had sworn in the most positive manner that he knew the great coat to be the same, instead of having merely said, as I understood him to have said, that it was a great coat like that produced to him, but supposing him to have positively sworn that it was the same great coat, I ask you whether you would go the length

†

of believing a man who, having had no opportunity of particularly examining it, having made no mark upon it at the time, judging merely from its colour and cape, I ask you whether you would conclude in your minds, when the life of a man is at stake, that that evidence was such as you ought to act upon, or whether you would not conclude that it was swearing a great deal too much from so slight an observation as the colour of a coat, and the single circumstance of the collar being the same. As far therefore as any positive evidence is given from any living witness, it is clear it is not that which you can depend upon, as that sort of certain testimony, which proves the property of the coat in question, and when life is to depend upon the sort of proof.

But I admit the case upon the part of the prosecution does not rest here. They have undoubtedly given evidence to you of a paper found in the pocket of that coat, and among others, they have given evidence that the paper which forms the subject of this indictment was, among others, found there. The witnesses have undoubtedly sworn that the paper was found there. But no person has endeavoured to say by whom it was put there, and therefore whether the paper was there with the knowledge of Mr. O'Coigly, or without his knowledge, that also is a mere inference that you must draw from the circumstances of the case, because the case in that respect, as in every other, is totally destitute of any positive evidence. I do not mean to contend that it is not peculiarly a subject for your consideration from the facts that have been proved, but I say, that according to the nature of those facts, so ought the inference that you draw from them to be one way or other in favour or against the prisoner. What then is the nature of the facts proved? All that they have proved with regard to the great coat is, that in the pocket was found a paper which is the paper in question. They found also a pocket book in which there are different articles belonging to Mr. O'Coigly, and this great coat was found in the room of an inn, where it had continued all night, the prisoners having slept in a different apartment. Now this is the whole of the evidence that is given on the part of the prosecution in order to prove the possession of this paper by the prisoner, Mr. O'Coigly, with his own knowledge, and from which knowledge you are desired to infer the intention of delivering it into the hands of the enemy. Undoubtedly it is for you to draw the inference. I can only state the facts to you, and state them correctly, nor would I wish to push any observations upon this part of the case beyond that which it fairly warrants, because I feel that I should be rendering no service, either to the particular individual whose case is now under your enquiry, or to the other persons taking their trial with him. But the question for your consideration will be, whether under the evidence given on

the part of the prosecution,—no person having been called to prove this to be the dress he generally wore, no person being called to prove that he knew of this paper being in his pocket, no person having been called to prove that it is in the hand-writing of any one with whom he was acquainted, the great coat being proved to have been in the open room of an inn during the night,—it will be for you to say, whether, under all these circumstances, you are so completely convinced of the existence of this paper in the pocket of Mr. O'Coigly, with his knowledge, for the purpose stated in the indictment, that you must find with respect to him the allegation of the indictment fully proved, that is, that he had it in his custody and possession, and had it for the purpose of conveying it to the enemy in order to send them intelligence of the state of this country.

The circumstance of its being in the possession of Mr. O'Coigly, with his knowledge, becomes still less probable, if you consider the extraordinary fact that has been proved by one of the witnesses, who has been also called upon the part of the Crown. For I am sure you cannot have forgotten, that one of the witnesses from Whitstable expressly told you, that in a conversation which he had with O'Coigly, he mentioned to him that the people at Whitstable were in a state of distrust, which is, in other words, that they suspected them to be in the prosecution of some improper purpose. Now that conversation is extremely material in this respect, namely, that it does not profess to have been addressed to any of the other prisoners, because then O'Coigly might have heard it or not, but the conversation is addressed to O'Coigly, and not to the other prisoners; and yet the very person in whose ear the alarm is sounded, who is put upon his guard, who is told that suspicion is abroad, who has every reason to believe that a search will be made in consequence of that suspicion, what is the conduct of this man who is stated to be charged with an important paper for the purpose of conveying it to the enemy? Why his conduct is such as is repugnant to all observation furnished by common experience. Instead of increasing his caution in consequence of the intelligence he received, instead of concealing or destroying the paper, knowing that it was in his pocket, liable to be searched, he leaves it in the open room of a public inn, and has not the common caution to carry it into the room in which he slept! Gentlemen, again I put it to the candor of every one of you to say, whether this is a conduct that at all agrees with the observation you have made upon the manner in which persons generally conduct themselves, who are in the perpetration of deeds of guilt? And with this observation I leave this part of the subject, having now stated all that occurs to me with respect to the case of Mr. O'Coigly, with regard to the possession of the paper in question, that is, the

supposed possession, or the actual possession, with his knowledge, in the manner it has been endeavoured to be proved by the witnesses called on the part of the Crown.

I shall next proceed to the consideration of the case of Leary.

And, gentlemen, Leary's case is very important for your consideration, not merely as it relates to himself, but as it concerns all the other prisoners at the bar. Leary you have been told by Mr. Attorney-general, in his opening, is the servant of Mr. O'Connor, and what was stated to you by Mr. Attorney-general, has been proved by the witness whom he called. You will remember that Leary was not a person who was passing by a feigned name, or under an assumed character. For though Mr. O'Connor was passing by the name of colonel Morris, yet Leary still continued to act in that character which really belonged to him, that is, as the servant of Mr. O'Connor, passing by the name of colonel Morris. But Leary is included in this indictment. And in the opening of the Attorney-general, no distinction whatever was made between his case, and that of any other of the prisoners at the bar. I do not wonder at it. The Attorney-general would have been inconsistent with himself, according to the principles he has stated, if he had gone the length of distinctly admitting, what I shall distinctly prove, that it is utterly impossible for you, upon the sort of evidence that you have heard, to convict that boy of the crime of high treason, which is now imputed to him. In doing this, I say he would have been inconsistent with himself, for reasons which I shall presently explain.

Gentlemen, Leary, the servant of Mr. O'Connor, is not pretended to have had any particular connection with any one of the persons who are now upon their trial, excepting his master; nothing particular is alleged with regard to him as to the possession of this paper: his case therefore amounts to this, and this only, that he, the servant of Mr. O'Connor, who had been such for a great length of time, is found in the course of his usual employment, travelling with his master, his master (I admit, passing by a feigned name), and that which is made a question for you to consider is—whether, upon the whole view of this case, you think there is the slightest evidence to believe, that Leary was privy to the existence of any such paper, to the contents of it, or to the plot with which he, this servant, is charged, of having confederated with his master, and other persons accused, to commit high treason, by carrying this paper over to the enemy?

Why, gentlemen, I own I am astonished! If you were to be asked who was precisely the person, of all others, whom human imagination would point out as the last, and the least likely to be acquainted with the purpose of Mr. O'Connor, if his purpose were of a treasonable nature, I should say the very man

who stood in the relation to him of servant to master. Gentlemen, you know perfectly well, that we are not in the habit of communicating our plans, even upon ordinary occasions, to those who are in the capacity of domestics about us. You know, likewise, that if you were going upon any journey, and your servants were to enquire of you what the object of that journey was, you would consider it as a very officious and impertinent intrusion. In the case, therefore, of Leary, it is repugnant to all probability to suppose that his master would explain to him, or that he would ask an explanation of his master where he was going, or what was the purpose and object of his journey.

To what, then, does his case amount? To this, and this only—The servant of Mr. O'Connor, who had lived with him in Ireland, who knew the situation of affairs there, knowing that Mr. O'Connor, was about to embark at a sea-port town, Mr. O'Connor being a public man, knowing therefore that his master was passing by a feigned name, to be concealed, he is found in the course of employment by his master, attending upon him, and there is no evidence of any sort before you, that at the moment when all these persons were apprehended, this man even knew, from any communication made to him, or from any circumstance whatever, whether his master was going to Ireland, whether he was going to France, or, in a word, where he was going; and without any evidence to convince you that Leary knew whether Mr. O'Connor was going to one place or the other, without a word of evidence to connect him with the treasonable paper or purpose, you are desired to infer against this servant, from the mere act of his attendance upon his master, whom he had long served, that he not only knew that he was not going to Ireland, but that he actually knew he was going to France; and farther, that he knew he was going to France for the specific purpose of carrying a treasonable invitation to the enemy to invade England, and was co-operating with him in this intention and design!!—Good God! Gentlemen, this is the length to which the doctrine of construction, of presumption, and of inference, is pushed upon the part of the prosecution; and I admit that it does not stop short of this extreme. For according to the reasoning of the Attorney-general, it would indeed comprehend the case of this man, for the same reasons that he states it to involve the case of the others. It is for you to say, whether these principles and doctrines can, in point of law, reason, or humanity, be maintained.

The case of Leary, therefore, I take for granted, for the reasons given, is much too clear to require farther observation. With one word only I will detain you farther. He is included in this indictment, for what reason I do not know, and because I do not know, I will not take upon me in this respect to condemn the conduct of the At-

torney-general. It is possible that he might have been originally put into the indictment from his exact situation not being ascertained; and as these persons were some of them passing by feigned names, and under assumed characters, it may have happened, that the Crown might not be in possession then, of complete evidence to ascertain the fact, whether he was that which he now turns out to be, the servant of Mr. O'Connor, and nothing more. But now this fact does distinctly appear, I am extremely mistaken if the Attorney-general will ultimately press you upon this part of the case for a verdict of guilty; but I am sure I am not mistaken, that if he should call upon you for such a verdict, he will do it in vain.

But before I finally dismiss the case of Leary, I will trouble you with only one observation more. You have been already referred to the case of lord Preston, Ashton, Elliot, and another person. There were four persons who upon that occasion were going to France. With respect to two of them, they were tried and convicted under the circumstances that have been stated. Elliot, who was the third, but not a servant, was not even brought to his trial, though put in the indictment. As to the fourth person, whose name also appears in the course of the proceedings, he was going as servant to lord Preston, and the crown, knowing this fact, did not even think it proper to include him in the charge; and yet his case was in that respect precisely the case of Leary. The servant of lord Preston, going in a state of concealment out of this country, which state of concealment might have suggested to the mind of a servant the idea of some improper or criminal purpose, at least precisely as much so as in the case of Leary—they are parallel cases, the circumstances of each suggesting an equal degree of suspicion;—but in that case the servant was not even accused, much less put upon his trial, and gravely pointed out as a fit object for a verdict of high treason. I now therefore quit his case, with the most entire and perfect confidence that it is impossible for you to hesitate one moment in saying that there is not the slightest pretence for imputing to this man any guilt whatever, much less that guilt which the indictment charges—the crime of high treason, in adhering to the king's enemies.

The next person who occurs, is the prisoner of the name of Allen. And with respect to him, his situation is in some degree ascertained, because you find, from a person of the name of Smith, that Allen lodged in a house in Plough-court, Fetter-lane, kept by a person of the name of Evans; and she tells you that she had not known him for above ten or twelve days before the time when he went to Whitstable, in company with some of the persons now before you. The case, therefore, of Allen, appears to be this—a person who,

you find, had not been long resident in London, because he is not proved to have lodged at any other place, and in the only place in which he did lodge, he is proved to have been there but a few days before the transaction in question, and nothing is given in evidence to you with respect to his connexion with Mr. O'Connor, nor with any one of the other persons, except Mr. Binns, and the only evidence of his connexion with Mr. Binns, and indeed Mr. O'Coigly, is, that he lodged in the same house in which they did. But who is Mr. Allen? Is he a man likely to be engaged in a treasonable plot against this country? Is he a person whom you can imagine to have been in the pay of the enemy? Is he a person whom you can for one moment believe to have received the wages of treason? Why, the evidence on the part of the crown informs you what is the miserable condition of this wretched man. You find, that after arriving in London, he was reduced to that state of distress and poverty, that he is proved to have lodged in this house, not in an apartment of his own, but that he, in company with two other men, all occupying the same room, paying for that room at the rate of seven shillings and sixpence a week, that he, thus situated and thus circumstanced, had lodged there for some days before he went on board this vessel with Mr. O'Coigly, for the purpose of going with him, I admit, to France. The evidence with respect to Allen is different from that of Leary, in respect of the peculiar circumstances of their different situations, because Allen, I admit, was not the servant of Mr. O'Coigly, but he was passing under a feigned character, in order to escape with Mr. O'Coigly, who was passing by the name of Jones; and it clearly appears he was a man in a state of miserable poverty and abject distress. But with regard to the paper, the point of the charge both with respect to him and Leary, there is not the slightest particle of evidence, on the part of the crown, to show that either of these persons knew of the existence of such a document in the possession of any man whatever, or had reason to suspect it, much less that they were engaged in the plot described. Then so far we get. Leary was the servant of Mr. O'Connor, and Allen a person in distress, passing as the servant of Mr. O'Coigly. Their case amounts to this—one is with his master, and the other going out of England, it being unsafe for him to continue there; and they are found in Margate, in the same house, I admit, having the charge of the baggage, at the time this paper is stated to have been found in a great coat pocket, which is said to have belonged to Mr. O'Coigly. Therefore, with regard to these two persons, the case on the part of the Crown completely fails in establishing that which it is necessary to maintain, in order to induce you to convict them, that is, their knowledge of the existence of this paper. Positive evidence there is

none. The circumstantial proof leads to no such inference with respect to them; on the contrary, as far as it leads to any inference, it excludes the presumption, as it does also completely with respect to the others, as I shall next have occasion to show.

And this brings me to the case of Mr. Binns—he also is proved to be a native of Ireland. When his acquaintance with Mr. O'Connor commenced, does not exactly appear, nor can it for the reason that I have stated to you before, as to another part of the case, because he, as well as Mr. O'Connor, being now upon his trial, they cannot give evidence to explain it. But this I admit does appear. That sometime before all these persons left London, in order to go to France, Mr. Binns went to Canterbury, for the purpose of hiring a vessel; and, I admit, for I would not wish to attempt to mislead you, in the course of the observations which it is my duty to submit to you, I do admit, that in all the instances which have been spoken to by the different witnesses on the part of the Crown, there is no ground whatever, to impute to them any attempt to conceal the truth, or to misrepresent it, with respect to the fact of Mr. Binns having been in treaty with them, for the purpose of hiring a vessel in order to convey some persons to France. Now let us consider who the persons are, and the testimony they have given as to this fact. Mahoney and Claris, who live at Canterbury, are the two first witnesses who were called upon the part of the Crown. And the story that they tell you is, that Mr. Binns applied to them, to know if he could get a vessel, under the circumstances they have stated, and, that when he first applied to them, he told them that his name was Williams, and that in Canterbury he passed by that name, and that letters were so addressed to him.

Now, gentlemen, you will consider what the purpose of Mr. Binns was—clandestine I admit; but whether criminal or not, is a different consideration; and if criminal, to what extent is the precise point of inquiry? The transaction being clandestine, it required therefore concealment—and this will explain the first thing of which I have to satisfy you, namely, why Binns passed by another name than his own, the reason for which, I think, you will completely feel, from the single consideration, that if he had passed by his own name, being engaged in a clandestine attempt to hire a vessel in order to go to Flushing or France, he would have been thereby prevented from attaining that purpose. No man wilfully so acts as to counteract his own purpose. He, at once, assumes the name of Williams. Was it for any other reason? why no. You have that in evidence, from the witnesses for the Crown. It was not from any consciousness of guilt in the transaction; still less could it be from the consciousness of treasonable guilt, because Mahoney, Claris, and three or four other witnesses,

have told you that both at Canterbury and Whitstable, though Binns passed at the post-office, and publicly, by the name of Williams, yet he told, to no less than five or six different persons, that his name was not Williams, but Binns. Nay, he went farther, and told them why he passed by the name of Williams, informing them that he was the person tried sometime before, and acquitted, upon a charge of having uttered seditious words, at Warwick. I am sure you will think a person going to a sea-port town in his own name, having been tried for seditious words not long before, was the most likely of all others to have his letters opened, and therefore the mere circumstance of that trial, induced the necessity of concealing his name, that he might not be interrupted in his purpose, and at once explains why he passed by the name of Williams, and not by the name of Binns. But any inference arising from this fact, that he was conscious of a treasonable design, is completely negatived upon the part of the evidence given by the Crown itself, because it is repugnant to all probability, that a man conscious of such a purpose, would, at the moment of attempting to carry it into execution, tell to a great number of persons, whom he had never seen before, that his name was Binns, whereas he might have remained in complete concealment by the name of Williams. The observation, therefore, seems to me fairly and strongly to arise, his passing by a feigned name is a circumstance that cannot furnish, in any degree, the presumption of a treasonable purpose; because a man with a treasonable purpose, would be uniformly cautious to remain concealed, whereas this man told his name, and who he was, though they would equally have treated with him under his assumed character. You find he applied to a great number of persons to engage a vessel, in order to convey the persons whom he mentioned to France. I admit it. The effect of that clandestine transaction I shall presently observe upon more particularly, but deferring it for the present, only attend to this one circumstance, which is most material, I mean, that Mr. Binns, in conversation with Mr. Mahoney, who was, I think, the man, by whom he was referred to some of the persons at Deal, distinctly told him, in the very first conversation, that he did not intend to go to France himself. I think I do not misrepresent the evidence, if I do I shall be obliged to the learned judge for his correction, and will thank you to correct me if you recollect it otherwise,—but Mahoney has said, I think, that in the conversation he had with Mr. Binns, when he first applied to him to assist him in hiring a vessel, he did distinctly and particularly inform him, that it was to convey some friends, whom he expected at Whitstable, but that he was not going with the vessel himself. Then so far, at least, we get. If the evidence upon the part of the Crown consists in the declaration made by

the accused, they must take that declaration altogether, and then it amounts to decisive proof, that Mr. Binns was not in the prosecution of that purpose imputed to him by this indictment, that is, an intention to go to France in order to convey this paper to the enemy, he not even intending to go to France for any purpose whatever. But, gentlemen, there is, I do not seek to conceal it, other evidence given upon the part of the Crown. It appears from one of the witnesses, whose name at this moment I do not particularly recollect, nor is it material, the substance of the evidence is sufficient, but it appears from one of the witnesses, that Mr. Binns told him, after the bargain had been concluded, that he would go with the vessel, but that he would return in three hours. Now, gentlemen, there again the evidence given by Mahoney is confirmed by the other witness, who is called upon the part of the Crown. And what is the progress of the transaction but this? When he first applies to hire a vessel, he says expressly, that he is not going himself, but his friends are going; when he finds it necessary to deposit 300*l.* to be forfeited in case the vessel does not return, then he distinctly informs the person that he will go with the vessel, and she will not be detained above three hours, and what? that he, Mr. Binns, would return in her. Then what does the case come to? The earliest evidence and the latest testimony both agree in this, that it was not the original intention of Mr. Binns to go to France in this vessel, and that when he did state himself to entertain that idea, it was not with an intention to continue in France, but to return to England with the vessel, he engaging, according to his notion, that the vessel would not be detained above three hours. I say again, therefore, that the charge is disproved completely with respect to the circumstance of Mr. Binns intending to go to France for the purpose of conveying this treasonable paper, his inducement to go to France not being to carry any paper, but with the special intention of remaining on board, in order to hasten the return. In every view therefore of the evidence, in every part of the testimony, as it relates to Mr. Binns, I think I state the result of the case fairly, when I assert it to amount to this, that instead of there being any proof of Mr. Binns being in a conspiracy to go to France, if this were an indictment for a misdemeanor for an attempt to go to France without a licence, you must acquit him even of intending that, because in order to establish that charge, you must prove that he intended to remain, not that he went with others for the especial purpose of hastening the return of the vessel, and not continuing there himself.

But there is one, and one other part of the case of Mr. Binns only, which requires some observation, and that is the conversation which he held with those different persons at the time he applied to them, in order to engage them to let their vessel to him. And

the Attorney-general has stated in his opening, that Mr. Binns alleged to these different persons that he had the means to insure her return. Now you will attend to that expression, and see how that accords with the evidence. Mr. Binns, says the Attorney-general, stated to these different persons, that he had the means to insure her return: but what is the evidence? Why, all the persons with whom Mr. Binns treated upon this occasion have told you, that he said, he thought it was probable she would not be detained; that he did not believe she would be detained; that he offered to deposit a sum of money in case she should be detained; and so far from his going the length of asserting that he had the means to insure her return, you find the transaction ended in his agreeing to deposit three hundred guineas, to pay one hundred guineas per month for the time she continued there, and in that proportion during the length of her continuance, the whole to be forfeited if she did not return at the expiration of the time. Instead, therefore, of his positively asserting, that he had any such means, all he stated to them was his own expectation of what might happen in case the vessel should carry the persons he expected at Whitstable; and the evidence on the part of the prosecution, instead of confirming the opening of the Attorney-general, disproves it,—only amounting to this, that Binns made use of assurances to several of these persons, as to the probability of what might happen by way of inducement, when anxious to procure, at all events, a vessel, in order to carry the persons to Flushing or to France, who were afterwards to go on board of her, not that he asserted, as a fact, that he himself had the means of insuring her return.

Gentlemen, I have stated to you, as far as I have now proceeded, all that seems to me to relate to the distinct circumstances of Leary, of O'Coigly, of Allen, and of Binns, and I now come to consider the case of Mr. O'Connor. But, before I proceed to the consideration of the case of this gentleman, I would take the liberty of again recalling to your consideration, very distinctly, what is the nature of the present charge.

Gentlemen, the indictment imputes to Mr. O'Connor, to Mr. O'Coigly, and to all the other persons, that they had a paper of a certain description in their possession, and you will recollect the words—*in their possession*—because, before you can find any one of those persons guilty of that which this indictment imputes to them, you must be satisfied, as honest men, in the exercise of the important and awful duty now cast upon you, that you can look every one of these persons in the face, and with your hands upon your hearts, on the solemn obligation of your oaths, and in the presence of that just God in whose name you are sworn to administer justice, say, You had this paper in your possession, with the criminal intent alleged by the indictment, at

the time you were taken into custody. To this length you must proceed; because the main allegation of the indictment, from which all the other facts alleged follow as consequences merely, is, the possession of all and each of those several persons of the paper in question; and unless they have proved that possession by such evidence as the law requires,—instead of having failed, as they have, to prove it by any evidence of any sort whatever, then, I say, you cannot hesitate, for a single moment, in declaring, with the exception of Mr. O'Coigly, whose case stands upon a different ground, as I have stated, that all the other prisoners are not guilty of that which this indictment imputes to them, that is the possession of this paper, at the time they were arrested, with the intention of conveying it to France, in order to deliver it to the enemy. Now, let us examine, in what manner the Attorney-general has endeavoured here to make out the case. There is no positive evidence pretended to exist. For that any one of these persons ever saw the paper, or heard the contents of the paper, or even knew of the existence of any paper, there has been no testimony attempted to be given upon that part of the Crown, but you are desired to infer their knowledge of the existence of the paper from the single circumstance, that they say it was found in the possession of one of the party, that is, O'Coigly.

But upon what ground is it that the Attorney-general argues the case to this extent?—Why he states it thus:—That when any number of persons are in the prosecution of a common purpose, the act of one is the act of all, and I agree that the Attorney-general states the law correctly in this respect, but the enquiry for your consideration is as to the common purpose; what was the common purpose, in the prosecution of which all these persons were associated? What was it which they conspired to do? Which they consulted to do? and which, therefore, constitutes the common purpose, as to which they were engaged.—This is the point, and the only point for your consideration. Without denying, therefore, the law, as stated by the Attorney-general, I say, that if he means to apply that law to the present case, by alleging that these persons were in the prosecution of a common purpose, and that it was a treasonable purpose, and, therefore, that the act of one is the act of all; in so alleging, he begs the question, for before he can make the act of one the act of all, he must prove the common purpose a treasonable purpose, and the treasonable purpose charged by the indictment. But if he does not show this, then, according to the doctrine of the Attorney-general himself, there is no ground or colour for imputing the alleged possession of Mr. O'Coigly, of a particular treasonable paper, to the other persons, if the common purpose had no reference whatever to that paper, and therefore they would not be liable for any act done by him,

even if the paper was in his possession and custody with his knowledge, because engaged with him in the prosecution of a common purpose of a different sort.

I will explain my meaning a little more distinctly. These persons were, I admit, in the prosecution of a common purpose, and that purpose undoubtedly was going to France; that, I state, was the only common purpose; and being in the prosecution of this common purpose, I do admit that the act of Mr. Binns, in applying to different persons to hire a vessel in order to carry them to France, is evidence against all those other persons of an endeavour made to go to France. But the question is, whether they meant any thing beyond this? or to state the case in this way—If one of these persons, who was going to France with the others, had, unknown to the others, this paper in his possession, and this paper being in his possession constitutes an act of treason, then, I say, that such ulterior purpose being unknown to the rest, is not the common purpose, and the act of this man cannot be ascribed to the rest, so as to involve them in his guilt; for nothing can be more clear than that if five persons agreed, for different purposes, to go to France, it is utterly impossible you can say that you must therefore infer the knowledge of each of these persons of every paper that might be found concealed upon the person of any one of them. Therefore this case, after all, will come round to the great question, which I originally stated, not whether these persons were concerned clandestinely in going together to France, but whether they were going to France in the joint prosecution of carrying this paper to the enemy; for if the others were merely going to France, and knew nothing of this paper, then a possession by O'Coigly is no evidence against them; and how much soever it might operate against him, it cannot touch their case, or affect them in the slightest degree. I hope, therefore, as far as I have proceeded, I have made myself distinctly understood, and if I have, I trust you will agree with me, that the observations I have hitherto made, are fairly warranted by the facts of the case.

Now, gentlemen, we come to the important question in the cause, and that is, whether this paper (no matter, for the purpose of the present argument, how it found its way into the pocket of Mr. O'Coigly), was there with the knowledge of the rest. And here, I will assume, for the purpose of the argument, that the paper was in the possession of O'Coigly, with his knowledge; and I will assume, for the purpose also of the argument, what, I trust, will not be the conclusion to which you will come, that it was there for a treasonable purpose; but assuming all this, the case of the other persons differs from that of Mr. O'Coigly in this material respect, that the paper, in this view of the subject, is actually found in his possession, but in his exclusive possession, for it is not in the possession of

any other person; therefore the circumstance, in respect of which alone, if you could be disposed to convict him of this offence, the possession of the paper, that circumstance is wanting in the case of every one of the other persons accused; nor is there any evidence either positive or circumstantial, that they knew the paper to be in his possession, or of the existence any where of any such paper.

Upon this part of the case I beg that I may be distinctly understood; and let it not be supposed for a moment that I mean to make the attempt to mislead any one of you. When I talk of possession, which is what this indictment alleges, I will explain myself accurately. And here again, that I may state nothing to you in point of law that is not perfectly correct, I will state what I mean, inviting the animadversion of the learned judges, if I state it in an improper or an incorrect manner. The indictment has alleged the possession of this paper by all the several persons at the bar, and from the fact of possession the prosecutors allege their knowledge, and infer their criminal intention. Now see to what this case results. First, they infer the possession of the rest from the fact, as they allege, of the possession but of one; then they infer their knowledge from such their constructive possession; and lastly, they infer the treasonable intent from their constructive knowledge, founded on their constructive possession; so that instead of this being a case, as the law requires, established by plain, direct, and manifest proof, it is precisely the case of all others in which the pith and substance of the charge, the gist and essence of the indictment, is all inference, is all conjecture, is all common argument, is all presumption. But is it necessary there should be an actual possession? No; for I admit that possession may be of two sorts. It may be actual, or it may be constructive. And by actual possession, I mean where a paper is in the personal possession of any man, with his own knowledge; as, for instance, if you should be of opinion that this paper was in the possession of O'Coigly, he knowing it to be in his pocket, that would be the actual possession of O'Coigly, but it could not be the actual possession of any one of the other persons. Then their case must be reduced to a case of constructive possession. And here again, I admit that possession may become constructive, or be inferred from the conduct of the parties. For if all the circumstances of the case show that it was in the possession of O'Coigly, with the privity and consent of the others, in order to be conveyed by him to France, they co-operating with him in that purpose, then I admit that his possession would be their possession, upon the principle correctly stated by the attorney-general, that where they all unite in the prosecution of one common purpose, the act of one is the act of all. Therefore, in order to make out the constructive possession in this case, it is necess-

sary that the crown should establish—which they have not attempted by any positive evidence, and which they have not only failed in doing by any circumstantial evidence, but they have by circumstantial evidence established directly the reverse—that this paper was in the actual possession of O'Coigly, with the knowledge of Mr. O'Connor, or with the knowledge of the other persons at the bar, for the purpose of being made use of as the indictment states.

But let us examine still more closely what are the circumstances on which they rely. The paper is found, they say, in the pocket of O'Coigly. Why, my friend has truly told you, that that which is found in a man's pocket, is generally supposed peculiarly to belong to himself. But I go farther, and beg your attention to this, that if the place in which the paper was deposited, was the pocket of O'Coigly, it was precisely that, of all others, in which it was least likely to be known to Mr. O'Connor, unless you can suppose that this gentleman, after the character and the account that you have heard of him, was a man of such a description, that he was likely to put his hand into the pocket of another person. Its being therefore in the pocket of O'Coigly, would not merely prove that it was in his possession, and his possession exclusively, but would go the length of proving that it was deposited in that place, in which, of all others, any gentleman travelling in his company would be the least likely to find it, because no gentleman is likely to put his hand into the pocket of any other person.

What are the means by which knowledge of a paper is ordinarily established? Knowledge of a paper, I admit, is to be inferred from the possession of the paper. Again, if any evidence had been given that this paper was in the hand-writing of any of these persons, that would be evidence of their knowledge. If any evidence had been given that they had heard it read, that would be evidence of their knowledge. If any evidence had been given that they had told the contents of it to another, before it was found, that would have been evidence of their knowledge. But none of these circumstances (which are the only facts in respect of which you can raise the question of constructive possession, for to be actually or constructively possessed of it they must know of its existence,) are to be found in the present case; but you are desired, from the mere circumstance of their going to France in company with O'Coigly, to infer their guilt to the full extent of the charge; are to take upon yourselves, on your oaths, to declare, without, I assert it, a syllable of evidence, positive or circumstantial, leading to such a conclusion, that the single fact of a paper being found in a place of concealment, to which they had no possible access, fixes the full criminality of this paper upon Mr. O'Connor and the others, though they are not proved ever to have known of its existence, though

they are not proved to have heard it read, though they are not proved to have told the contents to any other person, and though it is absolutely inconsistent, as I shall show, with all the other circumstances of the case, all but impossible I might say, that he or they could have any knowledge of this paper having been, up to the moment when it is stated to have been found. For consider who these persons are, the circumstances which attended the discovery, and the evidence which has been given.

You find that Mr. O'Connor had a great number of packages belonging to himself; that he had papers of his own in those packages, under lock and key; I ask, then, can you believe it of a man like Mr. O'Connor, who has been accustomed to the business of the world, who has long lived in public life, who has acted a great part upon the political theatre, who is represented to you to be a man of a mind uncommonly acute and intelligent, can you suppose it possible that he could prove such an idiot and driveller, that having knowledge of a paper of this treasonable sort, though he had concealed with the most cautious care others, of a nature which they have not ventured to allege even as overt acts in this indictment, though he had hidden every other scrap of paper that belonged to him, can you, I say, all this being proved, believe, that knowing the existence of this paper, when discovery must prove so fatal, he would have trusted it to the possession of O'Coigly, to be found in a loose cover in his pocket, in an open great coat, in the common room of a public inn?

Such is the sort of intelligent mind Mr. O'Connor is proved to possess! and this you are desired to believe! was his conduct when plotting the downfall of a state. According to them, he went out of this country expressly to invite the French to invade it, by the possession of a paper, which paper he knew, if discovered, would lead to his certain destruction, and which, however, turns out to be the only paper which at all concerns him, which is proved not to have been under his own charge, or in his own custody, secured in his own packages by his own key. It is impossible to come to such a conclusion. Reason revolts at the idea! feeling sickens at the thought! It would be nothing short of a judicial murder, according to the light in which I view this case, if it were possible for any man to convict Mr. O'Connor, and the others, of the possession of this paper, under the circumstances I have fairly stated. When I say this, it does not arise from any distrust of you, either on my part, or on the part of the prisoners at the bar. Quite otherwise. Next to him in whom we are chiefly taught to put our trust, their firm reliance is upon you, in this, the awful hour of their deliverance. But I am a plain man, speaking to plain men, and it is necessary to speak plainly when the lives of men are at stake. Plainly, therefore,

I say, it is grossly repugnant to every idea of justice, to suppose that if this were the case of a common misdemeanor, instead of a charge of high treason, you would infer the privy of these several persons, to the possession of this paper, on such evidence.

But, gentlemen, consider farther how the case stands in another respect. And here again the conduct of Mr. O'Coigly becomes material. You find that he had been told the people of Whitstable entertained suspicions on his account; you find also, that he was in company with Mr. O'Connor subsequent to this; now, I ask you, whether it is reasonable to believe that if O'Coigly had been joined in a conspiracy with Mr. O'Connor to carry this paper to France, he would have suffered Mr. O'Connor to have remained ignorant of such a circumstance? or is it probable that Mr. O'Connor, knowing of such a circumstance, and having a paper in his own possession, or in that of O'Coigly, of a treasonable nature, would have delayed one moment to have destroyed it, after the alarm was given, and distrust was known to exist. But, instead of this, you find all Mr. O'Connor's packages continued locked; nothing is put into them, and nothing is removed; no attempt is made even to secrete the paper in question, but you find his boxes continued exactly in the same state they did before; and when they are taken up to the Secretary of state's office, the locks of each are obliged to be forced, in order to get at the contents. So with respect to all the other prisoners. When their luggage and pockets were searched, there is nothing found that relates to this paper, nor is there any paper of any other sort, excepting one belonging to Mr. O'Connor, upon which I shall presently observe, but no paper of any sort or description, which has the most remote relation to that which forms the substance of the present charge.

I have now, therefore, in respect of all extrinsic circumstances, I trust, completely satisfied you, that it is quite impossible, even if this were a charge for a common misdemeanor, and not a trial for high treason, to come to any such conclusion, as that Mr. O'Connor and the others, whose case stands upon the ground of constructive possession, knew of the existence of this paper; but quite the reverse. And now, before I go to the consideration of the paper itself, I will take the liberty of troubling you with one or two observations only, upon some other parts of the case, as they relate to Mr. O'Connor alone. And first, gentlemen, you will always bear in your minds that the charge against these persons is, the possession of this specific paper, which constitutes the act of treason alleged; and that the other papers which have been produced before you, have been given in evidence only as collateral circumstances, to prove the overt act alleged; that is, the possession of the paper. But the moment that you disbelieve the possession of this paper,

even if the other circumstances were of a different nature from what they are, and amounted in themselves to overt acts of treason, yet, inasmuch as they would be overt acts of treason not alleged in the indictment, you could not find them to be such upon this occasion, and therefore, with the overt-acts laid in the indictment, all the other overt-acts must vanish of course—if any such existed, for they would be made use of as evidence only, and not as matter of charge. Of these collateral circumstances, are some papers found in Mr. O'Connor's possession. And that to which your attention has been chiefly drawn, is a cypher with the key to it. And here again it is necessary, in order to understand this part of the case, to consider who Mr. O'Connor was, and what had been his former habits of life. You find that Mr. O'Connor had taken a very active part in the politics of Ireland, whether right or wrong, is not the subject of the present enquiry; but one fact is perfectly clear, that in consequence of that active part, he had been confined there, during a long space of time, in the gaol of Dublin, as you have heard from the gaoler who had the charge of him, imprisoned and guarded in the strictest manner; and upon being liberated from that confinement, which he was, without any trial, Mr. O'Connor shortly after came over to this country.

On the part of the crown, I admit they have given in evidence a paper which is a cypher, and have also produced a key to that cypher; and I do not deny that it distinctly appears, from these documents, that Mr. O'Connor was going to France; but I undertake to satisfy you upon this part of the case, deemed so peculiarly important in support of the charge, as well as upon every other circumstance in proof, that when this cypher comes to be attentively and accurately considered, it is, of itself, the strongest and most conclusive evidence to destroy even the possibility of a suspicion of the existence of any intention, on the part of Mr. O'Connor, to carry this paper to France, in order, as the charge alleges, to invite the Executive Directory to invade England. And first, I will suppose I could not account for the possession of this cypher, in any way whatever, by extrinsic circumstances. What then? Why you have been truly told, that the possession of a cypher is not of itself treason, nor is it even criminal in any degree. The only proper use, therefore, that can be made of it is, as a circumstance in evidence, assisting the other facts in the case, to prove the overt-acts in the indictment. They must connect the cypher with the intention alleged, to procure an invasion of England, and if they can so apply it, it may no doubt be considered as material evidence to that purpose.

The question then is, considering the intended application of this cypher, does it apply to England or to Ireland? For if it applies to Ireland only, there is an end of the

charge which imputes to Mr. O'Connor an intention, by means of this cipher, connected with the paper in question, to procure an invasion of England. Now what are the contents of the cipher? Look at it, examine it thoroughly, and I entreat of you, before you withdraw, again and again to consider it, with this particular view, always recollecting that the charge against Mr. O'Connor is, his intending to invite the French to invade England, not Ireland. Why, gentlemen, you would naturally suppose, that in the case of such a cipher, intended for such a purpose, you would find little, if any, which related to Ireland, and much, if not all, which related to England; instead of which, when you examine the contents of the cipher, you find a long string of sea-port towns all on the coast of Ireland, and none of the sea-port towns upon the coast of England, with the single exception of Dover, which I trust it will not be contended, upon the part of the crown, is precisely the spot, and the only spot, upon which we are to expect an invasion from France. It seems to me that the observation is therefore irresistibly strong, and absolutely conclusive, that this cipher did not relate to any purpose as to England, but that it related to Ireland, be the purpose what it might; because all the different places which form the subject of the cipher, and would be of course the matter of correspondence, are, to a degree of minute and circumstantial detail, the ports of Ireland, and not of England. Therefore, if I could not account, from the character and pursuits of Mr. O'Connor, from the habits of his public life, from the circumstance of the times rendering necessary the use of a cipher, and if it rested upon the mere ground of what you can collect from the cipher itself, and if you were required to say one way or other, which you suspected as matter of common belief, I am certain you would, without hesitation, declare it does not relate to England, but to Ireland; and therefore the cipher is decisive and conclusive evidence, to show that it could not be in the contemplation of Mr. O'Connor, to make use of this cipher, with reference to an invasion of England, because the subject of it is Ireland, and not England, and yet this is the important paper on which the attorney-general, in his opening, mainly relied, to prove Mr. O'Connor guilty of this charge.

But the case does not rest here: the counsel for the crown have given you that which tends in a considerable degree to explain the possession of such a paper. Mr. O'Connor, besides being a public man in Ireland, and in this country, having been formerly in the Irish House of Commons, was also, as you have been informed, the proprietor of a newspaper called the Press. And here again (for I cautiously forbear introducing political topics of any sort into this question) putting the merits of the Press as a political paper; out of all consideration, it is enough to say, that it

VOL. XXVII.

was a public and political print of great circulation throughout Ireland. Gentlemen, when Mr. O'Connor had been obliged to fly from Ireland, because it was unsafe for him to continue there, no one can be so weak and so silly as to believe, that if Mr. O'Connor had corresponded in his own name, and openly at all times, if he had transmitted intelligence to his private friends, or to those who conducted this print, that his letters would not have been occasionally stopped and opened; I do not say improperly opened, I state merely the fact. To be the proprietor of a newspaper, to any effect, it is necessary to impart intelligence to those on the spot who conduct that paper. This accounts for Mr. O'Connor's being in possession of a cipher, and it also explains why that cipher had relation to public events. When he was to correspond with those who conducted the Press in his absence, with respect to the public situation of England, France, or Spain, and probable, or actual events of a public nature, it was necessary he should correspond in cipher, if he did not mean to have his letters intercepted, understood, and his intelligence discovered. That he was in the habit of transmitting information for the Press, is proved on the part of the crown, for they have given in evidence a letter to Mr. Roger O'Connor, in which he mentions the Press, and states a transmission of the Courier, which is one of our papers, for the purpose of furnishing intelligence for the Press. This alone reasonably accounts for his being in possession of a cipher; but farther, being a public man, and obnoxious to government, liable to have all his private letters stopped at the Post Office, and in the habit of corresponding with his friends as to public affairs, he did not choose, with the probability of that event, in case they should be actually stopped and intercepted, that the contents of all his private correspondence should be known.

But upon this part of the case I will pause for a moment—and when this prosecution has got to its close, I request you, gentlemen, who are now honouring me with a degree of attention, for which, upon the part of the prisoners, and myself, I most humbly and most gratefully return you thanks—I request every one of you, when this case has got to its conclusion, to consider whether I have not, as far as I have troubled you with any observations, submitted those which fairly arise out of the facts of the case, and I only desire of you ultimately to let them have effect, as they agree or differ with the observations which may have arisen in your own minds. Subject, then, to this remark, I think, as far as I have gone, that I have accounted for the nature of all those circumstances, which, on the part of the crown, are said to be mysterious. But I go farther, and say with my learned friend, that if they are mysterious, precisely for that very reason you are not to conclude that they are criminal, for criminality must

G

distinctly appear, instead of facts mysterious, or doubtful, or dark. I have explained them satisfactorily; I trust I have. But suppose the explanation, for a moment, not to be satisfactory—Admit them to be mysterious still. What is the effect of a case in which there are some circumstances that cannot be developed, that cannot be explained, and which at last remain the subject of conjecture, of doubt, of mystery? And to answer this question, I will refer you to the words of a very learned judge, peculiarly conversant in the administration of criminal law, and equally distinguished for his humanity and for his knowledge; I mean the words of lord chief justice Eyre upon a very recent occasion, the trial of Mr. Horne Tooke. In the close of his address to the jury, the chief justice expresses himself in these words:—"If you should be of opinion that notwithstanding the first impression which these circumstances have made upon your minds, and must I think certainly make upon every man's mind who has heard the case, considering the nature of the enterprise, and considering the actual situation of the means by which it was to be effected, taken together with the evidence of his principles, his habits of life, and his situation in point of health, that you are bound to refer all these transactions to other objects, and you should conclude to form your judgment, as to his intent in these measures in which he has been engaged, rather from these domestic parts of his character, than from those in which he has acted with others in public;*" and, gentlemen, the very last important and emphatic words which he addressed to that jury, were these which I am now about to state to you:—"I wish heartily that Mr. Horne Tooke had put this case really beyond all suspicion, because I see, with great regret, a man of his cultivated understanding, of his habits, of his capacity, to be useful to mankind, a man supported by the evidence of that venerable prelate the bishop of Gloucester, who I am sure would flatter no man; I say, I should have been heartily rejoiced if he could have put this case beyond all suspicion, but I cannot say that he has done so. There certainly is a great deal to be explained, which I am not able to explain, and I am at this moment totally unable to develop the character and conduct of this gentleman"—but that does, what? "But that" (says lord chief justice Eyre) "goes but a little way upon the question, whether he is guilty or innocent of this indictment; that you will judge of by the result of the evidence, and the clear impression that that result shall make upon your minds."†—Important words! containing the sound principles of justice and humanity. Apply them to this case; and, therefore, if I were to admit that all these circumstances

which are not the overt-acts charged in the indictment, are of a nature which after all cannot be developed and explained, that they still remain suspicious and mysterious, still I am entitled boldly to say to you, this goes but a little way to maintain the charge. A verdict of guilty must be the result of a clear impression made by convincing evidence on your minds. But what is this case? Not like the case which I have just stated to you—a case, the result of which in the close of a most long and patient investigation, still left in the mind of that learned judge, a high degree of suspicion as to many circumstances. No, gentlemen, the present is a case, as far as I have gone, clear, I will venture to say upon every principle of law, reason, and justice, against the charge. But putting it in the strongest point of view for the prosecution, allowing them the benefit of every observation that may be made in reply, that these parts of the case have not been satisfactorily cleared up; first I assert they have, but next, if they have not, then I submit they are not the overt-acts charged, they are but adduced as evidence to prove those acts, and however suspicious, however mysterious they may be deemed, which I say they are not, yet still, according to the language of the learned and humane judge who tried the cause to which I have alluded, that goes but a little way towards the question of guilt. To justify such a verdict, the result must be, not a doubtful, but a clear impression.

Now, gentlemen, I come,—and here I shall detain you very shortly,—to the consideration of the paper itself. And upon this part of the case, I should think that I certainly conducted myself with the greatest indiscretion, and that I was doing the most essential injury to the case of every one of the persons now under trial, if I were to say much after the observations which you have heard from my learned friend. His address to you no human ability can surpass, and certainly I should be the most arrogant of men, if I were to presume for a moment to think I can possibly strengthen it. On this part of the case I should therefore at any rate have troubled you with very little observation, but that observation is rendered still less necessary from the evidence that has been given by all the respectable persons who have been called.

Gentlemen, Mr. O'Connor is proved to have been a man, who, up to within a few weeks of the time of this transaction, had resided chiefly in Ireland; a man of rank, a man of family there; the nephew of lord Longueville; a representative, in the Irish house, of one of the boroughs in that kingdom; and having served in the same parliament with Mr. Grattan, who has been examined this day, and in the course of that service, having undoubtedly delivered his sentiments on one occasion in particular, in a manner to do immortal honour to that intelligent mind, of which the most competent of judges have

* See Horne Tooke's case, *ant*, vol. 25, pp. 743, 743.

† *Ibid*.

spoken in the manner you have heard. Such is Mr. O'Connor; and you have it in evidence from all those with whom he has been, and still is most intimately acquainted, that the prevailing subject of his consideration, the constant object of his thoughts, what lord chief justice Eyre aptly calls the habits of his life, were peculiarly the habits of Irish politics, and of whatever related to that country. There all his thoughts revolved, there all his wishes centered. Mr. Sheridan has told you, that in the most confidential conversations that he held from time to time with him, so occupied was he, so intent, so engrossed, so absorbed with the state and situation of Ireland, that he could not bring him for a moment to believe there was any thing of grievance existing in this country, that is, to accede to the opinion, which in this respect Mr. Sheridan entertained with respect to it. These, then, are the habits of life of Mr. O'Connor: you have it from Mr. Erskine, from Mr. Fox, from the earl of Suffolk, from the duke of Norfolk, from all the noble and honourable persons who have been called. They have told you, without a single exception, that in the course of the numerous confidential conversations, during a long period of time, up to the moment of his departure, the constant subject of these conversations, whenever of a political nature, was Ireland and not England; nay, that they even found an aversion to interfere with the concerns or politics of England, where his property was not, where his residence was not, a people with whom he was no otherwise connected, except by habits of private and domestic friendship with many individuals, undoubtedly, of the first private and public consideration. These then were the habits of his political life.

But with whom was Mr. O'Connor connected in England? Were his friendships with administration or with opposition? With the latter you can entertain no doubt, for we have called all the most distinguished persons who commonly pass by that description. Gentlemen, you will fairly conclude, when you find Mr. O'Connor associating with opposition, men out of place, that he could not have an interested motive in doing it: if his attachment had been to persons now in administration, it might at least have been contended, he was a candidate for place and enolument; but when you find him associated with men, who have it not in their power to bestow any favour, or to afford any promotion, you must be certain that they are the men of his choice, that they are the friends of his heart. Then let us for a moment consider what is the sort of paper in question. The charge against Mr. O'Connor is, of a foul and wicked conspiracy to induce an invasion of England. If the charge against him had been, that he was going over to the French to induce them to invade Ireland, upon general principles, at least, it would have been less improbable.

But how it can be supposed that Mr. O'Connor, who came over to England from Ireland, quitting the latter, stung with what he deems the sense of injury, should the moment he arrived in England, enter into a plot to induce the French to invade England only, about which he cared nothing, and forget all that related to Ireland, about which alone he cared up to that moment, how this can reasonably be supposed, I own I cannot possibly conceive. But this is not all; you will attend to the manner in which this paper is worded: it purports to be a paper from the Secret Committee of England, to the Executive Directory of France, and it states—"Go on, Englishmen will be ready to second your efforts;" it continues—"already have the English fraternized with the Irish and the Scots, and a delegate from each now sits with us; the sacred flame of liberty is rekindled; the holy obligation of brotherhood is received with enthusiasm; even in the fleets and the armies it makes some progress; disaffection prevails in both, and United Britain burns to break her chains." Then again it says—"United as we are, we only wait with impatience to see the hero of Italy, and the brave veterans of the great nation—myriads will hail their arrival with shouts of joy." In another place it says—"Englishmen are no longer blind to their most sacred claims." So that, gentlemen, you see, that in every part of this paper, which is a paper purporting to be an invitation to the Executive Directory of France to attempt an invasion, it is an application by Englishmen to invade England, and there is not a word with respect to the discontents of Ireland, the distress of Ireland, the disaffection of Ireland, much less an invitation to the French to attempt an invasion of that country. I ask you, is it possible to believe, that Mr. O'Connor would quit this country, would leave with a bleeding heart those numerous persons with whom he was in the habits of the closest and fondest friendship, for no other earthly purpose, than the moment he got to France, to induce the French to invade England, though if he had any grievances to complain of, their seat was Ireland, and in England only were his enjoyments to be found. But I will not enlarge farther upon the improbability of this part of the case of which my friend Mr. Plumer has already said so much. Since then you have heard a description of Mr. O'Connor in words which I will not attempt to repeat; that he is a man, frank, open, ingenuous, sincere; a man affectionate, ardent in his friendships; that he possesses great simplicity and openness of character; a romantic spirit of honour, said Mr. Erskine, is the characteristic of his mind—But of such a man it is you are desired to believe, that he will go to France with a paper, pointing out unnecessarily as the objects for foreign enmity and detestation, persons with respect to whom I solemnly declare I believe he would willingly lay down his life to avert from any of

them any serious evil. Yet these are the only persons whom you are to believe, without a motive assigned, are the men pointed out, designated by Mr. O'Connor in this paper, as the objects of proscription and destruction, the moment that a landing should be effected upon the shores of England; but as to Ireland and his enmities there, the paper is silent altogether. And, gentlemen, of whom are you required to believe this? Of a man, with respect to whom Mr. Sheridan has distinctly told you, that in the course of conversations of the most confidential sort, he has always collected from him, that it was the fixed sentiment of his mind, that whether it was England or Ireland, no foreign power had a right to interfere with the government of another country; that invasion was an event not only to be deprecated and abhorred, but to be resisted to the utmost whenever it might happen. This is not, therefore, a case which stands merely upon his general habits and principles, but as far as you can get at the interior of his mind, as far as you can search his inmost soul, upon the subject of his political opinions, in this particular respect, delivered in his most unguarded and confidential moments, you find him a determined enemy to invasion, no man more so, no not even Mr. Sheridan himself, who has so lately returned to the House of Commons, chiefly to induce all persons, with one heart, and with one spirit, to arm, to resist to the utmost, the threatened invasion of a daring enemy. No, gentlemen, not even Mr. Sheridan himself, who has lately maintained these sentiments from motives most honourable to himself, and I hope they may prove beneficial to his country, is a more decided enemy than Mr. O'Connor to an invasion of this country by France.

But it will be asked, why was Mr. O'Connor going to France? And suppose I could not explain this, would you therefore infer that his purpose was treason? The law warrants no such conclusion, quite the reverse. The going to France without a licence is, by a particular act of parliament, made a misdemeanor, punishable by an imprisonment of six months. It would be absurd to say, that in a case in which the law punishes the guilt, by an imprisonment of six months only, that the law raises the presumption of treason; on the contrary, the law excludes it. If there were no particular cause, therefore, to account for his going to France, so the case would stand in this respect. But what is the evidence as to this point? You have heard the account given by Mr. Erskine. Indeed all his friends agree in telling you, that Mr. O'Connor was anxious to remain in this country. He was living happily here, honoured, respected, beloved by all. Witness the splendid testimony that has brightened his character in this the eventful hour of trial! living happily in England, he would have wished to have continued here. But why did he go? Mr.

Erskine has distinctly told you. And who is Mr. Erskine? an obscure man—a man ignorant of his profession—a man likely to mislead him! Who will say this of one, than whom there does not exist, in this or in any other country, a person of higher honour, or more distinguished talents. I was the man, says Mr. Erskine, who advised Mr. O'Connor instantly to quit this country, to get out of it by any means. The Attorney-general would not permit him to explain why, and of this I do not complain, for it would not have been evidence. To what then does the case result? By the advice of the person, whose advice, of all others, it was the most proper for him to take, by the advice of Mr. Erskine, by whom he is told it is unsafe for him to continue here—Acting under that advice, he attempts to go out of the country; in attempting it he is found, without any treasonable paper about himself, in the company of a man who is charged to have had in his possession a treasonable paper; and in respect of that paper, though not in his own possession, nor the slightest evidence given that he knew of it, you are desired to impute treason to him.

But there yet remains one circumstance upon the face of the paper itself, which, in addition to all the other facts observed upon, is absolutely conclusive to show that Mr. O'Connor must have been completely ignorant of its existence. The design imputed to Mr. O'Connor is a conspiracy, together with the other persons who are upon their trial with him, to obtain the possession of this paper, in order to carry it to France. It imputes, therefore, a design, a conspiracy, a plot. And here dates are material. Gentlemen, you find that Mr. O'Connor arrived in England some time about the 7th of January; the conversation with Mr. Erskine is fixed to have passed about the 21st of that month. Attending to this, I beg your attention to this introductory part of the paper in question: "Citizens Directors, we are called together," how? "*on the wing of the moment*, to communicate to you our sentiments. The citizen who now presents them to you, and who was the bearer of them before, having *but a few hours to remain in town*;" So that this design, this plot, the result of deliberation, of contrivance, which one would think must have been long in hatching, and slow in maturing, you find, instead of its being a transaction of such a sort, the paper expressly states, that they are called together "*on the wing of the moment*, the citizen who is to bear this having *but a few hours to remain in town*;" conclusive, I contend, to show that the writing this paper must have been a casual thought, the resolution of the moment, by whatever person or persons the paper might be composed. The wing of the moment! and but a few hours to remain in town! Why, gentlemen, what is the case proved? You find, by the testimony of Mr. Bell, that for many weeks before Mr. O'Connor went to Margate, he had been en-

deavouring to get out of the country. You find, that in conversation with Mr. Erskine, long before the time in question, he had advised him no longer to continue here. How then can a paper, evidently referring to a casual circumstance, to an accidental opportunity which snatches at the passing moment, which seizes upon the wing of the occasion, how can you say that such a paper can apply to the case of Mr. O'Connor, who long had formed the project, and long had entertained the intention of going to France, whenever an opportunity of any sort might occur? This is proved by all the evidence in the cause, Mr. Erskine, Mr. Bell, Mr. Sheridan; by the evidence of the written documents; for, in a letter which he writes to lord Edward Fitzgerald, this expression occurs: "He has been most active to try and get away from his creditors, but they so watch him, and *this embargo by the enemy makes it most difficult*;" a difficulty which accounts for the circumstance of Mr. O'Connor afterwards taking the steps he did. From the contents then of the paper, the persons to whom it was addressed, the subject of it, the moment at which it was written, the bearer to whom it alludes, the persons pointed out, the invitation to invade England and not Ireland, I defy any person to depart out of this court, putting all these circumstances together, with any other than the most sincere and perfect belief, that Mr. O'Connor was altogether ignorant of the existence of such a paper, and in no respect whatever engaged in the foul plot of going over in a vessel, in order to convey it to France, to induce an invasion of this country.

But, gentlemen, in addition to what I have already stated, my friend reminds me, that there is also this fact proved upon the part of the Crown. They have called all the different persons who were the tradesmen employed by Mr. O'Connor, and those persons have told you, that his orders were executed, in most instances, a considerable time before he went from London. It is therefore clear that Mr. O'Connor, instead of being a person who had but a few hours entertained this intention, had entertained it almost from the time when he arrived in England, and was at last induced to prosecute it, under the special advice, and by the direction, of Mr. Erskine.

Gentlemen, I have now gone through all the circumstances of this case, by making such observations as occurred to me, and the progress of the argument which I have humbly offered to your consideration has been this:

In the first place, I say, that the overt-act in this indictment, on which the whole charge depends, the possession of the paper, is not proved by any positive evidence: in the next place, I say, that instead of being proved by any positive evidence, it is disproved by all those circumstances of the case, from which the Crown would wish you to draw the conclusion, that Mr. O'Coigly had it with the knowledge of the others; so that if

this were a case in which you could convict upon common inferences, upon common presumptions, and upon common argument, without plain, direct, and manifest proof, the common inferences, the common presumptions, and the common arguments, are all completely in favour of the persons accused, with the exception of O'Coigly, whose case stands, as I said before, upon its special ground; but the constructive case, with regard to the other persons, is completely disproved by those very circumstances relied upon to establish it on the part of the prosecution.

Gentlemen, I trust you will do me the justice to recollect, that in all I have addressed to you, I have endeavoured, cautiously, to apply my observations to your reason only. I have not attempted, in any degree whatever, to interest your feelings, or to raise your passions; I might have done it if I had thought proper. For the practice of courts of justice in this country, similar to those of every other civilized state, the laws of humanity being every where the same, permit the exertion of those arts to the advocate for the accused, whilst they are rigorously forbidden to the counsel for the prosecution. But I have abstained from even making the attempt, and I will tell you why; because it seems to me, that these are arts at best adapted to a doubtful case, and this is a case upon which I entertain no doubt, but I am perfectly confident, that when you come to consider all the circumstances which belong to it, you will feel no hesitation in saying, that there is not even a colour to impute to Mr. O'Connor, to Mr. Binns, to Allen, and to Leary, any knowledge whatever of the existence of such a paper, much less that they were employed in procuring a vessel in order to carry them to France, to communicate it to the French Directory, in order to invite them to invade this country.

Gentlemen, of all this it is undoubtedly for you to judge; and in the course of a very few moments, comparatively speaking, you will be called upon to say whether the several persons who are now before you shall live or die. It is an awful consideration, and hear the prayer which fervently I make. May that great Judge, before whom we must all appear one day for trial, fill your hearts, upon this occasion, with that mild spirit of benevolent justice which we are taught humbly to hope we may expect from him! may he incline your minds to that sure and safe conclusion, that when hereafter it may happen, as oft it must, that you shall meditate and reflect upon the event of this day, your verdict may be such as shall prove to yourselves the source of comfort in life—of consolation in death—of happiness here—of hope hereafter!

Mr. Justice *Buller* asked the prisoners if they chose to say any thing themselves in their own defence?

*James O'Coigly.**—My Lords and Gentlemen of the Jury; as I cannot *prove* a negative, I think it a serious duty I owe to myself, to my country, and to you, in the awful situation in which I now stand, to *DECLARE* to you, under all the solemn impressions of that situation, that I never was the bearer of any former address from any man, or body of men, in this country or my own to the Executive Directory of France; and that the absurd and contemptible paper, which is made the ground of the present serious charge against me, is *NOT* MINE. Upon the very face of it, it was intended to be taken to France by some person *who was the bearer of a FORMER ADDRESS*. I repeat, gentlemen, I was *NOT* the bearer of that address, or any other. If I had been, *that*, although it was impossible for me to prove the *negative*, was a fact clearly capable of *positive* proof on the part of the prosecution; but that has not been proved; it *could not* be proved, because it *was not the fact*.

I must also warn you with the same solemnity, that I am not, nor ever was, a member of any political society in this country. If I had been, that also was a proveable fact, but has not been proved on the part of the prosecution, although the contrary is incapable of proof on mine. Gentlemen, with these few observations, arising not only from the facts, *but also from the evidence*, I consign myself with confidence to your justice, not doubting that by your verdict you will acquit yourselves as men and Englishmen, to your own consciences, your country, and your God!

Mr. Dallas.—Gentlemen of the jury, there is a single observation which I forgot to state. There is an expression in the letter addressed to lord Edward Fitzgerald, "that when he got to Williams he would be active there." You will recollect the evidence of Mr. Fox, that lady Fitzgerald had property in France, and that lord Edward Fitzgerald, some time ago, had it in contemplation to go over to obtain that property.

John Binns.—Gentlemen, when I reflect upon the evidence which has been laid before you, and the manner in which that evidence has been explained and commented upon by my counsel, who have this day so ably and eloquently defended me, I should consider it rather to be an insult upon your understandings and your discrimination, to trouble you with any observations upon my own case, conscious as I am of my innocence.

Mr. Arthur O'Connor.—I have been so ably and so eloquently defended by my counsel, that I shall not trouble the jury with a single syllable upon the occasion; I will leave them entirely to themselves, and to your lordship's summing up.

* This short address is taken from "Observations on the Trial of James Coigly," Appendix, No. VI.

John Allen.—I do not think myself called upon to say any thing: I do not think it necessary, for I do not see any thing like evidence to affect me.

Jeremiah Leary.—The jury may do what they like with me.

REPLY.

Mr. Attorney General.—Gentlemen of the Jury; I trust that I cannot possibly so far forget the nature of those feelings, which ought to influence every Englishman's heart, and the nature of those principles, which ought to regulate my conduct in the discharge of my duty, as not to concur in representing to you, with the counsel for the defendants, that this cause is unquestionably a cause of the utmost importance. In the opening I did not presume to aggravate before you the nature of the offence, which the indictment imputed to the prisoners, because, though I recollect, with whatever confidence I may feel that British valour will defeat the efforts of any foreign enemy, that dares to invade this country, that every such effort must be attended with a great effusion of British blood, and that therefore the wisdom and policy of the law has placed the offences, which are charged in this indictment, in the highest class and rank of criminal offences, known to the law of England. I recollect also that the issues of the life and death of each and every of these prisoners is in your hands; and I am quite sure that no step can be taken more essential to the safety of this country than this, namely, to demonstrate, in the verdict of every British jury, that the law of the country has a deep and sacred concern for the lives of all the subjects that live under it.

Gentlemen, if the observation which fell from my learned friend, who addressed you last, was just (in some degree I admit that it was just, though I think his own conduct was a discharge of his professional duties, more correct in its principle), when he intimated that the counsel for the defendants might use some arts in discharging their duty towards their clients, but that he would not think it consistent with his view of his duty to his clients in this particular case so to conduct himself, I am sure I need not state before you, and in the presence of the country, that I am not to rise upon this occasion as an advocate, having any zeal for the event of this cause, but bound, in the discharge of my official duty, to state for your consideration those observations on the nature of the evidence, which you have heard, as appear, to my mind, to be such as, for the sake of justice between the country and the prisoners, I ought to call your attention to. And, gentlemen, what I have to offer to that attention, for many reasons, I think I shall be able to lay before you, without presuming to ask much more of your time, in addition to that which you have already given to this long

and important cause.—In some measure I feel myself compelled not to trespass long upon your time, because I am not very well able to do it. If the circumstances in which I now stand, did enable me with the utmost vigour to address you, I know also that the duty, which is about to be done to the prisoners and the country by the wisdom which presides here, in stating to you every thing which is material in law and fact for your consideration, certainly would supersede the necessity of my troubling you very much at large.

I think it my duty to intimate in the first place, and I do this with a view that a correct idea of this indictment may be given to you by the learned judge, who will sum up this cause, that I think my learned friends have all of them taken much too narrow a view of the effect of this indictment. They have each, and every of them, endeavoured to satisfy you, that unless a prisoner can be found either to have had this paper in his possession actually, or to have had it in his possession in the legal sense of those words, that is, to have been cognizant of the fact that some other prisoner had it in his possession, with intent to go to France, and to have concurred with him who had the actual possession in his design with reference to that paper, you cannot find such prisoner guilty.—Now I take leave to represent in his lordship's hearing, that I do not take that to be the effect of the indictment—The indictment charges three species of treason, and states several overt-acts of the different species of treason.—The first act is a conspiracy to stir up, raise, and make rebellion and war against the king within this kingdom, and to incite, encourage, move, and persuade the enemies of our lord the king, to make and cause to be made, an hostile invasion of this kingdom. As to the first overt act, so far from making it necessary to prove that this paper was in the possession of one of the prisoners, with the knowledge of all or any other of the prisoners, I conceive, if the fact of the possession by one of the prisoners, accompanied with the true inferences which resulted from the circumstances of the conduct of the rest of the prisoners, proved that the prisoners were engaged in one common design, either by that paper, or otherwise, to incite the enemies of the country, to an invasion of the country—that, although some of the prisoners might not even know the fact, if it could be so put, that that paper was in the pocket-book of O'Coigly, yet, if the circumstances of the evidence satisfy you, as to each, or any of them, that they engaged in such a conspiracy, that that evidence will be sufficient to authorize you to find such of the prisoners guilty.

With respect to the second overt-act here stated, namely, that the prisoners did procure and obtain, and in their custody and possession did conceal and keep a certain paper-writing, theretofore composed and prepared,

to signify and represent to the enemies of our Lord the king that divers of the subjects of our Lord the king, in case the enemies of our Lord the king should make, or cause to be made, an hostile invasion of this kingdom, with ships and armed men, to prosecute and wage war against the king, within this kingdom, would assist such enemies; it is most certain that that count does, in the most express manner, charge that they did conceal and keep the paper in their possession; but I think also that my lords will agree with me in this observation, that it is not necessary, that a prisoner, in order to entitle you to find him guilty, should have the paper in his actual possession, though, as it seems to me, upon this count it would be necessary, if you were to proceed upon this count only, that the prisoners, who had it not actually in their possession, should in this sense, have it legally in their possession, namely, that they should be concerned in one common design with the prisoner who actually has it in his possession, to send that paper to France.

When you look at the other overt-acts here stated, which are overt-acts charging the prisoners with an endeavour to hire a vessel or vessels, to convey or cause to be conveyed the prisoners from this kingdom unto, and into parts beyond the seas, to the intent that they might, in parts beyond the seas, give advice, information, comfort, aid, and assistance to the enemies of the king; I apprehend it to be quite clear in point of law also, that if you can be satisfied that it was their intention that they, or any of them, should be conveyed, either conveying all of themselves, or causing and procuring some of themselves to be conveyed for that purpose, in whatever form, in whatever mode, by whatever means they meant to give that advice and information, even if that paper never had been carried or intended to be carried into France, the indictment would be made perfectly good as to all who had conceived that general intention of giving such advice and comfort; so with respect to treating for the boats, the same sort of observation will apply to the counts in the indictment which relate to that fact. As to those, which relate to the conspiracy, I believe I am accurate, hoping to be corrected if I am otherwise, in stating that, if all the prisoners, if four, if three, if two, are engaged in the conspiracy, the engagement of such number of them, more or less, in such conspiracy, would justify your finding against such of them as were so engaged, notwithstanding you should think the others not guilty. With respect farther to those counts that mention the treating for boats for the purposes mentioned in the indictment, I apprehend that I am also justified in stating, that whether one, or two, or more, were so concerned, as to so many as were so concerned, you would be justified, if the evidence bore you out in such finding, in finding them guilty, though you acquit the others.

With respect to the last count, my lords will see that it charges the prisoners with the fact of going to the King's Head, at Margate, for the purpose of there devising and obtaining the means of going to France, with intent to carry unto the enemies of the king, intelligence, information, advice, assistance, and comfort; it also charges that they meant to convey that paper; but I apprehend that it is quite clear in point of law, that if you can be satisfied that they meant to give that advice, assistance, intelligence, and comfort, although that paper is mentioned in that count, it will not be necessary that you should also be satisfied that that advice, assistance, intelligence, and comfort, was to be given in this express mode, namely, by the communication of that paper to France.

I have said thus much with a view that the nature of this charge may be understood; it seems important now to state, that I have great satisfaction, whatever may be the nature of your verdict in the result of this business, in reflecting that at least those, who are charged with this important offence, may be fairly, I think, represented to you now, to have had time to prepare for their defence; and I conceive that this observation is not uncandid, because, when I come to consider what the nature of the defence is, and what the nature of the defence might have been, I shall certainly offer observations upon the nature of what the defence has been, with more of satisfaction to my own mind, than I could have felt, if I had offered such observations to you, having any scruple in my mind with reference to the fact, whether the parties had had sufficient time to prepare for their defence. Before I examine the evidence on the part of the Crown, as it affects each and every of these prisoners, stating my observations shortly, as to each and every of them; you will give me leave to dispose of the whole evidence in defence at this moment, with a reserve only of what I have to say, with reference to the character which has been given to Mr. O'Connor; you will permit me now to dispose of all the rest of the evidence offered in defence.

With the exception of one witness, who speaks to the fact, a very material fact, as it seems to me, viz. that of O'Coigly's having applied to him as a person in distress, I think the gentleman's name is Stewart, I do not recollect that any witness has been called on the part of the defendants, who has spoken one syllable with regard to any of these prisoners, either as to character, or otherwise, save as to Mr. O'Connor, and excepting the testimony which relates to Thomsett.

I correct myself; I understand that when I was out of court, Mr. O'Coigly received a character from the same witness Mr. Stewart, a gentleman who knew him as a clergyman, and never knew him but by the name of O'Coigly. With these exceptions, I think the evidence on the part of the defendant has applied to no one except to Mr. O'Connor.

With respect to the witnesses who are called to contradict Thomsett, and whose testimony it was very obvious was calculated to discredit him, under the idea that he would have given some considerable evidence with respect to the property of the great coat; you will permit me to mention that Thomsett's evidence, as far as it was material, was most distinctly proved to be true in two ways; first it was proved by all the witnesses at Whitstable, that Thomsett went from Whitstable with the cart and luggage, and O'Coigly, Allen, and Leary; secondly it is proved by all the witnesses who came from Margate, that Thomsett came to Margate with the cart, and with O'Coigly, Allen, and Leary; so that the fact which Thomsett stated, that he had made that journey, would have been as well proved without the evidence of Thomsett, as with the additional evidence of Thomsett; and, in point of fact, Thomsett, so far from giving a suspicious evidence, had stated himself with great caution, with reference to the coat; that he would not presume to swear to the coat; in fact, he said little or nothing about the coat; and then they took the trouble to call three witnesses to discredit him, one of whom, I think his name was Kettle, instead of destroying the credit of Thomsett (whose evidence was really not necessary to be given at all) confirms him throughout, for Kettle states distinctly that he told the same story to him as he has related here this day; he certainly does swear that Thomsett did say he wished they were hanged; you recollect Thomsett explained that by saying he wished they should be hanged if they deserved it, and that he would not take a hundred pounds to keep back his evidence, if he was offered it, and that he had been offered three hundred pounds not to give his evidence, to which fact you can pay no attention, because it is not brought home to any of the prisoners; and then with respect to the two women, Mrs. Jones and her servant, they differ in this most material respect, that Mrs. Jones states the conversation, such as it was, to have been upon the day when these gentlemen were arraigned at Maidstone, which, if I recollect right, was upon the 30th of April, whereas the servant, who was called to support her, distinctly stated that the conversation passed on the 9th of March; I think therefore, that with respect to that contradiction, which is attempted to Thomsett's evidence, you may lay it intirely out of the question.

Gentlemen, when I had the honour of opening this case to you yesterday, I certainly could not be ignorant that Mr. O'Connor, one of these prisoners, had been intimately acquainted with a great number of persons of high respect and condition, who have this day been called to his character, and undoubtedly from the evidence which has been given with reference to his character, he is intitled to say he has received testimony to character from persons of as high credit, and from as

respectable witnesses, as it is possible to put in to that box; though I could not be ignorant that he was in the habits of intimacy with those persons, the difficulty that struck my mind was this (how far I am right in this observation it will be for you, when you have heard the more correct observations of my lord, to say), that it was impossible in the nature of things, however, that Mr. O'Connor could be engaged in such a transaction, as this certainly must be admitted to be, attending to all the circumstances of it, without occasioning at least as much of surprise to the respectable persons who have spoken to character this day, as the disclosure of these circumstances could have created in the minds of any persons, who had not had previously an acquaintance with Mr. O'Connor. The feelings of surprise, which such a transaction as this is, considered with reference to all its circumstances, must necessarily create, cannot but be as considerable in the minds of those who speak to character, as in the mind of a perfect stranger to the person relative to whom such a transaction happens to be related.

Gentlemen, having stated to you the nature of the indictment, and having troubled you for the present with these short observations upon the defence which has been made by the evidence on the part of the prisoners, you will allow me here, to apply myself for a moment to consider those principles of evidence, upon which my learned friends have each and every of them insisted, as being those which are to govern your minds, when you come to apply the facts of this case to the law of the country: and I am extremely ready to state with them, in the broadest terms, that your consciences must be perfectly satisfied by cogent evidence, and satisfied too, by that species of formal evidence, which the law of the country requires to be given in this kind of case, that the defendants are guilty of what is imputed to them, before you can convict. Gentlemen, I am confident that no man in this country would dare to ask you to convict them upon any evidence, short of that, which does fully satisfy your consciences; and here I take the opportunity to beseech you, on behalf of the country, and on behalf of the prisoners, who are part of the country—in whose fate the country is interested, deeply interested—that your verdict should be according to the evidence, that you will now address yourselves to consider the whole of the evidence which has been given, and that you will now most anxiously endeavour to execute the duty which you have solemnly imposed upon yourselves, by the oath which you have taken, to make a true deliverance between the king and the prisoners at the bar. Gentlemen, I go as far as any man in beseeching you, by every consideration that can be pressed home to your consciences, that, if any means whatsoever have been taken to create any prejudices, you will be pleased to recollect, that, in my humble judgment, there is not a man among you, who is

VOL. XXVII.

qualified to execute that duty which the law imposes upon you, who has ventured to form an opinion upon this evidence, till the very moment that you have heard the whole of it, and the whole that is said upon it. Having heard the whole, you should then conscientiously review the whole; and I trust I am addressing myself to twelve men, none of whom have formed their opinion, declared their opinion, or stated their opinion even at this instant.

Gentlemen, you will permit me to say, that I think my learned friends, I mean particularly the very respectable gentleman who addressed you first, and the very respectable gentleman who addressed you last, must have entered upon the execution of their duty this day, with considerable pain, because I think it impossible not to see, that they have felt it absolutely impracticable to defend all their clients, without necessarily making admissions, which must prejudice some of their clients, and without using arguments occasionally on behalf of some of their clients, which arguments cannot, in my apprehension, be justly founded, without your being compelled to draw inferences with reference to some others of their clients, which it was the duty of counsel, as far as their situation would permit, and to the extent in which their situation would permit it, to have guarded the other prisoners against; they have executed their duty as faithfully as the nature of the case would permit.

With respect to the law in this case, upon the nature of the overt acts, I think I am intitled to repeat again, what I stated in the outset of this business, that we could have no dispute about it; as to the offence of compassing the king's death, the offence of adhering to the king's enemies, and the offence of inviting those enemies to enter the country, I stated them to be in law of such a nature that it is unquestionable, and for that reason it has not been questioned; when I so express myself, I desire not to be understood to mean that it would have been improperly called in question, if it could have been questioned; but it has not been, and could not be questioned, that if the overt acts of those treasons, as laid, are proved in fact, they are, in point of law, each and every of them, such overt acts as will support the charge made upon the statutes, upon which the indictment for those offences proceeds; I do not therefore trouble you with one word more upon the law of the case.

With respect to the facts of the case, my learned friend who addressed you first this morning, admitted that it could not be reasonably or fairly doubted, after the evidence which had been given, that Mr. O'Connor, his servant, O'Coigly, and Allen, meant to go out of the kingdom together—and, I think, he could not raise a doubt that they meant to go to France—and that these four did mean to go to France, is, I think, a point of fact which it is impossible for you to doubt of, when you

H

some to consider the evidence. My learned friend, to whose language I am now alluding, followed by other gentlemen in the same terms, intimated that no such thing could be stated with respect to the prisoner Binns. Now, with reference to that, I take leave to state to you, that for the reasons I shall represent presently, it appears to me, that that is as decisively proved (more decisively it cannot be proved) with reference to Binns, as with respect to any of the other four.

There was another observation which fell from the learned gentleman who opened this cause in the morning—a comment, I should rather call it, upon the nature of the paper addressed to the Executive Directory. That the paper, as he expressed himself, was a foul paper:—He spoke of the contents of the paper, as of the contents of what he called that foul paper; and he so characterized the paper, when he stated that Mr. O'Connor could not be base enough, wicked enough, or foolish enough, to have any thing to do with that foul paper. He was obliged afterwards, however, to contend, I think, that this paper was rather foolish than foul; and he afterwards entered into a discussion of the contents of the paper, many parts of which discussion I shall have occasion to take notice of.—When he came to consider the case of O'Coigly, he found it (as it seemed to me) impossible so to state himself to you (if you credited the evidence, and the paper was such as he first admitted it to be) as really to raise any thing like a fair doubt in your minds with reference to the guilt of O'Coigly, if he, having in his actual possession such a paper as the counsel had first represented this to be, did intend to go to France with that paper; and my learned friend was therefore obliged, in this part of the case, to contend that the paper, though at first represented as I have mentioned, was of such a nature, that it could not possibly be presumed that it was intended to be delivered to the Executive Directory, to which it professes to be addressed; and that the contents of it were such, that it was impossible, even if you should be of opinion that O'Coigly had the paper in his possession, that he could have had it in his possession (as I admit he must have had it, to make the possession criminal according to the indictment) with intent to be carried into France, to be presented to the enemies of the country.

Let us now see, as to general facts, how the case stands with reference to O'Coigly. Some little attempt was made yesterday to prove that O'Coigly was an Irishman in distress: it has been followed a little to-day, in the evidence of Mr. Stewart, who mentioned, I understand, that he was an Irishman in distress, relieved by him, Mr. Stewart, and likely to be relieved by Mr. O'Connor, whose temper and generosity have been stated;—that he had fled from Ireland, as my friend, who addressed you last repeated again and again, on account of the state of Ireland;—that, having fled on

account of the state of Ireland, it was true that he was going to France;—that, somehow or other, but how remains perfectly unaccounted for, he had connected himself with Mr. O'Connor—a connexion perfectly unaccounted for, as it seems to me, both upon the part of Mr. O'Connor, and Mr. O'Coigly;—that he had also, somehow or other, connected himself with Binns; the origin of that connexion of O'Coigly with Binns is also perfectly unaccounted for, as well as the origin of Mr. O'Connor's connexion with Binns;—that he had likewise connected himself with Allen;—and that these four persons and Leary were found at Margate, going to France, under the circumstances which you have heard. It is said, however, that there was no criminality attached to Mr. O'Coigly.—Gentlemen, you will permit me to put you in mind of what has been really the evidence—and I will do it in a very few words.

You have had evidence laid before you, which, being uncontradicted, I apprehend I have a right to state to be complete, that O'Coigly appears to have been in France, by the passport which has been produced, which is proved to have upon it his own name, in his own hand-writing; and in Holland, and in Flanders, from the month, I think, of August, to the month of November, if not of December, inclusive. If, therefore, O'Coigly was a person who had fled, from any circumstances of distress, from Ireland,—which, by the way, are not at all proved to have existed—but, if O'Coigly from any circumstances of distress had fled from Ireland, the first observation that I have to make to you is, how does it happen that Mr. O'Coigly went so lately back to Ireland, as the letter which he writes to lord Edward Fitzgerald, on the 14th of January, distinctly proves that he went back to Ireland? and which letter, though it contains a very few words, I take to be a most important one in this case. How does it happen that he betakes himself to Ireland in the period between the month of December and the 14th of January, the date of the letter to lord Edward Fitzgerald, and then comes back again to England soon after the date of that letter? He has not at all accounted for his going to Ireland: he has not at all accounted for the fact of his having been in France: he has not at all accounted for the fact of his being in Holland: he has not at all accounted for the fact of his having been in Flanders: he has not at all accounted for the circumstance of his writing the two letters proved—the one to Rotterdam—the other to Amsterdam—the one of which you will recollect was put into the hands of Perkins, the man who keeps the Bear and Key, at Whitstable; the other of which was found in that pocket-book, which, upon the evidence, I am entitled to represent, I think, as being his pocket-book: I will state presently, why I am entitled so to represent it. He has given no account of any of these transactions; and he

has not accounted for having the address to the Directory. It has been proved upon him, that he has been in Ireland: it has been proved upon him, that he has been corresponding with lord Edward Fitzgerald: he has not thought proper to give you any account of the subject of that correspondence: and (what is as material as any thing) you will be pleased to recollect that it was proved by Mr. Ford, who was here examined, that,—according to that practice which I was going to call humanity; but it has nothing of a more dignified character, in my opinion, than that which belongs to common and ordinary justice,—this gentleman was told that he was not bound to give any account of himself; and, that being brought upon suspicion before those who examined him, if he thought it proper to give any account of himself, which had a tendency to clear him from the suspicions which had attached upon him, he had an opportunity of doing it, and he was examined. Without calling now to your attention the particulars of each of the examinations of O'Coigly, which have been given in evidence, and which you will hear stated in the terms of them by the learned judge, who sums up the cause (which circumstance, therefore, makes it unnecessary for me to trouble you with the detail of these matters), I think myself entitled to say, that the evidence which has been given before you, to-day and yesterday, most distinctly proves that there is not one word of truth in either of the examinations of O'Coigly.

Then I beg to call your attention to the circumstances of his conduct. In the first place you observe, that it has been proved by Mrs. Smith, I think, that Binns—I should be sorry to misrepresent any thing here, and therefore I mention that I am not sure whether I am correct in imputing this fact to John, or Benjamin Binns; but that either John or Benjamin had hired in the house of Mr. Evans, in Plough-court, Fetter-lane, a lodging—

Mr. *Fergusson*.—There is no proof of Binns having hired any lodging—I refer to his lordship's notes.

Mr. Justice *Buller*.—He slept in his brother's bed.

Mr. *Fergusson*.—Nothing of Binns having hired a lodging for any body.

Mr. *Attorney General*.—I will not detain you, gentlemen, with that; it is but a very small circumstance among many.

Gentlemen, I was about to state to you, that after John Binns had set out, upon the Wednesday, for Rochester,—and you will recollect here, that with respect to John Binns's conduct, as to his journies, it is not only proved by all the witnesses who have been called, but the whole is proved by his own memorandum book, though I admit that the circumstance of his taking these journies, of itself, is very insufficient to prove the criminal intent that must be fixed upon him, in order to find him guilty, according to this indictment,—

that after this John Binns had gone to Rochester upon his journey, and before his return, and after he had been endeavouring to engage boats upon the Friday at Whitstable, and upon the Saturday at Deal, Mr. O'Coigly and Mr. O'Connor dined together upon the Saturday, at the house of Mr. Bell. Now, when we speak of this Roman Catholic clergyman as a person in distress, and when we speak of Mr. O'Connor as wishing to get out of the country, upon the advice given him, with reference to which I have a good deal of observation to lay before you presently—I observe here that it is a very singular mode of relieving a Roman Catholic clergyman in distress, to convert him into an officer, to make a gentleman fellow-traveller of him as an officer, and to take him abroad with you in the character of an officer and fellow-traveller, having a servant to attend him; that it is singular that this happens by way of relieving him in his distress. I observe farther to you, that it is (as far as any thing can be collected from the evidence of Mr. Bell), proved, that O'Coigly, as captain Jones, and Binns occasionally called upon Mr. O'Connor at his house, and that when O'Coigly occasionally called upon Mr. O'Connor at his house, he was introduced to him (Mr. Bell) by Mr. O'Connor, as captain Jones; that he dined with him as captain Jones, as the friend of, and a person introduced by Mr. O'Connor. It is proved by other evidence, that in the evening of the day upon which they dined together at Mr. Bell's (to whom Mr. O'Connor had introduced him under the name of captain Jones), Mr. O'Coigly, under the name of captain Jones, and Mr. Allen, slept in the room of Binns, at Evans's house, No. 14, Plough-court, Fetter-lane. On the Sunday morning, as you recollect, Mr. O'Connor, under the name of colonel Morris, with his servant Leary, and Mr. O'Coigly, under the name of captain Jones, with Allen in the character of his servant, (the account of the connexion between O'Coigly and Mr. O'Connor being given you upon the foot of the supposition that Mr. O'Connor was willing to relieve a person in the situation of O'Coigly, in distress), meet opposite the Tower stairs, and they go down together to Whitstable. I pass over the transactions which happened on board the boat upon the evening. The two military gentlemen, as they then appeared to be, namely, Mr. O'Connor and captain Jones, leave the vessel, taking with them a part of the baggage: the two servants, as they were supposed to be, the one of them being a servant, the other being the person who had slept at Evans's along with Mr. O'Coigly, staid on board the vessel, to bring the rest of the articles from on board. Upon the subsequent day, gentlemen, I think it has been proved to you,—reasonably proved to you,—that in the morning, in consequence of Binns's not being at Whitstable in the evening of Sunday, Mr. O'Connor left Whitstable, and O'Coigly stayed

at Whitstable. I think it has been reasonably proved, that great attention was given for the whole time during which they were at Whitstable, to the baggage; and I think it has been reasonably proved, that both at Whitstable, and afterwards, when the baggage was removed, that baggage was carefully attended to; and, what is very material for your consideration, it has been most distinctly and clearly proved, as it appears to me, that at Margate, upon the Tuesday afternoon, after captain Jones, that is, Mr. O'Coigly, came to the King's Head at Margate, there had been no other guests in that house between the time at which O'Coigly came, and the time of the seizure of the baggage the next morning; that the family, one and all of them, speak, as far as it was possible to establish such a fact by evidence, to the circumstance that no other baggage had been brought into the house: they distinctly stated that that coat was found in the room in which Mr. O'Coigly was sitting; and as to which coat, it has been urged to you, as if it could be taken for granted, that it had never been in O'Coigly's bed-room in the course of the night, whereas that fact has never been proved, one way or the other; and if the coat had never been in the bed-room, the pocket-book might have been there; but I do not pretend to state that fact, one way or the other. It is proved that it could not be the baggage or great coat of any guests who were in that house, for there were none; nor was it the baggage of any part of the family of the house.

Then, gentlemen of the jury, an attempt is made to state to you, with reference to Mr. O'Coigly, that this paper was not found in his possession. Now see what are the circumstances with respect to finding the paper in his possession. I speak with respect to him alone now. They find the paper in a pocket-book, which pocket-book is in the pocket of a great coat, which great coat was in the room where he was sitting, and whether that great coat was his or not, I distinctly told you in the opening yesterday, did not appear to my judgment to be material; but they find that pocket-book in his presence: they examine the contents of it—according to Mr. Twopenny, this paper, which is addressed to the Executive Directory of France, was folded up in a sheet or two of white paper, in such a manner that it could not readily be seen; he described to you the fold at the edge of the paper; it was found in that pocket-book, with a variety of other papers; it was found in that pocket-book with other papers, which were addressed to captain Jones; it was found in that pocket-book with another paper, which was directed to lieutenant Johnes, and which certainly, as I understand, whilst I was out of court, has been proved not to be the hand-writing of Mr. O'Connor, but of Mr. Stewart. It was found in that pocket-book with that letter, however, of Mr.

Stewart's, which is a letter to Mr. O'Coigly, and found in a pocket-book with the letter of orders, and the testimonials which produced the grant of those letters of orders, to Mr. O'Coigly, who is now sitting at the bar.

Gentlemen, you are told this is a kind of negligent custody, in which such a paper would hardly be found; I cannot agree with that observation, for I think the paper was in a custody in which it was much more likely to be found, than that it should be locked up in any one of those boxes which required a smith to break them open, being boxes which, from their construction, it has been proved, were most difficult to open; the means of destroying that paper were not so ready to the person who had the possession of it, if he kept it in the boxes, as if he kept it in the pocket-book: then he has the coat in the room with him, the pocket-book in the room with him, and you see what means of defence he has upon his person, the instrument which I now hold in my hand. This pocket-book is seized, he refuses to give any account of himself, he denies a connection with any of the other persons, and continues to deny that connection not only at Margate, but in the way up to town; and he denies it when examined at Bow-street, and when before the secretary of state; and the denial, both at the one place and at the other, is of such a nature, that, connected with the other facts proved, it is utterly impossible, I apprehend, for men acting upon the common principles which ought to actuate human judgment to enable it to form conclusions according to what is fairly rational, that you can have the least doubt that that paper was in his possession. Gentlemen, if that paper was in his possession, surely I should be thought to waste the time of a British jury, if I were to follow my learned friend through the great variety of observations which he made upon the contents of it. With respect to the date of the paper, it is immaterial to observe, that it is dated upon the 25th of January: it is therefore a paper dated within about four days of the time in which Mr. Erskine gave the advice, which his evidence, tendered to you this day, has informed you that he did give. It is a paper addressed from the Secret Committee of England to the Executive Directory of France; it purports upon the face of it, therefore, to be a paper to be delivered to the Executive Directory of France.

My learned friends have said, that we have not proved who the secret committee of England are.—In the first place, it is imposing a task of some difficulty upon persons to prove who form a committee, expressly stated to be a secret committee; but it is not necessary to this case that any such secret committee should exist; if it does exist, then O'Coigly having the paper, addressed from that committee to the Executive Directory of France, and meant to be delivered to them, in his

possession, he knowing the contents of it, is unquestionably guilty of an overt-act of treason. If that secret committee does not exist, but this is an address to the Executive Directory of France, in order to induce them to believe such to be the state of the resources, and the state of the dispositions of the people in this country, as that paper represents them, and to believe that there exists such a committee as that secret committee in this country; and if it were intended to make them believe all that, contrary to the truth, then I have no other observation to make upon the fact but this, that it appears to be a more desperately wicked act of high treason, than in the other case; because then it is stating distinctly to the enemies of the country, with a view to invite them to invade the country, contrary to the truth, that there is a systematic and organized body in the country, which has a secret committee in the country, capable of representing, and taking upon itself to represent the wishes, the circumstances, and the finances of the country; and it is knowingly giving them encouragement beyond what the truth could admit to be represented, if the law would admit any representation upon the subject to be made.

Then my learned friends say, 'why should the secret committee of England state all these circumstances about the voluntary contributions? the French already knew those circumstances.' If my learned friends will refer to the date of that paper, and recollect that it was upon the 25th of January, the fact with respect to the voluntary contributions in this country was not then of the same nature as it is at this day. The two millions, or thereabouts, that have been subscribed into the Bank of England, were not subscribed into the Bank at that time; and I believe not a fiftieth part of them was then subscribed, and the paper marks, with pointed attention, that circumstance to the Executive Directory of France. You, gentlemen, when you come to look at the paper, will see that there is a line drawn under the word *failed*; it calls for the particular attention of the Executive Directory to the fact, that the voluntary contribution had *failed*; and it states that which the writer of it must know to be contrary to fact, with respect to the army, and the manufacturers of the country, and with respect to the seamen of the country. In short, it is a paper which is calculated to induce the Executive Directory to believe this, and to believe what is false, that the great bulk of the valuable subjects of this country,—for in this country, as living all equally under the law, every man in the country is of high value in the view of that law,—that the great bulk of the valuable subjects of this country are united for the sake of forwarding an invasion from France, in a project to overturn that system of government under which they are living, and representing their want of attachment to that system, their

want of the means of defending that government, and that they are unwilling to contribute any part of their pecuniary resources to the support of the government and the country. It attempts to make the Executive Directory of France believe, that in this country there was a body of men who were willing to speak to them precisely that sort of language, which every man who knows any thing of the French revolution, does know, has been the species and kind of language in which the papers of that government itself, as well as of others with which they have been corresponding, have always been couched. Read the paper; the language of it is calculated to be addressed to Frenchmen; it is in the very style and language of every paper that we have seen during the last three or four years, that relates to that country, and it is unquestionably a paper which is drawn up, as I have before stated, for the wicked purpose of communicating, I care not how truly or how falsely, the resources, the dispositions, the means, the inclinations, the temper of the people of this country, for the purpose of inducing the persons who have the government of that country in their hands, to invade this.

Gentlemen, I am sure it will not be contended, though it has been insinuated, that this is the less an overt-act of high treason, because the French Directory might not act upon it, after considering the whole contents of it, if they had had the means of learning by those spies, whom I think one of my learned friends intimated they had in this country, that the intelligence conveyed in it was not true, that it was not accurate, that it was not well founded; it will surely not be contended, that it is the less an act of high treason in persons who give the information, because the French Directory happen to find out, that it is not information upon which they can rely. Whether they can or cannot rely upon the information, it has been the language of all judges, in all times upon this subject, that the man, who has ventured to compose such a paper, or to keep it in his custody, with the intent of sending it to the enemy, to give them information, has done as much as in him lay, to bring about the purpose, which the paper, upon the face of it, attempts to accomplish. His guilt is complete, whatever effect the paper has.

It is said, that it is an extraordinary thing, (I am again applying myself to the case of Mr. O'Coigly only) it is said, it is an extraordinary thing, that no other paper but this was intended for the Executive Directory. Why should there be any other paper intended for the Executive Directory? Besides, this paper is, in its nature, a credential of the man who carries it.—It is a paper, which, if conveyed by any man, and received from that man by the Executive Directory of France, would establish to the Executive Directory, that that man, without the aid of other papers, with the aid only of the intelligence and in-

formation that could be conveyed by him in conversation, might be received, as able to make representations for others upon the subject to which it relates: it would inform the Executive Directory that he was a person who came accredited by that secret committee, or that body of men, who were supposed to speak their sentiments in that paper, and that he was a person with whom they might communicate with confidence, upon the subjects contained in that paper. And when after all this, you find that Mr. O'Coigly when called upon to give an account of himself, has given that account, which is detailed in the examination from Bow-street, and the examination from the Secretary of state's office, gentlemen, however painful it may be to me, to represent to you, that this case is most clearly and decisively proved against the prisoner, of the name of O'Coigly, **IN DISCHARGE OF MY DUTY I AM BOUND TO DO IT;** and here I rest the case with you beseeching only of you to correct me if I have fallen into any error with reference to his case in point of fact, as I am sure my lord will do if I have fallen into any error in point of law.

Gentlemen, the next case, to which I will beg your attention for a few minutes, is the case of Mr. Binns.—Now with respect to Mr. Binns, representing to you that I apprehend that this indictment is completely proved against him, if you shall be satisfied either that he was cognizant of the purpose of Mr. O'Coigly, or any others, to go to France with that paper, or to carry any intelligence or information to France, whether contained in that paper or not, with intent to give assistance to the enemies of the country; you will give me leave to state how the case stands against him.

In the first place, he has given you no evidence whatever—none—how it happened that he had any connection either with Mr. O'Connor, or with Mr. O'Coigly, or with Allen. The fact is clear, that he knows them all most intimately;—that he was engaged, in any way of putting the case, with reference to Mr. O'Connor, as his agent;—that, in the most favourable way of putting it, he was engaged as the agent also of Mr. O'Coigly, in their attempt to go into France;—that he has been also engaged on the behalf of Allen, who was apparently the servant of captain Jones, in his attempt to get into France.—These facts are clear beyond all question.—If the case had stood upon these things alone, as a case of suspicion, one should naturally have expected that Mr. Binns would have endeavoured to have given you some information how his acquaintance happened to be formed with Mr. O'Connor; how his acquaintance happened to be formed with Mr. O'Coigly; how his acquaintance happened to be formed with Allen.

Gentlemen, I beg the favour of you to attend to the same observation otherwise put, —How has it happened in this case, that Mr.

O'Connor has given you no account how his connection came to be formed with Mr. Binns? —That Mr. O'Connor has given no evidence how his connection came to be formed with Mr. O'Coigly?—So I put it again as to Mr. O'Coigly,—How has it happened that he has given you no evidence how his connection came to be formed with Mr. O'Connor? and how has it happened that he has given you no evidence how his connection came to be formed with Mr. Binns?—Then as to Mr. Binns, you find him, in fact, as early as the Wednesday morning, the agent of Mr. O'Connor, of Mr. O'Coigly, and of Allen; the commencement of his connexion with whom, or with any of whom, he has not explained to you all: but he goes down to Rochester upon Wednesday—upon Thursday he was engaged at Canterbury with two witnesses, of the names of Claris and Mahoney; he represents himself there, if I recollect rightly, as being about to be concerned in some smuggling connection, desiring to have a recommendation—not to such place—you will attend to that—not to such place as Claris or Mahoney should point out to him, but desiring a recommendation to some persons at Whitstable, that place to which Mr. O'Connor, Mr. O'Coigly, Allen, and Leary, came upon the Sunday, to which they have not accounted for their coming upon the Sunday, unless there had been some intermediate communication between Binns and them, or some of them.

He not only points out to Claris and Mahoney that Whitstable is the place he wants to go to, but he names the persons there, to whom he wants a recommendation, and he states, falsely, as I am entitled to say upon the evidence of Rickman, that he had been recommended to Claris by Rickman, who has proved to you that he did not so recommend him. He goes to Whitstable: he sees there no less than four persons, I think—he sees Kitchinham, Appleton, Norris, and Foreman. Now, gentlemen, you will permit me to call your attention, for a moment, to the conversations which he has at these places. In the first place, is it capable of being denied that Mr. Binns (who was a lodger in the house, where Allen was paying 7s. 6d. a week for his room in Plough-court, Fetter-lane)—Is it denied that Binns, at Whitstable, enters into a negotiation to hire a vessel?—I do not name the place now—the price of that hire being no less than the deposit of three hundred guineas, and the price of the voyage, if the trip was a short one, being one hundred guineas—that is, if the trip was a short one, and the vessel brought back what one of the witnesses has called a *crop*,—and a hundred and fifty pounds, or guineas, if she came back unfrighted with any such cargo?

Now, I beg to ask how it happens that Mr. Binns has given you no explanation whose money it was, that he was bartering with thus largely? I do not call it excessively, for the

terms were not excessive, they were much larger than the bargain afterwards made at Deal, but not excessive, considering the danger with which the transaction was attended. How has it happened, that Mr. Binns has not accounted to you by what authority he was empowered to pledge himself to these persons, that there should be a deposit made to so considerable an amount, or that a sum should be paid in one event, or other, so considerable as the sum he did engage should be paid to these people at Whitstable?

There is another material circumstance.—Mr. Binns, if I understand the evidence right, first proposes that the vessel should go to Flushing—he is told that to Flushing it cannot go, because there is an embargo by the enemy: then he proposes (and he proposes it as an object) which he more desires, that it should go to Havre—that it should go to Dunkirk—that it should go to Calais. He distinctly, therefore, proposes that a communication should be opened between this country and the country of its enemies. He is remonstrated with by no less than four persons, whose testimony throughout is perfectly consistent, who suggest that it was too dangerous a service for them to engage in to go to Flushing, much more dangerous for them to engage to go to Calais, to go to Havre, or to Dunkirk. They were afraid of their persons, as well as their property, and he holds that language, if I recollect the evidence right, at Whitstable, which he also holds at Deal, he takes upon himself to be answerable for the return of the vessel, as he expresses it; he insures that the vessel shall come back again: he states that he is not certain whether he himself should go or not: sometimes saying he should go; sometimes that he is uncertain whether he should go or not; at other times stating, that if he does go, he should return in three or four hours. But it is the effect of this evidence, that Mr. Binns undertakes that the detainer should not go beyond that, and that the vessel should return, and that he should return with her, and that such a price as I mentioned should be paid for her, his business being that which would be over, as he said, in three hours. Now, has he stated any other business, or given any evidence whatever how he came to be engaged for any person, in any other business whatever? But it does not rest there, because you will recollect that at the time that Binns holds these conversations, he goes farther; for he asks,—which proves a perfect knowledge of the intention of all the parties before he left London,—whether there would be any objection, when the gentlemen should come down on Sunday, that three or four should go in the vessel, instead of one,—he having originally held a language, which seemed to import, that he was a person who was engaging the vessel for his own use—that three or four should go: they say, and very accurately, we can have no objection to three or four going with our vessel to make this

trip; it is no more of trouble to us than if one person only goes. Then he distinctly states this representation of the number of persons he expects to come down, and the place to which he expects them to come down, and the occasion of their coming to that place he states to be their purport of going to France. Mr. Binns, after having been at Whitstable, goes back to Canterbury, and from Canterbury to Deal; at Deal he has communication of the same kind with three or four other persons, persons of the names of Hayman, Barham, Elliot, and a person of the name of Campbell: he treats with them also for the price of a vessel to go, as he first said, to Flushing; but they could not go to Flushing for the reason the Whitstable people refused to go there—Campbell proposed that they should go to Hamburg—Binns objected to that, and this is not an immaterial circumstance for your consideration when you come to attend to the letter of Mr. O'Connor to lord Edward Fitzgerald. He then proposes that they should go to Calais, or to Havre; they seem not to have much of disinclination to that, if the vessel of the brother of one of the persons which had usually sailed under neutral colours, could be engaged for that purpose; and they hold out to him that for the sum of sixty guineas they would venture to make that trip, about the Tuesday or Wednesday in the subsequent week. Then, gentlemen, Mr. Binns comes back again to Canterbury. You will permit me here to mention, that I think that the evidence has established that he at Canterbury received a letter directed to William Williams, at the Fountain-ian, Canterbury; of which letter I refer to the evidence of Mr. Bell, such as it is, as proving that he had, at the instance of Mr. O'Connor, written the address, upon the Saturday evening, in Charterhouse-square, and which letter is a letter signed, not Arthur O'Connor, not with the name of colonel Morris, but signed James Wallis, addressing Mr. Binns in terms of the greatest friendship and intimacy, informing Mr. Binns that he had received his letters, and that he would bring down with him all the parcels, which Binns had mentioned in those letters. This was Mr. O'Connor's handwriting, under the name of Wallis, acknowledging his own receipt of Binns's letters in town.

Gentlemen, how Mr. O'Connor came to assume the name of Wallis, if the letter was his,—and I submit it as matter of fair observation that that letter may be stated to be his, when he procures the address, under which Mr. Hugh Bell sends it from Charterhouse-square to the Fountain-ian at Canterbury,—has not been at all explained to you. Mr. Binns, however, sets out by the Canterbury coach on Saturday evening, and comes up to town; he goes immediately, as Mr. Bell has proved (for his evidence is also sufficient for this purpose), to Mr. Bell's, in Charterhouse-square; he enquires there what had

become of the gentlemen; that is, colonel Morris and captain Jones; finding they were gone, he immediately takes a Gravesend hoy; he goes to Gravesend, he applies to Assiter, naming to him a person, I think, of the name of Galloway, an acquaintance of his, and as Assiter said, formerly a member of the London Corresponding Society; he procures, by means of Assiter, a horse, upon which he goes to Canterbury; he goes to Claris and Mahoney, at Canterbury; at first he proposed upon that evening to go on to Whitstable, he does not however go that evening, but he goes from Canterbury in the morning. It seems probable that he went towards Whitstable, because he met Mr. O'Connor, and Mr. O'Connor and he came back again to the Sun, at Canterbury, from which they set out together to Deal, and at Deal Mr. O'Connor and Binns are again communicating and negotiating for the hire of a vessel, which is to take them from Deal to France. And here I state to you again, what I took the liberty to open yesterday, that it appeared to me extremely clear, from the circumstance which afterwards happened of their meeting at Margate, that it had been determined by Mr. O'Coigly and Mr. O'Connor, before they left Whitstable, that they should meet again at Margate, and not meet again at Whitstable.

Gentlemen, you have then proved to you this fact, that, in the absence of Mr. O'Connor and Mr. Binns, all the baggage is left behind at Whitstable; all Mr. O'Connor's baggage, as well as the baggage which belonged to the other persons who formed this party; and you have the fact proved to you, that between the Monday morning and Tuesday afternoon, after enquiry whether any searches would be made into this baggage, whether it was probable that if it went by water it would be over-hauled, and being informed it would, they removed the whole in the manner in which Thomsett has informed you the baggage was carried from Whitstable to Margate.

Before I state the transactions which happened at Margate, you will permit me to mention that it is proved, by the evidence of Perkins, and also by the evidence of King the land-waiter, that these circumstances happened at Whitstable—That, when the baggage was searched by Mr. King, the boxes, other than the mahogany boxes, were looked into, that is, other than those boxes which contained the money; that O'Coigly represented that colonel Morris was gone, I think, to Dover, to meet a friend; that the baggage was his, and that he was going to the East Indies; on the other hand, Leary, when the baggage was examined, stated that his master was gone to meet a friend, and that he had taken the keys of these boxes with him, which keys, to this hour, have not been produced, and he represented that his master was going to the West Indies.

Such is the account given by O'Coigly and

Leary of the intentions of colonel Morris in his absence. Then they go to Margate; when they come to Margate, the baggage is deposited by Thomsett; the degree of care which was taken of it, I have before-mentioned; it is put into a parlour, where it is watched by Allen and Leary, as the two servants, except that the more valuable part of it is taken up stairs. Within a quarter of an hour after Mr. O'Coigly had arrived there, Mr. Binns and Mr. O'Connor came there; and Mr. Binns, Mr. O'Connor, and Mr. O'Coigly lived together as three gentlemen of the same party, until the moment in which they were apprehended in the morning.

Now, gentlemen, I am entitled here to state, I think, that Binns had been thus actively employed, and that he does not account to you either for the circumstances under which he undertook the employment, the cause of his being engaged in it, or the motives and inducements which led him into this situation; and you find him with two persons (the origin of his connection with both remaining totally unexplained), the one of whom has in his custody that paper upon which I have before commented, I mean the address to the Directory, which paper unquestionably was to be carried to that country, for repairing to which Binns had been making no less than half a dozen efforts to engage a vessel—had been insuring the return of that vessel—had been insuring the payment of a large price for that vessel—had been bargaining that three or four other persons should go if he did not himself go, sometimes proposing to go himself, sometimes proposing to stay abroad if he went abroad, sometimes proposing to return in the vessel;—and the other of those two persons having in his razor-case that paper, which I call Mr. O'Connor's cipher, upon the contents of which I shall have to observe presently. Having mentioned this cipher, let me here, whilst it occurs to me, illustrate what I stated in the beginning of this reply, as law, where parties have one intent; if Mr. O'Connor had the possession of that cipher, and I prove that cipher to be of such a nature as I think I am entitled to represent to you it is, and O'Coigly did not know that Mr. O'Connor had it; if, on the other hand, Mr. O'Coigly had that address, the custody of which we have fixed upon him, without the knowledge of Mr. O'Connor, if they knew not what was in each other's possession, yet if it was the intent of the one, by one paper, to convey intelligence to France, and thereby encourage France, and the intent of the other, by the other paper, to find means in France of making, for the encouragement of France, communications to and from France, however ignorant each might be that the respective papers were in the possession of the other, they are both, in law, concerned in one common design, of encouraging the enemies of the country, in acts of hostility to this country.

I state besides, that when Binns was apprehended, there was the same circumstance common to his conduct as to that of the others; I am submitting to you here the effect of that fact in evidence, which is common to the conduct of all the rest of these persons. Mr. Binns, who had been so actively employed in the design of getting Mr. O'Connor out of the country, innocently, if you please to take it so,—Mr. Binns, who had been engaged in getting Mr. O'Coigly out of the country, a distressed Roman Catholic clergyman, travelling with Mr. O'Connor as a brother officer, attended by his servant—Mr. Binns, who has given no explanation of these transactions, knows as little of his companions as they know of him, and has as little claim to the property of the baggage as the rest of the party, who were found together with that baggage by the officer, upon the Wednesday morning. Then, gentlemen, I must submit to you, that this evidence, taken altogether, with respect to Binns, connected with the evidence respecting the other prisoners, does most distinctly prove, that he was aiding and assisting O'Coigly and the other prisoners, in conveying intelligence to assist the enemy of the country.

Gentlemen, there is another circumstance, to which I beg leave to call your attention, and that is, that Binns also is proved to have a cipher in his possession. What explanation does he give you of the paper called the cipher, which was in his possession? which gives false names to places we all know, and false names to places we do not know? That is an additional circumstance of evidence against Binns. I ask how Binns could insure the return of the vessel to this country, unless he had reason to believe, that those who went in the vessel would be hospitably received in the country to which she went? and what reason could he have to believe, that those who repaired to Dunkirk, Havre, or Calais, would be hospitably received there, unless he had some reason to conceive, that the persons were conveying to those places, materials, which would make their arrival there acceptable, and insure an opportunity to any who accompanied them, to return, if they thought proper, from that country, without running the risk and danger of imprisonment?

Under these circumstance, I submit also to you, that this case is most distinctly proved against Mr. Binns.

Gentlemen, I now come to trouble you for a few moments upon the case of Mr. O'Connor. Most undoubtedly I should be offering to you an observation, which I think would render the most valuable thing in the world of little or no value, I mean character, if I did not represent to you that, in all doubtful cases, character ought to have very considerable weight indeed; but when you have given to character all the weight that is due to it, yet executing your duty as conscien-

VOL. XXVII.

tious jurymen, having to declare and to decide now, for the first time, upon the whole of the evidence, after you have heard the whole of the evidence, the true point of your inquiry is this—*Was the person, to whom such a character has been given, concerned in the charge which is imputed against him, aye or no?* Now let us consider what the effect of the evidence is in this case, as far as the evidence relates to Mr. O'Connor.

Gentlemen, in the first place, I submit it to you, as an observation of very considerable weight indeed, that I think it is most indisputably proved, if Mr. O'Connor did not mean that intelligence should be conveyed to the enemies of this country, with respect to the invasion of this country, that it never happened to an innocent man to stand in a situation which exposes him to so much suspicion of guilt. That he was in the company of persons, of whom, I am afraid, I am bound to say some of them are indisputably guilty—that he was in the company of persons meaning to convey intelligence to France—that he was in the company of persons with whom he has no natural connexion—that he was in the company of persons, the origin of his connexion with whom, or any of whom, he has not explained—that he was in the company of persons, who are no part of those gentlemen acting in a body in this country for purposes, highly honourable I do not presume to question, a great variety of whom have given you evidence this day as to Mr. O'Connor's character—that he was in the company of persons with whom it was not necessary that he should be in company, for the purpose of getting himself abroad—All these things are clear. If Binns had been his acquaintance, though that fact is not proved, how he happened to employ Binns in particular, for the purpose of getting himself out of the country, if he had no intention but to avoid the danger of being in it, how he happened to employ Binns is not accounted for. If his object had been to get out of this country, without reference to France, as connected with any idea of hostile attempts against this country, what occasion was there to take with him to France O'Coigly, a person who is stated to have just come from Ireland, and to have been lately in France? What reason had he to take O'Coigly with him? Why was it necessary to O'Coigly's relief, on the other hand, as a distressed clergyman, that Mr. O'Connor should take him to France? How was it necessary to his relief, or is it consistent with an innocent purpose in Mr. O'Connor, that he should suffer O'Coigly to represent himself under the name of captain Jones? How was it necessary, from motives of charity on the part of Mr. O'Connor, or any other motive that has been assigned, that O'Coigly should be travelling as a military officer, with a person as servant to him, who was no servant? Of all these circum-

I

stances, none of which were either necessary, or probably such as should happen in consequence of any thing suggested in defence, not one has been accounted for, or has been attempted to be accounted for. Add to these circumstances, that Mr. O'Connor at the same time had the misfortune to fall into the company of persons, one of whom had in his custody and possession the treasonable paper addressed to the Directory, and that he had in his own custody the cipher; and I think then that all the circumstances justify me in the observation that I have made, that if he is innocent of this charge, he has fallen under more heavy suspicion that generally belongs to the case of any person, who can maintain that he is really innocent.

But, gentlemen, it does not rest there, for when Mr. O'Connor was apprehended at Margate—you will recollect the nature of the evidence that has been given you as to this—Mr. O'Connor who is now represented in the defence to have found it necessary to go out of this country for his own security,—who had employed Binns without accounting why he employed him—who had connected himself with O'Coigly without accounting why he connected himself with O'Coigly—who was travelling with them and the other two persons without accounting why he was travelling with them, except as his own servant, Leary—Mr. O'Connor, who is said to have been acting with an innocent purpose, when they are apprehended at Margate, becomes immediately ignorant of all the persons with whom he has been travelling in Kent, and a stranger to all the persons with whom he not only was travelling there, but with whom he had been going abroad, and whom he was occasionally meeting whilst he was remaining in London. He becomes also afraid, for some reason or other not well explained (for the reason which they give cannot be the true one) of owning any part whatever of this valuable property. He got up to London, and the same mode of examination takes place at the secretary of state's office, which I have before mentioned; that is, the person examined is informed that he is examined for the purpose of clearing himself from suspicion, if he thinks proper so to do, or with a full liberty to say nothing upon the subject, if he thinks fit so to act. Gentlemen, I call your attention to what is the conduct of Mr. O'Connor. If the real purpose of Mr. O'Connor had been to leave this country, under the circumstances which have been represented, I ask you, would it not naturally have occurred to any man who had that purpose, and who found himself in actual custody, when the hope therefore of avoiding the possibility of being in actual custody, which is supposed to have created in him the intent to go abroad, could no longer be entertained, to have said—*why—I have been very unfortunate; having left Ireland on account of circumstances which I need not repeat, because*

*you have so often heard them,—having left Ireland and come to this country, I meant to live happily here with the respectable persons with whom I have been connected; I have been living happily with them, but I received an intimation from a most respectable gentleman on the 21st of January last, that I must go out of the country to avoid the prosecutions which might reach me from Ireland. I was going out of the country to avoid them. I had so much property, and so much baggage with me. What the intentions of others were I do not know, I had dined with Mr. O'Coigly under the name of captain Jones, at Mr. Hugh Bell's, on Saturday. I was going out of the country with him, because he was going out of the country with me. I had no intent but that which I have stated to you—that is the whole of the transaction. I have been unfortunate in falling into the circumstances in which you have found me; but a candid, an honest, and a fair explanation will, I trust, extricate me from the embarrassments which arise from these circumstances; and the worst situation in which I can be placed is this, namely, that situation in which I should have stood prior to my embarking on board the *Whitstable* hoy. Gentlemen, I say, that the conduct of Mr. O'Connor is the reverse of all this; and I do beg your most serious attention to this part of the case. Mr. O'Connor is, as Mr. Ford has proved, examined—examined under this caution: his declarations are taken down: he is again called upon—that examination put into his hand, and, as Mr. Ford informs you, being put into his hand, he himself corrects it: after it is corrected, it becomes then that declaration by which he means to abide: AND THAT DECLARATION BY WHICH HE MEANS TO ABIDE,—I AM SORRY TO USE THE WORDS, BUT I AM BOUND TO USE THEM—FALSIFIES THE WHOLE OF THE CASE SET UP TO-DAY.*

In the first place, Mr. O'Connor states that he was not going to France, and he not only states that he was not going to France, but he states that he will implicitly abide by the declaration that he was not going to France: he states that he knows no person of the name of Fivey: a name which O'Coigly used:—in short, without going through the whole of the paper, I take leave to represent it to you, subject to the observations you will yourselves make upon it, as perfect evidence that it was not Mr. O'Connor's intention, at that time, to acknowledge, as he has done now, that he was going to France. Why does he declare that he was not going to the place to which it is proved that he was going? Why was Mr. O'Connor afraid of the contents of his own baggage, and the other things which are now here? I will tell you why he was so: and first with respect to the money—you have heard a sort of representation made to you to-day and yesterday, that Mr. O'Coigly was to be taken as a person to be relieved, and in extreme distress:—Now it happens that in that box of Mr. O'Connor's, which contains the

quantity of money which you have frequently heard mentioned, there is one bundle of the money amounting to the sum of ninety-seven guineas, and accompanied with a paper which states distinctly that that money is the money of captain Jones, whom Mr. O'Connor, the owner of that box had stated he did not know. Gentlemen, that is not not all, but you will recollect, however ludicrously that has been treated by my friend who spoke last, that a witness gave considerable evidence with respect to that money. Not only has Mr. O'Connor been, without tolling you why, connected with Mr. O'Coigly, to the extent in which I have before stated, but they are in such a degree of intimacy, these strangers to each other, that they slept in the same room at the inn upon the Sunday night. There was a person who slept in the next room to them, and (as I understand his evidence) over the door between the two rooms there was a lattice, which therefore opened to a more easy communication of what was passing out of one room into the other, than if the whole had been a brick, or lath and plaister wall: that fact has been sworn to by two witnesses. Now, in the course of the night, or early in the morning, these gentlemen, each of whom denies his knowledge of the other, are concerned in counting the money, and one of the witnesses, I understand, speaks to the scratching with a pen upon a paper, in which circumstance the production of the paper confirms by that witness. This proves therefore, that in the course of that night, Mr. O'Coigly, and Mr. O'Connor, who afterwards denied each of them, the ownership of this baggage, and the contents of it, distinctly knew, after the account had been corrected as (upon this statement it was in the course of the night) that one of these boxes contained a large sum of money belonging to one of them, and a considerable sum of money belonging to the other of them. Then what is the reasonable conclusion upon this conduct of Mr. O'Connor?—why the reasonable conclusion upon all this conduct of Mr. O'Connor—taken together.—I submit to you—is this, that Mr. O'Connor either knew that O'Coigly had such a paper as was found in his pocket-book, or (what is precisely the same thing to the purpose of this indictment) he knew either that he himself was engaged in the project of carrying information to France with respect to an invasion of this country, or he knew that Mr. O'Coigly, if not going with that paper, was going with some other means, or with a general purport of conveying intelligence and information to invite an invasion of this country.

But, gentlemen, I do not rest it here; because I wish to know, if Mr. O'Connor has not explained any part of his conduct in this country with reference to his connexion, or the origin of his connexion with these other prisoners, has he better accounted for other parts of his conduct? Mr. O'Connor, upon

the 14th of February, 1798,—for I think that is the date of his letter, and a most material date it is, because you see it is just the midway between the 21st of January, when he received Mr. Erskine's advice, and on the 25th of February, when he left Mr. Boll's house in Charter-house-square, having had intermediately between that 21st of January, and the 25th of February, an opportunity, if he had thought proper, to get himself ready to go in a vessel to Embden,—upon the 14th Mr. O'Connor writes that letter to lord Edward Fitzgerald, which has been produced, and he writes also the letter to Mr. Roger O'Connor of the same date. In the last of these letters he has stated distinctly his notions of the situation of this country—he has stated the fact of his having sold all his own property to sir Francis Burdett, a gentleman living in this country, who might have been called to give an account of the transaction.—With respect to the letter which he writes to lord Edward Fitzgerald, gentlemen, I beg leave to ask if it is possible,—I beg you will read this letter when you come to put this question to yourselves, in order to deliver your consciences,—if it is possible to induce any gentleman to suppose that some rational account could not have been given of the meaning of the contents of that letter, *if it were consistent with the defence which has been made this day, that the true account should be given of the meaning of the contents of that letter?* What do the dark, mysterious, and unintelligible terms of that letter mean?

My learned friends say, and truly, that when you prove a case of mystery, you do not prove a case of treason; in truth you prove no case, when you prove a case of mystery, but I say this letter, though occasionally mysterious, has a direct and obvious reference to transactions, in which these gentlemen have been found actually engaged. I call your attention again to the passage in which the name of Williams is coupled with France by the cipher (upon which I shall trouble you by-and-by), and to the fact that the person who writes that letter, who refers to Williams, who has that cipher, in a part of whose baggage it is found, is the person who is found in connexion and in company together with Mr. O'Coigly, who has the other paper addressed to France.—I say when you come to consider the effect of that cipher upon the word Williams in that letter, that it is most perfectly clear, that Mr. O'Connor was going to France, and I must submit to you that that letter and that cipher prove very distinctly what the purposes were, for which that gentleman was going there.

Now what is the cipher? My friend, Mr. Dallas, was obliged to put Mr. O'Connor in a very dangerous and desperate situation, as it appeared to me, when he made his observations upon this cipher, for he put it thus—that, as far as it proved any thing it proves this, that there was a correspondence, not

with reference to the invasion of England, but of Ireland—

Mr. Dallas.—I said it related to Ireland, not to an invasion of England—

Mr. Attorney General.—My friend will do well to consider that he must go a great deal farther than that: for, when he says it relates to Ireland, he must take upon himself to inform us in what respect it relates to Ireland. Now that there has been an attempt made to account for the respect in which it has relation to Ireland, you will recollect, as in the original, that the attempt which has been made to account for its relation to Ireland is this—that it ought to be supposed to have reference to the property of lady Edward Fitzgerald. As these concerns therefore of lord Fitzgerald were not national or commercial concerns, I should be extremely glad to know why the coast of Ireland is to be described by the cipher? why the frigates of this country are to be described by the cipher? why the armaments of this country are to be described by the cipher? why the sea-port towns of Ireland are to be described by this cipher? and why some of the ports of England are to be described by this cipher? In order to give an explanation of any concerns relative to property in which lady Edward Fitzgerald, or any body else, may be interested, can such a cipher be necessary?

Mr. Dallas.—It was another part of the letter I applied to the concerns of lady Edward Fitzgerald, where Mr. O'Connor says, when I get to Williams, I shall be active there—

Mr. Justice Lawrence.—And you applied the cipher to Mr. O'Connor, being the proprietor of a paper called The Press.*

* The arrest of Mr. O'Connor and his companions was thus noticed in the 68th number of The Press, published on Tuesday, March 6th 1798:

“Persecution has followed the steps of Mr. Arthur O'Connor. He has been arrested at Margate, with other Irishmen, one of whom it is not known whether he is Irish or English, and more extraordinary still, Mr. O'Connor's servant, a young lad about seventeen years of age, was with him; and more wonderful still, a person strongly suspected of being an Irish priest. One of the parties had a serpentine dagger, it would appear. The manner in which these extraordinary persons eat their breakfast, is made matter of wonderful moment. Mr. O'Connor, wonderful to relate, refused to answer questions, and spoke indignantly before the Bow-street magistrates; and sir Francis Burdett and Mr. Boswell offered to go bail for him. They are sent to different prisons. Mr. O'Connor is gone to Tothill Fields. We hope he will, in that land of liberty, *Old England*, meet with less rigour than he did in this unhappy country, where he was nine months confined in the Round Tower, and three times fired at by the soldiers, upon a charge, notoriously

Mr. Attorney General.—Gentlemen, I was stating to you (what indeed I have stated before) that it was incumbent upon the prisoner to give some account of the meaning of the contents of this letter. Now, if I correctly understand my learned friend who addressed you last, he says that the words “I shall be active there,” might have a reference to the domestic concerns of lord Edward Fitzgerald, as connected with a lady who is spoken of in this letter.—Why undoubtedly, gentlemen, it is impossible to deny that it might have that reference, but I say it is extremely singular that it should have that reference, following that word Williams, which is the important word in that cipher, which relates to France, and being written upon that 14th of February, 1798, which was about a fortnight after this gentleman received the advice to go to France, and about ten days before he actually set out for France—then he refers lord Edward Fitzgerald to a cipher, which contains the name of Williams.

Mr. Fergusson.—I beg pardon for interrupting the attorney-general, but this is a gross misstatement of this letter; it contains nothing of the kind, but that a person was to go to Hamburg in the course of three days.

Mr. Knapp.—Here is the letter.

Mr. Attorney General.—I excuse Mr. Fergusson, because when I had the good fortune to be as young as he is, I was as impatient.—Mr. O'Connor says “the instant I get to Williams you shall hear from me, I mean to be as active as I can,” and it appears to me now, referring your lordship and the jury for my accuracy in the observation, that that is all one sentiment. I was stating, gentlemen, that this certainly might mean what *they* have said it meant. I am also stating it, at least in the hope that I do not overstate the matter, that it might mean what *I* say it means—that I mean to be active in France, for such purposes as a person having that cipher would probably be engaged in. Now WHAT ARE THE PURPOSES THAT A PERSON HAVING THAT CIPHER WOULD PROBABLY BE ENGAGED IN? I say, if you will examine that letter and this cipher from the beginning to the end of it, I think it is impossible for any one of you, as men of common sense, to say that either the letter or the cipher can have any reference whatever merely to any domestic concerns, or at all to any domestic concerns. What could Mr. O'Connor, who is stated to be (and in a general light he must be believed to be so, be-

unfounded, of high treason. Alas! in what spot of the earth is a resting place to be found for a brave or honest Irishman. Perhaps this Irish priest will turn out to be some unhappy sufferer, fugitated from his native home—whose father or brother have been shot, or burned out of their house, and who have been possibly seeking an asylum in some more favoured land.”

cause stated to be so) so ingenuous and open, what could he mean by the *Man of Consideration*, the *Black Terrier*, the *Sugar Baker*, the *Priest*, and various other enigmatical phrases, which he uses in that letter? Upon these, perhaps, I might have no right to observe, if I did not find these dark, obscure, and ambiguous passages standing as part of a letter, in which that passage occurs that connects it with the cipher, which I submit can have no relation to any thing but the purpose of invasion, either of England or of Ireland. I desire, therefore, gentlemen, that when you give your attention to that cipher, you will be so good as judge whether I represent rightly, when I represent as confidently as I do, that no person could either give or receive such a cipher as that, with reference to domestic purposes, or purposes relating only to property.

Then, gentlemen, let us see how this paper connects itself, or whether it does at all connect itself, with the paper which was in the possession of Mr. O'Coigly. If Mr. O'Coigly was going from this country to give material information to the French with reference to this country, and if the possession and contents of that cypher and the letter can be made to prove, that Mr. O'Connor was going from this country to give material information to the enemies of this country with respect to France, I think it will be extremely difficult upon this indictment to say, that they were not engaged in one common project of giving assistance to the enemies of this country.—Why, gentlemen, in the first place, would not an invasion of England assist an invasion of Ireland? Are the enemies of this country at present, do you think, acting upon a project, which supposes that it will not be beneficial to them, for the invasion of Ireland, to invade England, or not beneficial for them for the invading of England to invade Ireland? What is the paper? the paper itself, which was in the possession of Mr. O'Coigly, states the union of the English, Scotch, and Irish, that the delegates of each country were sitting at that very moment for the purposes mentioned in that very paper. Then, if you find a cypher in the possession of Mr. O'Connor, which has relation to Ireland, which has also relation to England, which has relation to England generally, which has a clear relation to his residence at Paris, and if you find him in company with a person going to France, and that person has a paper in his possession, which has a most direct reference to an invasion of England, attending also to all the other circumstances of the conduct of the parties, I submit that the true inference from the whole is, that both these persons were engaged in once common project. Now let us see what his conduct is with respect to going abroad.—Gentlemen, according to Mr. Erskine's account of Mr. O'Connor, who came here in the beginning of January, and who, you will recollect, had lived in the metropolis of London,

publicly as Arthur O'Connor, in the company of most or many of the respectable persons here called to you, who did not find the least occasion at all, living in London, to change his name from the beginning of January to the time he left London upon the 25th of February, Mr. O'Connor receives advice from Mr. Erskine upon the 21st of January to leave this country; the advice that he should leave this country, may be followed certainly with a very innocent intent, or that advice may be followed by being acted upon in the execution of any bad project with a very criminal intent. Now let us see how he conducts himself between the 21st of January and the 25th of February. Mr. Erskine is supposed to represent to him the absolute necessity of getting out of the country. There is no communication, except that to which Mr. Sheridan has alluded, there is no communication made by Mr. O'Connor to any of the respectable persons, that have been called, of the fact of Mr. O'Connor's acquaintance with any of the prisoners, and the letter to lord Edward Fitzgerald is written upon the 14th of February, 1796.

Mr. *Ferguson*.—It is not dated.

Mr. *Attorney General*.—I put it to your lordship, and the jury, that when you read the letter to Roger O'Connor, and when you read the letter to lord Edward Fitzgerald, the true inference from the contents of the two letters is, that they were sent by the same conveyance, and were of the same date. When I am stating this as a fact, your lordship knows that I am stating what I conceive to be the import of the evidence, and really my younger friend, if he will permit me to call him so again, seems to me to forget, that when counsel are stating the case, as the case appears to them to be, all they pledge themselves to, is, to endeavour to be accurate; whether they are finally accurate, or not, is that, of which the Court and the Jury are to judge. I state it then to be the true inference in fact, that these letters are of the same date of the 14th of February, 1796, and I state that, as the result of my judgment, upon the best consideration which I can give the two letters, and in truth I have no doubt about it.

Mr. Erskine gave the advice upon the 21st,—that very earnest and anxious advice—it does not seem to have been acted upon with as much anxiety as it seems to have been given—I beg here your attention to a passage which you find in the same letter to lord Edward Fitzgerald, written after this advice was given, I mean the passage with respect to sending off Maxwell, and the sending off the two young men.—First, with respect to the sending off Maxwell: When you come to read the examination of Mr. O'Connor, before his majesty's secretary of state, I beg you will attend to what he says, about his knowledge of such a person as Maxwell: for he positively declines to give any information whether he knows such a person or not. In the next

place, as to the young men, in what project does this letter of such a date (Mr. O'Connor at this very moment being supposed to be in possession of Mr. Erskine's advice, then three weeks old, that he should get himself out of the country as soon as he could), what project does it prove that he is engaged in? Not in the project of getting himself out of the country with as much expedition as he could, but he is informing lord Edward Fitzgerald that he would get these two young men away as soon as he could: that he hopes to get them away in the course of three days; and if he fails of getting them away in the course of three days, he will take care that Maxwell, of whom he declines to give any information, shall go by *Hamburgh*: it is clear that he could have got himself away, if there was this occasion for his going so expeditiously, as soon as he could have got these young men away; why did he not do so? Then what explanation is to be given of his engagement, in case he did not get the young men away, that he will make it a point, with Maxwell, that he goes by *Hamburgh*, Mr. O'Connor declining, upon his examination, to explain who that Maxwell was? Then does Maxwell mean himself?—It is for your consideration whether the name Maxwell does mean himself; because, when a person is asked, by a magistrate examining him, whom this word Maxwell means, and he will not answer, and when we find a letter, in his hand-writing, stating that Maxwell should go by *Hamburgh*, and when we find a person, in whose hand-writing that letter is, employing Binns ten days afterwards, who appears before to be a stranger to him, to engage him vessels at *Whitstable* and *Deal*, for France, it is a matter for your consideration, whether Maxwell is not himself; if it was not, still one should have thought it natural that Mr. O'Connor should have given some explanation who Maxwell is.

An observation has been made, that this letter is matter of surprise upon Mr. O'Connor, and that therefore he cannot give an explanation of it. It appears to me that that observation cannot apply to it, because in the nature of the thing, it is not very difficult to give some sort of explanation of a letter written by one's self, so lately as the 14th of February. But Mr. O'Connor could not be unapprised that he might be called upon to give some explanation of the name of Maxwell, because he had been five weeks ago called upon to give some explanation of the name of Maxwell before the secretary of state.

Mr. O'Connor, it is also to be observed, had an opportunity to go out of the country, and not in the company of those with whom he has connected himself; for Mr. Bell states that there was a vessel which was going to *Embsen*, and that he might have gone in that vessel some few days before the 24th, and although the advice had been given him by Mr.

Erskine as early as upon the 21st of January, he continued living in London under the appearance, name, and character, of Mr. Connor, living in high respect with the persons who have appeared here to day, and without making the least attempt to rescue himself from that danger, which is represented as being the only cause of his leaving the country.

I must then submit to you this question, whether it is or is not satisfactorily made out to your consciences, upon the whole of this evidence, that Mr. O'Connor, meaning to go out of this country, for whatever reason he did originally mean to go out of this country, when he was going out of it, engaged himself in a project to go to France for the purposes mentioned in this indictment, with the persons mentioned in the indictment, or some of them.

Now, gentlemen of the jury, having stated thus much to you, it does appear to me, I confess, that the circumstances of the case, when I opened the case to you yesterday, did warrant me in saying that I had not been able to conceive what satisfactory answer could possibly be given to these facts. The opportunity has now been afforded of giving that answer, and I must submit it again to your consideration, as my judgment, that, in point of fact, the case against Mr. O'Connor has received no satisfactory answer, that in point of fact the case is of such a nature, that it could receive no such answer, and that the fact, that it could receive no answer, is the only satisfactory reason why it has received none.

The next person, whose case falls under consideration, is Mr. Allen. With respect to Mr. Allen, certainly his concern in this business lies in a narrower compass, than that of the three persons, whose cases I have before examined. But you will allow me to put you in mind, that in the first place Allen connects himself with Mr. O'Coigly as his servant. Allen not being a servant, and Mr. O'Coigly, according to the accounts given of him, not being a person very likely to stand in the relation of a master to him—that he goes with him from *Evans's* house in *Plough-court*—attends him as his servant—that he takes the care of the baggage—that he goes throughout with Mr. O'Coigly, from *Whitstable* to *Margate*—that then he again takes the care of the baggage—that he lives with *Leary*, as being a servant to a person to whom he was not a servant—and that he also participates in the general repudiation, if I may so express myself, of all knowledge of the parties with whom he is concerned, and of all interest in the property proved to be in the baggage. It is not the conduct of *Allen alone* which you are to consider, but the conduct of *Allen, taken together with the conduct of all the rest of the prisoners*, he being one of the party of which these prisoners formed the rest; and you are to infer as much, or as little, as can be conscientiously inferred from the acts of

all of them, as to the acts of each of them; and without going more largely through the particulars of Allen's conduct, I must submit to you whether Allen has not, from the beginning to the end of this, by assuming a false character, afforded sufficient evidence to satisfy you that he knew the purpose for which these persons were embarking to France. For what reason should he go as a servant, unless he knew the other persons were going for purposes which were not proper to be known?—for what purpose should he go in a false character, unless there was some reason that made it necessary prudence for all to assume false characters of some kind or other?

The same observations apply to the conduct of Leary throughout, as to the conduct of Allen, with this difference only, that Leary certainly did not assume the character of a servant to a person, with whom he was not a servant, but was travelling with his master. You will remember however the representations of Leary, with respect to his master, that were made at Whitstable: you will remember the representations of Leary with respect to the destination of his master to the West Indies, you will recollect what was the conduct of Leary, when all these parties were arrested; and you will recollect he refused to explain that conduct, as well as the rest of the parties.

There are a great number of other observations which may possibly be material to be pressed to your judgments, which I have omitted to state; but, if I were more capable, than at this moment I am, farther to enlarge upon the case, I should decline to do so. I have opened generally those observations, which appear to me proper and necessary to be made in reply to the case brought forward on the part of the defendants. I know that you will hear the whole evidence, given for and against the prisoners, with every just and proper comment upon it, as it applies to the case of every one of the prisoners, delivered to you with an accuracy, which will demand and ensure your attention, and which will enable you to do justice both to the country and the prisoners. To do justice to both, is the duty which you are solemnly sworn to execute.

SUMMING-UP.

Mr. Justice Buller.—Gentlemen of the jury; This is an indictment against these prisoners, James O'Coigly, otherwise called James Quigley, otherwise called James John Fivey; Arthur O'Connor; John Binns; John Allen, and Jeremiah Leary—the offence with which they are charged, is that of high treason—the charge contained in the indictment consists of three species of treason. The first for compassing the king's death; the second for adhering to the king's enemies; and the third, which is founded upon a recent act of parliament, is for compassing to move and stir the persons exercising the powers of

government in France, with force to invade this realm. These are the three species of treason which are stated in the indictment; and there are stated also a great number of acts said to have been done by the prisoners, tending to prove that they are guilty of those crimes which I have stated to you.

The first act, which is called an overt-act, is, that these prisoners conspired, together with others, to stir up, raise, and make rebellion and war against our lord the king, within this kingdom, and to incite, encourage, move and persuade the enemies of our lord the king, to make, and cause to be made, an hostile invasion of this kingdom, with ships and armed men, to prosecute and wage war against our lord the king, within this kingdom—There are then five other assignments, or overt-acts, which all relate to this paper, about which we have heard so much, and which I will state presently more at large—There is also another overt-act, which states that these prisoners repaired to the King's-head, in Margate, in order to provide the means of going beyond seas, with intent to give advice, information, comfort, aid and assistance to the enemies of our lord the king, to make an hostile invasion of this kingdom, with ships and armed men, to prosecute and wage war against the king, within this kingdom—that therefore takes no notice of this paper, but charges them with having, by some means or other, without stating how, entered into a combination together, to induce the French to invade this country.

Gentlemen, this is the substance of the different charges mentioned in the indictment. I cannot but observe to you with great satisfaction, as far as relates to myself, that there has been no doubt or question made by the counsel, on any side, as to the law; and the leading counsel for the prisoners, namely, the gentleman who spoke first, and the gentleman who spoke last for them, admitted the law to be clear, which they did with a very proper view, as it struck my mind, because they wished to bring your attention to that which really is the point of the case: they did not attempt to deny what is clear and plain law; they would have degraded themselves; they would have disgraced their character in a way which they are incapable of doing, if they had done it; but they brought the case to that which is a plain matter of fact. I approve their conduct in so doing, and think they acted highly honourably to themselves, and judiciously for their clients.

I will read this letter, which was to go from the Secret Committee of England, to the Executive Directory of France.

[His Lordship read the paper: see it, Vol. 26, p. 1280.]

Undoubtedly it is impossible for the wit of man to put more than one construction upon this paper, or to read it in different lights—What it imports is, that the great mass of the

people are already prepared to join in any invasion which the French should attempt; it insinuates to them, that the country itself is divided; that it is a bankrupt in its finances, and that there is no hope entertained in this country, but by the presence, as it is called, of the hero of Italy, with the assistance of an army of France. Who the hero of Italy is, no man can doubt.

How it could enter into the mind of any man, that if a French army ever came into this country, and got the better, they should be induced to return quietly home, and leave their advisers here in the possession of this country, is a matter which raises great astonishment indeed in my mind: no conduct of the French towards any other country has ever justified that expectation.—The result of that paper is to induce the French Directory, under an idea that the people of this country would rise in a mass to their assistance, to invade this kingdom, holding out every inducement to them to come, and assuring them that if they did come, they must succeed.

Gentlemen, upon this paper I do not know how to express a better opinion to you, than in the very language of that great judge who has most deservedly had the highest eulogiums bestowed upon his memory, in the course of this day, from every part of the Court—I mean lord chief justice Holt: In the trial of lord Preston, which you have heard very much relied upon by some of the counsel for the prisoners, a paper was produced pretty much to the effect of this; but not I think, quite in such desperate terms as are to be found here—but, speaking of that paper, lord chief justice Holt says,* “There is no manner of doubt but this is a treasonable declaration; and if any person had this in his possession, and was going into France, to carry it with an intention to make use of it there, that is treason, though it be couched under the specious pretence of restoring the people to their liberty.” In short, says he, “it was plainly a design to invade England by a French army.” So I say here; and upon this case I shall not hesitate a moment in stating to you, that these expressions of lord chief justice Holt are applicable, in the utmost extent, to the present case; and that, whoever had the possession of this paper, meaning to carry it into France to make use of it there, was guilty of high treason within every part of this indictment.—It was high treason within the first branch of the indictment, which charges the prisoners with compassing the king's death; it was high treason within the second branch, which charges them with adhering to the king's enemies; it was also high treason under the third charge in the indictment, which applies in words to this very case; for the words in the act, and in the third charge in the indictment, are, that the prisoners compassed and imagined to move and stir the per-

sons exercising the powers of government in France, with force to invade this realm.—Having got thus far, I think I have not, in any part of the case, a single question of law more to state to you; the whole then becomes a matter of fact, and the question is, did any, and which of the prisoners, engage in a design of carrying this paper to France, for the purpose of inducing the French to make an invasion upon this country.

Now, gentlemen, I will state to you the evidence which has been given; and I will then state to you some observations which occur to me upon the cases of the different prisoners, which I shall do principally for the purpose of drawing your attention to their cases distinctly; because it certainly has happened in this case, and so it does in a variety of others, that there may be some evidence extremely strong against one prisoner, which does not affect another prisoner in any material degree; and therefore, after I have stated the whole of the evidence, I propose to make such observations as appear to me applicable to the prisoners distinctly.

[Mr. Justice Buller summed up the evidence at large, and then proceeded thus:]

Gentlemen, this is the whole of the evidence.—As to the law, I have already told you that it is perfectly clear, that whoever had this paper in their possession, meaning to carry it to the French and deliver it to them for the purpose of affording them any assistance or information against the country, was undoubtedly guilty of high treason.—The question is, whether any of these prisoners have been proved to have been so concerned. The evidence unquestionably affects the prisoners in a very different degree; and therefore, in order to lay before you, for your consideration, the principal parts of the evidence, as they affect the prisoners respectively, I will state how it appears to stand as against each.

First, with respect to O'Coigly, it has been admitted, I believe, by every counsel who spoke in the cause, that if the facts stated here, are proved to your satisfaction, there can be no doubt of the result, because, if they are proved to your satisfaction, it is impossible to say he was not fully apprized of the whole design. He denies positively that the great coat in which the pocket-book was found was his. Now it has been proved by one witness, very positively, and has not been denied by any body, that this great coat was his.—What is the general character that he appeared in?—He has been filling the characters of a priest, of captain, and of merchant: and he has passed by the names of Jones, of Parkinson, and of Wallace. The only witness called for him, as to character, spoke of that very slenderly. He said, he considered him as a man of moral character. But was there any reason for his quitting Ireland as he did, or any reason for his going to France as he was going? Some

* *Ante* Vol. 12, p. 734.

account ought to be given of this by him. Here is a long detail of the various places that he was going to, and had been at; and no account or explanation of his conduct offered by him.

He says, he came to London in May 1797; the next place we hear of him in, is Holland; then he went to France; we hear of him at Paris; then at Havre; he came back to Havre in December 1797; in January, 1798, he is proved to be in Ireland; on the 14th of February he was at Manchester; on the 22nd and 23rd of February he was in London; and after that, we find him in the situation in which the prisoners are described, with this paper in the pocket of a great coat, which is proved to be his. Whether he was going to France, or not, will be a question for your consideration, by and by—but all these things require some answer.—What answer is given?—None. His witness says, about ten years ago, there were some people in Ireland, under the character of Orange men and Peep-of-Day boys, that did mischief to the prisoner's father's house.—What then?—Did that call upon O'Coigly to quit Ireland so lately as a few months ago?—If there was any serious danger to his person, from the attack that had been made upon his father's house ten years ago, how came he not to leave Ireland then? and if he did, how came he ever to go back again?—The next thing is, that the journey and the dates are proved by a passport, found in a way which admits of no doubt as to him, because it not only describes him by name, and where going, from place to place, but there is his hand-writing upon it.

Then, say the counsel, as to the great coat, there is only one witness that proves it; but he stands uncontradicted; and therefore why are you not to believe him?—In the next place, it is not absolutely necessary that this great coat should be proved to be his; for it is sworn, not by one witness only, but by four, that the address which he was to carry to France, as they say on the part of the prosecution, was taken out of his pocket-book.—The question will be asked again, how does it appear to be his pocket-book?—It appears in this way, that the papers found in that pocket-book were letters addressed to O'Coigly, written by a great many different persons, but all to him.—How came all these papers, written to him, in that pocket-book, if it was not his?—And four witnesses have sworn positively, that this address from the Secret Committee of England to the Executive Directory of France, was found in that pocket-book.—You see this is extremely strong evidence; and, as I said before, what have you to contradict it?—Nothing. On looking into the examinations which the prisoner underwent, it seems to me, that almost every fact there stated by him, is proved to be false. And if you find him telling different stories that are contradictory in themselves, it goes a great way also against him.

VOL. XXVII.

When examined in Bow-street, he said, there was a gentleman and his servant went on board with him, who were strangers to him. There was no gentleman and no servant who went on board with him, but Mr. O'Connor and his servant.—Was he a stranger to Mr. O'Connor?—The direct contrary appears in all the evidence: and he admits, in that examination, that he saw the baggage come on board, which consisted of three mahogany boxes and other things; and he rather thinks they belonged to the gentleman he saw on board the hoy.—How happens it, that he there represents Mr. O'Connor and his servant to be total strangers? for that clearly was not so. He is examined, the next day, before the secretary of state—and what does he say there?—He asserts that there was no great coat belonging to him, and that there was none in the room; and the counsel have relied very much upon the circumstances under which the coat was found. They seem to have understood the evidence as if the coat had been left all night in the room in which they sat in the course of the day, and that it remained there all night, whilst O'Coigly and the other prisoners went to bed.—There is no such evidence, nor any thing like it. It is proved that the coat was first found in the sitting room in which O'Coigly was, with the tea-things before him, then going to breakfast, and when he was in the room himself. Does that prove that the great coat was there all the preceding night? Is it an uncommon or an extraordinary thing, that a man who goes to an inn, without any particular extraordinary errand, puts his great coat in the parlour when he is there, and when he goes to bed takes his great coat up with him, and when he gets up carries it down again? What is there improbable in this? There is no evidence that the great coat was left in the room all night, and perhaps you will think the fact must be taken otherwise. Before the secretary of state he denies that he had any great coat. The fact that he had one, is proved beyond all possibility of contradiction. Can you suggest to yourselves any reason why he should deny that he had any great coat, if there was not something in that great coat which he did not choose to have fixed upon him? I cannot suggest any other reason; and if there is no other reason for it, that becomes most important and material evidence. He is asked more about the baggage, and he says, in that examination, the gentleman took care of the baggage. That is directly contrary the fact; Mr. O'Connor never took care of the baggage, it was all in other hands; and it is proved by one witness, that O'Coigly himself marched by the side of the cart which carried it to Margate.

Still you are told by the counsel it must appear that he knew what this letter was. Now let us see how that is: first of all, you will please to recollect a little how it was directed, for the direction was, The Secret Committee

of England to the Executive Directory of France. Had he got the letter in his custody without knowing where he was to carry it? Is it possible that a man could have such a letter, and not know the address, or to whom he was to convey it? The next thing is, what are the contents of the letter? "*The citizen who now presents this to you, and who was the bearer of our sentiments before.*"—Sending it by the prisoner, if he were the person who had been in the course of carrying communications from England to France, makes it still stronger against him. Is that true? does he appear to have been in the course of carrying correspondence before? The fact is allowed that he had been a great traveller into foreign parts; the passport proves that, and this also stands without any contradiction whatever; and he has travelled, they tell you, from place to place, within a very small distance of time, and none of those journeys are accounted for. It is for you to put all this evidence together, and if the letter was found in his custody in the manner that has been proved, wrapped up in his pocket-book (and which pocket-book is proved to be his, in the manner I have stated), directed as this was, and accompanied with all the contradictions and falsehoods of which he has been guilty, and he was going to France for the purpose of delivering that letter, I can state to you no ground on which it may be supposed that he was ignorant of the effect of that letter; and if he knew it, the case is decided as to him, and undoubtedly you ought to find him guilty. If you can doubt of those facts, upon this evidence, or any thing else occurs to your minds, which affords a fair presumption of innocence, by all means allow for every thing, consistent with the truth of the case, which may make in favour of the prisoner.

With regard to the other prisoners, undoubtedly the evidence stands on different grounds, and, as it seems to me, requires more attention at your hands.

The first in order is Binns. Now, certainly, this man was also using great expedition, and taking journeys with great haste; he is proved to have gone from one place to another with as much expedition as a man could well travel, and he also goes by another name, for he went by the name of Williams. In the inquiry which he made for the purpose of getting a boat, he also used the names of persons whose names he had no authority to use; he tells them he wants to get to the other side of the water; sometimes he stated he was to go himself, at other times his friends were to go, but always asked whether it made any difference if he took three or four persons with him; and he agreed for the vessel upon the terms that three or four men were to go by it. After he had made this agreement, he went to London with all possible despatch; he returned to Gravesend, then to Canterbury, then to Whitstable, then to Margate. It appears he solicited several persons for boats,

and agreed to give one hundred pounds for the hire of the vessel, if they brought back a cargo of smuggled goods. The witnesses say he made the application to go to France, and particularly asked which port was nearest. In making the bargain, he takes upon himself to insure the safe return of the boat: the luggage he put under the care of Hayman, and he sometimes represented himself as intending to go, sometimes not; but he is proved to have been with Mr. O'Connor upon the 26th and 27th at Deal; he certainly is also proved to have a cipher character with him, and that is a circumstance that raises suspicion; but he denies that he knew the object of the journey. How or by whom he was employed to hire the vessel, has not appeared by express evidence, but I will state presently a way in which he might be employed. When he agreed for the boat, they tell you he offered to insure the return of the boat, and he offered to deposit money for the purpose of indemnifying them, in case the boat should be seized there.

Now it is rightly stated by the counsel, that if all were acting on the same design, they are all equally guilty, and you will please to recollect in this case, that if they were all going for the purpose of communicating this paper to the French Directory, yet the paper could only be in the hands of one. The question is, whether you are satisfied, upon the evidence, that they all knew of this paper; for I think upon the evidence, notwithstanding the observations which have been made in reply, the case stands upon that. It is true, as the attorney-general told you, that the assignments in the indictment are so broad, that the prisoners might be convicted of intending to carry intelligence of the state of this country, and inviting an invasion, though this letter was not known to them; but I do not see, upon any part of the evidence, that there is any sort of communication which ever was intended to be carried from England to France, excepting what is contained in this letter. Therefore, though it be true that if other overt acts of treason were proved, the prisoner, or any of them, might be convicted on this indictment; yet as no other sort of communication has been either proved, stated, or alluded to, it will be necessary for you to be satisfied that they were all acquainted with the contents of this letter: so it stands against him.

Was he or not the agent of all, or of one only? for a great deal depends upon that: and this is a case accompanied with so many circumstances, that it is material to weigh them on both sides. There is this reason, for supposing that he might be employed principally, if not altogether, by Mr. O'Connor; he undoubtedly is proved to have offered to deposit money to pay for this vessel, if any accident happened. Who was likely to find that money? It seems, by all the evidence, the whole party, except Mr. O'Connor, were bag-

gars. Who was to find the money but Mr. O'Connor? and if he was going in a great hurry, supposing that Binns was employed by him only, Binns might say, as to the loss of this vessel, if she does cost O'Connor three hundred pounds, money is no object to him, and therefore I will agree for the vessel. That is one way of putting it, and it deserves your consideration. If he really was only acting for Mr. O'Connor, it does not necessarily follow that he knew the contents of this paper, or that O'Coigly was going with any information to the French Directory. The circumstance of his offering to insure the vessel, undoubtedly creates a suspicion, because, on the one hand, it might proceed from a pretty great confidence, with which the previous acquaintance he had with the Directory inspired him; or, on the other hand, it might proceed from the circumstance I stated, that he found Mr. O'Connor in a great hurry to go, and thought the money no great object to him, and therefore took the risk of hazarding so much of Mr. O'Connor's money; it makes a wide difference whether one or the other be true; there is that opening, which is for your consideration, whether he did or did not act in this business merely as the agent of Mr. O'Connor. I have told you the reason why it might be so, and if you think he did, it seems to me there is nothing else to affect him. His conduct in hiring the vessel, the great hurry he was in, and the undertaking to insure the boat, are the great facts against him, to be sure. These are the circumstances from which his motive must be inferred, and whether his conduct is to be ascribed to his knowledge of the paper, and his desire to convey it to France, or only to assist O'Connor in getting abroad, without any knowledge of the paper, is for you to judge. If you think he was only employed by O'Connor, and knew nothing of the paper, you ought to acquit him. If on the other hand, you think, from all the circumstances, he was fully apprized of the contents of the letter, in that case you ought to convict him.

The next prisoner is Mr. O'Connor, and his case certainly stands upon many facts that are liable to different constructions, and here is a character given him by some of the first, and some of the most respectable characters in this kingdom—I think I may say, generally, that no man's character can be better established, or by men of more respectability and more honour than the witnesses who have been called for him; but still I cannot say that character ought to decide; character, as you have been told at the bar, and which you must have learned over and over again, if you ever have served upon juries before, can only weigh in doubtful cases. If the fact be doubtful, you ought to let the character weigh, and turn the scale in favour of innocence; but if the facts are proved clearly to your conviction, and you shall be satisfied that this prisoner knew the contents of the paper, you ought to find him

guilty. With respect to him as well as Binns, I see nothing in any part of the case from whence to ascribe the guilt charged to him, unless you find an acquaintance with the paper. I admit he might on this indictment be convicted of other acts of treason, if they were proved by evidence; but that evidence does not exist. He did not tell his name at first, after he was taken up; he denied all knowledge of the baggage in the first instance; as to the things carried to the Tower, they were proved to be his; and he certainly had to the duke of Portland admitted, that part of this baggage was his, because when the witness carried stockings to the Tower, he told him, he had brought the stockings which he had written for. You see, therefore, he must have applied for them. There is this fact against him, that he denies all acquaintance with O'Coigly, and that is not true, for one letter is read, which is proved to be his handwriting, and which shows he was not so great a stranger to O'Coigly as he represented. Besides, he had dined with him, and seen him several times at Bell's. He told Bell he had not known him above a day or two, but he said that he was one of the persons intended to go abroad. There appears to be no doubt upon this part of the case, from the number that Binns agreed for; Binns agreed for himself, and four more besides himself. What other persons were there in existence, who were likely to go, besides those four? The direction to Hayman seems to be a very small circumstance in the case, he had the same direction that Binns had in his custody, and it was in the purse; that direction seems to me to carry it no farther than this, it is an intimation to him where to get the baggage, and he was to get it according to this direction. It is proved that O'Coigly was frequently at Bell's, and how that agrees in any degree with the conversation he held at Bell's, or how that letter is reconciled with the information which Bell says O'Connor gave to him, viz. that he had never known O'Coigly till within a day or two, is not easily reconciled. He added that he reluctantly made acquaintance with him; but he certainly had made acquaintance with him, as appears by the letter, and his asking him to dinner; and he also knew his real name, though he introduced him by a false one. Bell says, he at times appeared very uneasy at having agreed to go with him; what that arose from we have not learned in the cause, that might have arisen from different circumstances. But how happened it that Mr. O'Connor did not go to Hamburgh? It seems to me there is a suspicion from that, and yet I do not state it as more than suspicion. He had received advice from a very respectable gentleman most positively to go to Hamburgh. Now if this vessel was hired by Mr. O'Connor (as the great probability seems to be, from the circumstances I mentioned, that he was to find the money), why might not he just as well have

hired the vessel for Hamburg, as for a French port? These are circumstances of suspicion, but I do not state them as more. A French port was made the *sine qua non*, and the ship was to go there. Mr. Sheridan also advised him at all events to go to Hamburg.

The next thing is what is proved to have passed between Mr. O'Connor and O'Coigly respecting the money. Part of this money is tied up with a ticket denoting that it belonged to O'Coigly. The money is found altogether, and some how or other, they did not make their accounts right. Mr. O'Connor directs persons to write to him from London by Williams, at Canterbury, where he says he shall receive it on the morrow—different accounts are given of the places where he was gone, but that is all by other people, and therefore makes nothing against him.—Then, there is the letter to lord Edward Fitzgerald, which certainly is an improper letter, but I do not think that goes to show whether he did know the contents of this paper or not. The key is also an awkward circumstance against him. What purpose could that serve but some secret correspondence? By that key it appears, that the name Williams was to be used instead of France. He knew also that the persons with whom he was travelling were going by feigned names. This is a circumstance that would have alarmed any reasonable man's mind.—What does he say in his examination? When examined before the privy council, he says, "He had had an intention to have gone to Hamburg?" The terms he had had, imply, that though he once entertained that idea he had laid it aside; why had he done so, or why not go to Hamburg?—What made the change is not mentioned in this examination. He there says, "That he was expecting letters conveying intelligence of his bail, which were to determine the time of his going to Ireland."—One fact is, that he had sold his property in Ireland, and he was going abroad, going to France. But they say he had other business, and that he was going upon another concern.—It seems to me, as if he was going, not with an intention to return again; but whether he was going as the carrier of this letter, or merely for the purpose of transacting other business, is to be considered by you. These are the leading facts that make against him.

Now let us see how the case stands for him.—It is said first by his counsel, that two men might go in the same vessel with different views: undoubtedly they might—it is more or less probable, according to the circumstance, what that vessel is—in a general vessel that takes up all passengers that it can get, men coming from different quarters of the world, from different parts of the kingdom, and acting upon very different designs, may get together in the same vessel, just as they do in a stage coach; it is not so strong here if you understand the vessel to have been hired or paid for by Mr. O'Connor.

Yet still the fact might happen in the way that they state it. Mr. O'Connor had agreed to let O'Coigly go with him—now if that was all, and if the declaration which he made to Mr. Bell was made fairly at the time, that might happen to be the case; for says Mr. Bell, he was very much concerned afterwards at having made the engagement, and if there was nothing more in the case than that he had agreed to take him, because he was a poor distressed Irishman, and could not pay for his passage, certainly no criminality attaches on O'Connor for so taking O'Coigly into this vessel. Before you find him guilty you must be satisfied that he knew the contents of the paper. Undoubtedly that knowledge may be proved most satisfactorily by the conduct and the behaviour of the prisoner himself, and what I have stated to you is what arises from his conduct. I have told you what appears against him, and I will state more which is for him, and you will apply the evidence, and judge which is most likely to be consistent with the truth; and as the evidence satisfies your minds, one way or the other, you will have to find your verdict in this case. One circumstance for him, and certainly not an immaterial one is, that he is not proved ever to have been a member of any political society, either in England or in Ireland. There is no evidence whatever of that.

As to the observation made by the counsel about the cipher, as far as it went, the cipher mostly relates to Ireland, but still it must be remembered, that England is not forgotten, nor is Dover forgotten; there are characters in the paper which describe each of them, but in other parts it is more applicable to Ireland than it is to England; I think also that you may take it to be pretty clear that Mr. O'Connor was not the person alluded to in the paper addressed to the French Directory, for the paper says, the bearer is the person who had gone for the Secret Committee before, and is in great haste. There is no pretence for saying that Mr. O'Connor had ever borne any message for them before; the paper alludes to an Irish delegate who is present among them; there is no evidence that Mr. O'Connor ever was amongst them, or of any other society whatever; they say also, that he had other business in France; now that letter certainly is to be read with very different meanings; and if the case admits of reasonable doubt, probably you will make allowances for it; the letter says, when he gets to Williams (which means France) he will be active there.—The witnesses have stated to you a subject upon which he might be active, though he knew nothing of this paper: that is, that he had a very intimate acquaintance, as it appears by the letter, with lord Edward Fitzgerald: and lord Edward Fitzgerald's lady had property in France, which property it appeared, from some of the gentlemen's evidence, lord Edward had neve-

got possession of; and the activity spoken of in the letter, it is said, relates to that property, which he hoped to secure for his friend. If the letter means no more, there is no harm in it. Undoubtedly the mere possession of a cipher does not amount to treason, but still it does raise a suspicion, and the question is, whether, upon the whole of the evidence, you find such facts established against Mr. O'Connor as convince your minds of his guilt. Before you can convict this prisoner, or Binns, I think you must be satisfied that they knew the contents of this paper, because there is no other evidence but that letter, from whence to impute any species of treason, or communications from England to France, to either of them. So far the question stands pretty much upon the same ground as to the prisoners O'Connor and Binns; and as to O'Connor, there is this circumstance also certainly in favour of him more than in favour of Binns, namely, that the paper, which is the principal thing in question, was not written till the 6th of February, but it is clear, by Mr. Bell's evidence, if you believe him, that Mr. O'Connor had made up his mind about quitting the kingdom and going out of the country so early as the 20th of January. Now, if he had made up his mind so early as that to quit this country, it does not seem that such intention was governed or occasioned by the letter.

Mr. Attorney General.—The date of the paper is the 25th of January.

Mr. Justice Buller.—It is a French date; I thought you stated it to be in February, but if it were in January the observation arising from it is not so strong as in the way I understood it; but if the prisoner had made up his mind, and had a determined resolution to go out of this country, before the paper existed, it does afford a ground from whence to conclude that he was not one of the persons employed to carry this paper. The question is, whether on the one hand you are satisfied that he did not know the contents of this paper, and was going upon the same errand, although O'Coigly was the bearer of the paper, if you are satisfied of that, you ought to find him guilty, but if the facts hang at all in equal scales, it is a case in which character ought to weigh, and his character has certainly been proved to be as good as any man could establish.

I have stated the facts as they may be pressed and understood on both sides, because you should exercise your judgment upon them. The prisoners whose cases remain to be considered are the two servants; the question is still the same here, namely, did they know the contents of this paper? When five men are going together in the same boat, before we conclude that some did know, and others did not know, what errand the boat was going upon, certainly we ought to find some principle upon which to distinguish

their cases; the circumstance here is the character in which they appear; it was stated in the reply that Allen was not a servant, but no evidence has been given of that at all; he never appears to have been seen in any character, or company, appearing otherwise than as a servant; there is no evidence that shows him, upon any occasion, acting otherwise. If he really had filled any other character in life, I should have told you, without hesitation, that the circumstances of his assuming a false character of a servant, makes strongly against him; for why do men assume false characters if they are not acting in illegal designs; but it does not appear that he ever appeared in any other light than as a servant, and in that character he did appear in all transactions here. He lived with one who is clearly admitted to be a servant, namely the boy. When it is established as a clear fact that these were two servants attending their masters, is it likely that they should be acquainted with the contents of such a paper as this? Does not the mere circumstance of their being servants exclude the probability of their knowing that, and if you think they did not know it, you ought not to find them guilty.

Having said thus much, I trust I have discharged my duty both to the public, the prisoners, and to you. As to the law, I have stated that clearly and explicitly, because it is clear, and admits of no doubt. As to the fact, I have stated what has been proved upon each side; I have stated where it seems to me, the evidence that has been given, may admit of different constructions, which I have done, in order to lay the case fairly before you, for your consideration. Perhaps, as to the first prisoner, I have stated my own opinion pretty strongly; I have done that, because I am not able to find any doubts upon the evidence. It is my duty to state my opinion to you, because you have a right to know it; but you are not bound to follow it; the Court are bound to give their opinion, but having done that, it is for you to exercise your judgment upon the different parts of the evidence, and remember it is your verdict not mine. Let your opinion be what it may, pronounce it upon the evidence which has appeared against the different prisoners at the bar; and I am satisfied, that when you turn the evidence in your own minds, you will pronounce that verdict, which is consistent with the truth and justice of the case.

The Jury withdrew at fifty minutes past twelve o'clock at night, and returned into court at twenty-five minutes past one, with a verdict finding

JAMES O'COIGLY, Guilty.
ARTHUR O'CONNOR, Not Guilty.
JOHN BINNS, Not Guilty.
JOHN ALLAN, Not Guilty.
JEREMIAH LEARY, Not Guilty.

Mr. Justice *Buller*.—James O'Coigly, you stand convicted of the crime of High Treason, and upon the evidence which has been given, I have not been able to find the smallest doubt, which I could leave to the consideration of the jury, and on which they could honestly be stated to be at liberty to form the same favourable opinion of your case, which they have done of the case of the other prisoners at the bar.—What are the motives which actuate the human mind, when it is led into the commission of the blackest and the deepest crimes, it is often very difficult to say. It is extremely so, when the crime is directed against a prince, whose virtues and whose mildness have excited applause and approbation from all mankind, and against whom detraction itself cannot hint a fault; or, when it is levelled against the existence of a constitution, which has been framed wholly for the security of the liberties, and the preservation of the property, of those who live under it. Every man who has any property in any part of his majesty's dominions, whether he be Turk, Jew, Infidel, Papist, or Protestant, is equally interested in the preservation of this government; all of them have been, and still are, continually obliged for its moderation and its justice: for they have had the same indulgence in the enjoyment of their religion, the same protection, and the same benefit in the distribution of the common justice of the realm, as any other of the king's subjects. None of them could ever expect to mend their condition under a French dominion; but the contrary is foreseen by all considering men, and all descriptions of persons would be reduced to a most dismal state, if you had obtained your end.

It is against all the rules of reason, and against the experience of all ages to imagine, that if the French had become masters of this country, they would spare a restless and discontented race of men, more than those who have showed themselves orderly members of society, and capable of living quietly under a regular and well-ordered government. It is not a zeal for any particular society of persons, or for the establishment of any principles, which can tend to the happiness of mankind in general, which would incite the French to invade England; but it is the pride and ambition to conquer these kingdoms, and to reduce them to be a province of France. The pretence of diffusing liberty may serve to delude some warm and unwary zealots to engage in such plots, who do not consider that if they should be successful, they would be as certainly destroyed as others, but with more disadvantage to themselves; for after they shall have survived the liberty of their country, they will be at the mercy of their conqueror, who can never think it his interest to trust those, who have shown themselves incapable of living quietly under one of the mildest governments which exists in the known world, and therefore will naturally despise them as traitors to their own coun-

try, and unworthy of the confidence of any other.

When we speak of liberty, we should not forget what a very celebrated French writer says on that subject. He tells us that there is no word which has admitted of more various significations, and has made more different impressions on human minds, than that of liberty. Some, says he, have thought it a right to bear arms, and be enabled to use violence. Some have annexed it to one form of government, and others to another. But liberty is a right of doing whatever the laws permit; and if a citizen should do what they forbid, he would no longer be possessed of liberty, because all his fellow subjects would have the same power. He adds, that to have liberty, it is requisite that a government should be so constituted, as that one man need not be afraid of another. He has also told us that there is this inconvenience in conquests made by democracies, namely, that their government is always odious to the conquered country, and is much more oppressive than monarchy; as the experience of all ages and all countries evinces.

That any set of men should work themselves up to an opinion and belief, or even to a hope, that if ever the French should conquer this country, they will afterwards relinquish it to those who invite them here, is as extravagant as the idea which prevailed in the last century, that murder in this world would prepare the way for saintship in the next. The recent examples of what they call their disinterested conduct, and which they have shown lately towards Holland, Switzerland, and America, must leave that question beyond all possibility of doubt, and are the most convincing proofs that their whole system is a compound of oppression, of tyranny, and of venal corruption.

I do not suppose, that either a regard, or a mistaken zeal for any religion of any description, has now, in the smallest degree, contributed to an attempt, or desire to subvert this country or its constitution. On the contrary, the modern way of corrupting the human mind, has been to eradicate every idea of religion, and to deprive every virtuous mind of the comfort which it might derive from the assurance of a future state.—It is not my province to charge here on that important topic; but if you have suffered your mind to be tainted by ideas on that subject, which occasion misery here, and endanger salvation hereafter, I can only express a hope, that before you launch into a vast eternity, it may please the Almighty God of heaven to open your understanding, and to lead you to a true and perfect conviction of your errors, to a sincere repentance of them, and not to let the first thing which undeceives you, be death itself.—To that God every Englishman will address himself to implore the protection and salvation of his country—to the same awful power you will do well to address yourself for mercy and forgiveness. It is my duty to

see that the crime with which you are charged has been proved against you. It has been so fully proved, that the Jury in your case could form no conclusion different from what they did. No man can doubt the propriety of their verdict, and upon that verdict I am bound to pronounce the judgment of the law upon you, which is, and this Court does adjudge,

That you be taken from hence to the place from whence you came, and from thence you be drawn on a hurdle to the place of execution, there to be hanged by the neck, but not until you are dead; but that you be taken down again, and that whilst you are yet alive, your bowels be taken out and burnt before your face, and that afterwards your head be severed from your body; your body to be divided into four quarters, and your head and body be at the king's disposal.—And may God Almighty have mercy on your soul.

Mr. Arthur O'Connor was detained on a charge of High Treason, by virtue of a warrant from his grace the duke of Portland, dated March the 32nd.*

John Binns, John Allen, and Jeremiah Leary were discharged the next day.

James O'Coigly was executed at Penningdon Heath, on Thursday, the 7th of June.

After having been suspended about ten minutes, he was cut down, when his head was severed from his body (the king having graciously remitted the remainder of the sentence) and the head and the body were immediately buried under the gallows.†

* See the trial of the Earl of Thanet and others A. D. 1799, *infra*.

† A full account of the execution is given in the "Observations on the Trial," &c. &c. printed below.

The Life of the Rev. JAMES COIGLY, Observations upon his Trial, an Address to the People of Ireland, and several interesting Letters, all written by himself during his Confinement in Maidstone Gaol.

[PREFACE.]

The dying words and injunctions of my friend, have imposed on me the melancholy duty of giving to the world the following papers, which he directed to me, or entrusted to my care, as the only means left to rescue his memory and character from calumny and misrepresentation. Whilst I am determined to fulfil the engagement, I feel a reluctance in performing the task, as they press hard on some individuals. Though his expressions are, perhaps, too severe, yet I am led to imagine, that even those gentlemen to whom he alludes, had they been so solemnly enjoined as I have, would, in honour and charity, however grating and repugnant to their feelings, let the public hear him at large in his last defence.

Mr. Coigly was my early friend, benefactor, and bosom-companion. My interest was at his heart, even in the last moments of his existence. It was my consolation to be a favourite with so brave, so generous, and so virtuous a man. Thousands at this moment, with me, bitterly lament his untimely death, and the many miserable circumstances attending it—He surely deserved a better fate!

I saw him shortly after he first came from France. He gave me the most satisfactory account of the causes and commencement of the revolution that I have obtained from any quarter. His memory was so remarkably tenacious, that he seldom omitted the minutest circumstance in his longest narratives, let the subject be ever so complicated. He certainly

was not then a friend to the French Revolution; and if he had latterly changed his principles, I am confident it was brought about, as it is with the majority of the Irish nation at present, by calumny, false suspicion, prejudice, and unjust persecution.

I was with him almost every day whilst in Dublin last January; and particularly on the day of the date of the paper sworn to have been found in his pocket-book, which states that the bearer of it was then in London, and had only a few hours to remain! I went with him, on the night of the 31st, from Dublin to Rush, and parted with him next day, within a mile's distance of that place.—It may be asked, why he did not produce witnesses to prove he was in Dublin at the time? And, why he denied the great coat? To the first of these questions my answer is, that he could easily have produced respectable witnesses to prove the fact of his being then in Dublin: the evident presumption, therefore, is, that he had no knowledge of the date or contents of the paper in question until it was produced and read in court as evidence to take away his life.—To the second question my answer is simple (even supposing the great coat, which I can by no means admit, to be his—for there was no satisfactory proof of it)—that all his fellow-prisoners, as well as himself, thought it prudent, as appeared by the unwilling evidence of the Bow-street runners, "to refuse to own" any of the baggage—giving expressly as a sufficient reason for so doing, the probability of their having put something into it: to which is to be added,

the runners having refused to mark or make an inventory of the papers, or to send for a magistrate to identify them.

I lived in the same town with Mr. Coigly nearly three years, spent most of my vacant days and evenings in his company, and found his conversation always chaste, edifying and cheerful. I was delighted with his vivacity, pleased with his virtue and talents as a clergyman, and amazed at the solidity of his understanding and heroic principles.—In argument he displayed much erudition, particularly historical knowledge, of which he had a wonderful store. His disposition was mild, liberal and charitable—abhorrent of meanness and hypocrisy—feelingly indignant of injustice and cruelty. All my acquaintance loved and admired him: he was on the most intimate footing with them, and was as the child of the family in every house.

Although he has written the following narrative of his life, remarks on his trial, address to his countrymen, and all the letters except two, since his conviction, and immediately before his execution, under the greatest disadvantages, I have not ventured to have the least alteration made in his style. I give his friends his own words, knowing they would not be pleased with me if I had done otherwise.

VALENTINE DLEERY.

London, June the 14th, 1798.]

THE LIFE

OF THE

REV. JAMES COIGLY,

AS WRITTEN BY HIMSELF.

Meidstone Gaol, 30th April, 1798.

My dear friend;—Happy am I, even in my present melancholy situation, to have it in my power still to call you by that endearing name! My health declines so rapidly that I resolved to write you a few lines before the approach of that awful exit, *which now appears inevitable.*

I am the descendant of ancient Irish tribes. Not one of the plundering settlers who enslaved my country appears on the list of my ancestors. They were strenuous defenders of their country's independence; and were the last to yield to the tyrant's yoke, by far the greater number choosing greatly to fall with a falling state, rather than survive its destruction.—Disclaiming any present title to forfeited lands, it is astonishing to behold the immense property taken from my mother's ancestor by James the 1st, who almost destroyed my father's family, and all its connections, planting their inheritance with foreigners, and thus endeavouring to root out the spirit and name of these warlike tribes together; yet their scattered remains most vigorously opposed Cromwell, and were afterwards debarred of their rights at the Court of

†

Claims by the wicked policy of Charles the 2nd. Notwithstanding such treatment, they mustered all their forces in defence of his brother James; first positively insisting on his acknowledgment of Ireland's rights, and his consent in writing, under his hand and seal, to the suppression of boroughs and other grievances. See the speech of one of my ancestors, Daniel O'Donnelly, knight of the shire for Tyrone, in the parliament held at Trim. He concluded by saying, that it was not their business to intermeddle in the quarrels of the kings of England, but in as much as they could serve their country in doing so; and if the king would not immediately consent to their just demands, certain he was that his friends would stand silent spectators of the contest. Fatally for my family, James signed the agreement; of course they continued in arms, and my great-grandfather O'Donnelly, together with seven of his brothers, were slain at the head of the tribe, bravely defending the bridge at the battle of the Boyne; and so great was the carnage, that, at present, there is but one solitary male of that family in existence.

It was my great-grandfather Coigly who invented and constructed the famous boom at Fort Culmore, for the blockade of Derry. He, with three of his brothers, were afterwards killed at Killcommodon, commonly called the battle of Anghrim, gallantly fighting at the head of his regiment, after the infamous Lutterell had betrayed his country and cause.—You will say, perhaps, that I mention this through vanity: No! it is only to show that the spirit of independence, and love of their country, have been in some measure hereditary in my family; so much that when Elizabeth made terms with the famous Tyrone, she offered also to make my ancestor, at that time, John O'Donnelly, an earl. He refused, and said that he never would wear the badge of foreign servitude: he was Tyrone's son-in-law, and soul of the war.

My own unfortunate history would be worthy of perusal, were I able to write it. My father, a plain honest farmer, gave me an education superior to his situation, of which I profited as far as my health would permit. I was, from my entrance in life as a man, continually involved in disputes, always in favour of the poor trodden-down subjects against the gigantic strides of overbearing tyranny. Even in college, I maintained a four year's struggle against our despotic principal, in order to recover our ancient rights, in which I at length succeeded, although he was supported by the archbishop of Paris, &c. &c. I never receded an iota from my established plan; neither danger nor difficulty could deter me; was always of an open, friendly, and unsuspecting temper. I must acknowledge, that for the sake of unanimity, and to satisfy others, and not from my own conviction, too often did I yield to the sentiments of others. In point of moral conduct, even my enemies

will not, nor ever did attempt to impeach me. Never did I knowingly injure any one—was ever an obedient child, dearly beloved and cherished by my parents. Alas! my untimely fate will bring down their hoary hair with sorrow to the grave. I have also three brothers behind me; my fate will injure them materially.

May Providence ever protect you from your enemies! Your faithful friend,

JAMES COIGLY.

Maidstone Gaol, May the 29th, 1798.

My dear friend;—I arrived in Paris on the 8th of June, 1785; and, after some preliminaries had been arranged, I was received as student in the college of Lombard. Soon I perceived that the students were held in a state of abject slavery by their superiors; and any one who dared to call in question their authority, was marked out as an object of their vengeance, and certain he might be of becoming the victim of their wounded pride. Often I endeavoured to obtain a sight of the college charter; but our wary superiors always prevented me, until one of those occurrences in life, which at first promise nothing extraordinary, yet open the door to greater events, took place. It was a vacancy in a college foundation, or what is called a Burse, founded expressly for my mother's family, and that by the founder of the college itself. In my just claim I was opposed by our superior and two Irish bishops, who conspired to transfer the right of inheritance by blood to utter strangers, that they might have the patronage, and of course a share of the profits. This produced a law-suit, and gave me also an opportunity of reading the charter, which was sanctioned by Louis 14th and the parliament of Paris. You may guess my astonishment, at finding the principles of our constitution in direct opposition to the practice. By the charter, all our superiors were elective, and that only for three years; any person making use of undue influence was disqualified, not only from holding any office in the college, but also, if he previously had a right to vote, he was declared disfranchised for ever. By the then practice, our superiors had done away all appearance of election. They nominated, or rather appointed each other, and held their places during life.

After a tedious suit, during which every undue influence possible was made use of, even the king himself, without his knowledge, made a party against me. I was repeatedly threatened with a *lettre de cachet* either from the king or archbishop; for you must know the archbishop had his prisons and his *lettres de cachet*. My opponents found that justice and truth would prevail against them; and, dreading a legal decision, procured the assistance of the archbishop to compromise the affair. That business arranged to my satisfaction, I had recourse to the college charter, to show the students that they were robbed,

and the superior that he was the robber. At length, after a warm contest, we succeeded in wresting out of his hands the administration of our provisions and drink, which he had unjustly usurped, and out of which, by starving the students, he pocketed some hundreds per annum. Next I brought them to the resolution of resuming our right to elect our superiors, and that for three years. This we, indubitably, would have effected likewise, had not the revolution in France put a period to our efforts. Here I must observe, that the above-mentioned superior of our college, John Baptist Walsh, left no means untried to persecute me, and ruin my character: he even wrote to my bishop in Ireland, praying to have me removed to some other Irish college; and this fact he denied upon oath, until I produced my bishop's letter against him. He is still living, I am informed, and resident, as tutor, in the *ci-devant* baron de Montesquieu's family at Paris, where he acts as a spy on the French government for a certain *great man*.

Having run many great risks, and narrowly avoided being lanternized in the commencement of the revolution, I, with great difficulty, made my escape from Paris on the 12th of October 1789, and came as far as Dieppe unmolested; but the morning after my arrival there I was arrested, and with great difficulty obtained permission to embark in the Brighton packet-boat.

On my arrival in my own country, to my grief, I found the inhabitants of that devoted county, Armagh, engaged in a civil war, and *religion made the pretext!* Although my health was very low, I immediately attempted to reconcile the parties, but was much discouraged by several leading gentlemen of that county, who have often told me at their tables, "*That it was of great utility to the Irish government that such religious disputes should exist between the Dissenters and Catholics, and that at any rate it would be more easy to mix oil and water together than to make those two parties agree between themselves.*" Notwithstanding, I continued my endeavours, and succeeded with many: the country became nearly tranquil; but my endeavours on that great object, a union of the Catholics and Dissenters, continued the same. Witness my efforts in 1791, 1792, and 1793, at Randalstown, Maghera, Dungiven, Newtown and Magilligan: in a word, where-soever I happened to be.* It is true, I had to combat many deep-rooted prejudices on both sides; and my success would have been comparatively trifling, had it not been for the spirited exertions of that truly respectable, virtuous, and enlightened body, the Dissenters of the county of Antrim, but chiefly and in particular those of Belfast.

* As to father Coigly's efforts in Ireland, see sir Richard Musgrave's *Hist. Irish Rebellion*, 58, 198.

Things stood in this situation on the arrival of lord Fitzwilliam, when the Catholics, with one voice, from every part of the kingdom, came forward to hail him as a saviour. I was happy in taking an active part on that occasion also. How dreadfully we were deceived, even as to his own principles, sufficiently appears from his letter to Carlisle. This, I trust, will ever be a salutary lesson to my countrymen, never to have faith in the promises of lords-lieutenants, though they are all honourable men in England; but as soon as they land in Ireland they become nefarious villains, public plunderers of the inhabitants, proconsuls fit for Nero or Caligula, or bashaws fit for Ottoman Sultans. Witness one of them, now a member of Mr. Pitt's council. So, it seems, the more inhuman, the more base, the more villainous they are whilst in Ireland, the more likely they are to be caressed on their return to Sodom. Soon after the arrival of Fitzwilliam's successor, the degenerate Pratt, our Sanhedrim, became much alarmed at the union between the Dissenters and Catholics in the North; and in that holy, immaculate council, it was decided to light once more the torch of fanaticism. I could name the authors; but as all the members were fully engaged in this conspiracy to murder their countrymen, I take it that they were all equally guilty of treason against God and their country. My unfortunate county, Armagh, was chosen as the proper scene of action; as, comparatively speaking, the established churchmen were stronger, and the Catholics weaker, than in any other county of Ireland. A church and king mob was raised; and it has been proved upon oath, by some of the most respectable gentlemen and landholders in that county, that the said mob, unprovoked, attacked with fire-arms the unoffending Catholics. Then they proceeded to what they called racking houses, that is, to destroy every species of furniture, windows, window-frames, &c. &c. They commenced this great undertaking with a solemn oath, to destroy and utterly extirpate all his majesty's Catholic subjects of the kingdom of Ireland. I will now ask, has his majesty, or any one for him, taken cognizance of that barbarous oath? Has any one been prosecuted for taking or administering it? or, have any steps been taken to discover or prosecute such as have taken or administered it? No! because that oath was taken to secure the reins of government in the hands of the Beresfords, Chancellor, and Co. by preventing a union of the Catholics and Dissenters, which it was much feared might end in a union of all parties against the said Beresfords and Co. Now, the medium to be used was but a mere trifle in comparison of the great object to be attained. It was only to destroy and murder the Catholics, and they were generally what is called *mere Irish*, and of course ought not to rank so high as their governors *do*. Perhaps some hack or understrapper will assert, that government had no

official knowledge of the existence of any society or body of men having taken such an oath—but I answer that they had more than one information upon oath concerning, or rather stating, *its existence*. Lord Gosford, governor of the county of Armagh, brought Samuel Grindall, one of my neighbours, who belonged to that society, and afterwards had withdrawn himself, before the privy council, and there proved every word of this shocking oath, &c. &c.; and the attorney-general, who was present, took no farther notice of it, unless to protect the villains, as he did in many instances. This church and king mob, calling themselves Orangemen, commenced their bloody system by attacking my father's house about two years ago. My helpless hoary parents, the younger of whom is seventy-seven years, carefully avoided even the semblance of resistance, by throwing open the doors and windows at their approach; yet they wantonly fired one hundred shots into the house, one of which slightly grazed my father's head. My mother fell seemingly lifeless on the spot; and though she still lives, yet she is rather an object of general compassion, dragging on a wretched and miserable existence. My father they took prisoner, hauled him out of his own house, and, with blunderbusses directed to his head and breast, vehemently threatened his life if he would not immediately swear to recant the errors of the church of Rome, and conform to the established religion during the remainder of his life. Though in such a perilous situation, with his usual fortitude, he boldly refused to comply, declaring that neither threats nor promises should ever induce him to abandon his duty. One of the party interfered, and said he would not give his consent to murder the old man, as he must soon die at any rate; but if they should catch his sons, they would wreak their vengeance on them by the most exquisite tortures; and, raising his voice, he said it was well known that this old man had given greater assistance to the poor and distressed neighbours, without distinction of religion, than any other man in the county. However, they did not spare the most minute article of his property, carrying away whatever they thought proper, such as plate, cash, bank-notes, beds, bedding, wearing apparel, linen, looking-glasses, books, &c. &c. destroying the remainder on the spot; even the grates in his rooms, and surbases in his parlour, did not escape their fury; and, with more than Gothic rage, they totally destroyed a choice collection of books, my property, in the Irish, English, French, Italian, Latin and Greek languages; together with materials to compose a history of the last war in Ireland, being papers never published, and in the hand-writing of the late king James, Tyreconnell, then lord-lieutenant, sir Richard Nagle, sir Maurice Eustace, Pierce Butler viscount Galway, Richard Butler baron Dundoyne;

Patrick Sarafield created earl of Lucan, Brown created viscount Kenmare, sir William Mowat, who carried on the Scottish correspondence, sir Neil O'Neil, Arthur Magenis viscount Iveagh, lord Abercorn, earl of West Meath, lord Louth, lord Enniskillen, lord Clanrickard, sir Daniel O'Neil, sir Brien O'Neil, brigadier-general Gordon O'Neil, lord Athenry, lord Bellow, lord Slane, O'Donnell, sir Anthony O'Dogherty, sir Cahir O'Dogherty, colonel John O'Cañane, colonels Brien and Hu M'Mahon, colonels Edmund, Daniel and Owen O'Reilly, sir John Fitzgerald, knight of Glinn, brigadier-general Mac Gillecuddy, earl of Clancartie, Charles Mac Cartiemore, colonels John and Dominick Browne, colonel Walter O'Kavanagh, and many others. These papers threw a very great light on the affairs of Ireland, particularly the private correspondence carried on between the king himself, sir Maurice Eustace, and sir Richard Nagle, concerning the manner of dealing with the House of Commons, then assembled at Trim; but chiefly the independent country gentlemen, who would not vote the supplies until their grievances should be redressed; that is to say, the decided independence of Ireland secured, and all the new-made and rotten boroughs cut off, and no others created at any future period.

It appears under his own hand, that king James reluctantly complied through necessity; but with no intention to keep his promise longer than he could with safety break such engagements. So much for the written engagement of a king.

The above-mentioned mob proceeded afterwards to my elder brother's house, where they committed similar outrages. He being extensively engaged in the linen manufacture, kept some hundred hands at work. Those worthy supporters of government, to do him the greater injury, destroyed his account book entirely, containing an account of debts to a considerable amount. During this transaction, two parties of the military, one of the Clare and the other the Dublin city militia, came not only in sight, but within musket-shot of the mob, and each headed by a magistrate. To the honour of both officers and privates be it told, they burned with honest ardour to attack the miscreants; but our worthy conservators of the peace positively refused permission, and threatened the most forward with a court martial. Of these magistrates suffice it to say, that one of them was a young man led astray by the backneyed in vice, and the other has made the *amende* honorable of suicide in this country.

I took every means in my power to have these wretches prosecuted, and endeavoured also to reconcile the parties, but in vain—Flushed with success, and the hopes of support and protection of higher power, the Orangemen continued their support of government so well, that in a few months, they drove four hundred poor Catholic families out

of the county of Armagh, having robbed, ravished, maimed or murdered a great many more; even under the tyranny of Robespierre, I do not find that outrages were committed so shocking to the feelings of humanity, as on this occasion. A poor man named M'Veagh, in the barony of O'Nieland East, was so unfortunate as to have a handsome wife. They attacked his hoose, and destroyed his property; and, shocking to relate, held him a prisoner, begging for death, whilst four of these government monsters ravished his wife in his presence!! On different occasions, in another part of the kingdom, if an accident had happened to a bullock, or favourite ram, we had a flaming proclamation from the lord lieutenant and privy council, offering a large reward for all concerned in such abominable practices; but during the commission of these hellish crimes, neither proclamation nor reward came forth from the above-mentioned gentlemen. The reason of such distinction was, that, in the first case, beef and mutton were in question; but in the latter, they were Catholics, *mere Irish*. The assizes came on: I engaged Leonard Mac Nally, one of our principal barristers, to leave his usual circuit, in order to prosecute a number of those offenders, who had been arrested through the activity of one honest justice of Armagh; but the attorney-general appeared there—made a long speech, and said nothing—took the prosecution all into his own hands, and would not permit Mr. Mac Nally, nor any of our lawyers, to interfere, "*lest the prosecutions should not be carried on with sufficient zeal against such atrocious villains.*" Notwithstanding many schemes were put in practice to save each and every one of them, yet a chief ringleader and commanding captain of the banditti, William Trumball, was convicted of burglary, robbery, and wilful murder, upon the property and person of his neighbour and intimate friend Daniel Corrigan. Now, an Irish law, framed by Mr. Attorney-General himself, requires, that any person convicted of wilful murder, should be executed within forty-eight hours after sentence. Here it was absolutely necessary to evade that law; because Trumball declared solemnly to me and many others in the gaul, that he did not fear them—they dared not hang him; as he was resolved, if they attempted to execute the sentence, to declare previously the whole chain of connection and combination against the Catholics; and thus he would bring disgrace and infamy on the leading men of the country—of course he was respited, at length the sentence commuted for transportation. Take notice, there were then indictments for the murder of three other Catholics, a rape, several burglaries and robberies, &c. &c. all standing against the said Trumball; but the crown lawyers would not let him be tried for any of the above offences. He was conveyed to the Cove of Cork, from whence, instead of Botany Bay, he was sent on board the fleet!! At

these assizes I became more obnoxious than ever, by attempting to bring the malefactors to justice; and was informed by a gentleman high in the confidence of government, that the tools of administration kept a very watchful and jealous eye upon me continually.

In April 1797, it was agitated to address the throne for peace, but above all, for the removal of our task-masters, commonly called his majesty's ministers. This was during the assizes at Armagh; and, indeed, I was as active on that occasion as possible. The meeting was to consist of the gentlemen, clergy, and freeholders only, in order that the call might be strictly regular, and palatable to the high sheriff. The time was so short, that I was obliged to ride over a considerable part of the county, to distribute the printed notices, and exhort the freeholders to attend and do their duty. The meeting was well attended; a strong address to his majesty for the above purposes was carried, with only two dissentient voices. From Armagh I was subpoenaed to attend as a witness on the part of a prisoner at the assizes of Carrickfergus; and from thence I returned home by Downpatrick, where I overheard the late Marcus Beresford, lord Castlereagh, earl Annesley, and Nicholas Price, mark me out as a victim of their vengeance. When I came home, I was informed by a gentleman connected with that party, but more honest than his associates, that it was not safe for me to remain in the country; the active part I had taken in the business of the address, &c. had decided the ministerial action to get rid of me at any rate; and that the usual means of false witnesses would be resorted to against me: "I know you," said he, "as well as any person can, through a long and intimate acquaintance; am certain that you are not only innocent, but also incapable of what you will be charged with: nay, farther, your friends will not dare to come forward to testify the truth in your behalf, through fear of the exorbitant power of your oppressing persecutors."—As this gentleman holds a place under government, which is very useful for the support of his family, I shall forbear to mention his name.

In a few days after, some of my particular friends were arrested, without cause, as appeared afterwards, and thrown into prison at Dundalk, where I lived; and, what may appear surprising, they did not attempt to arrest me, but placed the warrant in the _____'s hands. This honest man gave me notice thereof; and yet, conscious of my own innocence, I would not go out of the way, until forced to it by my friends the day following.

Now you are in full possession of my crimes against the state—High Treason against the Beresfords, Chancellor and Co. in Ireland, and constructive treason against Pitt and Co. in England: because, as they say, not having the fear of God before my eyes, but urged thereto by the devil, wickedly, traitorously and maliciously, I did endeavour to prevent reli-

gious disputes in Ireland; and did, as far as in me lay, prevent the shedding of innocent blood in that country and elsewhere; and farther, I did levy war to dethrone them; did compass and imagine the political death of the aforesaid Pitt, Beresford, &c. &c. by stirring up the peaceable freeholders, &c. to petition for their dismissal.

It is also worthy of remark, that during these massacres in Armagh, the worthy administration shrunk from an inquiry, in the House of Commons, into the cause. Indeed, they were at no loss to know the real cause.

General Craddock was sent down with full powers: the military was already placed in every village, nay, at every corner, and a magistrate on every hill. The general returned to parliament, and declared, *upon his honour, he could do nothing in it!*—In order to save his character as a military man, we must suppose he had private instructions to that effect; otherwise we ought to give thanks at being so fortunate in the choice of generals this war. Surely a general, who, aided by such a civil and military force, could do nothing against a banditti, confined to a small county in his own country, would have made a poor figure in besieging Valenciennes, Maaubeuge, Lisle, or even Dunkirk. Which rout would he take to march to Paris? I think it is pretty clear, that he would have answered upon any of the last-mentioned occasions, "Upon my honour, I can do nothing in it!"

It may be proper to observe in this place, that during the slaughter and destruction of the Catholics in Armagh, every government engine was at work, to persuade the great body of Catholics, in the South and West, that it was the Dissenters who were butchering the helpless and unprotected inhabitants of that unfortunate county. I myself have had a great deal of trouble in undeceiving them on that subject; was obliged to send, even to the county of Mayo, on behalf of some poor refugees, whom that worthy smuggling justice, Sir Neil O'Donnel, had committed to gaol, for having barely told their tale of woe; and he would have had a great many more, were it not that he betrayed his intention.

"Mentita est iniquitas sibi."

The commander in chief of this Orange mob, James Vernor, a man who has done every thing but what is right and just, from a common feeder and haider of game cocks, metamorphosed into a legislator for his country, by holding at the beck of lord Northland, a seat for the borough of Dungannon—I say, this honourable member got up to justify the conduct of his troops, and declared that they were all true Protestants, and, though they might have committed some excesses, they happened only from their great zeal to serve the government.—Be it known also, that neither civil nor military power took any steps to prevent the destruction of the Catholics in that country; and that scarce a single

family of them would now exist, in the nine counties of Ulster, had it not been for the just and spirited exertions of the Dissenters and Quakers on their behalf, who, at the hazard, and sometimes loss, of their own lives or properties, did most generously, and Christian-like, afford them every assistance and protection in their power.

When arrived at Liverpool, I found that my enemies had pursued me even there; and to avoid them, set out for London, by way of Manchester; and there narrowly escaped a conspiracy to assassinate me. At length, I got friendless and moneyless to London. I should have acknowledged that an acquaintance at Liverpool, gave me as much as bore my expenses. When I found myself in that great city, I was really at a loss for the means of support.—Unaccustomed to labour, and ashamed to beg, many days have I spent in a truly wretched manner.—I should have been infinitely worse, had I not had the good fortune to form an acquaintance with some Irish captains, whose vessels lay in the river. I had not money, when going to dinner with them, to pay my passage in one of the small boats, and was obliged to await the opportunity of one of the ships boats. At length, some of my countrymen, discovering my situation, made a small collection for me, of a few half-guineas, half-crowns, and shillings: and an old school-fellow paid for my lodgings.—In this public manner, I return them my grateful acknowledgments.—Such then was the situation of a person, who is charged with being the emissary of certain bodies, with having waited on the Executive Directory of France, with having been their confidential agent, with managing the mighty plan of subverting the power of Great Britain, and all this entirely gratis—nay, whilst I was in a state little short of absolute want!

An attempt having been made to arrest me, the military dress was procured, by the charitable exertions of a friend, as the best disguise.—There are many this moment in London who can prove these facts. It may be asked, why they did not appear at my trial? The answer—I saw, by the cold-blooded malice of certain gentlemen at Whitehall, what would probably be the fate of such people as should appear for me: hence, I became at once determined not to subject honest and industrious people to the all-devouring fangs of ill-gotten power. As for my part, they can only put a period to a life, fraught with continual troubles, afflictions and persecution; and in my death, I trust, I shall triumph over their iniquity!

If it be judged necessary to say any thing about my journey to Paris, it is as follows:—With the above trifling resources, and a small bill from Manchester, encouraged by the then general expectation of a peace, I took the resolution of going to Paris, to recover the above-mentioned family property, and accordingly engaged an outside seat from

Fetter-lane to Yarmouth. I set out alone; arrived there on Friday; went on board the Prince of Orange, captain Bridge, the Sunday following, having first paid for a permission to embark.—I recollect there was a young gentleman, in an ill state of health, from London, on board, named Boddington.—I arrived on the third day at Cuxhaven, and set off immediately for Bremen, with a Venetian, who furnishes our government with German horses. At Bremen, I was introduced to an Englishman, Mr. Pitt's resident spy, for the examination of travellers: he lives at the Hotel d'Oldenburg. From thence I took the great road to Amsterdam, passed through Delmenhorst, Oldenburg, and Leer, having almost miraculously escaped being murdered by the savage inhabitants of East Friesland.

On entering the Dutch territory, I was arrested, on suspicion of being an English spy, at their frontier town of Nieu Schans; sent under an escort to Groningen, the capital of the province: there repeatedly examined, during three days, by different persons, in English, French, and Latin. At length, they agreed to send me, under a guard to the commander in chief at the Texel: so I was conducted a prisoner, across the provinces of Groningen, and West Friesland, to the town of Harlingen, where we embarked on the Zuyder Zee, and sailed to the Texel. On our arrival there, we found that the commander in chief, general Daendels, had set off for the Hague by Amsterdam. I was brought before general des Monceaux and the Admiral de Winter, on board a man of war. There I was ordered to the Hague, to appear before the commander in chief and the Committee of Public Safety. The admiral having recollected to have seen me very often, in 1787, at the Dutch ambassador's at Paris, gave me a letter of recommendation to Van Leyden at the Hague, where I was examined by the general, the committee, &c. and at length, by the influence of Van Leyden, was liberated from the arrest; he procured me also a permission to proceed to Paris. When I reached that city, I made application for my property there, and was told that every thing belonging to the Irish would be restored, but not until the end of the war. I was then without friends or interest, and had but very little money in my pocket, having spent about twenty pounds on my journey, and on the point of being laid in the Temple for want of a pass or person to be security for my good behaviour. It was my good fortune to meet an old college companion, now an officer of distinction in the regular forces. He became my security, and protected me; offered likewise to procure me employment as a priest; but on application, it was absolutely necessary to take certain oaths. These I refused positively, choosing rather to return, and die in any manner in my own country, than swear against my conscience.

Oh, my God! What did I not suffer on my way back?—Hunger, cold, storms by sea and

land, want of sleep, obliged to sell, for my support, to the Jews in Holland, every little article I had; yet I procured the means of escape for some English prisoners, taken a few days before by a Dunkirk privateer.—An English mate, a prisoner and a native of Hull, whom I got off along me, will bear testimony of this when I am rotten in my grave!—Behold the reward I receive at the hands of his countrymen!

I got a passage, at length, in a neutral vessel, and arrived in London, with a few halfpence only in my pocket; not even a hat to my head, having lost mine at sea. The honest man, whose good nature induced him to give me one on the third day after, must recollect this fact.

Hoping to remain unmolested in my own country, I with difficulty procured the necessary sum for my journey to Dublin; but was not there many days when I was informed by good authority, that the notorious Dutton had come post to town, in a chaise and four, to arrest me; and that he had publicly declared in Dundalk, on his way, that he would at all events have my life; at the same time, showing between four and five hundred pounds in cash and notes, which he had got of government. Some years ago, through mistaken lenity, I saved this wretch from the gallows.—He has sworn to my hand-writing. And here, I solemnly declare, he never saw me write a single word in my life. As to his character, which is so infamous, I shall say nothing—only thank God that he is not an Irishman.

My friend in Dublin, as I have already mentioned, procured me the military dress, and recommended me take the name of Jones, as I had hitherto, from my first departure from Ireland, gone by the name of Fivey, which I believe to be the English translation of Coigly. With great difficulty I got back to London, on Sunday the 11th of February last, though a forged letter was produced on my trial to prove me in Manchester the 14th of the same month, when I was actually in London.

Before that period I never saw Mr. O'Connor in my whole life: this can be proved by the very person now in London who introduced me to him. In a little time after, an attempt was made to arrest me, as I suppose between nine and ten o'clock, in Piccadilly, by two Bow-street runners. Dreadfully alarmed at this event, which can be proved by captain C——, who was along with me, I took the advice of my friends to get out of the kingdom by any means; and thus, after a short life,* I may say with Job. chap. 14, "Multis repleta miseriis," I fall an innocent victim to the rage of party!

JAMES COIGLY.

* He was in the 36th year of his age.

Maidstone Gaol, May the 17th, 1798.

My dear friend;—I am very sorry for having given you so much trouble. It is all in vain: they are resolved to have my life; and there they unfortunately must succeed. I am ashamed of saying so, when I think of old lord Lovatt, how gallantly he cried out on the scaffold, "*Dulce & decorum est pro patria mori!*" Believe me, I am not afraid of death. I have suffered severely by sickness during my confinement; but am pretty well recovered, thanks to God!

To add to my misfortune, on application during my illness, a certain venerable and pious-looking brother was dispatched from London, to attend and assist me in the spiritual way. Would you believe it?—this pretended messenger of God, during nine days he staid with me, exerted every nerve, and exhausted his entire stock of eloquence, sophistry, false theology, and scrupulosity of conscience, to engage me to make what he called important discoveries, and swear against honest and virtuous men!—He stated, very forcibly, the shame and consequent misfortunes which await my agent parents and family; as also, how much the clerical order would suffer on the present occasion: then the great advantages that might arise to me, &c. Next came mutilated texts of Scripture, decisions of popes and councils, quotations from the holy fathers, opinions of the great doctors of the church, &c. I was not wanting in a rejoinder at his own weapons. From the scripture, the following text gave him infinite trouble: "*Majorem hac charitatem nemo habet, ut animam suam ponat quis pro amicis suis.*" I have not been able to obtain his absolution as yet; nor will I have it on such terms. Indeed his behaviour is sufficient to give one a distaste, if not to our religion, at least to its ministers. Nor do I wonder, that at critical times, so many weak people suffer themselves to be imposed upon by such artifices. My resolution is, to trust to my Redeemer solely, and despise those satellites of despotism.

The efforts my friends have made to save my life, must be highly pleasing to them, to me, and to all honest minds. "*Cari sunt parentes, cari liberi, propinqui familiares; sed omnino omnium charitates patria una complexa est: pro qua quis bonus dubitet mortem oppetere.*"

As this is the last you may ever receive from me; and as you know of old the attachment I had for Belfast, even so far as to wish my ashes there—that being now impossible, I pray you to signify my last request to ———, or some other friend, to put up a small stone to my memory, with only my name on it. I will send you my watch, &c. by my solicitor: if you will not wear it for my sake—I have a nephew—alas! he is too young to assist in revenging my death; but he may yet become able. I have long been unfortunate;—it will soon have an end. It is not in mortals to command success.

"But we'll do no more, Sempronius; we'll deserve it."

I have not courage enough to write to my father. May the God of our forefathers give him and my distressed mother consolation! you will please to give my last adieu to my friends at Dundalk, in particular to Woods, Joe, Isabella, &c. &c. &c. I cannot name them all.

Upon second thoughts, it would perhaps be better for you to remain in England. If you think so, I am certain that _____ will give you every advice and assistance in their power. I do not recollect any thing more worthy of notice—only, if you had materials to compose a short sketch of my history, you might make money thereby.

Adieu, my friend!—May God, of his infinite goodness and mercy, protect you! I only go some years before you.

JAMES COIGLY.

"Victrix causa Dii placuit; sed victa Catoni."

[N. B. The above letter was imprudently published in some newspapers before Mr. Coigly's execution, without his knowledge or consent, or those of the person to whom it was written.]

MR. COIGLY'S OBSERVATIONS

ON HIS
T R I A L

Maidstone Gaol, 25th May, 1798.

My dear and excellent friend;—The awful sentence is past!—I thank God I heard it as became that conscious innocence which I know will inspire me with the same fortitude to the last moments of my life.

To show the chain of connection and high authority from whence the offer of life was made by the priest who attended me, if I would betray my fellow prisoners—know, my friend, that the lord chancellor of England, when I was examined before the privy council, urged the same thing, in very pointed terms: for, at my last examination, when I declined to answer any farther questions, he said, that although I did so, the privy council would attend my summons at any time; and if I should be disposed to be more explicit, it would be attended with *personal indulgence* and other advantages, which he could not then explain farther!

Speaking of the privy council, I cannot help expressing my surprise and horror at the production of my examination (in which that proposal, with many other facts of consequence to me, were omitted) as evidence against me; and I hope that my doing this will be a solemn warning to all men, not to be entrapped to answer any questions, if it should be their unhappy fate to fall into the

hands of that council. They warned me, it is true, before the examination commenced, not to answer any questions that might tend to criminate myself; but they cautioned me also, rather than deny any thing that they should charge against me, to decline answering the question they should put respecting it; for, if I denied what they could prove, that denial would be evidence against me; and moreover, they assured me, that the purpose of the examination was not to criminate me, but to give an opportunity of clearing myself of the suspicion which hung over me. Indeed, Mr. Dundas called the examination, not an inquisition, but an indulgence; yet, my friend, this examination, which I was thus assured was not to criminate me—this opportunity of clearing myself—this indulgence—yes, the very questions I declined to answer, with the fact of my declining to answer them—horrible to relate! were produced by Mr. Ford, who took down the examination, in his own way, in writing, as evidence against me. Need I say more, to deter others from sacrificing themselves and betraying their friends?—May God grant them the good sense and the fortitude to answer no question, however trivial they may think it, to privy councillors or magistrates; for, if you answer their questions, "out of your own mouth shall you be judged," and not by evidence given in due course of law.

It will strike you with horror, my dear friend, when I tell you, that all the witnesses who swore against me, except five, perjured themselves, or at least swore to circumstances, which, although they might possibly think them true, were in fact utterly false! The evidence that takes away my life is that of Richard Smith, the captain of the White-table-boy; Henry Tomsett, of Hoffham, the carter who conveyed us from Whitstable to Margate; William Twopenny, attorney of Rochester; Edward Fugion and John Rivett, two Bow-street runners; John Dyason, servant of Perkins; Richard Ford, esq. magistrate, and Frederick Dutton, of Newry, in Ireland.—Of the characters and evidence of these witnesses, I will give you the sketch of a dying man, and as I shall answer it at the judgment-seat of my God, before which I shall very shortly appear!

Richard Smith and Henry Tomsett, the only witnesses who swore, and but slightly to the great coat, in a pocket-book in the pocket of which the traitorous paper is most untruly said to have been found, applied to my solicitor, as he informs me, and of which I have no doubt, by means of one Welshman, a friend of theirs, then a convicted felon in Newgate, and proposed either to abscond, or give evidence for me and my fellow-prisoners, for 500*l.* each! Of the characters and evidence of these men, I need say no more; the statement of the fact is sufficient to stamp both infamous; but, mark the deep cunning of these men—the agent they employed to

to make the proposal, *being a convicted felon*, could not be called to prove it!

Tomsett's evidence to the great coat, however, was very slight indeed; and, with respect to Smith, how happened it that the crown only called on him? *The sailors of the hoy were in the list of crown witnesses.* They must have been as able as the captain to swear to the coat, if I had worn it on board the hoy; and, as his evidence was but weak, one would have thought the prosecutors would not have ventured to dispense with that of the sailors to support it. Why were they not called? I think the natural inference is, that the prosecutors were afraid to call them; and, if afraid, certainly not afraid of their *confirming*, but of contradicting or shaking the credit of it!

Twopenny, Fugion, and Rivett, swore, that Rivett found the *paper* in question in a pocket book, in the pocket of *that great coat*—which, I declare, most solemnly, in the face of my country and my God, was false, unless one of them, or some other person unknown to me, put it there. One of the runners, I believe Rivett, swore that he heard *part* of the paper read at Margate by Twopenny: Twopenny swore he read *the whole* to him: Rivett swore he took the pocket-book out of his side pocket, to give to Twopenny: but Twopenny swore that Rivett took it out of his bosom; and it is very remarkable, that Twopenny, in giving his evidence, as if to bolster it up, as if fearful of its being questionable, as if suspecting his own evidence, volunteered, without any question being put to that effect, and without any apparent necessity, except, as it struck my mind, the consciousness or fear of the appearance of untruth, in swearing not alone to the pretended fact of its being found in the pocket-book, but that it was put within the folds of a sheet of paper; and desired the pocket-book and a sheet of plain unfolded paper to be handed up to him, whereupon he folded it up in Court, to show in what manner the paper, he said he found it in, was folded. This, I think, need no farther comment.

I forgot to mention, when speaking of Tomsett, that upon cross-examination, he admitted, that he had boasted he had *rare living* in London, as a crown witness, and that he expected a hundred pounds *for the job*.

With respect to John Dyason, he swore, that going through a passage, he heard a great deal of money counted in the room in which Mr. O'Connor and I slept; and, marvellous to relate! that he "*heard a PEN GO.*" As easily might he have *seen* or *felt* the sound of it. I think I need say no more of the evidence of this man.

The character of Mr. Ford's evidence, and the *omissions* in it, will be seen from what has already been stated. Those omissions were extremely important, as I will state more particularly another time.

The last of these witnesses was the notorious informer, Frederick Dutton, of Newry, who swore to my hand-writing, and had the audacity to say that he had frequently seen me write; which, I declare to God, is false. Against this man, although I was well prepared to do it, I called no witnesses, because he had sufficiently disgraced himself on his cross-examination, of which, however, the learned judge, in summing up the evidence to the jury, took but very little notice. I think he ought to have taken serious notice of it; more especially as, in the course of the trial, Mr. Lane, a man against whose character there appeared no imputation, and who, from his official situation as under-sheriff to Mr. O'Connor, when sheriff of the county of Cork, *had ample means of becoming well acquainted with Mr. O'Connor's hand-writing*, was called upon to prove it, and swore, that a letter signed *A. T. S.* inclosing me a bank-note of 10*l.* was Mr. O'Connor's hand-writing. This was *positively contradicted* by my generous, virtuous, and excellent friend, Alexander Thomas Stewart, esq. a magistrate of the counties of Down and Armagh, and formerly sheriff of the latter county, who providentially happened to be in attendance here as a witness to my character. The letter signed *A. T. S.* was *his*, and *he manfully avowed it*. Notwithstanding this, the testimony of Dutton, a spy, an informer, and a perjured receiver of stolen goods, who could *trifle* with the solemnity of an oath by taking it on a *Reading Made Easy*, as he himself may be truly said to have admitted on his cross-examination; and although he admitted also, as far as men will admit such charges against them, that he had been discharged from the service of a Mr. Carlisle (which I know to be a fact, and not the only one of the kind), on a charge of theft; although he had first denied, and afterwards admitted, that he had been a servant in livery, though now raised, *for his services to government*, in the way of his *honourable* callings, to the rank of quartermaster in the army; for which appointment, too, he first denied that he made application to *any person*, though he afterwards admitted he had applied for it to lord Carlhampton;—the evidence of this man, I say, was received by the judge, with only such observations as tended to support it, in proof of my hand-writing.—Gracious God! forgive these my *****!

Thus you see, my friend, that by means of perjury of the witnesses, and omissions of the judge (which omissions, however, I hope, and am disposed to believe, from his justice to the rest of the prisoners, though not to me, were not intentional or corrupt, but proceeded from the universal fallibility of human nature, and the great fatigue of the trial), my prosecutors have succeeded in taking away my life! Who are my prosecutors? The men, the ministers of this country, who, pending our trial, issued the warrant of arrest, under

which Mr. O'Connor, in the face of the Court, at the very instant of his acquittal, was again arrested, and who, *so bent were they on blood*, I am credibly informed, had another warrant out against me, in the event of my acquittal. Why so? Because **EVEN THEY** were conscious of our innocence, and therefore looked for that acquittal! The judge thought fit to observe to the jury, that although so many noble witnesses had been called to Mr. O'Connor's character, not one, or only one, had been called to mine, who he said, had merely proved it was a *good moral character*. It was in evidence that Mr. O'Connor was a rich man, and that I was poor—and without the ability to bear the enormous load of expense of bringing witnesses from my native country into this, where I am a stranger—a distance, in coming and going back, of nearly 1000 miles.

It appears from the traitorous paper for which I am doomed to die, that it was intended to be taken to France by the person who had been the bearer of a former address from the Secret Committee of England. The judge, however, omitted to state to the jury, that the only evidence in the cause, of my having been in France, was a passport, said to be found in a trunk, said, but not proved, to be Mr. Binns's, with letters proved only by the infamous Dutton to be my hand-writing; and that that passport proved no more than that *I had been in France, not that I was the bearer of any former address there*; and lastly, that so far from proving me to be the bearer of any former address from any man or body of men in England or Ireland to the Executive Directory of France, it positively and expressly *negatives* that charge on the very face of it; for it states me to pass in the disguise of an American traveller. Why? Surely not because I was an emissary from a Secret Committee of England to the Executive Directory of France? That would be to disguise my best recommendation. My being such an emissary would perhaps have been a passport of itself.

The learned judge omitted also to give me the benefit he gave Mr. O'Connor, of stating to the jury, that it was not proved that I was a member of any political society in this country or my own, although I had urged that circumstance in the short address I made to the Court after my counsel had closed my defence.

The judge omitted also even to state to the jury, much less to point, and press upon their serious consideration, a circumstance which, unless they thought me totally void of common prudence and common sense, must have rendered it next to an impossibility for them to believe, that *I was possessed of the traitorous paper in question*. I mean that part of the evidence of Stephen Perkins, of Whitstable, where he swore, "that he had warned me personally, that an information was laid against me and my fellow-travellers, as persons suspected, from our conversation on board

the hoy, of intending to go to France with some improper things in our possession; and that, after our luggage had been searched, he repeated that warning (as was the fact) by telling me again that our danger was not yet over, for we should be searched again when we got to Margate." And yet, strange and incredible to relate! the traitorous paper in question—a paper which, after two such warnings, none but an idiot or a madman would have kept in his pocket—such a paper, under such circumstances, is said and believed to have been found in my pocket the next day at Margate! And for this I am doomed to die!

It occurs to me also, that, in summing up the evidence to the jury, the judge, *mis-stated at least*, and therefore misrepresented the effect of one fact sworn to by Mr. Stewart, namely, "the persecution of my family, and the atrocities committed against us in Ireland by the Orange (*i. e.* ministerial) party, about two years ago, or later;" which, together with my own persecution by them and the ministry of that country, formed my *real motives* for quitting my native land, and flying for refuge to another. This fact the judge stated, to the best of my remembrance, as a circumstance that ought not to weigh with the jury, it having happened ten years ago!—At all events, whether he called it two or ten years, I am confident he said it was a circumstance that ought not to weigh with them in giving their verdict!

Mr. Hugh Bell also deposed, that Mr. O'Connor had informed him, that I, like himself, was a fugitive from my native country; of which evidence the judge took no notice whatever.

Another feature of the general evidence adduced in the course of the trial was, that a young woman was called to swear against Mr. O'Connor and Binns, and in effect against all of us. She appeared to be so well tutored as to have their names, and the circumstances necessary to be sworn against each, quite pat and perfect; but, when called upon to identify their persons, she pointed out O'Connor for Binns, and Binns for O'Connor!

You will perceive, my dear friend, that in what I have here stated to you, I have contented myself with a simple relation of facts, accompanied with only a few short observations on the conduct and character of my prosecutors and their witnesses; leaving the rest to the reflection and judgment of my country and posterity. When the prejudices of the day shall have passed away like the shadow of a dark cloud, justice, I doubt not will be done to my memory, and to their's.

I cannot omit this opportunity to return my grateful thanks to the many, virtuous, and disinterested friends who have so nobly and generously supported me on this trying occasion, and amongst them (though our acquaintance is but short) to my solicitor, for his very anxious, active, and judicious con-

duct of my defence. Adieu, my dear friend! That heaven may preserve and prosper you, is the dying prayer of your friend,

JAMES COIGLY.

Mailstone Gaol, May 24th, 1798.

My dear friend;—I have already mentioned my earnest desire to address my countrymen of every religious persuasion, and have confided that important trust to you, having also given the outlines or ground of the address: There is some additional matter, not yet stated, which I request may be introduced into it likewise.

All the principal witnesses swore * * * * *; and, I have good ground to say, that circumstance was well known to the crown lawyers, and even to the judge himself. Thus am I found guilty; and my innocent blood must be shed, to gratify the implacable revenge of disappointed schemes in that all-devouring party!—Yes! they conceived the wicked plan of making me become a second Titus Oates; and thus make me, in the room of C——, director in chief of all spies, informers, cut-throats, assassins, and other such villains, composing the battalion of testimony, by swearing through every thing in England, Ireland, and Scotland, and even against people in parts beyond the seas; and they even pointed out the different places, no matter how true or false, as it would give a colour to the work, where the French intended to land, &c. &c.—To effect this diabolical plot, the most refined means, perhaps ever devised, were resorted to;—not only dreadful menaces against me and my family if I did not consent, but unbounded promises if I did: even God and religion were made parties to induce me to a compliance. I had applied for a priest to attend me in prison, and was asked by the sub-sheriff if there was any particular person whom I would wish to have. I named one in London. He wrote immediately to express my wish to the secretary of state: the gentlemen of that department rejoiced at such an opportunity. A Catholic bishop, superior of the priests in the London district, was applied to. Unexpected favours from those in power usually lay people under weighty obligations: hence Dr. Douglas engaged to find a proper person. Was it the priest I called for by name? No!—Was he an Irishman? No Irishman could be trusted in such important business!—A Mr. Griffiths is appointed—a gentleman fully acquainted with gaol affairs. In the first instance, he receives his cue with proper instructions from Dr. Douglas, in the presence and with the concurrence of some of his clergy. To be farther drilled, he is then sent to a Mr. Wickham, an under-secretary of state. After a long conference with that gentleman, he comes to the keeper of my prison, with credentials from the duke of Portland, authorizing him to see me when he pleased; and strictly forbidding him to permit

any other priest to see me at any time; and the fact is, another priest was prevented even since my conviction.

On Mr. Griffiths's arrival, he produced to me his testimonials as a priest, in order that I might speak to him with that perfect confidence that should exist between a penitent and his confessor, according to the rules of the Catholic religion. I did so, as became a zealous Christian; and gave him a brief history of my whole life, with that candour and openness of mind which always characterizes an honest Irishman. He then stated the apprehensions entertained, by the administration of this country, of a powerful conspiracy against them in Ireland, England, and Scotland; and that they were certain I could give them the necessary information concerning it—consequently expected every assistance from me. Not only my life, which they told him was in their hands, would be spared, and myself sufficiently provided for; but, also my aged and helpless parents, my brothers, particularly the youngest, who is a junior officer in the army, and, in a word, all my friends, would be well rewarded by a grateful government. On the contrary, I should suffer in my own person the severest punishment the law could inflict; my whole family would be persecuted (and here he dwelt upon the natural obligation I lay under to save and protect my hoary parents from afflictions and persecutions); the Catholics both of England and Ireland would share in my disgrace and persecution, particularly the Catholic noblemen of both countries, who though they at present stood well with the minister, would suffer extremely, and would never be trusted by him: for his own part, he entertained no good opinion as to the religion of the aforesaid noblemen (save the earl of Fingall), and in particular that of lord Petre. Next—a grand point indeed!—the indelible scandal, disgrace, and disrepute into which my brethren, the Catholic clergy, would fall by my refusal and untimely fate. Then he made use of the arguments I have already mentioned, and urged the natural obligation every member of society is under to disclose and discover every thing that may be of use to the state. Finally, it was the positive decision of Dr. Douglas, that if I did not comply with the desires of administration, I could not have the attendance of a Catholic priest, and the sacraments would be refused me as an infidel!! I was expressly asked, if I could swear against my fellow-prisoners, Mr. O'Connor, &c. In my opinion, it is unnecessary to relate all my answers to the above arguments. Suffice it to say, that truth in my mouth did not leave a shadow of difficulty in them. I could not make the proposed discoveries, and never would attempt to save my life by swearing against any man. After having adduced a variety of arguments, texts of scripture, &c. I told him, that if that was a condition *sine que*, I could not have the

consolation of a priest's assistance, nor of sacraments refused me; that in such case, depending and confiding in the goodness of my God, I would despise such satellites of despotism; and cheerfully go to death with that firmness and fortitude of soul, which innocence, purity of conscience, and a good cause, never fail to inspire.

I have given this account at large, in order to put all Catholics on their guard against the artifices of designing men, if perchance any of them should ever fall into my unfortunate situation. No, my Brethren! it is not your duty, you are not obliged by your religion to answer such questions, nor make such discoveries as they may think proper to require. The contrary is the fact—At the tribunal of confession, you are your own accusers; and if you do not tell the truth, it is to your God alone you are responsible. Any confessor, whether priest or bishop, who proceeds with such questions as I have mentioned, transgresses the limits of his duty, is impertinent, ridiculous, and unworthy of his office, by thus perverting, as far as in him lies, the power of God into a state-tool, to serve ministerial purposes, and entirely to destroy the most endearing ties both of society and religion.—My friend, once more adieu!

JAMES COIGLY.

Maidstone Gaol, June 3rd, 1798.

My dear friend;—How unfeeling it is to harass and torment a person thus! I have suffered enough already, without being perplexed in my last moments by ill-timed remonstrances from the clergy. That I have been and am strictly and firmly attached to the Catholic religion, no one of my acquaintance can doubt; if any one thinks or says otherwise, he does me an injustice; and though it is probable I may not have the assistance of a brother priest at my execution, yet I am not the less attached to my religion, notwithstanding I have, through life, made it my business, as a conscientious duty, to oppose, at any risk, with honest firmness, all doctrines, whether broached in church or state, which appeared of a dangerous tendency.

The priest who attended me some weeks ago, called on me again on Tuesday the 29th of May. He had with him a newspaper, containing the publication of a letter with my signature. Of this letter he made bitter complaints, saying it attacked religion, my character, and put his life in danger—insisted that I should disavow it in the public prints, and left me to reflect on it during the night. Next day we spent four hours in disputation: I refused to have any thing to do with public prints; but offered to testify my good opinion of him before my death, provided he behaved as in my mind became a pious clergyman unconnected with state tricks. At first he professed to have only seen the letter just before he stepped into the coach for Maidstone. It

was brought him by an attorney and a priest; he desired one of them to carry it to the bishop for his opinion. In a little time after, he knew all about the bishop's opinion, and that of many others; in particular, that of a friend of mine, Mr. M*****, who is neither priest nor attorney, and who told him a great deal concerning it. It was the bishop's decided opinion, and also his own, that I should make all the discoveries required, otherwise I could not have the usual assistance in the spiritual way. At length my blood got warm—I told him, I knew my duty, was well acquainted with the method of making and hearing confessions—farther, I would not be dictated to in such a manner, either by him or his superior, or any other person who would dare to mingle political affairs with spiritual matters in the tribunal of confession, and who would thus make the most awful parts of religion, with which mankind complies with the greatest reluctance, subservient to the politics of the day—"Return, Sir, to your bishop, and tell him, from me, to send me a priest unlimited as to spiritual authority and understanding—otherwise to send none at all: as I most earnestly request, and that for the sake of my Redeemer, that my last moments may not be embittered by arguments founded on bigotry and prejudice."

Here he told me he had some three or four questions, relative to discoveries or informations, to put to me; that they did not come from the bishop, but from another person, whose name he did not choose to mention—one of which went to criminate B. Binna, a person now in custody; and yet he always pretended to disavow the desire of criminating any one, but only a wish to serve the government in a general way. On my declaring that I could not give him the wished-for information on that subject, he said, in a very significant manner, *that he was very sorry it was not in his power to promise me a reprieve, or even a respite.* I answered, that the first I did not expect, and the second I did not wish for.

He seems very unwilling that I should make any declaration at the place of execution, or any address to my countrymen—as, he says, it might weaken the government, and hence must be uncharitable; but I shall not be controlled in these points. Indeed, he attempts to justify, not only the government, but also the crown lawyers, in their proceedings; and says, they had no design upon my life, as *their whole aim was directed against Mr. O'Connor.* Whence he derives his information, I think it not worthy my notice to inquire; but it is evidently from no mean authority. Previous to his departure for London, he asked me to call on the sheriff for any particular priest who would be more pleasing to me; and earnestly desired to know if I had any objection to himself, as he wished to attend me at the last hour. My answer was brief—I would not call any particular priest; such person might be subjected to the same persecution; as

himself, I had no objection whatever, nor to any other authorized clergyman; but he must first divest himself of the principles for which he had so warmly contended.

Speaking of the present affairs of Europe, he says that the large sums of money charitably bestowed by government on the emigrant clergy, have disarmed, at least for a time, the Divine vengeance; and thus, by drawing down an extraordinary blessing on the country, have procrastinated its fate! That the government has been very liberal in donations from the public purse, and that many individuals have been generous and liberal, I will readily admit; yet I cannot forget the words of Terence, "*Proximus sum egomet mihi*:" and I will assert, that these sums would have been as charitably and as advantageously laid out by the English government in support of the starving poor in Ireland, where, surely, the obligation lay. Look at the statements of the poor of Dublin alone, published by authority last summer, and at different periods during the war—Yes! whilst a father, a son, a brother, or some dear relative from each family, was engaged in the bloody contest, fighting the battles of England, the remainder are left to starve at home, through want of trade, the necessary consequence of war; and at the same time the children's bread is triumphantly thrown away! Alas! poor people! it is your fate to have your brave youth called forth, not only to fight the battles, but also to crown with laurels, titles, and pensions, certain men in a neighbouring country, whilst you remain either neglected, despised, or persecuted—"*Sic vos non vobis*."

I do not mean to injure or cast reflections on the emigrants: no—they have already experienced deep distress and numberless afflictions on many occasions. I do not wish to heap Pelion on Ossa. Besides, truth requires that I should declare my good opinion of the emigrant clergy, with many of whom I have lived, and performed the ecclesiastical functions, in the days of their prosperity; their humane principles and moral conduct did honour to themselves and to their country; but here I speak only of the inferior clergy: as to those dignified with the humble and truly apostolic title, "*Illustrissimi Ecclesie Principes*," I shall not presume to say any thing.

It is worthy of notice, that my reverend friend endeavoured to palliate the conduct of the Reverend Arthur Young, and others who might have tampered with the jurors previous to my trial; and in his own defence, for not having performed his duty towards me as he ought when called upon, he alleged the general practice of the Catholic clergy in England. If such be their practice, I shall only observe, that it, like many other things, calls loudly for a reform. He also attempted to justify the minister for having issued fresh warrants against Mr. O'Connor and me during our confinement, by saying that it was a mea-

sure of necessary precaution, dictated by the public safety!

The established clergyman of this place, a Mr. Lloyd, has just sent me a tender of his services. I am resolved to hear what he has to say.

I cannot say whether Mr. Ford was upon oath when translating the French passport produced in court; perhaps my lawyers know. If I had thought myself at liberty to ask him questions, I would have made it evident, even to Justice Buller himself, that Mr. Ford does not understand the French language: such bungling was never heard in a court of justice, not only as to the aforesaid passport, but also some papers written in the Latin language, attempted to be read in *Latin* to the jury by Mr. Knappe. Good God! what a burlesque on common sense! A professional gentleman appointed to read, as part of evidence, to the jurors—what? papers he manifestly did not understand himself! And had each of the jurors been as learned as Lipsius or Scaliger, they could not have understood him; no, not even with the comments of the bench and attorney general. It is a lamentable consideration for the learned of Great Britain, that the bench, Bow-street runners, and crown lawyers altogether, comprising Messrs. Garrow, White and Co. were not able to translate a few plain sentences of Latin and French!—"Tell it not in Gath" They might be just, and honest, without much learning.

I am removed to another cell, with two doors, seven locks, and six bolts. The double grating of the window is so thick and close as to admit very little light. It is the same, I understand, that was occupied by the misguided Parker.

I have once more applied in vain for permission* to see my only friend. Cruel, hard-hearted brutes! You boast of your humanity, liberality and civilization, when in fact you are worse than savages.

JAMES COIGLY.

To J. BLAKE,

PRINTER AND PUBLISHER OF THE MAIDSTONE JOURNAL.

Sir; I read your account of my trial, &c. in your paper. If any thing could add to the astonishment and indignation which I must feel at such a mass of false evidence being adduced against me, it would be a publication so replete with errors and inaccuracies. It is unnecessary for me to comment on them; as, in a few days, you will see a more correct edition from another quarter: but as you seem fond of Mr. Frederick Dutton, from the manner you have particularized him, calling him with emphasis an *Irishman*—and for so doing you most certainly had no authority—

* The sheriff gave permission when it was too late.—*Orig. Ed.*

give me leave to set you right: Mr. Dutton swore, he then was a quarter-master in the corps of drivers attached to the Royal Irish Artillery; had his warrant in his pocket, and held also a post in the revenue; he also expected to be farther rewarded and protected by government. I shall not examine his character here.—It is blasted every where, save in Kent. I call God to witness, that he has sworn falsely against me. Yet I have to request of you, not to degrade him in future publications; nay, restore him to his rank in the world, and rob not a great nation of the honour of his birth.—Yes, Mr. Printer! Mr. Frederick Dutton, gentlemen, is a *true-born Englishman*: his family reside, as yet, in the place of their nativity, not even fifty miles from Maidstone, where his mother and sisters are remarkably well known. It is to be hoped when the new-made gentleman has acquired a sufficient property in Ireland, that they will all go over to colonize there.—You owe it to truth and justice to repair the injury done Mr. Dutton's character. Your's,

JAMES COIGLY.

Maidstone Gaol, 2nd June, 1798.

TO THE
ATTORNEY-GENERAL.

Maidstone Gaol, June 5, 1798.

Sir;—Were I not certain of immediate execution, I would not take the liberty of sending you these my last lines, by way of memento of a person legally murdered. I will readily admit, that you were not originally a party in the conspiracy to murder me; but I will ask you, sir, in the face your country, is it possible you could hold your situation, and proceed in it as you did, without the knowledge of at least a part of the perjury committed against me? According to your own technical phraseology, I will give you a case in point. You were present in the privy council chamber when Mr. Ford read over my examination. I was asked by Messrs. Grenville and Pitt, was it correctly taken down? I answered, it was not—that many of my answers were not mentioned at all, and, when they were, it was not in my words, but changed to a different meaning. Now, sir, you were also present in the court at Maidstone, when Mr. Ford swore the contrary; that is, he swore that I made no objection whatever to sign the examination on the score of authenticity or correctness; and he also swore that he took down every thing material in my answers. Whereas, sir, you knew the contrary, and I call upon you to testify the truth hereafter, though you were silent when Mr. Ford perjured himself to your knowledge. Yes, you knew I was repeatedly pressed by Mr. Pitt to answer, was I, or was I not, a member of the Corresponding Society? was I or not, connected with it, the Whig Club, or some other of the political societies in this country? did I or not attend meetings of such societies

at Furnival's-inn cellar, or elsewhere? to all of which questions I answered directly, that I never was a member of any political society in Great Britain; that I never attended any of their meetings at Furnival's-inn cellar, or elsewhere, either public or private. Now, sir, I repeat the question, and urge it home to you—were you not present and silent in the court, when Mr. Ford perjured himself on that point? did you not declare in court, repeatedly, that from your situation as public accuser, you were bound to protect me as a subject, from any injustice whatever? Did you fulfil your promise?—I have known many attorney-generals rather inclined to the *punica fides*; two of them were remarkable—M. Joli de Fleury, attorney-general to Louis 16th, and Fouquier Tinville, attorney-general to Robespierre. Do you not know, sir, that Mr. Ford, after having first examined Revett, Fugion, and Twopenny, at Bow-street, called me up, and told me that the only charge against me was, attempting to leave this kingdom, and go into parts beyond the sea, without a regular licence for so doing?—These are his words, literally; Mr. Ford even said it was bailable. Now, sir, if Revett, Fugion, and Twopenny, had given the same evidence then which they gave afterwards in court, is it in the nature of the man, that Mr. Ford could have held such language to me? can he be supposed so ignorant of his duty? Neither did Mr. Ford once mention any treasonable paper whatever, at that examination. Revett, when confronted with me, at Bow-street, was obliged to acknowledge, in the presence of Mr. Ford, that neither he nor his companions had ever asked my name; yet he swore in court, that we all refused to tell our names; neither did Mr. Ford take any notice of the above-mentioned circumstance in his account. Oh shame, shame on perjury! Why were we not examined the following day, the 2nd of March? Why did Revett, the following evening, when giving me up to a king's messenger say, "Now you are under a different charge: you are now a state-prisoner?" When arrested at Margate, I made no resistance, though I could have done it effectually. I called for a magistrate, and insisted positively to have one brought, and all my papers examined in my presence, before I would consent to be taken out of the room; upon which, Revett and Fugion produced handcuffs, and threatened to put them on me, if I continued to insist on that point.

I could point out many striking instances of perjury in all the principal witnesses against me; but as I am convinced that they could not escape your penetration, I shall proceed to other matters, and ask you, why you did not produce the gaoler of Dundalk, as a witness, according to the notice served on me? You were very anxious, *in words*, for my justification, and the aforesaid gaoler would have been a most material witness for me, so he was not produced, and I was de-

closer the bonds of union, the only pleasing, the only profitable, the only godlike, upon earth.

I hope, I trust, I believe, that we shall all meet together, where we shall have but one faith.—How ignorant, then, or how wicked, must that man be, who attempts, through interested motives, to make us enemies for religion's sake. Persevere, then, my brethren and fellow-countrymen, in your laudable efforts. By your example, you will disarm some of your enemies, and attach all the worthy, the brave, the honest and virtuous, to your cause.—As yet a little, and your con-

stancy will prevail, may triumph, over the bigotry, prejudice and wicked pretensions of many ages. Behold the hand of your Lord, your God, is already stretched forth in vengeance over your unrelenting oppressors. “Often have they called out peace, peace! but it is not so, saith the Lord; for, behold the scourge of war, and all its evils, shall not be removed from their doors, until the shackles of the bondsmen and slaves are broken, and the oppressed delivered from their afflictions.”

JAMES COIGLY.

Observations on the Trial of JAMES COIGLY, for High Treason: together with an Account of his Death, including his Address to the Spectators. By John Fenwick.

ADVERTISEMENT.

THE delays that have happened in the publication of this pamphlet, have been very mortifying to the editor. He knows how great has been the impatience of many persons for whom he has the deepest veneration to see the character of the trial of Mr. Coigly plainly unfolded to the public, but still more to see some letters written by that unfortunate man on the day preceding his death, and also the interesting correspondence between his solicitor and the duke of Portland relative to an extraordinary circumstance in this trial. It is some consolation to him that little of the blame belongs to him. If an error which he committed in the beginning be excepted, he can safely say that he acquits himself entirely of it.

Since the first half-sheet of these observations was worked off, he finds that he made a statement in it which is not correct. Having shown the danger there was of a partiality existing in the panel beyond that which was betrayed by the conduct of the rev. Mr. Arthur Young and others, he says in page 179 of this volume, “But when these instances were before him, what had he a right to say? It was his privilege, and I will add his duty, to say, ‘I cannot justly be tried by a jury taken from a panel which is impeached and tainted, as a whole, by these partial and almost miraculous detections.’” The prisoner, he is told, had not a legal right to challenge the array (which means the whole panel) for partiality in members of it; he must show cause for impeaching the whole, such as partiality in the sheriff, to challenge the array. But his argument is not affected by this mistake, if he has shown, which he thinks he has, that there was a serious danger of secret partialities existing in the panel, beside those which were detected.

He would have been very glad to have con-

cluded these observations with a particular account of Mr. Coigly and his family, but he forbore to state what would come before the public in a more interesting form, Mr. Coigly having written memoirs of himself, after his conviction, which are now in the press, with others of his papers, and will be shortly published by a gentleman, a relation and one of his earliest friends, to whom he confided them. The reader, therefore, will find no more here, on that subject, than merely what is necessary to show that while he possessed noble qualities, he was a man of a respectable situation and of an amiable private character.

OBSERVATIONS

ON THE

TRIAL OF JAMES COIGLY,

FOR HIGH-TREASON, &c.

BEFORE I enter upon the important subject of these pages, I hope I shall be pardoned if I call the reader's attention, for a moment, to the difficulties of my situation. Powerful circumstances have imposed upon me a duty, whose obligations I cannot question, in the discharge of which I have to discuss the merits of a solemn judicial proceeding of the country—namely, the trial of Mr. Coigly, for high-treason. The inquiry implies, that I am not content with the character of that proceeding. But the decision of a jury, the issue of which has been the shedding of blood, the community is accustomed to regard as a subject to be kept sacred from examination; and not without an excuse, for the shedding of innocent blood, by judicial proceedings, which they would sometimes have occasion to contemplate, is at once the greatest of public errors, and amongst the greatest of public calamities.

But it is not on this topic only that I may have to encounter the antipathy of my reader: for in this inquiry is involved censure, which I feel to be of a very painful nature, and to the publication of which all generous minds will be naturally averse, if they do not happen to accord with me in my views of the object for which I contend.

If it were possible for me to impress my reader with a sense of my anxiety, adequate to its extent, some part of it would be removed; but if that cannot be, there is an indulgence, on which I rely. I look to my reader for a most liberal confidence in the purity of my motives. Professions sometimes carry with them the evidence of their integrity; and I hope mine, on this occasion, are of that number. To rescue the memory of an unfortunate man from mistake, is the object of this publication. If other topics are mingled with this, it is because they cannot be separated from it. The conduct of the government, and of some individuals, however it may be handled here, would have drawn no public animadversion from me, if it had been unconnected with my subject; and here it shall pass without all comment, but that which is necessary to the full and explicit statement of my case.

The trial opened with a proceeding that filled the mind of every humane spectator with disgust at the transaction it disclosed, and with apprehensions for the character of the trial. A letter was laid before the Court, with proofs of its authenticity, written by the rev. Mr. Arthur Young, to a gentleman of Bury St. Edmund's, exposing a deliberate and successful attempt of the writer to prejudice some of the jurymen against the prisoners.* A remedy was applied to the evil; but the question now remains—was the remedy complete?

The jurymen who were influenced by the practices of Mr. Arthur Young were summoned from the hundred of Blackburn, and all the jurymen from that hundred were set aside, on a proposition from the attorney-general. Did this remedy leave the panel

* Notwithstanding the plain nature of this letter, the writer's father attempted (injudiciously as it appears to me) to turn the letter into a "piece of pleasantry." His argument is, that it was written to a gentleman, whose political sentiments were different from those of his son, and therefore could not be written seriously; and that it was written to frighten that gentleman, whom he supposed to have had an anxiety for the prisoners—believing them to be innocent. I should have thought it unjust to have given the reverend Mr. Arthur Young's letter, without the preceding sketch of his father's explanation; but having done that, I leave the transaction to the reader. *Orig. Ed.*—As Mr. Young's letter has already been printed in vol. 26, p. 1224, it is not here repeated.

as it stood before the disclosure of that letter, and as a panel ought to stand, in the presence of God, and in the sight of the country—that is, firmly possessing the character of impartiality between the king and the prisoner? It is not possible to dissect the transaction, with the care it deserves, and come to this conclusion. Mr. Young did not act from motives of a private nature; he had neither a personal knowledge of the prisoner, nor any personal malice against him. He acted upon motives of public policy. His passions were inflamed with apprehensions of a foreign invasion; he supposed there were persons in this country ready to abet the invaders; and whether the prisoner were guilty or innocent, he viewed the trial as an opportunity to be seized, of making an example "for the security of the realm."

He argued in a manner natural enough to a person of great zeal and with ordinary intellect, and in a manner which is but too general among politicians. And accordingly we see he not only satisfied his own conscience, but the consciences of the jurymen whom he reasoned with, by the sanction of a state necessity. What we have to do with this transaction, is, to determine if it were a proof of nothing more than a partial and narrow infection in the panel? or rather, if it were not a symptom of infection in other parts? Let it not be supposed that I mean to push this reasoning farther than I do, and that I would insinuate, that any juror who sat on Mr. Coigly was actually tainted like the jurymen of Blackburn. What I have to say, it is my design and my interest to speak without disguise. No man persuaded of the prisoner's innocence, nor any man convinced of his guilt, and not thirsting for his blood, but regarding the justice of the country in his trial, could sit, after the disclosure of that letter, with a quiet heart, to see him delivered up to that panel, to take his chance for a fair or a partial jury, as the honour of some of its members, or the practices of such men as Mr. Young, might happen to prevail.

Independent of this reasoning, what was the *fact* at the moment of the dismissal of the jurymen of Blackburn? Did every other part of the panel* remain free from accusation? No!—Did every other part escape at least from all *proof* of partiality? Not even that! There was one person on the panel, who himself betrayed his prejudice and partiality; and this was a man of a condition and character so little exposed to suspicion, that any management, short of an undisguised and loudly-proclaimed partiality, would have given him an opportunity to slip into the box with the reputation of a fair and honourable juror.

But did all reasonable apprehension of par-

* The panel includes all the jurymen returned by the sheriff, and the reader must be careful not to confound it with the jury who served on the trial. *Orig. Ed.*

tiality in the panel and with the remedy applied to this case? When the panel was purged of Mr. Raikes, was it then safe to say,—"The panel is now pure; and the prisoner, if his conscience be clear, may view his fate with complacency?" The vulgar indiscretion of Mr. Raikes† was a solitary instance of the kind, amongst jurors of his description and rank in life. But who, standing in the prisoner's place, would not tremble to say, it was also a solitary example, among such, of prejudice and partiality? This was not a situation in which to speculate so unreasonably. Was Mr. Raikes less scrupulous and conscientious than other persons on the panel of his rank and description? That was an awful question to be put to the prisoner, tied down as he was to abide by the decision!

The instances of Mr. Arthur Young, and of the jurymen of Blackburn, and of Mr. Raikes, not only prove that the panel was tainted, but excite a suspicion, never to be allayed, that the poison had spread into the panel, beyond the reach of the remedy. Let the temper betrayed by those instances be considered. Before Mr. Young and Mr. Raikes could commit acts so odious to the general feelings of their countrymen, the panic with which they were struck must have been extreme. But what evidence have we that the panic, so violent in them, had not spread among other gentlemen who were jurymen, or who had influence on jurymen?

I cannot but suppose a case that might easily have happened: Suppose the practices of Mr. Arthur Young had remained a secret, and it was a miracle they were discovered, how would the case have stood when Mr. Raikes had betrayed his partiality, and was in consequence of it cast out from the panel? Then, on the same reasoning which must be used to oppose my present argument, it might have been said, "the panel is now free from any infection." And indeed, if it could not be so said, how was the prisoner to be tried by a jury from that panel, with any show of justice? But in that case, the hundred of Blackburn would still have lurked in the panel, and the prisoner, unfortunate as he was in the event, would not have had even the chance he acquired by the exclusion of those jurymen.

To dismiss this part of the subject, I ask, if neither the instance of the Blackburn hundred, nor that of Mr. Raikes, had come to the knowledge of the prisoner, what would have been his situation? A jury would have sat on the question of his innocence or guilt, taken from among men, some of whom had prejudged his case, and determined upon his fate!—But when these instances were before him, what had he a right to say?—It was his privilege, and I will add, his duty, to say, "I cannot justly be tried by a jury taken from a

panel which is impeached and tainted, as a whole, by these partial and almost rancorous detections."

Was the next step, in the course of filling the jury-box, of a nature to make us forget the character of the panel? I speak now of the challenges in behalf of the crown. I will not hesitate to say, nor will any man who is acquainted with the history of state-trials, that the object and tendency of the challenges of the crown-lawyers are to exclude from the jury-box persons from whose independent character the administration of the day has nothing to hope, and to make way for the dependants, the partizans, and the friends of the ruling party. I should be glad that this were a questionable point, and to lose the benefit of my argument here; for in times when our lives, our fame, and all our temporal interests, are in danger for political opinions, it would render us more secure from the bondage of terror, than any of us are likely to be, if we were not subject, as we now are, by means of the crown-challenges, to be tried by a faction in the country invested with the deceitful character of its jury.

In the trial of Mr. Horne Tooke for high treason, in 1794, the attorney-general challenged seven of the jurymen, and when the panel was gone through, there were only nine jurors in the box. The attorney-general being called upon for his cause of challenge, had no cause to give. What were the attorney-general's motives for challenging those gentlemen? Liberality and candour are virtues to be worshipped in society; but cowardice, that usurps their place, is a most mischievous failing. Yet, God forbid that I should wound the delicacy of the attorney-general, beyond the honest purposes of a sincere and necessary argument. He acted, in his station, according to its practices. What then were his motives for challenging gentlemen, against whom he had no cause that could be assigned to the public? He had no such cause, or he would have stated it for the sake of his reputation. There is not, I believe, a reason for these challenges to be discovered by human industry, but a secret knowledge or a secret sentiment of the attorney-general, that the gentlemen in question were not to be warped by reasons of state, in their examination of the guilt or innocence of the accused.

My present remarks are incumbered with a little difficulty, arising from a variance between the actual obligations imposed upon an attorney-general, and the character with which he stands clothed in theory. He appears in the high and honourable character of public accuser, bound to see justice done to the country, of which the accused is part; yet meanwhile it is the condition on which he holds his office, to use it for the interests of the governing party, which may be, and sometimes are, in opposition to those of the country. We must look steadily at these things,

† See, in vol. 26, p. 1226, the account of the challenge of Mr. Raikes, for cause.

or we cannot arrive at the true merits of such a trial as this I am examining. A state trial is often an engine of state policy. And it is in vain to expect that an attorney-general will divest himself of the passions and forget the interests of an administration, of which, in fact, he is part; and it is also childish to suppose he will not avail himself of the power of the crown-challenges, to gratify those passions, and promote those interests, as long as courts of justice uphold him in the exercise of that power.

If the character I give of the crown-challenges be thought partial, let the reader turn to the legal history of these challenges, and view their features in that mirror. The statute of the 23rd of Ed. 1, called AN ORDINANCE FOR INQUESTS, says—“Of inquests to be taken before any of the justices, and wherein our lord the king is party, howsoever it be, it is agreed and ordained by the king, and all his council, that from henceforth, notwithstanding it be alleged by them that sue for the king, that the jurors of those inquests, or some of them, be not indifferent for the king, yet such inquests shall not remain untaken for that cause; but if they that sue for the king will challenge any of those jurors, they shall assign of their challenge a cause certain; and the truth of the same challenge shall be enquired of, according to the custom of the court; and let it be proceeded to the taking of the same inquisitions, as it shall be found, if the challenges be true or not, after the discretion of the justices.”

Why did the framers of this statute interpose between the crown and the accused in this case? Because the law, when it speaks or acts in its purity, is jealous of the executive power, and could not be silent on a subject of such exquisite jealousy as that of the crown-challenges in cases of high treason. The law looks, as far as human capacity affords the means, into the future; and in the provisions of this statute, it had an eye to times when there might exist an unprincipled administration, having at its beck an unprincipled attorney-general. In such times it foresaw it would be possible for the crown, with the aid of peremptory challenges, to pack a jury at pleasure. The vassals of such an administration would return a panel so numerous, as to make the peremptory challenges of the prisoner a *dead letter*; they would return a partial panel, to give the minister a majority on it; and then would come that most servile and most faithful of instruments, a venal, corrupt attorney-general, with his peremptory challenges, to close this scene of a mimic jury, by sweeping from the panel the persons of courage and honesty, who would attend to the case between the king and the prisoner, in defiance of the suggestions of either passion or corruption.

This statute, one would think, was explicit enough in its terms, and its meaning out of the reach of the boldest chicanery.—“If they

that sue for the king will challenge any juror, they shall assign of their challenge a cause certain; and the truth of the same challenge shall be inquired of.” Thus speaks the statute! yet behold the crown lawyers actively betraying the character of their challenges, in an open impatient usurpation upon its authority! The crown-lawyers, aided by corrupt judges, set up an answer to the statute in their practice; and then they argue the practice against the statute.

It is difficult to pursue this point with patience when we come to the pretensions of judges and lawyers. Judges are ministers of the law, and they affect to answer with an argument of practice, when a positive and plain statute is produced for their rule.

But let us see their answer. The crown, they say, shall show its cause of challenge, but not till the panel is gone through; and if the jury-box is filled before the panel is gone through, the crown shall not show its cause. Here, then, we come at the naked character of the crown-challenges. They are to all intents and purposes peremptory challenges. The crown by means of a corrupt judge can make the panel so extensive as to evade the point at which the practice says, it shall show its cause. What remains to be said of its challenges, and who will say they are challenges for cause?

I have nothing to do with the illegality and iniquity of this practice, farther than the object and tendency of the crown challenges; and now I ask, why all this anxiety in the judges and the crown-lawyers, at the expense of all decorum, to get rid of the statute? The crown-lawyers have power by the statute to challenge for cause. What then is the use of the peremptory challenges of the crown, if it be not for state purposes, which the crown-lawyers have too much decency to disclose? The peremptory challenges of the accused in cases of high treason, were given in the spirit that ought to distinguish all criminal law. An accused person, in a case of high treason has an enormous weight of influence, open or concealed, and of prejudice, malicious or honest, to resist, in the fairest of these trials; to counteract which, not wholly but in part, his peremptory challenges are given by the mild spirit of the law. But the crown-lawyers have no reasons for peremptory challenges of an equitable nature, nor any uses for them but such as will not bear the light.

And this character of the crown-challenges, is illustrated by the times and judges that permitted them to creep into the practice. It was under a Stuart, when the crown entertained no scruple respecting means that were efficacious to its ends; and the abettors of these challenges were amongst those corrupt judges, who “traitorously and wickedly endeavoured to subvert the fundamental laws of England;” to speak in the words in which some of them were afterwards accused in articles of impeachment.

With this character of the challenges of the crown-lawyers, whose fidelity I submit to the understanding and observation of my reader, let us look at the trial before us.

The attorney-general challenged five-and-twenty gentlemen of the panel. Here then we are arrived at an awful and portentous period for the prisoner! The panel is proved in open court to be tainted with prejudice against the prisoner, and no remedy is applied to the evil commensurate with its probable extent; yet the unfortunate man is not permitted to take the chance this panel affords him to escape from the charge. The attorney-general stands up with an illegal power, usurped by servants of the crown with the connivance of mercenary judges—the attorney-general stands up with this odious power, to deprive the prisoner of five-and-twenty gentlemen, respecting whom, it is fair to conclude, there was no reasonable objection in behalf of the justice of the country, nor any objection on the part of the crown-lawyers, but such as would not bear the light of day.

Imputations of partiality and dishonesty, are not things to be thrown about at random, and it is a hateful office to employ them in any shape or degree. But what is it to be done? Is this unfortunate case to be stated with entire parts expunged? or is it to be distinctly laid open to the reader as it exists? My reader will protest against the former part of the alternative: he cannot want a mutilated case; and my conscience is with him. I could have shrunk from this duty from motives of fear, but I cannot be unfaithful to it by conscious concealment and reserve.

We have, then, to look at the panel after the attorney-general has concluded his challenges. When we view the spot on which it was struck, we cannot regard it at any period with much satisfaction. I do not mean to single out the county of Kent for any dishonourable propensity. I speak of the whole vicinity of the metropolis. We all know that it is inhabited by wealthy traders, and wealthy landholders; and few of us are so ignorant as not to know that the affairs of this country are brought into such a state by its administration, that the mercantile interest is wholly,* and the landed interest in great part, at the feet of the minister.

Then what a hideous transaction is here! The officer who returns this panel may be amongst the individuals who have preserved their independence. But where is he to look for his panel? The country around him is colonized with rich traders from London, or the descendants of that class, who have possessed themselves of the lands in the neighbourhood of London. Without charging those men with corruption, I impute to them partialities unfavourable to a prisoner in a case of

* I do not speak of individuals, but of the mass of wealth and influence included in the mercantile part of the nation. *Orig. Ed.*

high treason; partialities belonging to the weakness of human nature, but partialities that will have their silent effect in despite of the honour of such men. To such a panel the crown-lawyers come with their scrutinizing eyes and habits of business, to see whom they may challenge for their own secret reasons. Look to the fact! Who are the bulk of the persons they challenge? Are they contractors, or tradesmen of the crown, or men in open connexion with administration? No, to be sure (the crown-lawyers will answer) the question is ridiculous! I know it would be so, if the familiarity of the evil of which I complain were not such as to make even the honest by-stander insensible of its enormity. But there are independent men in the neighbourhood of London, as well as in every other part of England; and it is some consolation, amidst the evils of this case, that five-and-twenty of the jurymen fell under the suspicions of the attorney-general. I will plainly tell him, I wish the number had been greater. Nevertheless, the unfortunate prisoner was left exposed to prejudice and partiality, by the removal of five-and-twenty honest men from the panel. In the trial of Mr. Horne Tooke it was said by lord chief justice Eyre—"At the same time, I feel that the circumstance, which is become absolutely necessary, of making the panels vastly more numerous than they were in ancient times, might give to the crown an improper advantage, arising out of that rule (he was speaking of the crown challenges) and whenever we shall see that improper advantage attempted to be taken, it will be for the serious consideration of the court, whether they will not put it into some course to prevent that advantage being taken." When is the time of relief to arrive? What is the number of challenges that constitute an improper advantage? And when are the people of this country to know by what rules they are to be tried, when they fall into the hands of the crown-lawyers?

These are questions in which we are all concerned, and in which the prisoner was most deeply concerned. The hope held out by the chief justice was illusory to him. The crown-lawyers disdained to take their peremptory challenges as an indulgence. "It is no indulgence," said one of them; and the court acquiesced in this pretension; so that the attorney-general might have challenged one hundred honest men of the panel, if there had been so many detected by him. What then did the declaration of lord chief justice Eyre come to? And what did he mean by an improper advantage being given to the crown, if it were not that dreadful advantage of excluding from the jury box persons to whom the crown-lawyers could not put an unproved unsupported case? What besides could the chief justice mean? The crown-lawyers may show cause of challenge; and again and again I ask, what is the cause that must not be revealed?

Let it not be supposed, that I have drawn too much of my reader's attention to the two objects which have hitherto occupied these pages. They offer matter for the consideration of every honest man in the country; and although my plan does not directly lead me to examine them on the broad ground of the public interest, I cannot but recommend to my reader, to view them in that way. But as to my plan, the development of them is essential. I find a case of unmatched persecution and severity. I see the unfortunate man, of whom I am speaking, hemmed in, on all sides, from the moment he is accused, by designing persons and adverse circumstances. And although the practices of such as endeavoured to influence the jury, the passions of jurymen themselves, and the unprecedented number of the challenges of the crown, might each and all of them be harmless at length, in this instance, yet they are never to be forgotten, for their marking the very commencement of this trial with the hard character that stuck to every subsequent part.

Before I proceed to the next point in this inquiry, which, is, the character of the case made out by the crown, I have to guard, nevertheless, against a misapplication of the preceding observations. I have proved the panel to be unfit to try the question of the prisoner's innocence or guilt, inasmuch as it stood convicted of partiality; and I have shown that the numerous challenges of the attorney-general could have no tendency but to fill the jury box with such persons as suited his secret purposes. Does it follow, that I impeach the jury for partiality? I answer most unequivocally, that I do not; and I desire no such conclusion to be made. Notwithstanding the corruption of the panel, it is possible that no person passed into the jury-box who belonged to the infected part. The attorney-general's challenges might exclude impartial jurymen, and leave a space for jurymen that were prejudiced or corrupted; but they had no active power to corrupt:—they had no active power to place ignorant or interested men in the jury box. From the moment the jury is impanelled, I commit them to God and their own consciences. No man who is a friend to the trial by jury, will be forward to impeach a jury that has decided on a question of life or death. This country may hereafter fall away from its integrity, till a jurymen shall not hesitate to acknowledge he went into the box to condemn with or without evidence; but till that happen, or till it happen that a suspicion not to be rejected, arises against a jury actually inclosed in the box, as well as against parts of the panel, it is not only the most candid way to suppose a jury free from prejudice and corruption, but it is the safest for the purposes of justice. Jurors will seldom act with integrity where they have strongly to fear subsequent censure for their motives. To disgrace and sully men in their own eyes, is to prepare them for dishonourable actions.

To understand the character of the case made out by the crown, it is necessary to take a view of the nature of the case the crown was bound to offer to the jury, in order to maintain the indictment.

The overt acts charged in the indictment, are all, in the end, absolutely narrowed to one, namely, *that of the prisoner's possession of a treasonable paper, with an intention of being the bearer of it to the government of France.*

The statement of this overt act contains two distinct propositions: first, the prisoner's possession of the paper; and, secondly, his intention of being the bearer of it to the government of France.

The crown, therefore, was bound not merely to prove the prisoner's possession of the paper, but as plainly, and if possible more carefully, to prove that which was the sanction of the whole complaint, namely, his intention of conveying the paper to the government of France. The possession is an innocent act; as innocent (unconnected with the intention) as the going in a boy to Whitstable, the walking from Whitstable to Margate, and the residence at an inn at Margate.

This seems a statement of things of such extreme simplicity, as not to be subject to be overlooked or forgotten by the reader. Yet, simple as the distinction is between the first member of the overt-act and the second, there is a propensity in the minds of persons unused to consider such topics to include the one in the other, and, being convinced of the fact of the possession, to assent to the whole of the charge.

It is often the fate of important and unfortunate events, to derive the whole of their malignant character from gross and almost incredible mistakes in the actors of the scene. Things that are in every body's mouth, on all other occasions, are forgotten when we come to act. And now, one more obvious remark remains to be made, before we go on to the crown-evidence, and it regards the nature of the proof *exacted* by the law. In a trial for high-treason, the law demands *certainly* in the proofs of guilt. I may, without violence, say, that it demands *infallibility*—that is, infallibility in the conclusion from the facts as they stand before the jury.

With these observations impressed upon our minds, let us look at the crown-evidence; and first at the evidence of the prisoner's *possession* of the treasonable paper.

As I mean to enable the reader to understand the whole of this case as completely as the evidence will permit, I shall give such extracts from the evidence as seem necessary to this point:

“ John Revett.—Examined by the Solicitor General.

“ Did you find any thing in the room in which you apprehended Quigley?—There was a great coat upon a chair, on the left-hand side as I went into the room. Quigley begged to

know whether he might not have his breakfast; I told him, yes. After he had breakfasted, he said he was ready, and got up, and put on a blue spencer great coat. I then took him down into the parlour below, where this luggage was; then I went up again, and staid some little time in the room, and then Mr. O'Connor came down with me into the parlour. I asked them who the luggage belonged to?

"Were they altogether in the parlour then?—Yes. The direction to some of them was to colonel Morris; they refused to give any account—none of them would give any account of the luggage; they refused to own any of the luggage. I went up stairs, and in a bed-room there was a small cloke-bag; I asked Mr. O'Connor, if it belonged to him? he would not own it; he said, probably I might have put something into it; it was unbuckled, as if something had been taken out. I then looked into the sitting-room, where Mr. O'Connor and Quigley had been, and found that dark great-coat, with a black collar: I brought it down into the parlour, where the five prisoners were. I asked if the great coat belonged to either of them? and particularly Mr. O'Connor and Quigley; they said, no. I then took a pocket-book, and some other things, out of the pocket; every thing that was in the great-coat pocket was taken out and tied up in a handkerchief, and I put it into my side-pocket; we then took the prisoners away, and the luggage, to the hotel. After we had done so, Fugson, and a gentleman of the name of Twopeny, went into another room; I undid the handkerchief, and Mr. Twopeny opened the pocket-book, and pulled a paper out of the pocket-book; this is the pocket-book.

"John Revett cross-examined by Mr. Plumer.

"I understand you are a Bow-street runner?—Yes.

"How long have you been in that sort of employment?—About three years.

"What time in the morning was it when you arrested these people?—About nine or ten o'clock.

"After you had taken the papers in the morning, did you at that place take any account of them?—I did not mark them there, certainly.

"Did you take any list or inventory of them?—I did not.

"Did any body else, in your presence?—No.

"Were they marked by you, or by any body else, while you were at Margate?—They were not.

"Were they sealed up by you, or by any body else?—They were not.

"Did you take them before any magistrate, to have them examined by him at Margate?—No.

"Was there any magistrate at Margate?—I do not know.

"Do you recollect being desired to send for a magistrate, and have the papers noted and inventoried at the time, in order that there might be no mistake about what papers there were?—Probably it might be so.

"Was that before or after the great-coat was found?—After.

"You say, you first found Quigley in a room where there were some tea-things?—Yes.

"Then you went down with him, leaving nobody in that room?—I left Mr. O'Connor there, and two soldiers.

"When you went down with Mr. Quigley, you left Mr. O'Connor there, with two soldiers?—Yes.

"How long was it before you came back again?—Not more than five minutes, I suppose.

"You went into another room, you said, then, with Mr. O'Connor?—No, I went into a bed-room, by myself.

"That was before you returned into this room, where the tea-things were?—I believe it was.

"When you found the great coat, you said, you took it down stairs, and asked them, whether it belonged to them?—I did.

"Had you at that time examined whether there was any thing in the great-coat pocket?—I had not.

"Where was it that you first examined the great-coat?—In the parlour below.

"Who was present when you first examined it?—The prisoners were all in the room, and Fugson.

"Who did you find in the room up stairs, where you found this great coat, when you took the great coat down stairs?—I do not think any body was in the room at that time. I had seen it in the room.

"But you had left the room, and when you came back into the room, you found the door open, and nobody then was in the room, but the great-coat was lying upon the chair?—Just so.

"This was a public inn at Margate?—Yes.

"At ten o'clock in the morning?—Between nine and ten.

"There were a great many people, I believe, in the house at that time?—There were, soon after we went in.

"Do you mean to say you took the papers out of the pocket-book in the presence of the prisoners?—No, they were not present.

"Then you took a pocket-book out of the great-coat pocket and other things?—Yes; I took the papers out, and tied them up in a handkerchief; there were no papers examined in the presence of the prisoners.

"Did you keep the papers in your possession after they were taken out of the great coat pocket?—I put them in my inside pocket.

"You did not examine any of them?—Yes; one that Mr. Twopeny showed me.

"You did not examine them in the presence of the prisoners?—No.

"Who were present when you examined them?—Twopenny, Fugion, and myself.

"What is Mr. Twopenny?—An attorney, I believe, at Rochester.

"I desire you will recollect yourself a little; when you got into that room, and examined these things by yourselves, was not that paper separate from the pocket-book?—No.

"Recollect yourself, and say, whether you can be quite clear upon that subject?—I can; the paper was not in the pocket of the pocket-book, but in the middle of the pocket-book, in this manner [describing it] with some more papers.

"Did you read this paper that day?—Mr. Twopenny read it; I did not.

"Did you hear it read?—I heard part of it read.

"When was the first time that you marked any of the papers?—The first paper I marked was when I arrived at Bow-street.

"Edward Fugion.—Examined by Mr. Garrow.

"Did you see any thing of a great-coat?—I saw a great-coat up stairs, in the room where Quigly was sitting, when I first went up stairs.

"Where did you see that great coat after you had secured the prisoners?—I saw it when Revett brought it down stairs with him when he came down with Mr. O'Connor.

"By this time, all the prisoners were assembled there, together?—Yes; they were asked who the great coat belonged to; nobody made any answer.

"Did they make any answer, or remain silent?—I believe they remained silent.

"Did you see any thing taken from the great coat?—I saw a pocket-book.

"Should you know that pocket-book again?—Is this it? [showing a pocket-book to the witness].—I did not mark it; it was a pocket-book of that appearance. I believe that to be it.

"Who took that pocket book out?—Revett did; and tied that, and some other things he took out, up in a handkerchief, and put in his side-pocket; we then took the prisoners to the hotel at Margate.

"Did you afterwards see Revett produce that handkerchief with the contents, to any body?—Yes, to Mr. Twopenny.

"Did you see the handkerchief opened?—I did.

"Did you see any body take any paper from it, and read it?—Mr. Twopenny did.

"Did you see him take that paper out of the pocket-book which you had seen Revett take out of the great coat pocket?—I did.

"Did you hear Mr. Twopenny read it?—I did, and read it afterwards myself.

"What was done with it, after it had been so read?—It was returned to Revett again, and put into the same pocket-book, and delivered into Revett's care.

"When did you next see that pocket-book and the paper again?—The next day, Thursday March 1, at Bow-street.

"Did you mark that paper?—I did.

"Can you take upon yourself to say, that the paper which you marked at Bow-street, and which you saw in Twopenny's hand, and read, was the same you saw taken out of the pocket-book at Margate?—I am positive of it; this is the paper [the Address to the Executive Directory of France.]

"Look at that great coat; is that the coat you saw when you first went into the room at Margate, where Mr. Fivey was?—I saw a coat, but do not know what the colour was.

"Edward Fugion cross-examined by Mr. Dallas:

"When you first went into the room where Mr. O'Coigly was, you saw a great coat?—Yes.

"But whether this is the great coat you are not able to swear: now, are you able to swear to this fact?—After you had arrested Mr. O'Coigly in the room up one pair of stairs, in whose charge and custody was Mr. O'Coigly left?—I did not go into the bed room; as soon as I had searched Mr. O'Coigly, and taken that dagger from him, I came down stairs to see after the other prisoners.

"Who was left in the room with him?—I left Revett.

"From the time Mr. O'Coigly was arrested, was he suffered to quit the room in which he was arrested?—He was arrested up stairs.

"Was he in the bed room where the great coat was?—He was not in the bed-room.

"When the great coat was shown to you by Revett, was it in the room in which you first saw it?—He did not show it me there; it was brought by him down stairs.

"Then whether the great coat you saw in the room below, was the same great coat you had seen up stairs, you cannot tell?—No.

"Who were present when the papers were afterwards opened at the hotel, at Margate?—Mr. Twopenny, myself, and Revett.

"Then this handkerchief that had been tied up, was opened at the hotel, when all the prisoners were absent?—It was.

"Where were they at the time?—In the assembly-room.

"In what room were you when the papers were opened?—I think a front parlour.

"The papers were not marked when they were seized, nor when the handkerchief was opened at the hotel?—They were not.

"Edward Fugion cross-examined by Mr. Gurney.

"You were asked for your authority, and you told them, you were a Bow-street officer, and that you intended to take them to Bow-street, or to the secretary of state's?—I did.

"Did they not say, they should answer no

questions till they came before a proper authority?—They did.

“ Mr. William Twopenny.—Examined by Mr. Adam.

“ Do you remember a great coat being brought down?—I do.

“ Did any conversation pass?—They were severally asked which of them it belonged to? they all denied its belonging to either of them.

“ Did they say any thing about the baggage which was in the parlour?—They denied that also.

“ Did you see Mrs. Cricket, the mistress of the house, there?—Yes.

“ In the presence of the prisoners?—Yes; I desired they might be brought.

“ What did she say with respect to the baggage of the prisoners?—She said the baggage came with them: I wanted her to discriminate which baggage belonged to each; she could not.

“ This was in the presence of the prisoners?—Yes.

“ Was the great coat particularly asked about?—It was; she said that likewise came with them.

“ Were you present when any thing was taken out of the pocket?—I think they were in the act of taking them out at the moment.

“ Where did you go to, from the King's Head?—To Benson's hotel.

“ When you were at Benson's hotel, did Mr. Revett take the handkerchief out of his pocket?—He did, from whence he had put it.

“ What did you find in that handkerchief?—A pocket-book.

“ Did you open that pocket-book?—I did.

“ Look at that pocket-book; is that the pocket-book?—It is.

“ Look at that paper; did you find that paper in the pocket-book?—I did.

“ Did you read it at the time?—I did several times. I read it first to myself, in order to know what the contents were; and upon discovering what the contents were, I then read it to them.

“ In what manner did you find it in the pocket-book?—There was some writing paper in the pocket-book, and this was in the writing paper; the top of the writing-paper was pressed down like a sheet of paper folded together, and the upper part was rather bent over it, so as to contain this paper within; so that, if I had taken that paper out by itself, this would not have appeared.

“ Was it blank paper?—It was; at least I did not see any writing upon it: this was in one of the folds of it, not directly in the middle; this part was bent over it, so that it was confined.

“ You are quite sure this is the same paper?—Yes, I am.

“ Mr. William Twopenny cross-examined by Mr. Plumer.

“ What room did they first go into, when they came into the King's head?—A parlour below stairs.

“ At that time had they got the great coat below stairs?—Yes; I never went any farther into the house.

“ In whose possession was it, when you first saw it?—Revett's.

“ Below stairs?—Yes.

“ Was any thing taken out of it in the presence of the prisoners?—I think the things were then taking out, in the instant, in the parlour.

“ When the prisoners were present?—The prisoners were then present; they were then, I think, either in the act of taking them out, or had just taken them out.

“ But you saw them taken out of the great coat pocket, in the parlour below stairs, in the presence of the prisoners?—Yes.

“ That you are positive of, are you?—In the way I state it, I am certain of it.

“ You are positive that that pocket-book in particular was produced in the parlour below stairs, when the prisoners were present?—Yes; and the things were put into the handkerchief upon the table.

“ Did you go with these two persons, Revett and Fugion, into any other room?—Not in that house.

“ Did you go into a room with them, when nobody else was present at any other house?—At Benson's hotel.

“ Ann Cricket.—Examined by the Attorney General.

“ They (the prisoners) slept at your house that night?—Yes.

“ Had you any other guests that night?—No other strangers in the house.

“ Did any other strangers come in as guests before these persons were apprehended the next morning?—Nobody else but the town's people.

“ Did any body else that had baggage come in besides these three gentlemen, and their two servants, till they were apprehended?—None else.

“ Just look at that great coat; does it belong to any of your family, or any body else that you know any thing of?—It is not my property, nor the property of any body that I know.

“ Jane Dexter.—Examined by the Solicitor General.

“ You are sister to Mrs. Cricket?—Yes.

“ You live with her?—Yes.

“ Do you remember any gentlemen coming into your house on Tuesday, the 27th of February?—Yes.

“ Was any thing said to you about the baggage?—No.

“ Had you any other guests in the house that night?—None.

"You did not see any baggage that belonged to any other persons?—No.

"You had no other guests in the house?—No, nobody

"Do you remember seeing a great coat with a black collar?—No, I do not.

"Did that [showing the coat on the table] belong to any of the family?—No.

"Did you see it when the officer came in?—I did not.

"Richard Smith.—Examined by Mr. Garrow.

"I believe you are master of the Thomas and Stephen hoy, from London to Whitstable?—Yes.

"Do you remember, upon the evening of Saturday, the 24th of February, any places being engaged in your hoy, for the next morning?—There were some packages came on board about ten o'clock in the evening of Saturday.

"Did, the next morning, any person who is now here come to your hoy?—Yes, those four [pointing to the prisoners].

"Did either of the persons who were your passengers upon that trip, wear a great-coat with a black collar?—I think I can tell the man that wore that coat.

"Who wore that coat?—The stout gentleman, O'Coigly, had that coat on, and he wore a hairy cap.

"A cap of that sort? [showing it to the witness]—Yes; a cap of that sort, and a great coat of this kind.

"You have seen the great coat since these persons were apprehended?—Yes.

"Did you know it to be the great coat O'Coigly wore in that trip?—Yes; and I have two pieces I cut out of it.

"Richard Smith cross-examined by Mr. Dallas.

"When did you mark that great coat?—When I was in London.

"How long was that after Mr. O'Coigly was on board the hoy?—I cannot say, rightly.

"Was not that great coat produced to you by some person in London, as the great coat that Mr. O'Coigly had in the hoy?—It was brought to me to say whether it was?

"Was it not brought to the house where you were, to ask you, whether that was the great coat Mr. O'Coigly had in the hoy?—Yes.

"Was it produced to you singly, or with any other great coats?—It was in the room when I went in.

"What place in London was it where you saw this great-coat in the room, and pitched upon it as the one Mr. O'Coigly had worn?—The secretary of state's office.

"As soon as you saw it, did you fix upon that as the one he wore?—Yes; and told the gentlemen there so.

VOL. XXVII.

"Henry Thompsett.—Examined by the Attorney General.

"What time did you set out from Whitstable?—A quarter before seven in the morning.

"At what time did you arrive at Margate? About four in the afternoon; we stopped on the road to breakfast at Mrs. Raddon's, at a place called Sarr.

"Was that on the Tuesday?—Tuesday morning.

"Did captain Jones go with you?—He and the two servants walked along-side the cart, all the way; we got to Margate about four.

"Had you any other conversation with the captain, in your way from Whitstable to Margate?—After we left Sarr, captain Jones asked me, what business I was? I told him, I was a trader, and lived about forty miles from the place where I was then: I told him, the people at Whitstable were all in a boggle about him.

"What did you mean by that expression?—All in confusion to know where he was going; that they were in a mistrust about him, about where he was going.

"Do you recollect what sort of baggage it was you took in your cart?—Yes, this is some of the luggage.

"Do you recollect any thing in particular?—Yes; that box captain Jones told me to take great care of, particularly, and a coat that was tied up, when we breakfasted, he ordered me to take the coat out of the cart into the parlour; I gave it to the person that stands behind him, that acted as his servant; he took it in the parlour.

"Should you know the coat again, if you saw it?—It was something like one of these coats; it was tied up with a tea-chest in it.

"Henry Thompsett cross-examined by Mr. Dallas.

"You told captain Jones, on the way to Margate, that the people at Whitstable were in a state of distrust about him?—I did."

I have set this evidence in array against the prisoner, with all the strength it derives from being thus compact, and stript of all comment on my part, as well as all other matter either uttered by these witnesses or by other witnesses that might tend to weaken it; for the purpose of considering what would be the effect, if every word of it were true.

It is to be observed of this evidence, that it consists of two members, namely, proof as to the property of the great coat, and proof as to the custody of the paper in its pocket. That the coat was the property of the prisoner, is proved by nobody in a positive manner—not one! Smith is the only person who pretends to have seen Coigly with a great coat on; and he says—it was a coat of the same kind as that produced in court. This in itself is only presumption, and all the other evidence to

Q

that point is *presumption*, even of a less degree.

But if the coat were proved by *positive* evidence to be Coigly's, how stands the proof of the custody of the paper in its pocket? It rests solely upon the credibility of Revett. He was alone in the breakfast-room when he seized upon the great coat. Observe what he says:—

"Mr. Plumer.—Who did you find in the room up stairs, where you found this great-coat, when you took the great-coat down stairs?—*I do not think any body was in the room at that time. I had seen it in the room.*

"But you had left the room, and when you came back into the room, you found the door open, and nobody then was in the room, but the great coat was lying upon the chair?—*Just so.*"

Supposing now that Revett took the paper out of the pocket of the coat in the parlour, as stated by himself and Fugion, and I believe, by Mr. Twopenny (for there is some obscurity in his evidence as to that point), yet it does not necessarily follow, that he found the paper there; since he acted in such a manner as to have had an opportunity of putting something secretly into its pocket.

But although I say that the custody of the paper in the great-coat pocket rests solely upon the credibility of Revett, yet at this moment I mean to argue as if his evidence, as well as the evidence of all the other witnesses, were true; and then, I say, there is a want of *positive* proof to trace the paper into Coigly's possession, because Smith does not swear he is sure Coigly wore that very coat in whose pocket Revett says he found the paper. He does not even say it is his *opinion* that he wore the coat then in the Court, but he *thinks* he can tell the man that wore a coat of *that kind*, and he fixes upon Mr. Coigly.

So much for the *certainty* of this evidence! Let us look now at the degree of *presumption* it raises against the prisoner. And we naturally begin with Revett's story.

There are two things that are very dark, and that require a great deal of explanation, in his account of his conduct. It is necessary to remind the reader, that Revett is a Bow-street officer, and (as he acknowledges in his evidence) had been, at this period, in that situation about three years; and consequently was not wholly a novice in his employment. How then did it happen, that this man saw a great coat in the room with the prisoner, and which he supposed to belong to him, and that he left it, notwithstanding, in the room when he conducted the prisoner down stairs? The coat and every thing belonging to the prisoner would be objects of his attention and suspicion, not in consequence of after-thought, but instantly, by the habits of his office. It appears, by this account, that the coat was abandoned by this vigilant officer, to be removed by accident or design, the house being full of persons, some of whom

might have been accomplices of the prisoner; for when he returned to take the coat, there was no person in the room, consequently no precaution taken against its removal. But this is not the whole of this suspicious matter. He remained in the room while Coigly breakfasted, and he had seen the coat when he first went into the room. How came he to sit so patiently, eager (it is to be remembered) after every proof of the prisoner's guilt, without examining the coat, *having already examined the person of the prisoner?*

But if this very extraordinary neglect were explained, there is a second matter that seems inconsistent with the neglect, and that in itself creates a great deal of difficulty. Revett, Fugion, and Twopenny, all state, that the former asked the prisoners severally, to whom the coat belonged? The counsel for the crown took care that it should be fully understood, that every one of the prisoners was asked, to whom it belonged, meaning to raise a presumption of guilt upon their denial of the coat. Revett says, he asked the question, *as soon as he took the coat into the parlour.* What made him so anxious to know the owner of that coat, *which he had so grossly neglected, so absolutely, in fact, abandoned?* Was it the knowledge of its containing the treasonable paper? No. For it was expressly asked (by Mr. Plumer)—"Had you at that time" (*that is, when he asked to whom the coat belonged*) "examined whether there was any thing in the great-coat pocket?" and he answers, "*I had not.*" What accounts for this anxiety to know the owner of the coat?—an anxiety the more surprising, because all the baggage had already been denied by all the prisoners generally, and therefore there appeared no particular motive for asking any questions about this coat.

The evidence of Fugion and Twopenny is meant to corroborate that of Revett, respecting the finding of the paper in the pocket of the coat. Fugion's evidence is very inconsiderable. He saw a great-coat in the breakfast-room where Coigly was arrested, but he did not observe the colour of the coat, and consequently was utterly ignorant even whether the coat Revett brought down, and from which he took the pocket-book and the paper, were the coat he had seen before or not. And as he was not in the breakfast-room when Revett took the coat, he is of course silent as to the important question, whether or not the paper were in the pocket of the coat at the time of Coigly's being arrested? Twopenny's evidence does not go so far as Fugion's on this head. He never saw the coat till it was in the parlour. Where the coat was found, or what was in it at the time of its being found, are all matters of which he has no knowledge.

But although Fugion and Twopenny prove little, I may say nothing, as to the *main* questions, of whose coat, and whose paper, these were; yet neither their *evidence*, nor

that of Revett, is to be overlooked. Both one and the other cast a shade, over the whole of the transactions at the King's-head, and at Benson's hotel, relative to the coat and the paper. There is a confusion in the three several relations, taking them as they ought to be taken,—as parts of one whole, that scarcely can belong to the relation of a real story. But beyond this, there are several variations in these depositions. Twopenny says, he “remembers a great-coat being brought down; and they (*the prisoners*) were severally asked which of them it belonged to.” There is an ambiguity in the former part of this sentence. He remembers a great coat being brought down; but whether that means, he remembers seeing it brought down, or takes that to be the fact from seeing it in the parlour and hearing that it had been brought down, is not clear. Yet it seems he meant to say the former, for he positively says—the prisoners were severally asked, in his presence, which of them the coat belonged to; and Revett and Fugion state that question to have been put “immediately on Revett's bringing it into the parlour.” Now that Twopenny saw the coat brought down is actually contradicted by himself a little farther on, for he says, both on his examination by Mr. Adam and his cross-examination by Mr. Plumer, that “the things either were in the act of being taken out of the pocket, or had just been taken out, when he first entered the parlour.” It is no matter at which of these periods Twopenny entered the room, for in neither case will the parts of this story properly unite; for Revett and Fugion state, that the question was put to the prisoners as to the owner of the great coat, which question Twopenny says was put in his presence, *before the things were taken out of the pocket!*

Revett and Fugion state the handkerchief, in which Revett had put the contents of the great coat pocket, to have been put by Revett into his *side* pocket; but Twopenny says, Revett took the handkerchief, when Revett, Fugion and himself were alone in a room in Benson's hotel, from his *pocket*; and it is certain that the word pocket used in that general way means the *ordinary* pocket of a coat, and not a *side* pocket, which (by the way) Revett explains to be an *inside* pocket; and Twopenny, on his cross-examination says it was Revett's coat-pocket, having in his examination in chief said, it was his pocket, but both times certainly meaning his ordinary outside pocket, and not an *inside* pocket.

Revett says, he heard *part* of the treasonable paper read by Twopenny, in the presence of Fugion; Fugion says, he heard Twopenny read *the paper* (not *part*) and read it himself; and Twopenny says, having discovered the contents of the paper, he read it to Revett and Fugion.

These variations may appear to some to be slight and unimportant; but I cannot conceive them to be so, in this suspicious story. If a

tale were fabricated by several persons, for any purpose, it is to be supposed they would not very grossly differ in the relation of it. In the great outlines they would agree, those being objects of their common passion and immediate attention; but in the little circumstances that attend the tale, there would be a danger of variation amongst the accomplices. This is the nature of such a thing; and it is fit to consider these variations, whatever be the conclusion drawn from them.

But Mr. Twopenny volunteers the detail of a circumstance, on which the other two are silent. He says, the treasonable paper was concealed in the folds of some writing paper, so that, had he taken out the latter by itself (I suppose he means without suspicion or scrutiny) the former could not have appeared. It is surprising that this circumstance (which Twopenny thought of importance enough, not only to be minutely detailed, but carefully described and explained) should not have been corroborated by the other two! It would have been thought officious in them, I grant, to volunteer this fact with Mr. Twopenny. But did it not look officious in Mr. Twopenny? He had said, he took the treasonable paper out of the pocket-book, and that plain fact did not want *bolstering* up (to use the phrase applied to the mending of suspicious evidence) by this curious circumstance. But it was stated to show the careful custody and the concealment of the paper. No doubt; Mr. Twopenny could not overlook its tendency. But Mr. Twopenny has something to explain to us, or rather we have contradictory facts to reconcile. How are this care and concealment consistent with the prisoner's total carelessness about this paper (if it ever was in his possession) in all things but this, which could be of no use till the pocket-book fell into adverse hands, and which then could only be a safeguard against a very slovenly search, and such a search as was not to be expected from any adversary?

The evidence of Smith (the master of the Whitstable hoy) which is meant to prove the property of the great coat, involves the matter in more obscurity and difficulty, than that in which it is left by the story of the three gentlemen who detail the affair at Margate. Mr. Smith noticed the dress of Coigly, when he was on board his hoy, so particularly, as to form an opinion that the great coat he wore was like one shown to him first at the secretary of state's office, and afterward in the Court. Very well. He had entertained suspicions of his passengers on that occasion, and it was natural he should notice them. But then he would give a simple account of the coat, at every place and time of his being questioned about it. Let us see his account. He says, he *thinks* he can tell the man that wore a coat of the *same kind* as that shown to him in Court, and that was Coigly.—This is his account, in answer to questions put to him by Mr. Garrow. On his cross-examination, he says, he “no sooner saw the coat at the se-

cretary of state's office, than"—what?—"he fixed upon it as the one Coigly wore." Supposing Coigly to have worn a great coat in the boy (and it is always to be remembered, that it is in evidence that he had a spencer with him) almost any such man as Smith is, in Smith's situation, would have been as eager as he was to identify the coat; for he would feel an irresistible sympathy with the wishes of the gentlemen at the secretary of state's office, when they showed him the coat, and stood eager for his answer. It is common for a poor man to sympathise with the feelings and wishes of his betters, and more especially when he is in their presence. But the question is, how does this sure conviction at the secretary of state's office, as to the identity of the coat, agree with the coiners of his opinion in the Court?

But there remains a more extraordinary difficulty arising out of the facts, if they are to be credited, of this man's evidence. Why were not all the hoymen produced to prove that Coigly wore that coat, or at least, a coat like it? Why was not one of them produced? Indeed, I say again, if this story be true, why were not *all* the hoymen produced? There were three, beside the master. In the name of that poor man who suffered on this evidence, for the sake of his mangled character—be it beyond our reach—for the sake of that mangled character, I ask, why was not the evidence of Smith corroborated by the other hoymen?

But the doubt excited by the absence of the hoymen on the trial, accompanies us farther into the matter. Smith states that Coigly and O'Connor went ashore immediately on the arrival of the boy at Whitstable, and directly to the inn, the Bear and Key, there; and Perkins (the landlord of the inn) says, he saw them arrive at his house, about four in the afternoon. Did Coigly put off his great coat as soon as he came to Whitstable, and before he went into the inn? Does that appear? No. And it is not likely he should pull it off to carry it on his arm. Then the people of the inn must have seen this great coat on his back. Why were none of them called, not even Perkins, to substantiate Smith's evidence? Let these questions be answered, or let Smith's evidence be expunged, while my reader, while the country and posterity, decide upon the justice of this poor man's fate.

I do not at present touch upon Perkins's evidence, tending as it does to show the improbability of the prisoner's possession of the paper, because I wish to see the genuine effect of the stronger part of the crown evidence, standing alone, and unimpeached but by itself. Thomssett's evidence comes to add to this mass of surprising events. He is the person who conveyed the baggage of the several prisoners from Whitstable to Margate; and he says, Coigly told him take *great care* of a box, and a coat *that was tied up*, and when they breakfasted (on the road) Coigly

ordered him to take the coat out of the cart into the parlour. And he says, the coat was something like one of the coats before him in the Court. If Coigly was carrying the paper to the government of France, and had deposited it in the pocket of his great coat, that he should be so uncommonly anxious about the coat is not at all suprising. But the supposition is not to be taken for granted, and then where is the probability of this uncommon care of a great coat? Indeed, the story has a difficulty either way, not easily disposed of. On the supposition of the paper being a serious paper, and in the pocket of the great coat, it is matter of astonishment that Coigly should for a moment have put the coat into the custody of the carrier, especially after what had so very recently passed at Whitstable; and if he had no such paper in it, his anxiety about his great coat is extremely improbable. But after all this anxiety, and Thomssett's perceiving it, and his consequent care of the coat, this witness speaks with great dryness about its identity when he comes into court.—"It was (in his apprehension) something like one of the coats then lying before him on the table."

Would any dispassionate man suppose we were talking of evidence in a trial which affected the prisoner's life? But this is a trial of that kind, from which the law has been anxious, most anxious, to shut out, and for ever to exclude all presumptive evidence, however clear and cogent as such. Then what is this we have been talking of? Does it amount to strong presumptive evidence? Has it the validity even of that of which the law says, *it is too weak in cases of high treason?*

I admit there remains another proof of the prisoner's possession of the paper, of a nature very different from the vague stories respecting the property of the great coat and the finding of the paper in its pocket. This is the production of certain papers, by the crown lawyers, purporting to be papers relative to the ordination of Mr. Coigly, accompanied by evidence of their being found in the pocket-book with the treasonable paper. If these papers were Coigly's, and the treasonable paper found in company with them, these facts amount to strong presumptive evidence, I may say very strong presumptive evidence of his possession of the latter paper. But the crown must take this evidence with all its disadvantages. To bring it home to the prisoner, it was necessary to authenticate the papers of ordination, and to show whose papers they were. I do not now speak of the veracity of Revett, on whose testimony rests every thing that concerns the finding of any of the papers in the coat-pocket, but of the authenticity of these papers, if they were actually found in a coat-pocket belonging to Coigly. What has he to do with those papers? They include no inherent infallible mark of being his. And it is to be observed throughout the whole of this case, that I have a right to examine this trial by the rules of evidence established by

this country for its evidence in cases of high treason, and am not to be bound down by practices fit only for tribunals, in reprobating and abjuring of which we are all in this country unanimous. I grant the papers of ordination contain in themselves strong presumptive proof of their authenticity. But it did not the less behove the crown lawyers to show by other and extraneous evidence that they belonged to Coigly. Without that, they were not his, in the place where he stood, before a jury of his country. If the rules of evidence imposed upon us by the law be unwisely framed, let the legislature correct them. But as they were not corrected previous to this trial, let each of us inquire for himself, if the evidence offered by the crown to criminate Coigly, proceeded according to the letter or the spirit of those rules. What is the language of the crown lawyers as to this point? It says, "I prove to you that the treasonable paper was found in the pocket of a coat which was found in the room where Coigly was arrested, and that affords a *presumption* that the paper was Coigly's; but I go farther, I raise by a series of witnesses, a *presumption* that the coat was Coigly's; but I do not rest here, I would make the matter sure, and I prove (by the same evidence that proved the finding of the treasonable paper in the coat-pocket) that the treasonable paper was found in company with papers which from their internal evidence may be *presumed* to be Coigly's, and this I maintain to be *positive* proof of the prisoner's possession of the treasonable paper."

I can make no more of the crown evidence, as far as respects the possession of the paper, than this. If the attorney-general in his speeches, or the judge who presided on the bench and summed up the evidence, have made any thing more of it, I beg the reader to impute my mistake to my dulness, for I protest to him my ingenuity cannot screw it up to any higher pitch.

Let us pause, and look at the situation of the crown-lawyers at this moment. They had either proved the prisoner's possession of the paper, or they had failed in their proof of that fact. If they had failed, the indictment still opened a road to them to prove by other means that he was the bearer of the advice and information contained in the paper, or any other advice or information, or any kind of assistance to the government of France, in order to stir up an invasion of this country. But as they offered no proof, unconnected with the paper, of such an overt act, we have now a right to say, there was an end to their case the moment they failed to prove the prisoner's possession of the paper.

On the other hand, if the crown lawyers had made out the prisoner's possession of the treasonable paper, it is not to be taken for granted, that they had *consequently* made any, even the smallest, progress towards a proof of the prisoner's intention in holding the paper. The possession was a lonely fact,

when they had proceeded so far as to make it out, but no farther, that did not in itself afford even a *presumption* of the prisoner's intention. The crown-lawyers had still the entire proof of the traitorous purpose to begin and complete.

But before we proceed to examine the evidence upon which the crown-lawyers at last assumed the fact of the traitorous purpose of Coigly in holding the paper, having previously assumed the fact of his holding it, I have to guard my reader against an error he may very easily fall into. He may suppose that there can be no dispute, as there seemed to be none on the trial, respecting the law of the case. But I have some observations to make on that head, which appear to me to affect every motive and argument on which the attorney-general demanded a verdict of guilty of the jury.

The attorney-general in his reply congratulated himself on the situation in which he then stood as to the law of the case; but I think he was too bold, and mistook his ground. I will quote his words, for there is otherwise no way of doing them justice: "With respect to the law in this case, upon the nature of the overt acts, I think I am entitled to repeat again, what I stated in the outset of this business, that we could have no dispute about it; as to the offence of compassing the king's death, the offence of adhering to the king's enemies, and the offence of inviting those enemies to enter the country; I stated them to be in law of such a nature that it is unquestionable, and for that reason it has not been questioned; when I so express myself, I desire not to be understood to mean that it would have been improperly called in question, if it could have been questioned, but it has not been, and could not be questioned, that if the overt acts of those treasons, as laid, are proved in fact, they are, in point of law, each, and every of them, such overt acts, as will support the charge made upon the statutes, upon which the indictment for those offences proceeds; I do not therefore trouble you with one word more upon the law of the case."

The three different kinds of treason charged in the indictment were accurately enough defined by the attorney-general. No constructive treason, nor any new kind was conjured up by him in a palpable form of treason. So far I am agreed with the attorney-general. But *constructive treason* may be brought home to my door, and inclose me to the peril of my life, in the unsuspected shape of *overt acts* and *evidence* of treason, after the attorney-general and I have agreed on our definition of the treason with which I am charged. There may be such things as *constructive overt acts* of treason, and *constructive evidence* of real overt acts of treason. The crown lawyers can travel to their object by narrow and indirect paths when the high-road is shut upon them.

Not one of the overt acts stated in the in-

dictment in this trial is an overt act of high-treason in itself, and containing in itself the traitorous purpose. The treating for the hire of boats to go to France, the devising the means at Margate of going to France, the custody of the treasonable paper, are all innocent acts, or are offences of a different kind from that of treason, if criminal; and are overt acts of treason only when they proceed from a traitorous purpose, and are proved to be of that nature by evidence foreign to themselves. But suppose those facts to be charged upon me as being committed with a traitorous purpose, and therefore overt acts of treason, and then to be proved against me, and after that the traitorous purpose to be taken for granted as being included in the facts themselves, or presumed from other facts, and not manifestly proved by facts connected with them and indicating their nature in an incontrovertible way, then, I say, a new treason is palmed upon me, through the means of *constructive overt acts* and *constructive evidence*; and that which is the most detestable part of the injury done me is, that I have the old definition of treason given me, at the outset and close of my trial, by the crown-lawyers.

It is true the attorney-general has two words in the sentence I have quoted, that seem to be a *subterfuge* against the charge of imposing new treasons upon us in the form of presumptive overt acts or presumptive evidence. He says, "If the overt acts of those treasons, *as laid*, are proved in fact, they are, in point of law, each, and every of them, such overt acts as will support the charge made upon the statutes upon which the indictment for these offences proceeds." The words, *as laid*, exclude, I am aware, the presumptive overt acts, because in the indictment the overt act is always laid as being committed with the traitorous purpose, and if it be proved *as laid*, the traitorous purpose is proved. But an indictment is considered as an excrescence by the crown lawyers the moment the bill is found, and is in the Court only to mock the prisoner. And the question in this case is, if the words, "*as laid*," were ever adverted to by the attorney-general, after they had answered their purpose in that sentence? It is vain now to form a wish for the unfortunate man who died upon this indictment, yet I cannot refrain from wishing that those words, from the moment they were spoken by the attorney-general to the end of his reply, had been placed before his eyes, like the hand-writing on the wall before *Belshazzar*, to deter him from trampling on their meaning in his subsequent application of the evidence.

There is an ambiguity in the essential part of this quotation, tending directly to mislead the jury: "If (says the attorney-general) the overt acts of those treasons, *as laid*, are proved in fact, they are in point of law, each, and every of them, such overt acts as will support the charge made upon the statutes upon which the indictment proceeds." The words, "*as*

laid," are not explained as they ought to have been by the attorney-general, in such plain and distinct terms that the jury could not afterwards mistake his subsequent proposition, that the overt acts in the indictment, if proved in fact, are in point of law, such overt acts as will support the charge. The manner in which those overt acts are laid, and were obliged to be laid (no thanks to the attorney-general) to give a legal existence to the indictment, is with the traitorous purpose inseparably annexed. To prove them therefore, *as laid*, is to accompany the proof of the facts that constitute the overt acts with the proof of the fact of the traitorous purpose. But the ordinary usage of language would easily, very easily, mislead the jury into a conclusion that the proposition of the attorney-general was, that the bare and simple acts stated in the indictment as overt acts of treason were, if their existence were proved, such overt acts as would support the charge, that is, would in themselves prove the crime of treason. When the attorney-general stated that certain overt acts, if proved in fact, would have the effect which he maintains, was it not to be expected that unlettered men would understand his meaning to be, "if those simple facts be made out, my conclusion follows, and the intention is a legal inference that I have a right to state to you as being made out by the proof of the facts?"—What was the source of this ambiguity, I do not presume to say. But the ambiguity is there, and made part of the danger, and perhaps part of the mischief of this case.

But this is only an inferior instance of the mode of insinuating new treasons, in the form of *presumptions slipped into the re-statement of overt acts and recapitulation of evidence*. The whole reasoning of the attorney-general in his reply, is a mass that consists of nothing beside these presumptions, if we take away some barren propositions of law, expressed in very slovenly and ambiguous language. We have seen the attorney-general's statement and exposition of the law of overt acts, which I think is sufficiently ambiguous; and perhaps the statement of the principles of evidence contained in the following extract from his reply, if taken with his subsequent neglect of those principles, of which I shall completely convict him, will show what I mean by the barrenness of his propositions of law, and may also add something to the proof of his ambiguity.

"Gentlemen (he says) having stated to you the nature of the indictment, and having troubled you for the present with these short observations upon the defence which has been made by the evidence on the part of the prisoners, you will allow me here to apply myself for a moment to consider those principles of evidence, which my learned friends have, each and every of them, insisted upon, as being those which are to govern your minds, when you come to apply the facts of this case to the

law of the country; and I am extremely ready to state with them, in the broadest terms, that your consciences must be perfectly satisfied by cogent evidence, and satisfied too by that species of formal evidence which the law of the country requires to be given in this kind of case, that the defendants are guilty of what is imputed to them, before you can convict. Gentlemen, I am confident that no man in this country would dare to ask you to convict them upon any evidence, short of that which does fully satisfy your consciences; and here I take the opportunity to beseech of you, on behalf of the country, and on behalf of the prisoners who are part of the country, in whose fate the country is deeply interested, that your verdict should be according to the evidence, that you will now address yourselves to consider the whole of the evidence which has been given, and that you will now most anxiously endeavour to execute the duty which you have solemnly imposed upon yourselves, by the oath which you have taken, to make a true deliverance between the king and the prisoners at the bar. Gentlemen, I go as far as any man in beseeching you, by every consideration that can be pressed home to your consciences, that if any means whatsoever have been taken to create any prejudices, you will be pleased to recollect, that in my humble judgment there is not a man among you who is qualified to execute that duty which the law imposes upon you, who has ventured to form an opinion upon this evidence, till the very moment that you have heard the whole of it, and the whole that is said upon it. Having heard the whole, you should then conscientiously review the whole; and I trust, I am addressing myself to twelve men, none of whom have formed their opinion, declared their opinion, or stated their opinion, even at this instant."

I record these words against the attorney-general, and I wish they could reach every jury that is hereafter to sit upon a question of life or death, in which he is to address them; for, his appeal to the rectitude of the jury is never to be forgotten by jurors who in any time to come shall sit upon his indictments, whatever disregard of it may be found in his arguments or conduct.

But as these words are connected with my present subject, I ask, what is this exposition of the principles of evidence? "Your consciences (he says) must be perfectly satisfied by cogent evidence, and satisfied too by that species of formal evidence which the law of the country requires to be given in this kind of case, that the defendants are guilty of what is imputed to them, before you can convict."

We have words here that will include, when they are explained, the species of evidence demanded by the law in this case. But what are they without such explanation? Why did not the attorney-general give the jury his notion of cogent and formal evidence, to accompany this exposition of the principles of

evidence? What would be cogent with one man would be contemptible with another; and what would be formal in the eyes of an unlettered jury would be informal in the sense and spirit of the law. The attorney-general will say, the words had already been explained by those gentlemen whose duty it was to explain them. But I will tell him, it was also his duty to illustrate them, when he was stating this most important proposition, by plain, explicit, intelligible terms. And this was not merely a duty laid upon him by the sacred trust reposed in him by his office of public accuser, but one which he expressly assumed and adopted in declarations almost immediately preceding this ambiguous barren exposition of the principles of evidence.

What, in fact, would an attorney-general do, if his wish were to impose false principles of evidence upon a jury? Would he plainly state his false principles, and maintain them as principles of law? No, certainly! If he knew something of the human mind, he would not even insinuate them in words; but having stated the true principles of evidence in general, ambiguous, unimpressive words, he would apply his false principles at every step to every particle of his evidence. We have seen the attorney-general commence this career, we have still to see how it is to be finished by him.

But what the attorney-general would not do, it becomes us to do, and that is, to accompany every part of the evidence with a retrospect to the principles of evidence. And it is the more necessary at every step we now take, because the intention in holding the paper, supposing the fact of the custody of it to be proved, is the soul of the charge, and because proof of intention is of a very subtle nature, if we depart from what may be called the facts of intention. *Legal proof* of that which is ordinary language is called *matter of fact*, in such as makes it manifest to every understanding, if the witnesses be credited; and *legal proof* of the *intention* is such as makes out the design of the agent as manifestly and *consequently*, if the facts be believed.

When we come to look for the evidence of the *traitorous purpose*, the crown-lawyers disappear. They were as active as the sharpest motives could make men on any occasion, when they produced their evidence of the prisoner's possession of the paper. Why, then, do they recede when they come to the *proof that makes the whole of their case*? I see but two reasons, to account for the bustle of the former part, and the stillness and apparent reserve of the latter. I can suppose, they perceived that the proof of the possession was not only the most feasible part of the story, but that it would have to stand almost alone to make out the traitorous purpose. Then, both their activity and their subsequent calm is understood. Defective in the proof of the *traitorous purpose*, instinct would lead them to put the charge upon the jury, and make

the proof of the possession evidence of every part of the charge.

It is, however, a very extraordinary circumstance, and, considering how the most defective of cases steal into the place of precedents, a very alarming circumstance, that not *one scrap of direct proof* of the traitorous purpose is to be found in the whole body of the evidence. I am persuaded that no man of plain understanding and upright thoughts on the subject knows where to look for *any proof* of the intention after he has attentively perused the whole of the crown-evidence. All that I have discovered, in searching for it every where to discuss its merits, I have found in the attorney-general's reply and the judge's summing up, in neither of which places ought it ever to have been found, if not legible beforehand in the body of the evidence. But this proof, illegitimate and alien as it is, I am willing to take as proof whose intrinsic merit may be cast into the scale of the prosecution.

The proof of the traitorous purpose which I find most closely urged by the attorney-general is, the possession of the paper, taken with its internal evidence of its origin and destination. I am really putting the argument of the attorney-general too strongly, for he relies very confidently on the simple fact of the possession of the paper, and that sometimes in opposition to its internal evidence of every kind. "Gentlemen (he says in his reply) *if that paper was in his possession, surely I should be thought to waste the time of a British jury, if I was to follow my learned friend through the great variety of observations which he made upon the contents of it.*" Here the possession of the paper is insisted upon as proof of so cogent a nature, as even to supercede all necessity of commenting on its contents. In another part, farther on in the reply, the attorney-general says: "If it does exist (speaking of the secret committee) then O'Coigly having the paper, addressed from that committee to the Executive Directory of France, and meant to be delivered to them, *in his possession*, he knowing the contents of it, is unquestionably guilty of an overt act of high-treason." Here the attorney-general qualifies his former proposition with the condition of the prisoner's knowledge of the contents of the paper; but as to that, I shall be able to meet his assertions in every shape, whether they be more or less presuming. Then, to regard the spirit of this last passage, it maintains, that the fact of the possession of the treasonable paper, accompanied with the knowledge of its contents, is an overt act of treason; for the words "and meant to be delivered to them," do not qualify the possession with that condition, that the *possessor of the paper* meant to deliver it, but plainly refer to the *designs of the committee.*

One is surprised to meet with such ignorance of human affairs as is betrayed in this proposition, even when it is taken as qualified in the second passage I have quoted. If we

were to lay aside the severity of the rules of legal evidence, and try this case as a speculative question in the closet, we should not be authorized to presume even the *coldest approbation* of a paper from the possession. It is a thing that happens to every man that has concerns with political life or literature, to have papers given to him which he puts into his pocket and never thinks of again. It happens even when not only the writer is disagreeable to the person to whom the paper is delivered, but when the sentiments of the very paper is discountenanced by him. We do not choose rudely to repel every projector who comes importunately to us with a paper, accompanied with propositions suitable to its contents. We have no way left but to take the paper, and either to destroy it afterward, or, which is a more usual thing, to let it remain neglected, with other papers for which, as for it, we have no manner of interest or affection. This is very natural conduct, though it may not be very correct. The attention we pay by habit to the feelings of others, even of those we dislike, if it be not an excuse for its insincerity, accounts for its prevalence. I am sure there is no man who has any acquaintance with the world, who does not know the frequency of this kind of possession of papers, unconnected with the possessor's designs, and often in opposition to his opinions.

Does this serious nature of a paper deter people from taking it in the way I have been stating? Some men it will deter, no doubt; but not all. Many of my readers will bear witness that they have had dangerous papers, in this manner, in their possession. I do not speak of treasonable papers (for as to the paper in question, it must form an exception of a very particular kind, if it were written as it purports to be written) but of such papers as are rendered dangerous by the temporary spirit and politics of the government. Brave and generous men do not nicely weigh how much danger they incur by innocent or indifferent actions, which derive all their danger from foreign circumstances, whose source and authority they are accustomed to despise.

So much for the doctrine (even in a loose question of the ordinary character of an action) that the possession of a paper is or can be evidence of the holder's approbation of its contents, or of his intention respecting its application.

But let us come to the severer task which was imposed upon the attorney-general, of making out this doctrine to be such legal matter as it became him to offer to a jury in a capital case.

The attorney-general, sometimes stating the proposition in one way, sometimes in another, connects it at length with the *internal evidence* of the origin and destination of the paper. "It is a paper (he says) addressed from the Secret Committee of England to the

Executive Directory of France; it purports upon the face of it, therefore, to be a paper to be delivered to the Executive Directory of France." And the judge, in summing up, takes the same view of the subject, only expresses the inference of the intention from the possession more plainly, for he says—"The direction was, 'The Secret Committee of England to the Executive Directory of France.' Had he (the judge is speaking of Coigly) got the letter in his custody, without knowing where he was to carry it? Is it possible a man could have such a letter and not know the address, or to whom he was to convey it?" Throughout the whole of the attorney general's argument, the possession of the paper, accompanied with a knowledge of its contents, is supposed necessarily to include an approbation of its contents. And the judge pushes the argument farther, for he expressly includes the knowledge of the contents in the fact of the possession.—"Is it possible (he says) a man could have such a letter and not know the address, or to whom he was to convey it?" There is something so inherently absurd in the more decent of these two propositions, that it is almost impossible to preserve its answer from appearing ridiculous for its simplicity. No one will say that Revett's having the custody of the paper in question with a knowledge of its contents, till he should deliver it up to proper persons in the course of his duty, was an overt act of treason. It will be said, that is an extreme case, and the case explains itself. But I answer, no. The possession cannot explain itself. The explanation is, that Revett is an officer of justice, who having seized the paper, is carrying it to a magistrate. But that explanation, if Revett were dragged before a jury who knew nothing of him or his office, would not appear without evidence foreign to the paper. The possession of the paper (accompanied, we will suppose, with a knowledge of its contents) is, in Revett's case, and in every other, an unmeaning fact, till it be explained by other evidence.

To make the prisoner's possession of the paper any part of a series of proofs, of his intention to convey it to the government of France, which was all it could be made, it was necessary to show by some external evidence that the paper itself was a genuine instrument, and that its sentiments and spirit were the prisoner's, either directly or by adoption from others. This would be necessary if the possession were the plainest fact ever made out against a prisoner; but in this case, where the evidence of the possession leaves us full of doubt, the proof of the reality of the paper as a serious instrument of treasonable purposes, and the proof of the fact of the prisoner's entertaining those treasonable purposes, are things which cannot be evaded by the crown-lawyers, without exciting a suspicion of the whole charge being an unfounded and wicked accusation. There is no occasion

VOL. XXVII.

to look into every possible event that might have furnished proof to this effect. The natural way at present is, to look at the indictment, because the crown-lawyers knew the kind of story they had to tell when they drew up the indictment, and into that we may fairly look for its outline.

When we turn to the indictment, we find a simple and intelligible story. The prisoner compassed the king's death, and adhered to the king's enemies, and compassed to invite a foreign enemy to invade this kingdom; and to effect one or all of these purposes, the prisoner conspired with others to raise rebellion in this kingdom, and procured and obtained the paper in question, and concealed and kept it in his custody with intent to convey it to the government of France.

When we come to the evidence, we ought to find a story corresponding with this in simplicity and clearness. What then is it? Do we find the evidence which makes the custody of the paper an intelligible fact? Do we find evidence of the conspiracy, or of the procuring and obtaining of the paper? Not a fragment! And here our confusion is complete. When we are asked by the crown-lawyers to assent to this proposition—"The prisoner's possession of the paper (inasmuch as you see that it is addressed from the Secret Committee of England to the Executive Directory of France) proves him to be the bearer of it to the government of France,"—we answer, "No; we did not distinctly perceive the fact of the possession, but if we grant you that, you have not given any character to the possession." If the same proposition were followed up with evidence of the conspiracy, and the procuring and obtaining the paper, as laid in the indictment, we should involuntarily answer, "Yes; we see a palpable character in the possession, we see the deed that makes it the prisoner's in the guilty sense of the word."

I know the crown-lawyers will say, they were not bound to prove all the overt acts of the indictment, it was enough if the traitorous purpose were made out by one or some of them. Very well! But I expect to find a plain story in the evidence, unfolded in some way chalked out in the indictment. Every thing talked of in the indictment is resolved at last (by the course of the crown-lawyers) into the nature and character of the prisoner's possession of the treasonable paper. Then, what road does the evidence take to explain that? The indictment had chalked out one of the plainest that could be devised—the conspiracy, and the procuring and obtaining of the paper. The crown-lawyers knew their own story when they pointed out this plain direct road to the character of the possession. Did they take it? Where is the conspiracy? Not in the evidence. Where is the procuring and obtaining of the paper? We may successfully look for that, as for the conspiracy, in every other part of the proceedings

P

of the crown-lawyers, but not in the evidence. In the evidence we see nothing of the reality of the paper as an instrument of treason, nothing of the manner of its coming into the prisoner's possession. Up to this point, at least, we find nothing in the evidence but a confused account of the prisoner's possession of the paper (taking every word of the evidence to that effect as proceeding from honest witnesses) and from this *half-proved* possession we are to infer, according to the attorney-general's doctrine of the possession, the remaining and *essential* part of the story—the *traitorous purpose*.

In the assertions and inferences of the attorney-general on this topic, we have a happy example (I mean a perfect one) of his method of reasoning. In his brief, taken from his own indictment, he finds the facts of the *conspiracy, and the procuring and obtaining of the treasonable paper*, which make a good figure in the story, and without which indeed it is an unmeaning collection of facts. But when he comes to his evidence, not a word appears concerning those strong circumstances. Then how does he conduct himself as to those facts, when he comes to his reply?—“*He leaves them out there also!*” will be answered by any man who has any feeling and conscience. But this is not the attorney-general's mode. He still argues obstinately from his brief, and avails himself of his last address to the jury to clear up his blurred case, by solemnly and laboriously restoring all its obliterated parts. “This paper (he says in his reply) is in its nature a *credential* of the man who carries it. It is a paper which, if conveyed by any man, and received from that man by the Executive Directory of France, would establish to the Executive Directory of France, that that man, without the aid of other papers, with the aid only of the intelligence and information that could be conveyed by him in conversation, might be received as able to make representations *for others*, upon the subject to which it relates. It would inform the Executive Directory that he was a person who came accredited by that Secret Committee, or that body of men who were supposed to speak their sentiments in that paper, and that he was a person with whom they might communicate with confidence upon the subjects contained in that paper.”

The proof of the traitorous purpose which, after the circumstance of the possession, appears to be most strongly pressed upon the jury by the attorney-general and the judge, is the fact of Coigly's having been in France and other foreign parts. The attorney-general in his reply says, “You have had evidence laid before you, which, being uncontradicted, I apprehend I have a right to state to be complete, that O'Coigly appears to have been in France, by the passport which has been produced, which is proved to have upon it his own name, in his own hand-writing, and in Holland and in Flanders.”—“He has not at all

accounted for the fact of his having been in France: he has not at all accounted for the fact of his being in Holland; he has not at all accounted for the fact of his having been in Flanders.” And the judge in his summing up says, “The next place we hear of him in, is in Holland: then he went to France; we hear of him at Paris.”—“The journey and the dates are proved by a passport, and found in a way which admits of no doubt as to him, because it not only describes him by name, and where going from place to place, but there is his hand-writing upon it.”—“The next thing is, what are the contents of that letter? ‘The citizen who now presents this to you, and who was the bearer of our sentiments before;’ sending it by the prisoner, if he were the person who had been in the course of carrying communications from England to France, makes it still stronger against him. Is that true? Does he appear to have been in the course of carrying correspondence before. The fact is allowed that he had been a great traveller into foreign parts; the passport proves that, and this also stands without any contradiction whatever; and he has travelled, they tell you, from place to place, within a very small distance of time, and none of these journies are accounted for.”*

It is not possible, I believe, to encounter any thing more disgusting than the meaning and spirit of these passages. But we must repress our feelings and go on. The prisoner has been in France, and Holland and Flanders, or, as the judge phrases it, he has been a great traveller into foreign parts. Well! is that treason?—No; but it is a proof of the traitorous purpose.—How? The treasonable paper contains these words: “*The citizen who now presents this to you, and who was the bearer of our sentiments before;*” and the prisoner has been in Holland, Flanders, and France, and has not accounted for that; who, therefore, could that bearer of their former sentiments be but the prisoner?

I treat this reasoning with such contempt, that I am careless about the fact on which it is founded, and am willing to admit that Coigly had been in France. But it is worthy our attention, as making part of the character of this trial, to see how this fact is made out on which is built an argument of such a complexion! “The fact is allowed (says the judge) that he has been a great traveller into foreign parts; *the passport proves that.*” But how is this passport, on which is built this travelling story, made out to be Coigly's? Is it found upon his person? No. In any part of his luggage? No. It is found in a trunk which the crown-lawyers *attempted to prove to be the property of John Binns*. They did not prove the trunk to be any person's property on earth; and if the passport had been found in the attorney-general's trunk, the presump-

* These quotations are from different parts of the summing up.—*Orig. Ed.*

tion of its being Coigly's would have been as good as in this story of Binns's trunk as far as that went! But the crown-lawyers will say they went a step farther. I acknowledge it; they did so; they put it upon evidence that ought to have been struck out of the judge's notes.* They put it upon the evidence of a spy of the government, who disgraced himself and his evidence in court. The passport had the name of James Coigly written on it, purporting to be written by the bearer of the passport, and Mr. Frederick Dutton swore the hand-writing of the words James Coigly to be the prisoner's. Let us hear Mr. Dutton's own account of himself, as given on his cross-examination.—He had never been a footman, but had been in the capacity of a servant, and worn a livery; he had been in the service of five masters; he had been dismissed the service of one of those for theft, and had lodged a criminal charge against another: he had been a witness against "one Kayne, a man who was executed, and against one Lowry, at the last Downpatrick assize;" he was not in the capacity of a servant when he first became a witness, he had ceased to be so a few months; he had never applied (he said in answer to questions of Mr. Plumer) "to be rewarded for his evidence in Ireland; he had not applied to Mr. Cook, the secretary of state, nor to the government, nor to Lord Carhampton, nor to any body, for a quarter-master's warrant;" but (questioned a little farther) he had written to Lord Carhampton about a quarter-master's warrant which had been promised to him, and which he got, having then the warrant in his pocket, and this application (in consequence of a promise already given to him) was after his first examination as a witness; he had bought stolen plate of a man, with an intention of informing against him and convicting him, yet took an oath of secrecy to the man, after which he laid an information against him and was evidence against him, and as to this transaction excused himself by stating, that he took the oath of secrecy on a book entitled "Reading made Easy."

Thus far the counsel for the prisoner proceeded in getting into the character of this man, from his own account of himself; but when they would have gone farther, and were proceeding to show, still by his own account of himself, that he was not only a common informer, but "a man of so infamous a character, that both his informations and his evidence in a court of justice had been rejected on that very account," then the man is protected by the Court, and the scrutiny into his character goes no farther. Without questioning in this place the propriety of that practice which steps between the prisoner and a hired witness, when the former is on the point of proving the latter an infamous

* Allowing the practice of judges striking out, at their pleasure, parts of their minutes of evidence, to be legal. *Orig. Ed.*

character, for the express purpose of screening a wicked man from the discredit due to him, and (as it inevitably happens in its consequence) for the purpose of laying before the jury evidence for the crown proceeding from a notoriously false mouth, and which is afterwards argued upon as evidence both by the crown-lawyers and the judge—without discussing that, I ask what is the case here? The counsel for the prisoner having got so far as to ask Mr. Dutton this question—"How many informations may you have laid in Ireland, in the course of the three or four last years?" receives this answer—"I could not say, upon my oath, exactly; but I really do not think I ever lodged ten!" Lodging criminal informations against men (some affecting their lives) is not so light a thing (although Mr. Dutton confessedly thinks ten a small number) as to be forgotten in any instance by the person employing himself in that way, except he had actually lodged so many as to have lost all account; so that Mr. Dutton must be taken either as a man who was answering the question *falsely, upon his oath*, or as one having such large transactions in the way of lodging informations, as not distinctly to remember their number, and therefore as a very *hacknied* spy of the government. But there was no occasion to press him to choose between the evils of this embarrassing alternative. Mr. Dutton's account of himself, as far as the bench would suffer us to get directly into it, is enough. Mr. Dutton is a man raised by the government of Ireland from the station of a common footman to the rank of quarter-master in the army in this way—after he had been a footman to several gentlemen, and was turned out of one service on a charge of theft, he suddenly ceases to be a servant, and hangs a man by his information and evidence, and then reminds a nobleman, who is a dependent of the government, that he had a quarter-master's place promised him, and receives the quarter-master's warrant. And it is not to be forgotten, that this man, in telling this story, denied several of the facts first, although he reluctantly owned them afterward; and indeed, denied his application for the quarter-master's warrant till a draught of his letter to Lord Carhampton on the subject, in his own hand-writing, was produced against him. On the evidence of this man then, of this spy, thus personally disgraced by himself, on evidence thus discredited by the witness himself, rests the fact of Coigly's travelling into foreign parts; and on this fact thus founded, the attorney-general and the judge unhesitatingly raise a proof of a traitorous purpose in his possession of the paper!

But the crown lawyers, by the mouth of Mr. Garrow, express astonishment and indignation to hear it 'stated as a ground of imputation to a witness, that he is one of those persons who are ignominiously called spies!' And, through the same mouth-piece, they

give the polite appellation to such persons of "gentlemen, who have been instrumental in advancing the public justice of the country." Mr. Garrow is not a dull man, but he is a bold one, and we must not rely upon him for an exposition of the law of the land. In this case, he overlooked a very plain distinction between the justice of the country and the cause of the minister. It may be a true proposition that spies are useful and necessary to the latter. In the affairs of government, as in all other affairs, when they come to be managed by a succession of temporary expedients, the most desperate expedient (and the most impolitic, taken in itself) may be useful and even inevitable in its turn; and at length spies may become necessary to the existence of a government. What then? It is to be hoped, the justice of the country is a thing of a more stable nature. The minister may impose upon us, in its name, something that may answer the description given by Mr. Garrow, including in it as a necessary ingredient the ministry of spies. But the JUSTICE OF THE COUNTRY disclaims them! The LAW demands credible witnesses. And a SPY, to be such, is a man who has fallen so low as to lose all scrupulous feeling, and therefore till the nature of things be altered, cannot be that credible witness the law demands.

A spy is a creature hired by the government, with immediate rewards and larger prospects, to watch the proceedings of a man obnoxious to his employers, in order to deliver him over to the penalties of the law, the infliction of which is the signal of his advancement. This is the most favourable point at which the remnant of his feeling and the absence of all extraordinary temptation can stop him. But we cannot trust to circumstances that they will not tempt him, nor to his feeling when he has proceeded so far that he will not be tempted, to go on. If it be in the pursuit of blood that he is employed, he will have so many vices to practise, that it is utterly incredible he should preserve feeling to arrest him in any part of the career leading to murder, when that should become necessary to his views. It is seldom in human habits to sin deeply, and at length to throw away the price of guilt for a qualm about the little more that may be required. The spy who is in the pursuit of blood, must practise so closely upon his victim, as first to destroy all his compassion for him, and next to beget a hatred of him; and then, unchecked by humanity, and goaded by malice and motives of rapine, I ask where it is probable he will stop? and where the credibility is in any case of his evidence? I know this is a supposition of so much guilt, as to be resisted by the common interest we all have in our courts of justice. But I am not talking of any fact that has happened in any trial, but of the nature of the system which brings a spy into a court to be evidence in a capital case. There is no corrective in the system to prevent the evil,

and if it has not yet proceeded to this last degree of infection, it is because the administration in adopting the system have not also adopted a system of judicial murder; but let them beware that in preparing men for the worst, which they do, they do not go farther than they wish, and make them the instruments of crimes they do not contemplate.

There are men, however, of whom we expect such language as this of Mr. Garrow, and there may be times in which we shall have no reason to look up to the Bench for its protection against such maxims. But though the crown lawyers may never forget what they are earning from an administration, nor judges what they owe to it, yet the JUSTICE OF THE COUNTRY has a safeguard in a JURY OF THE COUNTRY, and woe be to the jurymen who, betraying his trust, takes his eye from the LAW, which demands a credible witness, to look at maxims engendered in the offices of administration, and spawned in courts of justice by the influence of unworthy judges!

And, in despite of Mr. Garrow's defence of Mr. Dutton, I maintain this to be a bad symptom of the character of a trial for high-treason, that we have seriously and eagerly proffered to us a frivolous story of the prisoner's travelling into foreign parts, founded entirely on the evidence of such a man as Mr. Dutton, as a proof of the traitorous purpose.

But the prisoner was going to France with this paper addressed to the Directory in his possession, and that is another proof of the traitorous purpose. I grant he was going to France, and (for the present purpose) I grant with the paper in his possession. To this apparent coincidence of events, I will add that of his having been in France before, and the bearer of the paper being described as the bearer of a former paper to the same quarter, granting all that is not proved of these facts.—No person who is able to understand what is passing round him, will finally conclude on the character of these events farther than to say, "They are events of which at present we want the clue, and which of course, contain no evidence of the prisoner's guilt or innocence." But here we may see the source of the mistake of all those who were honest in their outcries against the prisoner. Struck with this apparent coincidence, they overlooked the real chasm between every event of the story made out by the crown and all its other events, and the consequential want of consistency and truth in the whole, which is its distinguishing character.

Have the crown lawyers any thing more, to eke out this ugly heap of broken materials?—Yes; the prisoner's denial of the great coat; the contradiction between his account of himself on his examination and facts that appeared on his trial; and the want of explanation of some circumstances on his part.

When I talk of the great-coat, I cannot forget that Smith's evidence, by which the property is proved, appears without foundation as long as it is unsupported by the other hoymen; but it saves time to permit an antagonist to presume a fact, when he gets no farther by the concession. The eagerness and singularity with which the question was put at Margate, as to the property of the coat, *after it had been out of the prisoner's possession*, does not leave the mind of a by-stander assured of the purity of the motives of those who put the question, and it was natural for the prisoner to deny the coat when questioned in that suspicious manner, if he and the other prisoners had not before denied the baggage generally. This is not a place to talk by *etiquette*; and of the Bow-street officers, it is to be said that no man whose life is at stake would depend on their honesty. I am sure the attorney-general would not. Then, the prisoner's denial of the coat was as natural in the case of his innocence as that of his guilt. I should leave this silly presumption without another word, for indeed, I am weary of combatting so many nothings, but for the temper I find in the comments of the attorney-general and the judge on this point. The attorney-general says, "He has the coat in the room with him, the pocket-book in the room with him, and you see the means of defence he has upon his person, the instrument which I now hold in my hand! (showing the dagger taken from the prisoner)—this pocket-book is seized; he refuses to give any account of it himself." Oh God! that a man, seeing the prisoner resign himself, without even a remonstrance to the arrest and search of his person, seeing him sit calmly down to his breakfast instantly afterward, and conducting himself temperately through every part of the transaction, should harden his mind to such a temper as daringly in the face of the jury, with the same things before their eyes, to make this comment on the mere fact of the prisoner's possession of a dagger, unused at the very time of its being wanted on the attorney-general's supposition, does raise my astonishment, much as I know of the profligacy of venal times!—But let us turn to something better, for such is the comment of the judge. He says, "Before the secretary of state he (*the prisoner*) denies that he had any great-coat. The fact that he had one is proved beyond all possibility of contradiction.* Can you suggest to yourselves any reason why he should deny he had any great-coat, if there was not something in that great-coat which he did not choose to have fixed upon him? I cannot suggest any other reason; and if there is no other reason for it, that becomes most important and material evidence." There was a *very strong* and a

* By one witness (*Smith*) and that not positively, supposing his evidence to be true. *Orig. Ed.*

very obvious reason in Revett's suspicious proclamation of the importance of the coat; and when the judge overlooked this reason, undoubtedly he overlooked *very very material matter in the prisoner's favour*, which it was his office to point out to the jury, and put in its place comments which would not have been correct had there not been (as there was) in the evidence an inherent and obvious explanation of the prisoner's denial of the coat consistent with his innocence.

The prisoner's denial of the coat, supposing it to be his, and his subsequent language on his examination, which stood contradicted by evidence on the trial, supposing such language ever to have been held, afford very slight presumptions of guilt, if they afford any. Examinations before the privy council in a case of high treason, are dangerous things for a jury to take as evidence. Questions are asked, by men practised in subtlety,* mingling facts that are true and innocent, with others true and equivocal in their nature, though not treasonable, and others again true and innocent in themselves and in the prisoner's apprehension, but overt acts of treason in connexion with plans which are ascribed to the prisoner. In such a case if a man answer (*and humanity forbid that any man, however innocent, may ever again do so while that INQUISITION lasts!*) it is not possible for him, by truth or falsehood, to extricate himself from proof which the attorney-general will lay before a jury as confidently as that which he inferred from Coigly's examination. Suppose, in the present instance, the coat and the paper were the prisoner's, and he had acknowledged the property of both before the privy council, then the attorney-general would have produced his own confession to prove his guilt. And yet, he might have been innocent! It is no matter whether the prisoner were innocent or guilty, as to this argument. If there could be a case in which he could have the custody of that paper without an intention of conveying it to the government of France, my argument is perfect, and the prisoner's denial of the coat, or any other language held by him in his examination before the privy council, however vehemently urged as proof, ought to have weighed very little, and indeed I am persuaded ought not to have weighed at all in the decision of his fate.

The remaining proof of the traitorous purpose is found in the prisoner's defect in not

* The crown lawyers affect to call this an examination before the secretary of state; but most of the members of the privy-council were present at Coigly's examination, and were the EXAMINERS; and there is great difference between the chance of being entangled, innocent or guilty, by the duke of Portland, and that of being entangled by a board half filled with men nursed in the lap of the law. *Orig. Ed.*

explaining a great variety of actions imputed to him, all of them innocent in themselves, and each of them absolutely unconnected with every other, for any thing that appears to the contrary in the evidence. The doctrine from which this proof is derived is this foolish, illegal, and hardy proposition, that a prisoner is to be accounted guilty who does not explain every fact which an attorney-general chooses to make matter of proof against him, countenanced with loose evidence from hired agents of the government in defect of other evidence, and which can by any of the means that lie within the range of possibility be brought into connexion with the charge. This is certainly a proposition so monstrous, that one suspects some oversight in expressing it, the moment it is on the paper. Nevertheless, this is the attorney-general's proposition; and, such is the effect of facts artfully put together in evidence, and more artfully connected by comments and supplementary matter in a crown lawyer's reply, that I believe the attorney-general owed the verdict of guilty against this, in every way unfortunate man, to the skilful application of that doctrine. The attorney-general and the judge expressly objected to the prisoner as proof of his guilt, that he had not explained his travelling into foreign parts; his return to Ireland, and his connexion and correspondence with lord Edward Fitzgerald, of whom the jury knew nothing; his acquaintance with Mr. O'Connor, Mr. Binns, Mr. Allen, (and that honest worthy lad, the servant of Mr. O'Connor) Leary; his possession of the treasonable paper; the address of the paper; his being at Manchester; his assuming different names, and filling the characters of priest, captain, and merchant; his quitting Ireland and his present journey to France.* In the end we find all these circumstances harmless as they appeared in evidence, if every word of the evidence were true; but here we see the attorney-general's doctrine, and a long example of it, at once. All the travelling story of a prevaricating spy (*Mr. Dutton*) for its existence; and the attorney-general might have formed (it cannot be doubted if we remember what spies are) as good proof of a great many more stories equally requiring explanation. But if a thousand of such stories had been told in this loose way, the prisoner was to explain them all at the peril of his life! There is no depravity that is not ashamed of the doctrine when it is plainly expressed; and certainly no innocence could escape from it if it were fully acted upon. An attorney-general has the treasury of the state as a fund to procure witnesses against a prisoner, and may ransack

the earth to bring such as are honest, or to hire such as are false. If, therefore, he should be tempted to destroy a prisoner, and the scene of the alleged treason were not wide enough, he has only to extend it till no common fortune can collect witnesses to explain all the real and supposed facts of the case. But without talking of an attorney-general that may be venal and base enough to do this, in the present case we see the effect of the doctrine. The prisoner is called upon to account for transactions in parts of the world at a great distance from each other; and failing to satisfy the attorney-general and the judge on this topic, the defect is so steadily and so confidently argued by them as proof of the crime, that again I say, the verdict of guilty is in my opinion to be attributed to this argument. And the doctrine is *illegal!* It changes the character of our criminal law, bereaving it of that quality which all intelligent and benevolent men have admired and loved. The English law humanely says, an accused person shall not be compelled to criminate himself. But this merciful provision was withheld from the unfortunate Coigly. The attorney-general and the judge in that argument said—The prisoner has been compelled to criminate himself; to prove his own guilt—the traitorous purpose could not be made out against him by the direct evidence of the crown, but facts connected with his crime, and in default of explanation proving his guilt, have been made out against him, and he has not explained them!—In opposition to this cruel language, let us hear the voice of the law, in the mouth of a judge who revered its principles. Lord Nottingham, in the trial of lord Cornwallis, addressed the peers who were the judges, in this just and honourable manner—“I know your lordships will weigh the fact with all its circumstances from which it is to receive its proper doom. Your lordships are too just to let pity make an abatement for the crime, and too wise to suffer rhetoric to make any improvement of it. This only will be necessary to be observed by your lordships, that the fouler the crime is, the clearer and plainer ought the proof of it to be. There is no other good reason can be given why the law refuses to allow the prisoner at the bar counsel in matter of fact when life is concerned, but only this, because the evidence by which he is condemned ought to be so very evident and so plain that all the counsel in the world should not be able to answer it.”* The practice of the law at first was, to deny a prisoner the aid of counsel in matter of fact. And why? Was the law more cruel than it is now? Oh no! It demanded of the crown lawyers to make such a case as no explanation could affect. But when the practice of the law granted counsel to the accused, did it mean to convert its mercy into

* See Gurney's Report of the trial, pages 486-7, for the attorney-general's observations on this subject, and pages 523-4, for the judge's observations. *Orig. Ed.*—The matter referred to will be found in this Volume, p. 100 and p. 128.

* Mr. Plumer very anxiously urged this quotation upon the attention of the jury. *Orig. Ed.*

cruelty, by imposing this doctrine of explanation upon him? No! The law humanely added to his security, by allowing him to explain when he could repel the charge by doing so, but still not only permitting him, but calling upon him, to be silent when he could not explain but at the hazard of criminating himself. And I must do the justice to one of the prisoner's counsel to say of him, that he had warned the jury of falling into that error of demanding an explanation of any fact from the prisoner. Mr. Plumer very pathetically and very correctly said, "I am not on the part of the prisoner charged with so heavy a crime, bound to explain at all. I have a right to maintain a sullen silence; to say for him—I am not guilty; it remains for you, the prosecutor, to prove meso."

I find one more proof of the traitorous purpose, which, had it appeared in the evidence, would have removed the dark cloud that hangs over this trial. This proof is no less a fact than that the prisoner was the IRISH DELEGATE alluded to in the treasonable paper, as sitting in the committee when the paper was drawn up. Every tongue will be impatient to ask, where does this proof appear? and in what shape? I answer in the judge's summing up; and as to its shape, let it stand forward for itself. When the judge had done with Coigly's case in a direct form, in speaking of that of O'Connor, he says, "I think also that you may take it to be pretty clear, that Mr. O'Connor was not the person alluded to in the paper addressed to the French Directory, for the paper says, the bearer is the person who had gone for the Secret Committee before, and is in great haste. *There is no pretence for saying that Mr. O'Connor had ever borne any message from them before; the paper alludes to an Irish delegate who is present among them, there is no evidence that Mr. O'Connor ever was among them, or of any other society whatever!*" This is not the place, again I have to observe, to speak by *cliquette*. This passage insinuates (more strongly, considering its position, and of whom it affected to be talking, than any direct words could convey the same meaning) that Coigly was not only the bearer of a former message to the Directory, of which there was a shadow of proof in his travelling to France before, but also that *he was the Irish delegate alluded to by the paper, as being present in the Secret Committee. There was no evidence that Coigly had sat in the committee, or was of any other society; and if this remark had been made in his behalf by the judge in reviewing the evidence of his case, then the remark when he spoke of O'Connor could not have glanced at Coigly. But it does not stand simply thus, that the remark is made in behalf of O'Connor and not in behalf of Coigly; but the inference that the latter was the Irish delegate is pressed upon the jury by its immediately following, that other inference of his being the former messenger of the Secret Committee to the Directory,*

which inference had the advantage of the proof (urged as *good proof* both by the attorney-general and the judge) of his having travelled with a passport in France. On this proof of the traitorous purpose, I make only one remark—it is a *presumptive proof* of the prisoner's innocence, of more validity than all the *presumptions the other way*; for it is a resource of so desperate a kind for the prosecution, as could not have been resorted to by the crown or the judge in any plain and intelligible case of treason.

Having with great industry applied myself to exhibit to my reader the strength of the case on behalf of the crown, I ask him what *overt act of treason* he finds in it? Does any one of the facts (I am taking the proof of it to be unexceptionable) include *evidence in itself of a traitorous purpose?* or is any one fact preceded or accompanied by such other facts as give it a *treasonable character?*

The prisoner's safety, at this point, seems to me to have rested on the same foundation with the law of the land; and in his eventual misfortune, I maintain the law on the subject of treason to be overthrown—for ever overthrown, if this trial be erected into a precedent for future cases. What I have to say farther on the trial shall therefore be very brief. The case of the crown, such as it was made out to be, with the aid of uncontrolled conjectures and inferences (in which comparatively strong condition I wished first to show it) was, however, affected by parts of the evidence of the crown, and by other subjects before the jury. The internal evidence of the paper itself shakes the whole case. I grant to the attorney-general that the absurdity of a paper drawn up to invite an invasion of the country does not change the nature of the offence, but the absurdity of the paper is some proof that it was not drawn for such a purpose. A committee braving the dreadful penalties of treason, it is to be expected, would purchase something better by the danger than the power of sending to the enemy the *general, vague, and public* information of the paper.* And if such committee could be so absurd as to draw up a paper that might have been compiled from the newspapers, what man could be so infatuated as to incur the greater danger of conveying it to France? Should we expect him to be a man already hated, watched, pursued by the government? But if any such man were willing to incur all danger to aid the government of France, would he go no better furnished than with this paper?—The attorney-general says, "it is in its nature a *credential* of the man who carries it:" and he adds, the bearer would be accredited to make representations, for others, to the Directory in conversation. On this supposition of the authenticity of this paper, how does the matter stand with the insane bearer of it?

* See in Vol. 26, p. 1280, a copy of the treasonable paper.

He carries, at the peril of his life, a *credential* to the Directory, although he is a man known to them as the bearer of a former message; and he conveys intelligence in writing, which is useless for its want of detail, and could not be forgotten because of its publicity, although he goes instructed to make representations consisting of detail, and therefore liable to be forgotten in part, and making the useful, the essential, in short the entire object of his mission! According to the story told by the evidence for the crown, the prisoner has this dangerous yet useless paper in his great-coat pocket at Whitstable. The baggage of all the prisoners is searched there, and Coigly is expressly told by Perkins (the master of the inn) that the *hoymen* had given information against the prisoners as suspected persons, that the search was in consequence of the information, and that they would be searched again at Margate.* Thomsett, the man who conveyed the baggage to Margate, tells Coigly on the road, that the people of Whitstable were all in a *boggle* about him, and explains that term by saying, "they were all in confusion to know where he was going: they were in a mistrust about him, about where he was going." If the paper had contained unquestionable marks of its being a *credential* of the bearer, if it had not contained evidence of the bearer being a person already accredited with the Directory, and wanting no *credential*; or if the intelligence it was meant to convey had been of so secret, minute, and important a nature as to require the additional weight and security it would derive from being written, I acknowledge any enterprising man, engaged in such an undertaking, would have preserved the paper notwithstanding this uncommon warning. But the paper has properties the very reverse of all these, and the prisoner keeps it in his possession at the unnecessary uncompensated peril of his life. We are to believe this tale on the evidence of the crown. We have seen the perplexed, obscure, and dubious character of that evidence. But we have not seen all its disgrace. The *hoymen* were not brought to prove the property of the great-coat, along with Smith, the master of the hoy; but this fact, disgraceful as it was to the crown, when we looked at it in itself, when I was engaged in first putting the case of the crown in the strongest point of view, is more disgraceful now that we know that the *hoymen* were not quiet spectators of the scene, but had actually laid an in-

formation against the prisoners. Perkins says, the *hoymen* were present at the search. Their curiosity was so excited as to lay an information, and to be present at the search, yet they are not produced. They were never asked by the crown lawyers, nor by the gentlemen at the secretary of state's office, if they had not seen Coigly with a great-coat on? or if they were asked, their answer is suppressed. Thomsett, I have shown, helped to make out the story of the great-coat; and his evidence is impeached by respectable witnesses on the part of the prisoners. Cornelius Kettle (a clock and watch-maker at Offham, where Thomsett lives) says, that Thomsett informed him, in conversation, in which he talked of being a witness for the crown, that "it was a good job for him; he would not take a hundred pounds for his job; he had been to London, and there was rare living there; that good wine was a good thing in a man's belly;" in some farther conversation Thomsett introduced the subject of the great-coat, and said, "he was one of the principal evidences against these men, and their lives depended upon his evidence, chiefly on the great-coat that was supposed to belong to some of them; he had been before Pitt, Dundas, and White; he told them he was a smuggler; Mr. White called him on one side, and said it was not proper he should repeat that in that place; and asked him what he earned a week? he said sometimes more, sometimes less, sometimes ten pounds; they settled upon him six guineas per month till the trials were over, his expenses to be paid; and Cornelius Kettle said, he thought to himself, poor man! they nurse you." Sarah Job* says, Thomsett told her "he would hang them if they had a thousand lives." Thomsett's son said to her, "I am very sorry, aunt, my father says he will hang the people, and if he does, I won't live at home, for he will see their ghosts afterwards." Mary Morgan, servant of Mrs. Job, said she heard Thomsett say he would hang the prisoners. When Thomsett was previously asked, on his cross-examination, if he never told Kettle, he expected a hundred pounds for his job? he answered, "I said, I would not take a hundred pounds; my meaning is bribery—that I would not take a hundred guineas;" and he prevaricated very much on this topic; and being asked if he had not declared he would hang the prisoners? he qualified the declaration by saying—"if they deserved it;" and he added, "I stick to my stuff now." I say, this witness is completely disgraced by himself, first, in prevaricating and giving a very improbable explanation of his declarations, and secondly, by the front he assumes in holding this language in court: "I stick to my stuff now!" But really it is necessary to look a little at Thomsett, as

* The minutes of the counsel and solicitors for the prisoners have these facts in a way that shows the warning given by Perkins to the prisoner to have been even stronger than this; and as those minutes were taken for the purposes of the defence, they might safely be argued upon. But I have chosen to take Mr. Gurney's report of the trial as my authority, because he was employed by the solicitor of the treasury to take it. *Orig. Ed.*

* Mr. Gurney calls this witness Sarah Jones; but Job is her name; she is sister of Thomsett. *Orig. Ed.*

he is displayed in the evidence for the prisoner. Cornelius Kettle is a man of uncommon sobriety of conduct, and of an uncommon character for integrity. There is nothing, in or out of court, to impeach his evidence. What then is Thomsett? A man, on his own declaration, sent for to London by the Treasury, and pampered there, and pensioned with six guineas per month till the trial is over, independent of his expenses. No wonder he should talk at home before his family, and till he frightened his son, of hanging the prisoners! No wonder he should declare to his sister, he would hang them if they had a thousand lives! That was very natural. But it gives us a very hateful character of those who pampered and pensioned him; and affords a very awful lesson to jurors! There is no end to the disgraces of the crown evidence. Dyason, a waiter at the inn at Whitstable, was examined to prove a connexion between Coigly and O'Connor (for while the crown lawyers eagerly set Coigly, they endeavoured to drive the other prisoners, especially O'Connor and Binns, into the same toils) and he swore he heard, without listening, a pen go, in their bed-room, as he lay in his own bed in an adjoining room! Mary Lemon, a servant at an inn at Canterbury, was produced to prove a transaction between O'Connor and Binns, on which the attorney-general laboured to raise a presumption, materially, as he thought, affecting them; and she undauntingly swore to facts respecting O'Connor and facts respecting Binns, naming them respectively as if their persons were as familiar to her as their names, till she was desired to point them out respectively, and then she plainly betrayed an ignorance of their persons, misnaming them repeatedly, although Mr. Garrow, with infinite patience, tried to make her recollect herself, and although she made this declaration, "When I saw them before in London, I knew them"—sympathizing in this with Smith, who no sooner saw the great coat at the secretary of state's office, than he fixed upon it to be Coigly's, but at Maidstone could get no farther than to think he could tell the man that wore a coat of the same kind. If Mary Lemon's evidence had been put to the jury in the summing up with the comments that necessarily flowed from it, something would have been added to the offences of the crown lawyers. But the evidence had a tongue in itself, and I have yet to learn the principles on which it was silenced by the judge.*

The explanation of the prisoner's designs afforded by the evidence (taking both sides of it) is not much in bulk, but is very important in its meaning. Mr. Bell (a merchant of the city of London, and one of the witnesses for the crown), in answer to this question from the attorney-general: "Did Mr. O'Connor

tell you why he (*Mr. Coigly*) used the name of Jones?" says, "I do not recollect any precise cause, but that he was a person come from Ireland, on account of the state of politics in that country, and perhaps did not think it discreet to go by his real name, that was the only reason, I conceived." And on his cross-examination he repeats this evidence—"You have been asked about what Mr. O'Connor told you respecting Mr. Coigly; did he not at the same time tell you that this gentleman was under the necessity of leaving Ireland, that he was a fugitive from Ireland, like himself, and was going out of the kingdom?—He did so. You told Mr. Attorney-general, that you understood Mr. Coigly came from Ireland on account of the state of politics in that country, and did not think it discreet to go by his own name?—I did." And Mr. Bell again repeats this evidence in answer to questions put by Mr. O'Connor. "Did I not mention to you that he called upon me as an Irishman in a distressed situation, and that he came from Ireland as a persecuted man?—As an Irishman that was under that sort of apprehension for his personal safety in Ireland, that made it necessary for him to come here; you did so." This evidence is most unequivocal. Mr. Bell's honour is not to be impeached. What he says of these conversations cannot be questioned: and O'Connor's account of Coigly to Mr. Bell, in a confidential and very affectionate intercourse, is as little subject to doubt. Does any motive, then, appear that might induce Coigly to impose on O'Connor? If he had been an accredited agent of a secret committee here, and had gone to France before, in a secret manner, with a treasonable commission, he would know the means of making the voyage privately better than O'Connor, and the public character and celebrity of Mr. O'Connor, and the critical nature of his actual situation, would be only so many obstacles to Coigly's clandestine voyage. On the supposition of his guilt, nothing is more inexplicable than his desire to leave the kingdom with O'Connor. The account therefore of himself to O'Connor must be taken as true, because the other supposition is perfectly inconsistent with the character and conduct it ascribes to him. And this evidence is corroborated by Mr. Stewart, a magistrate of the county of Down, and one of the evidence for the prisoner. He says he knew Coigly, and had been on an intimate footing with him; his father's house was racked* by the Orange Men; he

* The Orange Men were a society that persecuted the Catholics. Racking a house was, destroying or carrying off every thing that could be removed, including furniture, provisions, liquors, money, and often even the doors, window-frames, and other wood-work. In the memoirs of Mr. Coigly's life (which I have mentioned in the advertisement prefixed to this pamphlet) is not only a very pathetic

* The judge struck Mary Lemon's evidence out of his notes. *Orig. Ed.*

did not see it, but the fact was stated in a petition that came, with many others, before the grand jury, the witness being present as a magistrate of the county; and he saw a great deal of racking himself. And on his cross-examination, he says, "Mr. Coigly called upon me in London, and told me he was in great distress; he told me he was under the necessity of changing his name; I had been under obligations to him of a very particular nature; he said he was in distress, and asked me if I could accommodate him with some money? I told him it was not convenient to me: I had some Irish bills about me, but could get little money for them here; that I expected remittances soon, and would send him some if it was convenient; and I did send him some." I cannot conceive that evidence of the prisoner's real situation could be stronger. But the crown lawyers and the judge say he gave no explanation on these very important topics—the cause of his leaving Ireland, and his changing his name. We have already seen the direct assertions of the attorney-general and the judge on these points; and the solicitor-general interrupted the speech that closed the defence to make this remark: "Mr. Dallas assumes as a fact, Mr. O'Coigly's being obliged to leave Ireland; we have no note of such evidence." I do maintain that the crown produced not one morsel of evidence (if the account of the treating for the hire of a vessel to go to France be excepted) so plain and so distinguished for its inherent marks of truth as the prisoner's evidence to that point.

But the judge sanctions the observation of the solicitor-general: "The evidence (he says) was no more than that the Orange party racked his father's house *twelve* years ago; that was by a *single witness*, Stewart."* The crown was permitted to prove the property of the coat *against the prisoner by a single witness*; the custody of the paper in its pocket *by a single witness*; the story of travelling through Holland, Flanders, and France, *by a single witness*. Whence, then, comes this doctrine, that a single witness shall not prove a fact for the prisoner? And I ask who will have the impudence to put Smith, Revett, and Dutton, in competition with Mr. Stewart, for veracity. The judge in the above passage says, that the circumstance of racking the house of Coigly's father was *twelve* years ago; and in his summing up, he says, it was *ten* years ago. Mr. Stewart says, "there have been persecutions of that kind for ten years past," but he does not name the time, within that period, when the circumstance happened. Why then does the judge in one instance carry it back to the remotest period at which

account of the particular sufferings of himself and his family from this faction, but also an interesting history of the origin and conduct of the faction. *Orig. Ed.*

* See page 62, of this Volume.

it could happen, and in another to *two* years beyond that period? In reality, it appears to have happened at a recent period; for Mr. Stewart says, he saw the petition on the subject before the grand jury, *among many others*; and he had said a little before, "he had known Coigly *about three years*;" and it is probable the interest he took in Coigly's concerns, was the reason of his remarking the petition of the father among so many. If there were no more than this conjecture, the probable period of racking the house would be some time within *three* years. But it was a piece of art to seize upon the *racking of his father's house*, as the *precise and immediate cause* of Coigly's leaving Ireland. Mr. Stewart says, Coigly told him in London, in a *confidential communication*, "he was in great distress, and *under the necessity of changing his name*." The necessity of changing his name must arise from some personal danger. So that at last it is probable, that Coigly left Ireland on account of a general and long-continued persecution of himself and his family, of which the racking of his father's house was but part, and was not the immediate cause of his flight. If we were demanding an account of Coigly's situation and designs at the time he was arrested, this would be satisfactory, that he told Mr. O'Connor confidentially, "that he was a person come from Ireland on account of the state of politics in that country; that he was a fugitive from Ireland, and was going out of the kingdom; that he did not think it discreet to go by his own name;" and that he told Mr. Stewart confidentially (and at the time of making these communications there was no question of explanation in a court of justice) that "he was in great distress, and was under the necessity of changing his name;" and finally, that Mr. Stewart knew (from a petition that came before the grand jury of the county, in which he was a magistrate) that the house of Coigly's father had been racked by a faction that persecuted the Catholics, and had been witness to a great deal of racking, and great outrages committed by that faction in the neighbourhood of Coigly's usual residence. But I will not wilfully confound questions in this important business; and I resist the doctrine of explanation as being an iniquitous usurpation upon the law.

I am now arrived at the point (and I have looked toward it with anxious desire) at which my reader has before him this extraordinary case as it went to the jury, not through the faithless statements and glosses of the minister's dependants, but through the legal and safe channel of the evidence. No man ever stood before a jury in a capital case at the close of the evidence, so perfectly freed from the charge as Coigly did. Some facts relative

* See Vol. 26, pp. 1315, *et seq.* for Mr. Bell's evidence, as to these facts; and page 29, of this Volume, for Mr. Stewart's.

to his attempt to go clandestinely to France are proved. But with those facts, ends the case of the crown. The custody of the paper is a thing on which we dare not decide. We cannot look the evidence in the face, and say, "there is no possibility of the paper belonging to any other person than Coigly; no possibility of any person putting the paper into his pocket for sinister purposes." To enquire what his intention was in having the paper is a folly, while we have still to enquire if it ever were in his custody. We have looked like fools, in running after the crown-lawyers in pursuit of the intention of an act that does not appear to have been committed. But that chase is over. And we have a solitary fact to decide upon—an attempt to go clandestinely to France. Is this an overt act of treason? Yes, if it be made with intent to invite the enemy to this kingdom. But, enquiring into the intent, we come back to the spot where we hesitated when in search of the facts. The legal path ends with the attempt to go to France. If we will go farther, we are instantly involved in the perplexities of conjecture.

For the jury, I am inclined to believe all they would say for themselves. I know the snares that surrounded them. I know the case was not left in their understanding with the simple character to which the evidence reduced it. I see that every thing that was equivocal was put as proof against the prisoner; every thing for him, omitted—every circumstance for him, to the minutest! I see the jury abandoned, and delivered over to mistake! For them, therefore, I feel pity;—perhaps not less than for the unhappy victim of their mistake.

But good may sometimes be gathered from a melancholy event. Let jurymen hereafter, in all such cases, look *only* at the evidence. It is an error in them to look to the crown-lawyers, to the judge, or even to the counsel for the prisoner. Their *authority*, their *guide*, is in the evidence. That usually tells a plain story, when it is stripped of extraneous matter, of facts that have no character, of facts that have no basis but the evidence of disgraced witnesses and of ingenious suppositions and wicked additions. And when the evidence fails to tell a story so plain as to admit of no doubt of the crime, the obligations of their oath call upon the jury to acquit the prisoner. The law, in any such case, cannot be mistaken by them. The crown-lawyers will lay their charges *formally* in the indictment, and so far the counsel for the prisoner may be relied on, that he will see that done. The *rest* is for the jury, and is a plain duty. They are to see that the acts charged as overt acts of the treason be proved by evidence which *cannot* be misunderstood, and proceeding from witnesses who have no individual interest in the prisoner's conviction, and who indeed are *credible* witnesses in the plain full sense of that word; and having laid aside every circumstance that does not stand a fact before them

in that clear manner, they are to see that the traitorous purpose of the prisoner be the *infallible* conclusion from the facts. They have to act with jealousy and vigilance! Whatever be the guilt or innocence of the prisoner, the minister they may be sure views the trial with the passions of a statesman; the crown-lawyers are inevitably his tools; and the judge may be ambitious or rapacious, in which case he will have an individual interest in the prisoner's blood, while there is a rank to which he can be raised, a post of emolument into which he can be put.

It will be seen that I have hitherto carefully abstained from touching upon any topic, in behalf of Coigly, which was not before the jury. But evidence exists that I think will decide the readers doubts. I have shown how far Coigly's situation was explained to the jury. I now refer my reader to two letters,*

* The following are the letters referred to :

" Copy of a LETTER from Mr. COIGLY, to Mr. _____, Dublin.

" April 19th, 1798.

" I am to be tried for my life, in a few days, at Maidstone, in Kent. My counsel and friends think your testimony would be of considerable service to me, as you could prove the origin of the Orange business, what my family and other Catholics suffered in it; my attendance at Armagh assizes to have them prosecuted, &c. &c. I beg you may also find _____; he will surely come. His evidence will be useful to prove, that he, with others was arrested, under the same accusation as was brought against me, at Dundalk, &c. Both your evidence will be of the more use, as you have known me for a long time. Perhaps _____, or _____, could be of use to me. Lose no time, but consult the necessary persons who may be useful. The chief evidence from Ireland against me are men of shocking characters; viz. Frederic Dutton, late of Newry; Charles M'Fillin, of Ballymulligan, near Magerafelt, both informers. See if you can find any person who knows M'Fillin, and could discredit him upon oath. Perhaps _____ could discredit Dutton; _____, of Dundalk, could. Denis Fitzpatrick, gaoler of Dundalk, is summoned against me; as also Woods, a revenue-officer there, which latter I don't know. Do all you can. There are also a John Jackson, cloth-merchant, summoned; Marian, a king's messenger; and Oliver Carlton, high-constable, all of Dublin. These last-mentioned I do not know. They have summoned also the collector of Derry, Rowley Gorges Hill; I know nothing of him. Get some one to apply immediately to _____, and _____, to see if either of them could serve me. The latter could prove my assisting to prosecute the Orange men. So could _____.

" JAMES COIGLY."

which, as they were written by him confidentially to two friends, will, first, corroborate the account of his flight from Ireland as it stood in the evidence of Mr. Bell and Mr. Stewart; and secondly will show that Coigly earnestly sought the means of a farther explanation of his character and situation as far as they lay within his reach.

The account of Mr. Coigly's conduct in his last moments, which will be found in the following pages, and his uniform declarations to the Court, the Jury, and the spectators of his death, afford, I think, a presumption of his innocence. In his address to the court when he was arraigned, and in that to the Jury at the close of the defence, † it is true he is to

“ Copy of a LETTER from Mr. COIGLY, to Mr. ———, Dublin.

“ April 19th, 1798.

“ Your evidence will be very material to show why I was forced to leave Dundalk at first—the whole business of the Orange men—why I fled from Ireland the last time—my intention on leaving Ireland the last time—my general character, &c. &c. The witnesses summoned against me are, Wood, said to be a revenue-officer at Dundalk; Denis Fitzpatrick, the gaoler; Frederick Dutton; Charles McFillin, of Ballymulligan; R. G. Hill, collector of Derry; John Jackson, cloth-merchant, of Dublin; Marian, a king's messenger; and Oliver Carlton, high-constable of Dublin.—I know nothing of Woods, Hill, Jackson, Marian or Carlton. I think ——— could assist me much in overturning the evidence of Dutton, and as to character. Perhaps ——— could assist me, or some other Dissenter or Protestant, against Dutton. McFillin I know very little of, and of course, am afraid you will not be able to procure evidence to discredit him. See what evidence can be got as fast as possible. Perhaps ———, ———, ———, or ——— could serve me. You know I did my utmost to prosecute the Orange-men, and to procure the dismissal of the present ministers by petition to his majesty.

“ JAMES COIGLY.”

† Coigly's Address to the Court on his arraignment was omitted in Gurney's report of the trial. It is here printed from the Appendix to the present tract. Coigly's address to the jury at the close of the defence will be found, *antè*, p. 92.

“ Copy of Mr. COIGLY'S Address to the Court upon his Arraignment.

“ My Lords;—Upon reading over the indictment, it appears to me, that there is an error in it which might vitiate it with respect to me, and of which I might probably take advantage in pleading, namely, that my real name is neither of those which are there stated; my name, my lords, is James Coigly, and not James O'Coigly.

be considered as an accused man, and his words were to be received with great caution; yet there is a manliness in them, and in that to the jury there is a correspondence with the purport of the evidence, that then ought not to have been disregarded, and they are now corroborated by his dying address. To these declarations two others are to be added, in my opinion of still more force than even the dying declaration, solemn as that is. Mr. Coigly wrote a letter to the attorney-general a little before the warrant for his death was announced to him, and another to the duke of Portland; immediately after that awful ceremony, which bear such internal marks of their sincerity as I think no man will question, and each of which contains a declaration of his innocence.

I have had occasion to say a great deal on the character of this trial in commenting on what was before the jury. A correspondence which took place after the trial, between Mr. Foulkes (Coigly's solicitor) and the duke of Portland, on a very extraordinary topic relative to the trial, will show, I have no doubt, that my opinion is not incorrect, nor my expression of it uncharitable. I refer my reader to the Appendix § for a narrative of this trans-

“ It strikes me also, my lords, that I am not properly described in the indictment, as it calls me a labourer, whereas I am of a profession.

“ I am also informed, that Margate, where I was arrested, and where the crime is alleged to have been committed, is within the jurisdiction of one of the cinque ports, which might perhaps entitle all the prisoners to be tried there, and not in the county of Kent generally.

“ But, my lords, without enquiring whether these objections are well founded or not, such is my reliance on the justice and impartiality of a jury of the county of Kent at large—such is my conviction of my own innocence—and so satisfied am I in my own conscience that I have not been guilty of treason against my king or my country, that I readily wave them all, and therefore plead to the indictment—Not Guilty.”

‡ See these letters, p. 169 and 171 of this Volume.

§ For the convenience of the reader I have placed several of the documents contained in the Appendix to this tract, as notes to the passages which refer to them. The Appendix contains other articles which have already been printed, either in the report of the trial, or in the preceding tract; instead of reprinting these, I have referred to the pages where they are to be found.

To Mr. ———.

“ Hart street, Bloomsbury-square,
June 10, 1798.

Sir;—Mr. Coigly's friends have an un-

action, and am happy I am enabled to give it in Mr. Foulkes's own words. On this subject I shall make one or two short remarks. Mr.

doubted right to every satisfaction I can give them, relative to any steps I may have thought it expedient to take on his behalf; and most anxiously do I hope that I have not been wanting in any exertion my duty demanded of me. That HE thought I had not, will be to me, and doubtless to his friends, a consolation to the last hour of our lives. Readily, therefore, do I comply with your request in transmitting you, for their information, a narrative of my correspondence with the secretary, and other officers of state, subsequent to the trial, with the letters I received from Mr. Coigly himself respecting it. I am, Sir, your most obedient servant,

"JOHN FOULKES."

Mr. FOULKES'S Narrative.

"Having, what appeared to me to be, indisputable authority for believing that there was a material variance between the evidence given by two of the witnesses against the prisoner at the trial, and that which those witnesses had given upon their previous examination at Bow-street, relative to one most important fact; and for believing that the same witnesses had given the same account of the same circumstance in conversation, as they had sworn to before the magistrate at Bow-street; conceiving it also extremely probable, for reasons of almost equal weight, that their evidence before the privy council must have been to the same effect; I thought it my duty to write the following letter:

"To his Grace the DUKE OF PORTLAND, one of his Majesty's Principal Secretaries of State.

"Hart-street, Bloomsbury-square,
June 1, 1798.

"My Lord Duke;—Being informed that the evidence given by John Revett and Edward Fugion, upon the trial of Mr. James Coigly, differs materially from that which they gave on their examination at Bow-street, before Richard Ford, esquire, the sitting magistrate there, it appears to me to be my duty, as Mr. Coigly's solicitor, to address myself to your grace's justice, and request an inspection and copy of that examination, for such legal purposes as may be deemed expedient, before the sentence of death is executed.

"If I am guilty of any informality or liberty in doing this, I beg leave to assure your grace that I am not intentionally so; and I trust the occasion and its urgency will be deemed an apology for it.

"I have written also to this effect to the attorney-general and Mr. Ford, and have the honour to be, with great respect, my lord, your grace's most obedient, humble servant,

"JOHN FOULKES."

Foulkes is informed, from a quarter whose authority is not to be questioned, that there was a variance in a material point, between

I took this letter myself, on the day of its date, to his grace's house, and was desired to attend at his office the next morning at 12 o'clock. On the same day I forwarded similar letters to the attorney-general and Mr. Ford. The attorney-general immediately sent a message back, desiring to see me at his chambers, at half past 9 o'clock on that evening, but not returning home until after eleven at night, I was too late to attend him;—and the next morning he dispensed with my attendance on him, in consequence of a note I sent to inform him of his grace's appointment.

Mr. Ford also paid immediate attention to my letter, and sent me a written answer, purporting, 'That the examinations taken before him at Bow-street, were not in his possession; and that he had delivered them up to the secretary of state, and had not seen them since that period.'

"At 12 o'clock the next day (the 2nd of June) I attended, according to his grace's appointment, at his office at the Treasury, and saw Mr. Wickham. The examinations were not shown to me, but Mr. Wickham informed me, that his grace's commands were, 'that I should state to him in writing what the variance was, of which I had been informed, between the evidence given at the trial, and upon the examination at Bow-street;' adding—'of course I have to assure you, in the mean time, that the warrant of execution is not gone down?'—I therefore wrote the following letter:

"To WILLIAM WICKHAM, esq. one of his Majesty's Under Secretaries of State.

"Hart-street, Bloomsbury-square,
June 2, 1798.

"Sir;—In compliance with your request, I will state, as well as I am able to do, without an inspection of the examination, the variance which appears, as well to the prisoner's counsel as to myself, to be material, between that examination and the evidence given by Revett and Fugion on the trial of Coigly.

"So far as regards myself, personally and privately, I should be content with your assurance that the variance does or does not exist; but (its existence having become a subject of general circulation and belief) I think that in justice as well to the prosecutors, as to the prisoner and myself, I am professionally bound to repeat and urge my request, to be permitted an inspection, and to be furnished with an authenticated copy of the original minutes of the examination.

"The evidence given by the above witnesses upon the trial, as taken down by the counsel in the cause, was to this effect:

"That Revett found a great coat in the

the account given by Revett and Fugion before Mr. Ford at Bow-street and their evidence at Maidstone; having stated this information in a letter to Mr. Ford, he receives a written

'room in which Coigly and O'Connor had been; that he took it down stairs into the parlour, where all the prisoners were in custody; that he there took out of the pocket of that coat a pocket-book and some other things, tied them up in a handkerchief, and put them into his side-pocket; that both the witnesses then took the prisoners and the luggage to Benson's hotel, where they (the witnesses) and Twopenny went into a room, and pulled out the [traitorous] paper from the pocket-book; that it was in the middle of the pocket-book, and not in the pocket of it; and that they also found in the same pocket-book letters and papers, which they marked No. 1, 2, 3, 6, 7, and 8.'

"This is the substance of the evidence of these witnesses upon the trial, as far as it regards the finding of the paper in question; concerning which, I am credibly informed, they gave a different account upon their examination at Bow-street, and probably before the privy council!

"In summing up the evidence to the jury, the learned judge laid the most decisive stress on 'the circumstance of the paper in question being found in a pocket-book, together with other papers belonging to the prisoner, and some letters which, though coming from different persons, were all addressed to him!'—These were the judge's words.

"Under these circumstances, independent of the question of perjury, it can hardly be doubted that the variance I have alluded to must have been material in itself, and most injurious, indeed fatal to the prisoner!

"It is scarcely necessary for me to add to this, the obvious fact that appears in evidence, of the coat in question having been, when found by Revett, for some time out of the prisoner's possession.—I have the honour to be, with great respect, Sir, your most obedient, humble servant,
J. FOULKES."

"You will doubtless perceive that in the above letter I avoided to state the contents of the examination, fearing that a mis-statement might prove fatal; thinking it hardly possible, without seeing the examination, to state its contents with any degree of accuracy, and persuading myself that, as the examination was in the possession of the secretary of state, the attempt was unnecessary!

"The flattering attention that had been paid to my application; the nature and apparent authenticity of the communication I acted upon; the unreserved conduct of the prisoner in stating his case to me; and his solemn declarations respecting the fact the witnesses had sworn to, having flushed me with sanguine hopes of success, I thought it right to communicate a small portion of those hopes

answer to this effect: "that the examinations taken before Mr. Ford at Bow-street, were not in his possession; and that he had delivered them up to the secretary of state,

to him, which I endeavoured to do, by letter, on the 2nd of June.

"On the 4th of June I received the following answer:

"Maidstone Gaol, June 3, 1798.

"My Dear Friend;—It is in vain to make any attempt in my favour. I intend to write to the duke of Portland, to have my execution expedited. The sooner the better. May God protect you from the machinations of all wicked and designing men!

"JAMES COIGLY."

"(On the same day, the 4th of June, I received also a letter from Mr. Wickham in consequence of my last, informing me,

"That he had laid my letter of the 2nd instant, before the duke of Portland, relative to the examination of Revett and Fugion at Bow-street. And that he was directed by his grace to desire, that I would state to him the precise points in which I was informed that the evidence given by those witnesses at Maidstone differed from that which they had respectively given before the magistrate at Bow-street."

"In consequence of which, I wrote on the same day as follows:

To WILLIAM WICKHAM, esq. one of his Majesty's Under-Secretaries of State.

"Hart-street, Bloomsbury-square,
June 4, 1798.

"In compliance with the desire contained in the letter I have this day had the honour of receiving from you, relative to the evidence given by Revett and Fugion on the trial of Coigly, and that which the same witnesses gave on their examination before Mr. Ford at Bow-street, I will confine myself to that point of difference which appears to me to be the most material; namely, that which regards the finding of the address or paper, which is the very foundation of the charge of high treason against the prisoner; without which, and indeed with it, if it be, as I trust I shall be able to show it is, imperfect, I humbly and respectfully submit, the charge itself must fall to the ground.

"Having in my last letter stated the evidence of the witnesses from the notes of the prisoner's counsel, I will only recapitulate it here in the words, and with the very impressive comments of the learned judge, which were these:—That it was sworn not only by one witness, but by three—[N. B. It appears from short-hand notes taken at the trial, that the learned judge said four—If so, it was doubtless said erroneously, for there were only three witnesses to this fact, namely, Revett,

and had not seen them since that period." Mr. Ford, to use an expressive phrase, washes his hands of the matter, by this answer. But what are we bound to infer from it? Mr.

Fugion, and Twopenny; which two latter also were not present when the coat was found!] that this address which they say the prisoner was to carry to France, was taken out of his pocket-book; there were found, in that pocket-book, letters written by different persons, but all addressed to him. How came these letters to be all addressed to him if they were not his? And four [this again should be three] witnesses have sworn that this address from the Secret Committee of England was found in that pocket-book. You see, gentlemen, this is extremely strong—what have you to contradict it?—Nothing?"

"The whole weight of the learned judge's comments appears therefore to be rested on the papers being found in a pocket-book, with letters addressed to the prisoner; and his question upon it is very strong and emphatic—What have you to contradict it? What answer the jury, to whom it is put, would have given to this question, if Revett and Fugion, the only witnesses who could or did swear to this supposed fact, had either admitted before them on cross-examination, that they had sworn differently at Bow-street; or denied that they had so done, and Mr. Ford (before whom the examination was taken) had proved, as he must, and unquestionably would have done, supposing it to be (as we are informed it is) the fact, that they had sworn differently before him;—What answer, I say, the jury would have given to that emphatic question of the learned judge, or in other words, what verdict they would have delivered, under such circumstances of palpable prevarication, or detected perjury, in a case thus tainted by the one, or blasted by the other, I confess myself unable to form a doubt upon, let the variance in question be what it may!"

"In the present case, I humbly submit, it adds to the weight of my conclusion, that the variance is not in itself immaterial. I cannot profess, without seeing the examination, to give the precise words of it. But I understand it to be in substance, that the address or paper in question was found, not in a pocket-book in a pocket of the great coat, but loose in one of the pockets of the coat." And here I am authorized by Mr. Plumer, the prisoner's leading counsel, to add, that he particularly and pointedly put the question to Revett, which Revett particularly and positively answered, that he found the paper not in the pocket of the coat, but in the middle of the pocket-book in which the letters were."

"In giving this evidence, thus altered and improved, the witnesses must doubtless have perceived, and it is manifest, that the probability of the paper's belonging to the prisoner would be increased, not alone by the company

Ford could not be ignorant of the variance, if it existed. In that case, it would be natural for him to act as he did. As an officer of the government, we may allow him, with no

in which that paper is said to have been found, but in the same proportion as the opportunity or means of palming it upon him, or of its having gotten into his possession by undue means, could be diminished; and moreover that the importance of the paper rose in proportion to the security and care, of its custody:—else wherefore swear they found it in a pocket-book, if they had in fact found it loose in a great coat pocket?"

"Independent therefore of the obvious arguments that would have arisen in the prisoner's favour, if the paper had been proved on the trial, as on the examination, to have been found loose in the pocket of a great coat, which was at the time of finding it out of the prisoner's possession, on the back of a chair, at a public inn, I cannot help thinking, and it is my duty to repeat and urge, that if on his trial he had had the benefit of our subsequent information of the existence of any variance between the testimony the witnesses in question gave on his trial, and their account of the same fact on their examination at Bow-street, one of the two consequences already hinted at must have resulted; namely, that they must either have admitted or denied that variance. If they had admitted it, the prisoner would have been entitled to, and most unquestionably would have had, the benefit, as well of this prevarication, as of all the arguments naturally springing from the paper's having been found loose in the pocket, &c. &c. and from Stephen Perkins's evidence. If on the other hand, they had denied it, the cross-examination of Mr. Ford, an honourable man, and the magistrate before whom the examination was taken, would have given the prisoner the still greater benefit, if possible, of his contradicting and overturning their evidence; and thus would the foundation of the charge have been rendered imperfect or totally destroyed. Either way, therefore, whether the witnesses admitted or denied the variance, I most humbly submit, it is at least probable that the prisoner would have been acquitted!"

"I am too deeply impressed by a sense of the attention, that has hitherto been paid to my humble efforts in the prisoner's favour, to think it necessary to claim your most serious consideration of the facts and arguments I have presumed to urge in this letter, or to doubt your pardoning that presumption on so awful an occasion; and that occasion, I hope and trust, will excuse also my again repeating my urgent hope to be favoured with an inspection and authentic copy of the examination.—I have the honour to remain, with the greatest respect, Sir, your most obedient, humble servant,
"JOHN FOULKES."

"I took the above letter to Mr. Wickham's

more than common laxity in our morals, to keep their secret and screen himself in this manner. But on the other supposition, the very opposite conduct would become his duty

office, in the morning of the 5th of June; and in the evening of that day, received a note from him, saying, that 'he would be glad to see me there the next day at 12 o'clock.'

"I attended there accordingly at that hour, and saw him; but, being sent for by Mr. Dundas, he appointed me to come again at 2 o'clock on that day, which I did: soon afterwards, while I was waiting in the anti-room, where I continued till near 4 o'clock, came Mr. White, the solicitor of the treasury, and then the attorney and solicitor-general, who all went into Mr. Wickham's office, and presently after this came Mr. Ford, who called me into the passage leading to Mr. Wickham's office and told me, 'that the examination of the witnesses taken before him at *Box-street*, had proceeded no farther than he thought it necessary to warrant his committing the prisoners: but that he had certainly asked the witnesses afterwards, as to the finding of the paper in question, and they had informed him, that they found it in the prisoner's pocket; but whether they meant loose in the pocket or not, he could not pretend to say, for he had not asked them, nor had they informed him, farther than he had already stated to me.'—Adding, 'the idea you go upon, I see, is, that it was found loose in the pocket.'

"About 4 o'clock, the attorney and solicitor-general, and I believe Mr. Ford, departed; and Mr. White was departing as I was called in by Mr. Wickham, who said, that 'as I had been kept waiting so long, he would not detain me while he wrote the answer he was directed to give me, which (he added) would be unfavourable.' He then asked me, *whether I had any thing farther to urge on the prisoner's behalf?* to which I answered, that 'whether the variance I had been informed of between the examination, and the evidence given at the trial, existed or not, the witnesses who had given that evidence had certainly said in conversation, that they had found the paper in question, not in the pocket-book, but loose in the pocket; and that the same arguments precisely would have arisen from that variance, as from a regular examination on oath.'—Adding, 'that I stated this to him for the purpose of being informed whether he thought it of sufficient importance to be reduced into writing, to lay before the duke of Portland, as I wished by no means to be troublesome.' His reply was, 'with regard to reducing it into writing, you must exercise your own discretion; BUT CERTAINLY ON AN OCCASION LIKE THIS, WE SHALL THINK NOTHING TROUBLESOME.'

"It may be proper to add here, that the examinations were not produced to me!

"About 7 o'clock in the evening, I received

and his INTEREST. There could not be two ways for him to choose between. To deny the variance would be creditable to himself and to the government; and indeed it was a

ed the written answer Mr. Wickham had promised me, the purport of which was:

"That every attention had been paid by his grace the duke of Portland, to the communications contained in my letters, relative to the supposed variance between the evidence given at the trial, and on the examination at *Box-street*, but that his grace saw no ground for his farther interference."

"Conceiving, therefore, that it was still left open to me to urge the further grounds for that interference, which I had suggested to Mr. Wickham, as before stated; I had very late at night sketched a farther letter to him, when I was accidentally informed that the warrant for the prisoner's execution, at 11 o'clock the next morning, had been sent down. It was announced to the prisoner, as his letter (which I received by the post the next morning) informs me, at 5 o'clock in the afternoon of the preceding day, viz. the 6th of June. Consequently (Maidstone being thirty-five miles off) it probably was sent down at, or soon after twelve o'clock, when I waited upon Mr. Wickham according to his first appointment, and when he was sent for by Mr. Dundas;—doubtless before 2 o'clock, when the attorney and solicitor-general, Mr. Ford, and Mr. White arrived, and I attended Mr. Wickham's second appointment!—certainly before 4 o'clock, when they left him, and I was called in as already stated!

"It was with difficulty that I could bring myself to believe the information to be true. But I thought it of too important a nature not to be attended to. I therefore prevailed on two friends to set out for Maidstone, at 2 o'clock the next morning (according to an assurance I had personally given the prisoner, at his earnest request, on the day after his conviction, and by letter afterwards) to be present at his execution, if it took place, for the purpose of bearing testimony to his conduct on that awful occasion, and to prevent that misrepresentation, the fear of which appeared to give him considerable anxiety.

"(On that morning the dreadful information I had received was unhappily confirmed by the before-mentioned letter from the prisoner, which I inclose.

[This letter the editor thinks it proper to insert.]

'To Mr. FOULKES, Hart-street, Bloomsbury-square, London.

"Maidstone Goal, Wednesday Evening, 5 o'clock; June 6, 1798.

"My dear Foulkes,—I have just received notice that my execution will take place to-morrow morning at 11 o'clock.—Receive my

thing of such imperious necessity as not to be evaded, even in the case of the existence of the variance, without extreme mortification.

'last lines—receive my last thanks. Had it been my lot to have lived longer, I should have had the pleasure of cultivating the acquaintance of a man, who has so generously come forward in the cause of suffering humanity, and has discharged his duty in a manner so honourable to himself, and so characteristic of the former inhabitants of this country. But alas! they are no longer what they were. Slaves to gain—vice and corruption are predominant! May Almighty God bless and protect you from the venomous malice of all your enemies. May you ever be as well as I wish you, is the last prayer and blessing of your injured and unfortunate friend,

JAMES COIGLY.

[Narrative continued.]

"The further letter I had sketched and intended to have sent to Mr. Wickham, had the time I expected been allowed me, was as follows:

Hart-street, June 6, 1798.

"Sir;—I avail myself of the liberty you allowed me, when I had the honour of an interview with you this afternoon, to state the further facts and arguments I have to urge on behalf of Mr. Coigly.

"In my last letter I alluded to the evidence of Stephen Perkins, which I said I conceived would have become extremely material (as in fact it appeared to me to be without) if we had been apprized at the trial of the supposed variance between the evidence given there, and that which had been given either at Bow-street, or before the privy council.

"Perkins's evidence amounted, in my mind, almost to a negative of the charge; particularly if prevarication, or perjury had been brought home to the two witnesses alluded to in the former part of my correspondence; for Perkins swore, 'that he had warned Coigly himself at Whitstable, that an information had been laid against him and his friends as suspected persons; that they would certainly be searched (as they afterwards were!) at Whitstable;' and a similar warning was repeated by his telling him, after that search had taken place, 'that they would be overhauled again at Margate.'

"After this, may I not ask, is it rational, is it probable, is it common sense to believe, that the very serious paper, for the supposed treasonable possession of which he is doomed to forfeit his life was at that time in the prisoner's custody? or at least, that he had any knowledge of any possession of such a paper, and did not, under such circumstances, immediately destroy it? If it were so important as to be the very object of his supposed mission, could he have forgotten that he had it? The treasonable intent, and the knowledge of the possession of the paper are certainly inseparable.

VOL. XXVII.

The conduct of the secretary of state, and his officers, and the crown-lawyers, in this transaction, is strong presumptive proof of the

It is utterly impossible for any man, much less a man of the extraordinary memory and other great mental endowments of the prisoner, to be the legitimate bearer of a treasonable paper to France, and not to know he was so when reminded of it. The mere unconscious possession of the paper would certainly not have been criminal; and many cases might be stated in which even the conscious possession of such a paper would not; with these, however, although they may not be entirely conjectural, yet as they do not perhaps clearly, palpably, and naturally flow from the evidence given in the cause, I forbear to trouble you. Under such circumstances, I think I may admit with safety that the prisoner intended to go to France, was possessed of the paper, and that the paper was treasonable; nay, I will admit, that at the trial (although the great coat and the possession of the paper were certainly not clearly proved upon him) that all this was proved, and that the very important evidence of Revett and Fugion, in proof of that possession, was then unshaken; still, if the prisoner was ignorant of the possession of the paper, he was not guilty of the crime of treason, or perhaps any other! The great question therefore in this view of the case, appears to me to be this: 'Whether he was or was not ignorant of his possession of the paper?'

"With respect to the affirmative of his knowledge of the possession of the paper, or in other words, the treasonable intent, how stands the evidence? I do admit that its having been proved (by Revett and Fugion only I believe; certainly only by them and Twopenny) that he denied the great coat to be his, is a circumstance from which it may be inferred, that it was probable that he knew that this paper was in the pocket of it. This however is not, even in this unqualified state, that plain, unstrained, direct, manifest and convincing evidence which is required by the statute of king Edward. The crime, to adopt the very significant epithet used in the statute to define the sort of evidence required in cases of high-treason, is not made out 'proseably.' It is barely made out probably. But this is not all, for that probability was considerably weakened at the trial, if not entirely destroyed by the evidence of the very witnesses whose testimony gave it birth; for one of them swore that all the prisoners had refused to acknowledge the luggage, and that one of them, in the presence of the rest, had said he refused to own part of it, because it was probable that he (the witness) had put something into it. And Revett admitted, though reluctantly, 'that he had been desired by Coigly to make a schedule of, mark, and seal his papers, and to send for a magistrate for that purpose, which had not been done.' Were not these very sufficient, and very probable reasons for his refusing to

R

existence of the variance. I do not mean to follow it here. I shall only say a word of its conclusion. At the very time when the war-

own the great-coat? Surely this probability is at least as strong as the other, more naturally flows from the evidence; and, were it even a case of doubtful balance, is more agreeable to justice, because more congenial with humanity and mercy!

"But I admit also that its having been proved, by the production of a passport, 'that the prisoner had been in France,' was another circumstance, from which it might perhaps plausibly, but doubtless nor necessarily and inevitably be inferred, first, that he had been the bearer thither of the former address alluded to in this paper; and then, that being so, he must have been the person intended to be the bearer of this. But weak as this evidence is, and slight and very questionable as was the testimony by means of which the passport was to be brought home to the prisoner, these are not the only answers to it. The evidence of the passport contains within itself the means of its own destruction. It furnishes upon the very face of it, a strong probability that the prisoner was not the bearer of a former address from England, and therefore not the intended bearer of this; for it appears from it, that he travelled in France, not as an English emissary, but in the disguise of an American. Why? His real character, if such an emissary, certainly needed no such disguise in France! To which may be added another strong negative probability, arising from the date and contents of the paper itself. It is dated 6 Pluaise (i. e. the 25th of January!) and written, it says, 'on the wing of the moment, because its intended bearer, the person who had conveyed the former address, had but A FEW HOURS to stay for it!' And yet it was in evidence in the cause, that the prisoner did not set out until the latter end of the following MONTH, the 26th of February!—Is it not therefore a fair, is it not a convincing inference that he was not the intended bearer of this paper? These are surely strong and natural probabilities for the prisoner, in opposition to weak and strained probabilities against him!

"Again, however, it may be contended, that the clandestine manner in which the prisoner was detected in the act of quitting the kingdom, is a third, and certainly it is the only remaining, circumstance worth noticing, from which to infer the probability of the treasonable intent. But this again is but probability, however strong, and the fact upon which it is founded, or rather from which it is inferred, was rationally accounted for on two strong grounds, totally distinct from the crime of treason, namely, its necessity, first, from the prisoner's being a fugitive from his native land for fear of arrest, under some other charge; and secondly, from its being a misdemeanor, punishable by fine and imprison-

ment, to quit the kingdom without his majesty's licence. Thus are all the probabilities deduced from the evidence in support of the affirmative of the prisoner's guilt, or treasonable knowledge of the possession of the paper opposed, and I think destroyed by probabilities of equal or greater strength and number in every instance; and stretching the evidence of the prisoner's guilt to its utmost possible bearing, it amounts to no more than a ground for an inference of a probability of it; from which alone it might perhaps fairly be insisted, that the crime is not *proveably* made out as the statute requires; is not even *probably* made out, which according to the legal exposition of the statute would be insufficient; and that therefore, upon this statement alone, the prisoner was entitled to an acquittal.

"But this is not all. It yet remains to be inquired how far the evidence goes towards the negative of the prisoner's treasonable intent, or knowledge of the possession of the paper? Undoubtedly that negative is almost, if not wholly, within the grasp of Perkins's evidence. It is hardly possible to believe that the prisoner WAS CONSCIOUS of the possession of the paper when Perkins warned him of his danger. And yet it is said to have been found in his pocket; and, to make out the case against him, must be believed to be there with his privacy the next morning at the very place where he expected to be 'overhauled!' Surely this could never be; such a conclusion is not proveable, is not probable, is hardly possible! I think therefore, that, looking not to the prisoner's guilt but to his innocence, I may justly say, in the language of the learned judge who presided at the trial (and I hope without impertinence or presumption, because some of the topics I have urged were not discussed at the trial) this is extremely strong; and ask, in the same very appropriate and emphatic language, What have you to contradict it? To which I would answer in the same language (considering the arguments I have stated respecting the contrary probability as well founded, and palpably deducible from the evidence) certainly NOTHING!—And in answering thus, I speak with reference, as I have already suggested, to all the evidence given in the cause against the prisoner.

"How much stronger then is the prisoner's claim to the mercy, I would say the justice of his country, when I add to all this, the alleged and proveable variance I had the honour of stating to you this day, between the evidence of Revett and Fugion at the trial, and the account they had given of the same fact in conversation at least, if neither at Bow-street nor before the privy-council. For most unquestionably the same arguments would have arisen in the prisoner's favour

and Mr. Ford, having Mr. White with them, affect to be in consultation in Mr. Wickham's office, on the subject of the variance, Mr. Foulkes waiting the mean while by appointment in an adjoining chamber; and at

from a variance in conversation, as from that which might appear from the production of a regular examination. The witnesses must, upon the trial, either have admitted or denied that they had had any such conversation. If they admitted it, their prevarication would have been detected, and with the same effect in the one case as in the other. If they denied it, the person with whom those conversations were had, might have been called to contradict them, and the result must have been the same. I am, &c. &c.

"This was my intended letter. Whether it contained any reasonable ground for a hope of success or not, I lament that the opportunity was not given me to make the experiment. Perhaps I ought to have written and sent it immediately, and my delay may be less excusable than their dispatch; but the subject was too important to be hurried over in a moment; and the assurances I had received from Mr. Wickham at my first and last interviews with him, added to the general public belief that the execution of the sentence had been suspended for ten days, left me, as I conceived ample time. And in fact I was half prepared as soon after the last interview as, I think, was possible; for I did not receive the written answer Mr. Wickham had promised me until seven in the evening, and I had written the draft of my letter on that night, and would have sent it the next day had not the prisoner's letter by that morning's post, as already mentioned, brought me the fatal news of his intended execution on that morning.

"One prominent result of these transactions in my mind is, that I cannot help considering it as a lamentable defect in the administration of justice, that the examinations or depositions, upon which the charge is founded, are not returned into court, as well in cases of high treason as in those of felony. And I think, I am warranted in this conclusion, by the opinion, to that effect, given by the learned judge in his charge to the grand jury upon this very trial. Besides enabling the judge to give the grand jury, as he observed, the outline of the case submitted to their consideration, would it not promote the ends of justice to supply the Court with the means, and the examinations are the means, and perhaps the only effectual means, of detecting a prevarication, or proving a perjury? Without these means the Court may be imposed upon, witnesses may upon the trial swear with impunity, as differently from their previous examination as they think fit; and upon such evidence, innocent men be doomed to death!

"J. F."

four o'clock of the same evening on which the warrant was announced to Coigly between four and five o'clock, Mr. Wickham informed Mr. Foulkes that the answer would be unfavourable, but asked him "*whether he had any thing farther to urge on the prisoners behalf?*" and after some conversation, in which Mr. Foulkes stated a new ground for still urging his application (which the reader will find to be a very extraordinary confession of Mr. Ford to him as he passed on that very occasion to Mr. Wickham's office) Mr. Wickham said, "*certainly, on an occasion like this, we shall think nothing troublesome.*" This was, I remind my reader, a little before four o'clock, and before five o'clock of the same day the warrant was announced to the prisoner, at the distance of five-and-thirty miles from this scene. I have no inclination to comment on this proceeding.

I have only one circumstance more to state in behalf of this unfortunate man. It is a fact that not only proves him to be innocent of the charge, but even ignorant of the contents of the treasonable paper. The date of that paper is, the 25th of January, and on that day Mr. Coigly was in Dublin, and dined in company with a gentleman who is about to publish his posthumous papers, and who has related this circumstance in his preface to that work; and on his authority, expressly given me, it is that I now state the fact. But there is a part of the crown-evidence, from which we may safely conclude that Coigly was not in England on the day, nor even in the month, when the paper purports to be written. Mr. Bell says, "*He (Mr. O'Connor) never informed me any thing of Mr. Coigly's arrival from Ireland till I saw him in my own house, about the middle of February; I understood he had come some very few days before, two or three days before as Mr. O'Connor told me; I understood from Ireland.*"* There is nothing to impeach this evidence. Mr. O'Connor is talking to Mr. Bell of Coigly's arrival from Ireland, and could have no motive to misrepresent the time. Mr. O'Connor probably related the fact from Coigly's own account. That is not directly said, but it flows naturally from the situation of the parties. It is not, however, of much importance where Mr. O'Connor got his intelligence. There is no apparent interest in any person living to deceive Mr. O'Connor in this matter. Why was this evidence, which appears to me to raise a very strong presumption of the prisoner's innocence, overlooked by the judge? If he thought the law of the land authorised him, first, to speculate on the case openly in the court, and secondly, to press the result of his conjectures upon the jury, as his decided opinion on the question of the guilt or inno-

* These are answers to questions of the attorney-general. *Orig. Ed.*—See Vol. 26, p. 1323,

cence of the prisoner,* did he also mistake the law in that amiable part of its character which enjoins the judge to be counsel for the prisoner? or was there no monitor in his breast to say, "Hold! be not an advocate against the unfortunate man!"

On the kind of case we have seen, Mr. Coigly was convicted and died. From the moment of his conviction he began to prepare for death; and his preparations were such as proved him to have deserved a happier fate. Having taken an affectionate and dignified leave of the other prisoners and his friends, he applied himself with the activity and vigour of a man who has a favourite pursuit to subjects by which the few hours he had to live might be made useful to others. He lamented that he had trusted his defence out of his own hands, and to counteract the public part of the mischiefs of his trial, was now his chief wish. But he was far from being insensible to his own interest, in its dearest part. He had an eager, perhaps an extreme anxiety for his fame. With views which were hence made up from public and private motives, he wrote a very long letter to a friend, in order to point out the chief errors of the trial. He then wrote a very affecting address to his own countrymen; and the hour of his death being very unexpectedly delayed, he seized upon the occasion to compose memoirs of his family and of his own life.* He did not deceive himself respecting the causes of this delay; he knew there was no way to a reprieve, but one he disdained. In answer to his solicitor, who had conceived hopes (honourable to himself) of saving Coigly, when he communicated a portion of his hopes to him, he said "It is in vain to make any attempt in my favour."

On the evening of the 6th of June, the gaoler announced to him the arrival of the warrant, for his execution on the following morning at eleven o'clock. The gaoler had conceived a high esteem of him, and was greatly affected while he read the warrant; and Mr. Coigly, undisturbed at his own fate, endeavoured in the kindest manner to restore his tranquillity.

A few minutes before this, he had finished a letter to the attorney-general, and as soon as Mr. Watson (the gaoler) withdrew, he wrote a letter to the duke of Portland.† He

* That the judge did *speculate on the case*, and that *very wildly*, I call upon every person to see for himself (who has the power) in the judge's summing up; and that he pressed the result of his speculations *inordinately* on the jury, I prove by his own words—"Perhaps (he says) as to the first prisoner (*Coigly*) I have stated my own opinion pretty strongly."—*Orig. Ed.*

† The whole of these papers are in the press under the inspection of the gentlemen to whom Mr. Coigly committed them.—*Orig. Ed.* See the preceding tract.

‡ These are the letters I have already alluded to. *Orig. Ed.*

then wrote a very affecting and noble letter to his solicitor.* Having taken copies of these three letters, he ate his supper, and after his usual evening's devotions went to bed.

Two gentlemen who had gone to Maidstone post, during the night, to attend his last moments, arrived early the next morning, and one of them was permitted by the gaoler, to visit Mr. Coigly, to receive his last wishes. Mr. Coigly said, "You do not find me very well prepared, as to strength, to discharge my important duty; I have had little sleep,† and my stomach is disordered. Yet I trust I shall not act unworthily." He spoke on several topics with dignity, and on some with vehemence. He complained, with a mixture of anger and sorrow, of the confessor who attended him. "We have not yet (he said) composed our differences, and I almost fear we shall not." This supposition moved him extremely. "But his conduct (he said) is not only inconsistent with his situation as a clergyman and a gentleman, but interferes with the devotions in which I would gladly pass my time with him." He left that subject for another; but he afterward said, "He (the clergyman) not only insists upon my confessing the treasonable act with which I am charged, which I expect him to do, but he entreats me to accuse others." And then Mr. Coigly named persons, both in Ireland and here, whom the clergyman urged him to accuse. "He not only offered me (he continued) my life and my own terms, but he assailed me on the side of religion. I uniformly answered, I have no confessions to make. I just now said to him, I wish you would permit me to die in peace with you." The contests between Mr. Coigly and this gentleman seem to have been at times very bitter. The clergyman complained of some reports which were spread to his discredit concerning this subject, and desired Mr. Coigly to contradict them. He answered, "If you conduct yourself toward me as becomes your character, I will say something at the place of my execution, to remove the effects of those reports," Mr. Coigly added in speaking of this, "yet he persecutes me up to this moment."

He spoke successively with indignation and grief of calumnies concerning him that appeared in some of the papers. "Your presence (he said) relieves me from great anxiety. It would have been hard for me to dis without a friend near me, on whose integrity I could rely to rescue my last moments from falsehood. But I contemplate a greater object in your presence. I am a murdered man, and I would not have my death thrown away, by its manner being belied." An eager love of fame was part of his sentiment at this

* See this letter, p. 240.

† He was kept awake by a large fire in the room, and the noisy conversation of two men who sat up with him. *Orig. Ed.*

moment, but it was lost in his greater passion for the public benefit. While he spoke of his approaching death, which several times occurred, although it was plain he had fully estimated its many horrors, yet his feelings always rested on a nobler view of it, and his eye and countenance often expressed his exultation at his approaching triumph.

That he had a very ardent wish that his memory should be cherished in the bosom of his friends, will be seen by his attention to a circumstance that would not be expected to occupy his thoughts in the very last hour of his life. He lamented that his friends could not be gratified with his portrait. Having stated that a gentleman of rank, whom he named, had employed a painter to take it, he said, "The proof that gentleman gave me of his esteem was very pleasing to me, but a brutal fellow has robbed me of the satisfaction of knowing that my portrait would be left with my friends both here and in Ireland. He is a captain of the volunteers of this town, and I believe a magistrate. When he knew what the painter came about, he took upon him to drive him from the prison."

He said, he had no wish left for his friends to execute, but that his papers should be published, and a faithful account of his death. He added, "the attorney-general is privy to my murder. I hope you have courage to see that this fact is not kept back from the world."

He sent his last thanks to his solicitor, of whose exertions in his behalf he spoke with gratitude; and then he said, "Farewell, till I see you again at the place of my execution!"

About half past eleven o'clock he arrived at that place, in a hurdle; he had no hat on, he was without a neckcloth, and his shirt-collar was open. The day was extremely sultry, he had been half an hour in coming from the prison, and the trampling of the horses that drew the hurdle, and of the soldiers and multitude that surrounded it, had kept him covered with clouds of dust, and he appeared faint from these causes. A chain which confined him on his seat in the hurdle was taken away; and while that was doing, the gentleman who visited him in the prison, and had gone to the ground to wait for him, informed him that there were persons present who would give a faithful account of his conduct. He said, "I thank you and them." He held a prayer-book in his hand, and he rose and prepared to read part of the Roman service, but the clergyman who had attended him in prison, stood at his side speaking earnestly to him in a low voice, and for some minutes interfered with his devotions. He listened with patience, but with evident disapprobation of the subject of the discourse. When he began his devotions, he read aloud several prayers in the Latin tongue. In a few minutes, he took an orange from his pocket, and afterwards a penknife, but his arms being bound he could not cut the orange, and beckoning to his friend he said, "Open this orange with my

penknife, it has been said they would not trust me with a penknife, lest I should cut my throat; but they little knew that I would not deprive myself of the glory of dying in this way." His friend having quartered the orange and given him a piece of it, he desired him to keep the penknife for his sake. He continued to read standing for more than a quarter of an hour, when he knelt down and chaunted a psalm, and then concluded with a prayer which he spoke inwardly. During the service, his thoughts seemed wholly absorbed by the subject. In a prayer in which he called upon God for aid in his sufferings, he was much affected and wept. But when he chaunted the psalm, he seemed to be animated with hope. At the conclusion of the service, the clergyman renewed his discourse to him in a whisper. It was plain that Mr. Coigly was offended with a part of it. He shook his head, and in a solemn manner said, "No! no!" It was impossible to draw any safe conclusion as to the subject, but it was probable it was that on which the clergyman had been so importunate in the prison. At the close of it however, was a proposition to which Mr. Coigly assented, for he bowed and said, "Yes, I will;" and giving the clergyman his prayer-book, he shook hands with him, and bade him farewell. He now stepped out of the hurdle, and his friend offered him a piece of the orange, which he took; and having eaten it, he bade him farewell. He walked up to the gaoler, who was on horseback at a few paces distance, and said, "Mr. Watson, farewell! God bless you! Your conduct to me has been very kind and generous, and I thank you for the many civilities you have shown me.—God bless you!" He shook hands with Mr. Watson; and then ascended the ladder with unshaken courage. As the executioner prepared the rope, the man said something that was probably an apology, for Mr. Coigly answered, "Say nothing; you know you must do your duty." The executioner, when he was about to put the rope over his head, said, "You must turn your back, sir." Mr. Coigly bowed, and turned round. When the rope was round his neck and fastened to the tree, and his arms bound behind, he spoke in the following manner:

"MR. SHERIFF,"

[The sheriff approached, with his hat off.]

"Put on your hat, sir, (Mr. Coigly said) put on your hat." [The sheriff stood with his hat off till Mr. Coigly concluded his address.]

"It is customary, you know, sir, in cases of this sort, for a person standing in my unfortunate situation, always to say something, more or less, to those who accompany him; but I do not think it requi-

* There can be no doubt this related to the words he spoke in behalf of the clergyman in his dying address. Orig. Ed.

site to say so much as I otherwise should, upon the present occasion, because I have taken the pains already, under my own hand, to draw a regular declaration—a convincing thing it will be, I think, to the world at large—and a sketch also of my unfortunate and afflicted life: I have sent them both to a friend in London, and I hope they will be published. I have therefore now only to make my last and solemn declaration:

“ I never was the bearer of any letter, paper, writing, or address, or message either written, printed or verbal, to the Directory of France, or to any person on their behalf of which I am accused, nor has any person for me been such bearer. I farther declare, that I never was a member of the Corresponding Society, nor any other political society in Great Britain, nor did I ever attend any of their meetings public, or private. So help me God!

“ Surely if a man is to be believed at any time, it is when he is going into eternity, before the bar of the Heavenly Father and Almighty God. Before him I now solemnly declare the truth of what I am now saying. I declare it under this impression. Whether it will be believed by men or not, is a matter that must rest with posterity. I hope history and posterity will do me justice; but if not, I go instantly before a tribunal where it is known that I speak the truth.

“ My life is falsely and maliciously taken away, by corrupt and base perjury, and subornation of perjury. But God forgive my enemies! I have long, long been persecuted by the government of Ireland. The first cause for that persecution was, my having endeavoured to teach the people this lesson: ‘ That no man could serve his God by persecuting his neighbour for any opinion, and particularly for any religious opinion.’ I have always said, ‘ If men wish to serve God on earth, they should give up their persecuting spirit.’ This was the first cause of my persecution.—The second cause of my persecution was, a contested election in Ireland, in which I used my endeavours to prevail on my father and my brother, who were freeholders, to poll for the opposition candidates.—The third, and final cause of my persecution, was (and it was supported by charges which have been since retracted) because I was active in procuring a long and spirited address to his majesty, to put an end to this most calamitous war, and to dismiss those who are falsely called his servants.

“ I forgive from my heart, with pure Christian charity, every man who has had a hand in my murder; for I declare it is a most wicked murder. ***** and ***** perjured themselves; but God forgive them! Mr. *** perjured himself by suppressing proofs he held in my favour; but God forgive him! ***** a man of most infamous character, corruptly perjured himself; but God forgive him also! Mr. ***** perjured himself; but God for-

give him! Two others perjured themselves, one of them was a poor ignorant lad; but God forgive them all, as I now do. I forgive them from my heart. I have no doubt that, when the clouds of prejudice and alarm shall pass away, justice will be done me; and I hope my sufferings will be a warning to jurors to be cautious how they embroil their hands in innocent blood.

“ Some few disputes took place between me and my brother clergyman who attended me. I have said some harsh things of him, for which I beg his pardon. I wish to die in amity with all mankind. We are now, thank God, agreed.

“ I have now finished.—But, gentlemen, I recommend to you—I do recommend to you, men of Kent, in time to come to beware how you permit any persons to take advantage of you, and to guard against the snares of the crown-lawyers. It has been the fate of your county to shed the blood of a poor helpless innocent stranger.—May Almighty God forgive all mine enemies; and I desire of you all to pray to God to grant me grace to support me in this moment, and to enable me to die in a manner worthy of my integrity. I have many sins to answer for, but they are the sins of my private life; and I am innocent of the charge for which I die.

“ O Lord! have mercy on me, and receive my soul!”

He spoke with so firm and distinct a voice as to be heard by all present. His manner was impassioned, but distant from all extravagance. Having concluded, he said, “ I am ready;” but the rope had got out of its place, and the executioner had again to adjust it. During this time, Mr. Coigly's countenance was expressive of peace within. While the cap was drawing over his face, he made signs to his friend to approach nearer, and bowing dropped his handkerchief at his feet. That most trying space of time between the moment when the cap was drawn over his face and the falling of the platform, was longer than is usual; during all this time no trepidation could be discovered in his limbs or muscles. His lips moved, and his hands were lifted up in prayer, to the last moment. He died apparently with little suffering.

The spectators behaved with great respect toward him.* When he declared his innocence, a buzz of applause ran through the multitude, and there was even some clapping of hands. Toward the close of his address, many of the spectators wept, and some of the soldiers were unable to repress their tears.

* It is due to the sheriff to say, that he conducted himself with something more than common propriety, indeed with very great humanity. He gave orders to the executioner to spare the prisoner all unnecessary pain; and assiduously watched to see that done.—*Orig. Ed.*

Mr. Coigly was descended, both by his father's and mother's side, from very ancient Roman Catholic families in Ireland. His father, who is a farmer in moderate circumstances, and a respectable old man, resides in the parish of Kilmore, in the county of Armagh, on the spot where Mr. Coigly was born. He educated his son for the church, and sent him first to the grammar-school at Dundalk, in the county of Louth, where he was instructed in the rudiments of the learned languages and the mathematics, and afterward to the Irish college of Lombard in Paris, where he finished his studies. In 1789, he returned to Ireland; and having taken orders settled at Dundalk, where he continued to officiate as a Roman Catholic clergyman, till he was driven from that place by the persecutions of the Orange Men and the Irish government.

In places where he resided for a length of time, he was well known for his talents and virtues. At the college in Paris he soon was considered as a youth of vigorous intellect and inflexible fortitude. In the North of Ireland, in the counties of Armagh, Louth, Down, and Antrim, he was beloved and admired, and as sincerely by the Protestant Dissenters as the Catholics. His public labours were directed against the tyranny of the Beresford faction, and the savage persecutions of

the Orange Men.* His private occupations shed blessings on the poor, the sick, and the afflicted. His amiable and great qualities were unsullied by any private vices. In speaking of him on this side of his character, I will use his own honest words: "In point of moral conduct, even my enemies will not, nor ever did attempt to impeach me; never did I knowingly injure any one; I was always an obedient child, dearly beloved and cherished by my parents—alas, my untimely fate will bring down their hoary hair with sorrow to the grave!"

The characteristics of his temper were of a noble kind. They were frankness, constancy, and generosity. Of all his transactions from a boy to his last scene, these are the predominant qualities. Perhaps his facility in sacrificing his own interest to that of others was too great. In his last moments it marked his feeling, for he not only forgave the clergyman who persecuted when he ought to have consoled him, who tempted him to crimes when he ought to have fortified him if wavering, but with an excess of generosity he endeavoured to remove the odium which that person had justly incurred.

He died on the 7th of June, aged 36.

* I refer my reader for an account of the circumstances of his public life to his own *Memoirs.—Orig. Ed.*

TRIALS FOR THE IRISH REBELLION.

631. Proceedings on the Trial of HENRY and JOHN SHEARES, Esquires, Barristers at Law, for High Treason; before the Court holden under a Special Commission of Oyer and Terminer at Dublin, on Wednesday the 4th and Thursday the 12th Days of July: 38 GEORGE III. A. D. 1798.*

PRELIMINARY PROCEEDINGS.

IN the month of May, 1798, several persons were apprehended in Dublin upon charges of High Treason; and shortly afterwards, an act of parliament was passed, empowering commissioners of Oyer and Terminer for the county and city of Dublin, to sit in term time.

Pursuant to this act, a commission of Oyer and Terminer for the county and city of Dublin passed the Great Seal, in Trinity term 1798. It was directed to the right honourable Hugh viscount Carleton, lord chief justice of the Court of Common Pleas; the honourable Alexander Crookshank, second justice of the said court; the honourable Tankerville Chamberlaine, third justice of the Court of King's-bench; the honourable Michael Smith [afterwards master of the Rolls, and a baronet], and the honourable Denys George, third and fourth barons of the Court of Exchequer; and the honourable Robert Day, fourth justice of the Court of King's-bench: appointing them, or any one or more of them, justices and commissioners of Oyer and Terminer within the county and city of Dublin, to hear and determine all treasons and misprisions of treason, murders and manslaughters, in said counties or either of them.

Under this commission, the Court was opened at the Sessions-house in Green-street, on the eleventh day of June, 1798, when it was adjourned for a fortnight, on account (as it was supposed) of the situation of things, viz. a rebellion then actually raging, and many of the citizens, likely to be called as jurors, serving upon military duty.

On Monday, the 25th of June, the Court sat again, when the sheriffs of the city and county of Dublin were informed, that Grand Juries for their respective counties would be wanted next day.

* Reported by William Ridgeway, esq. barrister at law.

On Tuesday, the 26th of June, the Court sat, when the Grand Juries were sworn, to whom lord viscount Carleton, lord chief justice of the Court of Common Pleas, gave a charge; after which bills of indictment for high treason were found against Henry Sheares and John Sheares esquires, barristers at law; John Mac-Cann, gentleman; Samuel Neilson, printer; William Michael Byrne, gentleman; and Oliver Bond, merchant.

These persons were brought into Court, informed that bills of indictment were found against them, and desired to name such counsel and agents as they chose to be assigned to them. Counsel and agents were accordingly named by all the prisoners, except Samuel Neilson, who said he would not name any counsel. The Court then adjourned to Wednesday, the fourth of July.

Wednesday, July 4th, 1798.

Judges present.—The right hon. Hugh viscount Carleton, C. J. C. B.; the hon. Mr. Justice Crookshank; the hon. Mr. Baron Smith; the hon. Mr. Baron George; the hon. Mr. Justice Day.

Counsel for the Crown.—Mr. Solicitor-General* [John Toler, afterwards lord Norbury and Lord Chief Justice of the Court of Common Pleas]; Mr. Prime Serjeant [James Fitzgerald]; Mr. Saurin [afterwards Attorney General]; Mr. O'Grady [afterwards Lord Chief Baron of the Court of Exchequer]; Mr. Mayne [afterwards a Judge of the Court of Common Pleas]; Mr. Webber; Mr. Ridgeway.

Agent.—Mr. Kemmis.

Counsel for Mr. Henry Sheares.—Mr. Curran [afterwards Master of the Rolls]; Mr. Plunkett [afterwards Attorney General].

Counsel for Mr. John Sheares.—Mr. Curran; † Mr. Mac Nally.

* See the note to the proceedings on July 12th *infra*.

† Mr. Ponsonby was afterwards substituted for Mr. Curran as counsel for Mr. John Sheares. Vide the proceedings on July 12th *infra*.

Assistant Counsel.—Mr. Orr ; Mr. Finlay.
Agent.—Mr. A. Fitzgerald.

Henry Sheares and John Sheares, were brought to the bar, and arraigned upon the following indictment:—

*County of the City of } “ The jurors of our
Dublin, to wit. } lord the king upon*
their oath present and say, that Henry Sheares, late of Baggot street, in the county of the city of Dublin, esquire, and John Sheares, late of Baggot street aforesaid, in the same county, esquire, being subjects of our said lord the king of this realm of Ireland, and not having the fear of God in their hearts, nor the duty of their allegiance considering, but being moved and seduced by the instigation of the devil, as false traitors against our said lord the king, their supreme, true, lawful, and undoubted lord, the cordial love and true affection, which every subject of our said lord the king should bear towards our said lord the king, wholly withdrawing, and contriving, and with all their strength intending the peace and common tranquillity of this his kingdom of Ireland to disturb, and the government of our said lord the king of this his kingdom of Ireland to subvert, and overturn, and our said lord the king off and from the royal state, title, honour, imperial crown and government of this his kingdom of Ireland, to depose and deprive, and our said lord the king to death, and final destruction to bring, on the twentieth day of May in the thirty-eighth year of the reign of our said lord the king, and on divers other days and times as well before as after that day, at the parish of Saint Michael the archangel, in the said county of the city of Dublin, with force and arms, to wit, with swords, sticks, staves and soforth, falsely, wickedly, and traitorously, did compass, imagine, and intend our said lord the king then and there their supreme, lawful, and undoubted lord, off and from his royal state, crown, title, power and government of this his kingdom of Ireland to depose and deprive, and the said lord the king to kill, and put to death; and that to fulfil and bring to effect their most evil wicked treason and treasonable imaginations, and compassings aforesaid, they, the said Henry Sheares, and John Sheares, as such false traitors as aforesaid, and with force and arms, on the twentieth day of May, in the thirty-eighth year of the reign aforesaid, and on divers other days and times as well before as after, at the parish of Saint Michael the archangel, in the said county of the city of Dublin, falsely, maliciously, and traitorously did assemble, meet, conspire, agree, and consult between themselves, and together with divers other false traitors, whose names are to said jurors unknown, to stir up, raise, and levy rebellion, and war against our said lord the king, within his kingdom of Ireland, and to procure great quantities of arms and ammunition, guns, pistols, swords, pikes, gun-powder and shot, for the purpose

VOL. XXVII.

of the said rebellion, and to procure, and cause great numbers of armed men to rise, and prosecute, and levy war against our said lord the king, within this kingdom: And farther to fulfil, perfect, and bring to effect their most evil and wicked treason, and treasonable compassings, and imaginations aforesaid, they the said Henry Sheares and John Sheares, as such false traitors as aforesaid, with force and arms on the twentieth day of May, in the thirty-eighth year of the reign aforesaid, at the parish of Saint Michael the archangel, in the county of the city of Dublin aforesaid, falsely, maliciously, and traitorously, did assemble, meet conspire, consult, and agree between themselves, and together with divers other false traitors, whose names are to the jurors aforesaid as yet unknown, to depose, and dethrone the said lord the king, and him off and from his royal state, authority, and government of this kingdom to deprive, and put: and farther to fulfil, perfect, and bring to effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said Henry Sheares and John Sheares, as such false traitors as aforesaid, with force and arms, on the twentieth of May, in the thirty-eighth year of the reign aforesaid, at the parish of Saint Michael the archangel, in the county of the city of Dublin aforesaid, falsely, maliciously, and traitorously, did assemble, meet, conspire, consult, and agree between themselves, and together with divers other false traitors, whose names are to the jurors aforesaid as yet unknown, to overturn by force the lawful government of this kingdom, and to change by force the constitution of this kingdom: And farther to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassings and imaginations aforesaid, they, the said Henry Sheares and John Sheares, as such false traitors as aforesaid, with force and arms, on the twentieth day of May, in the thirty-eighth year of the reign aforesaid, at the parish of Saint Michael the archangel, in the county of the city of Dublin aforesaid, falsely, maliciously, and traitorously did assemble, meet, conspire, consult, and agree between themselves, and together with divers other false traitors, whose names are to the said jurors unknown, upon and about the means of raising and making rebellion against our said lord the king, within this kingdom, and of procuring and providing great quantities of arms and ammunition for that purpose, and of procuring and causing great numbers of armed men to rise, and to prosecute and levy war against the said lord the king, within this kingdom, and of overturning by force the government of this kingdom, and of changing by force the constitution of this kingdom: And farther to fulfil, perfect, and bring to effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said Henry Sheares, and John Sheares, as such false traitors as aforesaid, with

S

force and arms, on the twentieth day of May, in the thirty-eighth year of the reign aforesaid, at the parish of Saint Michael the archangel, in the county of the city of Dublin aforesaid, falsely, maliciously, and traitorously did assemble, meet, conspire, consult, and agree between themselves, and together with divers other false traitors, whose names are to the said jurors unknown, upon and about the means of deposing and dethroning the said lord the king, and him off and from his royal state, authority, and government of this kingdom depriving and putting: And farther to fulfil, perfect, and bring to effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said Henry Sheares and John Sheares, as such false traitors as aforesaid, with force and arms, on the twentieth day of May, in the thirty-eighth year of the reign aforesaid, at the parish of Saint Michael the archangel, in the county of the city of Dublin aforesaid, falsely, maliciously, and traitorously, with design and intent, by force, violence, and rebellion, to overturn the present government of this kingdom, and with intent by force, violence, and rebellion to change and alter the constitution of this kingdom, did associate themselves together with, and become members of a party, society, and brotherhood, then and there formed, under the denomination of United Irishmen, and then and there together adhering, for the purpose of overturning by force the government of this kingdom, and dethroning, and deposing the said lord the king: And farther to fulfil and bring to effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said Henry Sheares and John Sheares, and each of them, as such false traitor and traitors as aforesaid, with force and arms, on the twentieth day of May, in the thirty-eighth year of the reign aforesaid, at the parish of Saint Michael the archangel, in the county of the city of Dublin aforesaid, falsely, traitorously, and maliciously, did urge, and endeavour to persuade one John Warneford Armstrong, to aid, and assist in raising, and exciting war, and rebellion against our said lord the king, and did then and there urge, and endeavour to persuade the said John Warneford Armstrong to seduce, and persuade divers soldiers of our said lord the king, of his regiment of King's County militia, to desert the service of the said lord the king, and to join in the said rebellion: And farther to fulfil and bring into effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said Henry Sheares and John Sheares, and each of them, as such false traitor and traitors as aforesaid, with force and arms, on the twentieth day of May, in the thirty-eighth year of the reign aforesaid, at the parish of Saint Michael the archangel, in the county of the city of Dublin aforesaid, falsely, traitorously, and maliciously, with intent to depose and dethrone

the said lord the king, and him off and from his royal state, and government of this kingdom to deprive, and put, did urge, and endeavour to persuade one John Warneford Armstrong to aid and assist in raising and exciting war and rebellion against our said lord the king, and did then and there urge, and endeavour to persuade the said John Warneford Armstrong to seduce and persuade divers soldiers of our said lord the king, of his regiment of the King's County militia, to desert from the service of the said lord the king, and to join in the said rebellion: And farther to fulfil and bring to effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said Henry Sheares and John Sheares, and each of them, as such false traitor, and traitors as aforesaid, with force and arms, on the twentieth day of May, in the thirty-eighth year of the reign aforesaid, at the parish of Saint Michael the archangel, and in the county of the city of Dublin aforesaid, falsely, traitorously, and maliciously, did urge, and endeavour to persuade the said John Warneford Armstrong, who was then and there a captain in the said lord the king's regiment of the King's County militia, to desert from the service of the said lord the king, in order to aid and join in war, and rebellion against the said lord the king: And farther to fulfil and bring to effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said Henry Sheares, and John Sheares, and each of them, as such false traitor and traitors as aforesaid, with force and arms, on the twentieth day of May, in the thirty-eighth year of the reign aforesaid, at the parish of Saint Michael the archangel, in the county of the city of Dublin aforesaid, falsely, wickedly, and traitorously made, composed, and formed, and did in writing and figures set down, and put, a plan to be by them and other false traitors, and by an armed force of rebels executed, for the seizing by force and by surprise the camp of troops of the said lord the king, then being at Lehaunstown in the county of Dublin, and for seizing by force and surprise the artillery of the lord the king then being at Chapelizod in the same county, and for seizing the city of Dublin, together with the Castle of Dublin, and the lord lieutenant, and his majesty's privy council of this kingdom, and making the said traitors and rebels masters thereof and of them, with intent, that the said plan should be carried into effect, and with intent that the said camp, artillery, and city, and the said castle, lord lieutenant, and privy council should be seized into the hands, and power of traitors and rebels against the said lord the king: And farther to fulfil, and bring into effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said Henry Sheares, and John Sheares, and each of them, as such false traitor and traitors as aforesaid, with

force and arms, on the twentieth day of May, in the thirty-eighth year of the reign aforesaid, at the parish of Saint Michael the archangel, in the county of the city of Dublin aforesaid, falsely, wickedly, and traitorously, with intent to depose, and dethrone the said lord the king, and off and from his royal state, and government of this kingdom to deprive, and put, did urge, and endeavour to persuade the said John Warneford Armstrong who was then and there a captain in the said lord the king's regiment of the King's County militia, to desert from the service of the said lord the king, in order to aid, and join in war, and rebellion against the said lord the king: And farther to fulfil and bring into effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said Henry Sheares, and John Sheares, and each of them, as such false traitors as aforesaid, with force and arms, on the twentieth day of May, in the thirty-eighth year of the reign aforesaid, at the parish of Saint Michael the archangel, in the county of the city of Dublin aforesaid, falsely, wickedly, and traitorously did procure, and obtain, and in their custody and possession have and keep, a certain paper with writings and figures therein, theretofore composed, and prepared, to signify, and represent a plan, for the seizing by force and by surprise the camp of troops of the said lord the king, then being at Lehaunstown in the county of Dublin, and for seizing by force and surprise the artillery of the lord the king, then being at Chapelizod in the same county, and for seizing the city of Dublin, together with the Castle of Dublin, and the lord lieutenant and his majesty's privy council of this kingdom, and making the said traitors and rebels masters thereof, and of them, with intent that the said plan should be carried into effect, and with intent that the said camp, artillery, and city, and the said Castle, lord lieutenant, and privy council should be seized into the hands and power of traitors and rebels, against the said lord the king: And farther to fulfil and bring into effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said Henry Sheares, and John Sheares, and each of them, as such false traitors and traitor as aforesaid, with force and arms, on the twentieth day of May, in the thirty-eighth year of the reign aforesaid, at the parish of Saint Michael the archangel, in the county aforesaid, falsely, wickedly, and traitorously did make, compose, and form, and in writing set down, and put, a certain proclamation, manifesto, and declaration, purporting, amongst other things, to declare that rebellion, and war against the lord the king, and against the government of this kingdom were commenced, and that the said rebellion and war would soon destroy the government, and purporting among other things to urge, invite, and call forth the people of this kingdom into open array, rebellion, and war against the

lord the king, and the government of this kingdom, with intent, that the said proclamation, manifesto, and declaration should be published, and spread amongst the people of this kingdom, and should incite them to enter into, and continue in rebellion, and war against the said lord the king: And farther to fulfil and bring into effect their most wicked treason, and treasonable compassings and imaginations aforesaid, they, the said Henry Sheares, and John Sheares, as such false traitors as aforesaid, with force and arms, on the twentieth day of May, in the thirty-eighth year of the reign aforesaid, at the parish of Saint Michael the archangel, in the county of the city of Dublin aforesaid, falsely, wickedly, and traitorously did procure, and obtain, and in their custody and possession keep, and have, a certain paper writing, theretofore composed and prepared, to declare, amongst other things, that rebellion and war against the lord the king and against the government of this kingdom were commenced, and that the said government would soon be destroyed, and to urge, invite, and call forth the people of this kingdom into open array, rebellion, and war against the said lord the king, and the government of this kingdom, with intent to publish, spread, and circulate the said paper writing, and the purport and matter thereof amongst the people of this kingdom, and with intent to incite the said people to enter into and continue in rebellion against the said lord the king: And farther to fulfil and bring into effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said Henry Sheares, and John Sheares, as such false traitors as aforesaid, with force and arms, on the twentieth day of May, in the thirty-eighth year of the reign aforesaid, at the parish of Saint Michael the archangel, in the county of the city of Dublin aforesaid, falsely, wickedly, and traitorously did cause and procure great numbers of armed men to the number of one thousand men, armed and arrayed in a warlike manner, traitorously to assemble, and appear in arms, to wit, at Clondalkin in the county of Dublin, and then and there traitorously to ordain, prepare, and levy war against the said lord the king: And farther to fulfil, perfect, and bring to effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said Henry Sheares, and John Sheares, as such false traitors as aforesaid, with force and arms, on the twentieth day of May, in the thirty-eighth year of the reign aforesaid, at the parish of Saint Michael the archangel, in the county of the city of Dublin aforesaid, falsely, maliciously, and traitorously, did assemble, and meet together with divers other false traitors, whose names are to the said jurors unknown, to take, and receive returns, accounts, numbers, and names of officers, men, and arms, to be employed in raising, and levying war, and rebellion against the said lord the king within this

kingdom, and did then and there take, and receive several returns, accounts, numbers, and names of officers, men and arms, to be employed in raising, and levying war and rebellion against the said lord the king within this kingdom, and did in writing set down the said returns, accounts, numbers, and names, and an account thereof, with intent that the said officers, men, and arms, should be employed in raising, and levying the said war and rebellion, against the duty of the allegiance of them the said Henry Sheares, and John Sheares, against the peace of our said lord the king, his crown and dignity, and contrary to the form of the statute in that case made and provided. *And the jurors aforesaid, on their oath aforesaid, farther present and say, that an open and public war, on the twentieth day of May, in the thirty-eighth year of the reign of our lord the now king, and long before was, and ever since hitherto, by land and by sea, hath been, and yet is carried on, and prosecuted by the persons exercising the powers of government in France, and the men of France, under the government of the said persons, against our most serene, illustrious, and excellent prince, our said lord the now king, and that the said Henry Sheares, and John Sheares, subjects of our said lord the king of this his realm of Ireland, well knowing the premises, and not having the fear of God in their hearts, nor the duty of their allegiance considering, but being moved and seduced by the instigation of the devil, as false traitors of our most serene, illustrious, and excellent prince George the 3rd, now king of Great Britain, France and Ireland, and so forth, and contriving, and with all their strength intending, the peace and common tranquillity of this his kingdom of Ireland, to disturb and molest, and the laws, constitution, and government of Ireland to change, subvert, and alter, they, the said Henry Sheares, and John Sheares, on the twentieth day of May, in the thirty-eighth year of the reign of our said lord the king, and on divers other days and times as well before as after that day, with force and arms, that is to say, with swords, sticks, and so forth, at the parish of Saint Michael the archangel, in the said county of the city of Dublin, unlawfully, falsely, maliciously, and traitorously, were adhering to, aiding, and comforting the persons exercising the powers of government in France, and the men of France, under the government of the said persons, and then being enemies of our said lord the king, and so carrying on war against our said lord the king as aforesaid."

The same overt acts were set forth in support of the second count, with an additional one, viz. the 7th, that they became members of a society of United Irishmen, for the purpose of aiding and assisting the French.

* Second Count.

Clerk of the Crown.—How say you, Henry Sheares, are you guilty of this treason, in manner and form, as you stand indicted and arraigned, or not?

Mr. Mac Nally.—My lords, I must entreat your lordships will indulge the prisoners with some little time, as their counsel are not yet come into court.

Lord Carleton.—If any application be intended to be made to put off their trial, it cannot be made until after the prisoners have pleaded.

Mr. Mac Nally.—My lords, there is a deliberation among the counsel upon a serious point of law, and until they come in, I cannot give an answer, or determine upon the line of conduct to be pursued.

Lord Carleton.—If there be any ground of demurrer to the indictment, you may file a demurrer. It is the duty of counsel assigned to attend the Court at the hour appointed for its sitting. It is now one hour after the time appointed by the adjournment; if there be any objection which can be taken in this stage of the proceedings, let it be made by the counsel who do attend.

Mr. Mac Nally.—It is not an objection in the form of a plea or a demurrer.

Lord Carleton.—Then in what way can it come?

Mr. Mac Nally.—My lord, if a single hint be mentioned, it may defeat the purpose of the objection. I wish to wait the appearance of the other counsel.

Lord Carleton.—According to my understanding there are but three ways in which objections to an indictment can be made—By plea, or demurrer, or a motion to quash the indictment. You mention, that your objection is neither in the form of a plea or demurrer.

Mr. Mac Nally.—My lord, it will come in the form of a motion to quash the indictment.

Lord Carleton.—Then it is not necessary to wait for the other counsel; because I take it to be settled law, that the Court will not quash indictments upon motion on behalf of the prisoner in cases of this kind, because, though every count, or every overt act in the indictment but one, be bad, yet that one will be sufficient to maintain the indictment.

Mr. Mac Nally.—Suppose, my lord, that the point went to show, that the whole proceedings were *coram non judice*?

Lord Carleton.—Then go on and show it.

Mr. Mac Nally.—My lord, I would rather wait to consult with the other counsel; I have intimated to them, what struck me upon the subject;—I have not made up my mind upon it; nor can I, until I converse with them.

[Here a delay of half an hour occurred, after which the Court said, the cause must go on.]

The Clerk of the Crown then asked the prisoner, Henry Sheares, whether he was guilty, or not?

Mr. *Mac Nally*.—My lords, I will state what I humbly conceive to be sufficient ground to quash the whole of the proceedings against these gentlemen, and every part thereof, except the king's commission. My lords, it is very lately that the point has occurred; but it is so plain in itself, that it will require very little ability to state, or enforce it.

I take it, my lords, to be an undeniable principle of law, that an *alien* cannot be a party, either as a grand juror, or a petty juror, or in any light but as a witness for the crown, in cases of high treason. My lords, the fact is, as I am instructed, that there has been an *alien*, a *Frenchman* born, a prisoner at one part of his life, and never naturalized, called upon the grand jury to find a bill of indictment against the prisoners. When your lordships read the caption of the indictment, you will find the name, *John Decluzseau*, among the grand jury.—It may be said, and I anticipate the objection, that this objection should have come by way of challenge. No doubt a challenge would have set him aside. But the act of the Court is the act of the law, and will not be allowed to injure a man any more than the act of God. The grand panel was called over in the absence of the prisoners; they had no counsel assigned them at that time. If any man had arisen and suggested publicly a challenge against the crown, he would be guilty of a contempt: so it is laid down in the State Trials—Alienage then being a good cause of challenge, the question is, does it come too late?—I say, the prisoners were ignorant of the persons summoned; they were not present when the grand jury were sworn, and therefore they lost the benefit of challenge, *not by their own default*.

The law gives a foreigner the privilege of having a jury, *de medietate linguae*; six aliens, and six natives: But how is it in treason?—Lord Coke says (and he has never been contradicted) that privilege is not allowed in treason, because a foreigner is not a judge of the allegiance due from a subject to the crown of these realms. The deduction is, that if a foreigner shall not have that privilege, the native shall not have a foreigner upon his jury. In Hawk. b. 2, c. 43, s. 34 & 35, tit. Challenge, two statutes are mentioned, 28 Ed. 3, & 9 Hen. 6.—both previous to the 10 Hen. 7, which makes the statute law of England antecedent to that time of force in Ireland;—these statutes, and some others subsequent in point of time, direct juries to be formed of *aliens* and *denizens* in particular instances, as where it was presumed, the native might be biased against the alien. The conclusion furnished by these laws is, that as in particular cases, by statute, an *alien* may be upon a jury, at common law he could not; for if he could at common law,

where would be the necessity of these statutes giving a special privilege?—Therefore, I contend, that the proceedings in this case are *coram non iudice*; because if the bill of indictment be found by a grand jury, upon which there was any one man not answering the description in the caption, "*good and lawful men*," competent to find the bill against a subject of the Irish crown, it is void, and if I do not come too late I come with force completely sufficient to set aside the proceedings of the jury.

I am aware, my lords, that this matter does not appear upon the record, because the name only appears; therefore it cannot operate as error, or in arrest of judgment.—Upon this account, I considered it my duty to communicate this objection to the gentlemen who act with me, and who, I regret, do not yet appear. I have faithfully stated the law, as it occurred to me, and I have only one observation to make, that so recently did the objection present itself, that I am not prepared to say, in what way the fact is to be established, should the Court be of opinion, that the objection is good. If a challenge had been taken, we know how it could be disposed of; but being deprived of that, as I have already stated, I am at a loss to know how the fact is to be enquired into, whether by collateral issue or otherwise. I am not ashamed to own my ignorance in this respect.—Perhaps it may come in the shape of a plea, to which the counsel for the crown may demur.

Lord *Carleton*.—In the present stage we must refuse this application. It is a motion to quash all the proceedings, except the commission; that would extend to quash even the *precept* under which the jury was convened, to which I do not find any objection has been made. But the object of the motion is, to quash the indictment, and the motion is grounded upon matter, not appearing upon the face of the record, but extrinsic to it, not supported by affidavits, but depending merely upon the suggestion of counsel:—Therefore, it is impossible to grant the motion.—There is another reason: In cases of crimes of great magnitude, the Court does not usually quash an indictment at the instance of the prisoner, but he is put to his demurrer, or his plea. If you have any plea, you must put it in.

Mr. *Mac Nally*.—A plea in abatement will not preclude the prisoners from pleading over in chief, in case it should be decided against them. I am sorry I have not my friends here to consult with. But, my lords, I advise a plea in abatement, and the counsel for the crown may demur.

[The Court waited some time for the plea to be drawn and engrossed. In this interval, Mr. Curran and Mr. Plunket came into court, and apologized for their absence, saying, they were informed that the Court would not sit till eleven o'clock. Lord Carleton said, the counsel

had been misinformed; for the judges upon the former day expressly mentioned their intention of sitting at half past nine.]

The following plea was then put in and read:—

“And the said John and Henry Sheares in their proper persons come, and having heard the indictment aforesaid read, and protesting that they are not guilty of the premises charged in the said indictment, for plea nevertheless say, that they ought not to be compelled to answer to the said indictment, because they say, that John Decluzeau, in the caption of the said indictment mentioned, was born in the kingdom of France, and is an alien, and is not a natural-born and liege subject of our said lord the king, and this they are ready to verify;—wherefore the said John and Henry Sheares, pray judgment if the Court of our said lord the king here, will farther proceed on the indictment aforesaid against them, and that they may be dismissed from the court hereof, and upon the premises.

“JOHN P. CURRAN,
“LEO. MAC NALLY,
“W. C. PLUNKET.”

The plea, when originally filed, was the plea of John Sheares only;—it was afterwards altered (at the instance of the prisoner's counsel, and with the consent of the counsel for the crown) to the form of a plea for both prisoners.

Mr. *Prime Serjeant*.—My lords; the law requires, in all cases of a dilatory plea, that it should be verified by affidavit. I perfectly recollect, that questions of this kind have arisen before lord Tracton, and the decisions upon them gave rise to a law, which provided, that outlawry, in a civil action should not be a ground of a plea in abatement to a grand jury; and I recollect, that affidavits were made in many such cases upon circuit. The statute says, that no dilatory plea shall be received, without an affidavit.

Mr. *Plunket*.—An affidavit must be unnecessary in a case of outlawry, because the outlawry must appear by record.

Mr. *Mac Nally*.—The plea is received, therefore the objection comes too late. In *Kinloch's case*,* there was no affidavit.

Mr. *Curran*.—It could not be expected, that the prisoner should swear to a thing not within his own knowledge. The fact here, namely, the birth of the grand juror, must have happened before the prisoner was born. Affidavits are only necessary in cases of misnomer, or coverture, and such like, where the fact stated in the plea is within the knowledge of the party.

Lord *Carleton*.—The act of parliament is merely a statute of jeofails, and applies only to civil cases.

* *Ante*, Vol. 18, p. 395.

A replication was filed on the part of the Crown, as follows:—

“And for answer to the said plea of the said John Sheares and Henry Sheares, John Toler, esq. the solicitor general of our said lord the king, who in this behalf for the said lord the king prosecutes, says, the said John Decluzeau is not an alien in manner and form as the said John Sheares and Henry Sheares above allege, and this he prays may be inquired of by the country. And the said John Toler, the solicitor general of the lord the king, who in this behalf prosecutes, protesting, that the said John Decluzeau is not an alien, as by the said John Sheares and Henry Sheares above alleged, yet for further answer to the said plea of John Sheares and Henry Sheares, says, that the said John Decluzeau is, and at the time of the caption of the said judgment was, and is, and then by force of the statutes in such case made and provided, was, and should be deemed and adjudged a natural and liege subject of the said lord the king, to wit, at the parish of St. Michael the Archangel, in the county of the said city of Dublin, and this he is ready to verify, as the Court shall award. And the said John Toler, the solicitor general of the said lord the king, who prosecutes as aforesaid, protesting, that the said John Decluzeau is not an alien, as by the said John Sheares and Henry Sheares above alleged, yet for further answer to the said plea of the said John Sheares and Henry Sheares, says, that after the twelfth day of April, in the fourteenth year of the reign of our late sovereign lord Charles the second, king of Great Britain, and so forth, to wit, on the first day of January, in the year of our Lord one thousand seven hundred and seventy, the said John Decluzeau, being a person born out of the dominions of the present lord the king, was a person of the Protestant religion, to wit, at the said parish of St. Michael the Archangel, in the said county of the city of Dublin, and did then and there, after his arrival with his stock, substance, and family in this kingdom, take the oaths of allegiance and supremacy, to and of our said lord the king, and did then and there take the oath of abjuration, and make and subscribe the declaration according to the force of the statutes in such case made and provided. And this he is ready to verify, as the Court shall award: and therefore prays judgment whether the Court will not proceed upon the said indictment.

“JOHN TOLER.”

Mr. *Curran*.—My lords; we have looked ever this replication, and we find that the gentlemen concerned for the Crown have thought proper to plead in three ways. The subject matter of our plea in abatement came very recently to our knowledge. To suppose that an alien had been upon the grand jury, finding a bill of indictment involving the duty of allegiance, was a rare thing. The suspi-

cion of it came late to our knowledge. It would have been our duty to be prepared had we known it in time; but as we did not, and as it is a plea of great novelty, we hope the Court will not think it unreasonable to give us time till to-morrow to answer this pleading.

Mr. Solicitor General.—My lords; I must resist this application. If we had applied for time, and procrastinated the trial, upon a plea of great novelty, as the gentlemen say it is, but upon which they came prepared, it would not be extraordinary. But that the counsel for the prisoners should require time upon a subject, in which they must be supposed to have been conversant, must appear to be singular and unprecedented. The prisoners have been apprised of their trial many days. When brought up for trial, they tendered a plea; we replied instanter, and surely your lordships will not procrastinate a subject of this nature, “breeding contention in a lingering act.” The prisoners are themselves considerable lawyers; they have great assistance:—I am glad they have; and I do not wish to weaken, or abridge the privileges of the subject in prosecutions carried on at the suit of the Crown; but from the nature of this proceeding, there should be a reasonable degree of expedition. If issue were joined upon the plea, possibly, there might be some foundation to apply for time to procure proof in support of their objection: though I do not say, they would be entitled to it. But as to matter of pleading, they are seeking for indulgence which they do not want. The counsel, who made the objection, stated, that it had been under consideration; and therefore I require, *ex debito justitiæ*, that they put in their rejoinder or demurrer immediately.

Mr. Mac Nally.—My lords, in Kinloch's case and in Hlay's * case (Foster, 21), time was allowed. It is true we have had a copy of the indictment five days; indeed a sixth day was given us by the solicitor general, who now refuses any farther indulgence; but we did not know that a French alien had been upon the jury till within a few hours. We could not conjecture that by any accident such a man could be upon the grand panel of the city. This is a full answer to what has been said upon that point. But as to the other, that the administration of justice calls for a summary proceeding, I take it to be a principle, that every indulgence which the sound discretion of the Court can grant, ought to be given. We therefore hope that the Court will comply with this application.—There is another reason in support of it; the counsel for the Crown state, in their replication, several acts of parliament; there should be time allowed to inquire into and examine them. Even the Court would require time to look into them; for though the law presumes the judges to be acquainted with them,

yet upon a novel point, suddenly started, the judges themselves might require time. Therefore, on account of the due administration of justice, your lordships will grant time.

Mr. Solicitor General.—In all the cases alluded to, the matter of pleading was concluded in one day. That is all I desire. If after the pleadings are filed, the Court require time, I can have no objection.

Lord Carleton.—This plea is put in as a substitute for a challenge, the party not being present at the swearing of the grand jury. If he had been present, and had taken a challenge, the subject matter of that challenge must have been instantly inquired into;—without doing any injury to the prisoner, the same expeditious mode of deciding upon this plea may be very well adopted in this stage of the business. This is a plea tending to delay the course of proceedings in a criminal case. The counsel for the prisoner admit they had a copy of the indictment and of the caption, in which the names of the jury are set forth, upon Wednesday se'nnight. The Court will see, that no unnecessary delay intervene upon subjects of this kind, which are of serious consequence. The prisoners were in possession of the indictment on Wednesday se'nnight: when they first acquired a knowledge of the alleged alienage does not appear; certainly it was not since the Court sat, because one of the counsel came prepared with the objection, though his deference for his colleagues induced him to wish to postpone making the objection till they came. He avowed, that it was under their consideration; from whence I draw this conclusion, that he should have come ready prepared with it; he should have had it ready drawn; however, we waited for it to be drawn. On the part of the Crown, the objection comes suddenly upon them. On the part of the prisoner it is an objection of some preparation; therefore his counsel ought to have come forward ready to meet every replication that could be put in to it. As to the authority cited, so far as it goes, it is decisive against the application; because there, the time granted was not for an opportunity to put in a pleading, but for the Court to consider of the subject and the arguments after the pleadings had been filed. Therefore there is no ground for the application.

Mr. Curran.—My lords, before we rejoin, it may be prudent to consider, whether this replication should not be quashed. There are three distinct matters in the replication, and they are repugnant to one another. One is, that the juror is not an alien;—the second and third contain averments, that he is an alien. Clearly, in civil cases, a party cannot plead double matter without the leave of the Court; even the statute which gives that benefit, does not admit it without a special motion, in order that the Court may see, whether the pleas can stand together. But even that holds only in civil cases, and by the authority of an act of parliament. Therefore your lordships

* See Vol. 18, p. 401.

will consider, whether a replication of this kind, consisting of three parts, contradictory and repugnant, ought to be answered.

Lord Carleton.—In civil cases certainly, the right of pleading double arises from the act of parliament. As to the objection you now make, you must avail yourself of it in some other way. We will not quash the replication upon motion.

The following rejoinder and demurrer were then filed on the part of the prisoners:

“ And the said John and Henry Sheares, as to the said first plea so as above pleaded by his majesty's said solicitor, and which he hath prayed may be inquired of by the country, do the like. And as to the second and third pleas so as above aforesaid pleaded, the said John and Henry Sheares say, that the same and the matters therein contained are not sufficient in point of law, to put the said John and Henry Sheares to answer the said indictment, and this they are ready to verify, when and where, and so forth;—whereupon they demur in law thereto, and pray the judgment of the Court of our said lord the king, whether they shall be bound to answer to the said indictment.

“ JOHN P. CURRAN,

“ W. C. PLUNKETT,

“ LEO. MAC NALLY.

“ A. FITZGERALD, Agent.”

“ And the said John Toler, the solicitor general of our said lord the king, who for our said lord the king in this behalf prosecutes, says, that the second and third pleas, and the matter therein contained are sufficient in law to put the said John Sheares, and Henry Sheares, to answer to the said indictment, and this he is ready to verify, and prays judgment of the Court thereupon, and so forth. JOHN TOLER.”

Mr. Curran.—My lords, it is my duty to suggest such reasons as occur to me in support of the demurrer filed here on the part of the prisoners.

My lords, the law of this country has declared that in order to the conviction of any man, not only of any charge of the higher species of criminal offences, but of any criminal charge whatsoever, he must be convicted upon the finding of two juries; first, of the grand jury, who determine upon the guilt in one point of view; and secondly, by the corroborative finding of the petty jury, who establish that guilt in a more direct manner; and it is the law of this country, that the jurors, who shall so find, whether upon the grand or upon the petty inquest, shall be *probi et legales homines omni exceptione majores*. They must be open to no legal objection of personal incompetency; they must be capable of having freehold property; and in order to have freehold property, they must not be open to the objection of being born under the jurisdiction of a foreign prince, or owing allegiance to any foreign power. Be-

cause the law of this country, and indeed the law of every country in Europe, has thought it an indispensable precaution, to trust no man with the weight or influence which territorial possession may give him contrary to that allegiance which ought to flow from every man having property in the country. This observation is emphatically forcible in every branch of the criminal law; but in the law of treason it has a degree of force and cogency that fails in every inferior class of offence; because the very point to be enquired into in treason, is, the nature of allegiance. The general nature of allegiance may be pretty clear to every man. Every man, however unlearned he may be, can easily acquire such a notion of allegiance, whether natural and born with him, or whether it be temporary and contracted by emigration into another country; he may acquire a vague, untechnical idea of allegiance, for his immediate personal conduct. But I am warranted in saying, that the constitution does not suppose, that any foreigner has any direct idea of allegiance, but what he owes to his original prince. The constitution supposes, and takes for granted, that no foreigner has such an idea of our peculiar and precise allegiance, as qualifies him to act as a juror, where that is the question to be inquired into; and I found myself upon this known principle, that though the benignity of the English law has, in many cases, where strangers are tried, given a jury, half composed of foreigners and half natives, that benefit is denied to any man accused of treason, for the reason I have stated; because says sir W. Blackstone, “ aliens are very improper judges of the breach of allegiance.”* A foreigner is a most improper judge of what the allegiance is, which binds an English subject to his constitution. And, therefore, upon that idea of utter incompetency in a stranger, is every foreigner directly removed and repelled from the possibility of exercising a function, that he is supposed utterly unable to discharge. If one Frenchman shall be suffered to find a bill of indictment, between our lord the king and his subjects, by a parity of reasoning, may twenty-three men of the same descent be put into the box, with authority to find a bill of indictment. By the same reason, that the Court may communicate with one man, whose language they do not know, may they communicate with twenty-three natives of twenty-three different countries and languages. How far do I mean to carry this?—Thus far:—That every statute, or means by which allegiance may be shaken off, and any kind of benefit or privilege conferred upon an emigrating foreigner, is forever to be considered by a court of justice with relation to that natural incompetency to perform certain trusts, which is taken for granted and established by the law of England. I urge it with this idea; that whether

* 4 Bl. Com. 358.

the privilege is conferred by letters patent, making the foreigner a denizen, or whether by act of parliament, making him as a native subject, the letters patent or act of parliament shall be construed *secundum subjectum materium*, and a court of justice will take care, that no privilege be supposed to be granted incompatible with the original situation of the party to whom, or the constitution of the country in which it is conferred. Therefore, my lords, my clients have pleaded, that the bill of indictment to which they have been called upon to answer, has been found among others, by a foreigner, born under a foreign allegiance, and incapable of exercising the right of a juror, upon the grand or the petty inquest. That is the substance of the plea in abatement. The counsel for the crown have replied, and we have demurred to the second and third parts of the replication.

My lords, I take it to be a rule of law, not now to be questioned, that there is a distinction in our statute laws; some are of a public, some of a private nature. That part of the legislative edict, which is considered as of a public nature, is supposed to be recorded in the breasts of the king's judges. As the king's judges, you are the depositories and the records of the public law of the country. But wherever a private indulgence is granted, or a mere personal privilege conferred, the king's judges are not the depositories of such laws, though enacted with the same publicity; you are not the repositories of deeds or titles which give men franchises or estates, nor of those statutes which ease a man of a disability, or grant him a privilege. With regard to the individual to whom they relate, they are mere private acts, muniments, or deeds, call them by what name you please; they are to be shown, as private deeds, to such courts as it may be thought necessary to bring them forward in. Therefore if there be any act of parliament by which a man is enabled to say, he has shaken off the disability, which prevented him from intermeddling in the political, or judicial arrangement of the country—if he says he is no longer to be considered as an alien, he must show that act specially to the Court in his pleading. The particular authority, whether by letters of denization, or act of parliament, must be set forth, that the Court may judge of them: that if it be by act of parliament, the Court may see, whether he comes within the provisions of the act. This replication does no such thing. The second and the third parts were intended to be founded upon the statute of Charles 2nd and also I suppose, upon the subsequent statute made to give it perpetuity, with certain additional requisites.* The statute of Charles re-

* The following are the statutes upon which the replication was founded, and which were referred to in the argument.

14 and 15 Car. 2nd, c. 13, recites, that the late intestine troubles, and cruel wars had

cites, that the kingdom was wasted by the unfortunate troubles of that time, and that trade had decreased for want of merchants.

much despoiled and wasted the kingdom, whereby the trade and commerce thereof was much decayed and lessened for want of merchants, traders, &c.—and then enacts,—
 “ That all and every person or persons born
 “ out of your Majesty's dominions, of the
 “ Protestant religion, and all merchants, tra-
 “ ders, and dealers in any goods, wares, or
 “ merchandizes, artisans, artificers, or others,
 “ working, or manufacturing any goods, or
 “ commodities, or any mariners, or seamen
 “ who are at present inhabiting within any part
 “ of this kingdom; and all others who shall
 “ at any time hereafter within the term of
 “ seven years from the end of this present
 “ parliament, transport his or their stocks
 “ and families into any part of this kingdom,
 “ with intention, that themselves and chil-
 “ dren after them will inhabit, reside and
 “ abide, in some part thereof, shall after his
 “ or their arrival with his or their stock, sub-
 “ stance and family, or families within this
 “ kingdom, and after his, or their taking the
 “ oaths of allegiance and supremacy, to and
 “ of our sovereign lord the king, before
 “ the Lord Chancellor, or the Lords Presi-
 “ dents, or Vice-presidents of the province of
 “ Munster or Connaught respectively for the
 “ time being, or any judge in his circuit, who
 “ are hereby authorised to administer the
 “ said oaths unto any such person or per-
 “ sons aforesaid, and thereupon to certify his,
 “ or their doing thereof, into his Majesty's
 “ High Court of Chancery there to remain on
 “ record, (be deemed, adjudged and reputed
 “ your Majesty's *LIEGE*, free and natural sub-
 “ ject, or subjects of this your Majesty's king-
 “ dom, and be adjudged, reputed and taken in
 “ every respect, condition and degree, to all in-
 “ tents, constructions and purposes, your majes-
 “ ty's natural and *LIEGE* subjects of this king-
 “ dom, as if they and every of them had been or
 “ were born within this kingdom of Ireland.”—
 And, that they may enjoy all laws, customs,
 &c. implead and be impleaded, &c. purchase
 and enjoy lands and goods, &c. by inheritance
 or otherwise, and may prosecute and defend
 suits, &c.—Then follows a clause exempting
 such aliens from payment of excise for house-
 hold expenses or provisions.

4. Geo. I, c. 9, s. 1, revives the former, so far forth as the same concerns or relates to the encouraging Protestants strangers and makes it perpetual,—save the clause exempting them from the payment of excise.

The second section enacts—“ Provided al-
 “ ways, that no person or persons shall have
 “ the benefit of the said act, until he, she, or
 “ they shall, instead of the oaths of allegiance
 “ and supremacy mentioned in the said act,
 “ take the several oaths mentioned and ap-
 “ pointed to be taken in *Ireland* by an act of
 “ parliament made in *England*, in the third..

After thus stating generally, the grievances which had afflicted the trade and population of the country, and the necessity of encouraging emigration from abroad, it goes on and says, that strangers may be induced to transport themselves and families to replenish the country, if they may be made partakers of the advantages and free exercise of their trades without interruption and disturbance. The grievance was the scarcity of men; the remedy was the encouragement of foreigners to transport themselves, and the encouragement given was such a degree of protection as was necessary to the full exercise of their trades in the dealing, buying and selling, and enjoying the full extent of personal security. Therefore it enacts, that all foreigners of the Protestant religion, and all merchants, &c. who shall within the term of seven years transport themselves to this country, shall be deemed and reputed natural born subjects, and "may implead and be impleaded, and prosecute and defend suits." The intention was, to give them protection for the purposes for which they were encouraged to come here; and therefore the statute, instead of saying generally, "they shall be subjects to

all intents and purposes," specifically enumerates the privileges they shall enjoy. If the legislature intended to make them subjects to all intents and purposes, it had nothing more to do than say so.* But not having meant any such thing, the statute is confined to the enumeration of the mere hospitable rights and privileges to be granted to such foreigners, as come here for special purposes. It states, "that he may implead, and he shall be answered unto;" "that he may prosecute and defend suits." Why go on, and tell a man, who is to all intents and purposes, a natural born subject, that he may implead and bring actions? I say it is to all intents and purposes absurd and preposterous. If all privileges be granted in the first instance, why mention particular parts afterwards? A man would be esteemed absurd, who by his grant gave a thing under a general description, and afterwards granted the particular parts. What would be thought of a man who gave another his horse, and then said to the grantee, "I also give you liberty to ride him when and where you please?" What was the case here? The government of Ireland said "we want men of skill and industry; we invite you to come over; our intention is, that if you be Protestants, you shall be protected; but you are not to be judges, or legislators, or kings: we make an act of parliament, giving you protection and encouragement to follow the trades, for your knowledge in which we invite you. You are to exercise your trade as a natural born subject." How? "With full power to make a bargain, and enforce it. We invest you with the same power, and you shall have the same benefit as if you were appealing to your own natural forum of public justice. You shall be here as a Frenchman in Paris, buying and selling the commodities appertaining to your trade."

"year of the reign of the late king William and queen Mary, of ever glorious memory, intituled, *An act for the abrogating the oath of supremacy in Ireland, and appointing other oaths being in the same form herein after-mentioned, viz;*"—setting forth the oaths of allegiance and supremacy, the declaration against transubstantiation, and the oath abjuring the Pretender's title.

19 and 20 Geo. III, c. 29, enacts, "That all foreign merchants, traders, artificers, manufacturers, workmen, seamen, farmers, and others who shall transport him, her, or themselves to settle in any part of this kingdom, shall after his, her, or their arrival within this kingdom, and after his, her, or their taking the following oath (or affirmation, if a Quaker) before the chief magistrate, of any city or town corporate in this kingdom for the time being, who is hereby authorised to administer the said oath, and thereupon to certify his, her, or their doing thereof, unto his Majesty's High Court of Chancery, there to remain on record, be deemed, adjudged and reported to be, free and natural subject, or subjects of this kingdom in every respect, condition and degree to all intents, constructions and purposes, as if he, she, or they had been, or were born within this kingdom, any law or statute to the contrary notwithstanding, whilst he, she, or they shall reside within this kingdom."—Then follows the oath:—

Sec. 2, "Provided always, that no person naturalized by this act shall be enabled to serve in parliament, nor to be of his Majesty's privy council, nor to hold any office, of trust, civil, or military, in this kingdom."—*Orig. Ed.*

Look at another clause in the act of parliament, which is said to make a legislator of this man or a juror, to pass upon the life and death of a fellow-subject; no, not a fellow-subject, but a stranger. It says, "you may purchase an estate, and you may enjoy it, without being a trustee for the crown." Why was that necessary, if he were a subject to all intents and purposes?

This statute had continuance for the period of seven years only: that is, it limited the time in which a foreigner might avail himself of its benefits to seven years. The stat. 4 Geo. 1, revives it and makes it perpetual. I trust I may say, that whenever an act of parliament is made, giving perpetuity to a former act, no greater force or operation can be given to the latter, than would have been given to the former, had it been declared perpetual at

* "The statute does say this generally, in the first instance, but the subsequent enumeration of particular privileges supports the view that Mr. Curran took of it." *Life of Curran by his Son, Vol. 2, p. 53.*

the time of its enactment. An act of that kind is merely to cure the defect of continuance; therefore it does no more than is necessary to that end. Then how will it stand? Thus:—that any man, who within seven years after the passing of the act of Charles 2nd, performing the requisites there mentioned, shall have the privileges thereby granted, for ever thereafter. The Court would assume the office of legislation, not of construction, if they inferred, or supplied by intendment, a longer period than seven years:—there is nothing in the subsequent act changing the term of seven years, limited in the former; it is not competent to a court of justice to alter or extend the operation of a statute by the introduction of clauses not to be found in it. It is the business of the legislature to enact laws; of the Court to expound them.

It is worthy of observation, my lords, that this subsequent statute has annexed certain explicit conditions to be performed by the person, who is to take the benefit of the preceding act; for it is provided that no person shall have the benefit of the former act, unless he take the several oaths appointed to be taken by the latter; among which is the oath against the pretender, which is not stated in the replication.

There is a circumstance in the latter act, which, with regard to the argument, is extremely strong, to show that the legislature did not intend to grant the universal franchise and privilege to all intents and purposes. It revives every part of the former, save that part exempting aliens from the payment of excise.—Will it be contended, that an alien should be considered as a natural-born subject to all intents and purposes, and yet be exempt from the payment of excise? It is absurd, and impossible.

Put it in another point of view. What is an act of naturalization?—It is an encroachment upon the common-law rights, which every man born in this country has in it: those rights are encroached upon and taken away by a stranger. The statute therefore should be construed with the rigour of a penal law. The Court to be sure will see, that the stranger has the full benefit intended for him by the statute; but they will not give him any privilege inconsistent with the rights of the natural born subjects, or incompatible with the fundamental principles of the constitution, into which he is admitted, and I found myself upon this, that after declaring that he shall be considered as a natural born subject, the act states such privileges only as are necessary to the exercise of trade and the enjoyment of property.

Therefore, it comes back to the observation just now made. Is not any man pleading a statute of naturalisation, by which he claims to be considered as a natural born subject, bound to set forth a compliance with all the requisites pointed out by that statute? He is made a native to a certain extent upon com-

plying with certain conditions; is he not bound to state that compliance? Here he has not stated them. But I go farther; I say, that every condition mentioned in the statute of Charles should be set forth in the second part of the replication—that he came with an intent of settling—that he brought his family and his stock—that he took the oaths before the proper magistrates,—and after a minute statement of every fact, he should state the additional oath required by the statute of Geo. 1st.

But, my lords, a great question remains behind to be decided upon. I know of no case upon it. I do not pretend to say, that the industry of other men may not have discovered a case. But I should not be surprised, if no such case could be found—if, since the history of the administration of justice in all its forms in England, a stranger had not been found intruding himself into its concerns—if, through the entire history of our courts of justice, an instance was not to be found of the folly of a stranger interfering upon so awful a subject as the breach of allegiance between a subject and his king. My lords, I beg leave upon this part to say, that it would be a most formidable thing, that a court of justice would pronounce a determination big with danger, if they should say, that an alien may find a bill of indictment involving the doctrine of allegiance. It is permitting him to intermeddle in a business, of which he cannot be supposed to have any knowledge. Shall a subject of the Irish crown be charged with a breach of his allegiance upon the saying of a German, an Italian, a Frenchman, or a Spaniard? Can any man suppose any thing more monstrous or absurd, than that of a stranger being competent to form an opinion upon the subject? I would not form a supposition upon it. At a time, when the generals, the admirals, and the captains of France, are endeavouring to pour their armies upon us, shall we permit their petty detachments to attack us in judicial hostility? Shall we sit inactive, and see their skirmishers take off our fellow subjects by explosions in a jury room?

When did this man come into this country? Is the raft upon which he floated now in court? What has he said upon the back of the bill? What understanding had he of it? If he can write more than his own name, and had written "*ignoramus*" upon the back of the indictment, he might have written truly; he might say, he knew nothing of the matter. He says, he is naturalised. I am glad of it; you are welcome to Ireland, Sir; you shall have all the privileges of a stranger, independent of the invitation by which you came. If you sell, you shall recover the price of your wares; you shall enforce the contract. If you purchase an estate, you shall transmit it to your children, if you have any; if not, your devisee shall have it. But you must know, that in this constitution, there are laws

binding upon the Court as strongly as upon you. The statute itself, which confers the privileges you enjoy, makes you incapable of discharging offices. Why? Because they go to the fundamentals of the constitution, and belong only to those men who have an interest in that constitution transmitted to them from their ancestors. Therefore, my lords, the foreigner must be content; he shall be kept apart from the judicial functions;—in the extensive words of the act of parliament he shall be kept from “all places of trust whatsoever.” If the act had been silent in that part, the Court would, notwithstanding, be bound to say, that, it did not confer the power of filling the high departments of the state. The alien would still be incapable of sitting in either House of Parliament—he would be incapable of advising with the king, or holding any place of constitutional trust whatever. What? Shall it be said, there is no trust in the office of a grand juror? I do not speak, or think lightly of the sacred office confided to your lordships, of administering justice between the crown and the subject, or between subject and subject;—I do not compare the office of a grand juror to that;—but, in the name of God, with regard to the issues of life and death—with regard to the consequences of imputed or established criminality—what difference is there, in the constitutional importance, between the juror who brings in a verdict, and the judge who pronounces upon that verdict the sentence of the law? Shall it be said that the former is no place of trust? What is the place of trust meant by the statute? It is not merely giving a thing to another, or depositing it for safe custody;—It means constitutional trust—the trust of executing given departments in which the highest confidence must be reposed in the man appointed to perform them. It means not the trust of keeping a paltry chattel, it means the awful trust of keeping the secrets of the state, and of the king. Look at the weight of the obligation imposed upon the juror—look at the enormous extent of the danger, if he violate or disregard it.—At a time like the present—a time of war—what, is the trust to be confided to the conscience of a Frenchman?—But I am speaking for the lives of my clients; and I do not choose, even here, to state the terms of the trust, lest I might furnish as many hints of mischief, as I am anxious to furnish arguments of defence.—But shall a Frenchman at this moment be entrusted with those secrets upon which your sitting upon that bench may eventually depend? What is the inquiry to be made?—Having been a pedlar in the country, is he to have the selling of the country, if he be inclined to do so? Is he to have confided to him the secrets of the state?—He may remember to have had a *first* allegiance, and that he was sworn to it.—He might find civilians to aid his perfidious logic, and to tell him, that a secret, communicated to him by the humanity

of the country which received him, might be disclosed to the older and better matured allegiance sworn to a former power! He might give up the perfidious use of his conscience to the integrity of the older title. Shall the power of calling upon an *Irishman* to take his trial before an *Irish* judge, before the country, be left to the broken speech—the *lingua franca* of a stranger coming among you, and saying, “I was naturalized by act of parliament, and I cannot carry on my trade, without dealing in the blood of your citizens!”—He holds up your statute as his protection, and flings it against your liberty, claiming the right of exercising a judicial function, and feeling, at the same time, the honest love for an older title to allegiance. It is a love which every man ought to feel, and which every subject of this country would feel, if he left his country to-morrow, and were to spend his last hour among the Hottentots of Africa. I do trust in God, there is not a man that bears me, who does not feel that he would carry with him to the remotest part of the globe, the old ties which bound him to his original friends, his country, and his king. I do, as the advocate of my clients, of my country—as the advocate for you, my lords, whose elevation prevents you from the possibility of being advocates for yourselves—for your children I do stand up; and rely upon it, that this act of parliament has been confined to a limited operation—it was enacted for a limited purpose, and will not allow this meddling stranger to pass upon the life, fame, or fortune, of the gentlemen at the bar—of me, their advocate—of you, their judges—or of any man in the nation. It is an intrusion not to be borne.

My lords, you deny him no advantage that strangers ought to have. By extending the statute, you take away a right from a native of the country, and you transfer one to an intermeddling stranger. I do not mean to use him with disrespect; he may be a respectable and worthy man; but whatever he may be, I do, with humble reliance upon the justice of the Court, deprecate the idea of communicating to him that high, awful, and tremendous privilege of passing upon life, of expounding the law in cases of treason,—it being a fundamental maxim, that strangers will most improperly be called upon to judge of breaches of allegiance between a subject and his sovereign.

Mr. Plunket.—In truth, my lords, I should hope, before I am called upon to add any observations to those most powerfully and eloquently urged by my colleague, that the counsel for the crown would give some hint upon what ground they mean to support their replication.—They have the right of reply; I do not wish to deprive them of that. But I am at a loss how to proceed, unless I follow the ideas thrown out by the gentleman who preceded me, which I should do in language infinitely inferior to his.

Lord Carleton.—Does Mr. Mac Nally mean to add any thing more to what he has said already?

Mr. Mac Nally.—My lord, I do not.

Lord Carleton.—Then there is no objection to hearing the counsel for the crown?

Mr. Solicitor General.—My lord, I must insist upon my right of reply.

Lord Carleton.—They do not mean to deprive you of the ultimate right of reply. But it is fair to hear some of you, before they go on farther.

Mr. Prime Serjeant.—My lords, I feel it my duty, in obedience to the intimation of the Court, and not from any sense of difficulty in the point to offer a few words to your lordships. The learned counsel for the prisoners has been eloquent in proving what our replication admits, that an alien ought not to be upon the grand jury. But an alien naturalized is by law declared to be to all intents and purposes as a free born subject. In the language of the act of parliament, he is to be “deemed, adjudged and reported your majesty’s free, liege, and natural subject in every respect, and degree, to all intents, constructions and purposes.” If it were possible to adopt words of more enabling qualification, I confess they do not occur to my understanding. Your lordships will see, when I come to call your attention to the other clauses, what the extent and operation of these words have been considered to be, both in England and Ireland; because you will find clauses in the statutes of both countries, excluding aliens, who have been naturalized from particular situations. Such was thought to be the general enabling operation of the words, that the legislature in both countries thought it necessary to restrain them, by excluding the persons to whom privileges were granted, from particular offices of trust.

13 Geo. 2, c. 7, Brit. enacts that persons born out of his majesty’s allegiance, who shall reside in the colonies of America, and take certain oaths, shall be deemed natural born subjects; and the 6th section provides, that no person, who shall become a natural born subject by virtue of that act, shall be of the privy council, or a member of either House of Parliament, or capable of taking any office of trust in Great Britain, or Ireland, civil, or military. It would be ridiculous for the legislature to enact such restrictions, if the act of naturalization had not conferred the right of filling all offices indiscriminately.

20 Geo. 2, c. 44, Brit. which naturalizes persons of certain descriptions, performing the requisites, contains the same restrictive provision. 22 Geo. 2, c. 45, Brit. which naturalizes persons serving on board certain ships and performing the requisites, contains the same restriction, and the Irish st. 19 and 20 Geo. 3, c. 19, provides, that no person naturalized by that act shall be capable of serving in parliament, be of the privy council, or hold any office of trust, civil, or military.

In opposition then to the construction put upon this law by Mr. Curran, I refer to the authority of three legislative declarations by the parliament of Great Britain, and one of Ireland, expressly intimating, that aliens naturalized would be enabled to enjoy all these offices, from the generality of the words naturalizing them. Therefore I think it unnecessary to take up your time upon that point.

Another objection has been made, that we do not state the performance of all the qualifications mentioned in 4 Geo. 1. I submit to your lordships, that we have expressly stated them. The replication states, that after his arrival in this kingdom, he took the oaths of allegiance and supremacy, that he took the oath of abjuration, and subscribed the declaration according to the form of the statutes. There are three oaths, and a declaration required by the statutes—they are all stated in the replication. The demurrer admits, that all these oaths have been taken pursuant to the statutes, and even if they were not so minutely stated, you would take them for granted, under an enabling statute, which is referred to. Therefore the objection fails them.

My lords, speaking in a court of law, and arguing a demurrer, I do not feel it necessary to follow the counsel through all that region of declamation upon imaginary grievances, which if at any time they existed, were to be considered by the legislature, and not in a court of law. Your lordships have the legislative declarations of the effect of the words, if they had not been restricted, and the performance of the requisites is admitted by the demurrer. I did not think it necessary to say a word; but in obedience to the Court, I have said thus much upon the subject.

Mr. Plunket.—My Lords, after so much has been said, and with such transcendent ability by Mr. Curran, I will not consume your time by going through the generality of the argument, but content myself with confining my observations to the point relied upon by Mr. Prime Serjeant. Although the point is now, in terms, admitted, that an alien cannot serve as a juror, yet it may not be unnecessary to refer to an authority. 2. Hawk, chap. 25, s. 16. “Every indictment must be found by twelve men at the least, every one of whom ought to be a freeman and a lawful liege subject—not an alien”—s. 18. “Outlawry in a grand juror may be pleaded to the indictment”—s. 26 and 28. A person arraigned upon any indictment taken contrary to the purview of the stat. 11 H. 4, c. 9, may plead such matter in avoidance of the indictment, and also plead over to the felony. “If any one of the grand jury who find an indictment be within any one of the exceptions in the statute, he vitiates the whole, though never so many unexceptionable persons joined with him in finding it.” And the regular mode of taking advantage of such objection is by plea.

When I lay down these positions, I beg to be understood as laying them down, not merely to show that the law considers an alien under a disability; but that it is a privilege and protection instituted by the law for the subjects of this realm, that no man, who is not one of their own country, no alien, who has ever sworn allegiance to a foreign state shall have a right of passing upon their lives, persons, or properties. Therefore, my lords, in arguing this question, as from the rights conferred upon aliens, it has not been fairly argued; because you are to consider not merely the right conferred upon aliens, but the rights which may be taken away from subjects of these realms. From the time of Magna Charta, it has been law, that no man should pass upon the life of a subject, but persons of his own condition: No alien could had a bill, or sit upon the petty jury. This principle of law extends through every kind of crime, whether treason, or felony; but more particularly does it apply to the case of treason; because there the subject is tried for a breach of his allegiance, and an alien is incapacitated from judging of it. That is also the reason, why an alien, who in common cases is entitled to a jury *de medietate linguae*, in treason is not. I beg leave to call upon the Court, and the very able counsel, who is to reply to me, to select a passage from any one of the statutes, which have been mentioned, taking away this birthright of every subject of these realms. If the common law gives any man a privilege—a protection for his fame, his life and property,—that cannot be taken away by any act of parliament without express and positive words.—Where are the express and positive words in these statutes?

It is said with triumph, that it is evident from the statutes, that the legislature must have considered the privileges granted to aliens, to extend to such a right as this in question, because they are excluded by express words from the privy council and the parliament and offices of trust;—from whence the prime serjeant concludes, that if it were not for that saving, aliens naturalized under those statutes would fill such places. But supposing him to be founded in that argument, an alien would be capable of filling the office of lord lieutenant of Ireland, even under the statute of Charles 2.

Then it is said, that introducing these exceptions is a proof, that without them the statute would give the right to the alien.—If that were true, Mr. Decluzeau might claim the right, not only of filling the office of a grand juror, but to be chancellor, or lord lieutenant, or to fill any other office of trust:—He might be prime serjeant, and in that situation, he might argue against the objection made to his own capacity. Would not that be monstrous and absurd?—The statute professes to receive the alien with hospitality—to enable him to sue for his debts, and to be impleaded. Can any man say, that under

such an act, the alien could claim the right of being lord lieutenant?—Then the exceptions stated from other acts prove nothing more than this, that the legislature has been cautious and anxious that words, which could not bear an extensive meaning, should not be extended by ingenuity, or contrivance.

But see then, my lords, what the restrictions are.—The alien is excluded, not merely from the office of lord lieutenant, but from every office of trust whatever. Give me leave to ask, is the office of a grand juror, an office of trust or not? The office of deciding whether a man shall be put upon his trial—of examining the different informations sworn against the king's subjects, to which common men have not access—to which the prisoners cannot have access,—which the juror is sworn to keep secret—the office of allotting money and levying it upon the king's subjects—Is that, my lords, an office of trust intended to be committed to an alien and a stranger?—If it be, I must admit, that, saving the office of lord lieutenant and some few others, the whole scope of power, patronage, profit and advantages of the state is open to such strangers, as may choose to come and enjoy the hospitality and protection of this country!

But supposing, that Mr. Decluzeau, upon performing the requisites, would be entitled to be a grand juror, yet I submit, that he does not show, by the replication, that these requisites have been complied with.

The first part of the replication is out of the case for the present. The second part is of this general nature, that Mr. Decluzeau, though he is not in direct terms stated to be a native, or a naturalized alien, yet he is to be considered as a native of this country; it does not state any one act done, or ceremony complied with:—it does not enable the Court to judge of the compliance; it is pleading matter of law, instead of matter of fact:—it draws a conclusion, without any foundation for it. But supposing it to be true, what answer is it to the plea? Is it law, that a man who ought to be considered as a native is fit for a grand juror? It is a vague and indefinite conclusion carrying no meaning; and if it were true, in point of law, it does not deny the plea.—He does not pretend to say, he is a native; he gives that up:—"But," says he, "under certain acts of parliament, I am to be deemed a native; this arises from facts, but what those facts are, I will not tell you."

It is said, you are to take every thing for granted under an enabling act of parliament.—I deny the position. This is a disabling statute, robbing the subjects of this realm of that protection, which the law formerly gave them. Whenever the crown makes a grant, it is to be construed strongly against the crown and the person claiming under it. Therefore, if this be considered as a grant from the crown and the parliament, the grantee would be bound in pleading to show his compliance with the conditions, otherwise

he must fail. This therefore is a bold piece of pleading—an audacious demand upon the Court, which it is impossible can be listened to for a moment. The Court are to presume what facts they please, and the pleader says, he will supply inferences of law.—This is really a novelty not to be matched in the history of legal pleading.

As to the third part of the replication, there are some requisites stated to have been performed; apply them to those appointed by the act of parliament, and see whether they tally. First, by the act of parliament it is prescribed, that the party shall take the oath of allegiance, and the oath of abjuration and supremacy; then follows the declaration;—all these are averred to have been taken. But then follows another oath which I think is not averred, and therefore the replication is defective. The question rests upon this:—Is the third oath in the statute the oath of *abjuration*, or not? For if it be not described by the oath of abjuration in the replication, it is not described at all. This last oath is not confined to mere matter of abjuration; there is much other matter in it;—there is allegiance to the king—the party swears to discover conspiracies. He may have taken the oath of *abjuration*, and not have taken all the matter contained in this oath:—he should have set forth, that he took the whole oath; and though it is said to be, pursuant to the statutes, yet that general expression will not help it; the averment should be more minute.

In a case, therefore, where the life of a subject is depending, and where rights are taken away from the subject, and foreigners are intruding themselves in matters for which they are not qualified, I must beg leave to repeat what has been said by the other counsel, that though this man complied with every requisite, yet he is not entitled to fill the office of grand juror—that it never was the meaning of the legislature to give an alien a capacity to fill an office of such trust and importance.

Lord Carleton.—The question has been ably and eloquently argued, so as to convince us of the propriety of our rule, not to allow any farther time.

This is a replication not put in by Mr. Decluzeau himself, apprized of all the circumstances and possessed of all the documents necessary to the establishment of his right; it is a replication by the counsel for the crown upon a plea put in by the prisoner's counsel.—I wish not to be understood as giving any opinion, supposing the question to have arisen merely upon the objection of Mr. Decluzeau's being an alien, how far it could be taken advantage of by way of plea. I do not wish to shake any authority upon this subject; but to have it considered, that I have not made up my mind upon the point, and that I give no opinion upon it. That a person being an alien is a good cause of challenge, I think is well founded; but whether it can be taken advantage of by way of plea, I reserve my opinion.

That a juror is outlawed may be taken advantage of by plea in avoidance of the indictment, but whether such plea is given by the common law, or depends upon the statute of the 11 Hen. 4, c. 9, is a question of some difficulty, that statute was passed about the same time with the case mentioned by Hawkins—and from a manuscript note which I have made in the margin of my Hawkins, I perceive the statute received the royal assent in *quindens Hilarii*, which was on the 27th or 28th of January, and might perhaps have preceded the decision referred to by Hawkins.

At the same time, there is considerable weight in what has been mentioned, that the prisoners were not present at the time when the jury was sworn, and that may perhaps support the decision in Hawkins to give them a right of pleading.

But assuming for a moment, that this matter may be taken advantage of by way of plea, it is necessary to consider the pleading here. Issue is joined upon the first part of the replication.—The second part is defective, as referring matter of law to the Court, without any fact to support it; therefore we throw that out of the case:—as to the third, my brethren agree with me, and we cannot better express ourselves, than by adopting the argument of Mr. Prime Serjeant. It appears to us, that these acts of parliament cannot have the limited construction, which has been contended for by the prisoner's counsel—that they must be sufficiently extensive to take in cases like the present; and the nature of the restrictions proves what the operation of the clauses would have been if these restrictions had not been enacted.

With regard to “offices of trust”—they must allude to such as are previously enumerated, viz. offices held under the crown.

But it is said, that sufficient matter has not been stated in the replication to show, that this juror comes within the provisions of the statutes. We think the counsel for the crown have stated sufficient matter for that purpose. The oaths of allegiance, supremacy and abjuration, and the declaration are stated to have been taken, and the oath respecting the Pretender is part of the oath of abjuration. Therefore, we are all of opinion, that the demurrer must be over-ruled and judgment be given for the crown—and a *respondent ouster* awarded.

Clerk of the Crown.—How say you, are you guilty or not?

Mr. John Sheares.—My lord, I must beg you will order the 7th overt-act in the second count to be read.

[This was accordingly done.]

Mr. John Sheares.—My lord, I am mistaken; I beg pardon for detaining the Court: I thought the 7th overt-act had been omitted in the second count.

The Prisoners then pleaded *not guilty*, in the usual form.

They were asked, were they ready for their trial; whereupon their agent desired the crier to call the earl of Cork and Orrery and two other persons to come forth and give evidence: none of them appeared, and then three affidavits were sworn and read.

The first affidavit was made by John Sheares: it stated, that sir Joseph Hoare, bart.; sir Richard Kellett, sir Patrick O'Connor; the rev. Mr. Lee, the rev. Mr. Stawell; John Theny, and Edward Hoare, esqrs. were material witnesses, without the benefit of whose testimony, deponent could not with safety abide his trial—that deponent received a copy of the indictment in the afternoon of Wednesday last, until which time his counsel and agent could not get admission to him;—that on the morning of Thursday, his agent attended him, and on that evening issued crown summonses for said witnesses, who reside in Cork—that on account of the disturbed situation of the country his agent informed him, he could not procure a proper person to leave Dublin to serve the summonses until the day following, when he procured John Graham who got a pass and set off that day in the mail coach;—that on Thursday, deponent wrote a letter for the colonel of the Somerset militia in England, whose name and address deponent was then unacquainted with, and who is a material witness, requesting his attendance, and deponent delivered said letter to his agent with directions to have it forwarded, when he found the address of said colonel, whom he discovered to be the earl of Cork and Orrery;—that deponent doth not make the affidavit for the purpose of giving unnecessary delay, and hopes, expects, and believes, he will procure the attendance of said witnesses at next adjournment.

The second affidavit was made by the prisoners agent, corroborating the former in those particulars which were within the knowledge of the agent.

And the third affidavit was made by John Graham, stating, that he received the summonses on Friday, and set off that night for Cork, and on Sunday the 1st July served the several witnesses resident there:—some of whom he conversed with, and they said they could not attend, some of them being officers in yeomanry corps, and Mr. Dennis said he was attacked with the gout in his stomach.

Mr. Curran.—In addition to these affidavits, there is a letter received from Mr. Bulleyn, a physician, stating that he had visited Mr. Dennis, who has been attacked by an irregular fit of the gout in the stomach, and is utterly incapable of traveling.

Lord Carleton.—We cannot attend to any thing, which does not appear by affidavit. In order that the counsel for the crown may be fully apprized of what you desire, state the

time to which you wish the Court to adjourn, and that you will have your witnesses.

Mr. Curran.—My lord, with regard to that I have always wished to leave it to the discretion of the Court, to say, how long they think it fit to postpone a trial. Your lordships will be pleased to see what a difficult task would be put upon counsel by naming a day: If we named a short day, that might be fatal to our client; If we named a distant day, it might be refused.

Lord Carleton.—The reason why I asked the question was this, that Mr. John Sheares has sworn in his affidavit, that "he believes and expects he will have the attendance of the witnesses."

Mr. John Sheares.—My lord, it is impossible for me to answer for the illness of witnesses. I leave it to the breast of the Court. There are certain military men, who can give evidence for me, but from the disturbed state of the country, I know not where to find them.

Mr. Solicitor General.—My lords, no time is mentioned in this application, which is become so common, that scarce a trial occurs without its being made, and there is scarce an instance in England or here, in which the adjournment has not been fatal to the administration of justice. This is a very serious case; your lordships have the indictments before you—you have the informations before you—they are great documents, and you will see, that some of the gentlemen, named in the affidavits as witnesses, cannot be able, by the most remote conjecture, to give evidence, bearing in the smallest degree upon the transaction. If those witnesses be wanted to character, the prisoners cannot want a number of amiable men from that profession to which they have been attached for eight or nine years, to give evidence of their character, if they think it will serve them. With regard to one of the witnesses, sir Joseph Hoare, he is blind and decrepid, and so advanced in years, that if any one answered for his life one week, he would run a great hazard. The transaction charged by the indictment is confined to the capital, and these witnesses have been one hundred miles from that scene. However, there is nothing I should lament more, than to appear to press forward the trial unnecessarily. The public are waiting the event of it with anxious expectation: yet I would not wish to accelerate it. We feel that the disposal of it is of great importance. If the imputation upon the prisoners be unfounded, I shall rejoice in their acquittal; but if it be attachable upon them, justice requires, that they should suffer. See what is the diligence used: last Sunday was the first day, upon which any summons was served.

Lord Carleton.—What occurs to me is, to give them time to procure such witnesses as they can:—Monday se'night would be a proper day.

Mr. Solicitor General.—My lords, we must

offer an affidavit to the Court, if such a distant day be named.

See the course of proceeding resorted to in this case. They put in a dilatory unfounded plea. This application to put off the trial is a second thought; delay therefore is evidently their object; this whole day has been consumed in the argument of an unfounded plea. They were entitled, in point of law, to make the objection; but was it not running away from the justice of the case, to select one man out of twenty-three of the jury, and make an objection to him after a residence of thirty years in the country, and say, that he is not fit for the office of a grand juror? Taking all these circumstances together, and the state of the kingdom, why postpone the trial to such a distant day?

Mr. Mac Nally.—My lords, I must mention one thing: that plea was not the suggestion of the prisoners, but mine, and I am responsible for it; I threw it out to the other counsel: they supported it ably, and it is not improbable, but it may be brought forward in another form in a subsequent case.

Mr. John Sheares.—My lords, I wish to say one word with respect to what the solicitor-general said concerning sir Joseph Hoare. He is a near and old friend of our family;—he is nearly blind, but that cannot prevent his giving evidence; he has attended very serious and laborious duties, his parliamentary duty, which has often detained him to a late hour of the night. My lords, I would not have sworn the affidavit, if it were not within the circle of probability. I am incapable of stating, even upon mine own trial, what I do not believe to be true.

Lord Carleton.—What has been said by Mr. Mac Nally makes an observation necessary. With respect to those motions, my brethren have suggested, and I concur with them, that they are to be listened to with great caution, and that we will not confine ourselves to the affidavits, though framed in the usual form, but we will enquire into all the minute circumstances, that can tend to show, whether the application is made with a fair view to the justice of the case.

This day has been taken up in the framing and arguing a plea, which we hear is intended to be rested upon in another shape; we may therefore have the other prisoners brought up forthwith to have them plead, that we may not lose another day in arguments of this kind, after the deliberate opinion which the Court has already given. The Court would not be satisfied, unless I expressed this their opinion upon this subject, in which opinion I concur.

Mr. Saurin.—My lords, we have now an affidavit sworn by Mr. Kemmis, the crown solicitor. It states, that he believes the application made to postpone the trial is for the purpose of delay—that deponent knows sir Joseph Hoare who is very far advanced in years, and nearly blind; that the earl of Cork

and Orrery resides in England; that from the nature of the facts charged, the persons mentioned as witnesses cannot be required for any other purpose than to give evidence of the general character of the prisoners; that deponent believes, the prisoners have resided in Dublin for some years past, and are barristers; that the principal witness for the crown is an officer in the king's county militia, and since the commitment of the prisoners was upon actual service, and was wounded in an action, and deponent believes it is of great importance on the part of the crown, that the trial should not be postponed. The witness for the crown may be called into service again, and the consequence may be fatal to the administration of justice.

Lord Carleton.—There is a distinction between a special commission, and the ordinary commission of Oyer and Terminer. Under the former, the time runs against the prisoner only from the finding of the bill of indictment. But under a general commission, it runs from the day of his committal. In this case, the Court was opened upon the 11th of June; it was adjourned for a fortnight;—on the 25th, the sheriff was directed to have the grand jury upon next day, when the jury was sworn, and the bill of indictment found. Counsel were assigned upon that day, and the copy of the bill was not served till Wednesday evening. The prisoners could not know the charge against them till then, and the charges are very long. Upon Thursday, the agent visits them and consults them respecting their defence; he finds there are witnesses, who are sworn to be material, and without the benefit of whose testimony, the prisoners cannot go to trial. What the particular objects of the testimony are, certainly do not appear; but it is stated, that from the particular circumstances of the times, no person could be procured to travel to Cork to serve the witnesses till Friday, and upon the night of that day a messenger was sent by the most expeditious mode, namely the mail coach; the messenger could not have arrived in Cork till the middle of Sunday, and upon that day he served the witnesses, who have been called in court. Now, let the witnesses be ever so desirous of attending, they cannot be supposed to be able to set out at a moment's warning; the time has been short, and they could scarcely have been here by this time. The only circumstance against the prisoners was, the plea put in by them, which has been over-ruled. But that does not seem to be such an instance of delay as to affect the prisoners—Indeed, if the experiment be tried a second time, it may have more influence upon us. It is very possible, that the application may be for delay; but no unreasonable time is required.

As to what is said on the part of the crown, that the witness is in the army, and likely to be called into service, the affidavit answers itself; the witness has been deposed

rately wounded in an action, and cannot be called out while he labours under that wound.—Upon consideration, we will postpone this trial till to morrow week; this will not be a precedent for any other cases, because we determine it with reference to the time of the bill of indictment being found.

The trial was accordingly appointed for Thursday the 12th of July, and the Court adjourned to next day.

Thursday, July 5th, 1798.

This day the Court sat, and several prisoners were arraigned: the indictments and the pleas of the prisoners will be stated in the reports of their respective trials.

Thursday *, July 12th, 1798.

Judges present.—Lord Carleton, Mr. Justice Crookshank, and Mr. Baron Smith.

This day, Henry Sheares and John Sheares were put to the bar, and asked, whether they would join in their challenges?

Mr. John Sheares.—My lord, I wish to say a word as to a witness whom I expected; I mean lord Cork. I wish, my lord, to avoid the imputation of delay, as the witness is not come; particularly, as I have not heard from the witness. I did state upon a former day, that I wrote a pressing letter to him; I have a copy of it in my hand; I have received no answer. I do not mean to throw any censure upon his lordship; it is more than probable, he did not receive it, or having received it, he may be upon the way. But I mention the matter merely to wipe away the impression from the public mind, that I made the application for delay. I do declare, I did expect his attendance in consequence of my letter. But, my lords, the delay occasioned by the indulgence granted by the Court was only seven days, which was not sufficient to enable me to send a special messenger to London, with any hope of reaching his lordship. But, I declare most solemnly, I expected his arrival, and I still declare, that if he did come, his evidence would be of material consequence; I am ready to verify this by affidavit, though it is painful to my feelings to do it; because upon the last day, when I made an affidavit it was asserted, that I made it for the purpose of delay only. But, my lords, I owe it to myself to declare, that I did expect the arrival of the witness, and his

* In the interval since the last sitting of the Court, John Toler, esq. his majesty's Solicitor General, was appointed Attorney General, in the room of the right hon. Arthur Wolfe, who was appointed lord chief justice of the court of king's-bench, and created baron Kilwarden.

And John Stewart, esq. was appointed Solicitor General. *Orig. Ed.*

evidence would be material. But, I do not ground any application for farther delay; for I would abide any danger, rather than labour under the imputation of seeking to delay a vindication of myself.

Lord Carleton.—We shall endeavour to take care, that any verdict given by such a jury as shall be impanelled, shall be founded upon the evidence and nothing else; not influenced by any extrinsic matter.

Mr. John Sheares.—My lord, I am sure I shall meet justice, and nothing else.

Mr. Curran.—My lords, we have conferred with the prisoners, and they do not choose to join in their challenges.

Lord Carleton.—Mr. Attorney General, which of the prisoners do you wish to try first? or will you try them both together.

The Attorney General answered, that he would try John Sheares first, and thereupon a precept was directed to the sheriff to return his panel, but afterwards Mr. Curran mentioned, that upon farther conference with his clients, they expressed a wish to join in their challenges; then upon motion of the prisoner's counsel the precept was quashed, and a new one issued for a jury to try both the prisoners.

In obedience to this precept, the sheriffs returned the panel, which was called over. The prisoners challenged thirteen peremptorily and fourteen for want of freeholds, eleven were set by on the part of the crown, and one for want of freehold—the following jury was sworn:

Sir Tho. Lighton, bart.	Richard Sayers
Robert Shaw	John Farrange
Price Blackwood	Cornelius Gautier
John Stewart	William Sparrow
George Palmer	Charles Bingham
Henry Woodward	John Ferns

At the desire of the prisoner John Sheares, Mr. Ponsonby was assigned one of his counsel in the room of Mr. Curran.—This was done to give the prisoners four counsel between them.

The prisoners were then given in charge. Mr. Webber opened the indictment.

Mr. Attorney General [Toler].—May it please your lordships, and you, gentlemen of the jury; With real and unaffected sincerity I assure you, that it grieves me—yes, it grieves me heavily, that the first act of my professional duty in the very responsible situation in which I am now placed, should be to prosecute two gentlemen, with whom although I have had no intercourse in life, yet who are members of that profession to which I belong—a profession, to which I am linked by every tie of affection, regard, and gratitude that can bind a man of honourable feelings.

But, gentlemen, there has devolved upon me, a duty which is too cogent to be influenced by circumstances of mere indulgence to personal feeling—a duty of which the pub-

lic have a right to demand, a full, a firm, and an honest discharge. This prosecution, your lordships, the jury, and the public well know, is instituted and carried on at the desire of the government of the country, for the protection of the public peace, and to guard these rights in which the common welfare is most deeply involved:—To vindicate his majesty's peace, his crown and dignity, against that horrid system of conspiracy and treason, whose malignant and desperate purpose has for many years been at work in designing, and has at length burst forth with all the horrors of rebellious outrage, to overthrow the government, to subvert the monarchy, to strip this nation of its liberties and its laws, to separate us from all connexion with Great Britain, or the blessings of her constitution, and to establish the anarchy of French republicanism in their stead. To rescue and to guard us from such dangers is what the public have a right to expect and to demand of the crown, in right of that allegiance which every good subject pays to his sovereign, the duties of which no subject can shake off without forfeiting that protection from the father and guardian of the people, which to the humblest individual of them is the indefeasible birthright. In the name of that sovereign, we now come to prosecute for an injured people, who seek for justice at our hands.

I should be inexcusable, indeed, in laying this case before you, gentlemen, to suffer myself to dilate it into any considerable length. It is a case that does not require it. I should not be warranted in pressing upon you topics involved with metaphysical distinctions, or argumentative inference—which might weary, embarrass, and distract your attention, and prolong the trial to that unreasonable length, which at all times is injurious to the administration of justice—when, in my humble judgment, I have a case to lay before you, as plain, as obvious and direct to criminate the gentlemen at the bar, as ever was inserted in any indictment, or brought before a court or a jury.—It will be but just barely necessary before I proceed to state facts, to lay down a few legal preliminaries with such concise precision, as may render the conclusions of law which are to be drawn from those facts, most obvious to the Court and intelligible to the jury.

The indictment upon which the prisoners are charged, is founded upon that ancient and well known statute the twenty-fifth of Edward 3rd, originally enacted, to guard the subjects against loose and indefinite charges of treason with which they had been theretofore harassed, and which valuable statute is still remaining, unaltered and unadded to, from that period to the present. The counts in the indictment are two:—The overt-acts necessary to be stated and previously made out are many. The first count is for compassing and imagining the death of the king; and the second is for adhering to

the king's enemies. Your lordships know, and the jury can be no strangers at this day (for unhappily we are of late much familiarized to trials of this sort in both countries), that it is necessary, in order to support indictments under that statute, to lay certain overt acts in each count to which proof is to be applied; therefore, gentlemen, I shall state, without embarrassing you with matter of difficulty, that there are a few considerations to which I wish to call your attention.

First, as to that count of compassing and imagining the death of the king—According to the law which I have stated, and adjudged cases, in the construction thereof, the crime of compassing and imagining becomes complete, so soon as the wicked imagination is acted upon by acts of open deed manifesting obviously the intention of the actor. From that moment, the intention so manifested is the completion of the crime. And in considering the ground upon which you shall regulate yourselves in the application of the evidence adduced, you will be kind enough to keep in your mind, first the fact, which is to be demonstrative of the intention, and then consider the relation of that (when proved), to the design charged against the prisoner.

The next principle which I would wish to lay down, is, that the evidence of the facts ought to be of such nature as should be illustrative of the intent, so as to satisfy the consciences of good and sensible men.

Gentlemen, under the construction of the statute, it has long been settled law, that in the care of providing for the safety of the king, that care is not confined to such acts, like assassination, as would amount to direct attempts on his life, but that it is extended to every thing deliberately done, which may in its probable and natural consequences, bring his life into danger; and therefore having heard the indictment read, containing the overt acts therein mentioned, and without delaying you by a repetition, I have barely to mention that the entering into any of those measures which are laid as overt acts in the indictment, to dethrone or depose the king, or overthrow or force him to change his government, such as by conspiracy, and procuring arms and armed men, for the purposes aforesaid, the forming plans to seize the camp, the artillery, and capital—the levying war and rebellion, for the purposes I have mentioned, are amongst many others, such as inviting the enemy to invade the kingdom, under unquestionable authorities of law, decided overt acts of compassing the death of the king.

The prisoners are charged with meeting, consulting and conspiring to procure arms for the purpose of deposing the king, and to overthrow his government, to put an end to the monarchy, and to lay open a scene of havoc and devastation, such as have already, in consequence of such daring conspiracy, drenched the country in blood; and as you

must know, that acts of that kind are beyond all doubt demonstrative of such intention as I have stated, so we shall establish them against the prisoners by irrefragable proof.

Gentlemen, there are certain acts of notoriety to which it is unnecessary to draw your attention or to apply evidence. It is notorious that we are at open war with the persons exercising the powers of government in France. It is matter of notoriety, that since the commencement of that war, there have been at work dark and wicked conspiracies, formed upon the model of French principles, and principally that detestable conspiracy associated under the denomination of United Irishmen, to overthrow the best government which can be enjoyed by the subjects of this or any other country, who, under the affectation which has at all times been assumed by men of that description (that the intent was to remedy imaginary grievances), resolved, under the guise of false philosophy, to overwhelm us with real treason. It will appear to you, however, that amongst those presumptuous spirits with whom the prisoners were embarked, there were men, who out of this destructive chaos of confusion, were vain enough to hope that they were to rise upon the ruins of a desolated world, who exulted in the speculations of their bloody triumphs of anarchy, in the desperate hope "to ride on the whirlwind and direct the storm" that they had prepared to burst upon your heads.

Gentlemen, there are advantages to the prisoners attending this species of trial, which are unknown in other capital cases. By the statute law of the land, it is necessary to serve copies of the indictment, accurate and precise, a certain number of days before the trial, that time has been more than doubled in the progress of the period which has elapsed since the copies were served; the prisoners, by this means, and from the nature and frame of the indictment, had full notice to what facts they were to apply their defence; they are assisted by counsel of great eminence; they are themselves men of considerable talents and learning in the law; I wish they had not misapplied those talents to wicked and mischievous purposes; for there was an easy and obvious, and an honourable road, by which they might have arrived to that high estimation and rank, to which other men of their contemporaries and acquaintance have arrived, in the same profession to which the prisoners belong. But, gentlemen, this consideration takes off much from that anxiety which would otherwise press upon our feelings;—the prisoners are not (as we have too frequently seen upon the circuits, which the prisoners have attended as barristers) men of low situation, unlettered, unacquainted with the excellence of the law under which they live, nor are they such men whose ignorance, at the same time that it exposes them to be the wretched instruments of seduction, ren-

ders them objects rather of pity than of punishment. No, gentlemen, you will find in the course of the trial, that the prisoners were no strangers to literary pursuits, or to an exercise of talents; and I own it does astonish me, that men having an opportunity of knowing and loving the constitution (for to *know it and not to love it*, as a lawyer ought, is amazing) could have so perverted their minds, and abused the honourable opportunities which were afforded them, as to have meditated the destruction of that goodly fabric, under whose roof they were nurtured. The prisoners well knew that by our law the man who counsels a single murder is to pay the forfeit of his life; how much more are they to suffer, who, knowing that, were deliberately the authors of causing and procuring the murder of thousands and tens of thousands of their innocent and deluded countrymen?

I know, gentlemen, the painful duty which has devolved upon us all; it is painful to the Court to preside at such a business; it is painful to the jury to investigate and decide upon it, and I have reason to feel that it is no small portion of pain to be the public accuser upon such an occasion. There is not a man who knows me in private life, that does not know it weighs heavily upon me. But mistaken lenity to atrocious delinquents, is at all times *crudelis misericordis* with respect to the public:—I know that the brightest attribute of our sovereign is to administer justice in mercy; but a wanton indiscretion of mercy is a wicked and ineffectual compromise with criminals, it is triumph to the guilty, it is depression to the innocent, and would perpetuate that devastation which rages through the land.

Gentlemen, the indictment states, among other things, that a wicked conspiracy was formed by a banditti of men, associated under the denomination of United Irishmen. I shall not waste your time by going into a history of that body of men. The evidence will speak most emphatically in this trial, and you will have the history of it from some of its most active members, and from the acts of the prisoners themselves.—There was no species of experiment, that was not made with the wretched and low people of this country; they were not competent suddenly to corrupt them; long working upon them was necessary, to make them forgetful of, or indifferent to, the comfort and protection they enjoy. When we first heard of the French revolution, we heard of it, as thunder at a distance; but the United Irishmen and their associates soon imported French principles, and improved upon them; the pen and tongue of every revolutionary ruffian were put in requisition, and those principles and doctrines which approached us like plague, pestilence, and famine, were the dreadful presagers and forerunners of battle, murder, and sudden death. Terror and seduction stalked forth hand-in-hand, and the libellous defamation

of the evening was the prelude which bespoke the assassination of the night; and this once happy country, where men had lived, until a few years ago, happy, contented, industrious, and protected, had all its hopes blasted, and the wretched credulous peasants were so hurried or deluded to their destruction, as if Satan and his associates determined

If not to drive
Seduce them to their party, that their God
May prove their foe, and with repenting hand
Abolish his own works.

That mischiefs, such as I have stated, must have been the result, had the measures of the prisoners and their associates been successful, you will have little doubt, when the evidence shall be laid before you; I shall state it shortly.

Gentlemen, two kinds of evidence will be laid before you, parol and written; the latter will be of very considerable weight, and being of the hand-writing of one of the prisoners, and found in the chamber and possession of the other, it will go to a participation with them both. It will appear, that the prisoners at the bar, who as I have stated are lettered men, held intercourse at a shop of a certain bookseller in this town (of the name of Byrne*), and at present in confinement. He was found to be an apt medium, and his house a convenient rendezvous, to chaunt over that treason and mischief, in which the prisoners were involved. It will appear, that a man of no less note than an officer in his majesty's militia (he is named in the indictment captain Armstrong) resorted often to the shop of Mr. Byrne, the bookseller; at whose shop, as well as at many others, a variety of modern publications are sold, which have too much captivated the dispositions of men, who might have employed their time and talents better. The intercourse, however, between captain Armstrong and Mr. Byrne became very familiar, and from the course of the reading, and the loose and unguarded conversation of the former, the latter was led to believe and conclude that captain Armstrong was one of those, who from his political principles, was very deeply embarked in the conspiracy of the day. Whether from a vanity of his knowledge, or appearing to be versed in the false philosophy of the times, captain Armstrong did pass with Mr. Byrne for a very learned and useful disciple of the United Irishmen. After an acquaintance of some length, Mr. Byrne did request to be allowed to introduce him (captain Armstrong) to some gentlemen, who he said were of the same political sentiments, and were desirous to cultivate his friendship. Mr. Byrne represented them to be "Gentlemen of the bar, and men of talents, engaged in their country's cause, and they are satisfied," said he, "that you can contribute to their assistance." Captain

* See his trial, *infra*.

Armstrong was not of so shallow an understanding as not to have formed an immediate conception as to what this conversation led to; from the significant manner of Mr. Byrne, and from the characters of the prisoners, of which he had often heard, he naturally conjectured something of Mr. Byrne's purpose. Captain Armstrong, without much difficulty, acceded to the proposition; but on reflection, that his own indiscretions might have led to the proposition, and apprehensive that an indulgence of a curiosity to be acquainted with Mr. Sheares and his pursuits, might involve him, he resorted to the commanding officer of his own regiment, and another, with whom he lived in honourable confidence, for advice on the occasion.

"I am under your advice," said he, to his officers, "but why should they pitch upon me, unless that from my being an officer, they supposed I might be an useful instrument?—but I submit," said he, "the matter to your judgment." Conversations had gone abroad injurious to the character of this regiment, and it did occur to those officers that captain Armstrong should, by all means, avail himself of the opportunity to make discovery, as they thought they might acquire a knowledge of the cause of the imputation which the regiment laboured under, of supposed disaffection. "If we learn it," said they, "this purpose will be answered, to rescue the character and the honour of the regiment; go on, admit of the interview, and as to that which seems to lie upon your mind, the reluctance of revealing what may at first view be considered as confidential, instead of its being an act unworthy of a gentleman and a man of honour, it is conformable with the principles of both, to put yourself in the way of procuring information which may render essential service to the state, and stop that carnage which is threatening the subjects of the land; a false delicacy of that kind can never justify you, when put in competition with this imperious duty."—These arguments prevailed.

Gentlemen, captain Armstrong by appointment went to the shop of Mr. Byrne upon the 10th of May last, and after having been there some time, Mr. Henry Sheares, who appeared to come by appointment, did arrive:—it is evident that Byrne had given the Messieurs Sheares the fullest assurance that the captain was every thing they could wish; an introduction took place, both parties seemed prepared for it, and with that degree of significant insinuation, of which no man less versed in the matter could have a doubt, Byrne addressed Mr. Sheares, and said, "you may rely upon him, he is a *true brother*; go together, there is my back-room, you may have conference there."—Mr. Henry Sheares and captain Armstrong sat some time together *tete-à-tete*; common place conversation ensued at first; but Mr. Henry Sheares early intimated that there was a subject of great

magnitude upon which they were likely to speak, but he had rather not broach it, till his brother John should come; that was not long a matter of expectation, John Sheares soon arrived, he was introduced; all difficulties were soon removed; and after some cursory conversation had ensued, Mr. John Sheares opened himself by saying, "I know you perfectly well, captain Armstrong, in point of character; I know your principles, and I have no difficulty in communicating freely," and accordingly very few words passed, before the following conversation took place, which I shall now mention to you:—"You are," said John Sheares, "an officer in the King's County militia, you know the great cause in which we are embarked, I have heard of your excellent disposition, and am aware of the importance of your assistance; you can be of considerable use; many men of your regiment, as I am sure you know, show excellent dispositions also, and some are in our confidence; but it is necessary to have your assistance, by which, as an officer, much may be effected; you will be able to give them passes and to procure leave of absence from the camp, and by your assistance we can do much, but our friends in the regiment are not as yet confident of your co-operation; I can give you an opportunity of intercourse with serjeant Connors, who is an extremely active, useful and enterprising man. We have had several meetings with him, and he has pledged himself honourably to our purpose: it is however necessary to be expeditious, for the period of time is approaching when we must act; a general rising must take place; the country is growing impatient, and our best friends have most sorely felt the weight of criminal prosecutions. We are obliged to accelerate our purpose; we cannot wait for distant expectations; we must make a home exertion! We are determined not to wait for the French now, but make a primary effort of our own."

This general conversation was pretty explicit, and such, if there were no more of it, as might enable you to draw a conclusion of its purpose; it certainly was tolerably plain for the first time; however, Mr. John Sheares begged to observe, that there was one thing he (Mr. Armstrong) was to have in recollection; "Our friends were aware, that you can work much better with the Roman Catholics of your regiment, as they have been sufficiently worked upon by your friends to irritate their feelings, and to make them easily convinced, that they should hold themselves aggrieved." And here, gentlemen, it is impossible not to observe the diabolical purpose of laying hold of every unhappy and unfounded prejudice which had prevailed in this as in other countries, in the minds of the credulous and uninformed populace; although it had been the pride and glory of his majesty's auspicious reign, to have eased the Roman Catholic body of every semblance of oppression, to

have received them into the bosom of the country, and the freest participation of the constitution; yet some wicked and infernal spirit has been for ever at work to keep alive the demon of discord, long after the causes of real discontent had vanished. But it is not to be wondered at. The speeches and publications of disappointed ambitious men, had been daily exhibited through the medium of a licentious press; and in addition to the modern philosophy of the infidel, the antiquated and exploded religious distinctions were to be blended up, as the common combustibles which knaves and impostors have always used to set an infatuated nation in a flame.

Gentlemen, when I make use of strong expressions, I would not wish to have them understood farther than they are applicable to characters which have heretofore existed; for though my arguments may bear upon the prisoners on trial, it would be illiberal to overbear men in their situation with the language of insult.

Gentlemen, I have stated to you the business of the 10th of May. It was agreed, that they should have another meeting so early as the 13th, for that the time was pressing; in that interval it was intimated, that serjeant Connors and others might apply for passes; that captain Armstrong would have no difficulty in giving them, and that he should have a note to Connors, by way of introduction to the business; that they might converse freely together. A communication after took place between Connors and Armstrong, in which Armstrong was not willing to let himself out altogether too suddenly. After handing the note, and finding him a little shy, the captain gave him to understand, that they might be better acquainted, Connors seemed to comprehend him, but no farther conversation took place, except that it was understood, that he might have any pass to town that he required, of which he accordingly accepted.

Gentlemen, according to appointment, on the morning of the 13th, there was another interview between captain Armstrong and the prisoners, at their house in Baggot-street. Henry first appeared, and after being in company with him some short time, John Sheares came in; upon his arrival, very little ceremony was necessary to reassume the subject of the former meeting; Mr. John Sheares said, "the time pressed upon them; on communication I find, a rising must take place immediately. I have some things of importance to mention; and among others," said he, "I have a plan, well digested and considered by my friends, for taking by surprise the camp at Lehaunstown, the city of DUBLIN, and the ARTILLERY of Chapelizod, on one and the same night, allowing only such intervals of time as will increase the confusion, and make it impossible for government to protect themselves or resist us, for we have NUMBERS, sufficient and ready to act." He asked captain Armstrong about the state of the regiment,

and whether it would be practicable to bring them into operation; he again pressed captain Armstrong to keep up the spirit of revolt among them, and said, the great enterprise would be forthwith commenced, that the torrent would carry all before it, and that it was determined not to spare any human being who would dare to oppose them. He said, he would wish to advise with captain Armstrong, what was the best method of taking the camp, whether by storm, by surprise, or by obtaining of the countersign. No conclusion was formed for that time, although much important communication took place; but it will appear that they conversed upon it long. John Sheares told captain Armstrong, that as a great mode of carrying their purpose, he should make as many United Irishmen as he could, particularly in his own regiment, and particularly of that description of people whom he mentioned before, and "you will by these means be of the greatest service to our glorious cause, you will be entitled to be called the SAVIOUR OF YOUR COUNTRY."—Saviour of your country! What a profanation of expression! That appellation by which we have been accustomed, with pious devotion, to address and to implore the REDEEMER of the world! who came not to destroy man, but to save him, and offered up his own blood for the salvation of mankind! This is the appellation that was to be thus blasphemously applied to him, who was to be engaged for the dreadful purpose—not to save, but to destroy.

Gentlemen, they parted for that time; but another meeting was held at the same place upon the evening of that day; the subject was resumed at the house of Mr. Sheares, to which we shall have occasion to resort for more purposes. It was intimated by the prisoners, "that the time was becoming more pressing every moment, that their friends were growing so impatient, it was impossible to keep them from acting. The trials were expected in Kildare, at the adjournment of the assizes in a few days, and that to avoid them, their friends there, and particularly a Mr. Reynolds, declared that it would be impossible to keep them from acting;" "act," said they, "we must." During this conversation four men came in, Mr. John Sheares appeared much taken up, and said he had a great deal of business to attend to, and that the four men were preparing matters for him; a note was handed to him, and upon that occasion, he again mentioned the necessity of expedition. "However," said he, "to further our cause, you must allow me to make you acquainted with a particular friend, who is most active, with whom you may communicate as freely as to me, and you may unbother yourself to him." Accordingly an introduction took place between captain Armstrong and Mr. Lawless, the close friend of the prisoners, one of whom was arrested since at his house.

It seems that gentleman (Mr. Lawless) is

not forthcoming, but has fled; he was bred a surgeon, and as his case is not immediately before the Court at present, it would be improper for me to state more with respect to him than is connected with the present trial. The introduction took place, and Mr. John Sheares urged as a reason for handing captain Armstrong over to any other person, that he (John Sheares) had special business to transact at Cork; that he must go there with expedition, that he must ORGANIZE Cork, and that the general rising which was planned all through the kingdom, was to take place there so as to co-operate with that in Dublin. He said he had undertaken for that department, and that he must go there and fix the time of its completion; it was calculated to be at a few hours' interval, that the confusion might answer their general purpose, and the more embarrass the government which was to defend the country.

In consequence of Mr. Lawless's introduction, a pretty free conversation took place, particularly on the subject of the camp at Lebaunstown; they talked of its situation, and whether it should be taken by storm or by treachery. Lawless observed much on its situation, and said, "that there was one circumstance very fortunate relative to it, that there was a number of trees at the end of the camp, which would be of the utmost convenience to hang their opponents, at the moment of their rising;" he said, that that was so necessary an ingredient, that he told captain Armstrong he must keep his attention to it.

A subsequent meeting took place between John Sheares and captain Armstrong, when a note was handed by Mr. John Sheares, who intimated that he had taken memorandums of the names of several persons with whom he had communication, by means of his servant who had been very active in making United Irishmen, and he took out a letter, upon the back of which were written the names of several serjeants in the regiment, and among them the name of Connors. It happens that that letter, with that very indorsement in the hand-writing of Mr. John Sheares, has been found on his person. And another letter, written by Mr. John Sheares, directed to captain Armstrong, has been found amongst the papers of Cormick, who has been proclaimed and fled, by which letter, which remained with Cormick unsealed and undelivered, the privy of the prisoners with Armstrong, and the intended communication through him with Connors, demonstrably appear. You will find that no less than seven meetings took place on the same business between the parties, from the 10th of May to the 21st, when the Sheares's were arrested; and in the last of those, John Sheares, after alluding to the justice of the Executive Directory of the United Irishmen, informed the captain, that instead of being a captain, he had it in command, from them to tell him, it was their resolution

to give him the command of the regiment as a reward, and for his service. So confident were they of establishing their purpose, so completely had they reduced their schemes into system, that they had actually determined to reward such men as captain Armstrong with the command of the regiments they betrayed. "You shall have the command," said they. Why? "Because you have been the gallant and deserving instrument of turning the bayonets of the soldiers of the king against his faithful subjects, to deluge the country with blood, to annihilate the monarchy, overthrow the government, and to spread ruin and devastation around;" therefore you shall be rewarded, and those are the services we mean to requite.

It will appear, that at the very moment when this revolutionary system and rebellion was hatching, and likely to be brought to action in a few days, that the prisoners were active every where, as men of their talents might be supposed to be; for you will see, that their talents were calculated for the most formidable mischiefs. Meetings took place night after night amongst their superior councils, and none were admitted but men of high confidence, and acquainted with the interior arrangement; for the unfortunate and misguided people, who are made the wretched instruments of ruin, were never acquainted with their orders until they came to act for their own destruction.

A meeting (among others) took place in Werburgh-street, in the middle of May last, and a person will be brought forward to show, that he was summoned, as having accepted a command as colonel in the army of United Irishmen, that in consequence of that summons to men in command and authority, Mr. John Sheares did come there. It will appear that the meeting was expressly summoned for MILITARY PURPOSE, and was attended by men, who had embarked so deeply as to be ready with their *organized forces*. The object of a direct and instant rising was there disclosed, and a number of persons were there present, who have been since distinguished in the rebel army; one of them in particular, a Mr. Michael Reynolds*, who commanded the rebels in the late battle at Naas, was present, and he did express there from authority, that certain parts of the country were growing so impatient, that they were determined to act; he said, that otherwise he could not keep his men together, and that the gaol of Naas was so full of persons expecting to be brought to trial at the assizes—"Unless you act," said he, "you must give up, for these people will not wait longer." A man of the name of M'Clune was at the same meeting, spoke also to the same effect.

* See Gordon's *Hist. of the Irish Rebellion* 74, and Musgrave's *Hist. Irish Rob.* 233, 234 *ed.*

Mr. John Sheares took an active part at that meeting, and the circumstances of the meeting will be minutely detailed to you.

I come now, gentlemen, to a piece of written evidence, to which I am to call your particular attention, and you will see by this document to which I have alluded as being in the hand-writing of one of the prisoners, and found on the other—that if the government of the country had not with peculiar vigilance obtained information of what was going on, but had remained inactive, and not laid hold on the conspirators, the country might have been lost in an instant; but however fortunate in discovery, if they had not acted vigorously, they would have betrayed the rights of the subject, and of the crown, and connived at the destruction of both.

It is high time that the world should know whether they or their calumniators ought to be the objects of censure from a set of men, whose pusillanimity or disaffection have made them the defamers of honour, and the advocates for outrage and rebellion. Acting according to the honest impulse of duty, the government arrested the prisoners and many others; whether the events which have since happened have justified their exertions, and whether the progress of these trials will justify the activity and vigilance with which they have acted, let the world at large judge. I thank God, that I live to address this venerable bench, and that upright jury:—Whether it was likely I should have done so under all the circumstances, if such calumniators governed, you will have little room for conjecture.

But it must be a consolation not only to the bench, to the jury, and those around me, but it must be a consolation even to the prisoners themselves, that the constitution which they en-leavoured to destroy, and the benignity of those laws which they meant to subvert, are still in existence, to afford them a more patient and impartial hearing, and to furnish them with more advantages for their defence than are to be found in any other country on the earth.

In other countries, to whose principles the unhappy prisoners were devoted, the accuser is often the judge, and to criminate and convict are one and the same. But, gentlemen of the jury, you will investigate with coolness, you will deliberate with wisdom, and decide with justice—That justice the prisoners and the public have an equal right to demand from you, and in discharging that duty, you will be equally regardless of the frowns of power, or the clamours of the mob.

Upon the issuing of the warrant against Mr. Sheares, an officer of high authority, Mr. Alexander, resorted to their house; one of them was taken there, another was taken at the house of Mr. Lawless, which brings him into close connexion. Mr. Alexander did not proceed with ruffianly violence, or the display of instruments of death, but with that

decorum becoming a magistrate, he walked into Mr. Sheares's chamber, told him he was arrested, and that he must come with him. He searched for papers, as magistrates upon such occasions are always directed to do, he observed a desk, and asked to whom it belonged; Mr. Henry Sheares acknowledged it to be his: in that desk was found a paper, which I have reserved for the second part of my statement, namely, the written evidence.

I will read to you the paper alluded to; it is of the hand-writing of John Sheares; I cannot add to or diminish it; it cannot change its own form and body, but it will speak conviction. As to its admissibility and application under all the circumstances—and neither can be questioned by any man who is acquainted with the adjudged cases on the subject—The composing and keeping the paper in question, for treasonable purposes, is laid as an overt act in the indictment; as the paper is upon that very business, relative to the charge, and embodied in the indictment, against both, the composing, procuring and keeping such paper, for the purposes laid in the indictment are proper subjects for your discussion. Observe, gentlemen, the period when the arrest was made, it was upon the 21st of May—the last meeting of the prisoners and the principal witness was upon the 20th.—That paper, which will be proved to have been found in the desk of Henry Sheares, conveys upon the face of it much appearance of being a deliberate act, was prepared with great caution, and the very erasures and amendments which appear on the face of it, are proofs of determined and considered intent. You cannot doubt, after this paper shall be read, that a direct and immediate massacre and revolution were intended; and it is expressly conversant of all the means by which it was to be at first effected, and afterwards completed. It imports to be an address to the people of Ireland, stating, that an insurrection has already taken place, and it endeavours to draw the people together by promises of reward, by the threats of terror, and arts of seduction. I do acknowledge I have read papers not extremely dissimilar, as published in and applicable to the situation of another country after the revolution of France, preparatory to the death of an amiable and unfortunate monarch, the weakness of whose concessions hurried on his own fate and his kingdom's ruin. The plan in Ireland was similar to that of France, and borrowed from that, and therefore necessarily correspondent in the principal parts:—It begins, "Irishmen, your country is free, and you are about to be avenged; that vile government which has so long and so cruelly oppressed you is no more."

[Here the Attorney General read the Proclamation, for which, see p. 324.]

Who is there that can read this bloody
VOL. XXVII.

scroll and not pronounce judgment upon the intention and imagination of the heart which composed it! and whilst I, thus behold it, methinks I have in full and palpable form before me, the sanguinary author penning it with his bloody dagger in one hand, and pointing in triumph to the revolutionary tribunal and guillotine with the other. And yet, gentlemen, it is not unworthy the observation of my countrymen, that there may be found in this paper some precepts, that, if well applied, it would be well to inculcate, when it denounces vengeance against treachery and cowardice.—I admire the wisdom of the laws of those countries, which put traitors and cowards in the same class of public criminals; and I am free to say, that the man who is traitor or coward enough not to take that unequivocal part which becomes him at such a time as this, deserves the severest punishment and the execration of his country.

But, gentlemen, in this paper you will read the cruel sentence that anticipated revolution had pronounced upon the innocent and honest vindicators of their country, and when you read it you will say, that there is not a single line which is

————— But to teach
Bloody instructions, which, being taught, return
To plague the inventor——

We shall now call our witnesses, and I consign this case and the prisoner to God and his country.

John Warneford Armstrong, esq. produced.

Mr. Curran.—My lord, before this gentleman is sworn, I will take the liberty, under the protection of your lordship, to ask a question, which at first sight may seem a sort of professional shift to disturb the witness. I protest I do not make it with that view. The propriety of it will appear hereafter. Under the sanction of the Court, I beg to ask, or that any other person directed by the Court may ask, whether this gentleman does believe in a God?

Lord Carleton.—Do you desire him to be sworn upon the *Voire Dire*?

Mr. Curran.—I do not apprehend that to be necessary; because putting an oath to a witness admits in some degree, that he acknowledges the moral obligation of an oath.

Lord Carleton.—Ask him now.

Mr. Curran.—In the presence of this awful Court, I ask you, to declare whether you believe in God, and in a future state of rewards and punishments.

Armstrong.—I do.

Lord Carleton.—Swear the gentleman.

Mr. Curran.—Have you always believed so?

[This question was objected to, as being proper only upon a cross-examination to affect his credit.]

X

John Warnford Armstrong sworn and examined.

Pray, Sir, in what profession are you?—I am a captain in the King's County militia.

Are you acquainted with Mr. Henry or Mr. John Sheares?—I am; with both of them.

Do you see these gentlemen in court?—I do.

Point them out?—That is Mr. Henry Sheares; and that is John Sheares, I believe.

You know these two persons?—I do.

Can you tell when you first became acquainted with either of them?—The first time was Thursday, the 10th of May last.

[Here the witness produced some papers.]

What papers are these?—Some notes I took of the business as it happened.

In your own hand-writing?—Yes.

Then you have a right to look at them. Can you recollect, how you happened to become acquainted with them?—I came to town from the camp about business, and went into Mr. Byrne's shop. After some conversation, he asked me, "Did I know Mr. Sheares?" I asked him, "Was it Sheares, the lawyer?"

What camp did you speak of?—The camp at Lehaunstown.

Was your regiment quartered there?—My company was quartered there.

Where was Byrne's shop?—In Grafton-street, I do not know the number.

What did Byrne propose?—He asked me, "Had I any objection to meet Mr. Sheares?" I said, I had not.

How long had you been acquainted with Mr. Byrne, the bookseller?—I believe I have known him about two years.

What was the nature of that acquaintance you had with Mr. Byrne?—He was familiar, or otherwise?—I knew him as my bookseller, whose shop I much frequented; I was there almost every day.

Do you recollect any particular description of books which you were in the habit of purchasing from him?—I used to purchase every political pamphlet as it came out, and other books I fancied.

Do you recollect what was the particular occasion of his asking to introduce you to Mr. Sheares?—I did not know his purpose.

But you were speaking about something?—I was not speaking at the time; he followed me out.

You had been speaking?—I had, but do not recollect.

There were other people there?—There were.

He followed you out, when he made that proposal?—He did.

Did you take any particular measure in consequence of that proposal?—I did; I went to look for captain Clibborn, a man upon whom I had dependence, and who I knew was in town: he was my particular friend.

Was that before you met either of the Mr. Sheares's?—It was.

Court.—Was that immediately after you left Byrne's?—It was, my lord.

Counsel.—Did you see Mr. Clibborn, whom you went in quest of?—I did.

What did you do?—I told him what had happened, and asked him for his advice.

I presume you mean what had happened between you and Byrne?—I do, sir.

Can you recollect what advice he gave you, or what you determined to do?

[The counsel for the prisoners objected to this question.]

Did you come to any determination?—Captain Clibborn advised me to give them a meeting.

The result of your conversation was, to give Mr. Sheares a meeting?—It was.

Mention, whether you were ever introduced to the Mr. Sheares's, or either of them, in consequence of this proposal, or not?—Upon my return to Mr. Byrne's late, I waited until the elder Sheares arrived.

Court.—That is Henry?—I believe so, my lord.

Counsel.—What passed upon the arrival of Mr. Henry Sheares?—Mr. Byrne introduced me to him in the inner shop.

Do you recollect in what manner, or form he introduced you?—He only mentioned my name, but said, that if we had a mind to chat, we might go into the room inside the inner shop.

Recollect whether any thing else was said by Byrne in the presence of Mr. Henry Sheares?—He opened the door, showed me in, and said, "All I can say to you Mr. Sheares is, that capt. Armstrong is a true brother, and you may depend upon him."

Be so good as to call to your recollection any thing that may have passed upon that interview between you and Mr. Henry Sheares; you have a right to refresh your memory by your notes. At what time did you take them?—I took a sheet after every interview I had with the gentlemen.

Mention the import and substance of what passed?—Henry Sheares told me, that what he wanted to say to me, he wished to say in the presence of his brother.

Court.—Did he say this in the presence of Byrne?—No, my lord, in the private room, when we were alone.

Counsel.—Do you recollect any thing worthy observing to have passed that day?—I told him, I had no objection to wait till the brother came.

When did you again hold conversation with him?—In a very short time after, the other Mr. Sheares came to the shop.

After he came, where were you?—We were introduced pretty much in the same manner as before.

Do you mean by Byrne?—Yes.

He introduced you to John also? Mention

then what passed?—He told me, he knew my principles very well—

Court.—Who told you that?—Mr. John Sheares.

Counsel.—Were you at this time in the inner room again?—Yes.

And the door shut?—I believe so.

Court.—Did the brother Henry go in?—No, my lord, I had separate interviews with them.

Counsel.—Did Mr. Henry Sheares go away?—He did, before John came, and did not return that day. John said, he knew my principles very well; that he was emboldened by that knowledge, and the pressure of events induced him, for the good of the cause, to make himself known to me, and to show me how the cause could be benefited by my joining the cause in action, as he knew I had by inclination. I told him, I was ready to do every thing in my power for it.

Meaning the cause?—Yes; and that if he would show me how I could do any thing, I would serve him to the utmost of my power.

Did he state to you in what manner you could serve this cause to which he thus alluded?—He said, that as I was willing to serve it, he would tell me at once what I could do. He told me, that the rising was very near; that they could not wait for the French, but had determined upon a home exertion, and that the principal manner in which I could assist them was, by seducing the soldiers, and bringing about the King's County militia, and consulting with him about taking the camp.

Court.—What camp?—The camp at Lehaunastown I understood, where I was quartered. And that for the purpose of bringing about the soldiers, he would recommend me to endeavour to practise upon the non-commissioned officers and privates, who were of the Roman Catholic religion, as they were most likely to think themselves aggrieved. I do not recollect any thing more of the conversation that day, except our appointment to meet the Sunday following.

Counsel.—Did he mention an appointment for that day?—He did.

Where?—At his house.

Where was that?—In Bagot street.

Did he tell you?—Yes; for I did not know it till then. On the Sunday following I went to his house, and the elder only was at home.

That was Henry?—I believe so; I only knew them at that time by the distinction of elder and younger.

Do you recollect the number of the house?—I do not.

Upon which side of the way is it?—On the right hand going out of town; his name was upon the door.

What passed?—I had a repetition of a good part of the conversation with Henry, that I had had upon the former day with John.

Mention what you particularly recollect?—He told me, that he understood his brother and I had conversed together; he apologized

to me for not returning to me to Byrne's, for that there was a committee sitting that day, which it was necessary that one of them should attend.

Did he mention what that committee was about?—He did not. He asked me as to the state of the regiment, and the situation of the camp; where it was most vulnerable, and the number of troops stationed there; he questioned me as to the possibility of taking it by storm, or by treachery, or by using the countersign, or something of that kind; I do not recollect any thing farther till the prisoner came in.

Court.—This conversation was before John came in?—It was.

Do you mean to say, you do not recollect any thing more said by Henry?—Except a repetition of what John had said. John asked me, whether I knew any United men in the regiment; I said not.

Counsel.—Was that in the presence of Henry?—It was; he said, he thought I could make good men of the soldiers.

Which of them said that?—John; I said, I should be afraid to commit myself with any of them; but if I knew them, I should then do what I could in concert with them. He said, he believed, he could inform me of some I might depend upon; he told me, it was their intention to seize the camp, the artillery at Chapelizod, and the city of Dublin in one night.

Court.—Whose intention?—Our's was his expression: I understood the United Irishmen. He said, there was to be one hour and a half between the seizing of the camp and Dublin, and an hour between seizing Dublin and Chapelizod, so that the news of both might arrive at the same time. He told me, if I would call at eleven that night, he would give me the names of some men in the regiment.

Counsel.—What regiment?—My own regiment.

Court.—That meeting was in the morning?—In the morning before dinner. At that meeting in the evening, he told me, he had not been able to obtain the names for me; but that a man would call upon me in the camp to whom I was to give a pass, and that I might converse with him upon his return without reserve.

Counsel.—Recollect, if you can, whether any thing more particular passed about the cause in hand?—I do not recollect any on that day.

Who had the command of your regiment?—Colonel L'Estrange.

Did you ever communicate to any persons what passed at these interviews?—I returned to the camp immediately after each interview, and communicated the business that passed to colonel L'Estrange and captain Clibborn. Sometimes I communicated it to lord Castle-reagh* and Mr. Cooke.† On Wednesday the

* Then Chief Secretary,

† Under-secretary.

16th, the colonel was surprised, that no man had called upon me; he requested I would go to town, and find out the reason: I came to town, and as neither of the Mr. Sheares's was at home, I left word that I would call between five and six o'clock. I called between five and six, and was shown into the library at Mr. Sheares's house.

At the same house?—Yes: the younger Sheares came in, told me he wished to introduce me to a gentleman with whom I might consult and advise in his absence, as he must go down and organize Cork; he said, he had not been able to find out the names I wanted in the regiment. He said, the rising in Cork, was to be in such a manner, that the news might reach Dublin at the same time with the war news of rising in other places, and that he only waiting for the Executive to fix the day.

Court.—Was the news of the rising in Cork to reach Dublin at the time of the rising there?—Yes.

Jury.—Where was the Executive? Who were they?—I do not know; he did not explain, and I asked him no question.

What did you understand?—The Executive Directory, who were sitting in Dublin in the same manner as other committees were sitting. Mr. John Sheares appointed me to meet him next day, and that he would introduce me to that gentleman.

Counsel.—Had you seen Henry at that meeting at all upon the 16th?—Not at that time; I went there next day, Thursday 17th, and met both the brothers.

At the same house?—Yes, the same house. I do not recollect any conversation of moment, until the gentlemen came. I was introduced to him as to a Mr. Lawless, a relation of Lord Cloncurry: that was the name he was introduced by.

Was there any other present?—None but the two brothers.

He was introduced as the person Mr. John Sheares had been speaking of the day before?—I understood so. Mr. Lawless told me, he had been present some time before at a meeting of deputies from all, or composed of almost all, the militia regiments in Ireland; at which meeting, he said, there were two of our men; he did not know their names; but that if I would call between five and six upon Mr. Sheares, he would leave their names with him for me.

Court.—Were the Mr. Sheares's present at this conversation?—They were both present, my lord. He said, he would obtain the names from a man who had been very active in making United Irishmen, and who had been very active in making some in every regiment that had been in Dublin for two years past.

Counsel.—The two prisoners were present at that meeting?—Both were present on that day. The elder Sheares told me, that the corps throughout Ireland were completely organized, and had all their captains and adjutants appointed. I called that evening to

get the names which Mr. Lawless was to leave for me. I was shown into the library: where Mr. John Sheares was in conversation with a man: Upon the man's going away, Mr. John Sheares gave me this note, which was to be a note of introduction to a serjeant in our regiment, intimating to him, that I might be depended upon, and said he got it from the man he had been speaking to.

Jury.—Is it in Mr. Sheares's hand-writing?—I do not know.

Counsel.—Is it directed?—It is directed to serjeant Connors.

Is there any other serjeant of that name in your regiment?—I believe not.

Before you quit Mr. Lawless, do you recollect any expression relating to the camp, or the neighbourhood of it?—I do; he remarked, that the trees to the right of the camp would be very convenient for hanging people.

Court.—Was that in the presence of Mr. Sheares?—It was, my lord.

Counsel.—Have you in your recollection any direction given by Mr. Lawless or the Mr. Sheares's, as to what should be done at the time of the attack, or the line of conduct to be pursued?—Yes, my conduct was to be this: I was to erect a standard upon the night to be fixed upon for the attack upon the camp, which was to be joined by all whom I had previously known to be United Irishmen; that no other person was to be spared, and they were not to be given the option of joining at the time of the attack. He gave me the name of a private, Pat. Fennan, at the time he gave me the note and appointed me to meet him the Sunday following, when he would introduce me to more friends of the cause.

Did he say any thing respecting Fennan?—I understood, that Fennan and Connors were the two deputies whom Lawless mentioned.

Court.—From whom did you understand that?—Lawless had mentioned, that he would leave their names with Mr. John Sheares, and those were the names which Mr. John Sheares gave to me. On Friday, I could not find Connors, but on Saturday I gave him the note, and asked him, did he know the man named in the note; it was Arthur Hill, he told me he did.

What is become of Connors?—He is in confinement, I believe in the castle guard-room.

He has been made a prisoner?—He was, about the 20th of May: He said he would call upon me for a pass.

Did you call upon Mr. Sheares again?—I did, upon Sunday the 20th of May. I found the elder Sheares at home, I told him what had passed between Connors and me, and that he would not know me.

That is, would not open himself to you?—Yes: He said he was much surprised at that, but attributed it to his caution; and he recommended caution to me, for that he and his brother escaped by their caution, for govern-

ment then thought them inactive. He said there was a man at that time with Connors at Lehaunstown and that I should find no difficulty in conversing with him upon my return to the camp. The younger Sheares produced a paper upon which appeared to be written names, by way of memorandum; among them were three more names of our regiment.

Court.—Did John come in?—He did. I do not recollect any conversation more of moment with Henry: John came in and Henry went out; then John produced the paper; he mentioned the names as if reading them from the paper, and three of them corresponded with three sergeants in our regiment.

What did he say of them?—He told me they were men I might depend upon as United Irishmen, and he mentioned their names to me as such.

Counsel.—Is there any thing else in your recollection?—He told me, he had that day called at Lawless's, and that he believed he had absconded, for he was denied to him. He said that a man had been out at the camp on Saturday looking for me, to give me a letter, but could not find me. I asked him the contents; he said it was no matter, as I was then there, I would hear of it. He said the Executive Directory had directed him to tell me, they had come to a resolution to appoint me to the command of the King's county regiment. He said I might promise to every man in the regiment that would join me, a portion of land in the King's county. He told me, that on the night of the rising in Dublin, the lord lieutenant was to be seized and all the privy council, separately in their own houses. This conversation was in the presence of the elder.

Court.—What part of the conversation?—All subsequent to his saying that Lawless had absconded himself. He said that when the privy council were all seized, there was no place to issue orders from, so as to counteract the rising; and that in case of a failure of the attack upon the camp, on the march of the soldiery into the town through Baggot-street, they had a sufficient number of houses in Baggot-street in their interest, to shoot them from, so as to render them useless; and that he expected throughout Ireland, that the militia regiments would join, from the accounts they had received of them: that several men of the different regiments had promised different numbers, some ten men, some twenty, some thirty, and some one hundred, provided they had sufficient notice; but that if they were called out with their officers, nothing could be done, as they must obey their officers, and the rest of the men would be too strong for them.

Counsel.—This was mentioned by John Sheares in the presence of Henry?—Yes.

He told you that the rising was to take place soon?—He did.

Did he mention any reason?—He said, the country was tired with the prosecutions, and that the people threatened, if the rising did not immediately take place, they would take the oath of allegiance, and give up their arms. The elder Sheares told me that he had had a servant, who was the greatest coward he ever saw; but that he had been particularly active in making United Irishmen, particularly soldiers; but had quit him through fear and gone to Cork. I do not recollect any thing farther.

Did you communicate the last conversation to any person?—Continually, every one: I never had an interview with the Mr. Sheares's that I had not one with colonel L'Estrange, and captain Clibborn, and my lord Castlereagh.

Where have you been since that time?—I have only been in Wicklow and Wexford, and the county of Kildare.

Did any thing happen to you?—I was wounded in my foot, at Slievebuy mountain, where I was with colonel Walpole. I could not go to my regiment, being ordered by lord Castlereagh not to leave town; I volunteered, and had the command of the grenadier company in the Londonderry militia, where they behaved in a most exemplary manner.

Did you see either of the prisoners after they were arrested?—I saw the younger.

Where?—In the officer's guard-room at the castle.

Do you recollect upon what day he was made a prisoner?—The morning after the last conversation.

Did any thing pass between you?—He asked me if his brother was taken; I said I did not know. He asked me if his papers were seized; I said I did not know. He said he hoped not, for there was one among them that would commit him.

John Warnford Armstrong cross-examined by Mr. Curran.

What countryman are you?—An Irishman.

What part?—The King's County.

How old are you?—I believe between twenty-seven and twenty-eight.

Have you any hereditary fortune?—Every thing I have is hereditary.

Then you have hereditary fortune?—I have hereditary fortune, which qualifies me to be a captain in the King's County militia, otherwise I would not be one.

Do you mean to say that your estate is not diminished, or wasted?—Since I came of age, do you mean?

Yes, sir?—Certainly not.

Had you ever been in any military situation before you were in the King's County militia?—I had.

Where?—In several places.

Mention as many as you recollect?—I have been quartered—

You mistake me, sir; I mean, had you been in the army?—I was in the English militia.

In what regiment?—In two; the Somerset, and the South Middlesex Supplementary.

Do you recollect how you came to quit the Somerset?—I do. Having business in Ireland, and not being able to obtain leave of absence.

Have you always, when you talked on the subject, mentioned that as your reason for leaving the Somerset militia?—I do not recollect having given any reason.

I want you to say positively upon your oath, whether you did, or whether you do not recollect?—I do not recollect that I gave any other.

Then you do not say you did not?—I do not believe I ever did.

Do you swear positively?—I cannot say; but I believe I did not; and that was the reason.

I ask you, will you venture to swear positively, that you never did give any other reason for your leaving the Somerset?—I cannot swear positively to what I may have said in jesting: It is not impossible; but I believe I did not, and that was the reason.

I beg you to recollect. Did you in jest, or otherwise, give any other account of your leaving the regiment?—I cannot swear positively; but I do not believe I ever did: It is so very trifling a thing; I might have said, I did not like quarters, or some such thing.

How long after did you go into the South Middlesex?—About a year, I believe. I do not exactly recollect the time the Supplementary were called out. I had a friend in London, who put down my name, knowing I was unemployed and would like it.

I asked you, sir—and you said you did believe in the existence of a future state of rewards and punishments—I ask you now upon the oath you have taken, have you always professed that belief?—Always.

I wish to have your answer correct and precise. Do you say you always professed it?—I do and did.

From your education, you ought very well to understand the moral obligation of an oath. I presume you have often reflected upon it?—I have often thought of it; I hope with great respect.

By virtue of your oath, have you ever expressed any other sentiment than respect of the obligation of an oath?—Never to my knowledge.

Will you say, upon your oath, that you never did upon any occasion deliberately say, that an oath ought to be binding so far, and no longer, than it was convenient?—Never.

Did you in any manner deride the moral obligation of an oath?—I believe not.

Do you know a gentleman of the name of Bride?—I do.

Have you been in company with him?—Very often.

Did you in his company deride the moral obligation of an oath?—I do not recollect.

Were you in his company within the last six months?—I was.

Were you in the college with him?—I was.

In whose chamber?—I do not believe I was in any chamber with him these six months.

Were you any time before that?—I have been in chambers with him.

In whose chamber?—Mr. Brown's.

Do you speak positively?—I do.

Within how many months?—Within a year.

Was Mr. Bride there?—I could not be in company with him if he were not there.

Oh, I forgot; I believe my question was as to your being in company with him; do you recollect any conversation in that company touching the subject of an oath?—I do not.

You will be the best judge yourself whether you can undertake to give a positive answer to my question: Will you upon your oath say, that you did not in that company express any contempt or derision for an oath?—I am confident I never did.

How long were you in the South Middlesex?—I do not know exactly; for I never saw my commission.

You mentioned that you had been much in the habit of buying political pamphlets from Mr. Byrne?—I said so.

Had you been much in the habit of talking upon such subjects?—Of politics, do you mean? Yes, I was.

Had you been much in the habit of expressing your own political sentiments touching the state and affairs of your own country?—I generally used to chat there: when buying a book, I had some conversation about it.

I do not mean to confine you to the time of buying a book, but generally?—Very often: when in company I used to speak upon that as upon other subjects.

I should be glad to ask, if you can recollect, whether the general style of your observations was in favour of the conduct of government, or the contrary?—The contrary.

That was the general and pretty uniform line of your conversation in company?—Generally so.

Was it pretty strongly the contrary, or not?—I do not know that it was very strong; it had that tendency.

Keeping at a due distance from ——?—I hope so, sir.

From what, sir?—Any thing wrong, or injurious to myself.

Do you recollect—People sometimes make up their sentiments to toasts, and hand them about in that shape; did you ever give "Republicanism"?—I do not recollect it. If that was the round, I gave it.

If that was the round?—Toasts are generally given in rounds; sometimes hunting; sometimes of other kinds. If that was the round, I gave it as well as I could.

Do you recollect any thing about the kings of Europe, as to either good or bad health?—Not the kings of Europe.

Some of them?—Yes, I have drank them.

With great affection?—I cannot say with

great affection; I have drank my own king with regard.

Have you had much political conversation with Mr. Byrne? I suppose not?—Never, but when I was buying a book in his shop.

That seems goes farther than the title-page with a bookseller. Did you make any particular professions to him? I suppose not?—I do not recollect any till after the introduction to the Mr. Sheares's.

Never before, about your principles?—Never about my principles.

The proposal to become acquainted with them was merely a wish of Mr. Byrne?—I do not know with whom the wish originated.

He proposed it, you said?—I did say, he proposed it.

You said, you had no idea of what the subject was, or whether any subject was talked of, between you and Mr. Sheares?—No, sir: I said the contrary.

When Byrne proposed it, you said you had no objection?—I did.

Pray, sir, do you know a gentleman of the name of Drought?—I do, a great many.

Do you know the Drought I mean?—I do not.

Have you no conjecture of the Drought I mean?—I have.

What Drought is it I mean?—I do not know whom you mean.

What Drought did you guess at?—You would not take my guessing.

I will: What Drought did you suppose I asked you about? Do you recollect having called any Mr. Drought to your window?—I do; that gentleman is my first cousin.

Then you know your cousin Drought: Had you any conversation with him when you called him up?—I had a good deal.

For what time?—Very near an hour.

Do you recollect what the conversation was about?—Upon my word, I do not: it was common place; the common news of the day. A good deal of it was professions of joy at having seen each other, for we had not seen each other for some time.

Was this before or after you met with the wound?—It was after.

Do you remember to have told him any thing that happened to you?—I suppose I told him all that happened to me.

Did you tell him any that happened about two countrymen?—No, but about three.

Did you tell him you had hanged any of them?—No, for that would not have been the fact.

Did you tell him you had tied them up?—No.

Or that you ordered them to be tied up?—No.

Or that they were tied up?—I did: I told him that one was tied up.

For what purpose?—One was to be hanged, the other was to be flogged. We were going up Blackmore-hill under sir James Duff;

there was a party of rebels there; we met three men with green cockades; one we shot, another we hanged, and the third we flogged and made a guide of.

Which did you make the guide of?—The one that was neither shot nor hanged.

Did Mr. Drought say any thing to you as to the cruelty of the transaction?—No; he might have said something of the distressed situation of the country.

Did he say any thing as to what you could expect hereafter?—No; I do not recollect that he did.

Did you say to him, "I thought you knew my sentiments too well long since upon the subject of futurity?"—I do not recollect ever to have broached the subject of futurity to him. I always knew Mr. Drought's opinion of futurity.

You never conversed with him upon the subject of a future existence?—Never; I do not recollect it.

How long ago is it since the conversation you mentioned?—I do not recollect the day; it was since the 5th of June. Colonel Walpole's death was upon the 4th; but I should think it was a fortnight after that, because I was not able to go to the window for a fortnight.

Then it was within a month. Can you undertake to say, that you did not say to him, "you know my sentiments upon futurity?"—I said no such thing.

Will you give me leave to ask you, had you ever been in any other military situation, a *civico-military* situation?—No.

Did you know Archibald Hamilton Rowan?—I have seen him; but never knew him to speak to him.

Were you in his corps?—Never.

Do you recollect the National Guards in 1792?—I do not recollect any thing of it. I have heard of Hamilton Rowan; I was only just of age at that time.

Were you in that corps?—Never.

Did you make up the uniform?—Never: I do not know the uniform. I might have had a coat answering the uniform; but I never made it up for the corps, nor did I ever see it.

Did you wear, in the year 1792, any dress like a uniform with green trowsers, buttons having a harp impressed without a crown, and green cockades?—Never. I had no green coat, nor buttons of that kind; I might have worn green when a boy.

John Warnford Armstrong cross-examined.
by Mr. Ponsonby.

How long have you been in the King's County militia?—Since the 19th of January last.

Have you declared it was in your power to bring over the King's County militia, if there was a rising?—Never to any person but the

* See his case, *antè*, Vol. 22, p. 1035.

Sheares's, and to Byrne after my introduction to them.

Do you recollect not having spoken favourably of the king of England? Did you ever say, "that if no other person could be found to cut off the head of the king of England, you would do it yourself?"—Never.

Are you positive you never did?—Never. As you have been fond of buying new pamphlets as they came out, do you recollect to have bought the pamphlets of Paine?—I have.

Have you read them?—I have read all that I got; I have not got them all.

You have read the "Rights of Man," and the "Age of Reason?"—I have.

Do you recollect having told any one, that they contained your creed?—No: I do not recollect that I did.

Are you sure you did not say it?—I did not say it, because I never thought it.

Andrew Kearney sworn.

Do you know Mr. Henry Sheares and Mr. John Sheares?—Yes, sir; I have seen them.

Were you in company with either of them in the month of May last?—I was.

With one, or with both of them?—One of them only.

Which of them?—I believe the youngest.

That is John?—Yes.

What time were you in his company?—I do not recollect the time exactly.

It was in May last?—It was.

In what house were you in company with him?—A house in Werburgh-street, I believe it was.

For what purpose did you go to that house in which you met Mr. John Sheares?—I do not exactly know.

What induced you to go there?—A person called upon me and desired me to go there.

What business was it for?—I do not know.

How many were there?—I do not remember.

Were there five?—There were.

Were there ten?—I do not know exactly.

There were more than five?—There were.

Did you know any of them?—I knew Mr. Sheares.

Are you acquainted with the names of any others who were there?—I do not think I am to answer that.

Was Mr. Michael Reynolds there?—I do not think I am to answer that.

Mention, sir, the name of any person you knew who was there?—There was a man of the name of Corr.

Do you recollect the name of any other?—I believe there was a man of the name of Mac Clune.

Was there any other?—I do not recollect at present.

Was there any conversation there in the presence of Mr. John Sheares?—Very little.

Mention what it was?—I cannot recollect it.

Am I to understand that you do not recollect it?—Not very perfectly.

Endeavour to recollect?—I cannot bring it to my recollection.

Was there any thing said by Mr. Sheares?—Not that I recollect.

There was by others?—They had a paper and wrote something down.

Pray, sir, what made you stagger there?—I was sent there.

You did not know the business?—Not at that time.

You knew it after?—There was not much of it.

Come, tell what little there was?—It tended towards mentioning, how many United Irishmen there were in Dublin, or something to that purpose.

Was that upon the paper?—Not upon the paper, but it was the subject of the writing.

How was the number to be ascertained?—By different people.

Try, how?—The people there were to tell the number of them.

Was any number told by the persons there?—I believe so.

Are you positive there were?—There were numbers told.

Numbers of what?—The numbers of United Irishmen.

The numbers in Dublin or in Ireland?—In Dublin.

Did you hear any number mentioned?—I heard a few, a part of them named.

Do you recollect what number?—I do recollect one: 1,100 by one man.

Do you recollect any other to have been mentioned?—I do not recollect.

Jury.—Who mentioned 1,100?—I am not bound to answer that: suppose it was myself.

Counsel.—Were these returns taken down?—I think they were: I saw a paper upon the table; and I do not recollect immediately the purpose of it.

Was the paper upon the table?—It was.

There was pen and ink?—There was: I do not recollect that Mr. Sheares did any thing in it.

In whose hand was the pen?—It was in Lawless's.

Did he write any thing?—He had the pen in his hand; but whether he wrote or not I cannot tell.

What was his Christian name?—I do not know, I never saw him since or before, and would not know him.

How long did this business last?—Half an hour.

Was there any other business transacted besides taking these returns?—I do not recollect.

What description of men were there? Had they any particular name, or office?—I believe they had; they were officers.

Did you understand they were all of-

seers?—Not all; I was told some of them were.

In what capacity did you go there?—As an officer.

Was there any other?—There was.

Who?—Corr.

What rank had he?—A colonel.

In the king's army?—No, no.

In what army?—In the United Irishmen's army.

Do you recollect any other officer?—I believe there was Mac Clune.

What rank had he?—A colonel.

Did they make returns?—I believe so, I understood so; but I do not recollect the numbers.

Do you recollect any thing near the gross return or amount?—I do not; I did not hear it.

One man returned 1,100?—Yes.

Were you told the purpose of going there?—No, but was desired to go there.

What hour was it?—In the morning.

Who took away the papers?—I do not know, I left the meeting.

Did you leave Mr. John Sheares there?—I do not know exactly.

Was he present when any of the returns were made?—I think so.

You must speak positively. Can you or not?—To the best of my belief he was there; but I think I cannot speak positively.

[This witness was not cross-examined.]

Here the note given by Mr. J. Sheares to captain Armstrong, for serjeant Connor was read:—

“Arthr. Hill comp. to serjt. Connor takes the liberty of introducing a particulr. friend of his to him; my friend will disclose his sentiments to you, which you may with every propriety intrust him with, answering every question he proposes.
“I'll see you on Sunday next.”

[Directed]

“Serjt. Connor [And on the back was
5, Bride St.” also this name]
“Pat. Fennan.”

Mr. Alderman *Alexander* sworn.

Look at that paper, and tell whether you ever saw it before?—I did.

Where did you see it first?—In Mr. Sheares's parlour.

Do you know the Mr. Sheares at the bar?—I know one of them.

At their house you found the paper?—I believe so.

What street?—In Baggot-street.

Upon what day?—Upon the 21st of May last.

In what part of the house did you find it?—It was in a small writing-box upon a table in the parlour.

Was that the library or study?—It was a study; there were many law books there.

VOL. XXVII.

Did you see either of the Mr. Sheares's there?—One of them.

Which of them?—That gentleman [pointing to Mr. Henry Sheares].

Did you speak to him about the desk, or the paper?—I had no conversation with him about the desk or the paper.

Did he say any thing about it?—He said there was no paper there that would injure him in any manner or shape.

Was that before you found the paper?—I told him it was my duty to examine all his papers. He told me, I might do so, for that he had no paper in his study or house, that could injure him in any manner or shape. Mr. Atkinson, one of the chief constables, was with me at the time.

You are sure that is the paper you found?—I am.

Mr. Alderman *Alexander* cross-examined.

You found that paper in a box?—In a small writing-box upon the table.

Not locked?—It was shut down, but not locked: there was a small reading desk inside the box, which was lifted up, and this paper was found under it.

There was no attempt made by Mr. Henry Sheares to secrete any paper?—None whatever.

Was Mr. John Sheares at home?—No.

Were you any time at the door before you got in?—Three or four minutes.

Mr. Henry Sheares might have secreted or destroyed any paper in that time?—He might.

He might have secreted himself?—I do not think he could, because I had a guard at the front and rear of the house.

He did not know that?—I do not suppose he did.

He made no attempt to fly?—No.

Did Mr. Henry Sheares, when you found that paper, betray any symptoms of guilt, as if alarmed by it?—I cannot say he did.

Mr. Alderman *Alexander* re-examined on the part of the crown.

At what hour of the day was it you went there?—About eight in the morning.

Did you rap in any uncommon way, or as gentlemen usually do?—Mr. Atkinson rapped at the door in the usual way. After some delay I got through the adjoining houses and put soldiers in the yards. I then went to the door. Mr. Atkinson told me a woman had looked out of the window; we then rapped again.

John Dwyer, esq.—Examined.

Are you acquainted with the prisoners, or either of them?—With both of them.

Are you acquainted with the hand-writing of either of them?—I have seen Mr. Henry Sheares write very often. I have seen Mr. John Sheares write, but not so often.

Look at that paper [showing the paper found by alderman Alexander] and say, whe-

Y

ther you can form a belief as to whose hand-writing it is?—From my recollection of Mr. John Sheares's hand-writing, it is his; but I am not perfectly well acquainted with it.

Mr. Curran.—My lords, there is not sufficient ground to give this evidence; he must establish a knowledge of, or acquaintance with, the hand-writing, before he proceeds to tell whose it is.

Mr. Mac Nally.—My lords, in Francia's^{*} case, a witness was examined, and a paper produced, which, he said, was the hand-writing of the prisoner—he was asked, whether he gave that evidence upon a recollection of the writing, or an acquaintance with it?—He said, “I have seen writing of the prisoner's and from my recollection of it, I believe this to be his writing.”—That evidence has been held to be inadmissible.

Lord Carleton.—This is a totally different case. In that there was no evidence of his having seen the prisoner write;—but that he had seen writing of his, and from a recollection of that he believed the paper produced to be the same hand. But here the witness speaks from a recollection of the hand-writing of a person whom he has seen write; though he has not so strong a recollection of the hand-writing of one, as he has of the other.

Do you believe that to be the hand-writing of Mr. John Sheares?—I do believe it: if I did not, I would not come here.

Look at this other paper? [showing a letter found by sheriff Archer, in Thomas-street. *Vide* p. 324]—I believe this to be the hand-writing of Mr. John Sheares.

Look at this paper [showing a letter found upon the person of John Sheares, with memorandums on the back of it. *Vide* p. 327]—I believe this writing on the back of the letter to be Mr. John Sheares's hand-writing.

Where has Mr. John Sheares resided for some time back?—I believe at his brother Henry's house in Baggot-street.

John Dwyer, esq. cross-examined.

Have you been any considerable time acquainted with the prisoners?—I have.

Have you been in any habits of intercourse with them?—I have: I have had a great deal of dealing with the elder brother, and some with the younger.

Did you consider them as men of integrity?—I never met men in dealing who appeared to me to have more integrity; they appeared to me to be men of honour and integrity.

Court.—Were they money dealings?—Yes, my lord, I bought an estate.

Counsel.—You have always considered them as honourable men yourself, and they were esteemed so by others?—I always considered them as such myself.

Mr. Sheriff Archer sworn.

Look at that letter; have you seen it be-

fore [showing one of the papers proved by Mr. Dwyer]?—I have.

Where did you get it?—I got it in the private office of Mr. John Cormick, Thomas-street; it was sealed, and I broke open the seal of it.

When was this?—Sunday 20th of May.

What is become of Cormick?—He is fled.

[This Letter was then read.]

“Dear Sir,

“I beg leave to introduce the bearer Mr. C. to your confidence, as a gentleman on whose honour you may perfectly rely.

“Yours, J. S.

“Conor did not come to town as I expected yesterday.

(Directed) “CAPT. ARMSTRONG.”

[The paper found by Alderman Alexander was then read.]

[Note.—The words in Italics were interlined: those between crotchets were struck across with a pen.]

“*Irishmen,*

“Your Country is free; all those Monsters who usurped Its Government to oppress its people are in our hands, except such as have]

“Your Country is free and you are about to be avenged [already] that Vile Go-

“vernment which has so long and so

“Cruelly oppressed You, is no more;

“some of its most Atrocious Monsters

“have already paid the forfeit of their

“Lives, and the rest are in our hands

“[waiting their fate.] The National

“Flag, *the Sacred Green*, is at this Mo-

“ment flying over the Ruins of Despo-

“tism, and that Capital which a few

“hours past [was the Scene] Witnessed

“the Debauchery, [the Machinations]

“plots and Crimes of your Tyrants, is

“now the Citadel of Triumphant Pa-

“triotism and *Virtue*. Arise then,

“United Sons of Ireland; arise like a

“great and powerful people, Determined

“to [live] be free or die, Arm Yourselves

“by every means in your power, and

“Rush like Lions on your Foes; Con-

“sider, that [in Disarming your Enemy]

“for every Enemy you disarm, you arm

“a friend, and thus become doubly

“powerful; In the Cause of Liberty, in-

“action is Cowardice, and the Coward

“shall forfeit the property he has not

“the Courage to protect, Let his Arms

“be Seized and Transferred to those Gal-

“lant [Patriots] *Spirits* who want, and

“will use them; Yes, Irishmen, we

“swear by that eternal Justice, in whose

“Cause you fight, that the brave Pa-

“triot, who survives the present glorious

“Struggle, and the family of him who

“has fallen, or shall fall hereafter in it,

* *Ante*, vol. 15, p. 897.

" shall Receive from the hands of a
 " grateful Nation, an ample recompence
 " out of [those funds] that property which
 " the Crimes of our Enemies [shall] have
 " Forfeited into its hands, and his Name
 " [too] shall be Inscribed on the Na-
 " tional Record of Irish Revolution, as
 " a glorious Example to all posterity;
 " *But we likewise swear to punish Robbery
 " with death and Infamy.*
 " We also swear, that we will never Sheathe
 " the Sword until every [person] being
 " in the Country is restored to those equal
 " Rights, which the God of Nature has
 " given to all men, Until an Order of
 " things shall be established, in which no
 " Superiority shall be acknowledged
 " among the Citizens of Erin, but that
 " [which] of Virtue and Talent [shall
 " Intitle to.]
 [" As for those degenerate Wretches who
 " turn their swords against their Native
 " Country, the National Vengeance
 " awaits them: Let them find no quar-
 " ter unless they shall prove their Re-
 " pentance by *speedily* deserting, Ex-
 " changing from the Standard of Slavery,
 " for that of Freedom, under which their
 " former errors may be buried, and they
 " may Share the Glory and advantages
 " that are due to the Patriot Bands of
 " Ireland.]
 " Many of the Military feel the love of Li-
 " berty glow within their Breasts, and
 " have [already to] joined the National
 " Standard: receive [those] with open
 " Arms, such as shall follow so glorious
 " an Example, they Can render signal
 " Service to the Cause of freedom, and
 " shall be rewarded according to their de-
 " serts: But for the Wretch who turns
 " his Sword against his Native Country,
 " let the National Vengeance be visited
 " on him, let him find no Quarter, Two
 " other Crimes demand—
 " Rouse all the Energies of your Souls;
 " call forth *all* the Merit and abilities
 " which a Vicious Government Con-
 " signed to obscurity, and under the Con-
 " duct of your Chosen Leaders March
 " with a Steady Step to Victory; heed
 " not the Glare of [a Mercenary] hired
 " Soldiery, or *Aristocratic Yeomanry*,
 " they cannot stand the Vigorous Shock
 " of Freemen [close with them Man to
 " Man, and let them see what Vigour
 " the cause of Freedom can.] Their
 " Trappings and their arms will soon be
 " yours, and the Detested Government
 " of England to which we Vow eternal
 " hatred, shall learn, that the Treasures
 " [she, it] *they* Exhausts on [their merce-
 " nary] its accoutered Slaves for the pur-
 " pose of Butchering Irishmen, shall
 " but farther enable us to turn their
 " Swords on its devoted head.
 " Attack them in every direction by day

" and by night: avail yourselves of the
 " Natural Advantages of your country,
 " which are Innumerable, *and with
 " which you are better acquainted than
 " they*; Where you Cannot Oppose them
 " in full force, Constantly harass their
 " Rear and their flanks; Cut off their pro-
 " visions and Magazines and prevent them
 " as much as possible from Uniting their
 " forces; let whatever Moments you
 " Cannot [pass in] Devote to fighting for
 " your Country, be [Devoted to] passed
 " in learning how to fight for it, or pre-
 " paring the means of War, for War,
 " War alone must occupy every mind, and
 " every hand in Ireland, until its long op-
 " pressed Soil be purged of all its ene-
 " mies.
 " Vengeance, Irishmen, Vengeance on
 " your Oppressors—Remember what
 " thousands of your dearest friends have
 " perished by their [Murders, Cruel plots]
 " *Merciless Orders*; Remember their
 " burnings, their rackings, their tortur-
 " ings, their Military Massacres, and
 " their legal Murders. Remember
 " ORR."

Major Sirr* sworn.

Have you ever seen Mr. John Sheares?—I have.

Where was he arrested?—I arrested him in French-street, at the house of surgeon Lawless.

Did you ever see that paper [showing him the letter, the memorandums upon the back of which were proved by Mr. Dwyer to be the hand-writing of Mr. J. Sheares. See it below]?—I did.

Where did you find it?—I got it upon the person of Mr. John Sheares.

Where is surgeon Lawless?—I do not know; he is not to be found; I imagine he is fled; I have endeavoured to find him.

Major Sirr cross-examined.

How long after the taking of Mr. John Sheares, did you find this paper? did you search him immediately?—I think I did.

Are you sure? recollect yourself?—I did.

Do you recollect whether you searched him at all?—I did.

Did not Mr. Sheares hand papers to you?—I desired him, I believe, to hand me what papers he had, and I think he gave that paper to me.

Did not some time elapse from your taking him into custody and getting this paper?—It is possible there was a small time. It was in Lawless's house I got the paper from him.

Do you recollect, that you searched Lawless's parlour before you received the paper from Mr. Sheares?—I searched it in part; I was searching it when Mr. Sheares rapped at the door.

* The celebrated town major of Dublin.

You were in the house before Mr. Sheares came?—I was.

You opened the door?—A gentleman with me opened the door.

You told him you had a warrant against him?—I told him he was my prisoner.

He made no resistance?—No.

He made no attempt to fly?—No, by no means.

Mr. Sheares must have known you when the door was opened?—I think so.

You are much known as a public officer?—I believe so.

You then proceeded to search the room, and after that desired him to give up his papers, which he did?—To the best of my recollection he handed them to me.

Had you your eye upon him the whole time you were searching the room?—I had not.

He had an opportunity to tear a small paper?—He might have done it unknown to me; but there was a person with me whom I desired to watch him.

Mr. John Sheares.—Did I show any uneasiness when apprehended?—You did not.

Did I show any reluctance to going with you?—No.

[The paper found by Major Sirr was here produced, and the memorandums upon it proved by Mr. Dwyer to be the handwriting of Mr. John Sheares, were read as follows:—]

Bourke	800
Garraty	1200
Howard	1400
Castleknock	700
Belruddery	2000 org. 2000 not org.
Rathdown	1000
Nethercross	1000
	8100

Mullins.
 Mc Donald.
 Lt. Hobbes.
 Capt. Crofton.
 Doctr. Wilkinson.
 Mc Clane.

Captain Clibborn, sworn

You are in the King's County militia?—Yes, a captain.

Are you acquainted with captain John Warneford Armstrong who has been examined here to day?—I am, sir.

Do you recollect his applying to you upon any particular occasion about the 10th of May last?—I recollect his applying to me, but I cannot say precisely the day of the month.

Do you recollect the day of the week?—Not perfectly.

Upon what subject did he apply to you?—He met me going into the Castle-yard—told

me he wished to consult me upon business—said he had been at Byrne's shop, who asked him, if he had any objection to be introduced to Mr. Sheares—that he said he had no objection. I told him, I saw no objection to his meeting any man. He then said, that as he had been in the habit of talking foolishly, it would be unwise to talk with Sheares, lest it might hurt him with the regiment. He afterwards came to the camp—said, he wished to speak with me and colonel L'Estrange upon business—We had drank rather much to talk upon business, therefore postponed it till morning, and the colonel asked him to breakfast. We met in the morning at colonel L'Estrange's—he told the colonel, that he had met one of the Mr. Sheares's at Byrne's shop—who introduced him to Mr. Sheares—that Mr. Sheares spoke to him upon different subjects, and then asked him, if he had any objection to be introduced to his brother—that captain Armstrong replied, he had not—they appointed a meeting—He then said, as well as I recollect, that one of the Sheares's talked to him about the regiment—how they were inclined, and fixed some future day, I cannot exactly say what, for a future interview.

You may mention the general purport of the conversation?—That captain Armstrong should interfere and use his endeavour to bring over our regiment. I said, such a business should not be kept a secret from the lord lieutenant, and advised the colonel to go to lord Camden that day.

Did you ever meet captain Armstrong after he had alleged he had any other meeting?—I did: he regularly mentioned to the colonel and to me every meeting he had with them.

How often did that occur?—Four or five times I believe, and last of all, he called the colonel and me together, and showed his notes, which I thought exact copies of what he had at different times told us.

How long have you known him?—I have a sort of an acquaintance of him since his childhood; I have dined with him and met him in company; but never was intimate with him, till he joined our regiment.

You were well acquainted with his general character and conduct?—I was.

Captain Clibborn cross-examined.

He produced his notes to you?—He did.

He had verbally communicated to you what passed at those meetings: how long after that did he produce these notes? How long after the first communication was it before he produced the notes?—I cannot be positive: I suppose 10 or 12 days.

When he met you in the morning he did not produce the notes?—No.

Nor at any time till after Mr. Sheares was committed?—No: he told me he took them down regularly. I cannot say, whether he did or not.

Is it not extraordinary that he should communicate such matters verbally, and not state them from his notes taken?—I do not think so; he is in the habit of taking minutes of the transactions of his life; he keeps a sort of journal.

When he came to the camp, did he say he had dined with Mr. Sheares?—As well as I recollect he told me he dined with Mr. Sheares one Sunday.

Did he say, he met Mr. Sheares and a family of three children there?—No.

Captain *Clibborn* re-examined on the part of the Crown.

Have you a serjeant of the name of Connor?—We have; he is at present in the prévôt in the barrack.

Benjamin Riky, esq. deputy clerk of the crown, sworn.

Do you recollect the day that judge Day went down to the last adjournment of the assizes of Naas?—The 23rd of May; I think the assizes were adjourned to the day after the last day of term.

[Here the case was closed on the part of the crown.]

Mr. *Ponsonby*.—Do your lordships conceive it possible to finish this trial without an adjournment.

Lord *Carleton*.—I hope so; we will go on as long as we can.

[Some further conversation took place relative to an adjournment, but the Court, for the present, determined to proceed.]

DEFENCE.

Mr. *Ponsonby*.—My Lords, and Gentlemen of the Jury;—In this case, I am counsel for the prisoner Mr. John Sheares, and I owe it to the kind accommodation of the gentlemen concerned with me, that I have the honour of addressing you at this stage of the trial. The stating of the case on the part of the prisoners would necessarily have fallen in the first instance at least, to the counsel near me; but as I am more than usually exhausted by this trial, he has permitted me to take a part now, knowing that if I were detained till to-morrow morning, I should be unable to go through it.

My client, gentlemen, has peculiar difficulties to labour under,—not only the unfitness of the advocate, to whom the stating of his case has been confined, but the extraordinary circumstances of the times; the peculiar and unhappy state of this country in the moment in which you are impanelled to pass upon his life, do necessarily subject him to difficulties, to which scarcely any prisoner we have heard or read of in this our native country has been liable.

I do believe that no bench can be found, or

jury impanelled, less likely to feel a prejudice against the prisoner from any extrinsic circumstances, than the bench which now presides, or the jury which is now in the box. But I do not conceive it possible that any twelve men can be impanelled at such a season as this, and find their minds wholly free from all bias and prejudgment against a man, accused of fomenting the rebellion in this country. Whatever degree of propriety, virtue, temper, or understanding I may be disposed to attribute to you (and I am disposed to attribute to you what I can justly attribute to any man) I cannot persuade myself, that you can come to this trial with that cool judgment with which you might have come at a future period.

I know extremely well, that it is not the wish of those, who conduct the prosecutions, to aggravate the case of the prisoners. I am too well acquainted with them to suppose it. Their duty impels them necessarily to this trial: but that necessity does not at all lessen the difficulty, under which the person tried actually labours.

Gentlemen, the indictment with which the prisoner is charged, accuses him of two species of treason; first, for compassing and imagining the death of the king; and secondly, for adhering to his enemies.

I wish, under the correction of the Court, to offer some observations to your consideration upon these two species of treason. The first is, that of compassing and imagining the king's death: to compass and imagine the death of the king, if the person, who has imagined it, shall be proved to have done so by acts and deeds forwarding that purpose, and demonstrating it, is undoubtedly liable to the penalties of treason. But I wish you to consider, whether it be possible for any evidence given in this cause, or from the nature of the things themselves, that a person accused of treason endeavoured to be substantiated as this has been, can, in point of law, be said to be guilty of compassing and imagining the death of the king.

“To compass”—is no mysterious, or allegorical language of the law. It means the actual death of the natural person of the king: it means not any attack upon the representative state of the executive government; but the natural and actual dissolution of his mortal frame by violent means; and I really do not well know, how in this country, where his majesty's person never is, and never does exist, a man can be said to compass and imagine his death, if the overt acts necessary to that death are confined to that realm in which the natural person of the king never exists. I know extremely well, that in the kingdom of Great Britain, for example, a compassing of the death of the king can be well proved by overt acts within that country which though not immediately going to prove the purpose of direct assassination, or attack upon the person, do in point of law amount to a compassing of

his death. An attempt to imprison the king amounts, beyond all doubt, to a compassing of his death; an attempt to depose him amounts to a compassing of his death; an attempt to force the king by violent means to change particular measures will amount to a compassing of his death. But the reason of all that is plain: because the natural person of the sovereign is resident in that country in which the acts are done, and if the conspirators can get the person of the king within their power, it will be matter for the jury to consider, and for the Court to direct the jury upon, whether that deposition, or imprisonment, might not lead to a dissolution of his natural person.

But suppose the treason alleged here to be true, how could that affect the king? He is not within this country; he is not within the reach of the conspirators; no act committed by them in this country can lead to the destruction of the natural person of the king, and no act but what leads directly, or by consequence in point of law to that, can amount to that species of treason charged in the first count.

It has been sworn, gentlemen, that the prisoner intended to seduce soldiers, and to raise armed men, and rebellion. If he succeeded (and rebellion has now existed for two months within this land) how could that affect the natural person of the king? Let me put this case in another point of view. If the law be thus in Ireland, that overt acts of the sort laid in this indictment, and endeavoured to be proved, did amount to a proof of compassing the king's death, it must be so in every part of his dominions, governed by the common law of England. It must be so in Jamaica, Grenada, and St. Vincents, because in all these places the common law of England runs, where local privileges, or the parliament of Great Britain have not otherwise ordained. Suppose a man raised a rebellion in the island of St. Vincents, could that mean a compassing and imagining the death of the king?—the death of a person resident probably 4,000 miles from the place? Could the force employed in such a rebellion be such as could in point of common sense, or judgment of law amount to a proof of compassing the king's death.*

If, gentlemen, this construction contended for in this case by the counsel for the crown be true, a man may be alleged to be a traitor, not only here in Ireland, but in every the most remote part of the king's dominions; in the smallest spot of land, having a distinct, local government. And yet it is difficult to conceive, how the force of rebellion in this small remote spot of land can affect the king's person, or how the rebel can be charged with accomplishing that, which it is impossible for him to bring about. This constructive killing of the king is extremely different from actual

killing. I do not mean to say, that if a man plans the actual assassination of the king, in the most remote part of his dominions, and sets out with that intent, he might be justly convicted upon the first count in this indictment. But this case is different from that; because here there is no evidence of an actual design against the king; it is only raised by inference from the rebellion charged to be excited against him. Then, gentlemen, it is for you to determine from the evidence already before you, and that which you will hear, whether the prisoner did compass the king's death. If the prisoner had succeeded in all that is charged against him, if every tittle of the evidence be taken for granted, if it were all perfectly true, all that was planned and alleged might be executed by him, and yet the king might have descended to his grave in a good old age, untouched, unaffected by them.

This, gentlemen, is a species of treason which can scarcely be supported in the realm of Ireland without evidence to prove an actual design against the king;—for the construction of law, which takes place in England, forming conspiracies to subvert the government, to change measures, to depose the king is applicable to England, because the royal person is actually resident there, and can be got into the possession of the conspirators: that construction is inapplicable to Ireland, because no act of the conspirator can enable him to subject the royal person to his power or to destruction. And, gentlemen, you are not to suppose, that in Ireland, the king's government is less guarded than it is in England, or that it is less dangerous to have recourse to force against the measures of his ministers than in England, because I contend that the construction of the statute of treason is such as I argue it to be: because there is another section in the same statute which in all the cases I have put will most effectually protect the public authority and the king's government; namely, that clause making it treason to levy war against the king, all these forcible means, if proved, do amount to a levying war against the king, and as much treason, as compassing his death, and therefore, gentlemen, no insecurity follows to the government, or to authority from the construction for which I contend upon the first clause.

Gentlemen, the next charge in this indictment is for adhering to the king's enemies: that is an offence within the scope of the same law, as much as either of the others I have mentioned. The indictment indeed in this case charges, that his majesty is at war with France, and it charges the prisoners with adhering to the men of France, by becoming members of a society formed for that purpose. But there is not one syllable of evidence applying to the charge, that the prisoners adhered to the king's enemies, or that there was any conversation between the prisoners and the persons exercising the powers of govern-

* As to this line of argument, see the trial of Mac Lane, *antè*, vol. 36, p. 731.

ment there. There has been no witness produced to show, that there was any correspondence or mutual intercourse intended, or that any communication was had, or intelligence conveyed. On the contrary, the object sworn to, if it were believed, was to be carried by Irish force alone. The witness said there was no foreign aid solicited, but that insurrection was to be had, and the object was to be accomplished by domestic force alone. How then, gentlemen, can you find, that the prisoner was adhering to the king's enemies, whom the indictment describes to be, the government of France and the men of France. The charge is not for adhering to *any persons* who may be at war, or in rebellion against the king; but it is for adhering to the king's foreign enemies, exercising the powers of government in France, and carrying on war against the king. Then how can you find, that the prisoner did adhere to those enemies, when the witness for the crown swears, that the object was, to act without *their* assistance, and to carry their scheme by *Irish force alone*?

If, gentlemen, you should be inclined to listen to the evidence for the crown, it may show criminality in the conduct of my client. But, gentlemen, it is the law of this country, that a man cannot be convicted for a crime committed, unless that crime be charged against him in the form of an indictment. It is the privilege of the subject, that his crime shall be alleged against him, it must be reduced to plain and intelligible language; it must be defined strictly according to the known laws of the land, and that crime must be supported by evidence directly applicable to it; so that a man must be convicted by a judgment "*secundum allegata et probata*;" so that by our law, if a man were to be indicted for one crime, and put upon his trial upon that accusation, if the evidence went to convict him of a thousand crimes, and did not prove him guilty of that specific offence for which he was indicted, he would be deemed as much an innocent man in point of law as a man who had never committed any offence whatever.

So here, gentlemen, if you believe all the witnesses, the evidence proves the offence of levying war against the king. But he is not indicted for that offence, and could not know how to defend himself against such a charge. He is first charged with compassing the king's death, which he could not accomplish in this country; and next he is charged with adhering to the king's enemies, which the king's own witness has disproved.

Here, gentlemen, let me with great humility, caution you against what may be a fair and justifiable feeling from the unfortunate situation of the country; it may be a national and unavoidable feeling; it must be difficult to suppress a strong feeling against those, who are supposed to have occasioned these troubles, and though you contemplate the

present calamitous situation of the country, you must not suffer that to carry you so far, as to convict the prisoner of a charge of which he is accused, but which is unsubstantiated by the evidence in this case.

Gentlemen, adherence to the king's enemies may be proved by several different ways: It may be proved, that a man has given intelligence to those carrying on war against the king, to enable them more effectually to accomplish their hostile purposes against the king, or he may send them pecuniary supplies, or have men raised for their service; in short, any act of assistance or any act demonstrating, that the person accused has done something useful to those enemies in the war carried on against the king, will amount in point of law to an adherence, if the witness be believed. But in this case, every species of adherence to the king's enemies charged by the indictment stands completely without proof, and, indeed, so far as any thing has been said about adherence to the king's foreign enemies, the charge stands negated by the witness. The evidence might tend to prove the prisoner guilty of another species of treason, but it does not prove him guilty of that of which he is indicted.

Gentlemen, it is not my province to expatiate much upon the evidence, which has been, or shall be, given. Luckily for the prisoner that department is in the hands of a person who will execute it much more ably than I could. But some few observations I shall submit to you upon the evidence of the principal, indeed, I may say, the only witness, captain Armstrong, for he is the only one, who attempted to prove the charge against the prisoner, supposing him to have been properly indicted.

It appeared by the story which he told us, that the first acquaintance he had with Mr. Sheares was on the 10th of May; and upon the 20th or 21st Mr. Sheares was arrested; and yet in the course of that short acquaintance, if you can believe him, Mr. Sheares did let him into all the plots and conspiracies he mentioned! I have not known a stranger story than he told. He said he was introduced by Mr. Byrne, and yet Mr. Byrne was utterly unacquainted with his principles; he said that Mr. Byrne chatted with him about books or pamphlets, but they had no farther conversation; and yet, if you believe the rest of the story, the object of Mr. Byrne's proposal must have been, because he thought him a person likely to enter willingly into the schemes, which the others entertained. Says Byrne, "*this is a true brother, in whom you may repose entire confidence.*" Strange! that Mr. Byrne, who had never conversed with captain Armstrong, by captain Armstrong's own account,—who was perfectly ignorant of captain Armstrong's principles by captain Armstrong's own testimony,—should have so far known the secret-workings and movements of captain Armstrong's mind, as to

have declared upon the first interview, "that he was a true brother in whom they might repose all their secrets!" These secrets, if you believe the captain, were not light ones; they were not the tittle tattle of a tea-table blasting a lady's reputation, or raising the gallantry of a man of fashion; but they were such as endangered the lives of those who meddled with them; and yet at the first interview, Mr. Byrne, who knew nothing of captain Armstrong, introduced him to the Messrs. Sheares as a person in whom they might repose their properties and their lives; and the Messrs. Sheares did not hesitate at the first interview to give up their lives and properties into the power of captain Armstrong! No private interview had been had between them before; no secrecy was even demanded; no precaution taken to guard against him; no inquiry, whether he was a person embarking in the same cause, but at the very first interview they committed their lives and fortunes to his discretion! It may be true! But it is the strangest account I ever heard.

Let me put a most unlikely case, that one of you was embarked in treason; would you at the first interview with a stranger, more especially if he wore the livery of the king, and was attached by every tie to his service, put your life into his hands? I think you would not do so; and because you would not do so, you must require some other evidence than that of captain Armstrong, before you believe that any other man would do that, which you would never venture to do in a similar situation.

Unhappily for the subjects of this country, the law is not the same here as it is in England; I know not why: It is, I think, a great omission at least,—I will not use a stronger phrase,—upon the part of the legislature, not to guard the lives of the subjects against the accusation of treason here in the same manner as the law of England has guarded the English subjects. But unhappily for the subjects here, the law is, that one witness alone is sufficient to convict. But by the law of England, no man can be convicted of treason, unless two witnesses concur to prove him guilty. This is a great preservative against false and malicious accusation, the spirit of party, or the heat of the times.

If two witnesses were necessary in this country, I think it would be difficult to find a second to swear as captain Armstrong has sworn; that a perfect stranger to the prisoner, unknown to him, and unknown by him, should so far depart from all rules of common sense and prudence, as to put his life and fortune into his hands, and expose both to forfeiture, when the contrite or perfidious conscience of the person led him to discover.

If this case were in Westminster-hall, you could not hesitate a moment; the most respectable witness there, standing alone, could not support a conviction. Why is the difference? Treason is not more common here

than in England, and therefore, gentlemen, I tell you, that when you know, that the most guilty subject of England could not be convicted of treason upon the oath of the most respectable man the country affords, if he stood alone, you will require here, where one is said to be sufficient, the testimony of a person unimpeachable in all respects, and who must tell you a tale, probable and consistent in all its parts. The parliament of England did not pass this law to encourage treason. The parliament of Ireland have not thought proper to pass such a law;—but a jury will require, that the witness to convict shall be such as that no man, however captious or cavilling he may be, can object, nor the most acute and plausible reasoner find a reasonable ground to attack the propriety or conscience of the verdict. If the characteristic of the story be doubtful, improbable, or inconsistent, twelve Irishmen will not convict upon such testimony, when by crossing sixty miles of water, the most guilty could not be convicted upon the testimony of the most respectable witness.

Gentlemen, I do not mean to argue against the law, but I regret, that the law is so. I think life ought to be protected here in the same degree; and I put it to the Bench and to you, in whose hands the life of this man now stands, whether it is fit, or decent, to take away the life of an individual upon the single testimony of a witness, unless he be of such a character, as that no man can find fault with it, or tell such a story, that no man can hesitate to believe it?

Gentlemen, does this witness appear in such a light to you? I am instructed, we shall call witnesses to show him to be very different from what the gentlemen concerned for the Crown would wish you to believe.—But as you have not heard this evidence yet, I am more inclined to take the account from himself.—He is introduced, without previous consent or inquiry, to the prisoners. He had, it seems, asked captain Clibborn, whether he should be introduced or not? and I entreat you to call to your recollection the reason he gave:—"For," said he, "as I have been indiscreet in my conversation, I do not know whether it would be prudent to be introduced to this person." Why did he say he had been foolish in conversation? If every man that might be foolish in conversation—or, in other words, if every man who was not wise in conversation was to be struck out of Mr. Sheares's circle of acquaintance, it ought to be very confined indeed. The folly he alluded to, must have been some very particular kind of folly. He was asked, had he always professed a regard for the king, always respected religion, and expressed the highest sense of the moral obligation of an oath? He said he never derided an oath, or natural or revealed religion; that he spoke with respect of the king, and did not recollect any conversation of another tendency; and yet he doubted, whether it

would be discreet to be introduced, in consequence of his foolish and indiscreet conversation! What can you infer, but that he expressed principles upon politics or religion inconsistent with that which he represented to you this day? Was it a common and ordinary folly? No, gentlemen, his conscience speaks for him, and he was sensible that he had expressed principles which might render him liable to censure or disgrace. Do you now believe, that he never expressed himself in an irreligious or improper manner?

If captain Armstrong had been foolish in conversation—Was Mr. Sheares a professor? Did he give lectures? Was he a great monitor? and could not the captain be introduced without conceiving a doubt upon its propriety? Did he conceive Mr. Sheares to be a foolish man, and that there would be ridiculous conversation between two foolish men? No, gentlemen, you must be conscious that he had spoken matter rendering him liable to suspicion, and therefore, in this part of the case, he is utterly incredible.

Captain Armstrong, if we believe his own account, continued this correspondence for nine or ten days. He had four or five interviews with Mr. Sheares, and in the course of these did actually obtain from him a direction to persons in his own regiment of militia, and a knowledge of the disposition of the persons employed in it. I do not know how you will be inclined to appreciate the conduct of a man, who gets into the confidence of another for the purpose of acquiring a knowledge of matters he could not otherwise obtain, and making use of that knowledge against the life of the person from whom he obtained it!—And yet, if we believe captain Armstrong, he did this. I pass no opinion upon such conduct. I leave that for you. But this I will say, that if I were a jurymen, I would not be quick to convict upon the evidence of a man, who acknowledged that he became the friend of another, for the purpose of betraying the friendship, and taking away the life of the friend. I shall not pretend to say, how a man ought to act under such circumstances; but I say, that in this country, where only one witness is necessary, that such a man is not that sort of witness upon whose testimony you would convict any person.

Gentlemen, I know it will be said, that this case does not rest upon verbal testimony, but that there is evidence, in the hand-writing of the prisoner himself, which manifests his design. Gentlemen, that paper, which was produced, was found in an open desk; it never was published, or sent into the world; it does not appear that it ever was intended to be published, or sent into the world. The person who wrote it, might destroy it the very moment or day after it was found, without making any criminal use of it. It could not be made use of as evidence of an overt-act, though it may be read in evidence against the prisoner; but that paper, however violent or

VOL. XXVII.

strong, does not in itself import any guilt. If it were published, or delivered for publication, or if steps are taken to bring it into public view, criminality might attach upon it; but a loose paper in a desk, without any evidence to show its intention, or what use was to be made of it, cannot affect the life of any man.

Suppose the person, at one time, actually entertained the sentiments contained in it—afterwards changed his opinion, and, before any discovery was made, destroyed it—would the circumstance of having once in his life written such sentiments, be evidence to affect his life? If the paper had not been discovered by alderman Alexander, it could not appear, or if it had been destroyed in consequence of a change of opinion, it could not be evidence against him; and therefore, not having been published, nor intended to be published, it should not affect him at all.

In Great Britain it could not affect him; for if only one witness were produced, this paper would not supply the deficiency of the second witness; and though the jury actually *thought* him guilty, yet they could not convict him: it would not amount to evidence in point of law to convict him; and therefore I intreat you to consider, whether a piece of evidence which could not affect a man in Great Britain, shall supply a want of evidence, and amount to a conviction against him.

The language of that paper, I do admit, is culpable in the extreme; it contains sentiments, which, if my instructions are right, never were the sentiments of the prisoner. As I am instructed, the most respectable witnesses will appear to show, that there is no man, who, for his general conduct and character, could less be supposed to entertain such sentiments than him; and a cloud of witnesses will appear to show, that so far from being a sanguinary man, his whole life has been amiable and benevolent. A witness for the Crown, who knew the prisoner, said, he never knew a man of more integrity; that character will be confirmed by many others; and if you hear it from many reputable, intelligent people, unquestionable for veracity and credit, will you make that instrument, found in an open drawer, without evidence to show any intention of acting upon it, proof sufficient to take away the life of the prisoner?

Gentlemen, you are not to couple the circumstances of this country with the conduct of the prisoner. You are not to say, that because a rebellion rages in the country, that therefore the prisoner is guilty; or that because the law may demand its victims from those who have outraged and disgraced it, that therefore the prisoner shall be one of them. You are not to make any inference, that because he was a member of this society or the other, that therefore he committed high treason. You can conscientiously convict the prisoner only upon the evidence, which shall, in your opinion, substantiate the

Z

two charges in the indictment against him. You must be convinced, that he compassed and imagined the death of the king, and adhered to his enemies. The former was impossible in this country, and the second is without evidence to support it.

The time of the trial is unpropitious to the prisoner. You must share in the common feelings of the country; and it is not possible but that, as men, you must come into that box with prejudice upon your minds. You come, I am sure, with as little as any other men; but some of you must entertain prejudice against the prisoner. If the crime be great, the punishment is not small, for his life is forfeited to the law. Such are the feelings of the people of this town, that no indulgence can be shown to a man convicted of treason. If twelve men find a verdict for treason, no man will complain of it; and yet it may happen as before. The history of past times shows, that men have fallen victims to state prosecutions, and the voice of posterity has condemned the sentence. Many instances there are of men dying for treason, where succeeding ages have known them to be perfectly innocent, and their death was not attributable to the malice of the jury; but was the necessary consequence of human passions operated upon by predominating evidence. The juries who tried Sydney and Russell, and others of less note, thought themselves right in the conviction. But time has shown a contrary opinion; and men, whose minds were not operated upon by the passions then prevailing, have shown, that these verdicts, instead of being the verdicts of law and the fact, were the consequence of prejudice and passion. Some things which have happened to honest men, may happen again. It is with great humility and respect I say, you may feel some sort of prejudice at these times; prejudices have prevailed among other men under similar circumstances. You may think you do right in finding a verdict of conviction, but satisfaction may not attend your dying beds. When the struggle of the present moment is gone by, it may be some consolation to be able to take a calm review of the proceedings of this night.

Gentlemen, I know not the opinion of captain Armstrong, but for my part, it is my opinion, that there is a God, and a future state of rewards and punishments.—That also is your opinion, and I cannot conceive a situation more satisfactory to a man having those opinions, than if he can upon his dying moment reflect, that as a juror, no inhuman prejudice prevailed upon or influenced his mind in the discharge of his office; he will reflect, when he is rendering up his own life to Him to whom he is accountable for all his actions, that when called upon to sit in judgment upon the life of a fellow creature, the judgment was not pronounced in heat, prejudice or passion. Take care, that your verdict satisfies you now, that hereafter during

every moment of your lives, as long as recollection lasts, you may still be satisfied with the justice of the sentence, and not tortured with the painful recollection, that though once you thought yourselves right, yet you did wrongfully deprive a fellow creature of his life. These are the considerations which I would press upon your minds—I have the honour of knowing many of you, and you are men of known integrity, and more honest men could not pass upon my life. I warn you only against the frailties of our frame, from which the best and the wisest among us are not exempt:—I leave my client's life in your hands, and to your justice I commit him.

Mr. Plunkett.—My Lords, and Gentlemen of the Jury;—As counsel for Mr. Henry Sheares, I shall make a few observations upon the points of law which have been already alluded to; and gentlemen, I have the satisfaction of thinking, that if I mistake, I shall be corrected by the superintending mind of the Court.

Gentlemen, the law of treason in this country rests upon the statute 25 Edward 3rd, by which three particular species of treason are pointed out. The first is, compassing and imagining the death of the king; the second, adhering to the king's enemies; and the third, levying war against the king. With regard to the third of these, there is no specific count in the indictment against the prisoner, as a substantive offence; and therefore, gentlemen, you are to confine your attention to the two first.

I shall take the liberty of stating some of the acknowledged principles of law prevailing since the enactment of that statute down to this day, from which it will appear, that no part of the charge is sustained by legal evidence.

Compassing the king's death is totally distinct from the other species in this respect, that the law does not wait for the perpetration of the wicked intent, or expect its being carried into effect, because by an anomaly distinguishing this crime from every other, the intention is made equivalent to the act in others. I do not mean to say, that the law is not properly framed, because the public weal is wrapped up in the person of the monarch, and that public weal requires, that an intention against his life should be considered as equal to the perpetration of the crime. But in the other species of treason it is totally different; because neither a conspiracy to levy war, nor a conspiracy to adhere to the king's enemies, will amount to treason under the two other branches of the statute. Such a conspiracy may be an offence in itself—it may be a high misdemeanor; but treason it is not, because it is not so provided for by the statute. In England this was felt to be a grievance; this was acknowledged as a fault and a defect, because cases might arise in which atrocious conspiracies against government, and designs to overthrow the

government by force might exist, and yet by the vigilance of government, or of Providence be defeated, and not for want of criminality in the inventors; therefore, an attempt was made to supply *by interpretation* that defect, and to make such acts criminal within the words of the statute, though they had not been so intended by the legislature, and therefore a mode was devised by which conspiracies to levy war or to adhere to the king's enemies was made tantamount to treason; not by adjudging them to be a substantive offence, but by saying, that they may be laid as overt acts of compassing the king's death, and that though the party accused had no intention directly to take away the life of the king, yet by doing acts which by remote consequence might have that tendency, he should be deemed guilty of the crime.

It may be necessary to state the caution with which this excess beyond the words of the statute was adopted in Great Britain, for it was found to be a departure from the letter of the statute which meant to put treason upon a clear foundation. It had been the curse of the country, that treasons were uncertain, and subjects had been entrapped in the vagueness of the charge. This statute was intended, for ever, to put the matter upon a clear footing—However, beyond that intention, these adjudications were adopted, saying, that though the party had not immediately conspired the death of the king, yet other acts, involving that event, however remotely, should be considered as overt acts of treason. But, gentlemen, see, whether that which has been adopted in England can be so here, without overturning the statute itself. It is not decided, that every conspiracy to levy war, or to adhere to the king's enemies can be laid as overt acts, but they are allowed with the most severe restriction and salutary regulation. I hold in my hand the work of one of the ablest men that has written upon criminal jurisprudence. Mr. Justice Foster in his discourse upon treason, chap. 2, sec. 4, says, "insurrections in order to throw down all inclosures, to alter the established law, &c. are, in the construction of law, high treason within the clause of levying war."—And in the fifth section he enumerates a variety of acts which might be done, and which if carried into effect would be treason, but do not come within either branch of the statute, because not having in contemplation any thing necessarily leading to endanger the king's safety. But in the sixth section he says, a bare conspiracy for effecting a rising for the purposes mentioned in the two preceding sections is not an overt act of compassing the king's death, nor will it come under any species of treason within the 25th Edward 3rd.*

How do I apply this doctrine?—The first

* Note.—This is an incomplete quotation of the passage in Foster.

count, to which I at present apply my argument is for compassing the king's death; the overt acts are various, as tending to stir up insurrection, &c. charging these as marks of the intention to take away the life of the king. From the author I have cited, it appears, that such conspiracies are not treason by the law of England, but even if they were, I hold the law of England and Ireland to be substantially different in this respect. A man in England conspires there to deprive the king of the crown; that may be charged as an overt act;—why? because it is an act, which cannot be done without involving the personal safety of the king; that is held to be a compassing of his death, because the interval between the prison and the graves of kings is nothing. According to the course of human events, the monarch deprived of his liberty and reduced to the state of a subject cannot survive his deposition, and therefore such an act is an overt act of compassing his death. But it is not a technical refined idea; it is not considered as a conspiracy merely against his public capacity, depriving him of his sovereign functions, but it is the crime of intending to deprive him of his natural life: and therefore every thing tending to deprive him of liberty is criminal, because his life cannot be safe without it—because death follows the imprisonment, and therefore the accused is deemed criminal, not for an injury done to the corporate right as sovereign, but to the natural capacity and person of the individual.

Apply that to the case here, and I ask you, whether upon your oaths, if you believe the evidence to the extent in which it has been given, and that the prisoner embarked in the conspiracy stated, that could *probably* involve the destruction of the king in his natural capacity? It might be argued with the same force and the same justice, that when America was part of the king's realms, a conspiracy there to take away the life of the king would be an overt act of compassing his death. I say, you establish a new precedent, out-leaping the boundaries which have been limited to this law in England—I say, that the law of England is different from the law of Ireland in many respects, when the fact is, that it is so—Upon this very subject, it is materially different: there the prisoner is entitled to have a copy of the panel of the jury and his indictment, and a list of the witnesses a certain number of days before trial—two witnesses are necessary to overt acts of the same treason. As to the first, he is not so entitled here; as to the second, there is a doubt thrown upon the subject; but if there be a distinction in one instance against the prisoner, it is not unjust to say, that in another there should be a distinction in his favour.

I say, therefore, with submission to the Court, that unless you are satisfied, that the prisoner did harbour the intention of taking away the life of the monarch, of which there is no evidence, or did some act leading to that,

you are bound to say, there is nothing upon the first count to convict him.

It may appear extraordinary, but so the fact is; there is no count in this indictment for levying war. The second count is for adhering to the king's enemies. Their lordships will tell you, gentlemen, that the words "enemies of the king" cannot be satisfied by any description of *subjects*, although the worst enemies which the king can have must be rebellious subjects. But a *foreign power at war with the king* is what is meant by the statute. I admit, that as to the existence of the war, precise evidence is not required; public notoriety is sufficient. But thus I say, that to implicate a party in the guilt, it is not sufficient to show, that a war is existing, but there must be some communication between the party accused and the foreign state—some co-operation, concert, or understanding between them. I say, also, that the mere fact of levying war against the monarch, at the time when he is at war with a foreign enemy, does not amount to an adherence to that enemy: There must be proof of entering into a conspiracy with him—now, where is the evidence here of such a conspiracy, or understanding between the prisoner and the powers of France? If the prisoner entered into such a conspiracy, where is the evidence, that he did so for the purpose of forwarding the schemes of the enemy? That is disproved by the evidence in the cause. What is the evidence of the solitary witness upon which this bill of treasons rests for its support? He states, that they spoke of the readiness of the country to rise—he introduces the name of the French, it is true—but with what view was it introduced? They said they would not wait for the French "We are to carry on war WITHOUT THEM"—That may be evidence of a conspiracy to levy war; but it is not an adherence to the king's enemies. Then the question is not—"Is the prisoner an *innocent man*?" though, I trust, it will appear he is—but the question is "Has he committed the crime of which he is indicted?" Not, whether he has entered into a conspiracy, but whether the crime *alleged* against him, has been substantiated by evidence? A man can be prepared to resist that crime only which is alleged against him—proof of any other crime must be disregarded by you upon this occasion, and therefore, I submit upon this part of the case, that the offence in the second count is not proved—that there is not a colour or complexion for saying, that the prisoner adhered to the king's enemies. You are not to take up matters from the conjectures of your own mind, but from evidence, and what evidence have you here of any intention on the part of the French to invade this country? Or that the prisoners conspired to assist them? We are at war with the Spaniards and also with the Dutch, and you might as well infer, that the prisoners conspired with them against the king. I say,

therefore, there is not a shadow of evidence of any counsel, assistance, or communication, so that the second kind of treason is out of your consideration.

Therefore, gentlemen, it comes back to the original ground, whether the conspiracy to levy war can be laid as an overt act of conspiring the king's death?—I have troubled you too much with what I conceive to be the law:—if I have been wrong, I shall be set right by the Court.

A very few observations remain in point of fact. What I have hitherto said, applies to both the prisoners, so far as respects the *law* of the case. But with regard to the *facts*, I must trouble you, upon the case of Mr. Henry Sheares, much less indeed than I would otherwise do, if I were not to be followed by a very able advocate, who will speak to the evidence.

With regard to Mr. Henry Sheares, the evidence against him rests upon the testimony of captain Armstrong alone. As to the law stated by Mr. Ponsonby, of two witnesses being necessary, I will not give any positive opinion upon it. I do not pretend to say, whether the statute in England, enacted a new law, or only declared the old. There are great authorities, who say it is only a declaratory statute—among others, lord Coko says, two witnesses were necessary by the common law. If he be right, we are entitled to the benefit of the common law and will claim it. But I throw that out of the case—not concluding indeed but supposing, that in point of law, the testimony of one witness is sufficient to convict, I beg leave to observe upon the nature of that testimony. What the kind of story is which fell from the lips of the witness; how far it is natural or probable, or entitled to credit, merits your consideration, when compared with your observance upon life and manners. That so rash and indiscreet a confidence should be reposed in this stripling, without any previous acquaintance of himself, his life, or manners; without any pledge of secrecy; but rashly and suddenly, as if he had fallen in love with him upon first interview; is matter for your conjecture. How far it was an honourable ministry, is for your judgment. In the case of a common informer, his evidence is weighed with caution; every circumstance throwing a doubt upon it is to be attended to; if the testimony exceed the common rules of life and course of experience, the jury are cautious in admitting it. But *this* is not the case of a *common informer*; it is not the case of an accomplice, who repents of his crime; that might be the fate of an honourable mind. A man may be involved in the guilt of conspiring or treason, and retrieve himself nobly by making an atonement to his country and his God, by a fair and full confession of the crime. But that is not the case here. This is the case of a man going for the purpose of creating and producing guilt, that he might

make discovery of it. Does it not appear, that the conception of the guilt was entertained in the mind, if not fomented by the witness. You are to consider the different motives and movements of the human heart, and how wavering dispositions may be taken advantage of, and urged on by dexterous persuasion to a conduct which the seduced abhorred. You are not now trying whether the prisoner be a man of strong frame; of firm nerves and mind, capable of resisting allurements of guilt and temptation to vice: But you are to try, whether the evidence has satisfied you, that he has been guilty of treason.

Suppose now the evidence to be true; would it not shake the mind of an ordinary man, not of the most strong and firm disposition, if he saw an officer of the camp making declarations hostile to government; making a sacrifice of his situation, saying, "I will betray the camp which I am appointed to guard"—if he goes and persecutes another with his volunteering treason, fastens upon him in the streets, follows him abroad, and haunts him at his house, I say, are you surprised at seeing the other listen for a moment to the temptation, when he perceived that the man whose more immediate duty it was to resist the treason, had adopted it? I say this, supposing for a moment, that the evidence is true; I will show you presently it is not. Was it the part of an honest man to seek repeated interviews; to follow the other to his house and into the bosom of his family, until at last he lodged him in a gaol? Did he know the prisoners before? Was he acquainted with their lives and characters? No, but seized with a sudden zeal of turning informer against them, he insinuates himself into their acquaintance. I can conceive the zeal of an honest mind in the moment of mistaken enthusiasm to be led into an act of vice to save his country; I can conceive an exertion of Roman virtue flinging morals into the gulph as a sacrifice to patriotism. But what a life must there have been to claim praise for that act of enthusiastic ardour? There must have been a life of religious feelings, of continued virtue, and disinterested, honourable views. In such a case you can by exerting your imagination, account for an act of perfidy to save the country. But does this witness stand in that point of view? No, gentlemen, by his own confession he is convicted, and we shall show by a cloud of witnesses whose characters are above imputation, that he does not believe in the existence of a God, or a future state of rewards and punishments; that he is a notorious republican, and devoid of the principles of loyalty. But see his own account.—Was he a man of decided loyalty—attached to his king and country? No; he confessed he had been in the habit of reading Paine's pamphlets—his "Rights of Man" and his "Age of Reason"—his creed was founded upon these, and he drinks republicanism as a **toast**—and this man, the companion of Byrne,

and who had been foolishly democratic, engages in conference with Mr. Sheares, and enters upon the new office of informer for the good of his country! It is surprising that between the violence of republicanism and the zeal of an informer for the crown, the mean proportion of virtuous patriotism could not be found! The friend of Mr. Patrick Byrne; the drinker of republican toasts, suddenly becomes a spy for the good of his country! You see, gentlemen, the evidence which has been laid before you. Is there any one fact brought forward, except the naked testimony of this informer, to fasten guilt upon Mr. Henry Sheares? He has chosen his time of interview with great discretion; no person has been present at the conversations, but the prisoners, who cannot give evidence for each other. Has the person who introduced them been brought forward; or the serjeant of the militia? They are in the power of the crown—or did the counsel for the prosecution conceive this witness to be so immaculate, that he could not be impeached, and that it was not necessary that he should be supported? Why not produce Connors? He is in the barrack. Why not produce Byrne? He is in prison. Why not produce Fannan? Why not produce any one to give steadiness to the tottering evidence of this man?

Gentlemen, as to the proclamation which has been commented upon, it is not in the hand-writing of the prisoner Mr. Henry Sheares. It was not in his possession—he knew nothing of it—he had an opportunity of destroying it, if he chose, or knew of it.—Whatever the effect of it may be, as applying to the other prisoner, I meddle not with it.—But I do not think it affects the other, and most certainly, gentlemen, the Court will tell you, that this evidence is not to weigh a feather upon your minds in determining the case of one man, to whom it does not apply, although it may be thought to have some relation to another. It is an unpublished, blotted, and unfinished paper. The mere circumstance of that blotted paper being found in the house of Mr. Henry Sheares, where Mr. John Sheares resorted—not received by Mr. Henry Sheares, not acknowledged by him, on the contrary from the evidence you must infer he knew nothing about it—cannot weigh with you, nor affect his life. Is it proved that Mr. Henry Sheares did any act; corrupted any man, or frequented any society, or took any political step, beyond the mere colouring which captain Armstrong gives to the conversation between them? And how is that with regard to Mr. Henry Sheares? Did he appear eager to gain proselytes? At the first interview, Mr. Henry Sheares declined to say any thing; he departed, and did not return that day. Did that show an eagerness to gain a proselyte? He deserted captain Armstrong, is hunted and persecuted by him; he infests the society of his wife and children; still no act is done; it rests in con-

versation ; not a single act done ; no men corrupted ; no societies frequented, arms taken up, or furnished to others ; no act countenancing rebellion, or hostility to the crown.

Gentlemen, we will prove by a crowd of witnesses, that this gentleman Mr. Henry Sheares has been unconnected with and unconcerned in politics—devoted to pursuits of a different nature—to literature—to science—an attention to private affairs—enjoying the society of an amiable wife and children, beyond whose company he sought no pleasure. You certainly are not to be influenced by humanity—But your verdict must be founded in justice and in truth—You cannot suppose, that a man in possession of every comfort and enjoyment, with a wife and six children, would voluntarily engage in treason—would rashly confide his life, his fortune and his family to this stripling of an informer, whom he never before beheld.

Gentlemen, I have troubled you too long. I now conclude ; and with a firm hope, I trust my client to your hands.

[It being now nine o'clock, by consent of the prisoners, the Court ordered some refreshment for the jury, but they did not leave the box, nor did the Court adjourn.]

Charles Robert Shervington, esq. sworn.

What regiment are you in?—Lieutenant in the 41st regiment.

Do you know captain Armstrong of the King's County militia?—I do, sir.

Have you known him long?—I have known him since his childhood, he is my nephew by marriage.

You have some degree of intimacy and acquaintance with him?—I have : he has been at my house from school very often.

You have had frequent conversations with him?—I have had frequent conversations with him in a general way.

You have had general conversations with him upon a variety of subjects?—Living together, I must have had a variety of conversations with him.

Have you ever heard a conversation by him, with regard to his majesty?—Yes, I have.

Have the goodness to mention what that conversation was?—Upon that subject, as a military man, I did not converse with him much.

Why?—I did not think his principles exactly such as those of a military man should be.

Upon what occasion, or where had you the conversation?—I have at different times had conversation with him, when in lord Cork's regiment in England.

You were going to mention one particular conversation, where was it?—At Mr. Mulholland's, an agent of his.

How long since?—I apprehend two or three years ago ; I cannot exactly say to the time.

Mention what the particulars of the conversation were?—It is very hard to recollect the particulars of a conversation so long ago over a bottle of wine.

Mention them as well as you know?—I remember that he was not loyal, because I told him, that any man, who wore his majesty's cloth, and received his pay, should not talk in that way.

What was the subject of the conversation?—We talked of various things, the French revolution, the army and such things as men talk of upon those occasions. He said he did not wish kingly government.

Endeavour to recollect, whether he used any particular expressions with regard to his majesty?—He did.

Mention what they were?—He said that if there was not another executioner in the kingdom for George 3rd but himself, he would be one, and pique himself upon being so. I told him he was a damned fellow, and ought to give up his commission, and leave the army and go over to France.

You mentioned, that he was your nephew?—If he was not, I should have knocked him down. I do not know the Mr. Sheares's, and never saw them until this day.

You were at this time in the army?—I was ; I think, I had just got into the regiment ; it is two years and a half ago.

Have you ever at any other time had conversation with captain Armstrong?—I always declined conversations of that kind with him, it being disagreeable to quarrel with so near a relation ; and I stopped him, saying " For God's sake, if these are your principles, keep them to yourself."

Do you recollect his using any expression respecting Paine or other writers?—I know he read his works, for I saw them in his room.

Did he give you any of them to read?—I recollect at a bookseller's in Grafon-street, I do not remember the number. I met him very often there ; he was in a delicate state of health ; he handed me a book ; he had a newspaper in his hand, and he handed the book to me, saying, " read this, it is my creed." I found it was Paine's Rights of Man : I thrust it into the fire, and said he should be served so. His aunt called upon me a few minutes after, and I went away and told her what a shocking thing it was that he kept such bad company, and it was a pity he got into the Somerset militia.

If captain Armstrong were to swear, that he never had declared, that Paine's Rights of Man were his creed would he swear truth?—I did not hear him swear it, because I was ordered to leave Court.

Did you ever hear him make any declaration as to the regiment he belonged to?—I have. Do you mean the King's County militia?

Yes, of that regiment?—Never ; I never heard him make any declaration respecting

that regiment. I have not known him lately, for I have been upon the recruiting service, and have been absent upon the business of purchasing into a regiment of dragoons.

You had some conversation about the King's County militia?—I was asked, did I know who was the captain Armstrong who was to prosecute the Sheares's: I said I knew but two, one was my brother-in-law; the other John Armstrong my nephew; I said I would enquire about it; I went to counsellor Barrington's who was from home; I then went to his mother's, who told me that John Armstrong was to prosecute the Sheares's. I met captain Clibborn, and told him I was sorry to find, that John Armstrong was finding out the secrets of men, in order to discover them. He told me, it was a different thing, that the Sheares's wanted to seduce him from his allegiance; "Damn him," said I, "he should have run them through the body."

Did he ever talk to you about the King's County militia?—No.

About any other regiment?—Yes, about the Somerset militia; he mentioned that some of them were disaffected, some not.

Was any person present, when he made use of the expression of being the executioner of the king?—Mr. Mulholland went up stairs, I went after him, and went to the drawing room to Mrs. Mulholland: the conversation was told to her when we both went up.

Charles Robert Shervington esq. cross-examined.

Are you of this country, or of the neighbouring one?—I was born in the King's County. I am a magistrate of that county I believe since 1786.

Were you ever a magistrate in any other place?—Never.

You have been always a resident of the King's County?—My estate lies in Kilkenny; I have 200 acres there; under the duke of Ormonde, but I have been principally with my regiment.

Are you sure that you never were a justice of peace prior to 1786?—Perfectly.

Have you been uniformly a magistrate since 1786?—It may be 1787.

Were you ever discontinued?—I was.

How?—Just for two or three days.

For what reason?—Without any reason.

At what period?—I cannot tell.

Cannot you give an account of it?—I cannot.

Try and recollect?—Indeed I cannot.

It is a remarkable event for a gentleman of high feelings?—I hope I have the feelings of a gentleman, and an honest man.

You cannot recollect the interval of time you ceased to be a magistrate?—I cannot.

You might have been three or four years without being a magistrate?—No, I was not: I was a very few days, I cannot tell the time, a post or two.

You said you kindly came forward upon hearing that captain Armstrong was to be a witness against the Sheares's?—No, sir, I was summoned: I would not have appeared for 100 guineas.

Where were you when you were summoned?—At Mr. Alsop's in Essex-street.

In Dublin?—Yes.

You did not hear of Armstrong's appearing till you came to Dublin? you said you went to Mr. Barrington's?—I did: I did not find him at home; I went to his mother's and saw his sister, Mrs. Stephens, who told me with regret that John-Warneford Armstrong was to appear.

In consequence of that, you did what?—In consequence of that I did nothing.

How came you to appear?—I was told that captain Armstrong was to appear to prosecute the Sheares's for treason.

Who told you?—My brother-in-law.

Who is he?—Mr. Alsop.

Then you went to counsellor Barrington's?—No, I saw him.

You went to his mother's?—I went to visit Mrs. Stephens; I saw her in town, and wished to enquire for her.

You went to Mr. Barrington's?—No: I went to see him, but not upon this business.

I wish to understand you, sir?—It is very easy to understand me.

How long have you been acquainted with the Armstrong family?—That I cannot tell, 10, 15, or 20 years.

Have you seen Mr. Barrington upon this business?—No, I have not.

You have seen this Mr. Armstrong very often?—Since he was in petticoats.

Have you any suits going forward between your family and his?—No.

In your own family?—Yes.

With your mother?—Yes.

Have you lived in great intimacy with the Armstrong family?—Yes.

How long an interval has passed within these five or six years without his speaking to you? Was there any?—There was.

What interval?—I cannot tell.

I suppose in two or three years after his declining to speak to you, you went to look for him?—No, sir, I met him at Mr. Mulholland's; I'll mention the cause of the quarrel if you please; he wished to preside at an assembly at Ballycumber; I took out a lady to lead up the dance, while he was out of the room, and his mother was displeased, and there was a sort of quarrel.

No more quarrel than that?—He would not speak to me, and I would not speak to him; I considered him a boy; he was afterwards much out of the country.

You were a man and he was a boy, and you had too much good sense to keep up the quarrel with him?—No: he spoke to Mr. Mulholland, said he was anxious to be on terms with me; it was mentioned to me; I said I had no objection, he asked me, what

he was to call me; Uncle or Mr., I said what he pleased, and shook hands with him.

Mulholland is dead?—He is.

Then there is no other person to mention the conversation about the executioner?—His wife is living.

She was not present?—No, but the conversation was told to her.

Where did you see captain Armstrong last?—I saw him here to-day.

Where before that?—I do not recollect.

Did you see him in the King's County?—I believe I did.

At several gentlemen's houses?—No: the last place was at captain Clarke's at Twickenham.

Is he a gentleman, and a man of honour?—I am sure he is.

Was captain Armstrong a visitant there, or was it an accidental meeting?—It is the Armstrong estate. Captain Armstrong asked the house from captain Clarke, and invited gentlemen to dine there.

Then you dined there upon Armstrong's invitation?—Yes.

Are you of the King's County?—Yes, I am.

Would any man from the King's County keep company with him, if they heard him speak as you have mentioned?—He is a man of honour from his situation, and from his family entitled to good company.

Tell me any man of honour in that county, to whom he expressed the sentiments you have mentioned?—He kept very little company in that county.

Mention any man by name to whom he expressed those principles?—Mr. Mulholland, who was his agent, carrying on suits for him with some of the family.

Is that the man who is dead?—Yes.

Mention any man who is living?—Mr. Eccles.

He is dead also?—Yes, I could not keep him alive. [Here there was a laugh, upon which the witness said] You may laugh; I am as good a subject as you are, and as honourable.

Mention any man of honour now living, in whose company you heard these expressions attributed to captain Armstrong?—I have dined very often with captain Clarke in his company; he very seldom kept company there; he was a very young man, and only came over to attend his law-suits.

How near did you live to Ballycumber?—Within a quarter of a mile.

Did you know Connors, the serjeant of the King's County militia?—No.

Have you attended the assizes of the King's County?—I have very often, when you [the attorney general] and Mr. Baron Smith were there.

How long is Mulholland dead?—Two or three years; I cannot say; I did not know I should be asked these questions.

Whom did you converse with upon the sub-

ject of these trials?—I conversed with several; I talked to captain Mellifont, and said it was hard to be summoned as a witness against the Crown, being an officer. I went to colonel Campbell, and I was told, I might be given up and sent into gaol, and fined 300*l.* or 1,000*l.*

With whom did you converse upon the subject of your evidence?—I spoke to many, that I was sorry to be obliged to appear; that I did not know the Sheares's.

To whom did you tell that?—I do not know; he is a captain.

What did you tell him?—That I was sorry to appear against the crown.

How did the agent concerned for the prisoner know the evidence you could give?—I know not that.

You did not communicate the substance of what you were to give in evidence before this day?—I told captain Mellifont that I was sorry to appear, and would be glad to escape it.

I shall not press you more upon that, sir. How long were you upon such terms as not to speak with your wife's relatives?—Except at the time of the election: I took a strong part with Mr. Daly, my near friend; and my friends were strongly attached to lord Tullamore.

Was that the only occasion of not holding terms of intimacy with them?—The only occasion.

How long did that continue?—A month or two.

Perhaps more?—I cannot say; it continued for some months. The election was over in June. Captain Armstrong's servant got very riotous, and I was sitting with a friend of Mr. Daly's at the town where I live.

Who was present when you called upon captain Armstrong, to know if he was not to give evidence against the Sheares's?—Captain Clibborn.

Did you sit long with him?—I did not sit four minutes, nor see him since; he has been out of town.

Was this the mode of your asking: "Are you to appear against the Sheares's?"—No; I said, "What is this you have to say against the Sheares's."

With a note of admiration?—No, not with any note of admiration; I did not care about the Sheares's.

Did you not ask captain Armstrong at that time, "What, sir, did you not get yourself introduced to the Sheares's, for the purpose of giving evidence against them?"—No, sir: captain Clibborn told me he was to appear against them; I asked him what it was? he told me the Sheares's had been attacking Armstrong to bring him over from his allegiance.

What did you say?—I said, he ought to have run them through the body.

Had you an opportunity of enquiring into the matter?—I was not much in town since.

Did not captain Clibborn tell you repeat-

edly, that captain Armstrong had been giving this account to him?—He did.

And the moment he told you that, away you went?—I went to my lodging.

You did not visit him since?—He was not in town.

He was in Grafton-street?—He was not there at that time.

Have you not heard repeatedly, that captain Armstrong was in Dublin, and had been wounded in the unfortunate affair of colonel Walpole?—He was wounded at that time, and when I saw him first he was confined, and I am astonished he was able to move so soon.

You never went to see him?—I heard he was at Bray.

Did you ever inquire for him since?—I have not been at that side of the town; I have been engaged with one army agent or another.

You have been anxious for his health?—I have.

Would you be anxious for the health of a man, who had expressed a desire to kill the king?—I considered him a giddy young man, led away by bad company.

Thomas Drought, esq. sworn.

Do you know captain John-Warneford Armstrong?—I know captain John-Warneford Armstrong.

Have you known him long?—From his infancy.

In what county do you reside?—In the King's county for some years past.

Is it your place of birth?—No, sir; I was born in the Queen's County.

Have you been intimate with captain Armstrong?—Very much so, while he was in Ireland, and while I was here; for I lived in England several years myself.

Do you recollect to have heard him express any particular opinion that he entertained, with respect to the existence of God, or a future existence of the soul?—I have frequently heard him utter atheistical opinions.

What opinions do you call atheistical?—A disbelief of a supreme intelligent Being.

Have you heard him express any opinion of the existence of the soul of man?—I have; perfect annihilation.

After what you have mentioned, it may be called an Irish question; but can you mention what his notion was of rewards and punishments, of the state of the soul after annihilation?—I do not know, but he said it was eternal sleep, non-existence.

Have you heard him express these kind of opinions with apparent seriousness and deliberation?—As if they were his real sentiments; I have heard him mention them at breakfast.

Did it seem, or did he utter them as a kind of idle rant, as if he thought it an idle thing, or did he utter them as his proper sentiments?—With his usual calmness, not with more levity than usual.

VOL. XXVII.

Do you mean to say, that this happened more than once?—It happened generally when I had an opportunity of talking with him upon that subject.

Do you recollect having passed by his lodging in Grafton-street, since the unfortunate expedition of colonel Walpole?—I do recollect to have passed from Stephen's-green to Grafton-street about five o'clock in the evening of Friday the 29th of June; he was ridiculing the idea of Papists fasting upon that day; that makes me remember it was Friday.

How came you to his lodging?—I heard a person call out, "Holloa!" I saw a person beckon at the window. I knocked at the door, and was received by him up stairs.

What conversation ensued?—The conversation principally concerned the engagement, and the wound he had received: we had some discourse respecting the number of people killed upon each side.

Do you recollect any thing respecting two or three peasants?—Yes: after talking of the number of people killed, I enquired as to those killed on the other side, whether they were all killed in the field, and with arms in their hands? He said, there were two or three caught at a distance, that one was hanged, in consequence of having refused to give information; another, I believe, was suspended, and captain Armstrong said, he cut him down, but one was hanged outright; and we both agreed, that it was not a good way to make him confess; and that upon his suggestion, the fellow that was suspended, or had the rope about his neck, I am not sure which, was ordered to receive twenty-five lashes, and when he received eight, he called out with vociferation, that he would give information; that he then led them on, and said the person who was hanged could have given the same information, though he suffered himself to be hanged. I asked him, how he could possibly reconcile it to himself to deprive those wretches of life, without even the form of trial? He acknowledged that they did so; I asked him, whether he expected any punishment for it, and though he did not expect it from government, yet, that there was an All-powerful Being, who would punish him. He said, "You know my opinion long ago upon this subject."

In what way did he make that answer? Was it with the tone or expression of contrition?—It was by no means a serious expression.

You pursued the conversation no farther?—I took my leave of him rather abruptly.

Do you recollect conversing with him about his leaving the Somerset militia?—I recollect his conversing upon it three or four years ago.

If you remember the time more exactly, mention it?—I do not.

Did he mention any reason for it?—Yes, his having entertained democratical principles. He mentioned, that there were two parties in the regiment; he mentioned some

names; I knew some of them, being a visitor in that county to my relations. He mentioned Lord Cork as one, and a baronet.

You mean, that they were a loyal party, and that the others were of a democratic party?—Yes; he said he had left the regiment in consequence of his democratic principles; he told me so, and my brother told me the same last summer.

[This was objected to, as not being legal evidence; upon which the witness said, he did not mean to offer it as evidence.]

Thomas Drought, esq. cross-examined.

Does captain Armstrong know you perfectly well?—I think he does. Not as well as I know him, because I am older than he is.

But he has a good notion of your character?—As good as other people in that county have.

How long have you lived there?—Since 1785. I was a magistrate of that county in that year.

You have been a magistrate of that county?—I have.

But are not now?—No; I was advised to resign, but would not.

You did not think it good advice?—No; I was indifferent about it.

You were superseded?—I was.

Did you ever hear the reason?—I never enquired from any person likely to inform me.

Never from any body?—Not to my knowledge.

What time were you superseded?—About 1794.

Are you married?—I am.

Where does Mrs. Drought live?—In this town.

With you?—No.

How long since you have ceased to live together?—We have not cohabited these seven years.

You have lived alone ever since?—No. I have children, and men and women servants.

None other?—None; but servants, men and women.

None other?—There is a French tutoress in the house, sir.

Is her name Frazer?—No.

Is there such a woman living with you?—There is.

In what capacity?—Housekeeper.

She is a Scotch woman from her name?—I believe so, but she has lived in England.

How long have you been in Dublin?—About 24 hours.

What brought you here?—Two reasons: one is, that I have been summoned; another was, to prevail upon my wife to come and live with me.

And with the housekeeper, and tutoress?—I have two houses.

And your wife was to live with the tutoress?—Not in the same house with either of them.

Then you had two reasons for coming?—I like to kill two birds with one stone.

How many children have you?—Nine children, legitimate and illegitimate.

Did you mean to invite your wife to live with these nine children?—I intended she should live with her own children and superintend their education.

Do you know Mr. Bernard?—I do, he is my next neighbour.

Did you ever pay him a bet?—I do not recollect. I staked my bible with him.

Did you ever lay any other bet with him?—I do not recollect accurately; but I was told I laid a bet with him, when I was drunk.

What was it?—It was something respecting this country.

In what particular?—I cannot say exactly.

Was it about the longitude?—No, sir.

What was it then?—Respecting the government of it.

Was it, whether this was a republican, or a kingly government? You have but a faint recollection of it?—Very faint.

When was it made?—In 1792, or 1793.

About the time you were superseded in the commission?—It was not; it was made a long time before it.

Then you speak of this bet from information from others, not from your own knowledge?—I have some little recollection of it.

Was it ever reduced to writing?—I believe it was.

Were not the opinions of counsel taken upon the legality of the wager?—Yes, there were: I heard there were opinions taken by the other gentleman.

Did you take any opinion yourself?—I believe, I did.

Did you hold, that Ireland would be a republic in two years?—No.

In what time then?—In four years, as I have heard.

What was the amount of the sum?—The sum was 1,000*l*.

The time has elapsed?—It certainly has.

You had not the least inclination, that the event upon which you betted should prove true?—Certainly, not.

You had an honest hope at the time you made the bet for 1,000*l*. that you might lose it?—I suppose so, if I had any thought about it.

Were you sober, when you took the legal opinion?—I was.

Was that opinion taken until very near the time the bet was to become payable?—Not till very near the time.

When captain Armstrong mentioned the atheistical opinions, you were filled with horror?—I certainly was.

You were actually shocked at his communicating such opinions to you?—Yes, I was.

Whether was it the captain or yourself, that had the education of your children?—A schoolmaster.

What school did your son go to?—Mr. Bonafous and Mr. Carey in Portarlington.

Did you hear that your son while at school professed atheistical opinions?—I never did.

Did you ever profess any opinions of the same nature?—I never did.

How did it happen, that captain Armstrong let himself out to a gentleman of your extremely religious turn, and precise mode of thinking?—I do not pretend to be a devotee, sir.

But you expressed great horror at his opinions?—I did.

How came he to mention the matter to a person of your precise mode of expression and grave turn?—He did not select me: he mentioned it in public, even in the grand jury room.

Can you mention anyone, who was present?—I certainly could.

Did he mention it to Mr. Bernard?—I cannot say.

Can you mention any body?—He mentioned it to myself and my brother, and to Mr. Armstrong of Clara.

Who is that Mr. Armstrong?—He is a relation of mine.

You are in the militia?—No.

In the yeomanry?—No: I was formerly in the volunteers.

You have never taken a military employment since that time?—No.

You have lived in the country since the rebellion broke out?—I have.

And have taken no part to prevent the rebellion for which you were betting?—I was not betting for rebellion.

Did you take any active part in suppressing the insurrection and rebellion for which you betted, but which you were anxious to lose?—I have been active in suppressing mischief.

In what way?—With a priest of the neighbourhood, going through the people to prevail upon them to give up their arms, and take the oath of allegiance.

When were you last in Dublin before the last twenty-four hours?—A week ago.

Whom did you associate with that time?—Several.

Did you meet the prisoners?—No.

Did you meet any of their friends?—I did; Mr. Fleming.

What is he?—An attorney.

Did you know he was a friend of the Sheares's?—I found it out.

Did you take an opportunity of telling him, you could give useful evidence for the Sheares's?—I did not.

Whom did you tell it to?—I did not tell it to any one: I did not mention it, unless in consequence of a person asking me, that I could tell something in their favour.

Upon your oath, who happened to ask you, whether you could give such evidence, or not?—Who asked me? Mr. Fleming.

Did he ask that before you mentioned you could serve the Sheares's upon their trial?—

Upon my oath, he asked me, before I mentioned any thing.

What did he ask you?—Whether I knew this Mr. Armstrong.

Was that before you intimated any thing?—It was.

Had you known the Mr. Sheares's?—I had some knowledge of one of them.

Which of them?—Mr. Henry Sheares, he had been at the same school, but he was my junior: I forgot him, till I saw him some time back.

When was that?—Three years ago.

Did your acquaintance continue down to the present time?—It did not.

Did you ever see him since that time?—I did; I met him in the street.

Had you any conversation with him?—Only shaking him by the hand and asking him how he was.

Did any body else, beside Mr. Fleming, converse with you upon the subject of the trial?—I believe there might.

Who?—Mr. Fleming's brother.

Any other?—I do not recollect.

Did they ask you merely, if you knew any thing of John-Warneford Armstrong?—Upon my oath, I do not recollect to whom I had spoken; my brother spoke to me last Sunday with horror, at his relation having acted the part he did.

You agreed with him in that idea? of the shameful part he acted in coming forward to give evidence?—No, but the treachery of him, his principles and atheistical opinions.

Great horror and indignation were expressed by your speeches?—Yes.

What was it raised these sensations in both you and your brother?—The treachery I mentioned.

Of what?—The manner in which he had acted towards them.

That who acted?—That captain Armstrong had acted towards the Sheares's.

Do you not believe that he acted with the approbation of the colonel and Mr. Clibborn his captain?—I do not.

Do you know colonel L'Estrange?—Yes; but I thought you meant sir Laurence Parsons was his colonel.

But was not his conduct with the approbation of captain Clibborn and colonel L'Estrange?—Upon my oath I do not know; but I do not believe it.

If captain Clibborn swore it, would you believe him?—I believe I would.

Do you not believe, that colonel L'Estrange is as good a judge of his honour, as you, or your worthy brother?—I doubt it.

What is the opinion of the King's county upon that subject?—I do not think the King's county entertain as good an opinion of his honour as of my brother.

And of your own?—If you will excuse me, I had rather decline answering that question. I may entertain as good an opinion of myself as of my brother.

Robert Bride, esq. sworn.

What is your profession?—A barrister.

How long have you been called to the bar?—In Hilary, 1795.

Do you know a gentleman of the name of John-Warneford Armstrong?—I do.

Do you recollect having been in his company within these six or eight months?—I have frequently.

Did you upon any of these occasions hear him express any opinion touching the moral obligation of an oath?—I do recollect an expression one evening.

What was that?—It was slighting the obligation of an oath.

Pray in what way was it slighting it?—I do not recollect the particular expression; but the substance was making light of it.

Do you recollect his giving any reason why he thought so?—I am pretty sure he did not assign any reason for it. I cannot say positively.

Did you say any thing to him upon the subject?—I do not recollect, that I said any thing; but I showed indignation at it, either by word or action.

Do you recollect in whose chamber it was?—I do, it was Mr. Browne's in the college.

Do you recollect whether any other persons in the company expressed indignation?—No, I do not.

Did he assign any reason for leaving the Somerset militia?—He said he was obliged to attend some law suits or affairs in Dublin.

Charles Graydon, esq.—sworn.

Are you a barrister?—I am.

Are you acquainted with captain Armstrong?—I know a John Armstrong of the King's County militia.

Have you been frequently in his company?—Yes.

Do you recollect his expressing his opinion of the moral obligation of an oath?—No.

Did he express any opinion of a future state of rewards and punishments?—No; I never heard him express any precise opinion upon that subject.

Have you heard him express any opinion of a supreme infinite Being?—I do not recollect to have heard him upon that subject.

Have you heard him express any political opinions?—I have very often; he expressed himself very freely.

Do you mean that he was free and unqualified?—I have heard him very often in a very unqualified and violent manner.

Were their republican expressions?—They were.

Do you recollect the expression?—No; I speak from general impressions; he uniformly expressed opinions of that kind.

Cross-examined.

From all you have heard him express, do you not think that a man who had real demo-

cratical opinions of his own might think captain Armstrong a fit person to confide in?—He might.

John Boardman, esq. sworn.

You are at the bar?—I am.

Do you know the Messrs. Sheares?—I have. How long?—I believe my acquaintance commenced seven or eight years ago.

You have been intimate with them?—Tolerably intimate,

Have you held any conversation with them upon political subjects?—I cannot call to my recollection that I have.

What do you consider their political characters? what principles did they profess?—If I were at all to collect their principles from any conversation I had, I thought them anxious to bring about a parliamentary reform and Catholic emancipation. No farther, as far as I could collect.

John Boardman, esq. cross-examined.

You are a lieutenant in the Lawyers' corps?—I have that honour.

If the prisoners entertained any other views, going farther than you have mentioned, they would be cautious in committing them to you?—I should think they would, or they would be very unwise in mentioning them to me.

How long have you been a member of the corps?—Since its first institution. But I beg leave to mention, that I have not had any conversation with these gentlemen, since the corps was formed, except once with Mr. John Sheares, in company with a large party, and there we happened to be near each other; and I could there collect that his sentiments were communicated to the same import.

Court.—How long ago was that?—In the beginning of Spring, I believe in March.

Mr. John Sheares.—I wish to remind Mr. Boardman, whether I did not regret, that reform did not take place, as the best mode to prevent revolution, which would take place if not prevented by reform?—I do recollect, that Mr. Sheares made use of expressions to that effect.

Edward Hoare, esq. sworn.

Are you acquainted with the Messrs. Sheares?—I am, perfectly.

How long?—A great many years, and their father before them.

From their childhood?—Yes, particularly John Sheares.

Have you had frequent opportunities of conversing with them upon political subjects?—I cannot say I have had frequent opportunities.

Have you heard them express their opinions upon the state of the country without reserve?—I have.

What did their opinions appear to be?—Their political opinions went very much as to men and measures.

What appeared to be their particular object?

The Counsel for the Crown objected to this species of evidence as not admissible.

Lord Carleton.—General character as to loyalty is evidence, but expressions upon particular occasions are not.

Counsel for the Prisoners.—Did you from all the opportunities you had of collecting their opinions, collect whether they were loyal or not?

The Counsel for the Crown also objected to this question.

Mr. Baron Smith.—This examination as to loyalty of character, should be like the examination into moral character—it should be their general character for loyalty, or otherwise, and not particular conversations.

Mr. Mac Nally.—My lords, in Tooke's case, particular conversations were admitted.

Lord Carleton.—As to what was done in that case, there was a difference from this:—There the charge was, that under colour of a reform in parliament they intended to subvert the government: the Court thought that matter might receive explanation from the particular measures under discussion by the prisoner.

Counsel for the Prisoners.—Pray, sir, do you know what the general character of the Messrs. Sheares is with regard to loyalty?—With regard to report, I did hear reports to the disadvantage of the Messrs. Sheares, and from my regard to them, I asked them a question upon the subject.

[It was objected, that the witness could not give their answer in evidence.]

Lord Carleton.—The declarations of a prisoner are evidence against him, but are not evidence for him, unless they are part of the original transaction.

Mr. Attorney General.—My lords, I consent, that the evidence be given, in order to relieve the Court and the counsel from any embarrassment upon the subject.

But the Counsel for the Prisoners said, they would not examine the witness any farther.

Chichester St. Leger, esq. sworn.

Have you been long acquainted with the Messrs. Sheares?—I have for a great while.

During that entire acquaintance with them, what is your opinion as to their general character?—The very best that I could conceive any men to possess.

And you have known them a considerable length of time?—I have, since I was six years old; I believe, I have not known the elder so long as John; he was at the same school with me.

But your acquaintance with Mr. Henry Sheares is not very recent?—Not at all, 14 or 15 years.

Thomas Casey, esq. sworn.

You are a gentleman of the bar?—I am.

Are you acquainted with Messrs. Henry and John Sheares?—With them both.

Have you been long and well acquainted with them?—I have been well acquainted with both, but most particularly with John Sheares.

What was their general moral character?—Their general moral character was as good, as great and as high as that of any man I knew. With regard to Mr. John Sheares, I have lived with him a long time, and during that time, I never had an occasion not to admire, esteem and respect him; and that was for a period of 18 months, during which we lived together.

Did you consider them as men likely to encourage murder and bloodshed?—With regard to Mr. Henry Sheares, I do not conceive it. With regard to Mr. John Sheares, if it be possible, I do conceive there must have been as great a revolution in his mind as any where upon the face of the earth; and I do recollect about two years ago or upwards, that I did hear John Sheares, in as warm a manner as I ever heard him speak truth to me upon any occasion, say, that he would be the first to take arms against a foreign enemy, and the last to lay them down.

Thomas Casey, esq. cross-examined.

You confine what you say to their moral character?—I mean it to the full extent of what I have said: I speak of their moral character and to their political, as far forth as my words can reach.

Do you speak as to their political character for the last 12 months?—Our acquaintance for the last 12 months was not much, though our friendship did not abate: I recollect at an assizes at Cork, we had some conversation; he and I talked upon men and measures, upon which we differed. He spoke with confidence to me, as two men may in conversation. He spoke against a revolution and a foreign enemy.

The conversation would have terminated, if he had intimated a contrary opinion?—I do not know, for I would have endeavoured to persuade him to be of my opinion, which is fully and entirely contrariant. I would not give him up while I had a hope of him, nor till I had a solid reason to the contrary.

John Leech, esq. sworn.

Do you know Messrs. Henry and John Sheares?—I know Mr. John Sheares very well, but not much of Mr. Henry Sheares.

What is the general and moral character of Mr. John Sheares?—Very amiable, and I never knew any thing to his disadvantage.

So far as you know Mr. Henry Sheares, what has been his general character?—So far as it came to my knowledge, I always heard it was a good one.

What has been his domestic character?—A very good father, and kind husband.

[Here the case closed.]

Mr. Curran.*—My Lord, before I address you or the jury, I would wish to make one preliminary observation. It may be an observation only—it may be a request. For

* In the very interesting "Life of the Right Hon. J. P. Curran by his son W. H. Curran, Barrister at Law" this speech in defence of Messrs. Sheares is introduced with the following observations: "Mr. Curran's speech upon this occasion, which was considered as the most moving that he had ever pronounced, was rendered peculiarly affecting, by the circumstances that accompanied its delivery. Notwithstanding the length of many of the state trials of this period, the courts seldom adjourned till the proceedings were concluded, so that their sittings were not only protracted to a late hour of the night, but it was not unusual for the returning morning to find them still occupied with their melancholy labours.

"It was midnight when Mr. Curran rose to address the jury; and the feelings with which he entered on the task cannot be perfectly conceived, without adverting to the persons who were grouped around him. At the bar stood his clients, connected with each other by blood, with their advocate, and many more of the surrounding audience, by profession, and with the presiding judge by the ties of hereditary friendship. Upon the bench he saw in Lord Carleton one of his own oldest and most valued friends, with whom he was now to intercede, if intercession could avail, for those who had so many tender claims to his merciful consideration; while upon the jury appeared several whom Mr. Curran (and probably his clients) had long known as acquaintances and companions, and with more than one of whom he had lived, and was still living, upon terms of the most confidential intimacy. When to this collection of private relations, so unusual upon such an occasion, are added the other attending public circumstances, it is not surprising that the surviving spectators of this memorable scene should speak of it as marked by indescribable solemnity. The fate that impended over the unfortunate brothers—the perturbed state of Ireland—the religious influence of the hour—the throng of visages in the galleries, some of them disfigured by poverty, others betraying, by their impassioned expression, a consciousness of participation in the offence for which the accused were about to suffer, and all of them rendered haggard and spectral by the dim lights that discovered them,—the very presence of those midnight lights so associated in Irish minds with images of death,—every thing combined to inspire the beholders, who were now enfeebled by exhaustion, with a superstitious awe, and to make the objects, amidst which the advocate rose to perform the last offices to his sinking clients, appear not so much a reality, as the picture of a strained and disturbed imagination."—*Life of Curran by his Son*, Vol. 2, 63—66.

myself I am indifferent; but I feel I am now unequal to the duty—I am sinking under the weight of it. We all know the character of the jury: the interval of their separation must be short, if it should be deemed necessary to separate them. I protest I have sunk under this trial. If I must go on, the Court must bear with me:—the jury may also bear with me;—I will go on until I sink;—but after a sitting of sixteen hours, with only twenty minutes interval, in these times, I should hope it would not be thought an obtrusive request, to hope for a few hours interval for repose, or rather for recollection.

Lord Carleton.—What say you, Mr. Attorney general?

Mr. Attorney General.—My lords, I feel such public inconvenience from adjourning cases of this kind, that I cannot consent. The counsel for the prisoners cannot be more exhausted than those for the prosecution. If they do not choose to speak to the evidence, we shall give up our right to speak, and leave the matter to the Court altogether. They have had two speeches already; and leaving them unreplyed to is a great concession.

Lord Carleton.—We would be glad to accommodate as much as possible. I am as much exhausted as any other person; but we think it better to go on.

Mr. Curran.*—Gentlemen of the Jury: It seems that much has been conceded to us. God help us! I do not know what has been conceded to me—if so insignificant a person may have extorted the remark. Perhaps it is a concession that I am allowed to rise in such a state of mind and body, of collapse and deprivation, as to feel but a little spark of indignation raised by the remark, that much has been conceded to the counsel for the prisoner; much has been conceded to the prisoners! Almighty and merciful God, who lookest down upon us, what are the times to which we are reserved, when we are told that much has been conceded to prisoners who are put upon their trial at a moment like this—of more darkness and night of the human intellect than a darkness of the natural period of twenty-four hours—that public convenience cannot spare a respite of a few hours to those who are accused for their lives; and that much has been conceded to the advocate, almost exhausted, in the poor remark which he has endeavoured to make upon it!

My countrymen, I do pray you, by the awful

* "This speech, in its reported state, is by no means the most favourable specimen of Mr. Curran's eloquence. Several passages in it are broken and unconnected, which may be attributed either to the incorrectness of the reporter, or to the extreme exhaustion of the speaker. If the defect arose from the latter cause, the solemnity of his delivery atoned for it with his auditors; for nothing could exceed the effect which it produced upon them."—*Life of Curran*, Vol. 2, p. 63, note.

duty which you owe your country—by that sacred duty which you owe your character—(and I know how you feel it),—I do obtest you, by the Almighty God, to have mercy upon my client—to save him, not from the consequences of his guilt, but from the baseness of his accusers, and the pressure of the treatment under which I am sinking. With what spirit did you leave your habitations this day? In what state of mind and heart did you come here from your family? With what sentiments did you leave your children, to do an act of great public importance—to pledge yourselves at the throne of Eternal Justice, by the awful and solemn obligation of an oath, to do perfect, cool, impartial and steady justice, between the accuser and the accused? Have you come abroad under the idea, that public fury is clamorous for blood—that you are put there under the mere formality or ceremonial of death, and ought to gratify that fury with the blood for which it seems to thirst! If you are—I have known some of you—more than one, or two, or three—in some of those situations, where the human heart speaks its honest sentiments.* I think I ought to know you well—you ought to know me; and there are some of you, who ought to listen to what so obscure an individual may say, not altogether without some degree of personal confidence and respect. I will not solicit your attention, by paying the greatest compliment which man can pay to man;—but I say, I hold you in regard as being worthy of it;—I will speak such language as I would not stoop to hold, if I did not think you worthy of it. Gentlemen, I will not be afraid of beginning with what some may think I should avoid—the disastrous picture which you must have met upon your way to this Court. A more artful advocate

* “One of the persons on the jury, to whom this observation was particularly directed, was sir John Ferns, with whom Mr. Curran had been long connected by habits of private friendship, and in whose society he had passed many of his happiest hours of convivial relaxation.

“The following little impromptu shows, in a striking point of contrast, the different styles in which different occasions induced the writer to address the same individual:

‘To sir John Ferns, with a bottle of *Cham-paigne*.

‘This bottle I’ve raised from the dust,
‘Where for many a year it had lain,
‘In hope that one day with the just,
‘It might rise and might sparkle again.

‘And now my dear sir John, I send
‘This type of good tidings to come,
‘That the grave-diggers empire must end,
‘And his pris’ners get loose from the tomb.
‘J. P. C.’”

Life of Curran, Vol. 2, p. 78, note.

might endeavour to play with you, in supposing you to possess a degree of pity and of feeling beyond that of any other human being: but I, gentlemen, am not afraid of beginning by warning you against those prejudices which all must possess—by speaking strongly against them—by striking upon the string—if not strong enough to snap it, I will wake it into vibration. Unless you make an exertion beyond the power almost of men to make, you are not fit to try this cause. You may preside at such an execution as the witness would extol himself for—at the sentence flowing from a very short inquiry into reason. But you are not fit to discharge the awful trust of honest men coming into the box, indifferent as they stood unsworn, to pronounce a verdict of death and infamy, or of existence and of honour. You have only the interval between this and pronouncing your verdict to reflect; and the other interval, when you are resigning up your last breath, between your verdict and your grave, when you may lament that you did not as you ought.

Do you think I want to flatter your passions? I would scorn myself for it. I want to address your reason—to call upon your consciences—to remind you of your oaths, and the consequence of that verdict, which, upon the law and the fact, you must give between the accuser and the accused. Part of what I shall say must of necessity be addressed to the Court, for it is matter of law. But upon this subject, every observation in point of law is so inseparably blended with the fact, that I cannot pretend to say that I can discharge your attention, gentlemen, even when I address the Court. On the contrary, I shall the more desire your attention, not so much that you may understand what I shall say, as what the Court shall say.

Gentlemen, this indictment is founded upon the statute 25 Ed. 3. The statute itself begins with a melancholy observation upon the proneness to deterioration, which has been found in all countries, unfortunately, to take place in their criminal law, particularly in the law respecting high treason. The statute begins with reciting, that, in the uncertainty of adjudications, it became difficult to know what was treason, and what was not: and, to remove farther difficulty, it professes to declare all species of treason that should thereafter be so considered; and, by thus regulating the law, to secure the state and the constitution, and the persons of those interested in the executive departments of the government, from the common acts of violence that might be used to their destruction. The three first clauses of the statute seem to have gone a great way indeed upon the subject; because the object of the provisions was to protect the person—and I beg of you to understand what I mean by person—I mean the *natural person*; I mean no figure of speech—not the monarch in the abstract, but the natural man;—the first clause was made without the small-

est relation to the *executive power*, but solely to the natural body and person. The words are, "when a man doth compass or imagine the death of the king, or of our lady his queen, or their eldest son and heir, and thereof be upon sufficient proof attained of open deed by men of his condition, he shall be a traitor." This, I say, relates only to the natural person of the king. The son and heir of the king is mentioned in the same manner; but he has no power, and therefore a compassing his death must mean the death of his natural person; and so must it be in the case of the king. To conceive the purpose of destroying a common subject was once a felony of death; and that was expressed in the same language, compassing and imagining the death of the subject. It was thought right to dismiss that severe rigour of the law in the case of the subject; but it was thought right to continue it in the case of the king, in contradistinction to all the subjects within the realm.

The statute, after describing the persons, describes what shall be evidence of that high and abominable guilt: it must appear by open deed—the intention of the guilty heart must be proved by evidence of the open deed committed towards the accomplishment of the design. Perhaps in the hurry of speaking—perhaps from the mistakes of reporters; sometimes from one, and sometimes from the other, judges are too often made to say that such or such an overt act is, if proved to have been committed, ground upon which the jury must find the party guilty of the accusation. I must deny the position, not only in the reason of the thing, but I am fortified by the ablest writers upon the law of treason. In the reason of the thing; because the design entertained, and act done, are matters for the jury. Whether a party compassed the king's death or not, is matter for the jury; and, therefore, if a certain fact be proved, it is nonsense to say that such a *conclusion* must follow; because a conclusion of law would then be pronounced by the jury, not by the Court. I am warranted in this by the writers cited by Mr. Justice Foster; and therefore, gentlemen, upon the first count in the indictment you are to decide a plain *matter of fact*: first, Whether the prisoner did compass and imagine the death of the king? or whether there be any act proved, or apparent means taken, to which he resorted for the perpetration of that crime? Upon this subject many observations have already been made before me. I will take the liberty of making one: I do not know whether it has been made before. Even in a case where the overt act stated has of its own nature gone to the person of the king, still it is left to the jury to decide, whether it was done with the criminal purpose alleged, or not. In Russell's case,* there was an overt act of the conspiracy to seize the

guards; the natural consequence threatened from an act of gross violence so immediately approaching the king's person, might fairly be said to affect his life; but still it was left to the jury to decide whether that was done for the purpose of compassing the king's death. I mention this, because I think it a strong answer to those kinds of expressions, which in bad times fall from the mouths of prosecutors, neither law nor poetry, but sometimes half metaphysical. Laws may be enacted in the spirit of sound policy, and supported by superior reason; but when only half considered, and their provisions half enumerated, they become the plague of government, and the grave of principle. It is that kind of refinement and cant which overwhelmed the law of treason, and brought it to a metaphysical death; the laws are made to pass through a contorted understanding, vibratory and confused; and therefore, after a small interval from the first enactment of any law in Great Britain, the dreams of fancy get around, and the law is lost in the mass of absurd comment. Hence it was, that the statute gave its awful declarations to those glossarists, so that if any case should arise, apparently within the statute, they were not to indulge themselves in conjecture, but refer to the standard, and abide by the law as marked out for them. Therefore, I say, that the issue for the jury here is, to decide, in the words of the statute, whether the prisoners "did compass the death of the king," and whether they can say, upon their oaths, that there is any overt act proved in evidence, manifesting an intention of injury to the natural person of the king.

I know that the semblance of authority may be used to contradict me. If any man can reconcile himself to the miserable toil of poring over the records of guilt, he will find them marked, not in black, but in red, the blood of some unfortunate men, leaving the marks of folly, barbarity, and tyranny. But I am glad that men, who, in some situations, appear not to have had the pulse of honest compassion, have made sober reflections in the hour of political disgrace. Such has been the fate of lord Coke; who, in the triumph and insolence of power, pursued a conduct, which, in the hour of calm retreat, he regretted in the language of sorrow and disappointment. He then held a language which I willingly repeat, "that a conspiracy to levy war was no act of compassing the murder of the king." There he spoke the language of law and of good sense; for a man shall not be charged with one crime, and convicted of another. It is a narrow and a cruel policy to make a conspiracy to levy war an act of compassing the king's death, because it is a separate and distinct offence; because it is calling upon the honest affections of the heart, and creating those pathological effusions which confound all distinct principles of law, a grievance not to be borne in a state where the laws ought to be certain.

* *Antt.*, vol. 9, p. 577.

This reasoning is founded upon the momentary supposition that the evidence is true—for you are to recollect the quarter from whence it comes:—there has been an attempt, by precipitate confession, to transfer guilt to innocence, in order to escape the punishment of the law. Here, gentlemen, there is evidence of levying war, which act, it is said, tends to the death of the king. That is a constructive treason, calculated as a trap for the loyalty of a jury, therefore you should set bounds to proceedings of that kind; for it is an abuse of the law to make one class of offence, sufficiently punished already, evidence of another. Every court, and every jury, should set themselves against crimes, when they come to determine upon distinct and specified guilt; but they are not to encourage a confusion of crimes by disregarding the distinction of punishments, nor to show the effusion of their loyalty by an effusion of blood.

I cannot but say, that when cases of this kind have been under judgment in Westminster-hall, there was some kind of natural reason to excuse this confusion in the reports—the propriety of making the person of the king secure: a war immediately adjoining the precincts of the palace—a riot in London—might endanger the life of the king. But can the same law prevail in every part of the British empire? It may be an overt act of compassing the king's death to levy war in Great Britain; but can it be so in Jamaica, in the Bahama Islands, or in Corsica, when it was annexed to the British empire? Suppose, at that time, a man had been indicted there for compassing the king's death, and the evidence was, that he intended to transfer the dominion of the island to the Genoese or the French; what would you say, if you were told that was an act by which he intended to murder the king? By seizing Corsica he was to murder the king! How can there be any immediate attempt upon the king's life by such a proceeding? It is not possible, and therefore no such consequence can be probably inferred; and therefore I call upon you to listen to the Court with respect; but I also call upon you to listen to common sense, and to consider whether the conspiring to raise war in this country be an overt act of compassing the king's death in this country. I will go farther: If the statute of Edward 3rd had been conceived to make a conspiracy to levy war an overt act of compassing the king's death, it would be unnecessary to make it penal by any subsequent statute; and yet subsequent statutes were enacted for that purpose, which I consider an unanswerable argument, that it was not considered as coming within the purview of the clause against compassing the king's death.

Now, gentlemen, you will be pleased to consider what was the evidence brought forward to support this indictment. I do not think it necessary to exhaust your attention by stating at large the evidence given by cap-

tain Armstrong. He gave an account which we shall have occasion to examine with regard to its credibility. He stated his introduction, first, to Mr. Henry Sheares, afterwards to his brother; and he stated a conversation, which you do not forget, so strange has it been! But in the whole course of his evidence, so far from making any observation, or saying a word of connexion with the power at war with the king, he expressly said, that the insurrection, by whomsoever prepared, or by what infatuation encouraged, was to be a *home* exertion, independent of any foreign interference whatever. And, therefore, I am warranted in saying, that such an insurrection does not come within the first clause of the statute. It cannot come within the second, of adhering to the king's enemies, because that means his *foreign* enemies; and here, so far from any intercourse with them, they were totally disregarded.

Adhering to the king's enemies means co-operating with them, sending them provisions, or intelligence, or supplying them with arms. But I venture to say, that there has not been any one case, deciding that any act can be an adherence to a foreign enemy, which was not calculated for the advantage of that enemy. In the cases of Jackson,* Henssey,† and lord Preston,‡ the parties had gone as far as they could in giving assistance. So it was in Coigley's.§ But, in addition to this, I must repeat, that it is utterly unnecessary that the law should be otherwise, for levying war is of *itself* a crime; therefore, it is unnecessary, by a strained construction, to say, that levying war, or conspiring to levy war, should come within any other clause equally penal, but not so descriptive.

But, gentlemen, suppose I am mistaken in both points of my argument—suppose the prisoners (if the evidence were true) did compass the king's death, and adhere to the king's enemies: what are you to found your verdict upon? Upon your oaths: What are they to be founded upon? Upon the oath of the witness: and what is that founded upon?—Upon this, and this only—that he does believe there is an eternal God, an intelligent supreme Existence, capable of inflicting eternal punishment for offences, or conferring eternal compensation upon man after he has passed the boundary of the grave. But where the witness believes that he is possessed of a perishing soul, and that there is nothing upon which punishment or reward can be exerted, he proceeds, regardless of the number of his offences, and undisturbed by the terrors of exhausted fancy, which might save you from the fear that your verdict is founded upon perjury. Suppose he imagines that the body is actuated by some kind of animal machinery—

* *Ante*, vol. 25, p. 783.

† *Ante*, vol. 19, p. 1341.

‡ *Ante*, vol. 12, p. 645.

§ *Ante*, vol. 26, p. 1191.

I know not in what language to describe his notions—suppose his opinion of the beautiful system framed by the Almighty hand to be, that it is all folly and blindness compared to the manner in which he considers himself to have been created—or his abominable heart conceives its ideas, or his tongue communicates his notions;—suppose him, I say, to think so—what is perjury to him? He needs no creed, if he thinks his miserable body can take eternal refuge in the grave, and the last puff of his nostrils can send his soul into annihilation! He laughs at the idea of eternal justice, and tells you, that the grave, into which he sinks as a log, forms an entrenchment against the throne of God and the vengeance of exasperated justice!

Do you not feel, my fellow countrymen, a sort of anticipated consolation in reflecting upon the religion which gave us comfort in our early days, enabled us to sustain the stroke of affliction, and endeared us to one another; and, when we see our friends sinking into the earth, fills us with the expectation that we rise again—that we but sleep for a while to wake for ever. But what kind of communion can you hold—what interchange expect—what confidence place in that abject slave—that condemned, despaired-of wretch, who acts under the idea that he is only the folly of a moment—that he cannot step beyond the threshold of the grave—that that, which is an object of terror to the best, and of hope to the confiding, is to him contempt or despair?

Bear with me, my countrymen; I feel my heart running away with me—the worst men only can be cool. What is the law of this country? If the witness does not believe in God, or a future state, you cannot swear him. What swear him upon? Is it upon the book, or the leaf? You might as well swear him by a bramble or a coin. The ceremony of kissing is only the external symbol by which man seals himself to the precept, and says, “May God so help me, as I swear the truth.” He is then attached to the Divinity upon the condition of telling truth; and he expects mercy from heaven, as he performs his undertaking. But the infidel! By what can you catch his soul? or by what can you hold it? You repulse him from giving evidence; for he has no conscience—no hope to cheer him—no punishment to dread! What is the evidence touching that unfortunate young man? What said his own relation, Mr. Shervington? He had talked to him freely—had known him long. What kind of character did he give of him? Paine was his creed and his philosophy. He had drawn his maxims of politics from the vulgar and furious anarchy broached by Mr. Paine. His ideas of religion were adopted from the vulgar maxims of the same man—the scandal of inquiry—the blasphemous of his God as of his king. He bears testimony against himself, that he submitted to the undertaking of reading both his abo-

minable tracts—that abominable abomination of all abominations, Paine’s Age of Reason;—who professes to teach mankind, by acknowledging that he did not learn himself! Why not swear the witness upon the vulgar maxims of that base fellow, that wretched outlaw and fugitive from his country and his God? Is it not lamentable to see a man labouring under an incurable disease and fond of his own blotches? “Do you wish,” says he, “to know my sentiments with regard to politics? I have learned them from Paine! I do not love a king; and, if no other executioner could be found, I would myself plunge a dagger into the heart of George 3rd, because he is a king. And because he is my king, I swear, by the sacred missal of Paine, I would think it a meritorious thing to plunge a dagger into his heart, to whom I had devoted a soul which Mr. Paine says I have not to lend.” Is this the casual effusion of a giddy young man, not considering the meaning of what he said? If it were said among a parcel of boarding-school misses, where he might think he was giving specimens of his courage, by nobly denying religion, there might be some excuse. There is a latitude assumed upon some such occasions. A little blasphemy and a little obscenity passes for wit in some companies. But recollect it was not to a little miss, whom he wished to astonish, that he mentioned these sentiments, but to a kinsman, a man of that boiling loyalty—I confess I did not approve of his conduct in the abstract—talking of running a man through the body—but I admired the honest boldness of the soldier who expressed his indignation in such warm language. If Mr. Shervington swore truly, captain Armstrong must be a forsworn witness—it comes to that simple point. You cannot put it upon other ground. I put it to your good sense—I am not playing with your understandings—I am putting foot to foot, and credit to credit. One or other of the two must be perjured—Which of them is it? If you disbelieve captain Armstrong, can you find a verdict of blood upon his evidence?

Gentlemen, I go farther. I know your horror of crimes—your warmth of loyalty. They are among the reasons why I respect and regard you. I ask you then, will you reject such a witness? or would you dismiss the friend you regarded, or the child you loved, upon the evidence of such a witness? Suppose him to tell his own story. “I went to your friend, or your child—I addressed myself in the garb of friendship, in the smile of confidence; I courted confidence in order to betray it. I traduced you—spoke all the evil I could against you, to inflame him. I told him your father does not love you.” If he went to you, and told you this—that he inflamed your child, and abused you to your friend, and said, “I come now to increase it, by the horror of superadded cruelty,” would you dismiss from your love and affection the

child, or the friend you loved for years? You would not prejudge them. You would examine the consistency of the man's story; you would listen to it with doubt, and receive it with hesitation.

Says captain Armstrong, "Byrne was my bookseller; from him I bought my little study of blasphemy and obscenity, with which I amused myself." "Shall I introduce Mr. Sheares to you?"—not saying which. What was done then? He thought it was not right till he saw captain Clibborn. Has he stated any reason why he supposed Mr. Sheares had any wish at all to be introduced to him? any reason for supposing that Byrne's principles were of that kind? or any reason why he imagined the intercourse was to lead to any thing improper? It is most material that he says he never spoke to Byrne upon political subjects: therefore he knew nothing of Byrne's principles, nor Byrne of his. But the proposal was made; and he was so alarmed, that he would not give an answer until he saw his captain. Is not this incredible? There is one circumstance which made an impression upon my mind, that he assumed the part of a public informer; and, in the first instance, came to the field with pledgets and bandages. He was scarcely off the table, when a witness came to his credit. It is the first time that I saw a witness taking fright at his own credit, and sending up a person to justify his own character.

Consider how he has fortified it. He told it all to captain Clibborn! He saw him every evening, when he returned, like a bee, with his thighs loaded with evidence. What is the defence?—That the witness is unworthy of belief. My clients say their lives are not to be touched by such a man: he is found to be an informer—he marks the victim. You know the world too well, not to know that every falsehood is reduced to a certain degree of malleability by an alloy of truth. Such stories as these are not pure and simple falsehoods. Look at your Oateses, your Bedloes, and Dugdales! I am disposed to believe, shocking as it is, that this witness had the heart, when he was surrounded by the little progeny of my client,—when he was sitting in the mansion in which he was hospitably entertained,—when he saw the old mother, supported by the piety of her son, and the children basking in the parental fondness of the father,—that he saw the scene, and smiled at it—contemplated the havoc he was to make, consigning them to the storms of a miserable world, without having an anchorage in the kindness of a father!

* "The writer of this is assured, by a gentleman now in Dublin, and who is free from any political zeal, which could induce him to invent or distort a fact, that, upon his dining one day at the house of Henry Sheares, immediately before his arrest, he observed Armstrong, who was one of the guests, taking his

Can such horror exist, and not waken the rooted vengeance of an eternal God? But it cannot reach this man beyond the grave; therefore I uphold him here. I can imagine it, gentlemen;—because, when the mind becomes destitute of the principles of morality and religion, all within the miserable being is left a black and desolated waste, never cheered by the rays of tenderness and humanity—when the belief of eternal justice is gone from the soul of man, horror and execution may set up their abode—I can believe, that the witness (with what view, I cannot say—with what hope I cannot conjecture—you may) did meditate the consigning of these two men to death, their children to beggary and reproach—abusing the hospitality with which he was received, that he might afterwards come here and crown his work, having first obtained the little spark of truth, by which his mass of falsehood was to be put into animation.

I have talked of the inconsistency of the story. Do you believe it, gentlemen? The case of my client is, that the witness is perjured; and you are appealed to, in the name of that ever-living God whom you revere, but whom he despiseth, to consider that there is something to save him from the baseness of such an accuser.

But I go back to the testimony. I may wander from it; but it is my duty to stay with it. Says he, "Byrne makes an important application:—I was not accustomed to it:—I never spoke to him; and yet he, with whom I had no connexion, introduces me to Sheares. This is a true brother." You see, gentlemen, I state this truly:—he never talked to Byrne about politics:—how could Byrne know his principles?—By inspiration! He was to know the edition of the man, as he knew the edition of books. "You may repose all confidence." I ask not is this true; but I say it can be nothing else than false. I do not ask you to say it is doubtful—it is a case of blood—of life or death. And you are to add to the terrors of a painful death the desolation of a family, overwhelming the aged with sorrow, and the young with infamy! Gentlemen, I should disdain to trifle with you: I am pinning your minds down to one point, to show you to demonstration that nothing can save your minds from the evidence of such perjury—not because you may think it false, but because it is impossible it can be true. I put into one of the scales of justice that execrable perjury; and I put into the other the life, the fame, the fortune, the children of my client. Let not the balance tremble as you hold it: and, as you hold it now, so may the balance of eternal justice be held for you.

But is it upon his inconsistency only I call

entertainer's little children upon his knee, and, as it was then thought, affectionately caressing them."—*Life of Curran by his Son Vol. 2, p. 96, note.*

upon you to reject him? I call in aid the evidence of his own kinsman, Mr. Shervington, and Mr. Drought; the evidence of Mr. Bride, and Mr. Graydon. Before you can believe Armstrong, you must believe that all these are perjured. What are his temptations to perjury?—the hope of bribery and reward:—and he did go up with his sheets of paper in his hand:—here is one—it speaks treason:—here is another—the accused grows paler:—here is a third—it opens another vein.—Had Shervington any temptation of that kind? No: let not the honest and genuine soldier lose the credit of it. He has paid a great compliment to the proud integrity of the king his master, when he did venture, at a time like this, to give evidence—"I would not have come for an hundred guineas!" I could not refuse the effusion of my heart, and avoid exclaiming, "May the blessings of God pour upon you: and may you never want an hundred guineas."

There is another circumstance. I think I saw it strike your attention, my lords. It was the horrid tale of the three peasants whom he met upon the road:—they had no connexion with the rebels. If they had, they were open to a summary proceeding. He hangs up one, shoots a second, and administers torture to the body of the third, in order to make him give evidence. Why, my lords, did you feel nothing stir within you? Our adjudications have condemned the application of torture for the extraction of evidence. When a wild and furious assassin had made a deadly attempt upon a life of much public consequence, it was proposed to put him to the torture, in order to discover his accomplices. I scarcely know whether to admire most the awful and impressive lesson given by Felton, or the doctrine stated by the judges of the land. "No," said he, "put me not to the torture; for, in the extravagance of my pain, I may be brought to accuse yourselves." What say the judges? "It is not allowable, by the law and constitution of England, to inflict torture upon any man, or to extract evidence under the coercion of personal sufferings." Apply that to this case: if the unfortunate man did himself dread the application of such an engine for the extraction of evidence, let it be an excuse for his degradation, that he sought to avoid the pain of body, by public infamy. But there is another observation more applicable:—says Mr. Drought, "Had you no feeling, or do you think you will escape future vengeance?"—"Oh, sir, I thought you knew my ideas too well to talk in that way." Merciful God! Do you think it is upon the evidence of such a man, that you ought to consign a fellow subject to death? He who would hang up a miserable peasant to gratify caprice, could laugh at remonstrance, and say, "You know my ideas of futurity." If he thought so little of murder-

ing a fellow creature without trial, and without ceremony, what kind of compunction can he feel within himself when you are made the instruments of his savage barbarity? He kills a miserable wretch, looking, perhaps, for bread for his children, and who falls unaccused and uncondemned. What compunction can he feel at sacrificing other victims, when he considers death as eternal sleep, and the darkness of annihilation? These victims are at this moment led out to public execution; he has marked them for the grave; he will not bewail the object of his own work; they are passing through the vale of death, while he is dosing over the expectancy of mortal annihilation.

Gentlemen, I am too weak to follow the line of observation I had made; but I trust I am warranted in saying, that if you weigh the evidence, the balance will be in favour of the prisoners.

But there is another topic or two to which I must solicit your attention. If I had been stronger, in a common case I would not have said so much; weak as I am, here I must say more. It may be said that the parol evidence may be put out of the case; that, attribute the conduct of Armstrong to folly, or passion, or whatever else you please, you may safely repose upon the written evidence. This calls for an observation or two. As to Mr. Henry Sheares, that written evidence, even if the hand-writing were fully proved, does not apply to him: I do not say it was not admissible. The writings of Sidney, found in his closet, were read; justly according to some: but I do not wish to consider that now. But I say the evidence of Mr. Dwyer has not satisfactorily established the hand-writing of John. I do not say it is not proved to a certain extent, but it is proved in the very slightest manner that you ever saw paper proved;—it is barely evidence to go to you, and the witness might be mistaken. An unpublished writing cannot be an overt act of treason; so it is laid down expressly by Hale and Foster. A number of cases have occurred, and decisions have been pronounced, asserting that writings are not overt acts, for want of publication; but if they plainly relate to an overt act proved, they may be left to the jury for their consideration. But here it has no reference to the overt act laid; it could not have been intended for publication until *after* the unfortunate event of revolution had taken place, and therefore it could not be designed to *create* insurrection. Gentlemen, I am not counsel for Mr. John Sheares, but I should be guilty of cruelty, if I did not make another observation. This might be an idle composition, or the translation of idle absurdity from the papers of another country: the manner in which it was found leads me to think *that* the more probable. A writing designed for such an event as charged would hardly be left in a writing box, unlocked, in a room near the hall door. The manner of its finding also

* See vol. 3, p. 371.

shows two things; that Henry Sheares knew nothing of it, for he had an opportunity of destroying it, as Alderman Alexander said he had; and farther, that he could not have imagined his brother had such a design; and it is impossible, if the paper had been designed for such purposes, that it would not be communicated to him.

There is a point to which I will beseech the attention of your lordships. I know your humanity, and it will not be applied merely because I am exhausted or fatigued. You have only one witness to any overt act of treason. There is no decision upon the point in this country.* Jackson's case was the first: lord Clonmell made an allusion to the point; but a jury ought not to find guilty upon the testimony of a single witness. It is the opinion of Foster, that by the common law, one witness, if believed, was sufficient. Lord Coke's opinion is that two were necessary. They are great names: no man looks upon the works of Foster with more veneration than myself, and I would not compare him with the depreciated credit of Coke; I would rather leave lord Coke to the character which Foster gives him; that he was one of the ablest lawyers, independent of some particulars, that ever existed in England. In the wild extravagance, heat, and cruel reigns of the Tudors, such doctrines of treason had gone abroad as drenched the kingdom with blood. By the construction of crown lawyers, and the shameful complaisance of juries, many sacrifices had been made, and therefore it was necessary to prune away these excesses by the statute of Edward 6th: and therefore there is every reason to imagine, from the history of the times, that lord Coke was right in saying, that not by new statute, but by the common law, confirmed and redeemed by declaratory acts, the trials were regulated. A law of Philip and Mary was afterwards enacted; some think it was a repeal of the statute of Edward 6th, and some think not. I mention this diversity of opinions with this view, that in this country, upon a new point of that kind, the weight of criminal prosecution will turn the scale in favour of the prisoner; and that the Court will be of opinion, that the statute of William 3rd did not enact any new thing unknown to the common law, but redeemed it from abuse. What was the state of England? The king had been declared to have abdicated the throne:—prosecutions, temporising juries, and the arbitrary construction of judges, condemned to the scaffold those who were to protect the crown;—men who knew, that, after the destruction of the cottage, the palace was endangered. It was not, then, the

* This is not correct: it was the unanimous opinion of the three judges of the court of King's-bench, before whom Jackson was tried, that in Ireland two witnesses were not necessary in cases of High Treason. See Jackson's trial, ante vol. 25, p. 783.

enactment of any thing new; it was founded in the caution of the times, and derived from the maxims of the constitution. I know the peevishness with which Burnet observed upon that statute. He is reprehended in a modest manner by Foster. But what says Blackstone, of great authority, of the clearest head, and the profoundest reading. He differs from Montesquieu, the French philosopher.

“ In cases of treason, there is the accused's oath of allegiance to counterpoise the information of a single witness; and that may, perhaps, be one reason why the law requires a double testimony to convict him: though the principal reason, undoubtedly, is to secure the subject from being sacrificed to fictitious conspiracies, which have been the engines of profligate and crafty politicians in all ages.”*

Gentlemen, I do not pretend to say that you are bound by an English act of parliament. You may condemn upon the testimony of a single witness. You, to be sure, are too proud to listen to the wisdom of an English law. Illustrious independents! You may murder under the semblance of judicial forms, because you are proud of your blessed independence! You pronounce that to be legally done which would be murder in England, because you are proud! You may imbrue your hands in blood, because you are too proud to be bound by a foreign act of parliament: and when you are to look for what is to save you from the abuse of arbitrary power, you will not avail yourself of it, because it is a foreign act of parliament! Is that the independence of an Irish jury? Do I see the heart of any Englishman move when I say to him, “Thou servile Briton, you cannot condemn upon the perjury of a single witness, because you are held in the tight waist-coat of the cogency of an act of parliament? If power seeks to make victims by judicial means, an act of parliament would save you from the perjury of abominable malice. Talk not of proud slavery to law, but lament that you are bound by the integrity and irresistible strength of right reason; and, at the next step, bewail that the All-powerful Author of nature has bound himself in the illustrious servitude of his attributes, which prevent his thinking what is not true, or doing what is not just.” Go, then, and enjoy your independence. At the other side of the water your verdict, upon the testimony of a single witness, would be murder. But here you can murder without reproach, because there is no act of parliament to bind you to the ties of social life, and save the accused from the breath of a perjured informer. In England a jury could not pronounce a conviction upon the testimony of the purest man, if he stood alone; and yet what comparison can that case bear with a

* 4 Bl. Com. 358.

blighted and marred informer? where every word is proved to be perjury, and every word turns back upon his soul?

I am reasoning for your country and your children, to the hour of your dissolution: let me not reason in vain. I am not playing the advocate: you know I am not. Your conscience tells you I am not. I put this case to the bench: the statute 7 William 3rd, does not bind this country by its legislative cogency; and will you declare positively, and without doubt, that it is common law, or enacting a new one? Will you say it has no weight to influence the conduct of a jury from the authority of a great and exalted nation?—the only nation in Europe where liberty has seated herself. Do not imagine that the man who praises Liberty is singing an idle song:—for a moment, it may be the song of a bird in his cage:—I know it may. But you are now standing upon an awful isthmus, a little neck of land, where liberty has found a seat. Look about you—look at the state of the country—the tribunals that dire necessity has introduced. Look at this dawn of law, admitting the functions of a jury. I feel a comfort. Methinks I see the venerable forms of Holt and Hale looking down upon us, attesting its continuance. Is it your opinion that bloody verdicts are necessary—that blood enough has not been shed—that the bonds of society are not to be drawn close again, nor the scattered fragments of our strength bound together to make them of force; but that they are to be left in that scattered state, in which every little child may break them to pieces? You will do more towards tranquilizing the country by a verdict of mercy. Guard yourselves against the sanguinary excesses of prejudice or revenge; and, though you think there is a great call of public justice, let no unmerited victim fall.

Gentlemen, I have tired you. I durst not relax. The danger of my client is from the hectic of the moment, which you have fortitude, I trust, to withstand. In that belief I leave him to you; and, as you deal justice and mercy, so may you find it. And I hope that the happy compensation of an honest discharge of your duty may not be deferred till a future existence—which this witness does not expect—but that you may speedily enjoy the benefits you will have conferred upon your country.

REPLY.

Mr. *Prime Serjeant*.—My Lords and Gentlemen of the Jury;—I find myself called upon at this late hour to discharge a duty the most difficult for an advocate to perform. Though I am intrusted, on the part of the public, to apply the evidence which has been given to the several overt acts of the treason charged upon the gentlemen unfortunately standing at the bar; yet the justice due to them is as much a part of my duty as the justice due to the public—and I trust that, as my honour

and conscience call upon me nought to extenuate which can be fairly pressed against them—so I trust they will prevent me from setting down aught in malice. The investigation of the truth is the proper duty of the advocate, the jury, and the Court; and therefore it would ill become me to warm your imaginations or increase your resentments, by stating the atrocity of the conspiracy, in which it is charged that the prisoners at the bar were engaged; not unlike in many features, but surpassing in its extent and sanguinary design, that in which Cataline engaged against the Roman republic.—But I beseech you, gentlemen, if possible, to discharge your minds of every impression, which they may have heretofore received. Weigh the evidence which has been given, with the caution and attention ever due in a case of life, and if you can find a loop whereon to hang a rational doubt, let the prisoners have the advantage of it.

The gentlemen at the bar stand charged with two species of treason—compassing the king's death—and adhering to his enemies. In cases of common criminal offences, the law is satisfied by charging the party with the specific crime, and bringing forward upon the day of trial, without previous notice to the accused, such facts as shall be judged proper by his prosecutor, to establish his guilt—and in such cases the prisoner is not entitled to the aid of counsel. But in cases of high treason, such is the tenderness of the law—such is its anxiety for the safety of the subject—that it requires that the indictment, which makes the charge, should also state the overt acts by which the charge is to be established. The law provides, that the prisoner should be furnished with the indictment stating those facts five clear days previous to his arraignment, and that he should have counsel and agent of his own nomination to conduct his defence. Thus he is previously apprized of the facts which are made the foundation of his crime, and full opportunity is given to him either to controvert or explain them.

The indictment enumerates several overt acts, which I shall just now particularly state. You, in the first place, should consider and try, whether any of those acts was done by the accused; and, if you find in the affirmative, then you should consider the tendency of such act to the accomplishment of that treason wherewith they are charged. For I will venture to assert, that the Court will inform you, that any one overt act of the tendency annexed to it by the indictment, amounts to a manifestation of that intention and imagination of the heart, which constitutes the crime of high treason. Overt acts, I should inform you, are the means made use of to effectuate the intentions and imaginations of the heart: and I will farther presume to say, that the Court will inform you, that to discover this malignant compassing of the heart, it is not necessary, that the acts or

attempts should directly and immediately aim at that life which cannot be taken away without the subversion of all order and society, and involving a whole nation in blood and confusion; but that any act having a tendency, though not so immediate, to the same fatal end, will furnish abundant proof of the guilt of the heart—of the criminal intention which constitutes the crime.

Gentlemen, it is clear and certain law, that every measure tending to depose the king is an overt act of treason; words of advice or persuasion, and all consultations for that purpose are clearly so. But it was for this day reserved to broach the alarming and monstrous position, that because the king is not resident within the realm of Ireland, that within this kingdom there could be no treason of compassing his death:—I trust in God, that the authority of such opinions has not gone abroad, and that the rebellion, which has for some time ravaged the country, has not been matured by such a doctrine. If that doctrine is well founded, all those who have suffered upon that charge in Ireland, suffered unjustly; every departure of the king from Great Britain was a suspension of that branch of the 25th of Edward 3rd, and while William the third and George the first and second were out of that kingdom, fighting in support of the religion and liberties of their kingdoms, their deaths might have been compassed with impunity. Treason does not depend on the local residence of the king; the order and well being of society requires that his person, wherever he may be, should be sacred.

The counsel for the prisoners have, I am sure without intending it, endeavoured not only to weaken, but indispose the public mind to the known and acknowledged law of the land. They have endeavoured to impress upon you, that the law of Great Britain is more tender of the life of the subject than the law of Ireland; that two witnesses are there necessary to convict of high treason; that the statute which makes that provision there was declaratory of the common law; and if it was not, that yet it should be the statute law of Ireland; thus endeavouring to seduce you upon erroneous principles to find a verdict against evidence and against law.

This point was made upon the trial of Jackson, at the bar of the Court of King's Bench, in Easter Term, 1795; and, upon mature deliberation, unanimously over-ruled. All the authorities—Coke, Hale, and Foster—were cited. It was again made at the commission of Oyer and Terminer, held after Michaelmas Term, 1795, and again over-ruled by the judges who presided; and it is this day again brought forward as calling for a serious discussion. If the learned counsel for the prisoners think it tenable, they may be justified in their endeavours; but the present case does not warrant the objection, futile as it is. They have erroneously stated, that by the

law of Great Britain two witnesses were necessary to the same overt act of treason; whereas even by that law, one witness to one overt act, and another to another overt act of the same treason will be sufficient. Now, gentlemen, though the same law were enacted in Ireland, a law which, it has been observed, "was calculated to make men as safe in all treasonable practices as possible," yet I will satisfy you and the Court, that in this case there have been produced three witnesses, each going to prove an overt act of the same treason. How dangerous and unwarranted then must it be, to endeavour to impress upon the public mind, that if tried in Great Britain, the prisoners at the bar, conceding the truth of the evidence given against them, could not be convicted.

I must trespass on you, late as it is, to state the overt acts laid in the indictment, and the evidence adduced as it applies to each; and if I should mistake or exaggerate I conjure the prisoners and their counsel to believe, that it was equally against my wish and intention so to do, and to set me right.

The first overt act states, that the prisoners with others did assemble, meet, conspire, agree, and consult to stir up, raise, and levy rebellion and war, and to procure arms and ammunition for that purpose, and to procure numbers of armed men to rise; the second is, that they did conspire to depose the king; the third is, that they did conspire to overturn by force the government of the country. You will recollect that it has been proved, that Henry Sheares, upon his introduction to captain Armstrong, declined any communication, but in the presence of his brother John; that the traitorous communication was opened with John; that after a subsequent meeting Henry avowed his knowledge of that communication, and alleged in excuse of his absence, a necessary attendance upon one of the committees. You will recollect that his presence and participation in many of the interviews between his brother John and captain Armstrong were proved, and those facts, the Court will inform you, involve and connect him with the acts of John. The proclamation—the *Jo Triumphe* of that sanguinary and successful rebellion which they had anticipated—was proved—and not controverted—to be of the hand-writing of John Sheares; and furnishes, with the testimony of captain Armstrong, clear and decisive evidence of the three first overt acts. Upon the 16th of May, Mr. John Sheares told him, that a rising would soon take place—the proclamation considers it as complete—that he waited only for the Executive to fix the day, for that an home exertion would be made, not waiting any longer for the French; words all arguing a foregone conclusion, and coercing the belief of the jury of the three first overt acts, and their too obvious tendency.

* See Post. 221.

The learned counsel then proceeded to state the several other overt acts, and with great strength and clearness, to apply the evidence given in support of each; but he particularly dwelt upon the 16th overt act, which is, that they did assemble to take and receive returns, accounts, numbers, and names of officers, men and arms, to be employed in raising and levying war and rebellion against the king, and did in writing set down the said returns, accounts, numbers, and names, with an intent that they should be employed in raising and levying war against the king.

To this overt act it appears to me, that there is the evidence of Kearney, as well as to the three first overt acts. You will recollect how reluctantly he gave it; though he confessed that he himself was a colonel in the rebel army of United Irishmen; that he did, in the month of May last, attend a meeting of the officers of that army, and that John Sheares was present; that returns of men were made from different quarters; and that these numbers were written down, received, and taken. This evidence is strongly concurrent with the evidence of captain Armstrong, as a former, and seemingly-unconnected transaction. Captain Armstrong has told you, that on the twentieth of May, John Sheares produced a letter, on the back whereof were entries and memorandums of men, arms, and ammunition, made from different quarters, and under different names; and on the 21st of May, John Sheares was apprehended, and a letter corresponding with such a description was found upon his person. The evidence of Kearney is strongly concurrent also with the intended proclamation, proved to be of the hand-writing of John Sheares: this proclamation furnishes such strong, indeed conclusive evidence, as to preclude the necessity of comment or observation. The spirit and contents of it will not admit of aggravation. Black will not take any other colour.

Thus, gentlemen, I may say that there is evidence for your consideration to every overt act charged. But the improbability of the evidence of captain Armstrong has been pressed upon your consideration. You will recollect the manner in which his connection with the prisoners at the bar commenced; you will recollect that it has been proved by captain Clibborn, that he had previously apprised him and colonel L'Estrange of the application to him, and that he acted under their approbation, and that by his conduct he has been the saviour of his country, from the ruin of which the prisoners promised him that glorious distinction. You will recollect, that the cross-examination of captain Armstrong by the prisoners' counsel, tended to prove him of republican inclination, and that some of the witnesses of the prisoners tended to make the same impression. Did not the supposed inclination of captain Armstrong point him out as a proper instrument of their conspiracy? Did not the prisoners at the outset of

the connexion assume a knowledge of his principles, and, to further them most effectually, propose the seduction of the King's County regiment, the seizing of the camp of Lehaunstown, and an active application to the non-commissioned officers and privates of the Roman Catholics, as most likely to be operated upon? thus calling in the weakness and bigotry of religion in aid of this horrid conspiracy! But see how the written evidence corroborates the testimony of captain Armstrong; the proclamation proves it in the gross; the letter found upon the person of John Sheares on the 21st of May, corresponds with a degree of exactness with the letter shown by him to captain Armstrong on the 20th of May; the note of introduction to serjeant Connor—of a captain to his serjeant!—written with a suspicious obscurity and bespeaking confidence for him, and procuring a pass for him to town, on the next day; the letter proved to have been written by John Sheares, and directed to captain Armstrong, found on the 21st of May in the house of Cormick, since a fugitive for treason, written with a suspicious obscurity, bespeaking his confidence in Mr. Cormick, and intimating that serjeant Connor did not come to town as was expected. Recollect that it was proved, that John Sheares declared he was to go down to organize Cork. This letter was therefore necessary to bring captain Armstrong and Cormick together. Recollect that John Sheares was arrested in the house of Lawless, and that Lawless is also a fugitive for treason. Can this mass of evidence be done away in the opinion of a discriminating jury, by the ridiculous attempts which have been made to impute atheistical opinions (denied upon his oath) to captain Armstrong?

If his evidence were to be contradicted, why not produce Byrne, who introduced them to each other? Why not Lawless, who was introduced by John Sheares to captain Armstrong? They were witnesses competent for the prisoners, but they would not venture to resort to them.

Some of the witnesses of the prisoner have declared, that they never communicated the subject of their evidence, and yet, as if by a miracle, the same questions were put to captain Armstrong, on his cross-examination, as to them on their direct.

To delay you with observations on the evidence impeaching Mr. Armstrong, would argue, that it either had or merited to have any weight with you. I am much mistaken if it has. Judge of it by the substance and manner in which it was given.

Many reputable gentlemen were called to the moral character of the prisoners, and some spoke highly of it; but there was not, to my recollection, a question hazarded as to their loyalty, or principles of government, save one, by the prisoner John Sheares; the answer to which, to say no more, cannot serve him. If it were a case that could be

affected by such puny circumstances, it might have been wise to stop in the inquiry.

I have trespassed on you too long, and shall only add, that if upon this evidence you can have a rational doubt, you will of course acquit the prisoners; but if you do not entertain such a doubt, I conjure you by your oaths, that, uninfluenced by terror or apprehension of any kind, you do, however bitter it may be, discharge your duty to yourselves, your country, and your God.

Mr. Henry Sheares.—My lord, I wish to say a word.

Lord Carleton.—It is not regular after the counsel for the Crown have closed. I asked you at the proper time; you then declined. However, go on.

Mr. Henry Sheares.—My Lord, after the able and eloquent defence which has been made for me by my counsel, it would ill become me to add any thing to it. But there is one part of it, which appears to me not to have been sufficiently dwelt upon. It is respecting that paper. I protest, most solemnly, my lord, I knew nothing of it; to know of it, and leave it where it was when the magistrate came, is a folly so glaring, that I cannot be supposed to have been guilty of it. When the alderman rapped at the door, I asked what was the matter? After he was admitted, he said he wanted my papers; I told him they were there. My lords, is it possible I could commit myself and all I hold dear, by so egregious an act of folly? Having the dearest sources of happiness around me, should I sacrifice them, and myself, by leaving such a document in an open writing-box?

My lords, I beg your lordships' pardon. I thank you for this indulgence. It would be irregular for me to expatiate farther. The evidence of captain Armstrong is one of the most ingenious and maliciously-fabricated stories, with respect to me, I ever heard of. My lords, I should think I could not be legally implicated by any paper found in that way.

SUMMING-UP.

Lord Carleton.—Gentlemen of the Jury:—The indictment in this case imputes to the prisoners at the bar crimes of the utmost magnitude, in which the prisoners have the most important concern, in which justice is equally interested. On the one hand, these crimes go to the very existence of the state; on the other, the consequences of conviction are of the most penal nature. You will therefore determine impartially between the public, which calls for the prosecution of real offenders, and the prisoners, who are entitled to an acquittal if they are innocent; and I am sure you will decide this case, without being influenced, either by the present critical situation of the country, or the pathetic address to your passions which you have heard from the prisoners' counsel.

VOL. XXVII.

Gentlemen, I will state to you, as well as I can from the weak state in which I am after so long a sitting, the law respecting high treason, so far as may be necessary for the decision of this case; the overt acts contained in the indictment upon which the prisoners have been given in charge to you; and the evidence which has been given in support of them; and I shall then trouble you with a few observations.

The indictment charges two species of treason—compassing the death of the king, and adhering to his enemies. In indictments of this kind, it is necessary to set forth some overt acts; they are the steps, means, or measures, taken in prosecution of, and to effectuate the intent and design proposed; if any one of them be properly laid and proved, it will warrant a conviction, although the evidence be not sufficient to support the others.

As to the first species of treason, I shall state what I take to be the law, as clearly laid down by authors of great legal ability, clear understanding, approved integrity, and constitutional attachment; and in laying down the law as I shall state it from these venerable authors, I shall do it very differently from the way in which it has been represented by the learned counsel for the prisoners. They lay it down, as is very often done in prosecutions of this nature, more from their own imagination than with a view to those venerable authors, to whom the Bench are obliged to look for information. As to the first species of treason, the compassing and imagining the death of the king; the life of the king, as the chief magistrate, is so linked and interwoven with the existence of the state, that if it be taken away, convulsions must arise, destroying every bond of society, levelling all order, annihilating all liberty and property, rooting out our noble constitution, and overspreading the land with desolation. The law, therefore, with anxious solicitude for his protection, renders the intention to destroy the king, as criminal as its accomplishment would be, provided such intention is acted upon, and any measures are adopted for carrying it into execution. Every stroke levelled at the king's person, aims destruction at the public tranquillity, and the guilty purposes of the mind are placed in the same degree of guilt as if they were completely carried into execution, as soon as any measures have been taken to render them effectual: the care which the law has taken of the personal safety of the king, is not confined to acts directly aiming at his life, it is extended to every thing wilfully and deliberately done or attempted, whereby, in the natural course of things, or in the common experience of mankind, his life may be endangered; and the measures taken in such cases may at the same time be evidence and overt acts of compassing his death.

Among the cases cited by authors of the

highest reputation, the following have been considered as law: Forming conspiracies to usurp by force, and in defiance of the authority of parliament, the government of the kingdom, to destroy its constitution, and in so doing to destroy the monarchy; or to levy war against the king's person, thereby to depose him, or otherwise to depose his majesty, are overt acts of compassing the king's death within the statute of 25th of Edward 3rd. So is the holding consultations, or entering into agreements, or advising, soliciting, or persuading others for any such purposes, or assenting to such purposes. The law is the same as to the entering into any other measures to effectuate any of said purposes. The moment the power of the government is usurped, the king is in effect deposed; he is bound by the duty of his situation to resist such attempts, even at the peril of his life, and the several acts which I have mentioned whereby his life may be endangered, have been deemed under the sound construction of the statute, and upon principles of substantial political justice, overt acts of compassing his death. It is not material, when the overt act is a conspiracy to depose the king, or the levying or conspiring to levy direct war against his person, involving an intention to depose him, whether the person charged with compassing the king's death has in his contemplation all the mischief which may flow from the acts which he meditates; a distinct imagination, or primary intent of personal injury to the king does not necessarily in such case form any part of the crime; if the death of the king is, in the nature of things, and the common experience of mankind, likely to result from the measures taken and the acts done, it is sufficient; and the act done is considered as done in pursuance of an intent to compass the death of the king.

This, gentlemen, is the unanimous opinion of the Court, and the law in this respect does not rest upon our authority only. It was the unanimous opinion of the judges who sat on the trials of Tooke and Hardy;* adhering to the king's enemies is likewise an overt act of compassing the king's death, it manifests a design to depose him. He is bound to support the law and the constitution, and to defend the kingdom against his enemies, and in the contest his life may be put in hazard.

Gentlemen, an attempt has been made, for the first time (depending merely upon the ingenuity of counsel) to contend, that the king not having personal residence here, a conspiring to depose him, or a levying of war against his person, cannot be overt acts of compassing his death. If we were to adopt that opinion, we must expunge from the 25th of Edward 3rd one of the most important provisions: we must go against the concurring opinions of all our predecessors, who have considered

* See them in vols. 24 and 25 of this collection.

the law of both countries in this respect, as exactly the same; and that as applicable to Ireland, to levy war against the king's person, or conspiring to levy such war, or otherwise to depose the king, are overt acts of compassing his death, whether he be within this country or not; and therefore it is the unanimous opinion of the bench, that there is no distinction between the law of England and Ireland on this point.

Gentlemen, another observation has been made, and pressed upon us;—when I take notice of these observations, in which I do not agree, I do not mean to find fault with the counsel; it is my respect for them which induces me to answer their arguments;—it is said, that in treason, two witnesses are necessary here: that they were necessary by the common law of England, and that the common law being the same in both countries, two witnesses are necessary here; that the common law is the same in both countries, I adopt; but as to this point of two witnesses being necessary in treason in this kingdom, with the concurrence of the Bench, and the opinion of several judges of this country given in some of the late cases here, I avow, that two witnesses are not necessary; they are necessary in England by a statute, which does not prevail in the same extent here. It is very true, that lord Coke was of a different opinion, as to the common law of England; however lord Hale, and Mr. Justice Foster did not agree with lord Coke, and Mr. Justice Foster says, it was the received opinion, that lord Coke was wrong.

Another observation has been made, that that which constitutes one species of treason cannot be laid as an overt act of another, However the contrary opinion is the settled law of England, and lord Coke was wrong in his opinion in that respect as well as the other.

Gentlemen, I have stated thus much as applicable to the first count in the indictment. The second count is for adhering to the king's enemies within the realm; that is also treason within the statute of Edward 3rd. Aid or comfort afforded to the king's enemies within the realm, or elsewhere, whereby they may be strengthened, or better enabled to carry on war, armaments, or enterprises against us, or to defend themselves, or whereby the king's hands might be weakened, are acts of adherence to his enemies; any act whereby the relative war-power of the enemy might be promoted, if done with that intent, is a treasonable adherence, though the attempt should prove abortive, and not produce the intended effect; because the party has done all in his power to render it effectual; and, gentlemen, wisely the law is so; for traitors would escape, if no punishment could be inflicted while the government existed; and it would be too late to attempt it when the government was overturned.

No adherence to the rebels, now in arms

against the king and his government, will constitute treasonable adherence within the statute: under this indictment, upon this charge the overt acts must be done, with the intent and design of assisting *the French*, and must be so considered by you. Notoriety is sufficient evidence of war, and of the French being enemies to the king, and his government.

Gentlemen, I shall now state the overt acts, which are set forth in the indictment, that you may see, how far you think all or any of them are established; I shall also state the evidence, and I shall afterwards state the object which you are to look at in a narrow point of view, for your consideration, that your attention may not be distracted.

[Here his lordship enumerated the several overt acts in the indictment, classing them as they related to the same subjects, and then proceeded.]

Gentlemen, the two prisoners stand indicted, as concerned in these several acts; and there has been evidence, if you give credit to it, that implicates them both in a conspiracy; and that having been done, every act committed by either of them in the prosecution of that conspiracy is evidence against the other, to the extent of ascertaining the nature of the conspiracy; but it is always in such cases open to the jury to separate the prisoners, and to say how far guilt shall ultimately be confined to one, or extended to both, by the particular evidence in the cause: therefore, gentlemen, in attending to the evidence in this case, you will consider it with its different relative bearings, to the two prisoners at the bar. Gentlemen, the first witness produced was John-Warneford Armstrong, he deposed.—

[Here his lordship minutely recapitulated the evidence of this witness, and observed]—

In stating this evidence, in order to make the observations thereon which I have submitted to your consideration, I have taken it for granted, that it is true; leaving it however to you finally to decide upon the credit of the witness, attempted to be impeached as he has been, and after the observations which you have heard from the prisoners counsel.

[His lordship then proceeded to recapitulate the rest of the evidence, observing upon it as he stated it, and particularly pointing to the consideration of the jury such parts of it as tended to corroborate the evidence of Armstrong. And when he came to that part relative to the paper found by alderman Alexander, he mentioned that it was found in a writing box which lay upon a table, open and unlocked, and that it did not appear in evidence whose property that writing box was, or to which of the prisoners the house belonged.]

Mr. *John Sheares*.—I beg your lordship's pardon; it was in *my* writing box that paper was found.

Lord *Carleton*.—I could not call upon the prisoner for any admission of that kind, and I wish the case may be determined on the evidence alone. This paper was in the hand-writing of John: no evidence was offered to disprove his hand-writing to it. It does not appear by express evidence, which of the prisoners was to be deemed as having it in his possession; as against John, who had written it, it is of more weight than against Henry; but as against the latter, it is of weight as being the act of one of the conspirators, ascertaining the nature and objects of the conspiracy; nevertheless, as to him, leaving the discussion as to the extent of his guilt, open. Gentlemen, this paper wants one circumstance of additional strength in not being published; but, notwithstanding, it is very powerfully operative in the cause, as corroborative of the other evidence, and as marking the intention of the party, whom it is to affect. A spirit of massacre and rebellion, an intent to destroy the existing government, and to usurp the sovereign power of the state, a hatred to the connexion of Ireland with Great Britain, settled plans of attacks to be made on the king's government, and a system of terror and rewards are strongly expressed; in short, the paper speaks so plainly and strongly, that it is only necessary for you to hear it read, without my remarking upon the different parts.

[After his lordship had gone through the whole of the evidence, he said,]

Now, gentlemen, a great deal has been urged, and you must draw your attention to this subject; much depends upon the credit which you give to the testimony of captain Armstrong: his testimony is sought to be impeached, by showing, that he does not believe in a Supreme Being, and in a future state of rewards and punishments. He has sworn that he does believe in a Supreme Being, and in a future state of rewards and punishments; though it has been sworn he declared the contrary. If he does not believe in a Supreme Being, and a future state of rewards and punishments, his evidence, to be sure, ought to go for nothing. Whether he has made those declarations, which have been imputed to him; and, if he did, whether he made them seriously, and communicating his real opinions, or as matter of idle conversation (for he has been described to you as giddy and inconsiderate in his expressions), you are to determine. You will also consider the circumstances of corroboration, which have appeared: he gave an account of each meeting, as it was held; in that respect, the evidence of Clibborn supports and fortifies his testimony, and in several parts of his testimony, the papers establish his credit in a very strong manner, as I more particularly pointed out to you when I stated those papers to you. The evi-

dence of Kearney also has the same tendency, especially when the memorandum is taken into consideration. On the other hand, as a farther ground offered to impeach him, there is a circumstance to be considered, namely, the manner of his getting admission to the prisoners: it has not been pressed upon you, that he was to be considered as an accomplice; but that he went as a spy, for the purpose of discovering the conduct of the prisoners. You will take that into your consideration, and see what influence it may have upon your minds as to his credit.

Gentlemen, I stated all the different overt acts, intimating, that I might afterwards suggest my ideas as to the object of your inquiry, upon a shorter scale. With regard to compassing the death of the king, if meetings were held, or conspiracies formed to overthrow the government, to usurp the sovereign power of the state, to depose the king, in my apprehension, the evidence, if you believe it, and are satisfied such was the object, is sufficient to establish the charge against the prisoners. Supposing the evidence satisfactory to your minds to establish the fact of a scheme formed to levy war against the king, this meditated war doubtless would (if levied) have been in construction of law, express direct war against the king's person, and an overt act of compassing and imagining his death. It was to be a war, referring to foreign aid and invasion, and in which, if the French armies came in time, they might be participators, but which, for special reasons was to precede the arrival of the French, the camp of the king's troops was intended to be taken by storm, or surprise: risings were to take place in various parts of the kingdom, and at periods which were to have a certain relation to each other; the king's artillery, his representative and council, and government were to be seized, and taken into the hands of the insurgents, all those circumstances will be combined together by you, and if you believe that the prisoners embarked in those designs, as stated by the evidence, the object in truth, will then appear to be to overset the government, to create a governing power in themselves, and the consequence would be the deposition of the king, a clear overt act of treason, in compassing his death. If therefore, I say, you believe the evidence, as establishing the conclusions which I have mentioned, it is sufficient to maintain the first charge.

If you are satisfied upon the first count, that the facts to which I have just now alluded, have been established against both the prisoners, you will find them both guilty; if they are established against one only, you will find him guilty, and acquit the other upon that count; and if, gentlemen, you entertain any rational doubt, not merely a capricious doubt, but the doubt of sensible men, then, in a capital case, you will lean in favour of life.

With regard to the second count for adhering to the king's enemies, I have stated to

you, that it is of the essence of that charge, that the act done must be with the imputed intent of aiding the king's foreign enemies. The evidence is, a conspiracy to raise war, and open rebellion, to take the camp, city of Dublin, the Castle, the lord lieutenant and privy council:—these measures were to be carried into execution at a later period, but a scheme appears to have been framed to bring them forward, from the anxiety of the people involved in the conspiracy, for their friends who were to be tried in Kildare, at the then approaching assizes; therefore an intention was professed of having the rising at an earlier period, than was first expected, and this was communicated to captain Armstrong by the prisoner John Sheares, under the pressure of events, as he stated, which prevented them from waiting any longer the arrival of the French; you are therefore to consider, whether you can infer, that this rising was acted upon with a view to aid the French. That intent is absolutely necessary. It is matter of notoriety, that the French have been upon the coast the winter before the last, and might possibly be expected again. You must on this count be satisfied of this intent.

Mr. Justice *Crookshank*.—Gentlemen of the Jury;—Lord Carleton has so fully and accurately stated to you the evidence and the law arising upon it, that I think it unnecessary to trouble you farther than by expressing my entire concurrence in what he has said.

Mr. Baron *Smith*.—Gentlemen of the Jury;—It would be severe at this hour to detain you by any length of observation, and indeed it is rendered unnecessary by the manner in which the case has been laid before you by lord Carleton, and I have only to say, that I concur with him in every respect both as to the law and the fact.

The Jury then asked for the papers, which, with the prisoners consent, were taken to the jury-room.

The Jury then retired for 17 minutes, and brought in a verdict, finding both the prisoners—GUILTY.

As soon as the verdict was pronounced, the prisoners clasped each other in their arms.

It being now near eight o'clock on Friday morning, the Court adjourned to three o'clock.

When the Court met at the hour appointed, *The Attorney General* moved that Henry Sheares and John Sheares might be brought up for the judgment of the Court.

Court.—Let them be brought up.

Mr. *Mac Nally*.—My lords, None of the counsel assigned for the prisoners attend, but myself. I have however a point to mention, which I would rather state in the absence of the prisoners (however singular) lest, if I am not founded, it should fill them with false

hopes. I have compared this indictment with that in Stone's case;* there it was stated, that a war existed, as it does here; but there was an averment which is not to be found in this indictment.—“That a war had been carried on and prosecuted, &c. to wit. at *Old Ford in the county of Middlesex*”—laying a *venue*:—that is not done here. There is a plain reason for it: The words of the statute are, if a man shall adhere to the king's enemies “within the realm or elsewhere.” Therefore the indictment should state where the adherence was. I shall not trouble your lordships farther: if I am wrong, I have to apologize, and have only to attribute my interference to the zeal which I feel for my client.

Lord Carleton.—You have been extremely proper in mentioning it in the absence of the prisoners, because they cannot avail themselves of the objection; for if that whole count were bad, yet the other count would be sufficient to maintain the judgment.

The Prisoners were then brought to the bar.

The Clerk of the Crown read the indictment, and asked them what they had to say, why judgment of death and execution should not be awarded against them according to law.

Mr. Henry Sheares.—My lord, as I had no notion of dying such a death as I am about to meet, I have only to ask your lordship for sufficient time to prepare myself and family for it.—I have a wife and six children, and hope your humanity will allow me some reasonable time to settle my affairs, and make a provision for them—[Here he was so overwhelmed with tears, that he could not proceed.]

Mr. John Sheares.—My lord, I wish to offer a few words, before the sentence is pronounced, because there is a weight pressing upon my heart much greater than that of the sentence which is to come from the Court. There has been, my lord, a weight pressing upon my mind from the first moment I heard the indictment read upon which I was tried; but that weight has been more peculiarly and heavily pressing upon my heart when I found the accusation in the indictment enforced and supported upon the trial; and that weight would be left insupportable, if it were not for this opportunity of discharging it—it would be insupportable, since a verdict of my country has stamped that evidence as well founded. Do not think, my lords, that I am about to make a declamation against the verdict of the jury, or the persons concerned in the trial: I am only about to call to your recollection a part of the charge, which my soul shudders at; and if I had not this opportunity of renouncing it before your lordships and this auditory, no courage would be sufficient to support me. The accusation, my lords, to which I allude, is one of the blackest kind, and peculiarly painful, because it ap-

pears to have been founded upon my own act and deed, and to be given under my own hand. The accusation of which I speak, while I linger here yet a few minutes is “that of holding out to the people of Ireland a direction to give no quarter to the troops fighting for its defence.” My lords, let me say this—and if there be any acquaintances in this crowded court—I will not say my *intimate friends* but *acquaintances*, who do not know that what I say is truth, I should be reputed the wretch, which I am not—I say, if any acquaintance of mine can believe, that I could utter a recommendation of giving no quarter to a *yielding and unoffending foe*, it is not the death that I am about to suffer which I deserve—no punishment could be adequate to such a crime. My lords, I cannot only acquit my soul of such an intention, but I declare in the presence of that God, before whom I must shortly appear, that the favourite doctrine of my heart was—*That no human being should suffer death, but where absolute necessity required it.*

My lords, I feel a consolation in making this declaration, which nothing else could afford me; because it is not only a justification of myself, but where I am sealing my life with that breath which cannot be suspected of falsehood, what I say may make some impression upon the minds of men, not holding the same doctrine. I declare to God, I know no crime but assassination, which can eclipse or equal that of which I am accused. I discern no shade of guilt between that, and taking away the life of a foe, by putting a bayonet to his breast, when he is yielding and surrendering. I do request the bench to believe that of me—I do request my country to believe that of me—I am sure God will think that of me.

Now, my lords, I have no favour to ask of the Court. My country has decided that I am guilty; and the law says that I shall suffer: it sees that I am ready to suffer.

But, my lords, I have a favour to request of the Court that does not relate to myself. My lords, I have a brother, whom I have ever loved dearer than myself;—but it is not from any affection for him alone that I am induced to make the request;—he is a man, and therefore, I hope, prepared to die, if he stood as I do—though I do not stand unconnected;—but he stands more dearly connected. In short, my lords, to spare your feelings and my own, I do not pray that I should not die; but that the husband, the father, the brother, and the son, all comprised in one person, holding these relations, dearer in life to him than any other man I know;—for such a man I do not pray a pardon, for that is not in the power of the Court; but I pray a respite for such time as the Court, in its humanity and discretion, shall think proper. You have heard, my lords, that his private affairs require arrangement. I have a farther room for asking it. If immediately both of us be taken

* *Ante*, vol. 25, p. 1158.

off, an aged and revered mother, a dear sister, and the most affectionate wife, that ever lived, and six children, will be left without protection or provision of any kind.—When I address myself to your lordships, it is with the knowledge you will have of all the sons of our aged mother being gone: two have perished in the service of the king, one very recently. I only request, that disposing of me with what swiftness either the public mind or justice requires, a respite may be given to my brother, that the family may acquire strength to bear it all. That is all I wish. I shall remember it to my last breath; and I will offer up my prayers for you to that Being, who has endued us all with sensibility to feel. This is all I ask. I have nothing more to say.

Lord Carleton.—In the awful duty imposed on me, no man can be more sensibly affected than I am, because I knew the very valuable and respectable father and mother from whom you are both descended. I knew and revered their virtues. One of them, happily for himself, is now no more: the other, for whom I have the highest personal respect, probably, by the events of this day, may be hastened into futurity.* It does not rest with us, after the conviction which has taken place, to hold out mercy—that is for another place; and I am afraid, in the present situation of public affairs, it will be difficult to grant even that indulgence which you, John Sheares, so pathetically request for your brother. With respect to one object of your soliciting time for your brother, unfortunately, sir, time could be of no use; because, by the attainder, he will forfeit all his property real and personal: nothing to be settled will remain.

It cannot be too much lamented, that two gentlemen, well-educated, of good birth, respectable descent, and considerable talents, should be involved in a conspiracy, that might have spread desolation over the kingdom, and brought us all to ruin. This country has enjoyed as much freedom and security in the possession of every thing that was dear and valuable, as was consistent with a stable and effective government, where a part of our natural liberty is taken away in order to secure the rest; his majesty has been celebrated for his mild and gracious reign, as a strict observer and protector of our laws, our rights, and our religion: his reign has been a continued series of liberal concession to the people of this country, calling upon them to make a suitable return of fidelity, attachment and allegiance. The conspiracy, in which you have been involved, proposed as one of the means of effecting its object to invite a fo-

* "Lord Carleton had been the intimate friend of the parents of the prisoners; a report even prevailed that he had been the guardian of the latter, but this, it is presumed, was incorrect." *Life of Curran by his Son, Vol. 2, p. 64, note.*

reign enemy into this kingdom, and to subject this country to a foreign yoke; the conspiracy has been remarkable for the system, perseverance and art with which it has been conducted, and for the wide diffusion of its principles. Other revolutions have had for their object a change of monarch, or an alteration of the constitution. But this conspiracy proposed the destruction of the higher orders of the state, and an almost general massacre. Those who formed this system so artfully carried on, endeavoured to make the people of this country *bad men*, and thereby to make them more likely to become *bad subjects*. The conspiracy, of which you have been convicted, had for its object the destruction of the monarchy and of the constitution, and to substitute anarchy, the worst of all tyrannies in their place; and, as far as we can collect from the intelligence received upon the subject, to annihilate all religion and morality, without having any substitute, save the unrestrained licentiousness of profligacy and vice; and this was done, when a foreign enemy had threatened to invade this country, had denounced its destruction, and had avowed an intention to erase its name from the list of nations.

When you meditated the destruction of our laws, religion, and constitution, it is surprising, you were not checked and restrained in the attempt, by the danger attending yourselves; or by adverting to the extensive mischiefs which must have necessarily ensued.

Let me, with great earnestness and charity, request you to reflect upon the enormity of your guilt, and that you will call to your minds that effusion of human blood which has already taken place, and that incalculable mischief which may follow a deliberate system of massacre and devastation. I could wish, that the manifesto read in evidence against you had contained nothing sanguinary; but recollect, that in that manifesto, it was declared, that no person should be spared, who did not join the rebellion prior to the attack—

Mr. John Sheares.—I beg pardon my lord, that was the evidence of captain Armstrong; it is not part of the paper.

Lord Carleton.—I have not the paper here, but that evidence was given against you. It now falls to my lot,—and I never felt more pain than I do upon the present occasion,—to pronounce that sentence which the law has provided, against persons committing crimes of such magnitude, as aim at the destruction of society. It is a sentence of great horror, but such as the wisdom of our ancestors ordained as a guard round the person of the king, and as a fence about that noble constitution, which was acquired by our ancestors, and which, I trust, we shall transmit unimpaired to posterity, in order to hold out terror to those who are disposed to do ill, and to afford protection to the loyal part of the people of this country.

His lordship then pronounced sentence.

Mr. Attorney General.—My lord, I could, with great sincerity, allow any indulgence of time, if the circumstances of the country could by possibility admit of it. But, my lords, I have a great duty to discharge, and must pray that execution may be done upon the prisoners to-morrow.

Court.—Be it so.

The prisoners were executed, pursuant to their sentence, on Saturday, 14th of July, 1798, at the front of the prison in Green-street.*

* “ The following is a copy of Mr. John Sheares’s farewell letter to his family. It is addressed to his sister, to whom he had been most tenderly attached; it may not have much literary merit; but nature is there, which is the greatest beauty.

‘ *Kilmainham Prison,*
‘ *Wednesday night.*

“ ‘ The troublesome scene of life is nearly closed; and the hand that now traces these lines, in a short time will be no longer capable of communicating to a beloved family the sentiments of his heart.

“ ‘ It is now eleven o’clock, and I have only time to address my beloved Julia in a short, eternal farewell. Thou Sacred Power!—whatever be thy name and nature,—who hast created us the frail and imperfect creatures that we are, hear the ardent prayer of one, now on the eve of a most awful change. If thy Divine Providence can be affected by mortal supplication, hear and grant, I most humbly beseech thee, the last wishes of a heart that has ever adored thy greatness and thy goodness. Let peace and happiness once more visit the bosom of my beloved family. Let a mild grief succeed the miseries they have endured; and, when an affectionate tear is generously shed over the dust of him, who caused their misfortunes, let all their ensuing days glide on in union and domestic harmony. Enlighten my be-

‘ loved brother: to him and his invaluable wife grant the undisturbed enjoyment of their mutual love; and, as they advance, let their attachment increase. Let my Julia, my feeling, my too feeling Julia, experience that consolation which she has often imparted to others: let her soul repose at length in the consummation of all the wishes of her excellent heart: let her taste that happiness her virtues have so well merited. For my other sisters, provide those comforts their situation requires.

“ ‘ To my mother,—O Eternal Power! what gift shall I wish for this matchless parent? Restore her to that peace which I have unfortunately torn from her: let her forget me in the ceaseless affections of my sisters, and in their prosperity let her taste that happiness which is best suited to her affectionate heart; and when at length she is called home, let her find in everlasting bliss, the due reward of a life of suffering virtue.

“ ‘ Adieu, my dear Julia! My light is just out. The approach of darkness is like that of death, since both alike require me to say farewell! farewell for ever! O my dear family, farewell!—Farewell, for ever!

‘ J. S.’ ”

“ In the cemetery of the church of St. Michan’s, in Dublin, there are vaults for the reception of the dead, of which the atmosphere has the peculiar quality of protracting for many years the process of animal decay. It is not unusual to see there the coffins crumbling away from around what they were intended for ever to conceal, and thus giving up once more to human view their contents, still pertinaciously resisting the influence of time. In this place the unfortunate brothers were deposited; and in this state of undesignated disinterment their remains may be seen to this day, the heads dissevered from the trunks, and the hand that once traced those lines, not yet mouldered into dust.”—*Life of Curran Vol. 2, p. 118.*

632. Proceedings on the Trial of JOHN MAC CANN for High Treason; before the Court holden at Dublin, under a Special Commission of Oyer and Terminer, on the 5th, 16th, and 17th Days of July: 38 GEORGE III. A. D. 1798.*

ON Thursday, July 5th, 1798, John Mac Cann was brought to the bar, and arraigned upon the following indictment :

County of the City of Dublin, to wit. } “ The jurors for our
“ their oath present and say that John Mac
“ Cann late of Church-street in the city of
“ Dublin gentleman a subject of our said lord
“ the king of this his realm of Ireland not hav-
“ ing the fear of God in his heart nor the duty
“ of his allegiance considering but being
“ moved and seduced by the instigation of the
“ devil as a false traitor against our said lord
“ the king his supreme true lawful and un-
“ doubted lord the king the cordial love and
“ true affection which every subject of our said
“ lord the king should bear towards our said
“ lord the king wholly withdrawing and con-
“ triving and with all his strength intending
“ the peace and common tranquillity of this
“ his kingdom of Ireland to disturb and the
“ government of our said lord the king of this
“ his kingdom of Ireland to subvert and our
“ said lord the king off and from the royal
“ state honour imperial crown and govern-
“ ment of this his kingdom of Ireland to de-
“ pose and deprive and our said lord the king
“ to death and final destruction to bring on
“ the twentieth day of May in the thirty-
“ eighth year of the reign of our said lord the
“ king and on divers other days and times as
“ well before as after that day at the parish of
“ Saint Michael the archangel in the said
“ county of the city of Dublin with force and
“ arms to wit with swords sticks staves and
“ soforth falsely wickedly and traitorously did
“ compass imagine and intend our said lord
“ the king then and there his supreme lawful
“ and undoubted lord off and from the royal
“ state crown title power and government of
“ this his kingdom of Ireland to depose and
“ deprive and the said lord the king to kill
“ and put to death And that to fulfil and bring
“ to effect his most wicked and treasonable
“ imaginations and compassings aforesaid he
“ the said John Mac Cann as such false traitor
“ as aforesaid with force and arms on the
“ twentieth day of May in the thirty-eighth
“ year of the reign aforesaid and on divers
“ other days and times as well before as after at
“ the parish of Saint Michael the archangel in
“ the said county of the city of Dublin falsely

“ maliciously and traitorously did assemble
“ meet conspire agree and consult together
“ with divers other false traitors whose names
“ are to the said jurors unknown to stir up
“ raise and make rebellion and war against
“ our said lord the king within this his king-
“ dom of Ireland and to procure great quan-
“ tities of arms and ammunition guns pistols
“ swords pikes gun-powder and shot for the
“ purpose of the said rebellion and to procure
“ and cause great numbers of armed men to
“ rise and prosecute and wage war against our
“ said lord the king within this kingdom
“ And farther to fulfil perfect and bring
“ into effect his most evil and wicked treason
“ and treasonable compassings and imagina-
“ tions aforesaid he the said John Mac Cann
“ as such false traitor as aforesaid with force
“ and arms on the twentieth day of May in
“ the thirty-eighth year of the reign afore-
“ said at the parish of Saint Michael the arch-
“ angel in the county of the city of Dublin
“ aforesaid falsely maliciously and traitorously
“ did assemble meet conspire consult and agree
“ together with divers other false traitors
“ whose names to the said jurors are as yet
“ unknown to depose and dethrone the said
“ lord the king and him off and from his royal
“ state authority and government of this king-
“ dom to deprive and put
“ And farther to fulfil perfect and bring to
“ effect his most evil and wicked treason and
“ treasonable compassings and imaginations
“ aforesaid he the said John Mac Cann as
“ such false traitor as aforesaid with force and
“ arms on the twentieth day of May in the
“ thirty-eighth year of the reign aforesaid at
“ the parish of Saint Michael the archangel
“ in the county of the city of Dublin aforesaid
“ falsely maliciously and traitorously did as-
“ semble meet conspire consult and agree to-
“ gether with divers other false traitors whose
“ names are to the jurors aforesaid as yet un-
“ known to overturn by force the lawful go-
“ vernment of this kingdom and to change
“ by force the constitution of this kingdom
“ And farther to fulfil perfect and bring to
“ effect his most evil and wicked treason and
“ treasonable compassings and imaginations
“ aforesaid he the said John Mac Cann as
“ such false traitor as aforesaid with force and
“ arms on the twentieth day of May in the
“ thirty-eighth year of the reign aforesaid at
“ the parish of Saint Michael the archangel
“ in the county of the city of Dublin afore-
“ said falsely maliciously and traitorously did

* Reported by W. Ridgeway, Esq. Bar-
rister at Law.

" assemble meet conspire consult and agree
 " together with divers other false traitors
 " whose names are to the said jurors unknown
 " upon and about the means of raising and
 " making rebellion against the said lord the
 " king within this kingdom and of procuring
 " and providing great quantities of arms and
 " ammunition for that purpose and of pro-
 " curing and causing great numbers of armed
 " men to rise and to prosecute and wage war
 " against the said lord the king within this
 " kingdom and of overturning by force the
 " government of this kingdom and of chang-
 " ing by force the constitution of this kingdom
 " And farther to fulfil perfect and bring to
 " effect his most evil and wicked treason and
 " treasonable compassings and imaginations
 " aforesaid he the said John Mac Cann as
 " such false traitor as aforesaid with force and
 " arms on the twentieth day of May in the
 " thirty-eighth year of the reign aforesaid at
 " the parish of Saint Michael the archangel
 " in the county of the city of Dublin aforesaid
 " falsely maliciously and traitorously did as-
 " semble meet conspire consult and agree to-
 " gether with divers other false traitors whose
 " names are to the said jurors unknown upon
 " and about the means of deposing and de-
 " throning the said lord the king and him off
 " and from his royal state authority and go-
 " vernment of this kingdom depriving and
 " putting

" And farther to fulfil perfect and bring to
 " effect his most evil and wicked treason and
 " treasonable compassings and imaginations
 " he the said John Mac Cann as such false
 " traitor as aforesaid with force and arms
 " on the twentieth day of May in the thirty-
 " eighth year of the reign aforesaid at the
 " parish of Saint Michael the archangel
 " in the county of the city of Dublin aforesaid
 " falsely maliciously and traitorously
 " with design and intent by force violence
 " and rebellion to overturn the present
 " government of this kingdom and with in-
 " tent by force violence and rebellion to
 " change and alter the constitution of this
 " kingdom did associate himself together with
 " and become a member of a party society and
 " brotherhood then and there formed under
 " the denomination of United Irishmen and
 " then and there together adhering for the
 " purpose of overturning by force the govern-
 " ment of this kingdom and dethroning and
 " deposing the said lord the king

" And farther to fulfil perfect and bring into effect
 " his most evil and wicked treason and trea-
 " sonable compassing and imaginations he the
 " said John Mac Cann as such false traitor as
 " aforesaid with force and arms on the twen-
 " tieth day of May in the thirty-eighth year
 " of the reign aforesaid at the parish of Saint
 " Michael the archangel in the county of the
 " city of Dublin aforesaid falsely maliciously
 " and traitorously with design and intent to
 " stir up raise and make rebellion and war
 " against the said lord the king within this his

VOL. XXVII.

" kingdom of Ireland did retain and keep cer-
 " tain paper writings containing accounts of
 " men arms ammunition and money to be
 " employed in raising and prosecuting war and
 " rebellion against the said lord the king with-
 " in this kingdom with intent that the said
 " men should be arrayed and the said arms
 " ammunition and money be employed in
 " raising and prosecuting the said war and
 " rebellion against the said lord the king

" And further to fulfil perfect and bring to
 " effect his most evil and wicked treason and
 " treasonable compassings and imaginations
 " aforesaid he the said John Mac Cann as
 " such false traitor as aforesaid with force and
 " arms on the twentieth day of May in the
 " thirty-eighth year of the reign aforesaid at
 " the parish of St. Michael the Archangel in
 " the county of the city of Dublin aforesaid
 " falsely wickedly and traitorously did cause
 " and procure great numbers of armed men
 " to the number of one thousand men armed
 " and arrayed in a warlike manner traitorously
 " to assemble and appear in arms to wit at
 " Clondalkin in the county of Dublin and
 " then and there traitorously to ordain pre-
 " pare and levy war against the said lord the
 " king

" And further to fulfil perfect and bring to
 " effect his most evil and wicked treason and
 " treasonable compassings and imaginations
 " aforesaid he the said John Mac Cann as such
 " false traitor as aforesaid with force and arms
 " on the twentieth day of May in the thirty-
 " eighth year of the reign aforesaid at the pa-
 " rish of St. Michael the Archangel in the
 " county of the city of Dublin aforesaid
 " falsely maliciously and traitorously did as-
 " semble and meet together with divers other
 " false traitors whose names to the said jurors
 " are unknown to take and receive returns ac-
 " counts numbers and names of officers men
 " and arms to be employed in raising and le-
 " vying war and rebellion against the said lord
 " the king within this kingdom and did then
 " and there take and receive several returns
 " accounts numbers and names of officers
 " men and arms to be employed in levying
 " war against the said lord the king in this
 " kingdom and did in writing set down the
 " said returns accounts numbers and names
 " and an account thereof with intent that the
 " said officers men and arms should be em-
 " ployed in raising and levying the said war
 " and rebellion against the said lord the king.

" And further to fulfil perfect and bring to
 " effect his most evil and wicked treason and
 " treasonable compassings and imaginations
 " aforesaid he the said John Mac Cann as
 " such false traitor as aforesaid with force and
 " arms on the 20th day of May in the thirty-
 " eighth year of the reign aforesaid, at the
 " parish of St. Michael the Archangel in the
 " county of the city of Dublin aforesaid falsely
 " maliciously and traitorously with design and
 " intent to stir up raise and make rebellion
 " and war against the said lord the king with-

2 D

“ in this his kingdom of Ireland did obtain
 “ and procure the use of a chamber in the
 “ house of one Oliver Bond in Bridge-street in
 “ the city of Dublin in order that divers false
 “ traitors whose names to the said jurors are
 “ as yet unknown should therein together
 “ with the said John Mac Cann meet and as-
 “ semble together to transact divers matters
 “ for the raising and prosecuting war and re-
 “ bellion against the said lord the king in this
 “ kingdom and to receive returns of men and
 “ arms to be employed for that purpose

“ And further to fulfil perfect and bring to
 “ effect his most evil and wicked treason and
 “ treasonable compassings and imaginations
 “ aforesaid he the said John Mac Cann as
 “ such false traitor as aforesaid with force
 “ and arms on the twentieth day of May in
 “ the thirty-eighth year of the reign aforesaid
 “ at the parish of Saint Michael the Archangel
 “ in the county of the city of Dublin aforesaid
 “ falsely maliciously and traitorously did
 “ then and there and at divers other time did
 “ give notice to divers persons of meetings to be
 “ held for the purpose of consulting upon the
 “ means of raising war and rebellion against
 “ the said lord the king and of receiving ac-
 “ counts and returns of men and arms to be
 “ employed in the said rebellion and did sum-
 “ mon and require the attendance of divers
 “ persons to the said jurors as yet unknown
 “ to attend at the said several places for the
 “ said purposes

“ And further to fulfil and bring to effect
 “ his most evil and wicked treason and trea-
 “ sonable compassings and imaginations aforesaid
 “ he the said John Mac Cann as such
 “ false traitor as aforesaid with force and arms
 “ on the twentieth day of May in the thirty-
 “ eighth year of the reign aforesaid at the
 “ parish of Saint Michael the Archangel in
 “ the county of the city of Dublin aforesaid
 “ falsely maliciously and traitorously did col-
 “ lect from divers persons whose names are
 “ to the said jurors unknown divers sums of
 “ money to be applied in the purchasing and
 “ providing arms to be employed by rebels in
 “ war and rebellion against the said lord the
 “ king with intent that the said money should
 “ be so employed as aforesaid

“ And further to fulfil perfect and bring to
 “ effect his most evil and wicked treason and
 “ treasonable compassings and imaginations
 “ aforesaid he the said John Mac Cann as
 “ such false traitor as aforesaid with force and
 “ arms on the twentieth day of May in the
 “ thirty-eighth year of the reign aforesaid at
 “ the parish of Saint Michael the Archangel
 “ in the county of the city of Dublin aforesaid
 “ falsely maliciously and traitorously did
 “ obtain and procure the use of a chamber in
 “ the house of one Oliver Bond in Bridge-
 “ street in the city of Dublin in order that
 “ divers false traitors whose names are to the
 “ said jurors unknown should therein together
 “ with the said John Mac Cann meet and as-
 “ semble together to transact divers matters

“ for the raising and prosecuting war and re-
 “ bellion against the said lord the king and
 “ for the deposing and dethroning of the said
 “ lord the king and to receive returns and ac-
 “ counts of men and arms to be employed for
 “ the said purpose against the duty of the al-
 “ legiance of him the said John Mac Cann
 “ and against the peace of our said lord the
 “ king his crown and dignity and contrary to
 “ the form of the statute in that case made
 “ and provided

Second Count.—“ And the jurors aforesaid
 “ on their oath aforesaid further present and
 “ say that an open and public war on the
 “ twentieth day of May in the thirty-eighth
 “ year of the reign of our said lord the now
 “ king and long before was and ever since
 “ hitherto by land and by sea hath been and
 “ yet is carried on and prosecuted by the per-
 “ sons exercising the powers of government in
 “ France and the men of France under the
 “ government of the said persons against our
 “ most serene illustrious and excellent prince
 “ our said lord the now king and that the
 “ said John Mac Cann a subject of our said
 “ lord the king of this his realm of Ireland
 “ well knowing the premises and not having
 “ the fear of God in his heart nor the duty of
 “ his allegiance considering but being moved
 “ and seduced by the instigation of the devil
 “ as a false traitor of our most serene illus-
 “ trious and excellent prince George the Third
 “ now king of Great Britain France and Ire-
 “ land and soforth and contriving and with all
 “ his strength intending the peace and com-
 “ mon tranquillity of this his kingdom of Ire-
 “ land to disturb and molest and the laws
 “ constitution and government of Ireland to
 “ change subvert and alter he the said John
 “ Mac Cann on the twentieth day of May in
 “ the thirty-eighth year of the reign of our
 “ said lord the king and on divers other days
 “ and times as well before as after that day
 “ with force and arms that is to say with
 “ swords sticks and so forth at the parish of
 “ Saint Michael the Archangel in the said
 “ county of the city of Dublin unlawfully
 “ falsely maliciously and traitorously was ad-
 “ hering to aiding assisting and comforting
 “ the persons exercising the powers of govern-
 “ ment in France and the men of France un-
 “ der the government of the said persons and
 “ then being enemies of our said lord the king
 “ and so carrying on war against our said lord
 “ the king as aforesaid.”

The same overt acts were set forth as in
 the first count.

The Prisoner pleaded—Not Guilty.

Monday, July 16th.

The prisoner being brought to the bar, and
 being asked, Was he ready for his trial, an-
 swered in the negative: after which he made an
 affidavit, containing several grounds for post-
 poning the trial; but the only part of the affi-

davit which was considered by the Court was that which stated, that two persons, naming them, then confined on board a tender in the river, were material witnesses; that a memorial had been presented to Mr. Secretary Cooke, praying, that an order might be made for the production of these men at the trial, to which no answer was given. This not being denied on the part of the Crown, the Court postponed the trial till next day, the Crown solicitor undertaking to produce the men, or account for their absence.

Tuesday, July 17th.

Judges present.—Hon. Mr. Baron Smith, hon. Mr. Baron George, Hon. Mr. Justice Day.

Counsel for the Crown.—Mr. Attorney General [Toler], Mr. Solicitor General [Stewart], Mr. Prime Serjeant [Fitzgerald], Mr. Mayne, Mr. Webber.

Agent.—Mr. Kemmis.

Counsel for the Prisoner.—Mr. Curran, Mr. Mac Nally.

Agent.—Mr. James Crawford.

The prisoner, John Mac Cann, was asked whether he was ready for his trial, and, finding that the two men mentioned in his affidavit of yesterday attended, said he was.

The panel was then called over:—The prisoner challenged nineteen peremptorily, and twenty for want of freehold: two were excused, fourteen were set by on the part of the Crown, and the following were sworn upon the jury:

Patrick Bride,	Arthur Stanly,
William Thompson,	Archibald Hawkesley,
Francis Kirkpatrick,	Thomas Black,
Thomas Hendrick,	Michael Culloden,
Richard Hewson,	Peter Roe,
Richard Jackson,	Richard Quintin.

Mr. Webber opened the indictment.

Mr. Solicitor General* stated the case,

* Another report of this trial contains the following account of the Solicitor General's opening speech:

"The Solicitor General (Mr. Stewart), in a short, simple, and concise manner, stated the case against the prisoner, which being little more than an anticipation of the evidence, we shall not attempt to follow; the observations which he made were few, but forcible. It would be found, he said, that on the very night on which lord Moira was making an attempt to conciliate (as it was phrased) the agitators of the country, those very agitators were resolving that nothing short of the entire separation of the two countries, and the establishment of a republic in Ireland, would satisfy their furious ambition. He also observed, that the old complaint, that though by the English law two witnesses were necessary to an overt-act of treason, one only was

Thomas Reynolds,* esq. sworn.

You did live a great part of your life in the city of Dublin?—I did.

In what part of it?—In Park-street.

In what course of business were you engaged?—A silk manufacturer.

Extensively?—Indeed, Sir, I believe, the most extensive in Dublin.

You had lately acquired a property in the interior part of Ireland?—I had.

Where?—In the county of Kildare.

What was the name of your residence there?—Kilkea Castle.

You must allow me, Sir, to ask you, were you ever an United Irishman?—I was, Sir.

You were regularly sworn to be one of that body?—I was.

At what period of time were you sworn to be one of that body?—Shortly after the French had left this coast from Bantry-bay.

I do not ask you who swore you, but at whose house was it?—At the house of Oliver Bond, in Bridge-street.

Did you ever see the prisoner at the bar?—I did.

Who was he?—His name was John Mac Cann.

With whom did he reside?—He resided at the house of Jackson, in Church-street, the iron-founder.

Do you know, whether the prisoner was an

necessary here, could not now avail; two witnesses would be produced; it was true both in the light of accomplices, but who else could give information of such dark and desperate conspiracies as existed in this country? One of them would be found to be a man of sense, property, and education, unhappily seduced by a wretched young nobleman, who had already fallen the victim of his diabolical ambition, who, though born of the first family in Ireland, had, to forward those ambitious hopes he had conceived, entered into fraternity even with an iron-monger's clerk, the prisoner at the bar. The Solicitor-general shortly sketched the miserable state to which this country had already been reduced by the practices of such men; and in order to prove the deliberate guilt and confidential situation of the prisoner Mac Cann, read a number of papers taken on him when arrested, written in his own hand, and evincing that he was indeed a very principal agent in the conspiracy which has laid waste this country.

"He stated the case at large, and explained the law of high treason by the statute of the 25th of Edw. 3rd, and stated all the overt-acts as set forth in the indictment, and observed that any one of such overt-acts being proved by written or parole evidence is sufficient to establish either of the charges of high treason laid in the indictment."

* See his examination and cross-examination on the following trials of Byrne and Bond, particularly the latter.

United Irishman, or acted as such?—He was, and did act as such.

How do you know?—Because I have been at Baronial Meetings with him.

Explain what you mean by Baronial Meetings?—A Baronial Meeting is constituted of delegates from the Simple Societies.

Is there any higher order, than that of the Baronial?—Oh, many: they differ somewhat in Dublin from those in the country. In the country, the meetings go from the Baronial to the County, and from the County to the Provincial; that was the mode in Kildare.

Then am I to understand, that the inferior societies elected to the provincial, and they proceeded from one to another?—The Simple Societies elected delegates who went forward to, and composed the Baronial Meeting, and the Baronial sent delegates from them to the County, and delegates were elected from the County to the Provincial. There is a difference in Dublin: the Baronials being too numerous in Dublin, there was an intermediate meeting between the Baronial and the County called a District Meeting, I never was a member of a district meeting.

Do you know of any Superiors in the Society, holding relation with them?—I do not understand that question.

I mean a Directory?—I have heard talk of it, but never was present at it.

Did you hear it talked of by the prisoner, or at any meeting where he was?—I did.

What did you understand by it?—I understood it to be a few men, who regulated the whole business, issued orders, &c. for the kingdom at large; but I do not know whether they were elected or not.

You had much opportunity of knowing what the objects of these societies were; what were the business and great objects of them?—To overturn the constitution and present government of this country, to establish a republican government instead of it, and to favour any landing of the French which might forward these views.

Pray, Sir, do you know any thing of a meeting intended to have been had at any place in this town about the 12th of March?—I do, Sir.

At what house?—At the house of Oliver Bond.

Had you any conversation with the prisoner previous to that meeting being held, and upon the object of it?—I had two or three conversations with him upon it.

What were they?—Being directed by the County Meeting of Kildare, to come forward as treasurer of the county of Kildare,—

Treasurer of the United Irishmen?—Yes. Having been delegated to a meeting before that, they desired me to apply to Mr. Mac Cann, who would introduce me to the meeting. I went to him shortly before the 12th of March, and asked him when and where the next Provincial Meeting was to be held. He asked me, had I my County Returns.

Of what?—The Returns from the County I was delegated from.

Returns of what?—Returns we always give in of arms, men, and ammunition.

You are clear he understood that?—Oh, perfectly clear: I told him I had not my returns.

What did he say?—He said he could not give me any information of the meeting, until I brought up my returns.

Then, if I am to understand you, the prisoner intimated, that he could not give you notice of the period of the meeting, until you prepared yourself by the returns of men, arms, and ammunition. Were they to be laid before the Provincial?—To be laid before the Provincial.

Then the business of the Provincial Meeting related to the returns of men, arms, and ammunition?—At every meeting I attended, that was always part of the business, and I was always desired to bring up my returns.

Did this business take place at the Baronial?—At all meetings it was part of the business; giving and receiving returns. On the Saturday following, I went to the county of Kildare to procure the returns.

Court.—Was that before the 12th of March?—The Saturday se'nnight before the 12th of March.

Was that the Saturday next after the conversation?—Immediately after the conversation. I went to the county of Kildare for the returns, called for them at Mr. Daly's, son to the man in Kilcullen, he was a delegate with me, and had attended the meeting, which I did not; he was a delegate from the County to the Provincial. He wrote out a copy of the returns, and gave it to me; I brought the copy up to Dublin. On the Monday night, I slept upon the road, came up on Tuesday, and either on Wednesday or Thursday, I am not sure which, I called upon Mac Cann, and showed him the returns.

Counsel.—Mention the conversation, which ensued upon that occasion?—He looked over the returns, and said it was very extraordinary, there was no increase in any part since the former returns.

These were returns of men, arms, and ammunition?—They were. He also said he could not then give me the information I wanted, as to the place and time of the next Provincial Meeting, but that he would call upon me on the Sunday morning following, and tell me of it, when and where it was to be. I asked him to breakfast, and he said he would come to me.

Do you remember what day of the month that was?—Of course it was the 11th, the day previous to the arrest at Oliver Bond's.

What happened when he came to breakfast?—He came to breakfast, and Mrs. Reynolds having left the room, he told me the Provincial Meeting was to be at Bond's the following day, at ten o'clock, and desired me to be very precise in my attendance, for there

was business of very great consequence to be agitated there.

It was understood what description of persons was to attend at the Provincial Meeting?—It is always understood, that they are delegates from counties.

And attended there as such?—Decidedly.

Do you know any circumstance relative to a room for that meeting, and how it was procured?—I was in a ware-room at Mr. Bond's, on Saturday the 10th; Mac Cann was likewise there, and he said "Bond, we must have a room for Mouday;" and Mr. Bond replied, "You shall have the room you had last; will you have the little room?" Bond and Mac Cann walked down to the farther end of the room and whispered together, and I shortly afterwards retired.

You will give me leave to ask you, did you ever hear the prisoner talk of lord Edward Fitzgerald?—Very little, Sir.

What did you hear him say of him?—He said to me, "that lord Edward Fitzgerald was a fine fellow, and warm in the cause."

Pray, Sir, where did lord Edward Fitzgerald usually reside?—I do not know; I have been at the Black Rock with him, where he resided for a time.

He resided there for a time?—He did.

You, sir, if I understand right, had some authority and command devolved upon you among the United Irishmen?—I had.

State in what manner and through what mode you acquired it?—The command I had was that of colonel of Kilkea and Moon, which is the name of the barony in which I live. In the month of November last, lord Edward Fitzgerald called upon me at my house in Park-street, —

Mr. Curran.—Was the prisoner present at this conversation?

Mr. Attorney General.—There can be no difficulty upon this subject: we have lord Edward's letter to the prisoner to produce. Pray, sir, was lord Edward Fitzgerald active in the business of United Irishmen?—He was.

Did the prisoner know that?—I cannot say farther than what I mentioned, that he said he was warm in the cause.

You mentioned what you understood the cause to be, that of overturning the government, establishing a republic, and receiving the French?—I always understood that from all I heard from any of them.

Mention how you came to be appointed a colonel in the army.

Mr. Curran.—My lords, I object to this evidence.

Mr. Attorney General.—The evidence is admissible; the weight and application of it, as against the prisoner, will be another consideration. I ask you now, how you came to be chosen a colonel, and through whom?—It was through lord Edward Fitzgerald; that is to say, he was the first, who broached it to me: in the month of November, he called at my house in Park-street, and solicited me to

become a colonel for the barony of Kilkea and Moon.

A colonel in the United Irishmen's army?—Yes; I at first hesitated.

You had a property in that barony?—I had a lease, for which I paid a fine.

Where did lord Edward Fitzgerald's property lie?—In the same county.

And in the same barony?—No, sir; about eight or nine miles from mine, but not in the same barony.

Mention how you acquired the command?—I at first hesitated; he used many arguments, and at length I agreed to accept of it. He told me that a man of the name of Matthew Kenna, whom I might rely upon, would call upon me before the election should take place. I expressed to lord Edward Fitzgerald some doubts, that the United Irishmen could stand in battle before the king's troops. He replied to me, "That will not be altogether necessary; that a landing of the French was expected; that some of them would, of course join in the ranks, but that the great body would only have to make the king's troops feel themselves in every respect in the country of an enemy, by attacking their convoys, taking their provisions, and destroying them in every way they could, not in regular battle."

Mention as much of the conversation as you remember?—I do not remember any more in that conversation: we were together some time; but I do not recollect any thing more material. Shortly after I went to Kilkea Castle, and in the month of January Matthew Kenna, called upon me; he told me the election was to take place.

What was he?—A farmer's son, who lived within a few miles of my house. Kenna told me, that at the first meeting in February, a colonel was to be elected, and asked me would I stand the ballot.

Court.—A meeting of whom?—A meeting of the captains of the barony to choose colonels. I told him, I would, for that lord Edward Fitzgerald had been speaking to me upon the business; he replied, he knew he had. He said it would be necessary for me also to hold a civil employment.

Court.—Under whom?—A delegation to the county.

Do you mean under the United Irishmen?—I do, my lords. And he asked me, which I would wish to be, treasurer or secretary; I told him, I should wish to be treasurer, because it was least responsible and least troublesome. He said, he was glad of it, and that he himself would go forward along with me, as secretary. About the 14th or 15th of February, he called on me, and told me, I was unanimously chosen colonel and treasurer.

Counsel.—You will allow me now to ask you, whether previous to your having agreed to accept this commission, any person assisted in prevailing upon you to accept it?—After

lord Edward Fitzgerald applied to me, and I had consented to accept of it, I met Mr. Oliver Bond.

Mr. Curran.—My lords, surely this is not evidence.

Mr. Attorney General.—My lords I will not press it, if the gentlemen object. You were argued with upon the propriety of accepting the commission?—I was.

And prevailed upon?—I had been prevailed upon, but was strengthened in my resolution.

By a person walking in company with lord Edward Fitzgerald?—By no means.

In conversation elsewhere?—Yes.

You will mention, then, what intercourse you had, previous to that delegation to town?

—Mr. Kenna came to me as I have said about the 14th or 15th of February, and told me, that on the Sunday following—

Mr. Baron Smith.—This does not relate to the prisoner.

Mr. Attorney General.—My lord, we shall bring it to the prisoner. Is Kenna an United Irishman?—He is.

And embarked in the business?—He was, and one of my captains. Kenna told me that he himself was chosen secretary: that the county meeting was to be held on the Sunday following at the 19-mile house; and that he would meet me on the road, and ride to it with me. That was, I think, about the 18th of February, accordingly, we met on the road, and went together to the county meeting. Am I to tell the business which passed there?

Yes, tell the business which passed there?—The business transacted at that meeting was, first, each man took an oath of secrecy, and then we went into the election of new officers, or new delegates, for the ensuing three months, to send forward to the Provincial. Shall I mention who were chosen?

Counsel.—Do so.

Court.—What delegates do you mean?—I call treasurers, and secretaries, delegates. Officers to send forward to the Provincial. Three were to be chosen to attend for that county for the ensuing three months. Mr. Cummins of Kildare was chosen secretary.

To what?—To the County Meeting; and a doubt arose then as to the propriety of choosing a treasurer: lord Edward Fitzgerald having been treasurer at that time, and being then absent, with regard to him they had a doubt, whether they should go into the choice of treasurer; but Mr. Cummins saying, he had directions from lord Edward Fitzgerald to say, that he was a very marked man, and wished for a while to drop attendance at the meeting lest he should be more marked, and therefore desiring them to appoint a new treasurer for the following three months; I was then chosen as treasurer, and Mr. Daly of Kilkullen was chosen as delegate. Mr. Michael Reynolds, I believe of Naas, or near it, had acted under some appointment, I believe that of secretary, for three months preceding,

and he told us, that the Provincial Meeting was to be held the following day in Dublin, at Mr. Oliver Bond's, at 10 o'clock. That meeting was on the 18th of February.

Counsel.—Did you come up to that Provincial meeting?—I did not. It was too far; I had to ride home 14 or 15 miles that evening, and 34 the next morning before ten: which was too far; therefore I did not go.

Nor did you attend at the meeting where the arrest was made?—I did not.

But you understood that they met at Bond's upon the 19th?—Decidedly so. Mr. Michael Reynolds told me also to call at Bond's for Mac Cann, show him our returns, and we would be admitted; he desired us to apologize for his not attending, as he was engaged to a dinner from the Meeting before.

After the time that Mac Cann breakfasted with you, what intercourse had you with him?—No intercourse with him: We walked into town together, talked of several matters.

Where did you walk to?—we walked to the quays, and parted there; I had a lodging in South Cumberland-street at that time.

Do you recollect where you passed the remainder of the day, the morning of which Mac Cann breakfasted with you?—I walked part of the day with Mrs. Reynolds upon Merrion square, and paid some visits with her. About four o'clock, I called at Leinster house upon lord Edward Fitzgerald.

Did you see him?—I did.

Had you any conversation with him about this business?—I had, about United business. I had a printed paper in my hand, purporting to be directions, or orders, signed by counsellor Saurin, to the lawyers' corps. These required them in case of riot or alarm to repair to Smithfield, and such as had not ball-cartridge were to get them at his house, and such as were going out of town, and did not think their arms safe, were to deposit them with him: and there was a little paper inside, which mentioned that their orders were to be kept secret. Lord Edward Fitzgerald upon reading this paper, seemed greatly agitated; he said, he thought government intended to arrest him, and he wished he could get to France, to hasten the invasion, which he could do by his intimacy with Talleyrand Perigord, one of the French ministers. He said he would not approve of a general invasion at first, but that the French had some very fine fast sailing frigates, and that he would put on board them as many English and Irish officers, as he could procure to come over from France, and as many men as were capable of drilling, and stores and ammunition of different kinds, and run them into some port in this country; he said he thought Wexford might do; that it would be unsuspected, and if they succeeded, they could establish a rallying point, until other help should come.

You say that at the meetings at which the prisoner was present, frequent conversations took place about arms, ammunition and

men, for the purpose of the general cause?—I do say so.

Do you remember in what capacity the prisoner acted?—As secretary to a Baronial Meeting.

There were returns made at this meeting?—There were, and the conversation turned upon the topics of United business at large.

Did you ever see the prisoner do any act relative to swearing people?—I did.

What was it?—I was delegated together with John Cormick of Thomas-street to attend a Baronial Meeting, which was held at the Struggler's in Cook-street. When we arrived there, we went up stairs; Mr. Mac Cann came out, and brought us into a room adjoining that in which the committee were sitting, and he there swore John Cormick, that he was duly delegated to attend that meeting, and that he then acted in that capacity. He made him answer for my being duly delegated, and he then introduced us; an election took place for new officers, and he was chosen secretary; I understood he had been secretary before, but I cannot tell.

About what period was this?—About the month of March twelve-month.

Of course you had frequent opportunities of speaking with him?—I had.

You are acquainted with his person?—Perfectly.

You knew of the meeting at Bond's house, and did not attend?—I knew of it, and did not attend.

Was Mac Cann taken there?—I heard so, but cannot tell from my own knowledge.

There was a considerable number of offices vacated in consequence of that capture?—A number equal to the number of persons taken.

Had you any conversation with lord Edward Fitzgerald relative to the prisoner, or the vacancies?—None relative to the prisoner; I saw lord Edward Fitzgerald the Wednesday night after, in Aungier-street.

Court.—You met him by accident?—No, my lord, I was brought to his place of concealment there. I had there little conversation with him, but he desired me to come to him the following evening, at the same place. I did do so, and he brought me up stairs and told me he had some money belonging to the barony of Offaley.

Counsel.—You mean the United Irishmen of that barony?—Yes; and that he also had some money as treasurer to the county of Kildare; that he would have both of these sums settled, and he gave me a paper, which he desired me to deliver as an address from him to the county.

Court.—To the County Society?—The County Society of Kildare.

Counsel.—Did you see the contents of the paper?—It was desiring them not to think any thing of what had passed, alluding to the arrest at Bond's, it was a trifle; but to fill up their vacancies as speedily as possible. I do

not exactly say the words, but the substance of it; that they would very soon be called upon.

Mr. Mac Nally.—What is become of that paper, is it to be come at?—It was burned at a meeting of captains at Athy, because it was lord Edward's hand-writing. I first delivered it to the County Committee where it was read; and after that, I brought it forward on the Tuesday following. The County Committee was held the Sunday after the arrest at Bond's, at Reily's on the Curragh. On the Tuesday after I met my captains at Athy, and it was there read, and after being so, it was burned.

Counsel.—What were the rest of the contents?—It stated, that the day was very near for their being called out; and that they might depend upon his being in his place in the day of need. I do not recollect any more. In consequence of that, an election took place to fill up the vacancies. Mr. Michael Reynolds—

Court.—When?—The Sunday at the County Meeting after the arrest. Michael Reynolds was elected to fill up the vacancy of Cummins.

Counsel.—Describe his person?—He was a little short man, rather a dark countenance.

And a remarkable horseman?—I know nothing of that; I did not know him, but met him twice.

What was Cummins?—I understood he lived in Kildare, and was an apothecary.

He was an odd looking man, with lank hair?—He had rather a thin countenance, was a thin man altogether, and looked rather tall.

Now, Mr. Reynolds, give me leave to call your attention to a few circumstances immediately relative to yourself. Who was the first person to whom you ever disclosed what you knew of the United Irishmen's business?—To Mr. William Cope.

What was your connexion with him?—I had a very great connexion with him. I had mortgaged a property to him for 5,000*l.* and after the death of sir Duke Giffard, I went down with Mr. Cope to the present sir Duke to get possession from the tenants.

There were some company there?—There was: lord Wycombe,* Mr. Fitzgerald and others, and there was much conversation upon politics. We slept there, and Mr. Cope and I came to town together. In coming up, Mr. Cope renewed the conversation about politics, and represented, in colours that struck me very much, the horrors of the revolution.

It was a sort of continuation of the conversation you had at sir duke Giffard's?—It was not so much upon the United business at sir Duke's, but the general points were the same; he represented the horrors of a revolution, the murders and devastation which would take place, and shocked me extremely.

He had much influence over your mind?—

* Afterwards second marquis of Lansdowne.

He had a great deal. I told him, I believed I knew a person, who upon representing all that passed, who was not of a sanguinary disposition, who did not wish for murder or bloodshed, would desert the United Irishmen, and in order to make amends for any crime he might have committed by joining them, would give to government such information, as he was possessed of, which I did believe was very considerable. Mr. Cope seized upon this, and immediately said that such a man would and ought to be placed higher in his country than any man that ever was in it. I told him, that neither honours nor rewards were looked for, or would be accepted of by the man, if he came forward; but that I would call upon him in a day or two upon the business. We travelled together the whole day together from eight o'clock in the morning till six in the evening, and the conversation was principally upon those topics, so that there was a vast deal said. Two or three days after my arrival in town, I called upon Mr. Cope, told him I had seen my friend, and had prevailed on him to come forward upon certain conditions; that he had, I believed, considerable information to give. Mr. Cope misunderstood me in what I said, and immediately said, "the man shall have greater conditions, than he can wish for;" he said "he should have a seat in parliament, be raised to honours, and have 1,500*l.* or 2,000*l.* a year."—I told him he misunderstood me, these were not the conditions, but I would tell him, and they were these: that he should not be prosecuted himself as an United Irishman upon any account whatever, that he should never be obliged, or forced to prosecute any other person as an United Irishman, and that the channel through which the information came should be kept a secret, at least for a time; and as the person would immediately upon its being known to the United Irishmen, be murdered, if he remained in this country, and I was sure it would come out in a very short time, he would, as soon as he could arrange his affairs, go to England till matters were settled, and would require for that time, that any additional expenses he should be at should be defrayed. Mr. Cope then pressed to know what would these be; I said that was impossible to tell; but after some conversation, I stated, that he should be allowed to draw upon him for any sum not exceeding 500 guineas. Mr. Cope again pressed considerable rewards, and expressed surprise, that they would not be taken; but when he found I was positive, he then acquiesced, and received all the information that I could give about what was then going forward.

What did you tell him?—I told him of the meeting at Bond's.

Previous to its being had?—Previous to its being had: I had heard from Mr. Daly a fortnight before, but was not certain.

Court.—Did you tell Mr. Cope then that you were the person yourself?—Not then, my

lord, because I wished to keep it as secret as possible, by making him think it was from a third person.

Am I to understand, that you told Mr. Cope of the meeting before it was had?—Yes, my lords. I heard from Mr. Daly at Kilkullen, that the meeting was to be had there on that day, he believed, but he did not give me certain information; he left me in some doubt of it.

The same Mr. Daly you mentioned before?—Yes, my lord.

Counsel.—But you told Mr. Cope previous to the meeting at Mr. Oliver Bond's when the arrest was made?—I told Mr. Cope long before, that it was to be held there; but I did not fix the hour exactly: but after Mr. Mac Cann breakfasted with me, I mentioned precisely the time; on that Sunday, told him decidedly the time, though indeed I was pretty sure of it before.

You communicated the natural difficulties that would ensue to the person making the discovery, and the necessity of providing for his withdrawing from the country?—I did, Sir: I did not say exactly to his going from the country, but retiring out of the way, and being indemnified. The loss already sustained since the arrest at Mr. Bond's is to the amount of 600*l.*

You have already received compensation?—I have lost upwards of 600*l.* and have received 500 guineas.

Now, Sir, after you had this communication with Mr. Cope, you went into the country, without making any disclosure of the discovery you had made?—I never told any other human being, not even Mrs. Reynolds.

You went to Killea?—I did.

You appeared in your usual intercourse in the country?—I did.

You held intercourse with those with whom you were to have acted as colonel?—I had one meeting with the county, and one with my captains.

From the part you were apparently taking, did any thing happen to you?—There did, two circumstances. Shortly after I went down, Kenna came and told me, he heard I was the man who had betrayed the meeting at Bond's; that he heard it as a rumour, but would inform me more, if he heard any thing; and on the 16th of April, the delegate of Narragh and Rheban, whose name I do not know, but whose person I did, came from the county meeting to me, to let me know, that I must attend on the Monday following at the county meeting, which was to be held at Bell's on the Curragh, there to stand my trial for an accusation brought from Dublin by Michael Reynolds from the Provincial Committee, relative to my having betrayed the meeting at Bond's: that he was sure, as every other member in the county was, that I would acquit myself, and it was for that reason they called on me. I had before that intended to quit the country, but Mrs. Reynolds's illness

prevented me, and I remained arranging my affairs, and intended to have gone to Dublin, instead of going to the Curragh; but on Saturday, previous to the meeting, captain Erskine and lieutenant Neale of the Louth militia, with a number of men, came to live at free quarters at my house, and put me under arrest; they staid about 8 or 10 days, and destroyed an immensity of my property; drank my wine, eat my provision, and broke my furniture. After they left me, and that I put the house in what order I could, I was coming to Dublin for the purpose of going out of the kingdom, before any other meeting could take place, or I be murdered. At Naas I met Mr. Taylor of Athy; he asked me where I was going, I said to Dublin. He told me it was his intention as soon as he got home, either to have come, or to have written to me, to let me know the great danger I was in, for that I was the public talk of Dublin, and that if I went there, I would be murdered, and the house I should go to would be pulled down, if they could not get at me without doing so. This terrified me so completely, that I went back to Naas, afraid to travel by night; and the next day, I went back to my own house. On the morning following, while I was at the post-office at Castle Dermott, I was arrested by a party of the 9th dragoons, and carried to Athy, as I have been informed upon an information sworn against me by some of my own captains. I never saw the informations.

You felt an impression upon your mind, that you were so betrayed, that it became matter of notoriety, that you had some intercourse with government?—Certainly, I thought so.

Antecedent to this you had made conditions, that you were not to prosecute?—It was.

Your name was not known to government?—I cannot say that; but I should rather think not; Mr. Cope alone knew my name, and I am sure he would not betray it.

You were determined not to be a witness?—I was.

Court.—Did Mr. Cope know you were the person?—I rather think he suspected, that I was the person; but I did not tell him. There is another thing makes me suspect, there was a letter of mine found in Mr. Boud's house, apologizing for my absence, and that I could not bring the money, but would see them shortly.

To whom was this apology to be made?—To Mr. Mac Cann, the prisoner.

Was that letter signed?—It was signed T. R.

Thomas Reynolds, esq cross-examined by Mr. Curran.

You talked of yourself as a married man: who was your wife?—Her name was Witherington.

Whose daughter?—The daughter of Catherine and William Witherington of Grafton-street.

She has brothers and sisters?—One sister and two brothers.

How long have you been married?—I was married upon the 25th of March 1794.

You were young when your father died?—I was about sixteen years of age.

I think your mother carried on the business after his death?—She did.

Do you recollect at that time, whether upon any occasion, you were charged (perhaps erroneously) with having taken any of her money?—No, Sir, I do not recollect having heard any such charge.

You have sisters?—I have, and had sisters.

Some of them were living at the time of your father's death?—All that are now living were; there were more, but they died.

Do you recollect having had any charge made of stealing trinkets, or any thing valuable belonging to those sisters?—Never, I never was charged with taking any thing valuable belonging to any of my sisters.

Were you ever charged with having procured a skeleton key to open a lock belonging to your mother?—I was.

I do not ask you whether the charge were true or not; but you say, there was a charge of that kind?—I say, I was told my mother said so.

She did not believe it, I suppose?—She did not say any thing she did not believe.

And she said it?—I heard so, and I have no reason to doubt it.

It was to open a drawer?—No; it was a key to open an iron chest.

Where there were knives and forks kept?—It is not usual to keep such things there: I believe papers were kept there. Mr. Warren was my mother's partner, kept her in ignorance, and did not supply her with money.

Do you not believe, that your mother made this charge?—I believe she thought it at the time. She was a woman of truth; though at times extremely passionate. I wish to say this: you ask me, whether I ever was accused of stealing money or other valuables or trinkets from my sisters: I was not: but I was accused of stealing my mother's trinkets; I was then about sixteen years of age.

During the partnership between Mr. Warren and your mother, do you recollect any thing about a piece of lutestring?—I do, perfectly well.

Was any charge made of stealing that?—The very same charge: I was charged with stealing the lutestring to give it to a girl, and that I also took my mother's jewels for the same purpose.

Then the charge consisted of two parts, the taking and the manner in which they were given away?—If you will have it so.

I am not asking you whether you committed any facts of this kind, or not, but whether the charges were made?—I tell you the charges were made, and I took the things.

Then you committed the theft, and you were charged with the stealing?—Both of the facts were true.

I did not ask you as to the skeleton key?—That charge was untrue.

It did not fit the lock?—I had no such key; the charge was unfounded, the others were true.

How long is Mrs. Witherington, your mother-in-law, dead?—Twelve months last April.

Where did she die?—In Ash-street, a part of the house was my office, and connected with the house.

How long did she live there?—About ten months.

Do you recollect, what the good old lady died of?—I do not know, but heard it was a mortification in her bowels; she was complaining badly for some days.

Had there been any medicine brought to her?—I recollect perfectly well, after she was ill, medicine was brought to her.

By whom?—By me.

Are you a physician?—No; but I will tell you. A Mr. Fitzgerald, a relation of our family, who had been an apothecary and quitted business, left me a box of medicines, containing castor oil, cream of tartar, rhubarb, tartar emetic, and such things. I had been subject to a complaint in my stomach, for which he gave me a quantity of powders in small papers, which I kept for use, and found great relief from; they saved my life. I asked Mrs. Reynolds for one of these papers to give to Mrs. Witherington, and it was given to her.

It did not save her life?—No, sir; and I am sorry for it.

You had paid her a sum of money?—I did.

How much?—300*l*.

How long before her death?—About a fortnight or three weeks: I got her receipt, and made my clerk account for it in my books.

Were you ever charged with stealing that money?—I never heard that such a charge was made; none of the family ever spoke of it to my face.

Captain Witherington is the son of your mother-in-law?—He is.

Did he make that charge?—Not to myself: I will mention a circumstance; she had a bond, and gave it to Mr. Jones to purchase a commission; he said the money could not be got, and the 300*l*. was asked to purchase the commission, and I always thought that her son, Edward Witherington, got that money: She died suddenly, and had not made a will.

She died suddenly?—She died unexpectedly.

She died in 48 hours after taking this powder, which you gave her to cure her?—She took the paper on Friday evening, and died on Sunday morning.

Do you know any thing of a woman of the name of Cahill?—I do very well.

Did you ever execute to her any security for money?—I did, two; a bond and a note.

Did you ever get this bond and note back again?—Several times I have had the bond in my possession, and several times I had the original note: If you choose, I will tell you the particulars; she had 175*l*.; she gave 100*l*.

to my mother upon the joint bond of my mother and myself: She gave me 50*l*. upon my own bond, and 25*l*. upon my note.

She is nearly blind?—I have heard so, I have not seen her for some time.

Did you ever give her any other bond?—I cannot say that; but if you please, I will tell you what I know. She is an old woman, who had passed great part of her life in my mother's family. In June, 1793, she had 175*l*. She gave 100*l*. to my mother upon our joint bond, 50*l*. upon mine and 25*l*. upon my note, saying she would call that in for her expenses. She took up 5*l*. afterwards, and got a fresh note for 20*l*. Some time after my marriage, Mrs. Reynolds went to see her, found her ill, and no one to take care of her; she brought her to my house, allotted her a room there, and she was taken care of, until she recovered. She then consulted some friends, Mrs. Molloy, I believe, was one, about settling her affairs, and she intended to sink the money for an annuity of 25*l*. for her life, that she might have some support, if she left us. After some time, the securities were made out; but she changed her mind, and said, she would make a will; I got the bond from her to compare the dates and calculate the interest due; I gave her back by mistake an old double bond and warrant, which had been filled up for another purpose, but lay in the desk in the office as a precedent, in case such things should be wanted. I paid her the interest regularly, and when she demanded the principal, I gave it to her.

You gave her back a bond, not the real bond you got from her?—I did, sir.

She was old and nearly blind?—She was: I paid her the contents of her own bond: I gave her the interest as she wanted it, and when she wanted the principal, I gave it to her.

You did not say, whether you put the real bond into the desk in the place of the copy?—I did; I did not discover the matter, until I was searching my papers, when I was preparing to quit business.

Then there never was an application made by an attorney to you upon the subject?—Indeed, there was, and the most unwarrantable application that ever was. I received a letter from Mr. Sullivan, that there was a mistake which I must rectify; I answered, that I would rectify it; that I would be shortly in town and would rectify every thing. I was much hurried at that time in getting my house repaired: A meeting took place of the creditors of Patrick and Richard Folie; I came up for one day, called at Mr. Sullivan's and left a letter with his wife, mentioning my hurry and requiring to know what money Mrs. Cahill wanted, and that I would execute a new security to her. I heard no more for some time, till I received a letter from an attorney to settle it. I came to town, found her in a lodging in Smithfield, told her I came to settle the business. She desired me to go to

Mrs. Molloy in King-street, and to settle it, as she chose; I went to her, and settled with her for principal and interest.

You were of age at this time?—Certainly.

Did your second note bear date at the time it was executed?—No.

It was antedated to the time of your being under age?—I cannot say exactly; but I do not believe it.

When did you come of age?—In 1792: the second note was to bear date as of the time of the original transaction when the money was borrowed.

How comes it that you cannot speak more exactly as to the time?—I cannot swear exactly as to the time of the note being dated.

A letter was written to you upon the subject?—She answered a letter of mine.

It was a very angry letter?—I do not recollect the contents: It was an answer to mine.

Do you recollect your aunt Fitzgerald's hand-writing?—I do not.

Or your grand aunt's?—No.

Did either of these women charge you, with giving this old blind, wretched woman a forged bond, instead of the real one?—What they said I cannot tell. My aunt wrote an angry letter to me, but the contents I cannot mention more particularly.

Does it begin in this way: "I cannot begin as I used, for it shocks and grieves me."—I do not recollect that.

"Would to God your father had no such son?" Do you recollect that?—No.

"It is well you were not the death of the woman?"—No, I do not recollect that.

"I am sure it would have killed her, if we had not persuaded her, it was owing to some mistake?"—They persuaded her very right.

"But she remains in her bed. My aunt hearing of her distress, sent her a guinea for charity?"—I have heard my aunt sent her money.

Did she use expressions of this kind in the letter?—I cannot say.

"She borrowed money here and there, and nothing but money would do, as no money could be got upon a note seeming to bear date in your minority." Was that the subject of the letter?—Upon my oath I cannot say. I read the letter, but thought no more of it.

There was a charge made against you for changing Elizabeth Cahill's bond, and giving a forged one in the place of it?—Never.

Well, in giving an old copy which was useless?—That was not a forged bond.

Do you not believe, that letter had another subject of inquiry, namely, giving a fraudulent note, dated as of the time of your minority?—I never heard such a charge was made. I say positively, that I never intended to defraud her, nor did I defraud her; I paid her the interest, and when she demanded the principal, I settled it.

An attorney threatened a prosecution?—An attorney wrote to me to settle it.

Finding the matter had got wind, and a prosecution threatened, you paid part of the money?—More than part. I settled it to her satisfaction, and that of her friends.

Court.—How long ago?—Last February, my lord.

Mr. Curran.—When did you receive that letter from the attorney?—Some time in the month of January, I believe.

What kind of an answer did you write to Mr. Fitzgerald?—I mentioned how anxious I was to have the matter settled.

Pray, sir, where is that bond you gave by mistake?—That bond I gave by mistake is destroyed.

Destroyed by mistake?—No, sir.

How came it?—I will tell you. Mrs. Reynolds brought to me that bond and a note, and told me Mrs. Cahill had given them to her, saying I was the right owner.

Court.—What note do you speak of now?—The note of 20*l.* that I had paid her justly and fairly; that Mrs. Cahill had been applied to, and offered a great deal of money by Mrs. Oliver Bond to give her that bond, and threatened to drag her to prison, if she did not prosecute me for that business; but that Mrs. Cahill would not give the bond to any other but myself; that Mrs. Cahill had been extremely ill, and in a kind of fit from the passion of Mrs. Bond: that she denied to Mrs. Bond, her having the paper, as she would give them to the right owner, myself. Mrs. Reynolds brought me the note and the bond. I replied they were of no use to any one, as they were not, having paid them both, and I then threw them both into the fire.

Was there any dispute between you and Mr. Cope, touching a money transaction?—There was, which Mr. Cope will explain.

What was the bond and note you burned?—It was the note I passed to Mrs. Cahill for 20*l.* and the bond was not the original one.

But the one that had been used for a precedent?—Yes.

If it were an unexecuted bond, why were you so anxious to get it from Mrs. Cahill's possession?—I was not anxious at all about it; she sent it to me, and I destroyed it, being of no use.

Did Mr. Cope threaten to prosecute you with regard to swindling him out of 1,000*l.*?—Never.

Did he ever threaten to prosecute you?—Never.

There was a dispute between you for 1,000*l.*?—There was, and I will tell you the circumstance.

Did you ever attempt to take credit twice for 1,000*l.*?—No: I cannot answer your question without mentioning the circumstance of the 1,000*l.*; and after that, let Mr. Cope give his opinion about it. Mr. Cope had very considerable dealings for many years with my father. Upon my father's death, a balance

remained due to Mr. Cope of something about 1,000*l.* My mother continued dealing until she was unable to carry on the business farther; she had got from me two-thirds of my wife's fortune, but still could not go on; she made over a list of debts to me, and other matters, to pay a particular sum. The debts fell short, and the other property not being productive, I asked Mr. Cope would he take with a mortgage for the whole demand then near 5,000*l.*, upon sir Duke Giffard's property? he said, he would, and I passed my bond as a collateral security. After this, I continued dealing with Mr. Cope a considerable time, I suppose two years; and then went to Mr. Cope, thinking it hard that my person should be bound for those debts which were not mine, and I offered him 1,000*l.* to release my personal security, and remain upon the other security; not a 1,000*l.* of the debt, but a particular sum exclusive of it, which he agreed to; my interest in the lands mortgaged being only contingent, being a lease executed by the present sir Duke Giffard in the lifetime of his father. We went on dealing, and when I closed, I asked Mr. Cope for a list of the securities to show my friends, which he gave me; he demanded payment of 1,000*l.*, or 11,000*l.*, a balance then due. I told him he had the benefit of all my father's dealing and my mother's, and that he ought to place the 1,000*l.* I gave him to the balance he claimed. We had much conversation about it. He said he would take a week to consider. I went to the country; received a letter in Athy from Mr. Val. O'Connor telling me the transaction was not right, and he chided me upon it. I instantly, without returning to my uncle's, from whence I set out, rode off to Dublin, went to Mr. Cope's in Merrion-square, found him at dinner, and made him easy upon the subject before I left him. He knows best the nature of my conduct in this particular.

Did you ever deny to any person that the bond you got from Mrs. Cahill was not given back to her?—Not to my knowledge.

Then you always knew that the bond you had got from her was the bond you gave her?—How do you mean?

She gave you the bond you gave her?—She did, when I was settling the interest account, in order to compare dates.

Did you settle that account in her presence?—No; she always had that reliance upon me; I always made it clear to her, to what time I paid her.

Did you ever deny, that you had got the real bond?—No, I think not: I might have said, that I did not know of it.

Court.—You got two bonds from her?—Yes, my lords, I got the real bond from her, and a short time since I got the double bond and warrant, which had been given her by mistake.

Mr. Curran.—You executed a bond for 50*l.* You got that back. Did you ever deny that

fact?—I have no recollection of ever having denied that bond.

What names did the bond which was given her by mistake contain?—I cannot tell.

Whose writing is that [showing a letter to the witness]?—It is mine.

It was written to Mr. Sullivan?—It was.

"Tell my aunt Molloy she has mistaken; it was my mother's bond, for 100*l.*" Was that your letter?—Just after my mother's death, Mrs. Cahill gave me my mother's bond for 100*l.* to get the amount from her executor, or enter judgment upon it, if necessary. I afterwards gave it back. Mr. Sullivan had stated to me, that I made a mistake in returning that bond, and I set him right in this letter. I returned the bond for 100*l.* to Mrs. Molloy by Mrs. Cahill's directions.

This letter says, "Betty did not give my mother's bond"?—She gave me my mother's bond, which I returned to Mrs. Molloy.

How long is it since you burned the bond and note?—The very day Mrs. Reynolds brought them to me.

When was that?—Fourteen or fifteen days ago, before any summons was issued to Mrs. Reynolds to appear as witness.

Do you not believe it was well known you were to be a witness against the prisoner and others?—I can form no belief upon it, being in confinement.

Did not Michael Reynolds tell you so?—He did not. I understood he made a charge against me for giving information.

At the time you sent Mrs. Reynolds for the bond and note, did you expect these matters would be enquired into?—I never sent her for them.

Did she go for them?—I do not believe she thought of them when she went to see Mrs. Cahill.

She said Mrs. Bond had offered a sum of money for the papers; were not this bond and note part of them?—Upon my word I believe so.

Do you not believe they were to be produced to impeach you?—I cannot tell how they could impeach me; I cannot tell what evidence Mrs. Bond might produce; when she endeavoured to bribe one, she might bribe others.

Do you not believe their object was to impeach your evidence?—By virtue of my oath I do not believe, if all the papers you speak of and others were produced, that they could impeach the evidence I have given.

Is that an answer to my question?—Ask me the question, and I will tell you.

Do you not believe they were wanted to impeach your evidence?—I believe that Mrs. Bond wanted them for this trial; and to injure me, but in what way I cannot tell.

And, after that you burned them?—After that, I burned them.

You do not know how it was intended to injure you. Was it not by showing you were a false witness?—I cannot form any belief upon the business; it might be the design to attempt to do so.

Can you form no belief?—No decided belief: I rather believe so.

That was your opinion, when you burned the papers?—My opinion when I burned the papers was, that the papers were my property; they were of no use; I had discharged them, and Mrs. Cahill coming forward here, will clear up the business. But all the time nothing has been produced to impeach the evidence I have given, which would be more conducive to the present matter.

You said something of your having taken some oath of an United Irishman?—I did.

Did you conceive at the time, that you were binding yourself to any treasonable project against his majesty or the government of the country?—I did, sir.

Would you have me to understand, that you were conceiving you were pledging yourself, by the solemn obligation of an oath, to the destruction of your king?—Not to destroy actually the king's person, but as pledging myself to the schemes of the United Irishmen.

You considered them to go to the extent you have already declared in your evidence?—At the time, I conceived I was joining a party of men united to overthrow the government.

Did you in the sincerity of your heart take that obligation, meaning to perform it?—I did.

Had you ever taken the oath of allegiance?—I did, sir.

Whether before or after?—Before.

Before you took the United Irishman's oath you had taken the oath of allegiance?—I had.

You had been a Yeoman?—Not at that time, but since.

Did you take the oath of a Yeoman?—No.

Did you take the oath of allegiance with an intention to keep it?—I did at the time.

And the united oath?—I did.

With equal solemnity?—The united oath was rather more solemn, and I took another oath afterwards: I took an oath of secrecy.

How long is your mother dead?—She died last November.

What did she die of?—I cannot tell.

Had you prescribed any thing for her?—No, I was not in the way of prescribing for her; I was not with her.

You have a sister married to a Mr. Prendergast?—Yes.

Had she any deed of annuity?—Never that I knew of.

Do you know any thing of one?—Indeed, I have known of one made out, but never executed.

You have seen it?—I have seen a copy, which Mr. Prendergast says he means to demand. It was not so much a deed of annuity, as an agreement between me and my mother.

Thomas Reynolds, esq. re-examined again on the part of the Crown.

Whose writing is this [showing him a let-

ter]?—I believe Miss Dwyer's, who lives with Mrs. Cahill, and transacts her business: it came to my wife as I heard by her directions.

A Juror.—The papers that Mrs. Cahill gave your wife, do you really think, she gave them of her own accord?—I think so.

With full voluntary will?—Freely and voluntarily; she really forced them upon my wife.

William Bellingham Swan, esq. * sworn.

Examined by Mr. *Prime Serjeant.*

Do you see John Mac Cann?—I do.

Point him out?—[The witness did so.]

Do you recollect having seen him before this?—Several times.

Do you know where Mr. Oliver Bond lived?—I do.

Where?—In Bridge-street.

Did you see the prisoner there?—I did.

When?—On Monday the 13th of March.

How many others did you find there?—Thirteen or fourteen more.

In what part of the house?—I found them in a back room, which appeared to me to be an addition to the house. I received information two days before, that I should find them there.

Were you accompanied by any person and whom?—I had twelve serjeants of different regiments, dressed in coloured cloaths.

Do you recollect the name of any particular serjeant?—I do, a serjeant of the Dumbartonshire regiment; his name is Mac Dougall.

He got in first?—No, he followed me. I laid the plan of the serjeants, having reconnoitred the house the night before: they had directions to come after me. After my securing a certain person—

Who was that?—Mr. Bond.

Did you bring him up stairs?—I did.

Did you see any papers?—When I bounced into the room, I saw one of the persons sitting in the room with a paper before him.

Look at that [showing him the paper No. 1, *Vide p. 434*]?—That is the paper: the ink was fresh upon it at the time, apparently not dry.

What did you do?—I desired them to hold up their hands, as I had information they had papers of consequence, to prevent their destroying them, and I said, if any refused, I would fire at them.

Was there any book upon the table?—There was a prayer-book, paper, pen and ink.

You searched for papers?—I searched each person. Previous to my going there, I desired the serjeants to be extremely watchful of the hands of the people, lest they should throw out any papers; and I desired the serjeants without side to pick up any papers that might be thrown out.

* This gentleman is a magistrate of the county of Dublin, but was employed in this business in the city confidentially by, and at the special instance of government.—*Orig. Ed.*

Were any papers handed to you by serjeant Mac Dougall?—There were. There was a fire in the room, and five of the people went towards it, I was afraid, to destroy the papers; I said, I would shoot them if they went to the fire; Mac Dougall stooped down, and said he had got a parcel; he handed me a memorandum-book, and a parcel of papers [Here the memorandum-book and the papers were produced, and identified by the witness].

Name as many others of the persons you found there as you can?—*William-Michael Byrne.*

What countryman is he?—I do not know. Mention the rest?—I found Mr. *Peter Ivers*, who said he came from *Carlow*.

Lawrence Kelly, who said he came from the *Queen's County*.

George Cummiss, who said he came from *Kildare*.

Edward Hudson, of *Grafton-street*.

John Lynch, who said he came from *Mary's-Abbey*.

Lawrence Griffin, who said he came from *Tallow*, in the county of *Carlow*.

Thomas Reynolds, who said he came from *Cabmultin*, I forgot to take the county.

John Mac Cann, the prisoner, who said he came from *Church-street*.

Patrick Devine, who said he came from *Ballymoney*, in the county of *Dublin*.

Thomas Traynor, who said he came from *Peelbag-street*, and has since made his escape.

William-Michael Byrne, who said he lodged at *Summer-hill, Dublin*, but he told me he came from the county of *Wicklow*; upon him I found the letter from *Mac Cann*, and other papers.

Christopher Martin, who said he came from *Dunboyne*, county *Meath*.

Peter Bannan, who said he came from *Portarlington*.

James Rose, of *Windy-harbour*, county *Dublin*.

Richard Dillon, of *Bridge-street*, who said he had slipped in with the guard, and was afterwards discharged.

What hour of the day was it?—It was exactly eleven o'clock, having set my watch to agree with several others.

Did you get any sign by which you were to obtain admission?—I did.

What was it?—*Where is Mac Cann?—Is Ivers from Carlow come?*

You made them all prisoners?—After looking and searching for their papers, I took them to the Castle. I had a warrant from Mr. *Pelham*, for arresting them. I had some names particularly specified in the warrant, *Oliver Bond*, *Henry Jackson*, *Hugh Jackson*, lord *Edward Fitzgerald*, *John Mac Cann*, *Mr. Mac Nevin*, together with all others I should find there. There are names of persons not arrested, therefore I will not mention them.

William Bellingham Swan, esq. cross-examined by Mr. *Mac Nally*.

This was eleven o'clock in the forenoon?—It was.

And you went to Mr. *Bond's* house?—I did.

Were you ever in that house before?—I did slip into the hall part of it the night before to reconnoitre it.

The lower part is occupied as a ware-room for goods?—It is so.

Then there is no room unoccupied below stairs, but a small office?—I did not go through the lower part.

You have spoken of the room as an addition. Was it furnished? or were there goods in it?—I saw no furniture in it.

Did you observe in what manner the room was furnished where Mr. *Bond* sat?—I did not find him in any room; I found him in his counting-house.

Was not this room at a distance from the place where Mr. *Bond* was?—It was at such a distance as required the going up stairs to it.

Was it possible for Mr. *Bond* to hear what was going on there?—Where I found him, he could neither hear nor see what was going on.

Did you use the pass-word to get in?—No, because they would know me too well; but I sent a person before me, who, I believe, used it.

At eleven o'clock, the street-door is usually open there?—But there is another door inside the hall near the stairs.

Is not the door of the office where Mr. *Bond* was, between the inner door and the outward door towards the street?—Yes.

You mentioned the finding a number of papers?—I did.

Some were found in a book under the grate?—There was, a bundle handed to me by the serjeant.

Did you see any use made of them after you got in?—I did not.

Some of them were found in a book under the grate?—I think so; they were handed to me, and I examined and indorsed them.

You cannot say where they were got?—I can: I saw the serjeant stoop for them, and bring them to me, as I had directed. I saw some of the company move towards the grate, and I threatened to fire at them.

Then the amount of your evidence is, that papers were found in the room, but that you saw nothing done on those papers, or in respect to them by any person in the room?—I saw but one person sitting at the table with the paper beginning, "*L. A. B.*" before him.

He made no use of it?—Not that I saw.

Court.—Did any one claim the book?—No, my lord; I thought it indelicate to ask any one, when I saw the contents.

John Mac Dougall sworn.

What is your situation?—A serjeant.

In what regiment?—In the *Dumbartonshire Highland Fencibles*.

Do you know Mr. *Swan*, the magistrate?—I do, by seeing him.

Do you recollect attending him to any place upon the 12th of March last?—I do; I attended him to the house of Oliver Bond, in Bridge-street.

Did you go up stairs in that house?—I did.

What did you see upon going up stairs?—

Upon entering the room, I saw a number of people, some sitting round a table, with about a quire of paper before them, pens and ink, as I suppose, entering upon business.

Did you see any thing else besides paper, pens, and ink?—There was taken from under a table a shamrock, made with green ribbon.

Was any thing written upon it?—There was, in gold letters, "Erin go Bragh," and under that a harp without a crown.

What became of it?—It was given to justice Swan.

Was there any fire-place in the room?—There was, sir; and a fire newly put on.

Did you see or find any thing particular about the fire-place?—I did; I saw a paper under the grate; I examined it, and found it was only blank paper; this raised my curiosity; the place was far in; I took my bayonet and raked, for I could not see, and I took out a small account-book, or memorandum-book, with some papers.

Can you be positive what you did with them?—I had been desired to keep all papers till we had time to secure the people; I rolled them in a sheet of clean paper, and delivered them to Mr. Swan.

Had you any curiosity to look at any of the papers? Did any thing strike you?—There is one of them stating an account of the expenses of a meeting, and I remarked, there was 2s. 2d. worth of sealing-wax made use of at one meeting.

Did you take these papers out of the room?—No, I did not; I gave them to Mr. Swan in the room.

Did you give any papers to Mr. Swan but what you found there?—None, but what I actually found under the grate; there was another loose paper, containing an account of the numbers of men in the different counties.

Not Cross-Examined.

Arthur Guinness, esq. sworn. — Examined by Mr. Mayne.

Do you know the prisoner at the bar?—I do.

Are you acquainted with his hand-writing?—I have seen him write very often.

Look at that letter [*vide* No. 5, p. 435]—I look upon it to be the hand-writing of the prisoner.

Do you believe it to be his hand-writing?—I do believe it to be his hand-writing.

Look at these other papers?—No. 1, is his writing; No. 2, is his writing; No. 3, is his hand-writing, except the latter end, the part entitled the "Private's Test." The letter directed to Edw. Ratigan, and signed John Mac Cann, is the prisoner's writing; and the

letter directed to W. M. Byrne, signed John Mac Cann, is the prisoner's writing; the paper beginning "I, A. B." is also his hand-writing; and two pages in the memorandum-book are also his writing.

Not Cross-Examined.

The papers were now offered to be read. The counsel for the prisoner objected to any paper being read, which was not proved to be the hand-writing of the prisoner. The Court, upon the authority of lord Preston's case,* determined, that papers found in the possession of the parties, are admissible evidence.

The papers were accordingly read.

[No. 1.]

	In hands	20	18	3
K.	.....10863			
W.	.....12095	£.		
D.	..... 3010	30		20 0 0
C. D.	..... 2000			
Q. C.	.....11689			
K. C.	..... 3600			
C.	..... 9414			
K.	..... 624			
M.	.....14000			
	<hr/>			
	67295			40 18 3
				<hr/>

"10 in the Morn^s. this day 3 Weeks.

"Resolved, that we will pay no attention whatever to any attempt, that may be made by Either houses of Parliament to Divert the Publick Mind from the Grand object we have in View, as Nothing Short of the Compleat Emancipation of our COUNTRY will Satisfy us."

[No. 2.]

"Resolved, that it is the opinion of this Committee, that if the other P.† be in an equal State of Preparation with Leinster as Soon as we Can procure the Information of their State and their determination to act in Concert with the Nation, we should immediately proceed to Act, and that the Exe.‡ be requested to take such Steps immediately as will tend most Expeditiously to bring about an Union of the different Provinces.

"Res^d. that the Select Com^{rs}. of 5 be requested to prepare a Military Test, to be Laid before the Prov^l. at their next Meeting for their approbation."

[No. 3.]

	19th February, 1798.			
S W.	In Tr ^l hands	20	18	3
Kildare	.....10863			
Wicklow	.....12095			
Dublin	..... 3010			20 0 0

* See it, *ant^e*, vol. 12, p. 645.

† It was alleged by the counsel for the Crown, that P. meant Provinces. *Orig. Ed.*

‡ Executive. *Orig. Ed.*

D^r. City 8000
 Q^r. Co. 11689
 K^r. Co. 3600
 Carlow 9414
 Kilkenny..... 624
 Meath 14000

67295 40 18 3

“ Res^d that the Colonels in Each County shall make a List of those persons to be Adjutants General for said Counties, the Lists to be Transmitted Sealed, Either thro’ the Provincial or any Other Authentick Channel to the Executive, who will Nominate One of the three to the employment.

“ Res^d that our Treasurer be allowed to pay 16 G^r. to the Delegate for to buy a horse, which when the Entire Country is Organized, is to be sold, and the money paid Back into the hands of The Treasurer.

“ Res^d that the Ex. Com^m be requested to Acc^t for the Expenditure of 60 G^r. Voted them.

“ Res^d that Each Co. who have not paid in any finance shall be Requested to pay in £70. immediately, Except the Co. Carlow, which shall only pay £40.

“ Privates Test.

“ I A. B. do Solemnly Declare, that I will perform my Duty, and be Obedient to all the Lawful Commands of my Officers, while they act in Subordination to the Duly Elected Comm^m.”

[No. 4.]

“ D^r Ratigan,

“ You will much oblige me by Calling on G. Fitzsimons and John Cormick to inform them, the B. C.* meet this Evening at ½ past 8 O’Clock at O’Neill’s, Cook-street—where I expect to have the pleasure of seeing yourself.

“ Yⁿ most Sincerely,

“ J. MAC CANN.

“ Church-street, 3d Febr^y.”

[Directed]

“ Edward Ratigan, Esq.”

[No. 5.]

“ Brother,

“ Inclosed you have the Letter Left by Citiz^r F.—† I have been making general Enquiries whether E. F.‡ has been in Town to-Day, and from Every Circumstance am inclined to think he has Not, if you wish to See him before you Set Off, think you should Lose no Time in going to the Rock, as you will be Sure to See him there at 6. O’Clock—I am to organize a New Sett this Evening, and to Attend my B. C.§ which may

* Baronial Committee. *Orig. Ed.*

† Lord Edward Fitzgerald. *Orig. Ed.*

‡ Same. *Orig. Ed.*

§ Baronial Committee. *Orig. Ed.*

Detain me Rather later, than I Could wish, however tis probable I may have the pleasure of Seeing you before 10 O’Clock.

Yⁿ most Sincerely,

JOHN MAC CANN.”

“ Church-street Monday,”

(Directed)

“ W. M. Byrne Esq^r.

Grumley’s Hotel
 Kevin-street.”

[No. 6.]

[The paper found upon the table, the writing fresh.]

“ I A. B. do Solemnly Declare that I came duly elected.”

[No. 7.]

[Extracts read from the Pocket-Book.]

19th Febr^y. 1798.

1	812	28	8	11
2	865	19	15	0
3	500	9	15	0
4		46	9	0

2177 104 6 5

20th Febr^y. 1798.

P. C.

		20	18	3
Kil.	10863			
Wicklow ..	12895			
Dublin ..	3010	20	0	0
D ^r City ..	2177	104	6	5
Qu ^r Co.....	11689			
K ^r Co.	3600			
Carlow....	9414			
Kilkenny ..	624			
Meath	14000			
		145	4	8

68272

William Cope, esq. sworn.

Are you acquainted with Mr. Thomas Reynolds who has been examined here to-day? —I am.

How long?—A great number of years.

Do you recollect whether he at any and what time communicated to you any thing remarkable respecting himself?—In the month of February last.

Mention what it was he communicated to you?—In the month of February the late sir Duke Giffard died. Mr. Reynolds had assigned to me a leasehold interest to which he was entitled after the death of sir Duke Giffard, to secure a debt of 5,000*l*. It was that brought us together.

Mr. Mac Nally.—My lords, I object to this evidence, though such evidence has been admitted of late years in this country. I have made much research, and cannot find any case where it has been done in England.

The Court said the evidence was admissible,

to show consistency in the accounts of the witness.

Counsel.—You had been in the county of Meath with Mr. Reynolds; upon your return from thence, do you recollect any particular conversation between you?—I do, sir; it had a reference to the conversation of the preceding evening; I spoke of the appearance of disturbance, and the wretched state the country would be in, if the French should land, for wherever the French went, they marked their progress with desolation and destruction. I went on a good deal, and applied it to the case of Ireland; I said, it was extraordinary, that in all the trials, government had never been able to bring forward any person of consequence; that we must all know, that the machines were managed by much greater persons, than they had been able to procure; and I at length put a question to him, because I had formed my opinion, that he was a United Irishman; in consequence of the conversation we had at sir duke Giffard's, I thought him one, and I put a question short to him—"You have it in your power to do great service to your country—more than any man alive—children yet unborn will bless you—why not do it?"—He said he would not come forward—he could not. I, seeing him determined, let the matter drop for a while. I had the subject much upon my mind. The horror and desolation, which would accompany the landing of the French, made a deep impression upon my mind. We concluded with his saying he would call upon me. He did so, and said, he could not come forward himself, but he knew a man that would—I said, if he would not have the honour and glory of it himself, I must submit. He said that this man would be under expenses, and obliged to retire—probably to quit the country—I told him the money should be paid, and I wanted to know the amount; he said about 500 guineas, for the expenses of the journey, &c. He then gave information, which I took down, for he would not write—it went to the point of a meeting to be had at Mr. Bond's house: that information was suggested to government by me.

Do you recollect what species of meeting he mentioned?—He told me, that hitherto he had never got higher than a Baronial Meeting; but he said they had their County Meetings, Provincial Meetings, a Directory and Executive. He told me the meeting at Bond's was to be a Provincial Meeting.

What did you do in consequence?—I communicated it directly to government, and that before the day on which the meeting took place.

Do you recollect what company you had at sir Duke Giffard's?—Lord Wycombe, son of the marquis of Lansdowne, captain Fitzgerald, an uncle of lady Giffard, and others.

Do you recollect what turn the conversation took?—A good deal was said, that there must be conciliation, reformation, and emancipation; that there must be a change.

VOL. XXVII.

You had conversations with Mr. Reynolds upon the subject of this trial?—Yes.

Whether has he been uniform and consistent in his relations to you?—Quite consistent and correct, and every thing he told me, actually came out.

Not Cross-Examined.

William Harris sworn.—Examined by *Mr. Solicitor General.*

Have you been a United Irishman?—I have, sir.

Were you employed in any capacity by the United Irishmen, or any part of them?—I was.

What was your office?—Treasurer, generally, to the societies from the Baronials to the Districts.

What were you first?—Of the Baronial.

At what place?—On the Coombe.

Have you ever seen John Mac Cann?—I have.

Do you know him by sight?—I do, very well.

Look about and try if you see him?—This is *him* [pointing to the prisoner].

Have you ever met him at any society of United Irishmen?—I have.

Where did you first meet him?—The first place I met him in committee was at Jackson's in Church-street.

What kind of committee?—It was called "The County Committee."

Had he any particular office or duty imposed upon him there?—Yes, as secretary.

What time was that?—As near as I can guess about twelve or thirteen months ago.

Do you remember any others who were present besides the prisoner?—I do; Mr. Duignum of Grafton-street.

Who was treasurer to that Committee?—One Jackson.

What Jackson?—Hugh Jackson.

Who is he?—Son to the man who is in prison; son to the man who owned the house.

What was the object of your meeting?—The object *were* to deliver in accounts of men, money and arms.

For what purpose?—To tell the strength of the city.

Were you at more than one of these meetings?—I was at several.

At the same house?—At the same house, and at other places.

Did you attend Baronial Committees in company with the prisoner?—Yes.

How many times at that house?—As nearly as I can guess six times at least, to speak safely.

Who acted as secretary to those meetings?—John Mac Cann.

What was the duty of the secretary?—To deliver us the returns of the country, that we might produce them to the city.

Did you give him any accounts?—We gave him accounts of the divisions in the city, and

he gave us a general account of the whole strength.

Do you recollect any returns you made?—I do not exactly, because I burned all my papers.

When?—When the search was made.

Can you tell any particular?—Not to a nicety, not having the papers.

What were the returns?—Returns of men, arms and money.

What was the object of them?—To maintain a reform in parliament.

By arms and money?—Yes, when the people would be armed.

Were you to do this of yourselves, or did you expect assistance?—We really did expect the French.

Who told you?—It was such a common phrase in every one's mouth, that we all thought it.

Were you ever told by any particular man, that the French would come?—I was told at one time they would come in June or July.

Who told you that?—To a certainty I cannot tell.

Was Mac Cann present at the meeting, when that was told?—He was.

What were you to do, or had you any particular object, when you were to rise?—To gain the Park, and the Castle.

Was that a part of the general conversation at the meetings where you were?—It was at the County and other meetings.

Did you hear that mentioned at any meeting where Mac Cann was present?—I never was at any meeting that he was not there, for he should attend there as secretary.

Was this when you got the French to assist you?—Yes.

What were you to do with the soldiers?—We were to gain them over as much as possible.

Were you long employed as treasurer?—About three months.

How came you to be removed?—The higher people came in.

How higher people?—Richer people came in, and were put up to it.

You continued a member however, though you lost the honour?—I was.

You were since taken prisoner?—I was.

And you expect to get off by telling your story?—I do not expect to get off.

How many different classes of societies were there?—That was according to their strength. There is the Society first; then the Baronial: if they are numerous, they split into three, that makes Districts.

What was your district?—I was chosen treasurer, and then went to the county.

Was it the county of Dublin or the county of the city?—The county of the city.

Were there any members from any part of the county?—No, not at the city meeting.

Mention any other persons who attended besides Duigenum?—One John Madden, Guilding, of Goat-alley, and Hugh Jackson.

Where did Madden live?—In King-street.

How long is it since you lost your office?—About three or four months.

Who was elected into your place?—One Coghlan.

Where did he live?—At the corner of Chaucery-lane.

William Harris cross-examined by Mr. Curran.

You were to have some great part in the new order of things?—I have been no more than what I told you.

What is your trade?—A ribbon weaver.

Do you know the road leading to Rathfarnham?—I do.

Were you in any company there a few days ago?—I was.

How many other gentlemen were with you?—About twelve or fourteen, when we followed the party.

Were you tied there?—No, I was not; I was walking.

And how many were taking the air?—There were eleven taken there.

You were to be interpreter in the new order; I ask you were you taking the air?—So I told you.

Did any of the company cease to take the air?—Where.

At Rathfarnham? Do you know the smith's forge?—I do not.

Did any of you go there?—I cannot tell.

Did you see any of your party afterwards?—I did.

Were not some of them hanged there?—Some were.

Had you been in their company?—I had.

Were you hanged there?—If I was, I would not be here.

Then what you say comes to this: a little party of you went to that part of the country, and some of you were hanged before you got back?—You know it all yourself; where is the use of my telling you.

Were you not caught?—I was caught near Rathfarnham.

How many of you?—There was a little boy along with me.

Five of you were hanged?—No.

How many?—Four.

Were any shot?—One as I hear.

I suppose you were spared, as being a great officer; how comes that? You had no disposition to rise; it might have puzzled you? How came you to be a witness; were you half hanged?—No.

Were you threatened?—No.

Were you punished, or threatened?—I offered when I was taken to do what I could for the gentlemen.

To avoid being hanged?—I do not know but I may be hanged yet.

You turned witness in order that you might not be hanged?—I turned witness for this reason, that I might get some favour in not being hanged.

By virtue of your oath, do you not think you would have been hanged, if you had not turbed witness?—As government showed me a partiality in not hanging me at the time, I suppose they will show me favour still.

What kind of a looking man is government?—It was gentlemen took me; that is what I mean: some of Mr. Beresford's troop.

How many of you were taken and brought to town?—Five.

What is become of them?—They are in prison, I believe; I did not hear of their getting any punishment.

Did you ever go bail for any one?—I did.

In this court?—Yes.

What was the man's name?—I think his name was Keane.

Did you swear any thing at that time?—I entered into a bail bond.

And did you take an oath?—Sure I took an oath that I was worth so much.

And how much were you worth?—I am worth more than I swore to.

If you were sold and turned into money?—No, but in property I had at home.

Were you worth 50*l.*?—I was at that time.

Did you ever tell any body, you were not worth fifty shillings?—I did not.

Do you know a man of the name of Field?—I do.

Do you know James Kelly, of Earl-street?—I do.

Did you ever tell him, you kissed the book for love of the man, and to prevent his going to gaol?—I did not.

William Harris, re-examined on the part of the Crown.

Was Kelly in any society with you?—No, but he is an United Irishman; he belonged to the work-house division.

How came you to mention the name of *Mac Cann* first; or did any one suggest it to you?

[The counsel for the prisoner objected to this question.]

You had looms at work?—I had several looms, apprentices, and journeymen, till the times brought decay upon me.

[Here the case closed on the part of the crown, and an interval of half an hour was allowed the Jury to take some refreshment, which was furnished by the sheriffs at the desire of the Court.]

DEFENCE.

Mr. Mac Nally stated the case on behalf of the prisoner.

Eleanor Dwyer sworn.

Do you know a person of the name of *Elizabeth Cahill*?—I do, sir.

Is she a very old woman?—She appears to be so; I do not know her age.

Has she the appearance of old age?—She is blind.

Is she firm in her health?—Quite the reverse.

Do you know a person of the name of *Harriet Reynolds*?—I have seen her, but am not intimate with her.

Were you present at any conversation between her and *Mrs. Cahill*?—I was.

Do you recollect the purport of it?—I do the purport of it, not the very words.

Will you mention what it was?

Mr. Attorney General.—My lords, I must object to this species of evidence; of conversations behind the back of the person to be impeached. This is as it were the trial of the witness; the counsel want to fasten perjury upon him by conversations between other persons when he was not present that will not establish any contradiction imputable to him; if there be any contradiction, let it be proved in the legal manner.

Mr. Curran.—Your lordships will recollect, that *Reynolds* said, he had the account from his wife. We will show, that he himself could not believe it as he has sworn in evidence.

Mr. Baron Smith.—It might go to something relating to the wife; but cannot affect the witness, *Reynolds*.

Mr. Curran.—Was there any thing said about handing over a note, or a bond?—I had them in my possession; they were handed to *Mrs. Reynolds*, who said she had bank notes, but as they were so difficult to get changed, she would bring guineas; and the next day she brought seven guineas for which I gave a receipt, *Mrs. Cahill* being blind.

Mr. Curran.—Was she pressed to give up the bond and note?

[This question was objected to.]

Mr. Baron Smith.—Put it on the strongest way possible. Suppose every word that *Mrs. Reynolds* said to be false, how could that affect the credit of *Mr. Reynolds*?

Mr. Curran.—My lord, I examine as to a fact; I want to prove, that these papers were handed over in consequence of money agreed to be paid.

Mr. Attorney General.—When an insinuation is made not founded on evidence, I must stop it. There was no such evidence given: the witness said there were seven guineas paid, but there was no evidence of any previous agreement.

Mr. Curran.—What was said by you relative to the notes?—She said she had not money, but bank-notes, and that she would get *Mrs. Cahill*, money.

Was this after the papers were given up?—No it was before.

I ask you did the proposal to hand over this bond and note move from *Mrs. Cahill*, or was it a request made by any one else?—No, nobody applied.

What brought *Mrs. Reynolds* there?—She

came some time after she got the first notice from the Court—

Who got notice?—Mrs. Cahill. Mrs. Reynolds came and saw her in bed; said she was sorry she was ill, and kissed her, and put her arms about her neck, and asked to see the false bond and note.

What happened then?—I had the note and bond in my possession; Mrs. Cahill asked me about them: hearing the bond was a false one, I said I did not know any thing of it. "Oh," said she, "what do you mean?" Seeing she was getting into a passion, I said, "do not be angry; here it is." I gave it to Mrs. Cahill, and she gave it to Mrs. Reynolds.

What reason did Mrs Reynolds assign for it?—I do not recollect that she assigned any.

But it was after the summons?—It was, sir.

To attend this trial?—To attend this trial.

Eleanor Dwyer cross-examined.

You are a very affectionate friend to Mrs. Cahill?—I live with her.

Any relation to her?—No.

How long have you lived with her?—Two months.

Were you there at the time Mrs. Reynolds went there?—I was.

Did she press any thing about the papers?—*Mr. Carran*.—My lords, I object to this evidence—it has no relation to this trial, though it may to another cause.

Mr. Baron Smith.—Considering your direct examination of this witness, I feel myself obliged to over-rule your objection.

Counsel for the Crown.—How long were you there before Mrs. Reynolds came?—I do not recollect.

Had not Mrs. Cahill the bond and note, when Mrs. Bond came?—I do not know.

Did not she ask for the papers to be given to her?—Mrs. Cahill said she would give them up, if paid 170*l.*, which was the debt due by Mrs. Reynolds, she being a poor, blind woman, as she said.

Then she must have had the papers at that time; Mrs. Reynolds had an account with this lady a considerable length of time?—I know nothing of that.

Have you not ever heard, that Mrs. Cahill sent to Mr. Reynolds to give her money upon the foot of the account current between them?—I did; and I wrote a note myself for the purpose.

Was Mrs. Cahill angry with Mr. Reynolds?—She was.

For what?—He did not pay her punctually, and his wronging her in the false bond and note turned her against him.

You wrote a note for her?—I wrote it: she desired me to write as feelingly as possible to Mrs. Reynolds, that she might interfere for her.

She desired you to write in terms of anger?—I believe so.

She was violent against them?—No, I believe she was attached to the family; she had been a servant in the family, and she said she had been a long time earning the money for her old days.

Did she express herself, or did you by her desire use violent expressions in the letter?—No, rather in terms of entreaty.

Then she did not desire you to write angrily?—No.

At what time was this?—A day or two before the notice.

Was it about the time that Mrs. Reynolds came as you say, to look for the papers?—It was: I do not know that Mrs. Reynolds came to look for the papers; she came there; I heard it said, but did not hear her say so.

Whom did you hear it from?—From Mrs. Cahill herself.

What reason have you to disbelieve it?—I can tell nothing about it.

Did you hear that Mrs. Bond wanted the papers to make use of upon the trial?—I did hear it.

Do you not believe it?—I do; but cannot swear to it.

Do you not believe she offered money for them?—No, I do not. But Mrs. Cahill said, if she got 170*l.* she would give them, or she might be starving.

Then she would have given them up, if she had been paid the amount due?—I suppose so.

She gave them up without being paid?—I believe so.

How came that?—She may answer that herself; I suppose, relying upon the professions of Mrs. Reynolds's affection.

Did she not rely upon Mr. Reynolds himself?—I believe so, until she found him out.

When was that?—I do not know; I have been but two months with her. I heard nothing of it till the notice was served.

Did you hear her speak of the bond before the notice was served?—I did not.

In the period of two months. Where were you born?—In Leixlip.

Did you hear her speak in terms of friendship, or otherwise of him?—I heard her say that she would be sorry that any of the family suffered.

Did you not hear of this bond before the notice was served?—I did.

How long?—I do not know. I did not attend to it; my own affairs were of more consequence to me.

To be sure they are?—I am glad you say so, because you may be of service to me.

Did you hear her say any thing as to the bond before?—I do not know, I think more about myself than him, or his bond. She thought much of his being brought to trial.

What trial?—That he should be brought into court. I think it hard to be brought into court.

Why should she think about that?—She might be afraid, that he would not give her money.

Are you afraid I should ask you about the letter?—I am not afraid of any thing, thank God.

Was your letter, a letter of entreaty?—I do not recollect; but if I heard it, I would know. If I got the universe, I cannot recollect it.

Is that your hand-writing?—It is indeed; it is not much to my credit.

You wrote this by Mrs. Cahill's directions?—I did. Mr. Reynolds said it was not Mrs. Cahill's hand-writing. I said, how could it be her hand-writing, as she was blind; and the servant woman made the same observation.

The bond was given up, and Mrs. Reynolds gave her seven guineas?—She did.

Was there not a current account between them, and did he not pay her money constantly?—I believe so.

Did she demand any debt which he denied to be due? Do you not believe, that money was paid upon the account depending between her and Reynolds?—I do.

Did you not hear, he used to pay her interest from time to time, upon account of the debt due?—I do not recollect I did. I heard her say, she took up 5*l.* of the principal.

You were present at the time the papers were given up. Did Mrs. Cahill say, what was due upon the foot of the papers, or the account?—I do not recollect I did, for at the time she appeared to have a reliance upon Mrs. Reynolds's honour, she embraced her so affectionately.

Must she not have a reliance upon the honour of Mr. Reynolds?—I do not know: I heard her say, Mrs. Reynolds never deceived her.

But could a married woman pay money without the assistance of her husband?—I cannot say whether she had money of her own, or not; she ought to pay it, if she promised it.

[Here the letter was read.]

“ My dear Madam,

“ It was with the utmost concern I heard of yours and Mr. Reynolds' very afflicting situation.—Nothing but absolute distress could in such a time induce me to be so troublesome having often experienced your goodness I must be very illnatured if I did not feel sorry for your trouble I therefore tried every means before I send again to you but all in vain.—I sent to Mr. Pendergast and Mr. Ware but got no satisfaction on Saturday last I endeavoured to go in person & the reception I met with (altho' they seen me almost fainting with fatigue) was such as I hope never again to experience had it been to you I^d. gone I^d. be sure of very different treatment & I'm persuaded when Mr. Reynolds gets his liberty he'll call them to an account I'm extremely anxious to know you & the children are, & whe-

“ ther you have saved your furniture—
“ you may judg of my distress when I was
“ obliged to take the ring off my finger and
“ dispose of it for a very great trifle I have
“ been keeping my bed ever since I seen
“ Mr. Ware so great was the shock I got
“ at his telling me he w^d. not give me six-
“ pence & must suffer more than you can
“ imagine unless you have the goodness
“ to send me something either to day or
“ to morrow I conclude dear madam with
“ the sincerest regard for you and family
“ your humble servant. E. C.

Friday Morn.

“ D^r. Mam

“ be kind enough to seal what-
“ ever you Send me.”

(Directed) Mrs. REYNOLDS. :

Mr. Thomas Warren sworn,—Examined by
Mr. Mac Nally.

You live now in the country?—I do.

You formerly lived in Dublin?—I did.

What business did you follow?—I was a silk manufacturer.

Were you ever in partnership with any person?—I was.

With whom?—With Rose Reynolds in that business.

Was any partner admitted into the firm of the house afterwards?—There was; Thomas Reynolds.

You know him pretty intimately?—I do know him.

Do you recollect at any time any articles or goods being missing out of the warehouse of the partnership.

[This question was objected to.]

Do you know Thomas Reynolds?—I do.

Is he to be credited upon his oath in a court of justice?—From what I know of him, I would not credit him upon his oath.

Court.—From his general character is he a person to be credited upon his oath in a court of justice?—I do not think he ought.

Mr. Thomas Warren cross-examined.

Do you know the prisoner?—No, sir, I never saw him but in the dock.

You never heard of him?—I never heard of him, until I saw by the newspapers, that he was taken up.

Who applied to you to give evidence?—I received a subpoena, where I reside in the country.

When?—On the Saturday before the commission sat. The subpoena is dated the 27th of June.

You got no application by word of mouth, or letter, before that to come to town?—No, I did not.

When you did come to town, you had no communication with any body, till you came to give your evidence?—I was subpoenaed at the suit of Oliver Bond; I went to his house and asked, what I was wanted for, as I was

much surprised they could wait me; Mrs. Bond desired me to go to Mr. Johnson, the agent, who would tell me; he said it was to the character of Reynolds.

What answer did you make him?—I said it was disagreeable to be called from home to the character of a man I have known so long, and with whose connexions I had an intimacy.

Then you retired?—He had anecdotes of Mr. Reynolds's conduct, while I was within that house, that fell within my knowledge, and he asked me, whether I recollected them.

Was that all that passed?—I did tell him the things so far as I knew of them.

Was that all that passed?—I said nothing more.

Was that all that passed by the virtue of your oath?—Nothing more that I recollect, but I am sure nothing respecting this business.

Did he ask you, whether you would swear, that Mr. Reynolds was not to be believed upon his oath?—I do not know; but he made notes; I rather believe he did ask me, whether, upon the whole I knew of him, I would say so.

And why did you hesitate in giving an immediate answer to the question I asked?—I would choose to be particularly correct in answering the question.

You have been pretty well acquainted with Dublin?—I have, till within these four years.

There are Societies of United Irishmen in Dublin?—There are, I believe.

You know it?—I appeal to the Court, whether I am bound to answer any question that may criminate myself.

The Counsel for the Crown said, they would not press the question.

Mr. Mac Nally.—I wish to ask the witness, whether he has not heard that there have been two Societies of United Irishmen.

Mr. Attorney General.—I object to the question.

Mr. Mac Nally.—I will ask, whether he belongs to a Society of United Irishmen?

Mr. Attorney General.—I object to that, since he has refused to answer the question put to him upon our part.

Court.—The counsel for the prisoner cannot now put any question, but such as arises from the cross-examination.

Mr. Mac Nally.—Does the witness know of any other Society of United Irishmen, but that which he says existed a few years ago?

Mr. Baron Smith.—Where a man refuses to answer as to one Society, why ask him if he knows of two.

Court.—Was there any difference of accounts between you and Mr. Reynolds or Mrs. Reynolds?—No, my lord.

No claim upon you for any balance, or default supposed to be made by you?—I believe not.

Were the accounts of the house ever adjust-

ed?—Mrs. Reynolds said they were not, but the son did not say so. I carried the papers with me to the country.

After taking the papers with you to the country, did you return to town to adjust the account?—I lost the papers upon the road.

You lost the evidence for adjusting the accounts, and never returned to settle them?—I did not.

I suppose you went to the country four years ago?—I did.

Has the partnership subsisted any time since that?—No.

How long before you went to the country, was Mr. Reynolds admitted to the partnership?—In January.

When did you leave town after that?—In June.

Did you know those things, for which you say he ought not to be believed, before he was admitted?—I did. His mother reserved a right of putting him in, and it was against my approbation that he was named.

How long has she been dead?—Since November or December.

It is now four years since you left town with the accounts unsettled?—It is: I lost the papers, and had no means of settling them. But subsequent to that, Mrs. Reynolds sent me a message about a bond assigned to me in confidence for her, and she said that if I would execute a deed of trust for her, she would release me from all claims. I did fulfil the trust, saying to the person who attended, that I was much obliged to her for saying so much, and that if I had sixpence of the property, I would let my family want rather than keep her from it.

If you never refused to execute the trust, why should she offer to release her claims upon a settlement to have it done?—I do not know.

Did you ever remonstrate with her about taking her son into partnership?—She knew I was against it, but she received him peremptorily under the clause.

Did she know the character you gave him?—She was disposed to trust him.

Did he ever give evidence in a court of justice before?—Never that I heard.

How came you to take a partnership account to the country?—They were discount papers, referring to a cash account. All the rest were in the books; but those were discounts, not in the books, but upon abstract papers, that I collected together and took with me, where I might have more leisure, and no disturbance: with intent to carry them back, being only the cash account, which was the only account unadjusted.

Where did you carry them to?—To my brother's in Killeal, in the Queen's county. I took a seat in the mail-coach, and lost them in the mail-coach; I made the most diligent search for them.

Did Mrs. Reynolds make any inquiry since?

—I do not know. The parties knew my conduct; I have lost severely by the dealing. My lord, I was asked respecting a society; I never belonged to any political society these four years.

Mrs. Mary Molloy sworn.

You know Mr. Reynolds?—I know a man of that name.

He is your nephew?—He is my niece's son.

You know Mrs. Cahill?—I do.

She gave you a bond and a note to keep?—She did.

You had them in your care?—I had.

When did you return them?—The day I was served with the summons, or what you call it, from this court.

Was it after you were served?—It was: I sent them to her, and she received them.

Was there any notice at the foot of the summons to produce these papers at the trial?—No not upon the foot; but after I returned them, I got the notice.

How did it happen, that you returned them immediately after you received the summons?—I never received a summons before, and for fear I would be put to farther trouble, I gave them up.

You thought you were to produce them?—I suppose I should if I kept them; and when I gave them up, I thought it no harm.

That was your motive for giving them up to Mrs. Cahill?—It was.

How came you to get these papers into your custody?—The poor woman had lived with my family many years; she had a confidence in me; she was going to the country, and left the papers with me, lest any accident should happen.

Did you ever read the note?—I did.

When did it appear to bear date?—I do not know; I did not know it was antedated, till a gentleman, I showed it to, told me.

Court.—Do you or can you form any belief, whether it was antedated or not?—I cannot; but when I showed it to the young man, he said it appeared to be dated in the minority.

Counsel.—Did any body come to you to get these papers, after you gave them up?—No.

Or to inquire about them?—No.

Mrs. Mary Molloy cross-examined.

Are you acquainted with Mr. Thomas Warren?—I am.

Did you know him to be concerned in trade with old Mrs. Reynolds?—I did.

Did you ever hear of complaints made against him by Mrs. Reynolds?—I must recollect myself: yes, I have heard her complain, that he did not make up his cash account with her.

He went to the country?—He did.

And did not make up his accounts?—I do not know.

Peter Sullivan sworn.

You have got a protection?—I have.

You were a United Irishman, and have surrendered.—I have.

Do you know Thomas Reynolds?—I do.

Do you know any thing of a transaction between him and Mrs. Cahill?—I do.

Did you see a note passed by him to her?—I did, for 20*l.*

What date did it bear?—I saw two notes; the first was dated three or four years, I am not sure.

What sum was that for?—Twenty pounds; the other was four or five years back; that was antedated.

For what sum was it?—Twenty pounds.

How did you come to know it was antedated?—I knew his hand-writing.

Court.—Can you say, whether one of them was for 20*l.*?—I am confident each of them was for 20*l.*

What was the date of the first?—I am not clear as to the date. I believe it was four years ago.

Counsel.—Do you recollect the year the second note was dated in?—I do not; for I never expected to be asked about it.

How do you know it was antedated?—The date of it was seven years back from the time I saw it.

That is, antecedent to the time you saw it?—Yes.

When did you see it?—About December last.

From the general character which Mr. Reynolds bears in life, on your oath, do you consider him to be a man deserving credit upon his oath in a court of justice?—From my own knowledge of him, I would not believe him; but I cannot speak from his general character. From his character in his own family, I would not credit him.

Peter Sullivan cross-examined.

Where do you reside?—In Francis-street.

How long have you resided there?—A year.

Where did you reside before that?—In the house of Mr. Reynolds, for 17 years.

Where?—In Dublin.

Then you have been an inhabitant of Dublin for many years past?—Except when I went to the country upon their business.

What business are you?—A silk manufacturer.

What kind of United Irishman were you?

—Am I bound to answer that question?

When did you get the protection?—The 10th of this month.

When did you become a United Irishman?—About 15 months ago.

There are two sorts of United Irishmen; one, that do not choose to be hanged; the other, who take their chance. Did any body advise Reynolds to become a United Irishman, and tell him whether it was safe or not?

—He spoke to me, and asked me, whether it was prudent to take the oath. I considered it so myself, and told him so.

So that you were not only a United Irish-

man yourself, but an humble maker of United Irishmen, a promoter of the cause?—Am I bound to answer that? I certainly recommended it to him.

Were you not a promoter of the cause?—I might be one in that way.

Do you know the society, that Reynolds first entered into?—I do not.

Perhaps you think Reynolds is upon his trial: Do you know Mac Cann?—I have no intimacy with him.

I do not ask whether you were his play-fellow; but had you such an acquaintance with him, as to ask him, good morning, Mr. Mac Cann?—I never asked him that question.

Or good evening?—Never.

Did you ever see him?—Once I went of a message from Mr. Reynolds to Mr. Mac Cann, and I never saw him but that time.

Was it to deliver a letter or a verbal message?—A verbal message.

A verbal message to drink tea or to dine with him. Do you recollect the purport of it?—I recollect the purport to be—it does not criminate the prisoner, it only criminales myself—

Come, what was it?—He sent me to Mr. Mac Cann to know if he could get a pike sharpened; and Mac Cann did not acknowledge to have any thing to do with it.

By virtue of your oath, did not Mac Cann then ask you for it?—No.

Did he turn you out?—He did not act in any remarkable manner.

So then, he had never seen you before; What did you say to him?—I cannot recollect exactly; but I understood, he would not do them, he was above work of that sort.

What did you say to him?—I said that Mr. Reynolds sent me to him to have pikes sharpened.

You asked him what he was?—I asked, "Where was Mac Cann," in Mr. Jackson's.

And when you saw him, you asked him about the pikes?—Yes.

What did you say?—I asked him to have pikes sharpened; and he said he could not, or would not.

When the foreman would not do the business, did you ask the master of the shop?—I did not know him.

You knew him as well as the foreman?—I was directed into the office of Mac Cann.

If Thomas Reynolds would swear, that Mac Cann was a United Irishman, would you believe it?—Unless I had other reasons to believe it, I know so many objections to his veracity and honesty.

He took the oath of a United Irishman?—He did, I believe.

And betrayed the cause?—He did.

Would not that give you a bad opinion of him?—It would, if I did not entertain a bad opinion of him before.

If Reynolds swore Mac Cann was a United Irishman, would you believe it?—Not from that alone.

I do not ask you; you said that already. I do not wish to bring you and Mac Cann together. Would you believe the evidence?—I cannot say; that might depend upon other circumstances.

Then do you believe he was a United Irishman?—I believed it, when I heard he was taken up, and I believed it before, because I was sent to him about the pikes.

Then if you believe he was a United Irishman, you would not disbelieve it, because Reynolds swore to it?—I would not, if I believed it before.

Court.—Had you the same opinion of Reynolds before you brought the message as you have now?—No, I had not.

When did you bring that message?—About a year ago.

[Here the evidence closed on the part of the prisoner.]

William Cope, esq. examined again on the part of the Crown.

You know Thomas Reynolds?—I do.

Many years?—Yes.

From what you know of his general character, do you think him a man to be believed upon his oath?—Upon my oath, I believe he is.

William Cope, esq. cross-examined.

Do you not think a man engaging in a society of this nature has injured his credit?—There are many erroneous things that a man will do; but still, after a man has been re-instated with his God and his country, I think he is to be believed.

Do you think this witness to be re-instated with his God?—I cannot say for that; but from the contrition I see him in, I should hope he will receive mercy from God, as all repenting sinners will.

Do you found your opinion upon his conduct as a traitor?—Upon my word, I found my opinion upon the transactions respecting myself.

Why did you not mention that upon your direct examination?—Because I was not asked.

You have heard a charge to-day about a bond. Do you believe that charge to be false?—I do believe every word respecting Reynolds being guilty of forgery is all false.

When did you hear of it first?—I disbelieve every syllable of it; and the reason I have for it, is, that he gave notes for the bond, and has paid them, or most of them.

If he swore that he paid off that bond, would he swear true?—He would; because he paid it in a certain specie.

Are the notes paid?—I understand he paid them as they became due.

As a mercantile man do you not know, that a bond is a better security than a note?—As a mercantile man, I do not, because a note is a negotiable security, and money may be had upon it. A bond is not so transferable.

But it may come back with a protest?—These did not, because they were paid.

Is not a man guilty of perjury who breaks the oath of allegiance?—I think so.

And do you think a man guilty of perjury deserving of credit?—Certainly not.

William Furlong, esq. sworn.

Do you know Mr. Thomas Reynolds?—I do.

How long?—Seven years and upwards.

Have you had dealings with him?—I have, many.

What is your opinion with respect to his general character, as to his deserving credit upon his oath?—I have always had a good opinion of his general character.

Would you give credit to his oath in a court of Justice?—I would give credit to his oath, notwithstanding what I have heard alleged to his prejudice.

William Furlong, esq. cross-examined.

Were you in Court during the examination to-day?—No.

Then what you alluded to was what you have heard in common conversation?—Yes.

If you heard that he had taken the oath of allegiance, and had afterwards taken a traitorous engagement in violation of that oath, would you think him deserving of credit upon his oath here?—I think it is very possible, that a man who has taken the oath of allegiance, and at a subsequent period has taken the oath of a United Irishman, may, seeing the misery and calamity in which his country has been involved by it, repent of it, and adhere to his oath of allegiance as more obligatory upon him and may deserve credit, by bearing allegiance to his king, and becoming faithful to his country.

[Here the case closed on both sides.]

Mr. Curran spoke at considerable length to the evidence for the prisoner.

Mr. Saurin replied on the part of the crown.

SUMMING UP.

Mr. Baron Smith.—Gentlemen of the Jury;—When I consider the very important duties which you have to discharge to the prisoner and to God—to your king and your country; and when I consider the very exhausted state in which I now am, I do most heartily rejoice, that you have heard from the prisoner's counsel every observation which could be made in his favour, and from the counsel for the crown every observation which the prosecution called for.

Gentlemen, the prisoner stands indicted for high treason—the greatest offence known to our law—an offence tending to the subversion of the government of the country, and indeed of all social order.—But, gentlemen, if the offence be of an higher degree than ordinary, certainly the proof ought not to be

VOL. XXVII.

less than in other cases; and if there be any ground of distinction, the magnitude of the offence ought rather to call for stronger evidence.

The indictment contains two counts specifying two species of treason, defined by the statute 25 Edward 3rd. One is for compassing and imagining the death of the king; the second is for adhering to the king's enemies; and, gentlemen, several overt acts, thirteen in number in the present case, are laid in support of each species of treason.

With regard to the offence of compassing and imagining the death of the king, there the law means to act upon the imagination of the heart, and to punish the will for the deed. But the justice of the law has taken special care, that still there must be one overt act proved sufficient to show that this imagination of the heart tending directly or indirectly, to the destruction of the sovereign has been acted upon. So soon as measures appear to have been taken for the purpose of effectuating that wicked intention, then the law considers it in the same degree of guilt, as if it had been actually effectuated. And here, gentlemen, let me observe, that it is not by any means necessary, that a conspiracy, or combination to take away the king's life should be a direct, immediate intention of attacking his person, and thereby depriving him of existence; for it is now undoubtedly settled law, not to be controverted or debated, that any conspiracy tending to bring the life of the sovereign into danger is such a compassing of his death as will draw down the punishment of treason upon the offender. Therefore a conspiracy to levy war—to raise rebellion—furnishing arms, ammunition, men, provisions or intelligence to a foreign enemy;—compelling the sovereign by force to change his measures;—a conspiracy to overthrow the government, or change the constitution by force, are all overt acts sufficient to draw down the punishment of treason upon the offender.

I mentioned, that in the present case, there are thirteen overt acts laid in the indictment; the eighth, however, it has been conceded by the counsel for the crown, cannot be substantiated. Therefore your attention is to be directed to the remaining twelve. I will very briefly state to you what these overt acts are.

[Here the learned judge stated the overt acts from the indictment.]

These several overt acts are laid in support of the treasons charged, and it was necessary to state such of them in the indictment as evidence would be applied to, in order that the prisoner might be apprised of what would be attempted to be proved against him, and be prepared to defend himself, if he could. If any one of these overt acts shall appear to you to have been proved sufficiently and satisfactorily, according to your consciences, acting upon your oaths, it will be your duty to find the prisoner guilty. But whether there has been

such evidence is your sole province to determine. I will endeavour to assist you in forming that determination, by reciting the evidence from my notes, making a few observations, occasionally, as I go on, reserving an opportunity, if I shall be able, at the conclusion, to make some observations, perhaps less embarrassed, than those which I may submit to you in going through the evidence—

[The learned judge then read the evidence from his notes—when he came to the part relating to the object of the meetings—he said,]

You will observe, gentlemen, that the prisoner's counsel argued, that Mr. Reynolds did not specify any person from whom he received intimation of the object of the United Irishmen: but you will see from the evidence, that he stated the object of all the meetings to be "to overthrow the government and constitution of the country; to establish a republican form of government in its place, and to favour a landing of the French to forward these views." Now it seems to me, so far as the witness deserves credit, that his evidence is as pointed and precise as it could be to ascertain his source of information with regard to the object of all these meetings—he saw and he knew their object to be that which he stated, having heard it discussed at each and every meeting; so that saying he heard it at one particular meeting, or at another, or from some particular person, instead of strengthening, would have weakened his evidence, because he learned it by attending all the different meetings, there hearing the end and object of their institution, and repeatedly mentioned by the body collectively.

As to the meeting at Bond's, it is highly material; for if the meeting which Reynolds gave information of before the 12th of March did actually take place, either the witness must have sworn truly, or Mr. Cope must have falsified, or the witness must have been a prophet—He either learned from the prisoner that the meeting was to take place upon the 12th of March, or he must have predicted that event, for there is no colour of ground for supposing he had learned it from any other person than the prisoner.

As to the frauds and other acts of profligacy with which the witness, Reynolds, has been charged, some of them he admitted—others he denied; and I must say, that if he even had committed those which he denied, it would not follow of necessity, that he was undeserving of credit on his oath; though certainly if those charges, which he denied, had been proved against him, such circumstance ought to have weight with you in estimating the degree of credit, which you would give to his evidence.

Gentlemen, great stress was laid upon the witness having first taken the oath of allegiance, then that of the United Irishmen, and having

finally come forward here and given that testimony which you have heard. It was stated to be gross perjury; it was assimilated to the case of a man who had been sworn to give evidence in a court of justice, and been afterwards convicted of perjury, and it was said and said, truly that such a man could never afterwards, be received to give evidence; so the law undoubtedly is. But the present case is obviously distinguishable from the case put; Reynolds had taken the oath of allegiance it is true, nor can his violation of it by taking the united oath be justified in any respect; but as to the second oath, that of an United Irishman, it is very different indeed from an oath taken in a court of justice. A man takes an oath there calm and uninfluenced, apprised of its consequences, nor can he break it, without a violation of the laws of God and man—In giving evidence he does nothing, but what a good, conscientious, and honest man ought to do.—But a man taking the oath of an United Irishman may act under seduction, or the influence of persons who have acquired an unwarrantable power over his mind; and he takes an oath, "which is more honoured in the breach, than in the observance." Suppose a man should take an oath, that he would imbrue his hands in the blood of his sovereign, or that he would assist in the destruction of thousands of his fellow subjects; could it be said he was bound by such an oath? Or that if he violated it, such violation would be at all similar to the violation of an oath taken by a witness in a court of justice? There is no divine, who would not tell any man who had taken such an oath as I have supposed, that it would be meritorious to violate it, and that such violation would be pleasing in the eye of God and man. Neither ought the taking of an oath under the influence of seduction, or the terror of death, or other violent mischief, to be considered as a deliberate violation of the oath of allegiance, or at all analogous to wilful or corrupt perjury, so as to render a witness altogether incredible, although it may be a circumstance very proper to be considered by a jury when they come to appreciate the degree of credit to be given to the witness. It certainly does not render him incompetent, and the prisoner's counsel only argued it as going to his credit, though the effect of the argument would be just the same as if the witness had been held incompetent. The mischiefs of such a doctrine would be endless; because if a man who had taken the oath of allegiance, and afterwards that of a United Irishman were to be totally discredited for ever after, all lenity on the part of government would be utterly abortive; because if such a man could only purchase redemption by everlasting infamy, it can scarcely be supposed that he would ever seek to avail himself of the royal mercy.

[After the learned judge had stated the whole of the evidence, and observed upon

different passages of it incidentally, he said,]

Here the case was rested on all hands, and I will now trouble you with only one or two observations more;—Two species of evidence have been adduced on the part of the crown: one parol, the other written. Whether the former deserves credit is for your judgment solely. If the testimony of the witness, Reynolds, shall in your opinion, be worthy of belief, in my apprehension, it goes the length of maintaining all, or almost all, of the twelve overt acts laid in the indictment. There is scarcely any, if indeed one of the twelve, that it does not establish. But it is sufficient, if it establish any one; that, if proved to your satisfaction, will call for a verdict of conviction. The witness mentioned, that the object of the meetings was, to overturn the government and constitution—to establish a republic and to aid the French, when they came to forward these purposes.

Then, gentlemen, it is for you to consider, whether that evidence of Reynolds deserves your credit or not? In estimating his credit, you will recollect the manner in which he gave his testimony:—you will compare the parts of his testimony with each other, and you will compare the whole of it with the evidence of Mr. Cope. You will also consider, whether the written evidence has or has not been proved in such a manner as to leave no doubt of its authenticity upon your minds? Observations have been made upon it, with regard to the effect it ought to have and how far you should be influenced by it. So far as I have been able to collect the law from the best authorities, papers written in prosecution of certain determinate purposes that are treasonable, and with which purposes they are plainly connected, are undoubtedly admissible evidence: some of the letters and papers produced here are in the hand-writing of the prisoner. You are to consider, whether the matters contained in them were committed to writing in prosecution of any certain, determinate purposes of treason. The holding of the meeting was stated by the witness, Reynolds, to be for the purpose of aiding the French and subverting the government by force. Clearly, these were treasonable purposes; but it is for you to consider upon the evidence, whether these purposes were then in the contemplation of the prisoner—and whether the letters and papers given in evidence were plainly connected with those purposes or not. Some of the papers are returns of men, money, ammunition and arms. What were they connected with? Were they or were they not connected with the purposes of subverting the present government, and establishing a republican form of government in its place? or of assisting the French, if they came here to forward these traitorous designs? These papers appearing in the manner in which they do, were written in prosecution of the plans stated by Reynolds, if you give credit to his testimony.

But, gentlemen, it is your sole province to judge of his credit; you are to take into consideration those circumstances which go to diminish his credit, and those which go to confirm and corroborate his testimony; and upon considering the evidence on one side and the other, if you think Reynolds entitled to credit you will be bound to find a verdict of conviction, but if you entertain a fair and conscientious doubt as to his credit, and as to the sufficiency of the evidence in support of the indictment, you ought certainly in favour of life to acquit the prisoner; and here, gentlemen, I repeat, that you have a very momentous duty to discharge; and I am happy that this duty rests upon men so very competent to its discharge.

The jury retired for five minutes and brought in a verdict—Guilty.

Mr. Attorney General.—My lords, it is my duty to pray the judgment of the Court.

[The prisoner was put to the bar.]

The Clerk of the Crown read the indictment, and asked him what he had to say, why judgment of death and execution should not be awarded against him according to law.

Mr. Mac Cann.—My lords, I have nothing at all to say, but that some parts of the evidence held out against me this day are not true; particularly, that evidence of Harris, whom I never saw in a committee, as I meet that great Judge who is to judge me. I have nothing more to say; but hope your lordships will grant me as much indulgence as you can to prepare for my awful fate. I have much thanks to give to the gentlemen for their defence of me—I wish I had now more to give them.

Mr. Baron Smith.—John Mac Cann, you have been convicted by a jury of your country upon clear and full evidence, of the highest and foulest crime that it is possible for man in civilized society to be guilty of—by exciting and fomenting a rebellion, calculated to subvert the government of the country—one of the most benign governments, and one of the happiest constitutions that ever was devised by man:—A rebellion, that in its consequences you must have seen, would have destroyed all the happiness and all the comforts of social life—that must have covered what I suppose to be your native land with devastation and horror, and drenched it in blood;—and I am sorry to say, that that offence, of which you have been thus found guilty, has in too great a degree had these mischievous effects which I have mentioned. Thousands and ten thousands of your unhappy fellow-creatures have all fallen victims to that foul and abominable conspiracy of which you have been convicted. It gave birth to that rebellion which has convulsed the land, but which through the blessing of God, by the laudable exertions of government, the spirit of the king's troops, and the loyalty of his subjects,

is in a good measure suppressed. God knows, I do not wish to aggravate any feeling of your mind, though I earnestly wish to impress you with a due sense of your crime; in hopes, that it might stimulate you to make the best atonement you can, to your injured king and your offended country—and induce you to consider and reflect upon the awful account you are in a short time to give, and to make your preparation for that change of condition, which must soon—very soon take place. I do hope, that any exhortation of mine may be unnecessary for this purpose—I do hope, that you will have the assistance of those whose

exhortations will be much more impressive than any which I could now deliver.

It only remains for me to discharge that duty which is incumbent on me—and an awful duty it is—by pronouncing on you—the dreadful sentence of the law.

[The learned judge then pronounced the usual sentence upon a conviction for high treason.]

The prisoner was executed pursuant to his sentence on Thursday the 19th of July, 1798, at the front of the prison in Green-street.

633. Proceedings on the Trial of WILLIAM MICHAEL BYRNE, for High Treason; before the Court holden at Dublin, under a Special Commission of Oyer and Terminer, on Thursday the 5th, Friday 20th, and Saturday 21st days of July: 38 GEORGE III. A. D. 1798.*

ON Thursday, July 5th, 1798, William Michael Byrne was brought up to the bar, and arraigned upon the following indictment:—

“County of the City of } “The Jurors, &c.
“Dublin to wit } “present and say,

“that William Michael Byrne late of Park-hill in the county of Wicklow gentleman a subject of our said lord the king and not having the fear of God in his heart nor the duty of his allegiance considering but being moved and seduced by the instigation of the devil as a false traitor against our said lord the king his supreme true lawful and undoubted lord the cordial love and true affection which every subject of our said lord the king should bear towards our said lord the king wholly withdrawing and contriving and with all his strength intending the peace and common tranquillity of this his kingdom of Ireland to disturb and the government of our said lord the king of this kingdom of Ireland to subvert and overturn and our said lord the king off and from the royal state title honour imperial crown and government of this his kingdom of Ireland to depose and deprive and our said lord the king to death and final destruction to bring on the 20th day of May in the 38th year of the reign of our said lord the king and on divers other days and times as well before as after that day at the parish of Saint Michael the Archangel in the said county of the city of Dublin with force and arms to wit with swords sticks staves and soforth falsely wickedly and traitorously did compass imagine and intend our said lord the king then and there his supreme lawful and

“undoubted lord off and from the royal state crown title power and government of this his kingdom of Ireland to depose and deprive and the said lord the king to kill and put to death and that to fulfil and bring to effect his most wicked and treasonable imaginations and compassings aforesaid he the said William Michael Byrne as such false traitor as aforesaid with force and arms on the 20th day of May in the 38th year of the reign aforesaid and on divers other days and times as well before as after at the parish of Saint Michael the Archangel in the county of the city of Dublin falsely maliciously and traitorously did assemble meet conspire agree and consult together with divers other false traitors whose names are to the said jurors unknown to stir up raise and make rebellion and war against our said lord the king within this his kingdom of Ireland and to procure great quantities of arms and ammunition guns pistols swords pikes gunpowder and shot for the purpose of the said rebellion and to procure and cause great numbers of armed men to rise and prosecute and wage war against our said lord the king within this kingdom

“And further to fulfil &c. he the said William Michael Byrne with force and arms on the same day and year and at the place aforesaid falsely maliciously and traitorously did assemble meet conspire consult and agree together with divers other false traitors unknown to depose and dethrone the said lord the king and him off and from his royal state authority and government of this kingdom to deprive and put

“And further to fulfil &c. he the said William Michael Byrne with force and arms the day and year and at the place aforesaid

* Reported by William Ridgeway, esq. barrister at law.

“ falsely maliciously and traitorously did assemble meet conspire consult and agree together with divers other false traitors unknown to overturn by force the lawful government of this kingdom and to change by force the constitution of this kingdom

“ And further to fulfil &c. he the said William Michael Byrne with force and arms the day and year and at the place aforesaid falsely maliciously and traitorously did assemble meet conspire consult and agree together with divers other false traitors unknown upon and about the means of raising and making rebellion against the said lord the king within this kingdom and of procuring and providing great quantities of arms and ammunition for that purpose and of procuring and causing great numbers of armed men to rise and to prosecute and wage war against the said lord the king within this kingdom and of overturning by force the government of this kingdom and of changing by force the constitution of this kingdom

“ And further to fulfil &c. he the said William Michael Byrne with force and arms the day and year and at the place aforesaid falsely maliciously and traitorously did assemble meet conspire consult and agree together with divers other false traitors unknown upon and about the means of deposing and dethroning the said lord the king and him off and from his royal state authority and government of this kingdom depriving and putting

“ And further to fulfil &c. he the said William Michael Byrne with force and arms the day and year and at the place aforesaid falsely maliciously and traitorously with design and intent by force violence and rebellion to overturn the present government of this kingdom and with intent by force violence and rebellion to change and alter the constitution of this kingdom did associate himself together with and become a member of a party society and brotherhood then and there formed under the denomination of United Irishmen and then and there together adhering for the purpose of overturning by force the government of this kingdom and dethroning and deposing the said lord the king

“ And further to fulfil &c. he the said William Michael Byrne with force and arms the day and year and at the place aforesaid falsely maliciously and traitorously did assemble and meet together with divers other false traitors unknown to take and receive returns accounts numbers and names of officers men and arms to be employed in raising and levying war and rebellion against the said lord the king within this kingdom and did then and there take and receive returns accounts numbers and names of officers men and arms to be employed in raising and levying war and rebellion against the said lord the king within this kingdom

“ and did in writing set down the said returns accounts numbers and names and an account thereof with intent that the said officers men and arms should be employed in raising and levying the said war and rebellion

“ And further to fulfil &c. he the said William Michael Byrne with force and arms the day and year and at the place aforesaid falsely wickedly and traitorously did obtain and keep certain paper writings containing accounts of men and arms ammunition and money to be employed in raising and prosecuting war and rebellion against the said lord the king within this kingdom with intent that the said men should be arrayed and the said arms ammunition and money be employed in raising and prosecuting the said war and rebellion against the said lord the king

“ And further to fulfil &c. he the said William Michael Byrne with force and arms the day and year and at the place aforesaid falsely wickedly and traitorously did at the house of one Oliver Bond in Bridge-street in the said county of the city assemble meet conspire consult and agree together with divers other false traitors whose names are to the said jurors unknown upon and about the means of raising and making rebellion against the said lord the king within this kingdom and of procuring and providing great quantities of arms and ammunition for that purpose and of procuring and causing great numbers of armed men to rise and to prosecute and wage war against the said lord the king within this kingdom and of overturning by force the government of this kingdom and of changing by force the constitution of this kingdom

“ And further to fulfil &c. he the said William Michael Byrne with force and arms the day and year and at the place aforesaid falsely wickedly and traitorously did at the house of one Oliver Bond in Bridge-street in the said county of the said city assemble and meet together with divers other false traitors whose names to the said jurors are as yet unknown to take and receive returns accounts numbers and names of officers men and arms to be employed in raising and levying war and rebellion against the said lord the king within this kingdom and did then and there take and receive returns accounts numbers and names of officers men and arms to be employed in raising and levying war and rebellion against the said lord the king within this kingdom and did in writing set down the said returns accounts numbers and names and an account thereof with intent that the said officers men and arms should be employed in raising and levying the said war and rebellion against the duty of the allegiance of him the said William Michael Byrne against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in that case made and provided

“ And the jurors aforesaid on their oath
 “ aforesaid further present and say that an
 “ open and public war on the 20th day of
 “ May in the 38th year of the reign of our
 “ said lord the now king and long before was
 “ and ever since hitherto by land and by sea
 “ hath been and yet is carried on and prose-
 “ cuted by the persons exercising the powers
 “ of government in France and the men of
 “ France under the government of the said
 “ persons against our most serene illustrious
 “ and excellent prince our said lord the now
 “ king And that the said William Michael
 “ Byrne a subject of our said lord the king of
 “ this his realm of Ireland well knowing the
 “ premises and not having the fear of God in
 “ his heart nor the duty of his allegiance con-
 “ sidering but being moved and seduced by
 “ the instigation of the devil as a false traitor
 “ of our most serene illustrious and excellent
 “ prince George the Third now king of Great
 “ Britain France and Ireland and soforth and
 “ contriving and with all his strength intend-
 “ ing the peace and common tranquillity of
 “ this his kingdom of Ireland to disturb and
 “ molest and the laws constitution and go-
 “ vernment of Ireland to change subvert and
 “ alter he the said William Michael Byrne on
 “ the 20th day of May in the 38th year of the
 “ reign of our said lord the king and on divers
 “ other days and times as well before as after
 “ that day with force and arms that is to say
 “ with swords sticks and soforth at the parish
 “ of Saint Michael the Archangel in the said
 “ county of the city of Dublin unlawfully
 “ falsely maliciously and traitorously was ad-
 “ hering to aiding assisting and comforting
 “ the persons exercising the powers of govern-
 “ ment in France and the men of France un-
 “ der the government of the said persons and
 “ then being enemies of the said lord the king
 “ as aforesaid.”

In support of this count, the same overt acts were set forth as in the former, save the 8th and the 9th overt acts, which were omitted.

The prisoner pleaded—Not Guilty.

He was then asked, whether he was ready for his trial? He said, he was not. He was told to be prepared on Friday se'nnight.

Friday, July 20th, 1798.

The Court sat at nine o'clock.

Judges present:—The Right Hon. Lord CARLETON, the Hon. Mr. Justice CROOKSHANK, the Hon. Mr. Baron SMITH, the Hon. Mr. Baron GEORGE, and the Hon. Mr. Justice DAY.

William Michael Byrne was brought to the bar and asked, whether he was ready for his trial? He answered, that he was not. An affidavit was then made, stating the absence of some witnesses, and the counsel moved to postpone the trial; but the Court thinking the

affidavit insufficient, refused the motion, and directed the trial to proceed.

The following jury was sworn:—

Joseph Ashley,	William Long,
William Pike,	George Walker,
Charles Bingham,	Joshua Manders,
George Darley, jun.	Benjamin Simpson,
Mountford Hay,	William Wainwright,
John Crosthwaite,	Frederick Parker.

After the jury were sworn, lord Carleton and Mr. Baron Smith retired.

Mr. Mac Nally moved, that Mr. Curran might be substituted in his place, and assigned counsel to the prisoner.

Court.—Be it so.

The counsel on each side were as follow:

For the Crown.—Mr. Attorney General [Toler], Mr. Prime Serjeant [Fitzgerald], Mr. Solicitor General [Stewart], Mr. Saurin, Mr. O'Grady, Mr. Mayne, Mr. Webber, Mr. Ridgeway.

Agent.—Mr. Kemmis.

For the Prisoner.—Mr. Curran and Mr. Bushe, assigned; Mr. Mac Nally, assistant.

Agent.—Mr. Crawford.

Mr. Webber opened the indictment.

Mr. Attorney General.*—My Lord and Gentlemen of the Jury;—If I were to follow my own inclinations, I should directly call the witnesses to prove the charges laid in the indictment against the prisoner at the bar; but custom has made it in some sort necessary to state to the jury the leading circumstances of the case.

The prisoner at the bar stands indicted for two species of high treason; first, for compassing and imagining the death of the king; and secondly, for adhering to the king's enemies. In cases of a common criminal charge, the law of the land only requires the charge to be specifically set out in the indictment, but in cases of high treason the law of the land not only requires that the crime, but also that the overt acts must be set out, and the prisoner is furnished with a copy of the indictment several days before the trial, and counsel are assigned to him, that he may have every opportunity of vindicating himself. The overt acts charged on the prisoner are, that he did consult and conspire together with other false traitors to procure arms and armed men to make war against this kingdom of Ireland. Another overt act charged

* In Mr. Ridgeway's report of this trial the speeches of the counsel are altogether omitted. The accounts given in the text of this and the other speeches of counsel are taken from another report of the trial which was printed and published at the time.

According to Mr. Ridgeway, the case on behalf of the prosecution was on the present occasion stated by the Prime Serjeant.

is, that he, the said Michael Byrne, did with other false traitors conspire and meet together to depose and dethrone the king, and overturn and change the government and constitution of this kingdom by force, and did conspire together to make war and rebellion in this country, to depose the king; and that the prisoner with other false traitors did meet to take returns of officers and men, and procure arms for the purpose of carrying on the said rebellion against the king, and did meet with other false traitors in the house of Oliver Bond, to consult and deliberate about the means of carrying on the said rebellion.

All these several overt acts are laid in the indictment to support the charge of high treason against the prisoner, that he did levy war with intent to compass and imagine the death of the king. It will appear to you in evidence beyond all controversy, that the prisoner at the bar was a delegate from the county at Wicklow at the provincial meeting of the society of United Irishmen, held for the province of Leinster. It will appear in evidence, there were baronial, county, and provincial meetings; and that Byrne, the prisoner at the bar, did avow himself to be the delegate from the county of Wicklow; and that there was a meeting on the 12th of March last at the house of Oliver Bond, in Bridge-street; and that the prisoner and other delegates being met, they were there apprehended, and there was found on the table at which the prisoner at the bar was sitting, a return of the numbers of armed men, and that the ink was not then dry on the paper on which Byrne was writing. It will be proved, that Mr. Swan, a magistrate for the county of Dublin, with proper assistance, did apprehend the prisoner in the house of Oliver Bond, and did seize several papers which will now be read in evidence. On one paper found on the prisoner was written—"the provincial committee have received very flattering accounts from abroad;" a paper, dated 15th February, says, "the county committee recommends to the constituents to pay no attention to any flying reports, &c. which may tend to disunite us;" and on another paper it is written, "to get as many pikes made as you can;" and it states there were a number of prisoners belonging to the society of United Irishmen in the gaol of Arklow; and states the sum of 42l. the committee had for their support; and states the number of United Irishmen in Corbetstown, Arklow, Newcastle, and Shillelah, and that they had 181 guns, 78 pistols, 66 swords, 531 pikes, and 8,000 balls, &c. And there was a letter written by John Mac Cann* (the unfortunate man who was executed on Thursday last) to the prisoner at the bar, to meet citizen Fitzgerald, i. e. lord Edward Fitzgerald, at the Black-rock, as there was a number of men, a new set, to be organized, &c. We

* See the preceding case.

shall also give evidence of a meeting in Francis-street, of United Irishmen, at which Byrne was present. The right hon. the Attorney General concluded by observing to the jury that the whole of the parol and written evidence would be laid before them, which would enable them to give such a verdict as the justice of the case required.

William Bellingham Swan, esq. sworn.—
Examined by Mr. Attorney General.

You are a justice of peace?—I am, of the county of Dublin.

You have been confidentially employed under the authority of the government of the country?—I have.

Do you remember the twelfth of March?—I do.

Had you any direction to go to any particular place that day?—I had a warrant from Mr. Pelham,* authorizing me to arrest a Convention at the house of Oliver Bond.

Court.—What Convention?—A number of persons associated there.

Mr. Attorney General.—You repaired to the house of Mr. Oliver Bond?—I did.

Who went with you?—I had thirteen serjeants in coloured cloaths, and my own servant.

When you arrived there, mention what happened?—Previous to my going there, I allotted the different serjeants their different positions, and sent one before with a password, by which I received information the person would get admittance.

What was it?—Where is Mac Cann?—Is he from Carlow come?

What hour was this?—Exactly eleven by my watch. After arresting a person in the lower part of the house, I bounced up stairs; the serjeant had got into the lower part, but I bounced immediately after, and proceeded to the room—a back-room—that appeared to be an addition to the house, where I received positive information they were to meet. Upon entering the room, I saw a number of persons about the room in small groups, and one man sitting at the table, with pen, ink, and paper, and a prayer-book, I snapped at the paper directly; my anxiety to seize the paper was so great, that the man sitting at the table, took advantage of it, and went among the groups, so that I could not identify him. The paper was fresh written—the ink hardly dry. I then, after seizing the paper, directed the several persons to hold up their hands, to prevent their destroying their papers, as I had previously directed the serjeants to be particularly attentive to watch the hands of the people, and if they saw any papers to bring them immediately to me. This is the paper I found upon the table; it is marked with my name.—[*Vide p. 487 No. 1.*]

* The Chief Secretary to the Lord Lieutenant.

Did you ever see the prisoner at the bar?—I did; I found him among the persons in the room.

You have a memorandum of the places where they said they came from?—I have; here it is.

You proved that paper upon another trial?—I did; I read the names from it.

Mr. Attorney General.—Read them now?

Mr. Swan.—Peter Ivers, who said he came from Carlow.

Lawrence Kelly, who said he came from the Queen's County.

George Cummins, who said he came from Kildare.

Edward Hudson, of Grafton-street.

John Lynch, who said he came from Mary's-Abbey.

Lawrence Griffin, who said he came from Tullow, in the county of Carlow.

Thomas Reynolds, who said he came from Culmultin, I forgot to take the county.

John Mac Cann, who said he came from Church-street.

Patrick Devine, who said he came from Ballymoney, in the county of Dublin.

Thomas Traynor, who said he came from Poolbeg-street, and has since made his escape.

William-Michael Byrne, who said he lodged at Summer-hill, Dublin, but he told me he came from the county of Wicklow; upon him I found the letter from Mac Cann, and other papers.

Christopher Martin, who said he came from Dunboyne, county Meath.

Peter Bannan, who said he came from Portarlington.

James Rose, of Windy-harbour, county Dublin.

Richard Dillon, of Bridge-street, who said he had slipped in with the guard, and was afterwards discharged.

Mr. Attorney General.—This representation was made in the room where they were altogether?—It was: I beg leave to mention, that they were anxious to have their names kept private, and desired I would put the serjeants out of the room.

What Mac Cann is that mentioned in your list?—The unfortunate man who suffered yesterday.

Did you search the person of the prisoner?—I did.

Court.—Were the names then given in the names of all the persons in the room?—Yes, my lord; except the serjeants I brought with me.

Mr. Attorney General.—Look at this paper; where did you find it?—Upon the prisoner's person. [Vide p. 468 No. 2.]

Upon whom did you find that paper [Vide No. 3. p. 465]?—Upon John Lynch, in the room.

Where did you find this pocket-book?—I cannot swear positively to that; I am pretty sure this is the one I found upon the prisoner, but I am positive I found it in the room, and upon one of the persons whom I apprehended there.

Look at that paper?—I found this upon the prisoner. [A list of printed toasts and sentiments, No. 4. vide p. 487]

Where did you get that paper?—I am positive I got it from the prisoner, I have marked it as such [p. 487 No. 5.]

From whom did you get that paper [No. 6. p. 487]?—From the prisoner.

Look at that card?—I did not mark that; I know nothing of it; I did not think it of consequence.

Look at that printed paper?—I found this in the room, I cannot say now, upon whom [Vide p. 488 No. 7.]

The people were in little groups?—They were.

Did they make any movement?—I ordered the window to be let down, and they went towards the fire; I swore I would shoot any one that went near the fire; I would not allow any man to search them but myself.

Was serjeant Mac Dougall with you?—He was.

Did you see him do anything?—I saw him stoop at the grate and take up some papers which he handed to me.

Look at this?—This is positively one of them [No. 8. p. 488]; this is another [No. 9. p. 489]; and this another [No. 10. p. 489]. This memorandum book also was found under the grate [No. 11. p. 490].

They were all arrested, and the prisoner among them?—I arrested them all, and brought them to the privy council.

William Bellingham Swan, esq. cross-examined by Mr. Curran.

Was not the prisoner standing at the door at the time you went in?—I do not recollect.

You do not recollect in what part of the room he was standing?—There was a number standing in different parts, I saw Mr. Dillon near the door, but he was liberated.

Can you say, whether he was not near the door?—I cannot, but I desired every man to go from the door.

Christopher Stone Williams, esq. sworn.—Examined by Mr. Solicitor General.

Are you acquainted with the prisoner?—I am.

Have you seen him write?—I have.

Look upon that paper [No. 3.] and say, whether you can form a belief whose hand-writing it is?—The first and second pages and part of the third, I am pretty sure are the hand-writing of the prisoner. The figures I am not sure of: until I come to the figures, all the rest I believe to be the prisoner's hand-writing.

Look at some intermediate words among the figures?—I cannot say they are the hand-writing of the prisoner; I can speak to the other part.

Look at this paper [No. 6.]?—The words are very like, but I cannot form a belief.

[Mr. Swan was asked, whether the paper [No. 3.] as now produced, was in the

same state as when he found it?—Certainly it is.]

Richard Guinness, esq. sworn.—Examined by Mr. Solicitor General.

Were you acquainted with a person of the name of Mac Cann?—I was.

Do you mean the man who suffered yesterday?—I do; he had been clerk to the house in which I am a partner, for some years.

Are you acquainted with his hand-writing?—I am; I have seen him write.

Look upon the several papers now shown you, and say whose hand-writing they are?—This is his hand-writing [No. 2]; this, except one sentence, is his hand-writing [No. 3]; the latter part of this paper [No. 10]; two pages of this memorandum-book [No. 1]; and this paper [No. 12].

[The Paper No. 3, was read.]

The County W—* C—* inform their Constituents, that by the advice they have received from the Provincial, it appears, that very flattering acc^{ts}. have been received from a-broad—which will in a very few days be officially handed down. The Provincial Returns of Men have only increased a few Thousands since the last reports; as the new County Members have not yet come in, in Consequence of new Elections, which each Barony will take Notice must be on or before the 15th February next. The County Com^{rs} again earnestly recommend it to their Constituents, to pay no attention to any flying Reports—as they know to a certainty, false Emissaries are Encouraged to Disseminate such News as may tend to Disunite or Lead them astray.—The C. C.—† hear with regret, the Dissatisfaction of the Baronial Committee of New-Castle—with respect to their not being as yet fully supplied with Arms, &c.—They assure them, that every exertion has been used to that Purpose, and that Quantities of Pikes are now manufactured for Delivery—but would at the same time recommend to have as many made as possible in each Barony, as they will thereby Come infinitely cheaper.—The County Committee Cannot be accountable for any Money in the hands of a Baronial Treasurer, and of Course Cannot account for any, but Such as has been paid Into them, of which there appears a Correct Statement in the Returns; They feel with Concern, the Apathy of their fellow Citizens of the Co—W—‡ who refuse so small a Pittance as one penny per Man, to alleviate in some degree,—the distresses of their suffering Brethren now in W—Jail, where there are many innocent Cit^{izens} in

want of the common Necessaries of life—but who—tho'—furnishing, scorn to Betray the trust reposed in them.—The County Comm^{rs}. inform their Constituents, that so far from having a fund in their hands—they are now indebted to one of their Members—[No. 2.] who has

kindly advanced £ 18 : 4 : 2 for the re-

lief of prisoners.—The County Members are therefore entreated to forward to him—without Delay, as much Money as can be Collected in their respective Baronies, as there appears to be now in Jail—from Arklow Barony, Four—from Shillela, Five—from Ballenacorr, Fourteen and one, from Talbot's town, fifteen, and from Newcastle, two—in all forty-two—without the smallest fund for the Ensuing M^{onth}. Resolved, that a Subscription be instantly commenced for the purpose of forming a fund,—for the employing and Retaining Coun^{ty}. which shall be taken as a Voluntary Contribution—according to the circumstances of Individuals to be lodged in the hands of a treasurer Chosen by the County C^{ommissioners}.

Resolved, that it is requested, that the next meeting may be fully attended—as there is business of the utmost importance to be Taken into Consideration.

C. C.		Janv. 22nd. 1798.		Tal.		2974		20 3 10 Pd.		Prisoners		119	
low, Do,	766	—	—	1st	15	10	3	15	10	3	35	15	—
Ar.	2400	59	8	3	2	22	19	0	—	—	63	5	—
Rd.	1200	17	0	0	3	37	19	3	—	—	162	3	4
N. C.	1800	13	15	0	No. 2	12	6	5	—	—	245	8	4
											85	10	11
U. B.	1800	13	5	0		85	10	11			£ 159	17	5
L. B.	840	8	2	0	Rest to Province						75	4	6
Shil.	1080	7	19	3									
		12,800	162	3	4	88	18	10					
			73	4	6								
		†G.	P.	S.	Ba.	Pa.	B. C.	B. lb.	P.				
Tal.	181	78	60	131	321	3381	8315	75					
Ar.	265	85	68	87	200	400	8050	500					
N. C.	158	41	80	32	355		5965	169					
B. D.	185	94	62	75	380	980	500	17					
		789	298	216	328	1256	4711	22830	761				

* Months. Orig. Ed.

† To explain this part of the paper, it was alleged to be a return of men, arms and ammunition for the county Wicklow, the Baronies of which county are designated by their initial letters opposite the first column of figures, which denote the number of men in each—C. C. means Co. Committee—Tal. Talbotstown—low. Do. Lower Talbotstown—Ar. Arklow—Rd. Rathdown—N. C. Newcastle—U. B. Upper Barony—L. B. Lower Barony—Shil. Shillelagh. Orig. Ed.

‡ These letters at the top of the columns of figures denoted the species of arms and ammunition, viz. G. Guns—P. Pistols—S.

* Wicklow Committee. Orig. Ed.

† County Committee. Orig. Ed.

‡ Wicklow. Orig. Ed.

Ar.	810	15	68	
N. C.	100			
C. D.	800			
	1299	373	278	At.

[The paper [No. 2.] was then offered to be read.]

Mr. Curran.—My lords, this letter should not be read. I conceive that a case of this kind is to be governed by the known rules of law touching the admissibility of evidence: this paper is said to have been found upon the prisoner; it is not pretended to have been written by him; it has been proved to have been in the hand-writing of a person of the name of Mac Cann. I do not conceive that it can be evidence against the prisoner without going further. It is in the hand-writing of Mac Cann, and Mac Cann and the prisoner are sworn to be in the room together, that is no foundation for the paper being read against him;—I say, that upon a criminal charge, it is not sufficient to read the hand-writing of another person, merely because he was in the room with the prisoner.—I may conceive what thought I please—I may cloath it in words, and reduce it to writing—but that is no evidence against another man, in whose possession it may be found. It is the object of the crown to establish a conspiracy, and to make the act of one person evidence against another; but see what the rule was, which was adopted during the last trials in Great Britain; they gave evidence of a conspiracy existing before such evidence as this was gone into: because it is too loose to say, that when two persons are in a room together, what is found upon one shall be evidence against the other. There must be evidence of a general project, and of the participation of the prisoner in it; then the evidence now offered might be admissible. See whether there be any such foundation here. A number of persons are found together; they may be there for honest purposes, or on a meritorious occasion; it is all matter of evidence, and there is nothing before the Court to show for what purpose they met. One paper has been read; but there is no evidence from it of a general project. The jury may supply and fill up chasms, but unless that is done, there is nothing to affect the prisoner.

Mr. Bushe.—In the case of the King v. Hardy,* this objection was taken by the counsel, and argued, and allowed by the Court.

Mr. Justice Day.—I have some doubt as to the admissibility of this evidence at present. The prisoner and Mac Cann do not appear to be sufficiently connected.

Mr. Attorney General.—My lords, I could, by going a little farther into the evidence, remove every possible doubt; but I am unwilling to yield what I conceive to be tenable,

Swords—Ps. Pikes—B. C. Ball-cartridge—
B. Balls—lb. P. Pounds of Powder. *Orig. Ed.*

* *Antd.*, vol. 24, p. 199.

from an apprehension of the precedent. I contend, that every paper found in the possession of a prisoner, whether it be his hand-writing or not, is admissible evidence against him. In the King v. Hardy, the paper objected to does not appear to have been found in the possession of the prisoner, and therefore is not applicable to this case. Then it is objected, that a conspiracy is not proved. Suppose the very paper now offered proves the conspiracy, may not this letter found in the prisoner's possession be evidence of a conspiracy? But, my lords, this point was expressly decided in Preston's case,* and in Francia's case.†

Mr. Justice Crookshank.—I think the paper may be read as being found upon the prisoner; and indeed there is evidence of his connexion with the conspiracy from the paper [No. 3.] which has been just now read.

Mr. Baron George.—I have no doubt that a paper found in the possession of a prisoner may be read.

Mr. Justice Day.—I thought that this letter from Mac Cann, addressed to the prisoner, and found in his pocket, was not admissible evidence against the prisoner, until the Crown had first proved a privity between him and Mac Cann, and that they were *socii criminis*; otherwise it would be in the power of the greatest villain in the community to destroy the most innocent by means of an artful letter. But I now agree to the reading of that letter, since upon a review of the paper, marked No. 3, in the hand-writing of the prisoner, it is clear, that he was implicated in the general plot.

[The letter (No. 2.) was then read.]

“ Brother,

“ Inclosed you have the Letter Left by Citizⁿ F.—‡ I have been making general Enquiries whether E. F.§ has been in Town to-Day, and from Every Circumstance am inclined to think he has Not, if you wish to See him before you Set Off, think you should Lose no Time in going to the Rock, as you will be Sure to See him there at 6. O Clock—I am to organize a New Sett this Evening, and to Attend my B. C.|| which may Detain my Rather later, than I Could wish, however tis probable I may have the pleasure of Seeing you before 10 O Clock.

Y^e most Sincerely,

JOHN MAC CANN.”

“ Church-street Monday.”

[Directed]

“ W. M. Byrne Esq’.

Grumley's Hotel
Kevin-street.”

* *Antd.*, vol. 12, p. 645.

† *Antd.*, vol. 15, p. 897.

‡ Lord Edward Fitzgerald. *Orig. Ed.*

§ Same. *Orig. Ed.*

|| Baronial Committee. *Orig. Ed.*

*Thomas Reynolds, esq.** sworn.—Examined by Mr. *Saurin*.

Were you engaged in the conspiracy of the United Irishmen in this country?—I was, sir.

Be so good as to mention shortly, how the meetings of that conspiracy were held, and what gradations of meetings there were, and their arrangements?—There is, first, a Society, from which delegates are chosen—a Treasurer, a Secretary, and a person called a Delegate, to accompany them—they went forward to the Baronial. The first was, a Simple Society, from whence by delegation sprung the Baronial.

Mention whether there were any societies superior to the Baronial?—There were many. The next society from the Baronial was regularly the County Committee, composed in a similar manner, by delegates from the Baronial; but where, in particular places, too many Baronials happened, which would crowd the county too much, they had intermediate meetings, called Districts, as in Dublin. Then from the District, the delegates went forward to the County, in the same manner as from the Baronial. From the County, delegates were chosen to go forward to the Provincial Meetings, or Committees: they were elected in the same manner.

Did you ever attend any of these meetings, either Baronial or Provincial?—I have attended almost all of them.

Do you recollect to have seen John Mac Cann at a Baronial Meeting?—I have, very frequently.

What John Mac Cann do you mean?—The man who at that time was clerk to Mr. Jackson, and against whom I appeared the other day.

Mention what were the objects or designs of these meetings?—To overturn the present constitution and government of this country, and to establish a republican form in the stead of it, and to assist the French in case they attempted a landing that would forward these views.

Mr. *Saurin*.—What was the business transacted at the Baronial, or any part of the purposes for which they met?

Mr. *Curran*.—My lords, I must object to this evidence. The letter was read merely in consequence of its having been in the possession of the prisoner against whom it was read; but I rely upon this as law, that in order to let in the acts of other persons, there must be a community established between them and the prisoner.

Mr. *Baron George*.—Sure there can be no objection to asking what were the designs of the meetings, and to see whether they were treasonable or innocent.

Mr. *Saurin*.—I ask you, at those meetings,

* See his examination and cross-examination on the trial of Mac Cann, *ante*, pp. 406—417, and on that of Bond, *infra*.

whether of Simple Societies, Baronial, County, or Provincial, what was the principal business of each, or any part of the business?—The business of the Simple Societies was, to introduce new members, to collect money (generally collected either weekly or monthly), and also accounts of what was paid out, to receive from each individual returns of arms and ammunition, such as he had in his possession, and they also received reports of the Upper Committees, carried down to them, of the state of the rest of the kingdom, or each particular quarter; and they also delegated people forward to attend the Baronial, as I mentioned before.

Are we to understand that the business of the Baronial resembled that?—They received accounts and reports in the same manner; and it was a constant practice to read a list of names of men supposed to be spies, and inimical to the cause.

For what use or purpose were these men and arms, and collections, to be employed?—Decidedly for what would best forward the views I mentioned. The money was applied in various ways; to support the United Irishmen, who fled from their homes, or were in prison; money was paid to lawyers for the defence of prisoners upon trial; for the purchase of arms for such as were not able to buy them.

You have mentioned the unfortunate Mac Cann; was he, or was he not, engaged in this conspiracy?—He was.

To what county did you belong?—To the county of Kildare latterly.

Were you ever delegated by that county to a Provincial Meeting?—I was; when I was delegated to attend, was on or about the 18th of February. The meeting was summoned to attend the day following. The meeting of the county was held at the Nineteen-mile House, and we were told the Provincial Meeting was to be held the day following at the house of Oliver Bond, in Dublin.

Do you recollect whether any one else was delegated from that county along with you?—Two others.

Mention them?—Cummins of Kildare, and Daly from Kilcullen; Cummins as secretary, Daly as delegate, and I was sent forward as treasurer.

Did you attend that Provincial Meeting?—I did not: we did not break up the County Meeting till between three and four o'clock; I was obliged to ride 14 miles to my own house, and would have been obliged to ride 34 miles next morning before 10 o'clock, which would have been too severe; therefore I sent an apology.

Was there any subsequent Provincial Meeting after the 19th of February?—There was, I think that day three weeks, on or about the 12th of March.

Do you know where that Provincial Meeting was agreed or determined to be held by the party?—At the house of Oliver Bond, in

Bridge-street, at the hour of 10 o'clock in the morning.

Do you recollect any application made in your presence for a room any where for that meeting?—I do, sir.

Mention at what time, and what application was made?—On Saturday prior to the arrest.

Mr. *Bushé*.—My lords, I object to their proceeding in this evidence; it has no application to the prisoner.

The Court thought the evidence admissible.

Mr. *Saurin*.—Mention what you know relative to the procuring the room.—On the Saturday prior to the 12th, I was in the office or ware-room of Mr. Bond; Mr. Mac Cann was there at the same time, and he said, “Bond, we must have a room for Monday;” Mr. Bond replied, “You shall have the room you had last; will you have the little room?” They then retired to the farther end of the room, and spoke low together for a time; I shortly afterwards retired, without hearing any more.

You were elected a delegate?—I was.

And Mac Cann was embarked in the conspiracy with you?—He was.

Did you learn from Mac Cann the time and place, and where the meeting was to be held?—I did.

Where did he tell you?—He told me it was to be held at the house of Oliver Bond, on Monday the 12th of March, at ten o'clock; and he told me to be punctual at the hour, as there was business of great importance to be agitated.

Did you ever, before that meeting was held, communicate to any body the situation in which you were engaged, and that such a meeting was to be held?—I did communicate to Mr. William Cope, that such a meeting was to be held.

Before the meeting was held?—Yes.

Court.—Did you mention your county delegate for the 12th of March?—The same person as before, my lord; we were chosen for three months.

Mr. *Saurin*.—Did you mention that it was to be a Provincial Meeting?—I did.

Do you recollect exactly how long before the meeting, you mentioned it to Mr. Cope?—I told him a fortnight before, that there was to be a meeting of that kind; but I had some doubt as to the precise time, until the day before.

How came you to know exactly that time?—Mr. Mac Cann was to breakfast with me, to give me the information; he came and told me, and then I told Mr. Cope.

Did you tell Mr. Cope any particular word, by which to get admission?—I told him there was a pass-word, by asking for Mac Cann, or Mr. Ivers of Carlow, or both; I do not recollect it exactly.

You spoke of returns; what were they?—A list of the men, arms, and ammunition of the

country represented, written out according to the baronies.

These men, arms and ammunition were in the service of, and to be employed for the United Irishmen?—Certainly.

Do you know whether it was necessary to have such returns?—I am very sure it was; because Mac Cann would not inform me of the time and place of the meeting, until I showed him, that I had my returns.

At the time you spoke of the meeting of the 12th of March, you were not under any accusation or charge for this conspiracy?—No, not at all.

Did you communicate any thing respecting the conspiracy before any charge was made against you?—I communicated every thing I knew respecting the transaction to Mr. Cope, that he might communicate them to government.

Mention shortly the interview you had with Mr. Cope, and the cause of your giving this information?—Mr. Cope and I went down to sir Duke Giffard's to get possession of some land, which I had mortgaged to Mr. Cope for 5,000*l*. There was some company there, and great talk of politics. As we were in the carriage upon our return, Mr. Cope introduced the subject of politics, represented the horrors of civil war, and revolution, the murders and robberies which would ensue, the destruction of religion and of property, and the ruin which would be brought upon the whole country, if this business were let to go on.—We travelled the whole day together, and there was a vast deal of conversation, the result of which was, that I thought, if I let the business go on, I would be guilty of the greatest crime before God and man, and I determined to give up the United Irishmen to save the country from ruin.—But I took time, and I told Mr. Cope, that I knew a person who would give information, and that I would call upon him in a few days. Mr. Cope immediately stated, that such a man deserved every thing—that great rewards would be paid to him. I said, if he came forward, no rewards would be sought, but he would come forward to satisfy his own mind. A good deal of conversation ensued. I went in a day or two, and told him, I saw my friend, who was ready to give information upon certain terms; he, thinking it was reward, said, he should have 1,500*l*. or 2,000*l*. a year, and a seat in parliament, and be raised to the highest honours in the state; I told him, he mistook me; I told him the terms—that the channel should not be disclosed—that he should not be prosecuted for any act done as an United Irishman, or be obliged to prosecute any individual for being an United Irishman; and lastly, lest he should be murdered for giving the information, if he were suspected, he and his family would be obliged to withdraw, and that his extraordinary expenses upon that occasion should be defrayed. He asked, what sum, that any sum would be

paid; I said 500 guineas, that he must be out of the way for a year, and that his house would be damaged. He again pressed great rewards, and seemed surprised that none would be accepted of. He agreed to the terms, and I then gave him such information as I could; I gave it as from a third person. And I must now mention, that I have actually sustained losses to the amount of 630*l.* by quartering of troops and disturbances in the county.

You informed him of the meeting in Bridge-street?—Among other things I informed him of that meeting.

You knew lord Edward Fitzgerald?—I did. He was engaged in this conspiracy?—He was.

Had he any residence at a distance from town?—I have dined with him at the Rock; I believe he had a residence there.

Thomas Reynolds esq. cross-examined by Mr. Bushe.

You have taken the oath of allegiance in the course of your life?—I have.

And the oath of an United Irishman?—I have.

Is it not part of the oath, that you are never to give information against a brother?—It is; not to give information of any thing done in the society, or out of it.

Do you recollect having taken any other oath, since you gave information to government?—I took an oath to my captains, and received an oath from them. I swore to them, and they swore to me.

Did you ever take any other oath, since you gave information to government?—No; no other oath, except the oath upon my examination when I was giving information, and the oath I swore here the other day.

Do you recollect taking an oath in the town of Naas since you gave information?—No.

Did you ever take up a prayer book and take a voluntary oath, that you had not given up the United Irishmen?—I do not recollect any such thing.

Possibly we may find people to refresh your recollection?—Very likely.

Try and recollect?—No, sir; I was at Naas a day or two before I was arrested, and Mr. Taylor told me, I was to be assassinated.—I was in the midst of United Irishmen—there was a county delegate in the house with me—there was a Mr. Flood there, and I assured him, that I had not—but I did not take an oath. If I did not do as I did, I would be murdered before I got home.

If I intended to produce Mr. Flood, would you take off the edge of his testimony by saying he was a delegate?—I do not desire to take off the edge of any man's testimony; I state the fact.

Do you know Mr. Mac Donnell?—I do; he is the inn-keeper there: I would have given every assurance, and fifteen more oaths, if they required, rather than be murdered.

Then you took an oath before them?—I do not recollect that I did. I do not deny but I might have done so; but I have no recollection of it. I hope the oath I took here the other day, and the one I have taken this day, will absolve me from all the illegal oaths I may have taken.

You have been delegated by the county of Kildare?—Yes.

Then your actual knowledge is confined to that county?—By no means.

You have expressed the intentions of these societies. The members take an obligation?—They do.

That does not express such an intention, as subverting the constitution?—No.

What is it?—I have it not by heart.

Mention the substance?—They swear to be true to each other and not to discover; they swear to procure a reconciliation of all religious persuasions, the emancipation of the Catholics, and a reform of the representation of the people of Ireland in parliament.

Do you conceive these to be criminal?—No, by no means; I do not: but I must mention one thing; that if the full intentions of the United Irishmen were put into their oath, it would have deterred many from joining them, who were led on, having entered into them, to join in their other views.

Then their full schemes are not expressed in their oath?—Decidedly not.

And you have assigned the reason for their thus falsifying their real motives and putting forward ostensible, proper motives?—I say, that is my own opinion.

A scheme so well concerted must have had some success?—Too great success.

Do you not believe, that many were deceived, by thinking that their views did not extend farther than the ostensible motives expressed upon that paper?—I do, hundreds upon hundreds.

You said you could not well recollect the words of the obligation, that was because you repeated them but once?—I do not recollect to have taken it more than once.

But you administered it?—I did.

Then you repeated it?—No, the person taking it, read it.

In what manner?—We had a little book called the Constitution; we opened the part where the oath was, the man read it, and we swore him.

You have done that often?—I have.

When did you last?—I cannot say.

Have you administered that oath, or made a United Irishman since your communication with Mr. Cope?—Never.

Try your recollection?—It is tried, sir, I have done no such thing.

You have got 500 guineas?—I have got 500 guineas from government.

And you most liberally refused to take any thing else?—I have.

Do you expect any thing else?—I do not.

And you would refuse if it were offered?—

I do not know what I may do hereafter; I only speak as to what I have done.

You cannot say what you would do?—I cannot say what I would do to-morrow.

If they were at this moment to offer you a reward?—I would not take it.

If they offered you a reward to-morrow would you take it?—If you ask me that question to-morrow I shall answer you.

What is your opinion this day, as to some of the charges made against you in the early part of your life, of pilfering from ladies in your family?—Ask me the particular question, and I will answer you.

Were they malicious charges?—My opinion is, they were brought here to injure my evidence, not having any thing worse to say against me, and I hope they have not injured my evidence.

Were these charges true or false?

Reynolds.—You mean respecting the trinkets and the piece of silk.

Mr. Busha.—Yes.

Reynolds.—They were both true.

Court.—Mention them for the jury.

Reynolds.—I was asked the last day, whether I did not steal trinkets from my mother and a piece of silk, my mother being in the silk business, and I told, that I did, and gave them to my girl.

Mr. Busha.—What age were you then?—Sixteen.

Do you recollect to have administered a dose of medicine to a lady, not very successfully?—My examination upon the last day calls to my recollection the person you mean, my wife's mother.

What did you prescribe for her?—Tartar emetic, which I took very often myself with good effect.

Did it agree with her?—As well as medicine could, I suppose; she died the Sunday following.

You are sure you gave the medicine on Friday, and that she died on Sunday?—I am perfectly clear.

Though any person should swear she died in ten hours after?—I would not believe it.

You never did such an act of kindness to your own mother?—No.

What did she die of?—I do not know: I was not at home.

When did she die?—Last November.

Do you recollect going into your mother's room, and seeing a person taking away a bottle of wine, you ran with eagerness and said, "you would take it yourself, as you had sent it?"—No, never.

Will you recollect it to-morrow?—Never, because it never happened.

Were you not accused with having given poison to your mother-in-law?—I never heard it said to me; but I was told, that major Witherington said I poisoned his mother by a dose of tartar emetic—a most violent poison!

You know Mrs. Cahill?—I do.

You have been indebted to her?—Yes.

You executed securities to her?—Yes; a bond for 50*l.* and a note for 25*l.*

You got up the bond before it was paid?—I did.

How did that happen?—Mrs. Cahill gave me the bond to compare dates of the interest account. There lay in my desk, which was always open, a double bond and warrant, which had been erroneously filled up in part; it was afterwards corrected and left in the office for the clerks to follow:—In giving Mrs. Cahill her bond, I gave her this bond by mistake; and I always paid her the interest as it became due, and when she demanded the principal, I paid it to her.

Was not the bond, what is called a Kerry bond?—It was not.

You are positive of that?—I am.

Judgment was entered upon it?—No.

This lady happened to be blind?—No, not at that time.

She had a confidence in you?—Implicit.

When did she apply to you to rectify that mistake?—She did not apply to me.

Application was made to you?—Application was made, and it was rectified.

Did you do that, before you were threatened by an attorney to be prosecuted?—I received a letter from an attorney, and it was the most unprovoked letter I ever received. I had been in town about business of the Folie's; I called at Mrs. Cahill's; I could not see her. I left directions with Mr. Sullivan about it. I went to the country, received a letter from an attorney; I answered it, and the matter was settled.

How long a time elapsed between the mistake and the rectifying of it?—A long time.

Then you knew of it and did not rectify it?—I did not know of it, till I was regulating my papers at Kilkea.

But still you did not rectify it, till you were written to?—It was of no consequence, as I paid her the interest.

Did you not see her afterwards and before you were written to?—No: she applied to Mrs. Reynolds, to come down to Kilkea to settle for life: I would not consent to it, until she had settled her affairs with her friends in town. But I did not see her. When I did call upon her in town about the principal, I called upon her in Smithfield, she desired me to settle it with Mrs. Molloy; I did so; I gave her new securities for part of the money, and paid her the other part as she wanted it.

Then if the old bond was given up which had been kept as a copy, why not put the real bond into the desk?—It was so.

Then you discovered the mistake at Kilkea?—I did.

Though the bond remained in the desk in Dublin?—Yes, but I brought the papers to the country; there was a great quantity of them; a large chest of papers of the house of Warren and Reynolds, and I had more leisure in the country, where I sorted them.

Did you keep the bond still for a pattern?—No, because I quit business.

You have passed notes to Mrs. Cahill?—I have.

Did you date one of them, so as to go into your minority?—No: I passed her a note for 25*l.*; she got 5*l.* afterwards, and took a fresh note for 2*l.*, which bore date the same day as the first.

Were you a minor at the time you got the money?—No.

Did you not date the second note further back?—No.

What is become of that note?—I know that note and the bond are both destroyed.

When?—Fifteen or sixteen days ago; when Mrs. Cahill forced them upon Mrs. Reynolds, saying they were my property, that I had paid her fairly and honourably; and I put them into the fire the moment I got them.

You were in confinement that time?—I was.

How long is it since you paid her and made this settlement through your wife?—I made no settlement through my wife.

When was it you paid her?—I said that Mrs. Reynolds was with her sixteen or seventeen days ago: she found her ill from Mrs. Bond's having been with her and threatening to put her into gaol, if she did not prosecute Mr. Reynolds, who had always behaved fairly and honourably to her; and that Mrs. Bond offered her money for them; but she would not give them up to any other but myself.

But when did you make the payment that entitled you to get up these papers, and yet you did not take them up?—Because I made the settlement with Mrs. Molloy, and Mrs. Cahill was not present; I gave her notes for ten pounds each, payable at an interval of two months, and I gave the difference in cash. The first note became due in May.

You said your wife had an interview with Mrs. Cahill?—She had.

Do you believe that meeting was accidental, or that she went for the purpose of getting the papers?—By virtue of my oath, I declare upon my belief, that my wife did not go for that purpose, nor had she an idea of getting the papers at the time; but Mrs. Cahill gave them to her, as I mentioned, and she gave them to me, and I threw them into the fire, when I heard that Mrs. Bond had been looking for them.

Had you at that time heard that these papers were to be made use of to discredit your testimony?—All I heard was, that Mrs. Bond had been looking for these papers, and had offered a sum of money for them; Mrs. Cahill said they belonged to me, who had acted fairly and honourably by her. The papers were handed to me; I said they were of no use to any body, and I flung them into the fire.

Do you think these papers could have done you any injury if they had not been burned?

—No, nor all the papers I have or had in the world.

Then why did you burn them?—Because they were useless and were discharged.

If your character were attacked by cross-examination, would not these papers have been of use to you?—By virtue of my oath, if I thought the matter would have been enquired into here, I would not have destroyed them; I would not wish for 100*l.* that they had been destroyed.

Then you burned them by mistake?—No; I did it on purpose.

Merely because they were useless?—No; partly because Mrs. Bond was endeavouring to get them.

Why keep them from Mrs. Bond?—Because she was endeavouring to circulate calumnies against me.

Then you were afraid they might injure you?—No, they could not injure me, if produced, though much slander has been grounded upon them. I burned them more through want of thought, than any thing else.

When did the lady die, who died of the tartar emetic?—I knew no such lady.

But where did Mrs. Witherington die?—In Ash-street, in a house she rented from me. She had received 300*l.* about three weeks before her death?—She had.

She was very extravagant, and spent 300*l.* every fortnight?—No, by no means.

The money was not found?—I believe not; she had her husband and her son living with her; I did not live with them.

Were you ever a locksmith?—I never practised that trade.

Did you ever take the impression of a key in wax to have one made by it?—No.

Do you know what a skeleton key is?—I do.

Have you ever had one made?—Two or three.

Did you ever get one that would open your mother's desk?—No.

Make a round guess and say how many oaths have you taken within the last six months?—I believe seven or eight.

Were they exactly consistent with each other?—Indeed, sir, they were not. But I hope that this oath which I have taken to-day, and the one which I took the other day, will completely absolve me in the sight of God and man from my offence in taking the United oaths.

Thomas Miller sworn.—Examined by
Mr. *Mayne*.

Were you ever a United Irishman?—Yes, sir, I was.

Do you know William Michael Byrne, of Park-hill, in the county of Wicklow?—I do.

Do you see him in court?—I do.

Is he the prisoner at the bar?—Yes.

Did you ever attend any meeting of the Society of United Irishmen?—I did.

Did you in harvest last, or thereabouts, at-

tend any of these meetings?—I did. Last harvest, Mr. Byrne sent for me; I had never seen the gentleman at that time.

How far did you live from him?—About three miles.

He was a gentleman of some respect and property in the country?—I never knew him.

You went to his house?—I met him at this side of his house.

You were going to him?—I was.

Did Mr. Byrne upon that occasion say any thing to you about the barony of Rathdown, or the United Irishmen?—He did.

What did he say?—He asked me, was I a person concerned in that way?—

In what way?—The United Irishmen: I told him I was; and he said he was appointed to regulate the half barony of Rathdown.

Had you been appointed to any situation?—Not at that time.

Did Mr. Byrne say or do any thing more about the matter?—Yes, he asked me, did I think there were 120 men there, that I could bring him a return of?—

Court.—Where?—In the parish of Powerscourt.

Do you mean the parish, or the barony?—It was equal for that.

Is that parish in the barony of Rathdown?—It is.

Mr. *Mayne*.—What answer did you give?—I told him I believed I could: he showed me how to draw a return of the 120 men.

Did he give a draught in writing?—No; but he told me how.

Had you pen and ink?—None.

But he told you?—Yes.

Did you make a return for that?—No, but I told another person to make it out.

Who was that person?—One Ryan.

What is his christian name?—James.

Look at that paper?—[showing the form of a return, No. 13.] I never saw it before.

But look at it, and see whether that was the form?—Exactly.

What were these men to be? What was the purpose of them? What were they to be called?—I do not know.

What were they to be when put together?—Why, there was a captain to be over the 120, and they were to belong to the captain.

Do you remember shortly after that, being at any place where the prisoner was?—I was.

How long after that?—I believe in the course of three weeks.

Where was that?—In a house in the *Glyn of the Downs*.

Were there any other persons there?—There was O'Reily and Mac Cabe.

Any others?—A few neighbouring people of the same rank with myself.

Did Mr. Byrne say any thing as to what was to be done?—I saw nothing done, but that I was elected along with Mr. Byrne to go to the county.

What county?—The meeting of the county.

How the meeting of the country? under what description?—As a society of United Irishmen.

Was there any mention made, where that meeting was to be?—Not to me; I was not told where it was.

Did Mr. Byrne tell you?—He did not.

Did you ever attend the county meeting?—I did: *them* that *was* there, I suppose were county members.

You met them as such?—I did.

What?—At a place about Aughrim, at a place called Anna Curragh, I think. There was a chapel convenient to the place.

Was the prisoner there?—I rode along with him there, from Newtown-mount-Kenedy.

Did you do business there?—No, because the county did not meet according to expectation, I believe some met; but nothing was done.

Did you attend any other meeting with Mr. Byrne?—Yes.

Where?—In Francis-street.

How came you there?—Why the meeting was appointed from Anna Curragh, the time that it should be, and I got a note, I suspect from Mr. Byrne, that it was to be in Francis-street.

Was Mr. Byrne there?—He was.

Can you recollect any part of the business disposed of there?—There was nothing passed there; but they had a controversy to see, whether they would go on of themselves, or wait for the French.

Were you afterwards at any meeting in any place in Dublin?—I was.

Where was that?—It was convenient to the Green, I think it was French-street, turning from Cuffe-street.

How soon after the other?—A month.

Was the prisoner there?—Yes.

A meeting of the same society?—Yes, of United Irishmen.

Was there any business done there?—I saw nothing done, but money paid into it, to Mr. O'Reily.

Had he any office?—I do not know; I suppose he was treasurer.

By whom was the money paid?—Mr. Byrne paid him some.

Did any other person pay him money?—Yes, another Mr. Byrne from Tinnahaly.

Was he of the party?—He was: I saw him at two meetings in Dublin, but not at Anna Curragh.

Did you ever get any pikes?—I did.

How many?—Either 84 or 85.

By whom did you get them made? was it by a smith in the country?—Yes.

Was it for your business as a farmer, or an United Irishman you got them?—They were of no use in the farming way.

What did you do with them?—I gave them up and down to the division I belonged to.

Did you give them to any of the king's troops?—No, never.

Did you get any money for them?—Yes.

they all subscribed for the making of them, and buying iron.

Who received the subscription, or the money upon the delivery?—I did.

How much did you receive?—I cannot tell, some paid more, some less, and some did not pay at all; it was according to their ability.

Then you gave some pikes for love?—No, not in that way. Those who did not pay, were to pay.

What did you do with the money you got?—I got some money before I got the pikes, and I gave it to Mr. Byrne.

From whom did you get that money?—From the people who belonged to the society I belonged to: they were all to pay in a shilling a man, and such as I got I paid over to Mr. Byrne.

Did you hold any office at that time?—I was appointed their captain.

You had made your return of 130 men?—I had.

Why did you pay the money to Mr. Byrne?—Because he was the man over me, who was to receive it.

Have you been out of that county lately upon any particular occasion?—What county?

The county of Wicklow?—No.

How came you to give information? to whom did you give it?—To lord Powerscourt and to lord Monck.

When?—Better than six weeks ago.

Were you a prisoner at that time?—No, I went of my own accord.

What made you? had you been in danger?—I was in danger, and could not go home.

Were you in any battle, or at any camp?—I had been at the camp at Blackmore-hill.

And you say you gave this information to them?—I did.

Thomas Miller cross-examined by Mr. *Curran*.

Are you of any trade?—No, sir.

What way of life are you in?—I live with my father, in his house, as a farmer.

Are you an unmarried man?—No I am not.

Have you any family?—I have.

Do you all live together?—They did, when I left home; I have seen none of them since.

Is your father a man of any fortune?—No, he is a farming man, labouring for bread; he has no comings in.

At which battle were you?—There was no battle in it, for when the army came, we retreated.

You fled?—I did, and all that was in it.

You led your 130 men in the flight?—There was not one of them in it; I was upon my keeping, and when I heard of the camp, I went to it; my men had given up their pikes and arms before.

You came in voluntarily?—I did, I was not taken.

VOL. XXVII.

And you went before lord Powerscourt voluntarily?—I did.

You were not threatened at all with any thing?—How threatened.

Do you not know what threatening is?—I do.

Well, tell me what you think?—I mistrusted, that if I was taken I'd die, that lord Powerscourt would put me to death.

Why should he?—Because he would.

Why?—There was a man taken beside me, I made my escape, and he was shot in fifteen minutes after he was brought to Powerscourt.

Was he tried?—I heard of no trial upon him.

You expected to be shot?—I expected nothing else.

And for fear of that consequence you became a witness, thinking you would be shot, if you did not?—Certainly.

Where have you been ever since?—Ever since when?

Since you gave information?—I have been in confinement.

In the Castle?—About there.

What do you expect for giving evidence?—I expect nothing, I was promised nothing, and I cannot expect it.

A Juror.—Who gave you your commission?

—This Ryan.

Whom is it signed by?—Not by any one. The secretaries and sergeants voted me in, the secretaries elected me captain.

Court.—Did you get a commission in writing?—I had.

Have you got it now?—No.

What was the nature of it?—I do not recollect; it said they were satisfied, I should be their captain.

Mr. Curran.—Were you ever charged with stealing holly?—I was.

Where did you sell it?—I do not know;—I sold it in Dublin.

Did you steal it?—To be sure I stole it.

A Juror.—Was it green holly?—It was.

Mr. Curran.—Was it the timber or the branches you took?—I took it without the leaves.

Have you done that often?—I have pretty often.

Have you taken any other timber?—I have for carts and ploughs, and other things.

Have you stolen that?—I have taken that without leave.

A Juror.—Did you ever steal timber for pike handles?—Never, the men found them for themselves.

Were your men to be paid any thing?—No, I never heard of it.

James Ryan sworn.—Examined by Mr.

Webber.

What is your occupation?—I have been a school-master.

Have you known any thing of a society called United Irishmen in this country?—I have.

Were you ever sworn a member of that society?—I was.

Can you recollect at what time you were so sworn?—In April 1797.

Did you at that time take an oath of secrecy?—I did.

Did you in consequence attend any meetings of United Irishmen?—I did.

Can you recollect how soon after you were sworn you attended any of these meetings?—In the harvest following.

Pray, sir, were you at that meeting, appointed to any situation in that body?—I was appointed secretary to the whole meeting.

Did you understand what your duty of secretary was to be?—I understood it to be to write for the whole of the society, whatever proceedings were necessary to be written.

Were you informed of any thing particular?—I was.

What was it?—I was to draw out a list of the whole parish which I belonged to, and to form them into splits of twelve each.

What parish?—Powerscourt.

Were you shown how to make out the list of twelve each?—I was shown.

By whom?—By Miller.

Look round and try, if you see any person who was at these meetings?—That gentleman there [pointing to the prisoner.]

What is his name?—Mr. Byrne.

Was he at all the meetings?—I saw him at one.

Did he come there in any particular capacity? Had he any rank there?—He told me and the society sitting there, that he was head delegate for the county of Wicklow.

Did he make any particular inquiries as to the business of the meeting?—He did.

What were they?—He asked, whether we had formed the military system: I said, no, but that we had formed splits; he then mentioned the words, that were necessary to be in the commission, and some person said I would not recollect them, and he asked for pen, ink, and paper.

What did he do with the pen, ink and paper?—I gave it to him.

Look at this paper?—[No. 12.]—He wrote this paper: I signed my name upon the back of it, when I gave it out of my possession.

In what posture did he write it?—On his knee with the back of a pen, which he said was bad.

[No. 12 read.]

"We the undersigned do hereby certify, that we are perfectly satisfied with the conduct of _____ since his commencement in this business, and do now unanimously send him forward in the Military capacity to act as our Serjeant, &c."

You swear that was written by Mr. Byrne, the prisoner?—I do.

What was the general purport of the conversation at this meeting?—I understood

them to be, to endeavour to overthrow the king and constitution, and that we would put to death every person, not an United Irishman.

Do you recollect Mr. Byrne giving any direction at the meeting, or telling what you were to do?—He ordered us to be quiet for three weeks, and in that time the French, from the best of his information were to land, and we were to assist them.

Court.—When was this?—The first morning after New Year's Day last.

Mr. Webber.—Do you recollect what Byrne told you would be the consequence of the French landing here, good or harm to you?—The rewards we expected were according to our services. We were to have the lands of those we disinherited of it.

Court.—What land?—The land of those who were not United Irishmen.

What do you mean by disinherited?—Deprived of it.

Mr. Webber.—Look at this paper; [Vide p. 490 No. 13.] Whose hand writing is it?—I know this paper, it is my hand-writing.

What is that paper?—It is the copy of the return I made of our parish.

Who instructed you to make the return?—Miller.

What is that a return of?—Of 120 men.

Is it a return of any thing else?—No.

What do these letters mean?—The initial

letters of each serjeant, that was to be appointed.

What are the numbers opposite to them?—Twelve, the amount of each split.

What are the names in the column?—They are the serjeants that did act.

What are the four names?—Captains.

What do these letters mean, which are upon a row on the top?—They explain the barony and half barony and county, and p. is for parish.

To whom did you give this information first?—To lord Powerscourt and lord Monck.

How come you to give it, do you recollect?—I do.

Tell how?—When I found they were bent upon turning out, I believe upon the 30th of May, I sent a friend of mine to lord Powerscourt, to let him know, if he would accept of my information, I would give it freely and voluntarily, without fee or reward.

Court.—What do you mean by their turning out? Whom do you mean?—Of the United Irishmen turning out to fight; they are now called Rebels.

James Ryan cross-examined by Mr. Bushe.

You said you came quite voluntarily?—I did.

You were not afraid of any thing?—I was afraid to fight.

Was there nothing else going on that you were afraid of?—There was nothing else going on that I should be afraid of.

You might have fought, as a good subject?—I would not be afraid of fighting as a good subject.

You have acted as a schoolmaster: Was there no whipping going on there?—There was not.

Miller was afraid of being shot? were you?—No; Miller was out, I was not; I was in the Castle.

Were you promised any thing?—I was not. Had you any reason to think, that any person had betrayed you?—No; I heard of none but myself.

Did you hear that information was given against you, before you gave information yourself?—I never heard it, nor did lord Powerscourt explain any such thing.

Did you think your neck in danger?—To be sure, if I was taken in that rebellion, I should be hanged.

James Ryan re-examined on the part of the Crown.

You returned Thomas Miller in that list: is he the man who was examined here to-day?—He is the same man who came here to-day.

Was it he gave you the direction?—It was.

What commission had he?—A captain.

Where was that meeting?—At Castletown.

Prisoner.—Do you recollect any thing to have happened to two men of the name of Lacy about the time you gave information?—I never did.

William Cope, esq. sworn.—Examined by *Mr. Attorney General.*

You know Thomas Reynolds?—Very well.

You went to Castle-Jordan?—I did.

About business?—Yes.

You passed a day there?—Part of a day.

The conversation turned upon politics?—We talked upon politics, and the troubles that were likely to arise. They said there must be conciliation, and there must be a reform in parliament and emancipation.

This led you to talk freely upon politics?—It did.

Who were of the company?—Sir Duke Giffard, lord Wycombe, captain Fitzgerald, another Fitzgerald, and two others whose names I do not recollect.

The subject rested upon your mind?—Very much.

It was a serious conversation?—It was, they talked very freely of the troubles and their increase; that the people were not satisfied, and could not be satisfied.

You returned with Mr. Reynolds?—I did.

Mention shortly the import of the conversation you had with him?—I will. I said that was an extraordinary sort of conversation we had last night; it is very alarming, and will tend to revolution: talking in that way will breed a revolution; and the consequence would be dreadful; for if the French should

come, their object is plunder; no person, property, or life would be safe; the people, even the very gentlemen, who were talking last night would all suffer, and your property and mine be equally plundered.

What was the consequence? Did Mr. Reynolds open himself?—He did.

Did he give you information?—He did: I pressed him to give it; for I found he could. He said, he never could and would not. But before he left me, he told me, that what I mentioned pressed upon his mind. He called in a couple of days, and said there was a person who could give information. He then declared the meeting at Bond's.

Did he tell you the kind of meeting it was?—A Provincial Meeting.

Did he tell you upon what day?—He did.

And the place?—At Oliver Bond's.

Has he been uniform, consistent and correct in every account of the transaction?—Extremely correct, and every thing he ever told me came out as he represented.

[*The remainder of the papers found were not offered to be read.*]

Mr. Bushe.—My lords, I object to the reading of these papers: they are not made admissible evidence. If it were proved, that the prisoner attended that meeting in the character of a conspirator, and connected with the others for treasonable purposes, then I should not have the confidence to argue, that all the papers found there might not be read. But, my lords, there is no evidence that the prisoner was in that room upon treasonable purposes. The extent of the evidence, even upon Mr. Reynolds's testimony, goes no farther than that Reynolds and Mac Cann were both consunt of the meeting, and the treasonable conspiracy to be hatched by the persons there assembled. But it is not proved, that Mr. Byrne was in the smallest degree consunt of the purposes of that assembly, that he said what his motives were, or that he was delegated to go there. The only thing like a *stratum* upon which to rest this evidence is a general loose piece of evidence, that he was at some time or other to be a delegate; but there is no evidence, that he was to go to that particular meeting, or that he there attended, as a delegate. This case, my lords, is different from the former; because there a connexion was proved between Mac Cann and Reynolds and lord Edward Fitzgerald, which made the declarations of the last evidence against the first; but there is no evidence here to show, that the prisoner was connected with Mac Cann or with Reynolds, or with lord Edward Fitzgerald. And this shows, that we were right in objecting to the letter being read; because it is now made to bear against the prisoner most severely. It might have been in the nature of things, that Mac Cann (though it has turned out otherwise) was a traitor—an informer, and wrote this letter to the prisoner for the purpose of

having it discovered in order to be evidence against him. Are your lordships prepared to say, that where a number of people were assembled, some for traitorous purposes, one person may not be there with a letter in his pocket, without having a traitorous correspondence with them?

Mr. Baron *George*.—It does not rest upon the letter alone. It appears in evidence, that he was an United Irishman, attended their meetings, avowed himself a delegate, and talked of their plans, their schemes, and their intentions.

Mr. *Bushe*.—But, my lords, he did not say, that he was a delegate at Mr. Bond's house.

Mr. Justice *Crookshank*.—The papers which have been already read, are evidence to go to the jury of a conspiracy, and that the prisoner was embarked in it.

[The papers were then read.]

No. 1.

[The paper found upon the table, the writing fresh.]

" I A. B. do Solemnly Declare that I came duly Elected."

No. 4.

[This was a list of printed toasts and sentiments from which the following extracts were read:---]

- " The Irish Harp attuned to freedom.
- " Health and Fraternity.
- " Ireland righted and the world Free.
- " The Green Flag of Ireland—May her Sons Unite and support it.
- " The Memory of ORR,* who died a Martyr to Irish Freedom.
- " ERIN GO BRACH.
- " United Irishmen.
- " Ireland a Republic and the World Free.
- " The French Republic.
- " A speedy and RADICAL Reform.
- " May Revolution never cease till Liberty is established
- " May the Guillotine clip the wings of Tyranny.
- " The United Irishmen—success to their efforts.
- " Mother Erin dressed in Green Ribbons
- " by a French Milliner, if she can't be dressed with' her."

No. 5.

This was a receipt for the sum of £.5.

No. 6.

S. 1. | 2. 3. 4. 5. 6. | 7. 8. 9. 10. 11. | 2 S.

10 | Cap. 1

£. 120 ——— 8

960. ——— 1 Col.

* As to him see the case of Finerty, *ant^e*, v. 26, p. 901.

No. 7.

A CAUTION TO THE BRETHREN.

Those appointed by you to superintend your interest have from time to time sent you such advice, or information, as they were enabled from reflection, or enquiry to offer for your advantage and the general good.

Still actuated by the same principle of zeal and fidelity, they deem it their duty to caution you against the immense quantity of Bank-notes, which government is fabricating without bounds. We need not tell you that the value of any Bank-note rests upon the credit of him who issues it. And in our opinion, the issuer of this paper is a bankrupt, who in all likelihood must shortly shut up, and *run away*. The present convenience of circulation will be but poor amends for the subsequent beggary and ruin it will bring on the holders; for you know it will be waste paper, and must stop some where as soon as there is a *burst*, and that the possessor, (*God help him*) will be robbed of so much property as he has taken it for.

Sometimes people accept of rap-half-pence for the convenience of change; but that is by far not so foolish as taking these bank-notes; for a tinker or brass-founder will give you something for base metal: but when the government *goes down*, these fine notes of theirs, with stamps of *hundreds and thousands* upon them will not fetch a penny a pound at a snuff shop. Besides, government has a great many guineas in the Banks and elsewhere, which there is a design of hoarding up against the *hard push*, when these folks are very certain their Bank-notes will not be worth as much as the old rags they were made of. But if you'll not give the government contractors or commissioners your goods without *hard cash*, they must shell out the *gold*. What is the worst that can happen to you, but to sell somewhat less, until the want of your commodities makes them pay for them in proper coin; or if you don't sell, is it not better for you to have your goods than to give them for *nothing*.

No. 8.

19th Feb^r. 1798.

SW.	In Tr ^r . hands	20 : 18 : 3
Kildare	10863	
Wicklow	12095	
Dublin	3010	20 : 0 : 0
D ^r City	2000	
Qu ^r Co.	11689	
K ^r Co.	3600	
Carlow	9414	
Kilkenny.....	624	
Meath	14000	
	67,995	40 : 18 : 3

“ Res^d. that the colonels in Each County shall make a List of those persons to be Adjutants General for said Counties, the Lists to be Transmitted Sealed, Either thro’ the Provincial or any Other Authentick Channel to the Executive, who will nominate one of the three to the employment.

“ Res^d that our Treasurer be allowed to pay 16G^s. to the Delegate for to Buy a horse, which when the Entire Country is Organized, is to be sold, and the money paid Back into the hands of The Treasurer.

“ Res^d that the Ex. Comm^o be requested to Acc^t for the Expenditure of 60 G^s. Voted them.

“ Res^d that Each Co. who have not paid in the finance shall be Requested to pay in £70. immediately Except the Co. Carlow, which shall only pay £40.

“ Privates Test.”

“ I A. B. do Solemnly Declare, that I will perform my Duty, and be Obedient to all the Lawful Commands of my Officers, while they act in Subordination to the Duty Elect-ed Comm^o.”

	No. 9.	
	In hands	20 : 18 : 3
K.....	10863	
W.....	12095	£.
D.....	3010	30
C. D.....	2000	20 : 0 : 0
Q. C. ..	11689	
K. C.	3600	
C ^r	9414	
K ^v	694	
M.	14000	
	67295	40 : 18 : 3

“ 10 in the Morn^g. this day 3 Weeks.

“ Resolved, that we will pay no attention whatever to any attempt, that may be made by Either houses of Parliament to Divert the Public Mind from the Grand object we have in View, as Nothing Short of the Complete Emancipation of our Country will Satisfy us.”

No. 10.

“ Resolved, that it is the opinion of this Committee, that if the other P. * be in an equal State of Preparation with Leinster as Soon as we Can procure the Information of their State and their determination to act in Concert with the Nation, we should immediately proceed to act, and that the Exe^o. † be requested to take such Steps immediately as will tend most Expeditiously to bring about an Union of the Different Provinces.

“ Res^d. that the Select Comm^o. of 5 be requested to prepare a Military Test, to be

* It was alleged by the counsel for the crown, that Pa. meant Provinces.—Orig Ed. † Executive.—Orig. Ed.

“ Laid before the Prov^l. at their next Meeting for their approbation.”

No. 11.

[Extracts read from the Pocket Book.]

19th Feb^r. 1798.

1	812	28	8	11
2	865	19	15	0
3	500	9	15	6
4		46	9	0
	2177	104	6	6

20th Feb^r. 1798.

P. C.		20	18	3
Kil.....	10863			
Wicklow ..	12895			
Dublin.....	3010	20	0	0
D ^r City	2177	104	6	5
Qu ^r Co.	11689			
K ^r Co.....	3600			
Carlow	9414			
Kilkenny	694			
Meath	14000			
	68272	145	4	8

[No. 13.]

*P.P.C. H.B. R.D. C.W.

		£.	s.	d.	
I. R.	12	—	—	—	four Cap ^o Vey Thos. Miller Charles Calligan W ^m Mooney Jer ^m Delamene
A.B.	12	*	—	—	
C.D.	12	—	—	—	Secretaries or Ser ^o James Ryan Maurice M ^c Cue Edw ^d Reilly Charles Tool W ^m Booth James Booth John Sutton Philip Byrne Maurice Hanlon Rob ^t Parker Christopher Reilly Jn ⁿ Kerwin Ja ^s Edwards Patt Ward Tho ^s Meagan Francis Lamb Chris ^t M ^c Mahon Patt Brown W ^m Rutledge Laur ^o M ^c Enery Mich ^l M ^c Guirk Garrett Quinn
R.D.	12	—	—	—	
C. F.	12	—	—	—	
D.B.	12	—	—	—	
C.F.	12	—	—	—	
C.D.	12	—	—	—	
I. P.	12	—	—	—	
D.F.	12	—	—	—	
		120	is		

James Ryan

* Parish Powers-Court.—Half Barony.—Rath-Down.—County Wicklow. Orig. Ed.

[The case closed on the part of the Crown.

Refreshments were ordered to the jury, as on the former trials.]

DEFENCE.

Mr. Curran.—My Lord, and Gentlemen of the Jury; In this case I am counsel for the unfortunate prisoner at the bar; and it is now my duty to argue upon some points, that appear to me to be material for the jury to consider previous to their finding their verdict.

Gentlemen of the jury, it is scarcely possible for an advocate to discharge his duty, without offering something like observations. —I do not say this to entitle myself to your excuse, if I should lead you to some observations on the evidence.—I am counsel for this unfortunate prisoner at the bar; unfortunate in being brought here, to answer before the Court and the jury, those charges laid against him, which he is now called upon to answer; but even if he should by your verdict be declared innocent, the prisoner is unfortunate in being brought to answer a charge of high treason. He stands charged with this crime on the statute of the 25th of Edward 3rd; an act of parliament which has been called a blessed act, and well it deserves to be so called. Our forefathers, who made that law, have long since become dust and ashes; but there is no man in the profession, there is no man indeed out of the profession, who has a strong understanding and a good heart, and considers that statute, who will not feel some gratitude for the emancipation effected by it.

Gentlemen, that statute was made from the wisest motives; it was made by the wisdom of an intelligent legislature. The law of high treason in England had been, before that time, exceedingly wide and tyrannical; perhaps partly from want of much information or from some prejudices, or perhaps from the art of printing not having extended so widely as it has since done; or from the defect of written books, and a great restriction to the reading of those books, or from the doctrine of high treason being written on by lawyers of base principles. If there was any principle at all, it was choaked by pride and ignorance; the doctrine of high treason was left to float over their consciences; they had no concern for moral obligations, or affection for virtue; they had no kind of regard for the interests of the people; the royal power of the state was degraded by the laws, as they stood respecting high treason before the reign of Edward 3rd; their wisdom was lost in idle declamation; and in order to remove all doubts respecting the crime of high treason, our forefathers, in the reign of Edward 3rd, passed the statute which ascertains and defines what the crime of high treason is. You must see, that unless you protect the power of the constitution, nothing can be protected; therefore, gentlemen of the jury, that statute of high treason was made, in the reign of Ed-

ward 3rd, to guard the state and the constitution from abuses. The state must be supported, whether it be merely monarchical, aristocratical, or democratical; the supreme power, whatever it may be, must be protected; therefore, gentlemen of the jury, it was the highest wisdom to guard and shield the department of the supreme power; and the first object of that protection was, to throw a rampart around the sacred person of the king of these kingdoms.

It is necessary for you to consider the provision made in the statute, for the preservation not only of the king, but of the queen and heir apparent. To compass or imagine the death of either of these illustrious personages, is high treason. You see, gentlemen, that the statute is made to guard the person of the king; it specially provides for his personal safety; it enacts, that any person who shall levy war against the king, or shall compass or imagine the death of the king, is guilty of high treason: if any man levy war to overturn the constitution, he shall suffer death as a high traitor. It is necessary to show, that by the words of this statute, levying war within the realm or without the realm, is high treason against the king, and the party shall suffer as a high traitor.

The prisoner at the bar, in this case, is indicted upon the first and third clauses of this act—"if any man shall compass or imagine the death of the king, or attack the king by open deed." In the indictment, the prisoner is charged with compassing and imagining the death of the king; and secondly, with adhering to his enemies. It is for you to consider and determine, whether the prisoner at the bar is guilty of these crimes or not.

Gentlemen of the jury, in times like these, it is, God knows, hard to efface the trace of human passions, or to check the effusions of loyalty; and yet I trust, as I know every man of you, you will do your duty between the Crown and the subject. I have so much respect for you, that I take the best way of warning you against the effects of your loyalty.

In former reigns, before that of Edward 3rd, the law of high treason took so wide a field of obscurity, that it was difficult to ascertain what was the crime of high treason; and we find, that unfortunate men have suffered an ignominious death, upon very slight grounds of imagining the king's death. As the king had no one to advise him, to ascertain the crime, it appears that many were found guilty of treason and were executed; and the act of Edward 3rd was made, to point out, precisely and clearly, what constituted the crime of high treason; it protected the rights of the Crown, and was also a protection to the people.

Gentlemen of the jury, you will see whether my observations are just; that before the statute of Edward 3rd, the law with regard to high treason was uncertain: The statute of

Edward 3rd is a law of general justice; it establishes the boundaries of the law of high treason. It is now three hundred years ago since that act was made. That act is the security for the preservation of the life of the king, on which the felicity of his subjects depends; that statute should be preserved immaculate, as the spotless virtue of a virgin. It is necessary for you to recollect, that in the reign of Henry 8th (in whose reign there were continued struggles to maintain and extend the prerogative), the law of high treason made by Edward 3rd, was greatly entrenched upon. In the reign of William 3rd it was amended, and did in fact make a part of the Bill of Rights; it stated what the law was with respect to criminal prosecutions, that every man charged with the crime of high treason, should be furnished with a list of the jury impanelled, and with a list of the witnesses to be examined; that all the overt acts should be set out in the indictment; and that there must be *two witnesses*, to prove an overt act, before it was in the power of the jury to convict him of the charge or charges made against him by the Crown.

That statute of William 3rd was passed in England, and I know it will be said it was not passed here, and is *not now the law of Ireland*, and therefore *two witnesses* to prove an overt act, are not what the law requires in this country; but why the law did not require, that in Ireland there should be *two witnesses* to prove an overt act, I know not: it may be attributed to some former servants of the state, who are long since deceased; who perhaps thought it would be doing a good thing to retrench the Irish constitution, and though it was necessary to have two witnesses to prove an overt act of high treason in England, it was not necessary to have two witnesses to such a charge in Ireland. Certain it is, that by the law of this country, two witnesses to prove an overt act are not specially required. In my opinion, there was very little humanity in omitting, in the laws relative to high treason, that there should be, in Ireland, as well as in England, two witnesses, to prove an overt act of high treason. My opinion is founded upon great deliberation on the subject, in the course of several years, aided by the highest possible legal authorities, that the jury ought to require the most satisfactory evidence of guilt, before they pronounce upon the life of a fellow-subject; when, if they did so in England, without two witnesses to prove the charge, it would be *murder*. I aim not to practise upon the warmth of your hearts, but I feel the warmth of my indignation when I see, that in Ireland, a man accused of high treason, may be convicted of high treason without two witnesses to an overt act, while in England he cannot.

Gentlemen of the jury, you are to determine upon the guilt or innocence of the prisoner; you are to decide, whether he did commit these overt acts? whether he did compass

and imagine the death of the king, and adhere to the king's enemies. Gentlemen, you know as well as I do, that it is your province to determine whether the evidence that is given, if you believe the witness, is sufficient to support the charge. You will decide whether the evidence that is given, if you believe the witness, does establish the charge; it is therefore material for you to consider his evidence minutely, upon the rules of evidence. Suppose you in your little mansions preside as the fathers of your family, you would not believe a tale told by a vindictive mind, you would require some further proof before you pronounced on the guilt of the child accused; I say, gentlemen of the jury, in the bosom of your own little families you would require some farther proof besides a single witness, to see if the accusation deserved to be believed.

Gentlemen, the question for you to decide is, whether the evidence given this day by the witness, is deserving of credit, and you are to judge whether his testimony supports the charge which he was brought forward to support. The evidence that has been given consists of the parol testimony of Mr. Reynolds; and you will consider the written evidence (as it has been called) and see how far it supports the charge: you will consider how far they corroborate and support one another. You will consider what degree of credit you will give to the person who has come forward and given his testimony, to support the charges in the indictment,—a person who had been one of the United Irishmen—who had formed the abominable intent of compassing and imagining the death of the king.—I say the intentions of that body are abominable. Here give me leave to say in the presence of the learned judge, that in some newspaper it was falsely said, that I vindicated the society of United Irishmen on a former trial.* I deny it, for there is no one that does not know, there can be no man more attached to my king and country than I am.

The Honourable Mr. Baron George.—If any advocate had vindicated the conduct of the society of United Irishmen, in raising this rebellion, I should have done my duty, and lodged him in the body of the gaol.

Mr. Curran.—Gentlemen of the jury, You have had before you in the present trial, the parol testimony of Mr. Reynolds, and the papers that have been given in evidence.—Give me leave now to ask, if you are satisfied in your consciences, upon the evidence adduced before you, that there has been a conspiracy to destroy the person of the king? or are you satisfied there has been a conspiracy to levy war, or do any other unlawful act?

As to the papers; if you believe they were

* This may perhaps allude to an expression in the reply of the prime serjeant on Shearson's trial; see p. 381 of this Volume.

found in the room where they assembled, they are evidence against all the persons who have been, or who may be called upon to answer for the crimes with which they are charged. You will determine whether the evidence of Mr. Reynolds does prove that the prisoner at the bar is guilty of compassing or imagining the death of the king. See what the testimony of Mr. Reynolds is [Here the learned counsel, with great accuracy, commented on the whole of Reynolds's evidence.]—He said to Mr. Cope, that his, Reynolds's friend, would come forward and give information;—he now comes as a public informer; he was first a traitor to his king, and he afterwards became a traitor to the accomplices in his guilt—

Court.—That does not prevent his giving evidence in a court of justice.

Mr. Curran.—I am stating it in this way. He says he was an accomplice in the crime charged against the prisoner at the bar;—if the jury believe that Mr. Reynolds did break his oath of allegiance, they will weigh his evidence with great circumspection. And may they not say they believe in the innocence of the prisoner, notwithstanding Mr. Reynolds has testified to his guilt? In a case of this kind where a secret conspiracy is charged against the prisoner, an informer is by law admitted to give his testimony; but suppose he should give evidence of matters which were not true, no human being could contradict him; there would be no possibility of protecting the accused against the accuser. A paper was given in evidence, of a letter from Mac Cann to the prisoner, mentioning lord Edward Fitzgerald; we cannot call lord Edward Fitzgerald to answer the charge; he has been called to appear before a court,—where we must all of us appear! he is no longer amenable to an earthly tribunal! He is gone to that place where no false testimony can affect him.

As to Mr. Reynolds, you, gentlemen of the jury, will judge of the credit due to his testimony. It is evident he is not a foolish man, he had not the plea of ignorance for the shameful breach of his oath of allegiance; yet he now comes forward, to give his evidence against his accomplices; you will judge of his evidence, and you will hold the balance with the greater care and steadiness as the crime charged is of the greatest magnitude, and determine whether the innocence, or the guilt of the prisoner at the bar preponderates. You will observe one expression of this witness: he said "he had received five hundred guineas, as a compensation for his losses:" he said, "I think I will take no more; but ask me that question to-morrow, perhaps I may change my mind." He told you he had a conversation with Mr. Cope about the United Irishmen: Mr. Cope expostulated in a kind of sermon, on the abominable and mischievous conduct of the society of United Irishmen, of the horrid murders and depredations they had committed, and affirmed that

the whole property of the kingdom was endangered. Thus through the calibre of Mr. Cope's eloquence was struck the mighty Colossus Mr. Reynolds, with the crimes of these deluded people! and, says Mr. Reynolds, I know a friend, who is an United Irishman, and I will endeavour to prevail on him to come forward and give information against them. Says Mr. Cope, for such a man no reward would be too great, for he would be the salvation of his country. We shall produce evidence to show some traits of the moral conduct of Mr. Reynolds, relative to a bond given to a Mrs. Cahill; and if we prove that he is such a man as you may judge not deserving of credit, and if you have a rational doubt in your mind that the prisoner at the bar is not guilty, then you will bring in your verdict of acquittal.

As to the evidence of Miller and Ryan, they do not, in point of law, prove the charges laid in the indictment against the prisoner at the bar. To support this position, the learned advocate quoted sir Michael Foster, Mr. Justice Blackstone, and the opinion of Eyre; he concluded by intreating the jury to consider maturely the evidence: and if the jury had a reasonable doubt in this case, they would give such a verdict as would acquit the prisoner, and stop the effusion of human blood.

Miss Anne Fitz Gerald sworn.—Examined by Mr. Bushe.

Are you acquainted with Mr. Byrne the prisoner at the bar?—No, sir.

Do you know Mr. Thomas Reynolds?—I do.

From his general character would you believe him upon his oath?—I would not.

Miss Anne Fitz Gerald cross-examined by Mr. Attorney General.

Where do you live?—In a nunnery.

How long have you lived there?—Thirteen years.

You have not mixed in the world during that time?—No, sir.

Do you know a captain Fitz Gerald?—I do, he is my brother.

He is in custody upon a charge of treason?—I hear so.

How do you know Mr. Reynolds?—He is my nephew, and has visited me often till of late.

Of what age is he?—He is about twenty-seven years of age.

Mrs. Mary Molloy sworn.—Examined by Mr. Bushe.

Where do you live?—In King-street.

Do you know Thomas Reynolds?—I do.

Have you any reason for knowing him?—I am his mother's aunt.

Have you known that man for many years past?—I have known him from his childhood.

By virtue of the oath you have taken, from

your knowledge of him, do you, in your conscience, believe he deserves to be credited upon his oath in a court of justice?—I do not.

Mrs. *Mary Molloy* cross-examined by Mr. *Mayne*.

Are you a nun?—I am.

If Mr. Reynolds swore there was a society of United Irishmen would you believe him?—Why, if he swore there was a God, I would believe him.

If he swore there was a society of United Irishmen in the country, would you believe him?—I do not know what is understood by them.

Where have you lived, madam?—In Dublin.

And not know what a society of United Irishmen means?—I have heard the name, but I do not know their schemes.

Have you ever given any reason for not believing him?—I believe I have.

What is your reason?—I do not think him an honest man. I know of a transaction of a bond and a note given to a woman; she came and brought me that bond and note to keep for her, saying, it was Reynolds's bond and note; I found it was a false bond; neither his name nor her name were mentioned in it.

And therefore you would not believe him upon his oath, for that very reason you would not believe him?—For that very reason.

Pray, my good lady, did you ever say, he was a *double traitor*, and therefore you would not believe him?—I did not say that.

Did you ever say to any person that he was a traitor?—As I conceive the words, I never said them.

Did you ever conceive any other reason for disbelieving him?—No.

Did not you say that to another jury?—I did.

And the jury believed him notwithstanding?—I do not know.

Was not the money paid?—I do not know: I do not think the money due upon the last note is paid.

To whom is it due?—To Mrs. Cahill.

Can she not be examined?—She was here the last night, but is blind and sickly.

What relation are you to captain Fitz Gerald?—He is my nephew.

He is charged with treason?—I do not know.

There is some suspicion against him?—I suppose so, because he is taken up. It is very hard when a person takes a book oath, that an improper construction should be put upon one's words.

You are anxious to save Mr. Fitz Gerald?—I would, or any honest man like him.

A *Juror*.—You say the money is not paid upon the bond?—There is a 10*l.* note not paid yet.

When was it due?—The first of this month.

Mr. *Mayne*.—Was that 10*l.* tendered, or offered to any person, since the first of this

VOL. XXVII.

month?—Not to my knowledge; I heard, that Mrs. Reynolds gave one guinea and eight guineas after.

That is near 10*l.*?—That was for the first note, but there is 10*l.* due the first of July.

Payment was not demanded?—No, not to my knowledge.

You have the note?—I have it about me.

Then why not demand it?—Because I have no right.

A *Juror*.—The bond was paid by notes passed for the amount?—Yes.

Were the notes refused to be paid, when they became due?—I do not know.

But if you had the note in your possession, why not present it?—I do not know.

Mr. *Mayne*.—Do you not live in the nunnery?—I do.

Did not Mrs. Reynolds go there since the first of July to pay the money?—I do not know; she came there, I do not know for what purpose.

Was there not a note given to the priest for you at the nunnery?—I do not know.

Have you not heard and do you not believe, that Mrs. Reynolds went to the nunnery and offered to pay the amount of the note to you?—I do not know, not having seen her.

Did Miss Fitz Gerald tell you?—No.

Did you hear it from the priest?—I did not.

Did you not hear that Mrs. Reynolds came there?—I did.

And you refused to see her?—I did.

And had the note in your pocket?—I had but what had that to say to the business.

Court.—Why refuse to see her?—I was afraid to converse with her;—I am apt to speak my mind, and she might take advantage of it.

Mr. *Mayne*.—You shut the door against her?—Yes.

Did you ever shut the door against her before?—By virtue of my oath I took this opinion of him six months ago.

Had the priest any conversation with you upon this business?—He told me, that Mr. Reynolds asked him, whether he would deliver a note to me from her; I having refused to see her.

What did you say to the priest?—I do not know; but when I went up, I saw it upon the table.

Where is it?—I do not know, but I saw it upon the table.

Something to this effect, read this?—“I came from Mrs. Cahill, having paid the first note which was due; I would pay the second, but understood you have it.” I do not think that was *verbatim* the note, but the substance of it.

Has the priest any particular friendship for Mr. Reynolds or not?—I cannot judge of the man.

Did you hear the priest say any thing of Mr. Reynolds?—I do not think that is a fair question.

2 K

If the matter did not pass as Confession, it is a fair question?—But I will not answer it.

A Juror.—After the passing of these notes, was the bond cancelled?—It was.

To settle the account?—Certainly it was.

And the notes were given for the full amount and the interest?—Yes.

Eleanor Dwyer sworn.

You know Mrs. Cahill?—I do.

You know Mrs. Reynolds?—I am not acquainted with her; I have seen her.

And spoke to her?—Yes.

You have been sometimes in the same house with Mrs. Cahill?—I have.

She is an old woman and blind?—She is.

Did Mrs. Reynolds come at any time within these three weeks past to the lodging of Mrs. Cahill?—She did.

Tell what happened upon that visit with regard to a bond and a note?

Mr. Attorney General.—My lords, I object to this evidence. How can a conversation between two or three women impeach the credit of a man, who was not present? But, my lords, having mentioned this, I am indifferent what is done with the evidence.

Mr. Curran.—I shall examine as to matter of fact.—Mention the transaction?—Mrs. Reynolds came to Mrs. Cahill for a bond and a note, and Mrs. Cahill delivered them into her hands.

Go on, madam?—I know no more about it: if you ask questions, I will answer them.

Did she get the bond and note?—She did. I had them in my possession, and gave them up to Mrs. Reynolds at Mrs. Cahill's desire.

Was this bond and note given up by Mrs. Cahill, or did Mrs. Reynolds request it?—At Mrs. Reynolds's request.

When was this?—A few hours after the first notice to appear in court.

Eleanor Dwyer cross-examined by Mr. Saurin.

Who lives with Mrs. Cahill?—I live with her, and a servant maid.

No body else?—No, sir.

As soon as the notice was served upon Mrs. Cahill, did she dispatch you to tell Mrs. Reynolds?—She did not.

Did she send the maid?—I believe not.

Did she go herself?—She could not.

Then in three hours after the notice was served?—I cannot say as to three hours, it might be four.

But it was between one and four?—I believe so.

Then Mrs. Reynolds never heard from you, or from Mrs. Cahill, or the servant that notice had been served?—She did not hear it from me, I believe not from Mrs. Cahill or the servant.

Then if she did not hear of the notice, her coming could not be in consequence of the notice?—I do not know.

What do you believe?—I cannot say.

Were you in the room when Mrs. Reynolds came first?—I was.

Did you remain all the time?—I do not recollect that accurately, I think I may say I was.

Were you thinking about this bond, at the time she came?—I was not. I heard there was a false bond, and Betty Cahill called to me for the bond; I said I knew nothing of it: she spoke loud and asked me what I meant. I said, do not be angry, here it is, and gave it up.

A Juror.—Was there any application for the bond and note?—I do not know.

Did Mrs. Bond call for it?—I do not know. I heard she did, and that Mrs. Cahill said, if she was paid 170*l.* the debt due, she would give up the papers.

Court.—Did not Mr. Reynolds pay the money?—I heard so.

Samuel Paisley, M. D. sworn.—Examined by Mr. Bushe.

You live in the county of Wicklow?—I do. Are you acquainted with the prisoner?—I have been acquainted with him.

What has been his general character during your acquaintance with him?—A very good one as far as I know.

Have you ever had any reason to form an opinion of his political principles whether they were loyal or not?—During the time of his residence in our neighbourhood, I had an opportunity of forming an opinion, as far as conversation and actions went.

What has been the time of your acquaintance?—The last two years.

What opinion did you form?—From seeing him take the oath of allegiance to his majesty, as a member of the Mount Kennedy corps, from his volunteering as a yeoman when the French were at Bauty, and conversations, I had reason to believe he was a loyal man, and of a moderate disposition; and I never knew him to speak, or act contrary to that.

Have you known Mr. Byrne, as a yeoman, to be employed in taking up arms in the country?—I cannot say, I ever knew him employed in taking up arms; but I knew him act spiritedly in taking up robbers.

Do you mean persons who robbed houses of arms?—No; but who robbed houses of property.

And probably for swearing too?—That I cannot charge my memory with.

Samuel Paisley M. D. cross-examined.

Is the prisoner at present a member of the Mount Kennedy cavalry?—I believe not.

How did he cease to be a member? voluntarily on his own part, or otherwise?—Voluntarily on his own part.

How long since he left it?—I cannot immediately answer that question; but to the best of my recollection, I may be wrong, but to my recollection, just about November last.

Pray, sir, how has he been generally employed since he left that corps?—That I do not know.

Have you heard of his being active since that time in taking up robbers?—I cannot say, as to particular instances: he was ill in January last, and I set up a whole night with him.

Do you believe there exists in this country a society calling themselves United Irishmen?—I do.

Do you believe their object is treasonable?—I cannot consider myself competent to decide. I have heard of a particular society called United Irishmen.

I asked you, whether there does exist such a society, and you say there does; now, do you not believe their intentions are treasonable? or have been so for three months?—I cannot answer that question fairly. There are men now in arms, and who have committed many bad actions, and their designs are treasonable.

Are they not members of the United Irishmen's Society?—I believe so; but there are different descriptions of them: some have not bad designs, some have, and look to revolution and rebellion.

A Juror.—How do you make that distinction?—Merely from the report of people that I have been acquainted with, from the report of the people of Wexford, from some of my own friends, who were used very ill there, and from the description of people who infested that country.

Counsel for the Crown.—Do you not believe that the worst description of them are those who encouraged the making of pikes?—I think so.

And those who have attended Baronial, and County, and Provincial Meetings?—I know nothing of these farther than report; but I should suppose, that those who have attended these meetings have aided and assisted in the present system.

By virtue of your oath, would you entertain the same opinion of the prisoner as you have mentioned, if you saw in his hand-writing a request to the people of his own county to collect arms?—Certainly not.

Counsel for the Prisoner.—I wish to know from the witness whether copies of this paper were circulated through the county of Wicklow and were in many hands?

[The latter part of the paper, No. 3, was shown to the witness.]

Witness.—I recollect having heard of a paper of this nature; I cannot positively swear, whether this be a copy. But it seemed to be a return of men, arms, and ammunition in the barony, half-barony, &c. It was put into my hands by a neighbour, Mr. Laurence, at whose house I was at the time; I heard of a similar paper found in an upper part of the county by a magistrate, about the same time.

Samuel Paisley, M. D. cross-examined again,

“You are sure that paper you saw was a return

of men, arms, and ammunition of the baronies?—I think it was rather more full than it is here.

And you are sure the paper distributed through the county was of the same import?—I did not say *through*; I heard only of some, I heard a man had dropped one at a forge, and returned for it; but the person who got it, being a loyal man, refused to give it up, and he showed it to several.

You heard it was a return of the arms and ammunition of the Baronies?—Certainly I did hear so.

Did you hear of a third paper?—No, I did not.

Were you ever a Yeoman yourself?—I was. Are you still one?—No, I am not.

The occasion that induced you to take up arms ceased?—No, nor the desire. The reason I ceased to be a yeoman was this: I had conformed in every way that was necessary according to act of parliament, as a free soldier, and I took the oath of allegiance, which I never knowingly or willingly broke. There was another test proposed; it was reported to be an Orange test. The lower part of the people held Orangemen in such detestation, and I heard such expressions about them as alarmed me: I was a practitioner in midwifery, liable to be called out at all hours, and into remote parts of the country, and I did think, that if I did any thing to offend them, my life would be in danger, and I did not wish to risk my life, which was the support of myself and my family. I heard that this report was occasioned by Mr. Camac, who reported, that some of the Yeomen corps were formed of United Irishmen; I offered to satisfy the members in any manner of my principles and attachment, that I did not belong to any society of United Irishmen or seditious association, and I hoped they would allow me from my profession and situation, as they had at first, for I was considered as an honorary member; the captain of the corps was not at home at this time—When he came home, I addressed him on the subject, and he approved of it, and I hope will give that testimony of me.

Does not the same disinclination to serve continue?—No, sir, for as soon as the disturbance broke out, I offered to relinquish my profession, and join all the force I could against the insurgents.

When was this test proposed?—About four months ago.

Was not part of the test, that you did not belong to any Society of United Irishmen? Or what part of it was wrong as a test?—I did not say any part was wrong as a test in my opinion; but it was generally believed it was, and knowing the state of the country, I did not choose to run any risk.

How long after the 23rd of May did you offer your service to captain Gore?—I cannot recollect the day; but when I read the king's speech, speaking of the French making an invasion, and of the rebellion at home, I

thought I could not do better, than embark and fight for my king and country, and I told my captain so.

Did you ever say, that you offered your services, when the issue of the contest became doubtful, and that you embraced that side which was the strongest, and when the rebellion was put down?—I do not recollect particularly mentioning that; I did not apply to the corps, but to captain Gore, who approved of what I did.

Robert Gore, esq. sworn.

You have a command in the Wicklow Volunteers?—In the Mount-Kennedy Yeomanry I have the honour of being captain.

Do you know the young gentleman, the prisoner at the bar?—I do.

Was he in your corps?—He was.

Do you recollect the time of the invasion of the French fleet, when they came to Bantry-bay?—I do.

Was the prisoner a member of a Yeomanry corps at that time?—I believe he was.

Do you recollect any offer of personal service to follow you to Bantry-bay, or any other place?—Every man of the corps, except one or two, offered to march to Bantry, or where the wisdom of government, or the exigency of the times required.

Was the prisoner one of those?—He was not one of those who objected, but I cannot say, that he signed the paper; there was a great crowd in the room, and I cannot remember exactly. If he refused at that time, as a bachelor, he would be turned out. Some married men might have made objections: the post-master and a physician, I remember, and these were thought just exceptions.

What was the conduct of the prisoner in your troop?—A proper well educated gentleman-like man.

He sent in his resignation about the month of October?—He did. Mr. Hoey sent in his resignation at the same time. There had been some dispute, and the prisoner took up the cudgels for Mr. Hoey against my brother, and they both quitted the corps. This matter was so represented to me. I was not in the country at the time.

Robert Gore, esq. cross-examined.

Have you had occasion to know any thing of the conduct or character of this man for the last three months?—He has been in prison that time.

But for a month before he was in prison?—No; but I heard he encouraged the business; I heard that all the leading Roman Catholics in the country had aided it, and he as one.

There has been much trouble in that country?—A great deal.

There was a rising there last winter and Baronial Committees?—I have known it from positive information, but not from what have heard upon this trial.

[The case was closed on the part of the prisoner.]

William Furlong, esq. sworn, and examined on the part of the Crown.

Do you know Thomas Reynolds?—I do.

How long?—Upwards of seven years.

Have you known his general character during that time?—I was concerned as attorney for his father many years, and was acquainted with his general character, which was always a good one as appeared to me.

Do you consider that he is a credible witness upon his oath in a court of justice?—I do.

William Furlong, esq. cross-examined.

You have known him a good while?—Seven years particularly; I have known him somewhat more, and I have trusted him with a good deal of money.

Did you think him likely to take a treasonable engagement against the constitution?—For several years after I knew him, I did not think so; but latterly I did think so.

William Furlong, esq. examined again on the part of the Crown.

Latterly you thought he had taken an engagement of that kind?—Latterly, I thought him an United Irishman, and embarked with them.

Independent of that, you thought him credible upon his oath?—I do think him so.

Under every impression you have received, and opinion you have formed of his veracity, and the state of his character, do you believe, he is a man this day to be believed upon his oath in a court of justice?—I do believe he is a man at this day to be believed upon his oath in a court of justice.

[Case closed on both sides.]

Mr. Bushe.—My Lord and Gentlemen of the Jury;—I rise to address you at this late hour, and to offer to you a few observations. After the display of those great and eminent abilities of the learned counsel who preceded me in his elegant and correct statement of the prisoner's case, I offer my observations with great deference.

Gentlemen of the jury, you are called together here to determine upon the life of a fellow subject --- You will weigh in the scales of equal justice the evidence of a witness, who comes forward as a public informer, and consider the character which the prisoner at the bar bore before this unnatural rebellion broke out. I shall not presume to address your passions, to stimulate you to find a verdict on the ground of humanity, in favour of the unhappy prisoner at the bar; but let me appeal to your justice and to your wisdom, to consider the evidences which have been brought forward against my client on this occasion. Mr. Curran has already laid before you so many

observations relative to the crime of high treason, and animadverted on the many overt acts laid in the indictment against this unfortunate young man, the prisoner at the bar, that I will not detain you in detailing them to you. Let me, gentlemen of the jury, submit to your cool and dispassionate consideration, one peculiar circumstance in the evidence of Mr. Swan. It does not appear that when he went into the room, at Oliver Bond's, that the prisoner at the bar was then and there guilty of the charge laid in the indictment: it might be, for any thing that appears in evidence—and that is the only ground on which you are to found your verdict—it might have been an innocent meeting. There is nothing in that part of the case to show the intention -- *quo animo*—in the prisoner—to manifest the evil intention laid in the indictment, that the prisoner did compass and imagine the death of the king. I am speaking as to any act done at Bond's by the prisoner at the bar. You cannot, from the evidence of Reynolds, collect any particular stress laid on the prisoner at the bar, more than any other member of the body of United Irishmen who met at Bond's house.

The charge laid against the prisoner at the bar, is, that he did, with other false traitors, compass and imagine the death of the king, and that he did adhere to the king's enemies, and to effectuate those wicked purposes, did adhere to the persons exercising the powers of government in France, to overturn the constitution of this country. It is for you, gentlemen of the jury, to say, on your oaths, that there has been sufficient evidence laid before you, that the prisoner at the bar did compass and imagine the death of the king. But let me ask, have you precise and positive evidence, that the prisoner at the bar ever made any declarations that ever mentioned such sentiments or such intentions? Now, gentlemen of the jury, let me bring to your serious and deliberate attention, that there is a charge laid in the indictment, that the prisoner at the bar did adhere to the persons exercising the powers of government in France. And see what evidence you have had before you to support that charge against this young man, my unfortunate client at the bar. Let me ask you, have you one single tittle of evidence to support that charge against the prisoner?—You have heard, on the contrary, the evidence of a gentleman of great consideration in this country, that the prisoner at the bar did voluntarily offer his services against the French, to oppose their landing in any part of this kingdom. It will be said that the prisoner at the bar did make preparations for the war, and entered into a conspiracy to levy war; but there has been no evidence given of the intentions of this man, that he did intend to compass the king's death. If there is a variance between the evidence of the crime committed, and the charge laid in the indictment against any man, it may be taken advan-

tage of in favour of the person on his trial— if there is proof that a man's intentions were to levy war but no proof that the man's intentions were to compass the death of the king. The prisoner at the bar is a very young man. He was arrested before any rebellion broke out in Ireland; and here let me observe to you, that some years ago, several illustrious characters in Great Britain and Ireland entertained sentiments that a parliamentary reform and Catholic emancipation were objects which they considered to be of the greatest national utility. These were the ideas, these were the decided sentiments of Edmund Burke, of Mr. Pitt the present chancellor of the exchequer, of Henry Flood, and many others in England; and those objects were stated some years ago, to be entirely correspondent with the sentiments of many persons in this country; and it is plain, from the youth of the prisoner at the bar, that he had not been long in the habit of associating; and all the evidence that has been brought against the prisoner does not amount to more than a conspiracy; and upon that point I beg to refer to the sentiments of judge Buller, as given on Arthur O'Connor's trial. The several overt acts, charged against the prisoner in the indictment, have been so fully expatiated upon, that it is unnecessary to repeat them. If it was even admitted that the prisoner was guilty of a conspiracy to levy war in Ireland, I contend that that cannot be evidence of his intention to compass or imagine the death of the king in England.

Court.—It has been determined, as laid down by lord Hale, at a meeting of the judges in England, that a war in Ireland is, in point of law, a compassing and imagining the death of the king in England; and in lord Macguire's case, if a war was raised in the county of Middlesex, it is a compassing and imagining the death of the king, although the king was not residing in Westminster, in the county of Middlesex.

Mr. Bushe.—In the case of the earl of Essex, he was charged with compassing and imagining the death of queen Elizabeth: there the act was never done, but the evil intention was proved.

Gentlemen of the jury, I shall not recapitulate farther the evidence that has been given against this very young man, the prisoner at the bar; I doubt not that you regret the distractions that prevail in this country, but yet you in your verdict, will administer justice according to equity, to this misguided young man; and if you entertain a reasonable doubt in your minds, as to his guilt or innocence, you will incline to mercy.

REPLY.

Mr. O'Grady.—My Lord and Gentlemen of the Jury;—It is incumbent upon me, to offer to your consideration some remarks and observations. I have heard some arguments in point of law, and some observations on mat-

ters of fact, to which I find it impossible to accede. You have heard the evidences which have been produced. Mr. Swan positively swears, he apprehended the prisoner in Bond's house, with other members of the society of United Irishmen, and that there was found on him a letter written to him by John Mac Cann, which has been read in evidence, and other papers read in evidence in his hand-writing. Miller and Ryan, of the county of Wicklow, identified the prisoner, and proved that the prisoner did direct pikes to be made by Miller and appointed Miller to be captain of that body of United Irishmen. These evidences corroborate one another, to fix the charges laid in the indictment on the prisoner. You are called upon by the oath you have taken to give your verdict according to the evidence which has been given before you. You cannot shut your eyes and your ears to the barbarities that have been committed in this country; wives and children have been sacrificed to the brutal ferocity of these deluded men, and other enormities have been perpetrated, that could only have resulted from the most unprincipled and abandoned minds. Miller told you he did direct pikes to be made, 84 or 85 of them, and that Byrne ordered him to have them made, and paid Miller for them. Whom were they to be lifted up against? against all their opposers. If you should entertain a reasonable doubt of the guilt of the prisoner, notwithstanding all this body of uncontradicted and uncontrovertible evidence, both written and parol, then you will acquit the prisoner; but let me ask you, can you have a particle of doubt of his guilt, when you read under his hand the plan to overturn the constitution, the certificate, under his hand, of sergeants to be engaged in the war in opposing the king's government in this country? Gentlemen, the indictment states, and the evidence proves, the overt acts against this man; the conspiracy of this man, to levy war against the king, is manifest; and a conspiracy to levy war, is compassing and imagining the death of the king, by the law of the land.

Gentlemen of the jury, let me bring to your recollection a piece of written evidence, proved to be the prisoner's hand-writing; and it is to the following effect: it states itself to be a return of men, arms and ammunition—Now how were those intended to be employed? I answer, from the evidence that has been given, for the purpose of levying war in this kingdom, to overturn by force the government and constitution of Ireland. The prisoner's counsel attempted to impeach the character of Reynolds; but they have failed in that attempt; he is a competent witness. Mr. Swan has told you, there was found on the prisoner a pocket-book; in it are several entries in the prisoner's hand-writing; he has there some toasts written down, one of which is "May rebellion never cease!" another, "To the memory of Orr;"—and observe, that

Mac Cann, in his letter, calls the prisoner Byrne, dear brother. Let me, gentlemen of the jury, bring to your recollection, that you are called here to discharge a duty of the highest importance to your country; you will decide according to the evidence; you will not forget your duty, because the prisoner at the bar neglected his.

Gentlemen of the jury, the learned counsel for the prisoner, endeavoured, with all the energy of his eloquence, to impress you with a belief, that the prisoner was not guilty of the charges laid in the indictment; but he did not say the prisoner was entirely innocent; he could not say it, because Miller gave evidence that Byrne ordered the pikes to be made, and mentioned the number of them to be made that they might come cheaper. This is a crime stated, and the fact is proved, not only by Miller, but by the hand-writing of the prisoner himself—and this shows the depravity of his heart. Consider also the paper of February, 1798, which desires them not to mind false rumours, &c.; and see his return of men and arms, and delegates names, "Ivers of Carlow, and Cummings of Kildare, &c."—I shall not detain you farther. You will on your oaths, no doubt, find such a verdict as will be agreeable to the justice of this case.

SUMMING UP.

Mr. Justice Crookshank.—Gentlemen of the Jury;—I acknowledge, after a sitting of so many hours, I feel myself very unable to lay this case before you with that precision I could wish, and therefore I must request that my brothers will deliver to you their sentiments, in addition to what I shall say. I will state to you the leading facts upon which your verdict must rest.

The case which now comes before you is of great importance as well to the public as to the prisoner, and therefore to enable you to give that calm and dispassionate consideration which it requires, I must tell you, that if you have suffered any impressions to be heretofore made on you respecting the present subject, it is your duty now to discharge your minds of them, so that your verdict may be founded on the evidence you have heard upon this trial, and upon it alone—so you are sworn to do by the oath you have taken.

The charge, gentlemen, against the prisoner, is high treason; an offence the most heinous the law knows of.—The indictment contains two counts;—one for compassing and imagining the death of the king—the other for adhering to the king's enemies; and to each of these a variety of overt acts are applied—ten to the first count and eight to the second.

[Here the learned judge stated several of the overt acts that appeared most material.]

Gentlemen, the very great number of overt acts, that are laid, has contributed to make

the indictment of the length it is. The objects however for your attention are but few, and I do not know, that I can better lead you to them, than by stating in the first instance, what I conceive to be the law in the present case.

In treason against the life of the king, the mere imagining, compassing, or intending his death, constitutes the offence; but as that imagination can only be manifested by some acts, the law makes it necessary, that the indictment should state those acts, which are called overt acts, that is, those acts which open and unfold that intention which constitutes the offence. It is those acts which the prosecutor is to prove and substantiate by his evidence, and it is to those acts that the prisoner must apply his defence; and here it is proper to mention to you, though the number of those acts are considerable, yet if any one of them be proved to your satisfaction, it is sufficient to warrant a verdict for the crown. Your office, therefore, in the first place is, to apply the evidence which you have heard to those overt acts, and to see if any of them be proved, as your judgment is to be guided and your verdict found accordingly.

As it is possible, gentlemen, that some of you have never been upon trials of this kind before, it may not be improper to go a little farther in explaining to you the law, lest you should be led astray by some observations that have fallen from the bar. In the case of compassing the death of the king, it is not necessary, that the act laid in the indictment and proved in evidence should point immediately to his death. The care which the law takes for his personal safety extends to every thing wilfully and deliberately done, or attempted to be done, by which his life may be at all endangered. Thence it is, that entering into any measures to depose or imprison him, is an overt act of compassing his death;—so is the entering into measures with foreigners to invade this kingdom, because in effecting these objects his life may be endangered, and therefore those acts being proved, it is sufficient to support the charge of compassing his death, though there be no evidence of any act immediately pointing to that end.

It has been argued too very strongly on the part of the prisoner, that conspiring to levy war is not an overt act of compassing [the king's] death. In answer to which, I will give you the words of a very learned author—one of the highest reputation and first authority upon the subject—He says, “every insurrection which in judgment of law is intended against the person of the king, be it to dethrone or imprison him, or to oblige him to alter his measures of government or to remove evil councillors from about him, these risings all amount to levying war within the statute; whether attended with the pomp and circumstance of open war or not. And every conspiracy to levy war for these pur-

poses, though not treason within the clause of levying war, is yet an overt act within the other clause of compassing the king's death—for these purposes cannot be effected without manifest danger to his person.”—Thus I take the law to be clearly settled in this point.

Having said thus much upon the law, I trust you will be the better able to understand the nature of the present case, as well as more easily to apply the evidence that has been given upon it.

Gentlemen, I do not mean to trouble you with any repetition of that evidence; you have already heard it from the mouths of the witnesses themselves, with the comments of counsel on both sides—I will add only a few observations, as they occur to me.

Gentlemen, the evidence in this case is of two kinds, parol and written, both of them applicable to the subject before you and proper for your consideration. Mr. Swan the magistrate gave you an account that on the 19th of March, having a warrant for the purpose, he repaired to Bond's house in Bridge-street, where he found a number of persons assembled, among whom was the prisoner. He seized the several papers which have been read and laid before you, which are very material pieces of evidence for your consideration.

Mr. Reynolds, the next witness gives, an account that he was himself a member of this brotherhood, and therefore fully competent to give you a detail of their objects, which he expressly says, were, to overturn the present constitution, to set up a republican form of government, and to assist the French on their landing in this kingdom. And that these are treasonable objects, will not be controverted. The testimony of Reynolds does not stand single; it is corroborated by circumstances well worthy of your attention; the time and the place of meeting, and the persons found assembled agree precisely with the previous information given by him; the evidence of Mr. Cope, to whom Reynolds made the discovery, corresponds with the account given by Reynolds himself in every particular. The password told by Reynolds, afterwards communicated to Mr. Swan, and by him to the serjeant, was found to be right. The whole scene turned out as Reynolds had said it would, and it is therefore impossible to reconcile his having come to the knowledge of it by any other means than those by which he has told you. These are circumstances that strengthen the testimony of Reynolds in a very great degree, and therefore will merit your serious attention.

In order to lessen the weight of Reynolds' evidence, insinuations were thrown out in the course of his cross-examination, that in my apprehension had not much weight; one was of a very unpleasant nature, his having administered poison to his wife's mother, and ano-

* Foster, 210, 211.

dence of Mr. Swan as to that; as he entered the room, he saw a rush towards the fire, and the serjeant took up papers from the grate and put them into the magistrate's hand, and they prove to be returns of men and arms of the several counties of the province of Leinster, similar to one found in the pocket of Lynch, and similar to the information previously given by Reynolds.

Suppose the officer of justice, instead of giving such alarm as to make them spring from their chairs and rush to the fire, as he described, found them sitting at the table, with these papers before them, no doubt, the papers there found would be evidence to show their designs.—Then are you not to consider upon the evidence, whether the papers had not been before them, and whether they were not thrown under the grate upon the alarm being given? You will consider according to your experience, and if you think they were thrown under the grate, you will consider, with what view, they were brought there by the people, and whether they acted upon them, or not?—If you believe, that the papers were brought there by some person, not connected with the conspiracy, and that these papers were never in their possession, they would not be evidence against the prisoner.—But you will judge, as sensible men, what were the purposes of the men there assembled—And if you believe the papers, were brought there by them or any of them, or by any persons involved or acting in the same conspiracy, and that they were written in prosecution of their traitorous purposes, it unquestionably will follow, that they can be read in evidence as well against all, as against the individual, who wrote them; for all are embarked in the treason, and the act of one becomes the act of them all.

Gentlemen, the material issue for you to try, is, whether the prisoner was one of a party assembled in Bond's house, to receive returns of men, arms and ammunition, to be employed in levying war or raising rebellion against the king.—You will look at the returns—See from whence they and the other papers came, and you will put all the facts of the case and circumstances together, and if upon the whole you have a doubt, you will acquit the prisoner.—If you have no doubt, you will convict him.

Gentlemen, many topics have been argued upon at the bar—I shall only observe, that your consciences are to be regulated by the evidence given in court, and laid before you this day, and that you will not suffer yourselves to be influenced by verdicts pronounced on other evidence in any other court in England or Ireland—You are not to give up your consciences to any other set of men, nor to attend to any other case, but that which is before you, and which you will determine according to your oath.

Gentlemen, as to the final consequence that will follow on conviction, to which the

counsel for the prisoner has directed your attention, that is matter which our constitution has submitted to another power and not for us to deliberate upon.—You, I am sure, will, within your own department, discharge your duty with the approbation of your own consciences.

Mr. Justice Day.—Gentlemen of the jury;—Nothing but the commands of Mr. Justice Crookshank could justify my troubling you at so late an hour, when your strength and spirits must be abundantly exhausted, and every material observation upon this important case has been intercepted by my brethren.

It is a great satisfaction, that there occurs no legal difficulty in this case. For, gentlemen, however emphatically you might have heard it laid down to the contrary, no lawyer ought at this day to controvert, that a conspiracy, or consult to raise war and rebellion, to subvert the government and monarchy, and in effect to strip the king of his diadem, is an overt act of compassing the king's death. It is so laid down by Hale, Kelyng, Foster and Hawkins; it is so recognized in Hardy's trial* by a very distinguished crown judge, my lord chief justice Eyre, who stated, that a conspiracy to depose the king and subvert the monarchy is an overt act of compassing the death of the king; it is evidence so conclusive of such treasonable imagination, as to become a presumption of law, admitting of no contradiction. And therefore I thought myself bound, though it always is a painful violence to myself, to stop the learned counsel who would have disturbed that settled doctrine upon the authority of an exploded *dictum* of lord Coke. It became necessary also in the course of the trial to rebuke other instances of bad law hazarded by the counsel for the prisoner, and which always without serving the client, reflect only upon the advocate.

The whole case, therefore, resolves itself into a mere jury question—or rather into two questions—exclusively for your consideration. First, whether the evidence produced by the crown, supposing it implicitly credited, has substantiated all or any one of the overt acts, or (to speak in less technical language) any one of the facts charged by the indictment on the prisoner. And, secondly, what degree of credit ought in your judgment and conscience to be attached upon that evidence.

With respect to the first question; you will observe that though the overt acts are multiplied so far as ten or eleven in the indictment, they may be compressed in your consideration of them into three or four distinct charges. The first in order, as well as importance, is a treasonable conspiracy and consultation of the prisoner with divers other false traitors to stir up and raise war and rebellion, and to

* *Ante*, vol. 23, p. 199.

procure arms and ammunition, and levy great numbers of armed men for that purpose. And then follow five other assignments, or subordinate overt acts, all relating to the same conspiracy, but calculated to meet the different points of view in which the evidence may happen to present it.—The next charge is, that the prisoner became a member of a treasonable society under the denomination of United Irishmen, with intent, by force and rebellion to overturn the government of Ireland.—And the third charge is, that the prisoner did traitorously assemble with others, to take and receive returns of officers, men, and arms, and that he actually did take and set down the same in writing, with intent, that the said officers, men, and arms, should be employed in levying rebellion and war against the king.—These, gentlemen, are in substance, the facts charged upon the prisoner by the indictment in support and proof of the treason of which he stands accused, and to which you will apply the evidence; and I repeat that some one of these charges must be made out to your perfect satisfaction, to warrant a verdict of conviction.

Gentlemen, without recapitulating evidence which has already been with such precision and perspicuity detailed, it will be enough for me to remind you, that Mr. Reynolds has proved what public notoriety unfortunately would too well establish without his evidence, that the United Irishmen are a society of traitorous conspirators “whose object is, to overturn by force the present constitution and government, to establish a republican form of government in its place, and to favour any landing of the French to forward such design”—that Miller and Ryan have concurred in proving the prisoner to be an United Irishman—that he took an active and leading part in regulating and organizing the rebel force in the county of Wicklow, and for that purpose, furnished the forms of military commissions, of the returns to be made from each district of men and arms, and the manner of forming the various divisions and sub-divisions—that he was elected a county delegate with Miller, and did himself mention to Ryan, at one of their meetings, the fact of his being the principal delegate of the county—that his co-delegate Miller afterwards met him, with divers others of those conspirators, at Francis-street and French-street; at one of which meetings, it was debated, or to use the words of the witness “there was a controversy among themselves,” whether they should await the arrival of the French, or proceed without them, and the determination was, to wait for the French; and at the other meeting, the prisoner paid in to the treasurer, that money which he had before received from the witness, and which the witness had collected from his division at the rate of 1s. each man, to be applied to the general objects of the conspirators—and that the prisoner, at another meeting, ordered

Ryan and the others to be quiet for three weeks, and prepare themselves in the mean time; assuring the meeting, that the French would then land, when the United Irishmen would rise to their assistance, and were to expect according to each man’s merit, a distribution of the lands belonging to those whom they should dispossess.

Here then is evidence, if you believe it, without going any farther, to substantiate the charge of a treasonable consultation held by the prisoner with others about raising a rebellion, and to discuss the best means of promoting it. The meeting and debate in Francis-street, and the orders and exhortations of the prisoner, sworn to by Ryan at another meeting, are point-blank evidence to prove that conspiracy.—So also, the charge of his becoming an United Irishman for the traitorous purpose laid in the indictment is clearly established by his own declarations, as well as by his uniform conduct since last harvest.

Then, gentlemen, with respect to the meeting at Mr. Oliver Bond’s, and which it is pretended does not amount in evidence to such consultation, see whether the parol or written evidence applicable to that transaction, be not most cogent and convincing. You are told by Mr. Reynolds, that a provincial committee for receiving returns of the strength of the several counties, and for promoting the objects of the plot, was appointed to be held at Bond’s the twelfth of March, at 10 o’clock in the morning, of which he had apprized government, through Mr. Cope; and that he was directed by Mac Cann, the secretary, who suffered yesterday for the deep share he had in this treason, to come to the committee with a return of the men, arms, and ammunition of his county. The magistrate and his officers repair to the spot an hour after the time mentioned by Reynolds, for meeting, allowing the delegates a reasonable time to assemble and enter upon business. He gains admittance by the pass-word disclosed by Reynolds, and surprises fourteen men collected together from the several counties of the province, under precisely the circumstances which from Mr. Reynolds’s information might have been expected. It does not appear to have been a mercantile meeting though assembled in the house of a merchant; it does not appear to have been a religious meeting, though a prayer-book lay upon the table. But you will recollect that Cummins was there, the co-delegate of Reynolds for the county of Kildare; that the prisoner was there, the chief delegate of the county of Wicklow; Ivers and Mac Cann, whose names were in the pass-word, were also there. These persons found amongst them are sufficient to decide the true character and purpose of the meeting, and that it was what Reynolds notified, a committee of United Irishmen, delegated from the several counties of the province, to make and receive reports of the

number recruited, and in short, of the growth and progress of treason through Leinster.— But the other circumstances, and still more the papers found in the room, leave very little doubt in my mind, upon this part of the case—one man seated at the head of the table with a prayer-book before him, and the form of a test, verifying each member's election; while the rest upon the entrance of the magistrate and his followers crowd in manifest confusion to the fire-place, where upon search, a number of papers are found, all connected with and relating to the general conspiracy. Gentlemen, you remember the papers, some in the hand-writing of the prisoner, and all admissible evidence against him and every other man in the room. You remember No. 3, which is an address in the hand-writing of the prisoner from the county of Wicklow committee, of which he was the principal, to their constituents, acquainting them that very flattering accounts had been received from abroad; assuring them, that quantities of pikes were ready for delivery; and lamenting the apathy of their fellow-citizens for refusing to contribute so small a sum as 1*d.* each man to the relief of their brethren in gaol. At the foot of it is a return of the men, money, and arms furnished by the several baronies of that county. So, gentlemen, No. 8, containing a return of the numbers or force in each county of Leinster, as well as the several other papers proved to have been found at that meeting, are well worthy of your attention; all of them coupled with the parol proofs, furnishing pregnant evidence to support the several charges laid in the indictment.

Gentlemen, the next question for your consideration is, supposing the quantum of evidence in this case sufficient to sustain the indictment, what degree of credit will you feel yourselves bound to give to that evidence. And it is with great zeal and emphasis objected against the witnesses, that they all are accomplices, deeply implicated in the treason which they would fasten upon the prisoner; that they are covered also (particularly Mr. Reynolds) with foul stains and gross immoralities; and that they have as little claim to your belief and credit as to character: and undoubtedly this is an objection of a serious and weighty nature, well deserving at all times the grave consideration, and let me add, the favour of a jury, and which in every case, must be left with all its circumstances to their good sense and conscience.—Lord Mansfield said, that if it were not indispensable for bringing the most flagitious criminals to justice, that accomplices should be received as witnesses, the practice is open to much objection. And doubtless where an offence has been committed openly and publicly, where, from its nature and publicity, it is capable of unpolluted proof, it would be a powerful objection, that the crown had thought proper to resort to the

testimony of an accomplice in preference to any other person who had happened to be present. But crimes which are committed in secret, which shun the light and seek concealment, conspiracies, treasons, and such like atrocious crimes, can seldom be brought to light, without the assistance of a confederate; and whatever his motive may be for coming forward as a witness, whether it be the contrition and remorse of a person awakened to a due sense of the crime before he has leaped the gulph, or whether it proceed from the less virtuous impulse of an expected reward or pardon, necessity and public policy give such a witness a strong title to the best attention and consideration of the jury. Any other doctrine would proclaim impunity to the most wicked offenders; it would, in effect, secure all conspirators and traitors from the possibility of punishment, and there would be no hazard in committing the most flagitious crimes. To expect that unblemished witnesses shall be produced to prove every traitorous plot, is to exclude those from giving evidence, who are best acquainted with the subject, and in effect, to say, that no evidence of a conspiracy ought to be believed. It is by evidence of this description, that all the memorable treasons in our history have been hunted down; the regicides, the infamous assassins in William's reign, the rebels of 1715 and 1745, were all convicted upon the testimony of accomplices; and lord Holt, who was as great a friend to civil liberty as the English bench ever boasted of, in answer to this objection urged on one of those trials (I believe it was Charnock's) observed that treasonable conspiracies are works of darkness, as well as of wickedness and can only be discovered by the conspirators themselves, and that such evidence is perhaps in those cases the most satisfactory from their knowledge of the transaction and ought to receive great credit.*

In the present case, you will recollect that Mr. Reynolds, who has been the object in my mind of more invective and obloquy than the evidence warranted, has deposed to little else than to the existence of a comprehensive conspiracy and of its object;—Do you doubt its existence? Is there any man short of a driveller who doubts, that a most horrid conspiracy against all the loyalty and virtue of the country has long raged amongst us, breaking out at length into an unequivocal rebellion? Why, gentlemen, public notoriety would be sufficient evidence of the fact; and almost every other fact testified by him has been confirmed by Mr. Cope and the written evidence. But it should always be remembered, that if he and the other accomplices have acted under the bias of an unexpected pardon, the price to be paid for it is not perjury, but evidence; not the monstrous crime of convicting innocence, but to assist, as is

* See vol. 12, pp. 1403, *et seq.*, 1454.

the duty of every subject, in laying open a conspiracy formed to wade through private assassination and public massacre to the subversion of the state. You will recollect also, that they came in freely and voluntarily and made a willing and unconditional declaration; that no spleen or grudge appears to have subsisted between the prisoner and any of the witnesses; and that it is not to be *presumed*, without a shadow of proof, that any of them, much less all, are of such depraved and diabolical natures, as to select an innocent man for prosecution when so many confederates swarm round them, whose conviction would be so much easier, and would give them a safer claim to the expected pardon. For every well-administered government is as interested in the protection of innocence, as in the prosecution of guilt.

Such, gentlemen, is the light in which this case presents itself to me. But you will form your own judgment upon it, and be governed by that alone. You will weigh calmly and dispassionately all the circumstances of the case; the manner of the witnesses as well as the matter to which they have deposed—whether there be any gross improbability in the matter, or any prevarication, inconsistency, confusion, or spleen in the manner—or whether their testimony did not carry with it all the air and character of sincerity and truth. Upon the whole, if you are not satisfied with the weight of the evidence, or entertain such doubt upon the case, as rational and conscientious minds may well indulge in, you will be glad to acquit the prisoner. On the other hand, if you are satisfied in your consciences that the well-connected, consistent, and uncontradicted narrative which you have heard, be not fabricated, but true, you will, as honest and firm men, discharge your consciences, and find him guilty.

The jury retired for ten minutes, and brought in their verdict—GUILTY.

Mr. Attorney General.—My lords, my duty compels me to pray the judgment of the Court.

The Prisoner was put to the bar, his indictment read, and he was asked, what he had to say, why judgment of death and execution should not be awarded against him according to law.

Mr. Byrne.—It is almost immaterial to say any thing, since the verdict has been pronounced—But all I have to say is, that if my trial had not been hurried on, I should most assuredly have brought forward witnesses to do away the evidence of the villain who swore against me.—My affidavit was made to that effect, and I would not have made a false affidavit to avoid ten thousand deaths—I have only to return thanks to my counsel for their great and eloquent exertions in my defence. I did not think it possible, that such a splendid display would be made upon so short a notice.

If your lordship should grant me a day or two before execution to regulate some affairs of importance, I would thank you—I have a young wife and a child, and an aged mother.

Mr. Attorney General.—My lord, it is not intended to desire an immediate execution.

Mr. Justice Crookshank.—William Michael Byrne, you have been tried and found guilty by your country of an offence the most heinous that man can commit, being a breach of that duty and of that allegiance which every man owes to his king, and to the government under which he lives. It is an offence that at all times, and in all civilized states has been punished with death, in as much as no man can claim protection from that government which he endeavours to destroy, and therefore the moment he adopts the idea of subverting it, he forfeits all right to live under it.

To a man, Sir, in your class of life, above the lower order, and who has received some portion of education, I hold it unnecessary to enlarge more upon the nature of your offence, knowing it as you must to its full extent before you committed it,—a circumstance that must preclude you from that plea of ignorance which others perhaps in a different situation of life might with more colour set up.

Let me then turn your attention to a different object, infinitely more material, I mean your God, whom you have equally offended as you have your country. You must be sensible, Sir, that your fate is now inevitable—suffer not therefore a gleam of hope to glance upon your mind—it would but add to your misfortunes to find it blasted as it must be—avail yourself then of the short time you have in making your peace with your God—Fly to him, who alone can support you in the moment of terror that approaches, and whatever your offering may be to him, I trust it will not be unacceptable in his sight. It remains only for me to pronounce that sentence which the law prescribes for the offence of which you have been guilty.—It is an awful ceremony, that the soul of man shrinks from. But in this I am the instrument of the law only, and the sentence of the law is,

That you, William Michael Byrne, be taken from the bar of this court, and carried to the place from whence you came—the gaol, and thence to the common place of execution, and there to be hung by the neck, but not until you are dead, but while you are yet alive, your bowels are to be taken out, and thrown in your face, your head is to be cut off, and your limbs are to be quartered; and may God have mercy upon your soul!

The prisoner was executed pursuant to his sentence, on Wednesday the 28th of July, 1798, at the Front of the prison in Greenstreet.

634. Proceedings on the Trial of OLIVER BOND, Merchant, for High Treason; before the Court holden at Dublin under a Special Commission of Oyer and Terminer, on Thursday the 5th, Monday the 23rd, and Tuesday the 24th days of July: 38 GEORGE III. A. D. 1798.*

Thursday, July 5th, 1798.

MR. SOLICITOR GENERAL moved, that the indictment found against Mr. Oliver Bond,†

* Reported by William Ridgeway, esq.
† Mr. Bond had, on a former occasion, incurred the displeasure of the House of Lords, when the following proceedings against him took place:—

HOUSE OF LORDS OF IRELAND.

Friday, March 1, 1793.

"The hon. Simon Butler and Mr. Oliver Bond appeared at the bar in pursuance of their summonses. Lord Mountjoy proposed, that the following paper, which he had read on the night preceding, and which had the names of the persons at the bar prefixed to it, should be submitted to their inspection:—

"24th February, 1793.

"UNITED IRISHMEN OF DUBLIN,

"HON. SIMON BUTLER, *Chairman*,
"OLIVER BOND, *Secretary*.

"When a committee of secrecy was first appointed by the House of Lords, to inquire into the causes of the risings in certain counties in this kingdom; although this society well foresaw the danger of abuse to which such an institution was subject, yet it was restrained from expressing that opinion by the utility of the professed object, and by the hope, that the presence and advice of the two first judicial officers of this country, would prevent that committee from doing those illegal acts, which less-informed men might, in such a situation commit.

"But since it has thought fit to change itself from a committee to inquire into the risings in certain counties of this kingdom, into an inquisition to scrutinize the private principles and secret thoughts of individuals, since it has not confined itself to simple inquiries and voluntary informations, but has assumed the right, and exercised the power, of compelling attendance, and enforcing answers upon oath to personal interrogatories, tending to criminate the party examined; since its researches are not confined to the professed purposes of its institution, but directed principally to the discovery of evidence in support of prosecutions heretofore commenced, and utterly unconnected with the

merchant, might be quashed, and a new bill sent up to the grand jury. A clerical mistake was discovered in the present indictment, which made the motion necessary.

cause of the tumults it was appointed to investigate; since, in its proceedings, it has violated well-ascertained principles of law, this society feels itself compelled to warn the public mind, and point the public attention to the following observations:—

"That the House of Lords can act only in a legislative or judicial capacity.

"That, in its legislative capacity, it has no authority to administer an oath.

"That, in its judicial capacity, it has a right to administer an oath; but that capacity extends only to error and appeal, except in cases of impeachment and trial of a peer: in which alone the House of Lords exercises an original jurisdiction.

"That the House of Lords, as a court, has no right to act by delegation.

"That the committee of secrecy possesses no authority but what it derives by delegation from the House of Lords.

"That as the House of Lords does not possess any jurisdiction in the subject-matter referred to the committee, and as, even if it did, it could not delegate the same, it necessarily follows, that the committee has not judicial authority, and cannot administer an oath.

"That even if the committee of secrecy acted as a court, its proceedings ought not to be secret.

"That no court has a right to exhibit personal interrogatories upon oath, the answers to which may criminate the party examined, except at the desire of the party, and with a view to purge him from a contempt.

"That it was the principal vice of the courts of high commission and star-chamber, to examine upon personal interrogatories, to convict the party examined; and that those courts were abolished because their proceedings were illegal, unconstitutional, and oppressive."

This paper was accordingly delivered into the hands of Mr. Butler by the gentleman-usher. After he had seen it, he was asked, by lord Mountjoy, if that paper, bearing his name, was printed by his direction or authority?

Mr. Butler said, that the paper contained a declaration of the society of United Irish-

Mr. Mac Nally, on the part of Mr. Bond, objected to the motion. The prisoner has been served with a copy of the indictment according to the statute, and upon that indictment he ought to be tried. It is not a matter of course to quash an indictment, and here the counsel for the Crown has not pointed out the error.

men of the city of Dublin, and bore date the 24th of February, 1798; that he presided at the meeting; that, as chairman, he put the question on the several paragraphs, according as they were handed to him by the committee which had been appointed to prepare them; that he was then, and is still, satisfied that every paragraph of that declaration was agreeable to law and the principles of the constitution.

Lord Mountjoy said, that Mr. Butler hath not yet answered, whether he authorized the publication?

Mr. Butler replied, that he meant to give the fullest information on the subject; he did authorize the publication, he authorized it in common with every individual of the society.

Mr. Bond was then interrogated. He was asked whether he had signed the paper?—He replied, that neither he nor Mr. Butler had signed the paper. The resolutions of the society are referred to the committee of correspondence for publication; the committee cause the names of the chairman and secretary to be prefixed to every publication; that, as secretary, he delivered this declaration to the committee of correspondence. And on being asked, by lord Clonmell, whether he delivered it to the committee for the purpose of publication, and whether he thereby authorized the publication? He replied in the affirmative.

Lord Chancellor then asked Mr. Butler, whether he had any thing farther to add?—Mr. Butler said, that he attended to answer questions; that if his lordship had any questions to ask, he (Mr. Butler) was ready to answer.

Mr. Butler and Mr. Bond were ordered to withdraw, but not to leave the House.

They were shortly afterwards again ordered to the bar, and the following resolutions, agreed to by the House in their absence, having been read, viz.

“That the said paper was a false, scandalous, and seditious libel; a high breach of the privileges of this House, tending to disturb the public peace, and questioning the authority of this high Court of Parliament; that Simon Butler and Oliver Bond having confessed that they had authorized the same to be printed, should be taken into custody.”

They were committed to the custody of the gentleman-usher, and ordered to withdraw in such custody.

In some time afterwards they were brought to the bar, in custody of the gentleman-usher.

Mr. Baron George.—Perhaps it may save you some trouble to inform you of it. I have the indictment before me; and in the second count a line has been omitted, in that part where the existence of the war between France and the king is recited. The prisoner has not pleaded to the indictment, therefore he cannot suffer; he must be served also with a copy of the new indictment.

The lord chancellor, after reciting the foregoing resolution, spoke to the following purport:—“Simon Butler and Oliver Bond; you were called to the bar to answer for a libel on this high Court of Parliament. You have confessed, that such libel, which for its presumption, ignorance, and mischievous tendency, is unprecedented, was printed by your authority. You, Simon Butler, cannot plead ignorance in extenuation; your noble birth, your education, the honourable profession to which you belong, his majesty's gown which you wear, and to which you now stand a disgrace, gave you the advantages of knowledge, and are strong circumstances of aggravation of your guilt. It remains for me to pronounce the judgment of the House, which is—That you, Simon Butler and Oliver Bond, be imprisoned six months in the gaol of Newgate; that each of you pay a fine to the king of 500*l.*; and that you are not to be discharged from your confinement till such fine be paid.”

They were taken from the bar, and in a short time after conveyed in a coach to Newgate, under the escort of fifty or sixty soldiers and directions of Alderman Warren.

The following is a copy of the committal:—

Die Veneris, 1^o Martii, 1798.

Whereas it hath been this day ordered, by the Lords spiritual and temporal in parliament assembled, that the hon. Simon Butler and Oliver Bond should be committed prisoners to the gaol of Newgate for six months, and that they do each pay a fine of 500*l.* to the king; and that the said Simon Butler and Oliver Bond be imprisoned until the said fines be paid respectively, for a gross contempt and a high breach of the privileges of this House: You are therefore to receive the bodies of the said Simon Butler and Oliver Bond, and keep them in safe custody for the space of six months, and until they and each of them do pay the said fines of 500*l.* respectively to his majesty, for the said contempt and breach of privilege. And this shall be your sufficient warrant in that behalf.

W. WATTS GAYE, } *Cler. Parli-*
EDWARD GAYE, } *mentar.*

To the keeper of his majesty's
gaol of Newgate.

As to the legality of the above proceedings, Messrs. Butler and Bond submitted some queries to the consideration of Mr. Hargrave, which, together with the opinion of that very learned lawyer, will be found in the first volume of his Juridical Arguments.

The motion was granted; a new indictment was sent up to the grand jury; and being, in the course of the day, returned a True Bill, Mr. Bond was brought into court, informed thereof, and had counsel assigned him.

Counsel for the Crown.—Mr. Attorney General [Toler], Mr. Prime Serjeant [Fitzgerald], Mr. Solicitor General [Stewart], Mr. Saurin, Mr. O'Grady, Mr. Mayne, Mr. Webber, Mr. Ridgeway.

Counsel for the Prisoner.—Mr. Curran, Mr. Ponsonby, assigned.—Mr. Mac Nally, Mr. Jonas Greene, assistants.

Agent.—Mr. James Johnston.

Friday, July 13th, 1798.

Mr. Bond was brought to the bar, and arraigned upon the following indictment:—

“ County of the city of } “ The jurors, &c.
 “ Dublin to wit. } “ present and say,
 “ that Oliver Bond late of Bridge-street in
 “ the city of Dublin merchant a subject of our
 “ said lord the king of this his realm of Ire-
 “ land not having the fear of God in his heart
 “ nor the duty of his allegiance considering
 “ but being moved and seduced by the insti-
 “ gation of the devil as a false traitor against
 “ our said lord the king his supreme true law-
 “ ful and undoubted lord the cordial love and
 “ true affection which every subject of our
 “ said lord the king should bear towards the
 “ said lord the king wholly withdrawing and
 “ contriving and with all his strength intend-
 “ ing the peace and common tranquillity of
 “ this his kingdom of Ireland to disturb and
 “ the government of our said lord the king of
 “ this his kingdom of Ireland to subvert and
 “ overturn and our said lord the king of and
 “ from the royal state title honour imperial
 “ crown and government of this his kingdom
 “ of Ireland to depose and deprive and our
 “ said lord the king to death and final destruc-
 “ tion to bring on the 20th day of May in the
 “ 38th year of the reign of our said lord the
 “ king and on divers other days and times as
 “ well before as after that day at the parish of
 “ Saint Michael the Archangel in the said
 “ county of the city of Dublin with force and
 “ arms to wit with swords sticks staves and so
 “ forth falsely wickedly and traitorously did
 “ compass imagine and intend our said lord
 “ the king then and there his supreme lawful
 “ and undoubted lord off and from the royal
 “ state crown title power and government of
 “ this his kingdom of Ireland to depose and
 “ deprive and the said lord the king to kill
 “ and put to death and that to fulfil and bring
 “ to effect his most wicked and treasonable
 “ imaginations and compassings he the said
 “ Oliver Bond as such false traitor as afore-
 “ said with force and arms on the 20th day
 “ of May in the 38th year of the reign afore-
 “ said and on divers other days and times as
 “ well before as after at the parish of Saint
 “ Michael the Archangel in the said county
 “ of the city of Dublin falsely maliciously and

“ traitorously did assemble meet conspire
 “ agree and consult together with divers other
 “ false traitors whose names are to the said
 “ jurors unknown to stir up raise and make
 “ rebellion and war against our said lord the
 “ king within this his kingdom of Ireland
 “ and to procure great quantities of arms and
 “ ammunition guns pistols swords pikes gun-
 “ powder and shot for the purpose of the said
 “ rebellion and to procure and cause great
 “ numbers of armed men to rise and prose-
 “ cute and wage war against our said lord the
 “ king within this kingdom
 “ And further to fulfil perfect and bring to
 “ effect his most evil and wicked treason and
 “ treasonable compassings and imaginations
 “ aforesaid he the said Oliver Bond as such false
 “ traitor as aforesaid with force and arms on
 “ same day and year and at the place aforesaid
 “ falsely maliciously and traitorously did as-
 “ semble meet conspire consult and agree to-
 “ gether with other false traitors whose names
 “ are to the jurors aforesaid as yet unknown
 “ to depose and dethrone the said lord the king
 “ and him off and from his royal state autho-
 “ rity and government of this kingdom to de-
 “ prive and put
 “ And further to fulfil &c. he the said Oliver
 “ Bond with force and arms on same day and
 “ year and at the place aforesaid falsely mali-
 “ ciously and traitorously did assemble meet
 “ conspire consult and agree together with
 “ divers other false traitors unknown to over-
 “ turn by force the lawful government of this
 “ kingdom, and to change by force the con-
 “ stitution of this kingdom
 “ And further to fulfil &c. he the said Oliver
 “ Bond with force and arms on same day and
 “ year and at the place aforesaid falsely mali-
 “ ciously and traitorously did assemble meet
 “ conspire consult and agree together with
 “ divers other false traitors whose names are to
 “ the said jurors unknown upon and about the
 “ means of raising and making rebellion
 “ against the said lord the king within this
 “ kingdom and of procuring and providing
 “ great quantities of arms and ammunition for
 “ that purpose and of procuring and causing
 “ great numbers of armed men to rise and to
 “ prosecute and wage war against the said lord
 “ the king within this kingdom and of over-
 “ turning by force the government of this
 “ kingdom and of changing by force the con-
 “ stitution of this kingdom
 “ And further to fulfil &c. he the said Oliver
 “ Bond with force and arms on the same day
 “ and year and at the place aforesaid falsely
 “ maliciously and traitorously did assemble
 “ meet conspire consult and agree together
 “ with divers other false traitors unknown
 “ upon and about the means of deposing and
 “ dethroning the said lord the king and him
 “ off and from his royal state authority and
 “ government of this kingdom depriving and
 “ putting
 “ And further to fulfil &c. he the said Oliver
 “ Bond with force and arms on same day and

“ year and at the place aforesaid falsely
 “ maliciously and traitorously with design and
 “ intent by force violence and rebellion to
 “ overturn the present government of this
 “ kingdom and with intent by force and vio-
 “ lence to change and alter the constitution
 “ of this kingdom did associate himself with
 “ and become a member of a party society
 “ and brotherhood then and there formed
 “ under the denomination of United Irishmen
 “ and then and there adhering together for
 “ the purpose of overturning by force the go-
 “ vernment of this kingdom and dethroning
 “ and deposing the said lord the king

“ And further to fulfil &c. he the said Oliver
 “ Bond as such false traitor as aforesaid with
 “ force and arms on the same day and year
 “ and at the place aforesaid falsely wickedly
 “ and traitorously with intent to aid and assist
 “ in rebellion and war then to be raised and
 “ levied against the said lord the king within
 “ this kingdom did wilfully give unto divers
 “ false traitors whose names are to the jurors
 “ unknown the use of a chamber in the house
 “ of the said Oliver Bond in Bridge-street
 “ aforesaid and permit the said false traitors
 “ there to assemble and meet together in order
 “ to consult on the means and preparations
 “ for raising and levying war and rebellion
 “ against the said lord the king within this
 “ kingdom and in order to receive money for
 “ the providing of arms to be used in and
 “ for the said war and rebellion

“ And further to fulfil &c. he the said Oliver
 “ Bond with force and arms on same day and
 “ year and at the place aforesaid falsely
 “ wickedly and traitorously with intent to aid
 “ and assist in rebellion and war then to be
 “ raised and levied against the said lord the
 “ king within this kingdom did urge and ad-
 “ vise one Thomas Reynolds to accept of the
 “ commission of a colonel in an army of rebels
 “ to be arrayed in the county of Kildare for
 “ the purpose of carrying on war and rebellion
 “ against the said lord the king within this
 “ kingdom and did then and there traitor-
 “ ously urge and advise the said Thomas
 “ Reynolds to become an officer in the said
 “ rebel army against the said lord the king

“ And further to fulfil and bring to effect
 “ his most evil and wicked &c. he the said
 “ Oliver Bond with force and arms on same
 “ day and year and at the place aforesaid falsely
 “ wickedly and traitorously with intent to aid
 “ and assist in rebellion and war then to be
 “ raised and levied against the said lord the
 “ king within this kingdom did administer
 “ unto one Thomas Reynolds a certain oath
 “ purporting to bind the said Thomas Rey-
 “ nolds to become a member of a certain
 “ party society and brotherhood then and
 “ there formed under the denomination of
 “ United Irishmen and then and there ad-
 “ hering together for the purpose of over-
 “ turning by force the government of this
 “ kingdom and of deposing and dethroning
 “ the said lord the king

VOL. XXVII.

“ And further to fulfil &c. he the said Oliver
 “ Bond as such false traitor &c. with force and
 “ arms on the same day and year and at the
 “ place aforesaid falsely wickedly and traitor-
 “ ously with intent to aid and assist in rebel-
 “ lion and war there to be raised and levied
 “ against the said lord the king within this
 “ kingdom did collect from divers persons
 “ unknown divers sums of money to be ap-
 “ plied in the purchasing and providing of
 “ arms to be employed by rebels in the war
 “ and rebellion to be raised and levied against
 “ the said lord the king with intent that the
 “ said money should be so applied, and that
 “ the said arms should be so employed as
 “ aforesaid against the duty of the allegiance
 “ and against peace and statute

“ And the jurors &c. present and say That
 “ an open and public war on the 20th day of
 “ May in the 38th year of the reign of our
 “ said lord the now king and long before
 “ was and ever since hitherto by land and by
 “ sea hath been and yet is carried on and
 “ prosecuted by the persons exercising the
 “ powers of government in France and the
 “ men of France under the government of
 “ the said persons against our most serene
 “ illustrious and excellent prince our said lord
 “ the now king and that the said Oliver Bond
 “ a subject of our said lord the king of this
 “ his realm of Ireland well knowing the pre-
 “ mises and not having the fear of God in his
 “ heart, nor the duty of his allegiance consi-
 “ dering but being moved and seduced by the
 “ instigation of the devil as a false traitor of
 “ our most serene illustrious and excellent
 “ prince George the third now king of Great
 “ Britain France and Ireland and soforth and
 “ contriving and with all his strength intend-
 “ ing the peace and common tranquillity of
 “ this kingdom of Ireland to disturb and mo-
 “ lest and the laws constitution and govern-
 “ ment of Ireland to change subvert and alter
 “ he the said Oliver Bond on the 20th day of
 “ May in the 38th year of the reign of our
 “ said lord the king and on divers other days
 “ and times as well before as after that day
 “ with force and arms that is to say with
 “ swords sticks and soforth at the parish of
 “ Saint Michael the archangel in the said
 “ county of the city of Dublin unlawfully
 “ falsely maliciously and traitorously was ad-
 “ hering to aiding and assisting and comfort-
 “ ing the persons exercising the powers of go-
 “ vernment in France and the men of France
 “ under the government of the said persons
 “ and then being enemies of our said lord the
 “ king as aforesaid.”

Clerk of the Crown.—How say you, Oliver
 Bond, are you guilty of these treasons, in
 manner and form as you stand indicted and
 arraigned, or not?

Mr. Bond.—I am not guilty.

Clerk of the Crown.—Culprit, how will you
 be tried?

Mr. Bond.—The usual way, I suppose.

Clerk of the Crown.—How will you be tried?

2 M

Mr. Bond.—The usual phrase.
Clerk of the Crown.—How will you be tried?

Mr. Bond.—By God, and my country.

Two affidavits were then sworn, one by the prisoner, another by Mr. Johnston, his agent.—They stated, that Elizabeth Cahill would be a material witness upon the trial, that she was possessed of certain papers, and particularly a certain bond and note given to her by Thomas Reynolds, which would be material to have produced upon the trial. That she was in the city of Dublin, but kept out of the way to avoid appearing upon the trial, or producing the papers.

The Counsel for Mr. Bond prayed that the Court would interfere in this matter for the relief of Mr. Bond.

The Court said they could not presume, that their process would be disobeyed; and that in this stage of the business, they could not make any order for the delivery or production of papers.

Mr. Bond assured the Court, he did not mean to give any delay—he was anxious for his trial—but thought these papers necessary.

Monday, July 23, 1798.

Judges Present.—The right hon. Lord Carleton; the hon. Mr. Justice Chamberlain; the hon. Mr. Baron Smith; the hon. Mr. Baron George; the hon. Mr. Justice Day.

Mr. Bond was put to the bar, and asked whether he was ready for trial.

Mr. Bond.—I am not.

Mr. Curran. My lords, I am to move your lordships to postpone this trial upon two grounds.—Certain publications have appeared of previous trials, connected with each other. These publications affect to set forth the real facts of the trials; but they have sent forth facts so grossly false, as must of necessity raise a most unwarrantable prejudice against the prisoner at the bar. The publications alluded to are in papers, called The Dublin Journal and The Evening Post, in an account of the trial of Mac Cann, which was had some days since. They have published what they call an account of the trial, and there is stated a circumstance as a matter of fact, which by no human possibility could be the mistake of any man, wishing fairly and candidly to take a note of the transaction. To so cruel and unjustifiable an extent of misrepresentation have these publications gone, as actually to insert the names of individuals, never named at all during the trial. It is not the mere miscatching of the shade of meaning, or using a weaker word for a stronger, (for these kind of things will happen to any man ever so anxious for accuracy) but taking down the names of individuals never mentioned, directly or indirectly, and coupling these names with that of a man to stand

upon trial for his life, is so gross and foul an abuse of the privilege of publication, as every Court must set its face against. It is stated, that at the time certain persons (of whom Mac Cann was alleged to be one), were found by the magistrate in a room, where it was the idea of the witness to represent they had assembled for improper purposes, were found by the magistrate in an adjoining room other persons consulting together, of whom, the prisoner, Mr. Bond, is mentioned as one, and Mr. Hugh Jackson, and Dr. Mac Nevin. Now, let any man of common understanding form to his own mind, the impression, which a falsehood of this kind must make upon the mind of the man, who reads it.—See the drift of the publication; Mac Cann was found guilty of treason—the material guilt proved against him was a consultation at Mr. Bond's house.—The public give credit to the idea, that there was such a consultation—Mr. Bond was sworn to have been in his shop in the manner of an ordinary merchant, doing his business, and yet these publications state, that at the time Mac Cann was surprised, the magistrate did find the now prisoner at the bar and Mr. Jackson and Mr. Mac Nevin in another adjoining room—the most monstrous, inhuman, and intentional misrepresentation, calculated to lay a foundation for the belief that Mr. Bond was acting a part aiding and privy to the scene going on. It is a circumstance that must be injurious to his life.—It was a direct invention, flowing from a desire manifestly to misrepresent—to prejudice the public mind—to mistake a fact that should not be stated at all.

As to printing or publishing at all, while a transaction is incomplete,* it is a matter of doubtful policy.—But surely, the Court will adopt the same rule which was made in the sister kingdom upon a similar occasion. There an expectation was held out, that from two hours to two hours, a sort of communication of the proceedings upon a criminal trial would be given. As soon as that was understood, the attorney general, with a charity becoming his situation, gave notice, that if so dangerous a thing was done, it should be at the hazard of a prosecution for the fact—and he humanely and justly observed, that he did it for the sake of the prisoner. In my opinion, with great respect, it is highly unwarrantable, while a matter of fact is in a state of inquiry before a court of justice.—If the mere publication of a trial be a ground to postpone, how much stronger must the case be, when it is not a candid statement, but a false and outrageous misrepresentation of what appeared. It is not so much a statement of the trial of Mac Cann as the false statement of a fact to preoccupy the mind of the public against a man to be tried for his life. It is an abomination

* See the proceedings against Brandreth and others, A. D. 1817, *infra*.

to a court of justice, and the Court will think it necessary to postpone the trial merely upon that ground, until there be an opportunity for this poison which has been flung into the public mind completely to evaporate.

But, my lords, there is another ground which, without the aid of the former, will be sufficient to postpone the trial. It is in the judicial recollection of the Court, that upon one trial or two, Mrs. Molloy was produced as to the character of a principal witness for the prosecution. The materiality of that witness in the present case appears from his name being mentioned in the indictment in an overt-act, which is alleged to be personal to that witness. It is stated by affidavit, that this lady is very recently gone away from her place of abode, as if with a design of letting the trial pass without giving her attendance. It is sworn that her attendance is material to the trial; she is the aunt of the witness likely to be produced on the part of the prosecution. It is added, my lords, that we do hope to procure her attendance; she may have gone for some other motive. The agent states, that he has used, and will use every degree of exertion to procure her attendance. Upon these grounds we hope the trial may be postponed.

Two affidavits were read, one made by Mr. Bond, the other by his agent, Mr. Johnston, to the effect stated by Mr. Curran.

Mr. Attorney General.—My Lords, I trust, I shall have no difficulty in removing any impression from the mind of the Court, if any has been made, by what has been said by the counsel for the prisoner. My lords, two grounds have been stated, for postponing the trial; one is, that two papers have published incorrect notes of the trial; the other is, that Mrs. Molloy cannot be found, as of this morning, to give evidence, and she is alluded to as a person who had been formerly examined, and who, of course, would be examined again.

If these facts with respect to the publications were material, and if any had a right to complain of them, they are those who must be anxious to support a pure and consistent chain of examination and evidence, as the account to be given this day upon the table might differ from what appears in the publications, and therefore if the weight of the argument lay against any, it is against the prosecution.—But if still the facts appear to be material, your lordships would give an opportunity to those concerned for the Crown to answer the affidavits, and it will be sworn, that those concerned for the Crown have no connection with these publications; that the statement of the fact relied upon has been contradicted by subsequent publications; and therefore, if newspaper accounts make any impression, the correction must be more fresh upon the memory of the jury than the former publication. It is not pretended or

insinuated, that any one concerned for the prosecution caused these publications. Then the case really comes to this:—That scrambling notes of trials, published in newspapers are to affect the public mind, and the minds of those who may be impanelled on a jury, and a grave court of justice, where five of the ablest judges preside; trials would never go on in the ordinary cause, if this were allowed. Is that the opinion you entertain of the character of Irishmen, that they would attend more to newspaper accounts than to the evidence upon oath?

Lord Carleton.—You need not trouble yourself upon that part of the motion.—The fact may be mis-stated, but it will be set right in the course of the trial—otherwise it might be in the power of every man to postpone a trial.

Mr. Attorney General.—Now, as to Mrs. Molloy, you have judicial knowledge of her conduct; there is no suggestion, that we could be desirous to remove her—she was only called to the character of a witness—she was not acquainted with a single part of the case—but she was a most willing witness to the point she was brought for, and they have four other witnesses to the same point, I trust, I shall be relieved from speaking upon her character; she may be forthcoming before the end of the trial. I am extremely unwilling to advert to what may come out in evidence, and I rather wish to leave it to the judicial recollection of the Court.

Mr. Ponsonby replied, and cited the Dean of St. Asaph's case,* where the Court postponed the trial of an information upon affidavit of certain publications which were circulated through the country.

Lord Carleton.—With respect to the first ground, I have already stated the principle that weighs with me and my brethren, and I have only to state one or two observations. The publication does not appear by any expressions in it to be a publication calculated to inflame; a fact is stated in a different manner from that in which it appeared upon the trial, and the true bearing of the fact can be easily ascertained upon the present trial. The case of the Dean of St. Asaph was where there was an address circulated by the person carrying on the prosecution; it was not merely a statement of facts, easily to be ascertained, but it was an address to the passions of the people, who were to try the Dean of St. Asaph, and tending to prejudice the jury.—Another circumstance is, that there is no suggestion here, that this publication was by the prosecutors, or any person concerned for them; but it is the mere publication of a simple fact, capable of being explained according to the real import, therefore this is not a ground in my apprehension for postponing a trial; and I recur again to the observation, which influences my mind,

* See it, ante, vol. 21, p. 847.

and the rest of the Court, that it would be a ground for postponing a trial in any case where the party chose.

With regard to the evidence of Mrs. Molloy, I have consulted my brethren who presided during the trial when she was examined, and I leave it to them to state their opinion upon this part of the motion.

Mr. Baron *Smith*.—There was an affidavit formerly made by Mr. Bond, which shows his opinion of the materiality of her evidence; it stated, that there was a certain bond of Thomas Reynolds, and a note, which had been deposited by Elizabeth Cahill with Mrs. Molloy; when Mrs. Molloy was served with the subpoena, she was served with a notice to produce the bond and note. From this affidavit it appears sufficiently to the Court, in what respect, and in what respect alone, she is considered as material by the prisoner. Then what appeared upon the trial of Mac Cann at which I presided? She was examined as to the bond and note mentioned in the affidavit; she said they had been deposited with her, but as soon as she was served with the subpoena and the notice, she sent them to Mrs. Cahill, hoping, that she might thereby escape trouble. Nothing more did she say with respect to them, nor was she examined farther as to them. With respect to the credit of Reynolds, she was not examined at all; I speak of Mac Cann's trial; I was not present at the other. I express my concurrence with what lord Carleton has said; I say, that the case alluded to is widely different from this. Partial publications should not be permitted during the pendency of a trial; there the intention was, to publish from two hours to two hours what should occur. My idea concurs with the judges there, that such publications should not appear; but when the trial is closed, the publication is widely different. Now, what is the fact stated here; that Mr. Bond was found with the persons specifically named in another apartment. I can state from my judicial recollection, it appeared that Mr. Bond was found in the same house with Mac Cann, and though the other persons mentioned in the publication were not found with him, yet their names were disclosed upon Mac Cann's trial, for Mr. Swan said he had warrants against them, which I suppose gave rise to the mistake—that mistake cannot affix any criminality upon Mr. Bond, and therefore I concur with lord Carleton.

Court.—We are of opinion, that the motion be refused upon both grounds.

The panel was then called over. The prisoner challenged 20 peremptorily, and 19 for want of freehold. Four were set by on the part of the crown, and two were excused.

The following Jury was sworn:

Sir Tho. Lighton, bt. Richard Jackson,
Benj. Richardson, John Murray,

Charles Thorpe, Maurice Roberts,
William Kirkpatrick, Joshua Manders,
Rob. Alexander, jun. John Crosthwaite,
Robert Hanna, William Pike.

As soon as the jury were sworn, lord Carleton and Mr. Baron George retired.

Mr. *Webber* opened the indictment.

Mr. *Attorney General*.—My Lords and Gentlemen of the Jury; Notwithstanding that I am so much accustomed to discharge duties similar to that which now devolves on me; notwithstanding that, for many days past, I have, in common with the Bench, been engaged in vindication of the public rights, never in any moment of my life have I arisen under the impression of more solemn feelings, or on an occasion the importance of which claims more exertion on my part, or attention on that of the public. I am not at all surprised that so many people attend this trial, or that it excites so much, and such general anxiety; for I am free to acknowledge, that on the subject matter of the prisoner's trial, the public safety depends in trembling and fearful existence. [Here the crowds pressing into the court, occasioned some noise and interruption of the speaker]. I must wish that the little bustle prevailing in the court may subside, before I come to the essential parts of this statement; for it is impossible, consistently with a due attention to the mutual obligations which press on the jury, that a single circumstance alleged against the prisoner should be overlooked. This is an open court of justice—thank heaven that it is!—and the public have a right to know what its determinations are, upon trials of any of his majesty's subjects charged with crimes of such enormity as that which now awaits judicial enquiry. I trust, however, that nothing will occur to interrupt the decorum, which has uniformly marked the present commission. My lords, I have great reliance on the continuation of the decency distinguishing the progress of these trials; great reliance, when I look back on the decorum so strictly paid, and justly due to the solemn administration of justice. Since the commencement of the present trials, I have witnessed the dignified patience of the Bench, and the unwearied attention of the jury, and the public forming the auditory should be impressed with this opinion, that any interruption is a very gross and indecent mark of disrespect.

The prisoner at the bar stood committed under the charges now preferred against him, so early as the 12th of March last; and the commission under which your lordships sit, has been sealed now more than two months, and the prisoner and the public have had sufficient time to be perfectly aware of the

* The speeches of counsel were not given in Mr. Ridgeway's report of this trial: I have taken them from another publication.

nature and extent of the charges to be adduced on the present trial. In addition to this, the prisoner has had other great advantages: the time previous to trial, in which he should by law be furnished with a copy of his indictment, and the names of the witnesses to be produced against him, has been more than doubled, and most glad shall I be of every circumstance that can afford him an opportunity of establishing his innocence. Although a learned gentleman, in support of the affidavit advanced by the prisoner, has talked much of the ferment of the times, and the danger of prejudice operating against the interests of his client, I will say that the prisoner has, on this head, advantages, which have not attended the trials immediately preceding. In the interval between the committal of the prisoner, and the present time, a grievous, an enflamed, and headlong rebellion has desolated a great, and the fairest part of Ireland; but the vigour and activity of the executive government, aided by the valour of your citizens, have put it down, and restored the public mind to a very considerable, if not an entire state of calmness and abstraction. Be assured, gentlemen of the jury, that no man can wish less than I do, that you should bring a single ingredient into that box, of a tendency to irritate your minds. If you have not left all rankling feelings outside these doors, I most fervently entreat that you dispossess yourselves of them at this moment, before you hear a single word of the evidence.

The prisoner at the bar is a native of the North of Ireland: many of the jury know the respectability of his connections in that part of the kingdom, and with those very jurors most consonant of that fact, I leave the prisoner to avail himself of this favourable knowledge.—I cannot here pass over in silence, the manly, wise, and loyal conduct which has distinguished the North of Ireland, on a recent, trying, and unhappy occasion; when other parts of the country plunged into that madness and outrage, the consequences of which must long be felt in the scenes of their existence, the good sense, the spirit, and civilization of the North have maintained its credit and its peace, and preserved to it the happy and smiling features of industry and order.

The prisoner has been long a resident of this city, prosperous in a very extensive trade, and by that tie connected with every part of the kingdom. He is a man of strong mind and body, and of talents which, if perverted to the purposes of mischief, are formidable indeed. Within the precincts of that city in which he has resided so many years, he now comes to take his trial, and on charges of a conspiracy proceeded upon in the metropolis of Ireland, and almost within the view of every man here. This is an additional and great advantage to the prisoner, and a conspicuous feature in our laws—a trial of the vicinage, for thus an opportunity is furnished

of knowing the character of every person brought forward, and of forming a decision under all the advantages of trial by jury—that distinguishing character of our excellent and unrivalled constitution. The end of all laws, in all countries where the general good is held in view, is to preserve equally the laws and the people, making the maintenance of the one the best protection of the other. Where then shall we look for that perfection, or happy distinction in the laws of any human society, which can for a moment divert our admiration and reverence from the trial by jury; that great and sacred barrier of the crown and the subject? and never did I address a jury where the best characters of this popular judicature have been more conspicuous. While paying the tribute which truth and the respect I entertain for you demands, do not think, gentlemen of the jury, that I descend to the petty alliance of flattery, as I believe you to be equally free from the influence of flattery, or of fear, so I shall endeavour to address you without applying to either.

The frame of the indictment makes it necessary that I should say a few prefatory words: in respect, however, to the law in this case, I am much relieved by what has already been heard on the subject in the course of these trials, and by the decisions of the Bench on those novel and dangerous doctrines relative to the king's residency, which have taken up so much judicial time, which have been so ingeniously discussed by gentlemen of very great eloquence indeed, but which, it is very probable, have by a previous promulgation, contributed in no small degree to those delusions whose victims they are now employed in defending.

It is not to be calculated what mischief has probably been effected by the doctrine, that a rebellion in Ireland cannot affect the monarch in England, or on that principle become an act of high treason, or the evils which might farther result from such an axiom had it not been exploded by the voice of the Bench; but, thank heaven! the more the people of these countries understand the law, the more will they reverence it, and securely repose under its protection. I will not therefore trouble you with the law in this case, confident as I am, how tenacious the Court will be to give you the fullest information on that subject.

The prisoner, Mr. Bond, has been for many years past an active and enterprising political character: he was deeply engaged in trade; and grown rich—very rich, no man had more or better cause to reverence that constitution under which his wealth had increased; his person was secure, and his property protected; there was nothing desperate in circumstance, or imbecile in character, to make him an instrument of delusion in the hands of others, but on the contrary, it will appear that he himself was the promoter and the teacher of that treason for which he now comes before

you to be tried. His activity increased since the French revolution took place, and the idea of establishing a republic in Ireland, and promoting that object by the aid of France, took strong possession of his mind. The facility with which a French fleet arrived off our coasts at that period did not tend to damp the spirit of the prisoner. From that time the likelihood of a similar enterprize,—which however the French had too much sense to undertake, though they might operate on the folly and wickedness of this country by their promises,—had been strongly in the prisoner's contemplation, and had urged him to such an organization of rebellion as should invite and assist a French invasion.

Here then is the overt-act of adhering to the king's enemies, for what so likely to comfort their hopes, to aid their efforts, and protract the evils of war, as the keeping this country in a state of ferment? I am not at all surprised, that under such feelings, the French were unwilling to accede to that peace which it is well known the British government long since endeavoured to restore to Europe.

To effect his revolutionary objects, the prisoner applied to the agency of an association too well known in this kingdom, and denominated United Irishmen, and which agency was particularly active in the year 1797. It is not for me at present to inquire what species of government was to have been introduced on the ruins of that which I show you was to have been overthrown—much has been written, much has been spoken, and much has been felt on the subject, and the short but descriptive sentence uttered on this subject of what is called government in France, by a distinguished political character when participating in the administration of the day, and urging the necessity of the war in which we are still engaged, has never been out of my mind. "It is that country whose state is Bedlam; whose liberty is death—that government whose sceptre, broken into ten thousand pieces, is put into the hands of ten thousand maniacs, who employ the power they are thus possessed of to scourge themselves like scorpions." But we shall leave the visionary and arrogant philosophy that seduces to destroy, and go at once to intelligible facts applying to the nature of the case; and the simple thing, gentlemen of the jury, for you to look to is, whether the malignant intention and imagination existing in the mind of the prisoner, can be so manifested by the facts adduced in evidence, as to leave no doubts in the minds of honest and conscientious men of the imputability of the crime; and that imputability will be established if the overt-acts that shall be proved were done with any of the views laid in the indictment.

Gentlemen of the jury, it will appear to you, that in the year 1797, the prisoner was more than commonly active, in administering the oath of the United Irishmen, and in arming and embodying men of this description,

for the promotion of that rebellion which has since broken out. It will appear that Mr. Reynolds, a witness to be produced, has met him in various societies, unbosoming himself as to the means of accomplishing his treasons, and among others the expected arrival of the French, and the exertions to be made for destroying that city in the bosom of which he had lived, prospered, and was protected—laying plans of carnage which must have involved in their dreadful consequences those people with whom he had been in daily habits of friendly and commercial intercourse; and consulting how to throw the sovereignty of the country into the hands of a desperate banditti, by whom a giddy and credulous multitude was imposed on under the idea held forth that their situations would be bettered. Even when the conspirators were few, they were not desponding as to success, and the history of every resolution was commenced with the aspiring enterprize of a few, but among that few, in the present case, the prisoner was prominent, and you will find him already exulting in speculation over the ruins of that government which he had conspired to overthrow, and proceeding from day to day with rapid stride, until organized rebellion gave hopes of a full completion to his views.

The same Mr. Reynolds whom I have already mentioned, unfortunately for him, was brought acquainted with a man, closely connected with the evils which have overtaken this country—with lord Edward Fitzgerald, whose name I never mention without anxiety and grief, and of whom I wish to speak with as much tenderness as possible. "The evil that men do lives after them;" I do not mean that the good, if any, effected by this unfortunate nobleman, should be buried with his bones. Lord Edward's military spirit, the habits he acquired in another country, made him feel a desire to put his own in a state of anarchy and confusion, that he might ride triumphant in the storm of rebellion. His ambition, his enterprize, his French connexion, his personal courage, and perhaps his personal disappointments, all contributed to make him an active principal in a conspiracy against his sovereign and his country. He encouraged many persons to become colonels in the united army, and in this encouragement, the prisoner at the bar was conspicuously assisting, and, as will appear by his advice, Thomas Reynolds did take upon him the rank of colonel of a regiment in the county of Kildare, organized for the express purposes of rebellion and aiding a French invasion. The rebellion, we all know, by dear experience, has raged—many of our intimates and our friends have fallen before it, and some of the best blood in the country has marked its cruel progress. There was no corner of this metropolis that had not a rebel nest in it—no secret spot that was not the receptacle of pikes, and whether all this could be without original instigators, I leave for your decision.

[Here Mr. Attorney General went into the formation and progressive rank of the meetings from the original to the provincial, and over all those an Executive Directory—through all of which the prisoner, it would appear, bore an active part.]

In February last, when the civil campaign to take place the following summer was in contemplation, the country was greatly agitated, but, by a providential discovery of what was intended, and the measures adopted in consequence of that discovery, the country was saved. It would not become me to praise those, by whose vigilance and firmness this salvation was effected—they did but their duty—yet that was something when such a general dereliction of social obligation was prevalent. It was also providential that the capital was the scene where the principal conspirators held their consultations, as discovery was thus rendered more easy, and the facts became more cognizable to the jury. [Here the learned counsel entered upon a statement of facts contained in the subsequent evidence.]

On the 19th of February a provincial meeting was held at the house of the prisoner, which was adjourned to the 12th of March to be held at the same place, and at this meeting of the nineteenth, among other transactions, a resolution was entered into, strongly illustrative of the object of this conspiracy, and that no concession, no conciliation, which the parliament of Ireland could hold forth, would have satisfied that treason which had veiled itself behind the pretexts of Catholic Emancipation, and Parliamentary reform. On the very night that lord Moira,* with a degree of captivating eloquence, for which that nobleman is distinguished, was arguing with the lords of Ireland where he had been so long a stranger, and respecting which he had obtained very bad intelligence indeed, for I cannot suppose his lordship guilty of deliberate mis-statement—on that very night, when he was endeavouring to show that there were no traitors in Ireland—that the innocent were accused—and that the accusers were guilty, conspirators in the same capital were by a formal resolution giving the lie to what this able, eloquent, and popular character was urging in parliament. The resolution was expressed in these words:

“Resolved, That we will pay no attention to any measure which the parliament of this kingdom may adopt, to divert the public mind from the grand object we have in view, as nothing short of the entire and complete regeneration of our country can satisfy us.”

The means of this regeneration were to be found in the machinations of United Irishmen, in the manufacture and use of pikes, and in the aid of those friends of the human race the French constituted authorities. What

* See 2 Plowden's History of Ireland, 664.

this regeneration would be, is, thank God! matter of speculation, not of fact. When taken by Mr. Swan, an highly active, useful, and confidential magistrate, several letters and papers, worthy observation, were found on the prisoner, and which, although in the hand-writing of others, sufficiently mark the prisoner's participation in their contents—among these were a letter from a person of the name of Wilson, and one from Roger O'Connor when confined in Cork gaol, dated 18th of February, 1798. In this letter Mr. O'Connor talks confidently of soon seeing the prisoner in Dublin; expresses his satisfaction at the escape of a French prisoner Hebert, and in one part, where his confinement is the subject, exclaims, “Will the day of judgment never come!”—There was also an appendix to the constitution of the United Irishmen, all of which will come before you in evidence. I have now gone through the greater part of the evidence which will be laid before you; and, I trust, without infringing on that decorum, uniformly governing those who have conducted these trials from their commencement;—the talents and the labours of my learned colleagues are great, and the obligations due to them by the public are great also, and I know that I have the happiness to act conjointly with men whose integrity and honour would not suffer them to come forward in wanton prosecutions, and in cases which did not furnish sufficient grounds to go on. I know too well, gentlemen, how precious every moment of your time is, to waste it—may the result of its present employment contribute to restore, “peace on earth, and good will towards all men;” and I do most anxiously wish that at a time when public safety is put to the wall, and the state is put on its defence, no portion of prejudice will mingle in the discharge of your duty, but that truth and charity, and public virtue, will justify, in the eyes of God and man, the verdict which you shall give this day.

Thomas Reynolds, esq.* sworn.—Examined by Mr. Prime Serjeant.

Have you been sworn a United Irishman?—I have.

* See his examination and cross-examination on the preceding trials of Mac Cann and Byrne in this volume. The character and conduct of this person have been, on many occasions, animadverted upon, not only in Ireland, but also in England; as well in the Houses of Parliament as elsewhere. Recently, the public attention has been directed to the history of the transactions in which he was engaged in Ireland, in consequence of his having been summoned, and of his having served as one of the grand jury of the county of Middlesex, by which the bill of indictment against Watson and others for high treason was presented in the year 1817.—See the case in this collection, *infra*.

By whom?—By Mr. Oliver Bond.

Do you see him in court?—I do.

Where is he?—He is standing at the bar.

What time was it you were sworn?—In the beginning of the year 1797.

Where?—At the house of Mr. Oliver Bond.

And by him?—Yes.

Was there any other person present?—Richard Dillon.

Where does he live?—In Bridge-street.

Be so good as to explain the principles and objects of the United Irishmen?—Their objects were, to overturn the government and constitution of this country, to establish a republican form of government in its stead, and to aid and assist the French in any invasion they might make on this country, which might forward their views.

Is there any house in Bridge-street known by the name of the Brazen-head?—There was at that time.

Were you in it very often with the prisoner?—I was.

Do you know a man of the name of Wilson?—I do.

What is his Christian name?—Hugh.

Were you in that house with him and the prisoner?—I was present at a meeting at the Brazen-head, when Mr. Oliver Bond was present; and I was there at a meeting when Mr. Wilson was present.

Of what kind of society or meeting was that?—A society of United Irishmen.

Explain any circumstance in your recollection to show it was so?—Upon a split of the society, I was thrown into a different split from Mr. Bond; and for our split, John Cormick was chosen secretary, I was chosen treasurer, and Hugh Wilson as delegate for our split to go forward to the Baronial.

A Juror.—Where was this?—At the Brazen-head.

Who was present?—Mr. Bond, Mr. Wilson, Mr. Mac Bride, Mr. Cormick, Mr. Dillon, and others.

Mr. Prime Serjeant.—Do you know who Hugh Wilson was?—At that time he was a clerk in the bank of Mr. Finlay.

Explain the progress and enumerate the gradations of this society?—First, there is a Simple Society, such as I have described before; we choose three persons to represent it in another society, called a Baronial; and the Baronial chooses delegates to go forward to the county, three in like manner, a Secretary, a Treasurer, and a Delegate. In some instances, where they are too crowded, as in the city of Dublin, there is an intermediate

It appears, that since the conviction of his confederates, he has been employed in stations of trust and profit under the British government.

For more concerning him, see the thirty-sixth volume of Hansard's Parliamentary Debates, pp. 971, 1020, *et seq.*—1048 *et seq.*—1069, 1199, 1244, 1403, *et seq.*

one, between the Baronials and the County; that is, where the members from all the Baronials would make too large a County meeting; and in like manner three go forward from the County to the Provincial.

You were a Provincial Delegate from the County of Kildare?—I was appointed a County Delegate to attend a Provincial.

Do you recollect any particular matter or subject of conversation at any of these meetings, where the prisoner, Bond, attended?—I do, at one of them. I recollect, at the Brazen-head, Mr. Bond related a plan, whereby the United Irishmen should possess themselves of the city of Dublin, and the strong places that were in it.

Court.—Do you mean that he read it?—No, my lord, he stated it as the general outline of a plan; we expected, at that time, a general rising.

When was that?—It was in February, 1797; it was after the French had left Bantry-bay, several weeks.

Mr. Prime Serjeant.—Do you remember a person of the name of Cormick?—I do.

Was there an oath administered to him in your presence?—There was.

By whom?—By John Mac Cann.

What was he?—A United Irishman, and secretary to the Baronial.

How long did you continue to reside in Dublin after you were sworn?—I did not leave Dublin finally till the month of November last; I did not bring my family out of it till then.

You went to reside where?—At Kilkea, in the county of Kildare.

Do you recollect having been at any time about the Four-courts, and meeting any particular person?—Yes, I do; I met lord Edward Fitzgerald and Hugh Wilson, walking together.

Court.—About what time?—About the month of November last.

Mr. Prime Serjeant.—Relate what happened?—They came down the steps of the Four-courts and spoke to me; lord Edward asked where he could see me, as he said he wanted to see me; I mentioned Park-street, in the Liberty; he said he would call upon me.

Mr. Prime Serjeant.—State what passed?—

The Counsel for the prisoner objected to this evidence being given.

Mr. Prime Serjeant.—Pray, sir, did lord Edward Fitzgerald hold any office among the United Irishmen, or was he connected with them?—He did.

Had you any conversation with Mr. Bond, with regard to what passed between you and lord Edward Fitzgerald?—I had.

What was it?—Lord Edward Fitzgerald had applied to me to become a colonel in the army for the county of Kildare? I had given a very reluctant assent to become so; and some days after, I met Mr. Bond on the steps of his own house in Bridge-street. I told him, lord

Edward had applied to me to become a colonel, and that I did not like it, although I wished very well to the United cause. Mr. Bond said, that any man who wished well to the cause, ought now to put himself forward, and advised me to accept of the office of colonel.

Court.—When was this?—About the month of November. I replied, that since he advised it, I certainly would. The conversation lasted from the time we left his house, till we reached Corn-market.

Mr. Prime Serjeant.—Did you carry that advice into effect?—I did; I went down, to the best of my belief, about the 25th or 26th of November, to Kilkea. Lord Edward informed me, that a man of the name of Mathew Kenna would call upon me before the election of Colonels. In the month of January, Kenna came to me.

You acquired a property in the county of Kildare about that time?—I did.

Mathew Kenna came to you?—He did, and told me, that at the first meeting in February the election for Colonel would take place.

Court.—First meeting of what?—I understood United Irishmen; I dare say he said so, but I do not recollect; I understood it to be so. He came to me and asked me, "Would I stand the ballot?" I told him I would, that lord Edward had spoken to me upon the business. He replied, he knew he had; and he said, that it would be necessary for me to hold a civil as well as military employment, and asked me, Which would I choose to be, Treasurer or Secretary? I told him, I chose to be Treasurer, because that place had less trouble and less responsibility than the Secretary attached to it. He replied, he was glad of it, and he himself would come forward with me as Secretary.

Mr. Prime Serjeant.—You became a Colonel?—He came to me afterwards, about the 14th or 15th of the following month, February, and he told me, I was unanimously chosen Colonel and Treasurer.

For what Barony?—The Barony of Kilkea and Morn.

Who were the electors of Colonels?—The people who elected me were the captains. In that part, the persons who held the office of Captains, held also a civil employment, and composed the Baronial meetings. He told me, the meeting of the County was to be held on the Sunday following, which was about the 16th of February, at the Nineteen-mile-house, and that he would meet me on the road there.

Did you go to that meeting?—I did, sir.

In what capacity?—I attended that meeting in my capacity of Treasurer.

Was there any communication made to you there, with respect to a meeting in Dublin?—There was.

Mention what happened at the nineteen-mile-house?—The first thing done was, each

member took an oath of secrecy, and after that, the meeting went into the election of Delegates, to attend the Provincials for the following three months. I was one of them; Cummins was elected Secretary, and of course a Delegate; and a doubt arose respecting the office of Treasurer, which lord Edward had enjoyed till that time.

What Treasurer?—Treasurer of the County. He was not then present, and they did not know whether, in his absence, they should elect a Treasurer or not; but Mr. Cummins said, that lord Edward had told him, he was a very marked man, and afraid to be more so, and that for a time he wished to discontinue his attendance at those meetings, and desired them to go into the election of a new Treasurer.

Court.—Cummins mentioned this as instructions?—That lord Edward had so instructed him. They then chose me to be Treasurer, and a Mr. Daly, of Kilcullen, to be Delegate. Mr. Michael Reynolds of Naas, as he was called; he lived either at or near Naas, had been Secretary till that day, and had acted as Secretary that day, until the new one was elected; he told us, that a Provincial meeting was to be held the following day, Monday, at the house of Oliver Bond, in Dublin, at ten o'clock.

Mr. Prime Serjeant.—Did he give you any other information or direction?—He desired us to call for Mr. Mac Cann, or Mr. Ivers, of Carlow, and we would get admittance.

You were not at that meeting?—No: I sent an apology to the meeting; I wrote a letter. At the time we were told of it, I was about fourteen miles from my own house: to ride that distance home and thirty-four miles next morning before ten o'clock, I could not conveniently do it; Cummins could not attend either with his convenience, I wrote a letter to Mr. Bond, which ran in this way: "to apologize to Mac Cann that I could not bring up the bills, so soon as I had expected, but would in a day or two after." I sent the letter by post.

Court.—What did you mean by the bills?—I meant the returns, which I was to bring up. After I came to Dublin, Mr. Bond told me, he received the letter, and apologized to the meeting for me.

Mr. Prime Serjeant.—What was Mac Cann?—When I knew him, he lived as a clerk, I believe, to Mr. Jackson, and was secretary to a Baronial Meeting.

Who was Jackson?—He who kept the foundry.

Was there any connexion between Jackson and Bond?—I cannot answer that question; I do not know whether there is or not.

That was the Mac Cann, who was tried and executed?—It was.

You returned home the same day?—I did; and set off for Dublin the day after, with my wife and some of my family. I slept on the road, and arrived in town on Tuesday.

When did you return to the country, and for what purpose?—I went back for the returns, without which Mac Cann refused to tell me when or where the Provincial meeting would be had.

Court.—What do you mean by returns?—The lists of the strength of the county.

Mr. Prime Serjeant.—Do you recollect being at sir Duke Giffard's?—Perfectly well.

Do you recollect the company?—Yes, I do some of them; lord Wycombe, Mr. Fitzgerald, Mr. Madox, Mr. Cope, lady Giffard, and myself.

Mention what turn the conversation took?—Mostly upon politics, the present times, United Irish business, and the state of Ireland at large.

Mr. Prime Serjeant.—You returned to Dublin with Mr. Cope, mention what passed between you?

Court.—When was this?—In February. I arrived in Dublin upon the 20th of February, and in a day or two after went to sir Duke Giffard's.

Mr. Prime Serjeant.—Did you make any communication to Mr. Cope with regard to information upon the United Irishmen's business?—Yes. Mr. Cope, as we were returning, took up the conversation upon politics, which had been held the day before at sir Duke's, and he represented very strongly the crimes that were committed in the different countries of Europe, where revolutions took place, and that were here likely to ensue, if the United Irishmen were permitted to go on—the overthrow of religion—the murders already committed and likely to be committed, and in several points of view he stated these matters. I was a good deal struck with what he said, and I then determined to quit the United Irishmen, and to atone to government and my country for the crimes I had committed in having joined them, by giving information of what was passing. I told Mr. Cope, I believed, I knew a person who was deeply acquainted with the United Irishmen, who would come forward and give information; that I would see that person, and represent to him the different things that had passed between me and Mr. Cope that day. He said, if such a man could be procured, he ought to be raised to the highest situation in the country. I told him the person would not come forward for either honours or rewards; but if he did come forward, it would be to satisfy his own conscience and mind upon it. I told him, I would call upon him in a day or two after I got to town.

Did you call upon him?—I did, sir.

Tell what passed?—I told him I had seen my friend, and that he had consented to come forward upon certain conditions.

Be so good as to state what the conditions were?—Mr. Cope immediately upon my telling him this, said, that such a man should be put into parliament, be raised to the highest honours, and should have 1,500*l.* or 2,000*l.*

a year. I told him, he mistook the conditions entirely. It was not reward was looked for; but the conditions were, that he should never be prosecuted as an United Irishman, nor ever obliged to come forward to prosecute any other as an United Irishman; that the channel through which this information should come, should be kept as secret as possible; and that I was certain the United Irishmen would come to know it, in which case the person who gave the information would certainly be murdered: to avoid that, he had determined to quit the country for a time, and he would require his extraordinary expenses on such an occasion to be paid him, or other damages that he might receive, as far as a certain limited sum. Mr. Cope said, that any sum whatever, no matter how large, would certainly be given, and he pressed great rewards again; I still refused, and at length he asked me, what sum I conceived would cover the extraordinary expenses or losses: I said, I did not think they would exceed 500 guineas, for which sum there should be a liberty to draw on him. He agreed to every thing, and I gave him then such information as I was possessed of.

You continued to give information from time to time?—I did, sir.

Did you see Mr. Bond intermediately between this communication to Mr. Cope and your going back to the country for your returns?—I did, sir.

Be so good as to tell what passed between you and the prisoner?—I went to Mr. Bond's to know, for Mr. Daly had told me, he understood the second meeting of the Province was to be held the day three weeks from the first. He left me in some doubt, however: I went to Mr. Bond and asked him. He desired me to go to Mr. Mac Cann, who would give me information on that subject.

The same Mac Cann?—Yes.

You applied to him?—I did.

What passed?—He asked me, had I my county returns. I replied, I had not: and he said he could give me no information, till I brought them to him. In consequence of that, I went down to the country on the Saturday se'nnight previous to the arrest at Bond's; it was about the third of March.

Did you get the returns?—I called on Mr. Daly at Kilsullen, asked him for the returns, which he showed me. He wrote out a copy of them and gave them to me, and I arrived in town again the Monday following.

How soon after you returned to town did you see Mr. Bond?—I cannot tell exactly. I saw him three or four times.

Did you see him on the Saturday after?—I did.

Where?—In his own ware-room, and Mac Cann was there also. This was Saturday the 10th.

What passed?—Mac Cann said, "Bond, we must have a room for Monday."

Court.—Had you shown Mac Cann your

returns before this?—I had, and upon my showing them, he said it was very extraordinary there was no increase in them, since the former, and that he would call upon me the Sunday morning following, and give me the information I required. I asked him to breakfast, and he said he would.

Mr. *Prime Serjeant*.—This was before you saw them in the ware-room?—It was.

Now, inform the Court and the Jury what passed in the ware-room on Saturday the 10th?—I was in the ware-room. Mac Cann said, "Bond, we must have a room for Monday." Mr. Bond replied, "You shall have the room you had last; will you have the little room?" They then went together to the end of the ware-room, whispered awhile, and returned again to where they were before, and after some trifling conversation, I retired.

Mac Cann came to breakfast with you the next day?—He did.

What information did he give?—He told me, the Provincial meeting would be held next morning at Bond's at ten o'clock, and he told me to be punctual, as there was business of great consequence to be agitated there.

You did not go to that meeting? How did you manage to get rid of going there?—I knew they were to be taken up, and I sent a written note to Mr. Bond, requesting of him to apologize to Mac Cann, that I could not bring the money at the time mentioned, as my wife was ill; but as soon as the physician saw her, I would go and bring it: the note was to that effect, as well as I recollect: I sent it by a chairman.

Did you ever see it since?—I did.

Where, and how?—Mr. Cope brought it to me, at my desire, from government.

Why did you desire to have it returned?—The reason was, I had made a preliminary, that my name should be kept a secret; my hand-writing in this note, with Mrs. Reynolds's name at full length, and the initials of my name at the foot, would involve me, and disclose my name, which I then did not intend; and therefore I desired to have it.

What did you do with it?—I destroyed it, in a shop in College-Green, after I got it from Mr. Cope.

You gave information of that meeting to Mr. Cope?—I did.

Court.—When did you inform Mr. Cope of the meeting at Bond's?—I gave him information early, but kept him in some doubt, as I was myself from the information of Daly; and on Sunday, after I had seen Mac Cann, and he, at breakfast, had given me information of the time precisely, I went to Mr. Cope, and told him positively of it; and on Monday morning, I saw Mr. Cope again very early, perhaps about seven o'clock.

Mr. *Prime Serjeant*.—Then you gave probable information from the information you had from Daly, and positive from the report of Mac Cann?—Yes.

Do you recollect any conversation that

passed between you and lord Edward Fitzgerald with regard to any, and what kind of invasion of this country by the French, after you had the interview with Bond?—On Sunday the eleventh of March, about four o'clock, I called at Leinster-house upon lord Edward Fitzgerald, and saw him; I had in my hand a paper which contained directions from counsellor Saurin to the Lawyer's Corps, desiring them, in case of riot, to repair to Smithfield: there were two papers, one within side the other. Those who were going out of town, and whose arms would not be safe, were to leave them with him, and such as wanted ball-cartridge were to apply to him. And there was a line at the bottom, desiring them to keep these orders secret.

A *Juror*.—Where did you get these papers?—I picked them up in the course of the day somewhere. Lord Edward, upon reading these papers, was greatly agitated: he said, he thought government intended to arrest him: he wished to get to France, to hasten the invasion of the country, which he could do by his intimacy with Talleyrand Perigord, one of the French ministers. He said, he would not approve of a general invasion being made at first, because if any accident to prevent happened, or overturn it, it would totally overthrow the business, and destroy the spirit of it, both here and in France.

Mr. *Prime Serjeant*.—Did he assign any reason, or mention any place for a partial invasion?—Yes; he said, the French had some fine fast-sailing frigates; on board of them he would put as many Irish and English officers as he could procure, and men proper to drill soldiers, and a supply of arms and ammunition, and run them into some port in Ireland. He thought Wexford an unsuspected place, and one that would answer; and even if the frigates were destroyed, it would not be of any very material consequence: but if they arrived, they might with their friends establish a rallying point, until the rest should come. He said also, that if an attack was made on England at the same time, it would effectually prevent the government of that country from sending forces here. Lord Edward after this conversation walked up and down the room in a very agitated manner. "No," said he, "it is impossible; government cannot be informed of it; they never have been able to know where The Provincial meet." Shortly after this, the servant came and asked, was he ready for dinner. I went away; he wanted me to stay dinner, but I would not.

Did you see him after the arrest?—I did; I saw him in Aungier-street, at No. 23, I think, at the house of Doctor Kennedy. A Mr. Mac Cann, an apothecary, came to me.

Court.—Are you sure as to the number and name?—No, I am neither sure as to the number or name; but to the best of my recollection, that was the number and the name, Mr. Mac Cann, an apothecary in

Grafton-street, came to me, and said lord Edward wanted to see me, and he brought me to him: it was about eight at night; there were two or three gentlemen in the parlour drinking together; lord Edward told me to come to him, on the following night, and he would write something for me to bring down to the County; he desired me to come to the same place, at the same hour of the following night.

This was the Wednesday after the arrest? —Yes, my lord.

What county?—The meeting of the County Committee. I did go, and lord Edward brought me up stairs to a bed-chamber, and gave me a paper which he desired me to give as his address to the county Kildare; and he said, that he had in his hands as treasurer to the county Kildare, some money, and also some which belonged to the barony of Offalloy, in the same county: that he was to hand it over to me, as the treasurer appointed in his place. After this, we went down stairs; lord Edward disguised himself as well as he could and went away with a young gentleman, and I never saw him afterwards.

Mr. *Prime Serjeant*.—What did you do with the paper?—I brought it down and read it at a meeting at Bell's on the Curragh, and on the Tuesday after, at Athy, I read it to a meeting of my own captains; and at the desire of one of them, I burned it.

Can you state the general object or purport of it?—It mentioned, that they should not think any thing of what had happened; it was nothing, a trifle; to fill up the vacancies occasioned by the arrest at Bond's, as soon as possible, and that they might rely upon his being in his place upon the day, when they should be called upon to rise. There was a good deal more in it, but I do not recollect.

Did you get charge of any money?—Lady Edward Fitzgerald sent for me the day after, which was Friday, and handed to me thirteen pounds for the barony of Offalloy, and thirty-two or thirty-three pounds for the County, which she said Lord Edward desired her to give me.

You got the money?—I did, and it was afterwards principally laid out in the defence of prisoners tried at the ensuing assizes at Naas.

You have already said you got five hundred guineas?—I did, and my loss exceeds six hundred pounds.

You said it was never your intention to prosecute any man; tell the Court and the Jury, how you came to give information, notwithstanding that determination?—Shortly after the arrest at Mr. Bond's, I went to the country, and one of my own captains, Mr. Kenna, came to me and told me, he heard, I was one of the persons who betrayed the meeting at Bond's: but he said he heard it only from report, but if he heard more he would tell me. After that, the delegate from the barony of Narragh and Rheban came to

me and told me, that Michael Reynolds had brought down from the Provincial in Dublin a charge against me, respecting the information, which it was said I had given of the meeting at Mr. Bond's. He told me, that this charge was discussed at the County Committee, and that instant vengeance would have been taken upon me, were it not, that the gentlemen of the county could not believe such a thing, and therefore they gave me a hearing to clear myself of it; and that he came to summon me for that purpose. The meeting he summoned me to, was the Monday following, which I think he said was the Curragh meeting. We were to meet at Bell's at the Curragh, I was preparing to quit the country, and intended to quit it upon that day, under the pretence of going to the meeting, being afraid to go before, lest I should be dogged; but before I could go, captain Erskine, of the dragoons, and lieutenant Neil, of the Louth Militia, came to me with billets, and lived upon free quarters; they arrested me, and stayed with me eight or nine days; and as that was a sufficient apology for my not attending the meeting, I determined to quit the country before the next meeting could be had. After the soldiers quit my house, I remained just so much time as enabled me to put things into some order, for they were injured very much. I set out and met Mr. Wheeler Barrington, who had rode to Naas, and Mr. Taylor of Athy; they said I would be assassinated, in consequence of my betraying the business at Bond's; although neither of them knew any thing of the United business, they told me, that my having betrayed the meeting was the common talk of the town; that it was mentioned in the common alehouses, and that even an aunt of mine, Anne Fitzgerald, of King-street Nunnery, had repeated it with great bitterness. Upon this I consulted with Mr. Mac Donnell, who keeps the inn there; I remained that night at Naas, and returned home the next day, when I was arrested by order of colonel Campbell by information, as I have since heard, of some of my own captains.

This circumstance determined you to avow yourself?—I found when I came to Dublin, my character ill spoken of by both parties.

Court.—You were sent up to Dublin?—I was on the following day. I was abused by one party, as a traitor to my king; by the other as having betrayed the United Irishmen: and I heard that the United Irishmen had circulated a number of false and malicious reports, respecting my character; and I determined to come forward here, and to relate, as I have now done, my whole conduct really and fairly as it was, and to lay it before my country.

Thomas Reynolds, esq. cross-examined by *Mr. Curran.*

You said you heard it was given out, that you had betrayed your friends?—I did,

Was that true?—Decidedly it was.

You felt you had betrayed your king and your friends?—I did.

What was the nature of the oath you said was administered to you?—The common United Irishman's oath from a printed book, called the United Irishman's test.

What was the first obligation?—To keep secret whatever should pass in that society. It contained an obligation of forming a junction between persons of all religious persuasions, and to obtain an equal representation of all the people of Ireland in parliament.

Did that obligation bind you to be of any particular society?—It bound me to be of the society of United Irishmen, and to their acts.

I think I heard you say, some time or other, that many persons had taken that test, or oath, who had no idea of any thing to be done in consequence of it, save simply the advancement of that religious unity and the attainment of a reform in parliament?—Upon my word, I think so.

You said hundreds upon thousands?—No, I did not make use of that expression.

What did you say?—I said hundreds upon hundreds.

You do believe that?—I do.

Pray, Mr. Reynolds, at what time did you get the five hundred guineas?—I got them at different times.

When did you get the first? was it before the taking up of the people upon the twelfth of March?—I drew for three hundred guineas upon Mr. Cope, when, I'll tell you in a minute; I cannot recollect the exact day, but it was about four or five days before the arrest, and I drew for two hundred guineas some time after, when I was in the county of Kildare.

Had you been injured then by the military?—No; but I had determined to quit the kingdom, as soon as Mrs. Reynolds recovered, who was then lying in, and I wanted to pay some debts before I went away.

Then you had not sustained losses by the military?—No.

And you got the money?—Yes; but I told Mr. Cope it was to reimburse my expenses, or travelling charges.

You had conversations with Mac Cann about the meeting?—I had.

He told you, it was to be an assembly of the province?—He did.

That was what he said about it?—He said that.

You heard the meeting was taken up immediately after its assembling?—I heard it was taken up at about eleven o'clock on Monday.

Do you recollect what time it was you were made a convert of by Mr. Cope?—Yes, I do.

What time?—The latter end of February.

Will you get as near the day as you can?—It was between the time of my return to town after the Kildare meeting, on the 18th of February, and the 1st of March.

Mid-way do you think?—I should suppose so, but cannot say.

However, then you were completely convinced of the badness of their design; you did no more towards the advancement of them?—Towards the advancement of them? I attended a meeting, as I told you; I was at the election of Reynolds to fill the vacancy of Cummins, who was arrested.

That was not to carry on the part?—It was to avoid the suspicion of having given information.

Did you ever swear any body an United Irishman after that?—No.

Did you ever advise any body to become an United Irishman after that?—No, not that I know of.

You must know the sincerity of your own conversion?—My conversion was so sincere, as that I wished the whole cause at an end; but I did not wish that any man should be punished, and I was sorry to come forward; but I would do all the stonement in my power.

Do you recollect having sworn or recommended any man to be an United Irishman since?—I do not recollect it.

Will you swear positively?—I do not recollect any such thing; if I did, let the man come forward, but I do not believe I did.

What would you think of yourself, if a credible person swore it?—I would not think worse of myself, because I do not say positively, but I do not believe it.

You were married in 1794?—Yes.

Your mother-in-law died in November?—

No; my mother died in November; my mother-in-law died April twelve month.

Your mother-in-law died?—She did.

She had a complaint in her bowels?—She had.

You administered medicine?—I did; tartar emetic.

She died shortly after?—She took it on Friday, and died on Sunday.

Did you give her any other potion except that?—No, I did not.

She survived your prescription from Friday to Sunday?—Yes.

Do you recollect, Mr. Reynolds, having been charged in your family with any thing touching that prescription?—Since I have been brought up to Dublin, I have heard that major Witherington said, I poisoned his mother with tartar emetic.

You heard that?—And many other ill-natured things too.

Very cruel; but the best men—Witness.—May err.

Did you hear any thing of a pitched shift for this poor old lady?—I do, a pitched sheet; it was one of the charges of the funeral bill, which bill I paid; she was a very large corpulent woman; she was kept till her son came to town, and she could not be kept without the sheet.

Upon what day?—The fourth day after her death she could not be kept otherwise.

Your mother died in April?—No, she died in November.

Did you hear any thing unkind stated of you with respect to your mother?—Never, until I heard them stated upon this table.

She had an annuity from you?—Yes, and was so well paid, that she had received six months in advance when she died.

You know Mrs. Cahill?—Very well.

She lent you money?—Yes.

You gave her a bond?—Yes.

And a note?—Yes; I gave her a bond for 50*l.* and a note for 25*l.*

She was an old blind woman?—She was not blind at that time.

She is now?—Yes.

It was a note payable on demand?—Yes. Elizabeth Cahill was an old woman, who had passed a considerable part of her life in my mother's family. She lent us both money; she took my bond, and note payable on demand, saying she would draw occasionally for it; she took up 5*l.* and I then gave her a note in place of the first, dating it back to the date of the first note.

This was in 1798?—I did not know where she lived for some time, but she came to live in Park-street some short time after my marriage; Mrs. Reynolds went to see her; found her lying ill, brought her home, and afterwards brought her down to the country, leaving a girl to take care of her. After she recovered, she wished to settle her affairs; she went to King-street Nunnery and consulted with Mrs. Molloy and Mrs. Fitzgerald;—she agreed to sink the money upon an annuity of 14*l.* for life; after this, a deed was drawn out by Mr. Hetherington; she changed her mind, and there was no more about it; she gave me the bond, as she had done often before, to settle the interest: there had been a double bond and warrant in my desk which lay open, as a precedent for the clerks, and in returning the bond, she got this double bond and warrant, instead of her own, which is still among my papers, I believe. I regularly paid her the interest, and when she required payment of the principal, I settled with Mrs. Molloy, according to her desire, by giving part in money, and bills for the remainder payable at two months. One is paid, another became due the first of this month. Mrs. Reynolds went with money to pay it, and Mrs. Molloy would not see Mrs. Reynolds; a note was left with the priest for Mrs. Molloy, but no answer was given.

Do you recollect what time the note was dated?—At the time of first getting the money.

Can you say it was not drawn back into your minority?—Decidedly it was not.

Do you recollect what name was signed to the bond?—I do not.

Nor who were the witnesses?—I do not.

I think you say, you got it back voluntarily from her?—I did; I'll mention the circumstances; Mrs. Reynolds went to pay a visit to Mrs. Molloy, she told her Mrs. Cahill was ill

in bed; Mrs. Reynolds called to see her, and she had money to give her some days, not knowing where to find her, in part payment of the balance of one of the notes: she called at Mrs. Cahill's, found her almost in hysterics, a kind of fit, from the treatment she had received from Mrs. Bond, who said she would drag her to gaol, if she did not prosecute Mr. Reynolds, who had always treated her as an honourable man; that Mrs. Bond offered a large sum of money for some papers; that she denied having them, and would give them to the right owner. She called to a young lady, Miss Dwyer, to give them up; she hesitated, Mrs. Cahill grew angry, and asked what became of them; she then gave them to Mrs. Cahill, and she gave them to Mrs. Reynolds; when they were brought to me, I burned them, they were of no use.

Did your aunt Fitzgerald write to you upon that subject, charging you with a fraud?—No, she spoke of a delay of sending money to Mrs. Cahill, who was in want of it.

Do you not believe that these papers were got from Mrs. Cahill by Mrs. Reynolds, after Mrs. Molloy had been served with notice to attend?—I do not know, but I have since heard it: I heard Mrs. Molloy say upon the table, that she got notice, but I did not hear it before.

Mrs. Reynolds got these papers after that?—I believe Mrs. Reynolds knew nothing about them at the time she went to Mrs. Cahill, and would not trouble herself about them.

But was not the transaction of burning the papers after the notice to attend this trial, and after these papers had been obtained?—I say, the papers were not obtained; Mrs. Cahill forced these papers upon Mrs. Reynolds.

Was not that after the service of the subpoena to attend this trial?—I cannot say; but I heard that Mrs. Bond said she would drag Mrs. Cahill to gaol about them.

It was after Mrs. Bond made use of that language?—Yes, it was.

Mrs. Bond wanted to obtain them?—I do believe so, because she offered a considerable sum of money.

She wanted them to impeach your credit?—She wanted to produce them to injure me; but if they were produced, they could not affect my credit; and if I thought they would be of use, I would not have destroyed them.

Is your credit unimpeachable?—My country is the best judge of that.

Did Mr. Cope charge you with endeavouring to cheat him of 1,000*l.*?—No.

You bought Kilkea?—I paid a fine for it.

You represented yourself as a solvent man, you got up a receipt?—Let me tell the whole transaction.

Answer the question, you may explain yourself afterwards?—I will not tell it partially; or I will leave it to Mr. Cope.

Did you get a receipt from Mr. Cope of 1,000*l.*?—I must inform the Court of the whole fact from beginning to end.

I ask you, did you get a receipt for 1,000*l.*?—I did.

Had you paid the money?—I conceived I had.

Court.—State the transaction?

Witness.—Mr. Cope had considerable dealings for many years with my father. At my father's death, a balance remained due of near 1,000*l.* Mr. Cope continued his dealings with my mother, and at her quitting business, she owed him upwards of 4,000*l.* I succeeded my mother in business, and she assigned to me a schedule of properties, obliging me to undertake the payment of a schedule of equal amount of debts, and she also assigned to me a reversionary lease of property, which belonged to sir Duke Giffard. The list of properties she made over to me turned out some thousands less than she made them over for, and it was unproductive for a considerable time. Under these circumstances, it was impossible for me to discharge immediately the debts that were due by her and my father, and I applied to Mr. Cope and settled for my father's 1,000*l.* and my mother's 4,000*l.* by giving him a mortgage of this reversionary lease, and my own bond as a collateral security. Some time after this, I went to Mr. Cope, and gave him 1,000*l.*, in order that he might give up my bond which I had passed; not 1,000*l.* out of the debt, but I gave him a 1,000*l.*, that he should run the risk upon the reversionary lease, and discharge me from the bond. He accepted of it, and I gave the money. It was a contingent lease; I continued dealing some time, and at quitting business a balance of 1,000*l.* and some pounds remained due. I wished to lay a statement of my affairs at that time before some of my friends, and I applied to Mr. Cope for some vouchers; he gave them to me, and in some time after came to me for a settlement of this 1,000*l.* and I mentioned, that Mr. Cope having received all the benefit of my and mother's dealings, had no right to have my person bound for a debt which I had no share in accumulating, and I said he should return that 1,000*l.* to my creditors which I gave up, and that I had been wrong in binding my person for the debts of others. Mr. Cope refused to do this, and after some conversation he went away, and said he would come back in a week. He did; I remained of the same opinion. In a day or two I left town upon a visit to my uncle Fitzgerald, in Kildare, and on the Sunday following, I left his house, and went to Athy, where I received a letter from Valentine O'Connor, in which he stated, that Mr. Cope had been with him, and that I had done wrong in refusing a settlement with Mr. Cope, and that I would do right to settle immediately: I rode off to Dublin, without going back to my uncle's; I arrived at Mr. Cope's, found him at dinner, and instantly

settled the matter with him by returning the voucher for the 1,000*l.*

Mr. Curran.—Were you threatened with any prosecution by Mr. Cope for swindling him upon that transaction?—No, never.

I forgot whether you told me, did Mrs. Fitzgerald write to you upon the subject of this bond?—I said she did.

But she did not accuse you of a fraud?—Never.

Did not you write an answer admitting you had acted improperly.—No.

Can you take upon you to say what the answer was?—I answered her, but what the particulars were I cannot say.

Do you recollect using such phrase, as that you alone were guilty, and not your wife?—I remember no such thing.

Would you swear there was no such thing in the letter?—I will not swear as to any thing being in it: but if you ask me any question that I recollect, I will tell it.

Can you just tot up the different oaths that you took upon either side? In a lump?—I will give the particulars.

No, you may mention the gross?—No, I will mention the particulars. I took an oath of secrecy in the County meeting; an oath to my captains, as colonel. After this, I took an oath, it has been said; I do not deny it, nor do I say I took it, I was so alarmed; but I would have taken one, if desired. When the United Irishmen were designing to kill me, I took an oath before a county member, that I had not betrayed the meeting at Bond's. After this I took an oath of allegiance.

Had you ever taken an oath of allegiance before?—I shall answer that question after the former. After this, I took an oath before the privy council; I took two at different times upon giving informations respecting these trials; I have taken three since, one upon each of the trials; and before I took any of them, I had taken the oath of allegiance.

A Juror.—Were you a member of any corps of yeomanry?—I was chosen adjutant of a corps but a few days before I was arrested; the corps had no meeting, and therefore there was no opportunity of taking the oath of allegiance.

Mr. Curran.—Then the first oath was the oath of allegiance?—I say, I took it before any of these, therefore it was the first; I cannot say it was *the* first, but it was before any of these.

A Juror.—On what occasion did you take the oath of allegiance?—I took it to qualify myself to hold a lease of landed property, as being a Catholic.

William Bellingham Swan, esq. sworn.—
Examined by *Mr. Attorney General.*

You are a justice of the peace?—I am.

You are sometimes employed in very confidential matters by government?—Yes.

Do you recollect being employed to go to the house of Mr. Bond at any time?—I was, Upon what day?—Upon Monday the twelfth of March.

What was the business?—I received information on the tenth, that there was to be a meeting at the house of Oliver Bond, in Bridge-street, for the purpose of overturning the present constitution.

What steps did you take?—I had a party of serjeants of different regiments, dressed up in coloured clothes; on the twelfth, I repaired to the house; but previous thereto made my arrangement, and gave one of them a pass-word, by which I was to be admitted.

What was the pass-word?—*Where is Mac Cann? Is Ivers from Carlow come?*

To what serjeant did you give the pass-word?—To serjeant-major Galloguely, of the Fermanagh militia.

You sent him in?—Yes, and immediately after, I went and seized Mr. Bond in his own counting-house; I had a warrant, signed by Mr. Pelham, against Mr. Bond and several others.

It was mentioned in the news-papers, that you found Mr. Bond and some others in a room together?—It was not true.

You did not find him so?—No.

You found him in his counting-house?—Yes.

What did you tell him?—I told him I had a warrant against him for high treason; and I immediately darted up stairs, leaving an order, that Mr. Bond should be brought up after me.

In what part of the house was the room situated?—The back part; it appeared to me to be a new building, an addition to the house.

You got information of the room?—I had positive information of the room where they were to sit.

You went to that room?—I did.

What did you see?—I saw a number of persons in the room in groups; one man at the table, with paper, pen, and ink, and a prayer-book; I ran to the table, and was so anxious to get the paper, that the man slipped among the people, and I could not see which it was.

You got that paper?—I did; I desired that they should hold up their hands, lest they should destroy any papers.

These papers were not a settlement of accounts by merchants?—No; some of them were accounts of arms and ammunition.

[Here the witness identified the paper No. 1.]

Was Mr. Bond brought in?—He was brought in immediately after me; serjeant Mac Dougall handed me a parcel of papers. Some of the people had gone near the fire, and I drew a pistol, swearing I would shoot them if they went near the fire; they went

§

off, and then the serjeant handed me the parcel from the grate.

[The witness identified the papers; same as upon Byrne's trial.]

Did you search the person of Mr. Oliver Bond?—I did.

Did you find any papers upon him?—I did; I went to him, not wishing to put my hands into his pockets, and asked him. He turned his pockets out; I got these papers [No. 12], a letter directed from Cork, from Wilson; a note signed with initials, which I left with Mr. Cook, or the privy council. It is not here.

What were the initials?—T. R.

Do you recollect the purport of it?—At this time I cannot say; I gave it up.

Be so good as to tell who the people were?—I took their names, as they gave themselves.

Peter Ivers, who said he came from *Carlow*.

Laurence Kelly, who said he came from the *Queen's county*.

George Cummins who said he came from *Kildare*.

Edward Hudson, of *Grafton-street*.

John Lynch, who said he came from *Mary's-abbey*.

Lawrence Griffin, who said he came from *Tullow*, in the county of *Carlow*.

Thomas Reynolds, who said he came from *Culmultin*; I forgot to take the county.

John Mac Cann, who said he came from *Church-street*.

Patrick Devine, who said he came from *Ballymoney*, in the county of *Dublin*.

Thomas Traynor, who said he came from *Poolbeg-street*, and has since made his escape.

William Michael Byrne, who said he lodged at *Summer-hill, Dublin*, but he told me he came from the county of *Wicklow*; upon him I found the letter from *Mac Cann*, and other papers.

Christopher Martin, who said he came from *Dunboyne*, county *Meath*.

Peter Bannan, who said he came from *Port-arlington*.

James Rose, of *Windy-Harbour*, co. *Dublin*.

Richard Dillon, of *Bridge-street*, who said he had slipped in with the guard, and was afterwards discharged.

William Bellingham Swan, esq. cross-examined by *Mr. Ponsonby*.

In what part of the house did you find Mr. Bond?—Standing in the shop, or counting-house. He was standing in the middle, talking to two ladies and some gentlemen. It was on the left side as I went in.

Did you desire any thing of Mr. Bond when you went in?—I told him I had a warrant against him for high treason; that he was the king's prisoner, and, I believe, I said every person in the house.

Did he offer any kind of resistance?—Not the least.

Did you inquire for any other person by name, as you recollect?—I do not immediately recollect; I might, for any thing I know.

You went up stairs after you had spoken to Mr. Bond?—I did, immediately.

To another part of the house?—Yes.

Do you recollect what hour this was?—Precisely at eleven o'clock.

John Galloghly sworn.

What regiment do you belong to?—Fermanagh militia.

Do you recollect having been employed in the month of March upon any particular business?—I do.

Mention how and for what purpose?—Major Sandys sent me word by the serjeant-major of the Armagh, to dress myself in coloured clothes, and disguise myself as much as possible; I got word when I was in bed, and I attended major Sandys in the morning. We met some serjeants of the Armagh, and went to the old Custom-house.

Whom did you meet there?—Mr. Swan, the magistrate.

Do you recollect, whether you received any particular directions from him, what you were to do?—Mr. Swan told them all off in numbers, except me, from one to twelve. He turned to me and whispered me, did I know Bridge-street? I told him I did. He asked me, did I know the house of Oliver Bond? I said I did. He gave me a word. Do you go in, said he, before the party, and give this word, and stay in the house till I come; that he would keep me in sight.

What word? a pass word?—I conceive so; he said, when you go there, give the word.

What was it?—I recollect part of it. It was, "Where is Mac Cann?" He gave it in such a hurry, that I doubt whether I picked it all up. I went into Bond's house, and opened a door on the left of the hall, leading to an office. There was a door before me, but it was shut; I turned the button, and opened the door into the office.

Whom did you see?—A tall-looking man, and I gave him the word.

Would you know him?—I would.

Look and try if you can see him?—That is the gentleman [pointing to the prisoner].

Court.—What word did you give him?—"Where is Mac Cann?"

Counsel for the Crown.—What did that gentleman say to you?—He did not say any thing. He bowed to me, and before he could say any thing, Mr. Swan came in.

In what way did he bow to you?—He came forward to meet me, and when I mentioned the word, he bowed: then Mr. Swan came after and said, you are the king's prisoner, and all in the house. He was brought up; I remained below; I would not go up, because I saw pistols and some arms in the office, and kept my eye upon them.

VOL. XXVII.

[Not cross-examined].

Mr. Stroker sworn.

Where do you live?—On Ormond-quay, at the house of Finlay and Co. bankers.

In what situation?—A clerk in the house: I keep the specie book.

Were you acquainted with a person of the name of Hugh Wilson?—I was.

Was he in any particular situation in that house?—He was.

In what?—In the department of a runner in the same bank.

Is he still in the same employment?—No.

Where did he go to?—He went to Cork.

Were you acquainted with his hand-writing?—I have seen him write.

Have you often seen him write?—I think I have.

Can you form a belief whose hand-writing this is? [showing a letter found upon Mr. Bond, No. 14].—It is very like his hand-writing. I cannot swear positively.

Do you believe it is his hand-writing?—I do believe it is.

Watkins-William Verling, esq. produced.

The witness objected to his being sworn, saying that he had been agent to Mr. Roger O'Connor, and therefore ought not to be called to prove his hand-writing.

The objection was over-ruled.

Sworn and examined.

Do you know Roger O'Connor?—I do.

Are you acquainted with his hand-writing?—I am.

Whose hand-writing do you believe that letter to be? [showing a letter, signed O'C].—I believe it to be his.

Look at the date of it?—18th February, 1798.

Where was Mr. O'Connor at that time?—I cannot say; I was in Dublin upon that day.

Mr. O'Connor has taken the oath of allegiance under the proclamation?—He has.*

* This letter, though proved, was not read. It was as follows:

"My dear sir,

"I am to acknowledge the receipt of your kind letter—which I should have done by Mr. Leahy of this city had I timely known of his intention of going to Dublin. He is a worthy man and much esteemed by all here who know him.

"Yesterday and this day have been melancholy ones to me. On Thursday last I recd. the Account of the death of Mrs. O'Connor's only Brother—to communicate this sad intelligence to my wife I sent for her to Connorville, & here she arrived yesterday afternoon unfortunately knowing of her brother's death which added to a journey quite alone of 22 Miles on a very Cold day, a tormenting Cough, low spirits, in short to a thousand &c. brought her Very nearly dead to me insomuch that she

Arthur Guinness, esq. sworn.

[This witness proved several papers to be the hand-writing of Mac Cann, as in the former trials.]

Christopher-Stone Williams, esq. sworn.

[Proved the paper called the county Wicklow address to be the hand-writing of William-Michael Byrne, as in the former trial.]

William Cope, esq. sworn.

Are you acquainted with Mr. Reynolds?—Yes.

You recollect the arrest at Mr. Bond's house?—Yes.

Had you a communication with Mr. Reynolds concerning that?—Yes; he communicated to me, that there was to be a Provincial Meeting, told me the hour, and the persons who were to be there, and I communicated it to government, and the arrest took place in consequence.

A provincial meeting of, what?—Of United Irishmen: he had before described to me the

could not be prevailed on to allow herself to be conveyed to her lodgings, but went to bed here and in the night was taken in such a melancholy way as no words can describe, no help to be had, Goal Shut—and every moment I thought must be her last, this day Doctor Bullen came as soon as possible & found her in a very weak state indeed, she is now somewhat composed, but frequently torn to pieces by a dreadful Cough. Sitting on her bed, with one of my little girls who could Never be gotten to leave me, am I now writing to you—Will the day of judgment never come?

“You have heard of the death of Messrs St George & Uniacke five prisoners have been this instant brought in here charged with the killing—

“I have been full two hours writing thus far, my attention being called off every half minute to my poor wife,

there is nothing new here—Our Assizes are fixed for the 2d of April. *Perhaps* I may have the pleasure of seeing you and others of my friends in Dublin shortly after—I am told, but as yet I cannot positively say that Hebert the french prisoner who gave the Information agn. me has been Sent off with others of them from Kinsale to England—

“I recd. a letter from Arthur dated the 3d of feby. in which he mentions of having sent letters to me by a friend of mine, who has not yet come.

“I hope the next letter I shall have the pleasure of writing to you, will be on a more pleasant subject—at all times & in all situations believe me my dear Sir with truth your faithful

OC—

“feby. 18th, 1798—”

[Directed] “Oliver Bond, Esq.
Bridge St.
Dublin.” *Orig. Ed.*

different kinds of meetings there were; that when a society amounted to twenty, they divided into splits, and then they proceeded to a Baronial, a Provincial, and a Directory.

Did he tell you their design?—He did: to have them armed in such a way as to overturn the government, to establish a republic and assist the French.

Do you know any thing of a letter you delivered to Mr. Reynolds after the arrest?—I do.

Where did you get it?—I got it from Mr. Cook.

Do you recollect the purport of it?—Yes.

In whose hand-writing was it?—Mr. Reynolds: he was to have been at the meeting, and was afraid to be taken. I suggested to him, that it would be better for him not to go there, and he wrote a letter to Mr. Bond, acquainting him, that his wife, then great with child, was taken ill, and that he would not be able to attend so soon at the meeting, as the doctor had not arrived; but would be there at eleven, and desired him to tell Mac Cann, he would bring the money.

Why was the note delivered back to Mr. Reynolds?—He claimed my honour, that he was not to be brought forward; that he had wrote a letter, which was found upon Mr. Bond. I went to Mr. Cook and claimed the letter from him, and every other paper in the hand-writing of Mr. Reynolds, he being at that time determined not to come forward. No consideration would induce him. I tempted him in every way; I gave him the note, and what became of it I do not know; he told me he burned it.

Upon all the communications you have had with him, have you found him consistent?—In every thing quite correct.

Cross-examined.

You advised him to write the note?—Yes, I did.

Oliver Carleton, esq. sworn.

Did you ever see that paper before?—I have seen this paper before, it has my hand-writing upon the back of it: I got it, I think, when the press was taken up.

Thomas Reynolds, esq.

Proved two papers to be the hand-writing of Lord Edward Fitzgerald.

[The several papers proved upon the trial were now read, except the letter from Mr. Roger O'Connor, those found by Mr. Carleton, and those proved to be Lord Edward's hand-writing.]

No. 1.

[The paper found upon the table, the writing fresh.]

“I A. B. do Solemnly Declare that I came duly Elccted.”

No. 2.

" Brother,

" Inclosed you have the Letter Left by Citiz^r F.—* I have been making general Enquiries whether E. F.† has been in Town to-Day, and from Every Circumstance am inclined to think he has Not, if you wish to See him before you Set Off, think you should Lose no Time in going to the Rock, as you will be Sure to See him there at 6. O'Clock—I am to organize a New Sett this Evening, and to Attend my B. C.‡ which may Detain my Rather later, than I Could wish, however tis probable I may have the pleasure of Seeing you before 10 O'Clock.

Y^r most Sincerely,
JOHN MAC CANN."

" Church-street Monday."

[Directed]

" W. M. Byrne Esq^r.

Grumley's Hotel
Kevin-street."

No. 3.

The County W.—* C.—§ inform their Constituents, that by the advice their have received from the Provincial, it appears, that very flattering accⁿ. have been received from a-broad—which will in a very few days be officially handed down. The Provincial Returns of Men have only encreased a few Thousands since the last reports, as the new County Members have not yet come in, in Consequence of new Elections, which each Barony will take Notice must be on or before the 15th February next. The County Com^m again earnestly recommend it to their Constituents, to pay no attention to any flying Reports—as they know to a certainty, false Emissaries are Encouraged to Disseminate such News as may tend to Disunite or Lead them astray—The C. C.—|| bear with regret, the Dissatisfaction of the Baronial Committee of New-Castle—with respect to their not being as yet fully supplied with Arms, &c.—They assure them, that every exertion has been used to that Purpose; and that Quantities of Pikes are now manufactured for Delivery—but would at the same time recommend to have as many made as possible in each Barony, as they will thereby Come infinitely cheaper—The County Committee Cannot be accountable for any Money in the hands of a Baronial Treasurer, and of Course Cannot account for any, but Such as has been paid Into them, of

* Lord Edward Fitzgerald. Orig. Ed.

† Same. Orig. Ed.

‡ Baronial Committee. Orig. Ed.

§ Wicklow Committee. Orig. Ed.

|| County Committee. Orig. Ed.

which there appears a Correct Statement in the Returns; They feel with Concern, the Apathy of their fellow Citizens of the Co—W—* who refuse so small a Pittance as one penny per Man, to alleviate in some degree,—the distresses of their suffering Brethren now in W— Jail, where there are many innocent Cit^{is} in want of the common Necessaries of life—but who—tho'—famishing, scorn to Betray the trust reposed in them—The County Comm^m. inform their Constituents, that so far from having a fund in their hands—they are now indebted to one of their Members—[No. 2.] who has

kindly advanced £ 18 : 4 : 2 for the re-

lief of prisoners.—The County Members are therefore entreated to forward to him—without Delay, as much Money as can be Collected in their respective Baronies, as there appears to be now in Jail—from Arklow Barony, Four—from Shillela, Five—from Ballenacorr, Fourteen and one, from Talbot's town, fifteen, and from Newcastle, two—in all forty-two—without the smallest fund for the Ensuing M.† Resolved, that a Subscription be instantly commenced for the purpose of forming a fund,—for the employing and Retaining Coin^l. which shall be taken as a Voluntary Contribution—according to the circumstances of Individuals to be lodged in the hands of a treasurer Chosen by the County C^m.

Resolved, that it is requested, that the next meeting may be fully attended—as there is business of the utmost importance to be Taken into Consideration.

C. C. Jan'y 22nd. 1796.		Tal. 2974		20 3 10 Ed.		Prisoners		119	
low, Do,	706	—	—	1st	15	10	3	35	15
ar.	2400	59	8	3	2	22	19	0	83 5
Rd.	1500	17	0	0	3	37	19	3	162 3 4
N. C.	1800	13	15	0	No. 2	12	6	5	245 8 4
									85 10 11
U. B.	1800	13	5	0					£ 159 17 5
L. B.	840	8	2	0	Rest to Province				
Shil.	1080	7	19	3	75 4 6				
	12,800	162	3	4	08 18 10				
		75	4	6					

* Wicklow. Orig. Ed.

† Months. Orig. Ed.

‡ To explain this part of the paper, it was alleged to be a return of men, arms and ammunition for the county Wicklow, the Baronies of which county are designated by their initial letters opposite the first column of figures, which denote the number of men in each—C. C. means Co. Committee—Tal. Talbotstown—low. Do. Lower Talbotstown—ar. Arklow—Rd. Rathdown—N. C. Newcastle—U. B. Upper Barony—L. B. Lower Barony—Shil. Shillelagh. Orig. Ed.

	*G.	P.	£.	Sh.	Pa.	R. C.	B.	lb.	P
Tal.	181	78	66	134	221	3281	8315		75
Ar.	265	85	68	87	200	400	2050		800
N. C.	158	41	20	28	353		5945		169
B. D.	185	94	62	75	280	980	500		17
	789	298	216	328	1256	4711	22850		161
Ar.	210	75	62						
N. C.	100								
C. D.	200								
	1599	373	278						At.

No. 4.

[This was a list of printed toasts and sentiments from which the following extracts were read:---]

- " The Irish Harp attuned to freedom.
- " Health and Fraternity.
- " Ireland righted and the world Free.
- " The Green Flag of Ireland—May her Sons Unite and support it.
- " The Memory of ORR, who died a Martyr to Irish Freedom.
- " ERIN GO BRACH.
- " United Irishmen.
- " Ireland a Republic and the World Free.
- " The French Republic.
- " A speedy and RADICAL Reform.
- " May Revolution never cease till Liberty is established.
- " May the Guillotine clip the wings of Tyranny.
- " The United Irishmen—success to their efforts.
- " Mother Erin dressed in Green Ribbons " by a French Milliner, if she can't be dressed " with' her."

No. 5.

This was a receipt for the sum of £.5.

No. 6.

S. 1.	2. S.	4.	5.	6.	7.	8.	9.	10.	11.	2 S.
10										
Cap.										
C. 120										
	1									
	8									
960.	1 Col.									

No. 7.

A CAUTION TO THE BRETHREN.

Those appointed by you to superintend your interest have from time to time sent you such advice, or information, as they were enabled from reflection, or enquiry to offer for your advantage and the general good.

Still actuated by the same principle of zeal and fidelity, they deem it their duty to caution you against the immense quantity of Bank-notes, which government is fabricating with-

* These letters at the top of the columns of figures denoted the species of arms and ammunition, viz. G. Guns—P. Pistols—S. Swords—Ps. Pikes—B. C. Ball-cartridge—B. Balls—lb. P. Pounds of Powder. *Orig. Ed.*

out bounds. We need not tell you that the value of any Bank-note rests upon the credit of him who issues it. And in our opinion, the issuer of this paper is a bankrupt, who in all likelihood must shortly shut up, and run away. The present convenience of circulation will be but poor amends for the subsequent beggary and ruin it will bring on the holders; for you know it will be waste paper, and must stop some where as soon as there is a burst, and that the possessor (*God help him*) will be robbed of so much property as he has taken it for.

Sometimes people accept of rap-half-pence for the convenience of change; but that is by far not so foolish as taking these bank-notes; for a tinker or brass-founder will give you something for base metal; but when the government goes down, these fine notes of theirs, with stamps of hundreds and thousands upon them will not fetch a penny a pound at a snuff shop. Besides, government has a great many guineas in the Banks and elsewhere, which there is a design of hoarding up against the hard push, when these folks are very certain their Bank-notes will not be worth as much as the old rags they were made of. But if you'll not give the government contractors or commissioners your goods without *hard cash*, they must shell out the gold. What is the worst that can happen to you, but to sell somewhat less, until the want of your commodities makes them pay for them in proper coin; or if you don't sell, is it not better for you to have your goods than to give them for nothing?

No. 8.

19th Feb^r. 1798.

SW.	In Tr ^r . hands	20 : 18 : 3
Kildare	10863	
Wicklow	12095	
Dublin	3010	20 : 0 : 0
D ^r City	2000	
Qu ^r Co.	11689	
K ^r Co.	3600	
Carlow	9414	
Kilkenny.....	634	
Meath	14000	
	67,995	40 : 18 : 3

- " Res^d. that the colonels in Each County shall make a List of those persons to be Adjutants General for said Counties, the Lists to be Transmitted Sealed, Either thro' the Provincial or any Other Authentick Channel to the Executive, who will nominate one of the three to the employment.
- " Res^d that our Treasurer be allowed to pay 16 G^s. to the Delegate for to Buy a horse, which when the Entire Country is Organized, is to be sold, and the money paid Back into the hands of The Treasurer.
- " Res^d. that the Ex. Com^{ms} be requested to Acc^t for the Expenditure of 60 G^s. Voted then.

" Res^d that Each Co. who have not paid in the finance shall be Requested to pay in £70. immediately Except the Co. Carlow, which shall only pay £40.

" Privates Test."

" I A. B. do Solemnly Declare, that I will perform my Duty, and be Obedient to all the Lawful Commands of my Officers, while they act in Subordination to the Duty Elect-ed Comm^{ms}.

	No. 9.		
	In hands		20 : 18 : 3
K.....	10863		
W.	12095	£.	
D.	3010	30	20 : 0 : 0
C. D.....	2000		
Q. C. ..	11689		
K. C.	3600		
C ^r	9414		
K ^r	634		
M.	14000		
	67395		40 : 18 : 3

" 10 in the Morn^g. this day 3 Weeks.

" Resolved, that we will pay no attention whatever to any attempt, that may be made by Either houses of Parliament to Divert the Public Mind from the Grand object we have in View, as Nothing Short of the Compleat Emancipation of our Country will Satisfy us."

No. 10.

" Resolved, that it is the opinion of this Committee, that if the other P. * be in an equal State of Preparation with Leinster as Soon as we Can procure the Information of their State and their determination to act in Concert with the Nation, we should immediately proceed to act, and that the Exe^{cs}. † be requested to take such Steps immediately as will tend most Expeditionally to bring about an Union of the Different Provinces. " Res^d. that the Select Comm^{ms}. of 5 be requested to prepare a military Test, to be Laid before the Prov^{ts}, at their next Meeting for their approbation."

No. 11.

[Extracts read from the Pocket Book.]

	19th Feb ^r . 1798.		
1	812	28	8 11
2	865	19	15 0
3	500	9	15 6
4	—	46	0 0
	2177	104	6 5

* It was alleged by the counsel for the crown, that Ps. meant Provinces.—Orig. Ed. † Exe^{cs}utive.—Orig. Ed.

20th Feb^r. 1798.

P. C.		20	18	3
Kil.....	10863			
Wicklow ..	12895			
Dublin.....	3010	20	0	0
D ^r City	2177	104	6	5
Qu ^r Co.	11689			
K ^r Co.	3600			
Carlow	9414			
Kilkenny	634			
Meath	14000			
	68372	145	4	8

No. 12.

" We the undersigned do hereby certify, that we are perfectly satisfied with the conduct of ——— since his commencement in this business, and do now unanimously send him forward in the military capacity to act as our Serjeant."

[No. 13.]

*P.P.C. H.B. R.D. C.W.

		£.	s.	d.	
I. R.	12	—	—	—	four Cap ^{ts} Vey Thos. Miller Charles Calligan W ^m Mooney Jer ^m Delamene
A.B.	12	—	—	—	
C.D.	12	—	—	—	Secretarys or Ser ^{ts} . James Ryan Maurice M ^c Cue Edw ^d Reilly Charles Tool W ^m Booth James Booth John Sutton Philip Byrne
R.D.	12	—	—	—	Maurice Hanlon Rob ^t Parker Christopher Reilly J ⁿ Kerwin Ja ^s Edwards Patt Ward
C.F.	12	—	—	—	Tho ^s Meagan Francis Lamb Chris ^t M ^c Mahon Patt Brown W ^m Rutledge Lau ^s M ^c Enery Mich ^l M ^c Guirk Garrett Quinn
D.B.	12	—	—	—	
C.F.	12	—	—	—	
C.D.	12	—	—	—	
I. P.	12	—	—	—	
D.F.	12	—	—	—	
		120	is		

James Ryan

[No. 14.]

Dear Sir,
On Sunday last I took the liberty of drawing on you for 4l. 9s. 7½d. in fav Mr. R.

* Parish Powers-Court.—Half Barony.—Rath-Down.—County Wicklow. Orig. Ed.

King, which I hope you paid, this encloses you a Bill on Mr. Nugent for 10*l*. I doubt not but he will Accept it, if so have the balance brought to my credit, I am sure I will not want it before the Note I gave you will be due.

I have been so cooped up since I came here that had I known the situation of the place my mind should never have been so abominably cloyed for any emolument that I may derive before a change of the present G', takes place, you may inform Mr. Jack*, that I delivered the Letter he gave me the Day after I arrived and was dogged to the House of his worthy friend (who is a marked man here) asked by others if I knew him & put on my guard against him, all this I was highly pleased as it may tend to some good purpose at the same time tis hard to bear with, you can but faintly imagine how things are going on here, give the people but a little time & rest assured the progress science is making will astonish the world—The enemies of the human race are much alarmed & the revolt of the Dublin County Militia has increased their fears, Mr. Finlay says they are all assassins & he is almost afraid to trust himself with them I hear they are to be dispersed among the Hylanders thro' the Country, Numbers of Preachers of the true Gospel are better than few & those dispersed grain may not fall on Rocky Ground. There was a Court-Martial held yesterday on five members of the Cork Legion for Treasonable practices however they were all acquitted, the Hacks say they are happy of it although they well know they ought to a man to be Hanged Mr. Jacksons friend and another have been broke by a Court martial for disobedience of orders; when the News came this morning of the Spanish Fleet being out the Aristocrats seemed happy saying their doom was at hand Jervis being after them. If any thing material happens here, you shall hear of it as the way you will get my Letters will be perfectly safe, with best regards to Mrs. Bond & all friends I am

Sincerely yours H. W.

Cork 6 March 1798.

[No. 15.]

ADDRESS OF THE
COUNTY COMMITTEE

OF DUBLIN CITY,
TO THEIR CONSTITUENTS,

And an Appendix to our Glorious Constitution.

BRETHREN,

WE most earnestly intreat you, to recollect the solemn obligation you have entered into, "in the awful presence of God, to promote Union and brotherly affection amongst your countrymen of every religious persuasion." Be not merely nominal brothers, but

be active in the cause; and cheerfully contribute towards its support.

Form yourselves as speedily as possible into societies, upon the plan laid down in the annexed appendix, and let your secretaries be men of good moral character, sober, steady, and active.

Your numbers are truly formidable, and if properly organized and prudently directed, would certainly attain the end for which you have united; but without union and organization, you are an useless mass and can complete nothing: convinced of this, we again conjure you to fill up your societies, and pay in your subscriptions. The wants and distresses of several of your persecuted brethren, now in gaol call loudly for assistance, and it would be an eternal stain on the character of Irishmen, to let them call in vain. Many squander away sums of money, more than sufficient to relieve their distresses, on frivolous amusements, or the beastly indulgence of intoxication.

By no means make use of party articles of dress, or secret words or signs, they are certain inlets to deception; spies and informers will readily discover and make use of them for the purpose of gaining the confidence and discovering the secrets of honest unsuspecting men, whose ruin must be the consequence. Avoid all intemperance of speech and be on your guard against those who make use of it; 'tis often only the mask of designing hypocrisy, and a lure to draw you into acts or expressions which will be made a foundation to prosecute you for treason: spies and informers always use it, and have a licence for so doing.

In like manner avoid riot or any act that may be construed into a breach of the peace. But be particularly cautious that you be not led into any rash insurrection; for the only hope of your tyrants is, to create an opportunity of putting down the spirit of the country before the arrival of any event which would make it irresistible; they can never be better prepared than they are now; you, (rely upon it) will shortly be all-powerful; *be patient, be constant, be firm, be ready.*

But that you may be enabled to know how and when to act, we desire you will not attend to any orders or directions, but such as are communicated to you officially.

And lastly, we exhort you to distinguish yourselves from those wretches who bring disgrace on the name of United Irishmen by acts of Violence and dishonesty; our's is the cause of *Virtue, Liberty,* and our *Country,* and cannot need the assistance of practices which are vicious; if notwithstanding this admonition, any shall be found chargeable of such transgressions they will be regarded as aliens to the brotherhood.

APPENDIX.

Diminish as much as possible, the risque of giving or taking the T^{ax}; for this pur-

pose, therefore, we recommend that when any person has been admitted a member of a society, and is to take the Test, the practice should be, that it be taken in the presence of his friend only who proposed him, or of such other member of the society, as he may prefer for that purpose. It is likewise strongly recommended that one black bean should exclude from admission.

Avoid, as much as possible, meetings in public houses either of societies or committees, because they might be attended with much danger, and the occasions of meeting induce no such necessity; a few minutes in any convenient place, will be sufficient for a small number of men to confer on the objects of their deliberation.

As it appears from good foundation, that an irregular system of finance has produced a great waste and dissipation of the funds, it is our decided opinion, that no Society, Committee, or Treasurer, under any pretence should be allowed to apply the money passing through their or his hands, to any occasion whatever; but that the whole of the subscriptions should pass unimpaired to the county Committee, who should be obliged, in reporting back to the Societies, to account for the disposal of such finances; of course all applications for pecuniary aid should be made to the County Committee, to which all the necessities of the political association must be reported. The Societies are earnestly called upon to exert themselves with zeal and diligence, in paying in and forwarding their subscriptions, for the demands are of the utmost urgency; the sufferings and afflictions of the brotherhood greatly require alleviation.

It is also strongly recommended, that each Society shall fix upon a weekly subscription, suited to the circumstances and convenience of its members, which they shall regularly return to their Baronial by the proper officer.

Your Societies should be new modelled immediately, and on the most mature deliberation, and all circumstances considered, we are decidedly of opinion, that no Society should consist of more than *twelve members*, and those as nearly as possible, of the same street or neighbourhood, whereby they may be all thoroughly well known to each other, and their conduct be subject to the censorial check of all.

We recommend Baronial Committees to consist only of the Secretaries of the time being, of *ten Societies*, which number should on no account be exceeded; Baronial Committees to be numbered in the order of their formation.

The District Committees to be composed of the Secretaries for the time being, of the Baronial Committees, but not to exceed *ten members*, but if the baronials should be so numerous in the district, as to render it necessary, *five, six, seven, eight*, or any number, more or less, of the baronials, as the case may require, most convenient to each other,

should each send their Secretary to an upper baronial Committee, from which upper baronials in that case, Secretaries should be sent to constitute the district Committee, it being earnestly recommended, that no Committee, whether baronial or district, should exceed *ten persons*.

The County Committee to be constituted, as at present, by two members from each district Committee.

Observing these recommendations and regulations, we rely, that Order will be restored and confidence revived; as risque will be so considerably diminished.

February 1st. 1798.

[The case closed on the part of the Prosecution.]

[The Court ordered the sheriffs to furnish the jury with some refreshment, as in the former cases.]

DEFENCE.

Mr. Curran.*—Gentlemen of the Jury; fatigued as I am at this very advanced hour, and poorly as I am calculated to discharge the awful duty upon which I am entering, I feel how much more my client must depend upon the impartiality of his judges, than on the efforts of his advocate. I am not accustomed to make formal or premeditated speeches, but have been always of opinion that my clients have found their best defence in the kind and good-natured construction of their jurors. I trust that the present will not mistake the weakness of the advocate for the imbecility of the cause, or because the defence may be poorly insisted on conclude that the accused must be guilty.

Gentlemen of the jury; I do lament that the present cause has not been brought forward as simply and as unconnected with extraneous matter as in justice and humanity it ought. I do lament, and God grant that my client may not have cause to lament, that any of those little artifices which attach like cankering excrescences to the forms of justice, should be employed in a great and solemn cause like this.—I cannot but bewail that, instead of trying a fellow-subject on the simple

* "The Life of the Right Hon. J. P. Curran, by his Son W. H. Curran, esq.," to which I have already had occasion to refer, contains some extracts from a shorter but much more correct report of the speech in defence of Bond, than that which is given in the printed collection of "Curran's Speeches." Mr. Curran (to whom I am happy in availing myself of an opportunity of offering my thanks for the readiness with which he has afforded me his assistance on the present, as well as on other occasions), has obligingly furnished me with the passages which he had omitted in the Life of his Father, and I have accordingly printed in the text the above-mentioned report at length.

allegations contained in the indictment, there are introduced petty observations, and allusions to persons and things which ought not to intermingle in such a cause. What have to do with this trial the personages named with such seeming incidentality in the introductory statement? In God's name what relation has the speech of my lord Moira in the House of Peers to the case of my unhappy client? What the accidental table conversation of lord Wycombe?—If feeling and acting upon that dignity of mind which makes men resist the selfish allurements of great fortune, and the debasements of luxury,—if an elevation of soul and uncommon extension of philosophic views can make his name revered in the estimation of virtue as it is exalted in titled distinction, then does lord Wycombe challenge our admiration and esteem;—but what has all this to do with the charges preferred against my client?

Gentlemen of the jury; much pains has been taken to warm you, and then you are entreated to be cool; when the fire has been kindled, it has been spoken to, and prayed to be extinguished—*WHAT IS THAT?*—[Here Mr. Curran was again interrupted by the tumult of the auditors; it was the third time that he had been obliged to sit down: on rising he continued,] I have very little, scarcely any hope of being able to discharge my duty to my unfortunate client, perhaps most unfortunate in having me for his advocate. I know not whether to impute these inhuman interruptions to mere accident; but I greatly fear they have been excited by prejudice.

[*The Court* said they would punish any person who dared to interrupt the counsel for the prisoner. “Pray, Mr. Curran, proceed on stating your case: we will take care, with the blessing of God, that you shall not be interrupted.”] †

* “This question was occasioned by a clash of arms among the military that thronged the Court; some of those who were nearest to the Advocate appeared, from their looks and gestures, about to offer him personal violence, upon which, fixing his eye sternly upon them, he exclaimed, ‘You may assassinate, but you shall not intimidate me.’”
2 *Life of Curran*, 124.

† “Mr. Curran has been represented, by the detractors of his reputation, as surrounded, during these trials, by an admiring populace, whose passions, instead of endeavouring to control, he was rather anxious to exasperate, by presenting them with exaggerated pictures of the calamities of the times. It is not true that his audiences were of this description: one of the most honourable circumstances of his life is the fact that they were of a far different kind. He was encompassed, indeed, by men whose passions were sufficiently inflamed, but they were passions which it required no ordinary courage in the advocate to brave, and to

You have been cautioned, gentlemen, against prejudice. I also urge the caution, and not with less sincerity: but what is the prejudice against which I would have you armed? I will tell you: it is that preoccupation of mind that tries the accused before he is judicially heard—that draws those conclusions from passion which should be founded on proof—and that suffers the temper of the mind to be dissolved and debased in the heat of the season. It is not against the senseless clamour of the crowd, feeling impatient that the idle discussion of fact delays the execution, that I warn you. No; you are too proud, too humane, to hasten the holiday of blood. It is not against any such disgraceful feelings that I warn you. I wish to recall your recollections to your own minds, to guard you against the prejudice of elevated and honest understanding, against the prejudice of your virtues.

It has been insinuated, and with artful applications to your feelings of national independence, that I have advanced, on a former occasion, the doctrine that you should be bound in your decisions by an English act of parliament, the statute of William the Third. Reject the unfounded accusation; nor believe that I assail your independence, because I instruct your judgment and excite your justice. No: the statute of William the Third does not bind you; but it instructs you upon a point which before was enveloped in doubt. The morality and wisdom of Confucius, of Plato, of Socrates, or of Tully, does not bind you, but it may elevate and illumine you; and in the same way have British acts of parliament reclaimed you from barbarism. By the statute of William the Third two witnesses are necessary, in cases of high treason, to a just and equal trial between the sovereign and the subject; and sir William Blackstone, one of the wisest and best authorities on the laws of England, states two witnesses to be but a necessary defence of the subject against the profligacy of ministers. In this opinion he fortifies himself with that of baron Montesquieu, who says, that, where one witness is sufficient to decide between the subject and the state, the consequences are fatal to liberty; and a people so circumstanced cannot long maintain their independence. The oath of allegiance, which every subject is supposed to have taken, stands upon the part of the accused against the oath of his accuser; and no principle can be more wise or just than that a third oath is necessary to turn the balance. Neither does this principle merely apply to the evidence of a common and impeached informer, such as you have heard this day, but to that of any one witness, however high and respectable his character.

“despise. In his defence of Bond he was repeatedly interrupted, not by bursts of applause, but by violence and menace.”—
2 *Life of Curran*, 123.

I put this question to the Bench, and I put it confidently, if it is its opinion that the statute of William the Third ought not to have any authority with an Irish jury? If such be the opinion of the Bench,—I will not say it is a wrong one,—my respect for the Court will prevent my even thinking it is a wrong one,—but I will say that it will be the first of the kind ever given in this kingdom.

I now beg leave, gentlemen of the jury, to make a few observations on the charges laid in the indictment, and on the evidence offered in support of those charges. The prisoner is accused of compassing and imagining the king's death, and of adhering to his enemies. These are the two counts: the evidence is twofold; parole and written.

Mr. Reynolds has sworn that he was made an United Irishman by the prisoner, and has also sworn to what he conceived to be the objects of the society into which he had thus entered. But has he, gentlemen of the jury, sworn on his oath (liberal as he has been of them) that he was informed of these objects by the prisoner at the bar?—No such thing:—but he has told you what, if you can believe any thing he swears, must go as conclusive evidence in favour of my client: he has told you that hundreds upon hundreds,—these were his words,—took the United Test attaching no other meaning thereto than what was obviously conveyed by its literal expression. He has told you that two classes of men took this obligation: one, as binding them to those objects of conspiracy and treason which he has already explained; and the other, as considering it to be a bond of religious charity and affection, and political and constitutional reformation:—But he has not, hazardous as he is in evidential enterprize, ventured to state to which of these classes the prisoner at the bar belonged. And who shall attach crime to religious charity? who shall thus aid in restoring the terrible and gloomy reign of bigotry, which embroils men in hatred and in blood, turning their passions against each other's follies, instead of teaching them to bear each other's weaknesses, and endeavouring to sanctify with the blasphemous perversion of religious sentiments the lust of power and the lust of vengeance?

What, gentlemen of the jury, shall I say to you on the second feature of this test or obligation — Parliamentary Reform? On that point no man can be worse calculated to address you than I am; for in entering on the subject, I should seem to stand here more as the defender of myself than of my client: and if to promote a reform in parliament be to compass and imagine the king's death, or adhere to his enemies, you had better withdraw your attention from the unhappy gentleman at the bar, and in me behold the real criminal. If parliamentary reform be to endanger the life of the king, and to comfort his enemies, let your vision take a wider range, and in the parent of the measure

VOL. XXVII.

—in the first minister of Great Britain—behold the prime, the great, and the original culprit.

I know that Reynolds has laboured to establish a connexion between the prisoner and the meeting held at his house; but how does he manage? He brings forward asserted conversations with persons who cannot confront him—with Mac Cann, whom he has sent to the grave, and with lord Edward Fitzgerald, whose premature death leaves his guilt a matter upon which justice dares not to pronounce. He has never told you that he has spoken to any of these in the presence of the prisoner. Are you then prepared, in a case of life and death, of honour and of infamy, to credit a vile informer, the perjurer of an hundred oaths—a wretch whom pride, honour, or religion could not bind? The forsaken prostitute of every vice calls upon you, with one breath to blast the memory of the dead, and to blight the character of the living. Do you think Reynolds to be a villain? It is true he dresses like a gentleman; and the confident expression of his countenance, and the tones of his voice, savour strong of growing authority. He measures his value by the coffins of his victims; and, in the field of evidence, appreciates his fame as the Indian warrior does in fight—by the number of scalps with which he can swell his triumphs. He calls upon you, by the solemn league of eternal justice, to accredit the purity of a conscience washed in his own atrocities. He has promised and betrayed—he has sworn and forsworn; and, whether his soul shall go to heaven or to hell, he seems altogether indifferent, for he tells you that he has established an interest in both. He has told you that he has pledged himself to treason and to allegiance, and that both oaths he has contemned and broken. At this time, when reason is affrighted from her seat, and giddy prejudice takes the reins—when the wheels of society are set in conflagration by the rapidity of their own motion—at such a time does he call upon a jury to credit a testimony blasted by his own accusation. Vile, however, as this execrable informer must feel himself, history, alas! holds out too much encouragement to his hopes; for, however base, and however perjured, I recollect few instances, in cases between the subject and the crown, where informers have not cut keen, and rode awhile triumphant on public prejudice. I know of few instances wherein the edge of his testimony has not been fatal, or only blunted by the extent of its execution, and retiring from the public view beneath an heap of its own carnage. I feel, gentlemen of the jury, that I ought to beg pardon of Mr. Reynolds—I do beg his pardon; for I frankly confess that I have no reason, no authority whatever, for placing him in this point of view, but his own self-accusation.

Gentlemen of the jury, you have been em-

phatically called upon to secure the state by a condemnation of the prisoner. I am less interested in the condition and political happiness of this country than you are, for probably I shall be a shorter while in it. I have, then, the greater claim on your attention and your confidence, when I caution you against the greatest and most fatal revolution—that of the sceptre into the hands of the informer. These are probably the last words I shall ever speak to you; but these last are directed to your salvation, and that of your posterity, when they tell you that the reign of the informer is the suppression of the law. My old friends, I tell you, that, if you surrender yourselves to the mean and disgraceful instrumentality of your own condemnation, you will mark yourselves fit objects of martial law—you will give an attestation to the British minister that you are fit for, and have no expectation of any other than, martial law—and your liberties will be flown, never, never to return! Your country will be desolated, or only become the gaol of the living; until the informer, fatigued with slaughter, and gorged with blood, shall slumber over the sceptre of perjury. No pen shall be found to undertake the disgusting office of your historian; and some future age shall ask—what became of Ireland? Do you not see that the legal carnage which takes place day after day has already depraved the feelings of your wretched population, which seems impatient and clamorous for the amusement of an execution? It remains with you—in your determination it lies—whether that population shall be alone composed of four species of men—the informer to accuse, the jury to find guilty, the judge to condemn, and the prisoner to suffer. It regardeth not me what impressions your verdict shall make on the fate of this country; but you it much regardeth. The observations I have offered, the warning I have held forth, I bequeath you with all the solemnity of a dying bequest; and oh! may the acquittal of your accused fellow-citizen, who takes refuge in your verdict from the vampire that seeks to suck his blood, be a blessed and happy promise of speedy peace, confidence, and security, to this wretched, distracted, and self-devouring country!

Valentine O'Connor, merchant, sworn.

Where do you live?—In Dominick-street, in the city of Dublin.

You are in trade in this city?—I am.

Do you know a gentleman of the name of Thomas Reynolds?—I do.

The Thomas Reynolds who gave evidence here to-day?—I did not see him.

[Mr. Reynolds being in court, was pointed out to Mr. O'Connor, who said, "That is the gentleman."]

Does he deserve credit giving evidence upon his oath in a court of justice?—I can

only speak for myself: I would not give credit to his oath. From his general character, and from several things I know of him, I would not believe him upon his oath.

Valentine O'Connor cross-examined by Mr. Attorney General.

You form part of your opinion from a transaction between Mr. Reynolds and Mr. Cope?—I do.

You wrote a letter upon that subject to Mr. Reynolds?—I did, at the request of Mr. Cope and Mrs. Reynolds, his mother.

Did not Mr. Cope know of the transaction as fully as you did?—No doubt; he ought to know it better.

How long is it since you first knew or heard of Mr. Oliver Bond?—I do not know; I have had little communication with him.

Did you ever hear he was a United Irishman?—I might have heard it; I have had little communication with him; I believe I have heard he was a United Irishman.

When were you first summoned to attend this trial?—I have been summoned for three trials, and attended.

And you were not thought worthy to be examined?—I do not know.

Do you know Mr. Malachy O'Connor?—Yes, my brother, and in trade with me.

Do you know another of that name?—I do, a nephew of my brother and of mine.

Where is he?—In Liverpool, or London.

When was he in Dublin?—I do not know, he has not been here a long time.

Who applied to you first to be examined?—I came here once to be examined upon oath, and was asked what I could say. I would not mention till I was sworn.

Did not Mrs. Bond go to you?—She did.

Did not she ask you, what you could swear?—She surprised me at first; she came to me one Sunday morning; I saw her in the parlour.

You have attended courts of justice?—Very seldom.

You were very desirous to assist her?—She asked me about the transaction, and I was surprised at it, because I thought it was buried between me, Mr. Cope, and Mr. Reynolds's mother. I mentioned it to Mr. Cope, and he told me how it came to be public, that it was told to a Mr. Strange. I had great uneasiness in coming here at all.

Anne Fitzgerald sworn.

Do you know Thomas Reynolds?—I do.

Is he your relation?—His mother was my sister.

Have you known him long?—Since his infancy.

Do you know his character as well as his person?—I had every opportunity of knowing it.

From your knowledge of his character, do you think he ought to be believed upon his oath in a court of justice?—I do not.

Anne Fitzgerald cross-examined.

What is your situation in life?—I belong to a religious community.

Am I to understand, that you have taken the veil, and are a nun?—I am.

May I ask you, if you have been long in that situation? from your early youth? or after you had tried the troubles and the pleasures of the world?—It was at the usual period.

From a very early period?—Not a very early period; but I have been thirteen years there.

That is a society of religious persons, retiring from the world, and knowing little of it?—We are not so secluded in this kingdom.

Notwithstanding your retirement, you know something of the business of the world. Do you understand the nature of perjury?—I think I do.

Be so good as to explain it?—Attesting contrary to one's belief or conscience.

You have sworn, that Mr. Reynolds is not to be believed upon his oath. You form charitable opinions of all mankind. Am I right?—I believe you may judge.

Then communicate any of the perjuries that he has been guilty of?—I do not know as to his oath; but as to his being a man of truth—

You do not know of any perjury committed by him?—Not upon his oath.

Then your idea of perjury is, falsifying not upon oath?—I say, he is not a man of truth; I have heard him accused—

You have had frequent intercourse with him?—Until of late he had frequent communications with me.

What do you call late?—Ten or eleven months.

Have you not seen him since?—Yes, I have seen him since.

Do you know his wife?—I do.

Are you in the habits of receiving visits from her?—I have seen her occasionally.

You have not admitted her upon cordial intercourse?—She was on the footing that was reasonable; good-natured and neighbourly; and that sort of footing.

And why do you not say cordial intercourse?—I am not in the habit of giving invitations, I am not in a way for it.

Do you know Mr. Taylor, of Athy?—I do.

Did you see him lately?—I did.

Upon what occasion?—He came to town with an express.

Was it since the arrest at Mr. Bond's?—I believe it was, but I am not positive.

By virtue of your oath, did you not tell Mr. Taylor, that Mr. Reynolds was an infamous man for betraying the cause of the United Irishman?—No.

Did you not make some observation upon his doing so?—Mr. Taylor called to me about some business in the line of his profession; he is an attorney; he told me, he came with

an express to Dublin, to seek to have the town of Athy prevented from being set on fire, and he talked of the disturbed state of the county, and of the soldiers being sent on free quarters; and I asked, was it said in the county of Kildare, as in Dublin, that Reynolds was an informer? I do not recollect any farther conversation.

Did you make any farther observation upon his being an informer?—I do not recollect.

Did you upon any other occasion?—I do not recollect.

Did you to Mrs. Reynolds?—I do not recollect.

Pray endeavour to recollect?—She asked me, what I could say of her husband's character? I answered, I could say nothing of him that is not infamous.

Mention the rest of the conversation?—She mentioned something before, that he was an informer, and she took up my words; I am not equal to the task, nor in a state to go through it.

You must endeavour to recollect the conversation, since you have come here three times to falsify your nephew's character?—I cannot recollect exactly the rest.

Be so good as to recollect what you mentioned to Mrs. Reynolds?—I fear it is impossible.

Did you make any observation upon Mr. Reynolds, when you heard he was an informer?—Upon my entering the room, I saw her sitting with Mrs. Molloy.

Did you pronounce any censure upon Mr. Reynolds, for being an informer?—I believe I might have said—Upon my entering the room, I found her sitting in the room; I saw her agitated, and in tears; Mrs. Molloy said, that Mrs. Reynolds had been telling her, Tom Reynolds is an avowed informer. I expressed surprise, "Is it possible?" or some such expression; she repeated, and said, "Sure you know it; were you not served with a summons?"

Mention your observation?—I cannot go through, I am so overpowered.

Take your time, madam?—Mrs. Reynolds asked me, "Do you not know it? were you not served with a summons?" Mrs. Molloy replied to her, that she would not believe injurious reports without confirmation.

Then what did you say?—She asked me, what I had to say as to his character, respecting the transaction as to the bond? upon which I replied, "Good God! I know nothing of him but what is infamous."

Did you make any observation upon his being an informer?—I cannot come to that; I am recollecting the conversation.

Mention the observation you made, relative to his being an informer?—I cannot recollect.

Did you make any observation or not?—I cannot say positively, whether I did or not.

Then why recollect exactly what Mrs. Molloy said, and what Mrs. Reynolds said, and not recollect what you said yourself upon

so serious a subject, as speaking of your nephew to his wife?—I cannot recollect: it is not upon my memory.

Since you cannot recall what you said, you may recall your thoughts; whether do you think ill of him for it?—I cannot tell what my reflections were.

What do you think of him now, well or ill?—I declare I am not equal to answer these puzzling questions.

Have you no opinion of him?—I have this opinion, that acting with duplicity and deceit was improper, infamous and bad upon any occasion.

Do you conceive his giving information was acting with deceit and duplicity?—I am not a judge; I think his own conscience should be his director.

Do you swear you have no opinion upon it?—I do not swear to that; I say, that any act done with deceit or duplicity I consider very bad and improper.

Do you consider this as done with deceit or duplicity?—I am not a judge.

Did you ever apply the name of informer to him in conversation with Mrs. Molloy, or any other?—Never to my recollection.

Have you a brother?—I have, and the best of brothers, and the best and worthiest of men.

He has been unfortunate to be under a charge of treason?—I do not know; I have not heard the charge made against him.

Is he at large or in custody?—It is a question I cannot decide.

Which do you believe?—It is a point I doubt.

Did you not swear the last time you were here, that you did believe he was in prison under a charge of a public crime?—No, I did not say a public crime; I was asked, had I a brother in confinement; I said, I had.

Then why not give the same answer now?—I am not certain as to his situation.

Why were you more certain at that time than now?—I did not hear at that time, he was out; but since, I heard he was to get out; he may be out to night or to-morrow.

Do you know where Mrs. Molloy is?—I do not.

She has eloped from the convent?—I do not know how you may term it; she is not there.

Is it her place of residence?—She lives there.

How long is it since she went away?—On Saturday morning.

Court.—Mrs. Molloy said, Mrs. Reynolds told her Tom Reynolds was an avowed informer; you expressed surprise at that?—Yes.

Were you really surprised?—Yes, there is something in the name that I always considered degrading and improper.

You said you knew nothing of him that was not infamous; have you any particular cause for using that expression? Do you

mean to say, that he is capable of taking a false oath in a court of justice?—I meant it from my knowledge of his character.

Do you mean to say he would take a false oath?—I say from my general idea of his character, that his oath is not to be credited.

Is it from the circumstance of his being an informer, that you supposed him capable of taking a false oath?—No.

From what then?—My general idea of his character.

Henry Witherington, esq. sworn.

Is your mother dead?—She died last April twelvemonth.

What was the cause of her death?—I imagine it was from a dose of medicine administered by Mr. Reynolds.

Was there any medicine administered to her?—Yes.

When was it?—On Saturday night.

Were you in the house?—Yes.

Mr. Reynolds administered the dose to her on Saturday evening?—Yes.

When did she die?—Early on Sunday morning.

When do you say the medicine was administered?—Late on Saturday night.

Do you recollect the circumstance of her body being lapped up in a pitched sheet?—I do.

Upon what day was that?—Upon Monday evening.

What occasioned the necessity of wrapping the body?—Mr. Reynolds said it was necessary; I know no other cause.

What was the opinion of the family as to the immediate cause of her death?

[This question was objected to.]

Court.—This witness cannot give in evidence the opinion of others, when those persons can be produced.

You are acquainted with the character of Mr. Reynolds?—I am.

From your knowledge of his character, do you think him deserving of credit upon his oath in a court of justice?—I do not.

Henry Witherington, esq. cross-examined.

What age were you at the time your mother died?—Between sixteen and seventeen.

Do you recollect what part of the house you slept in?—That night I remained in her room; I had slept in the barrack.

Was, or was not Mr. Reynolds abroad the evening before her death?—He was.

Where?—I believe at the theatre, or at Astley's.

What time did he go out?—Early in the evening.

What time did he return?—About twelve.

He was not let into her room?—No, he came to the door and enquired for her, but was not let into the room.

Then, sir, what time did he give her the

medicine?—In the day time he gave it to her, and she took it at night.

Was he present?—No.

You were?—I was.

Were you present when he gave it to her?—No, but she told me.

And then you came here to confront your brother-in-law as to the fact of giving that medicine late on Saturday evening?—I did not know what questions I would be asked.

He swore he gave it to her on Friday, and you say that it was on Saturday night, though he was from home?—He went from home about six in the evening.

You said he gave it late at night?—I understood it was administered to her, and that was the question I answered.

When did she tell you it was given to her?—That day.

You have had some little difference with your sister and brother?—Never with my sister.

But with your brother-in-law?—I have not spoken to him a long time.

What servants were in the house that night?—A man and a woman servant.

Are they alive?—As to the man I do not know; I saw the woman the other day.

Did any physician attend her?—She was attended by Mr. Fitzgerald.

Is he alive?—I do not know; I have not seen him this some time.

Is he not a better judge of her indisposition than you?—I know nothing of his judgment.

Did he attend her that evening?—No, but he saw her in the morning.

She had not been well for some time?—She had not; she complained of her stomach for a month.

Had she not recourse to strong liquors to ease the pain of it?—I do not know.

Edward Witherington, esq. sworn.

You are in a military situation?—Second major in the 9th dragoons.

Have you any knowledge of a person of the name of Thomas Reynolds?—I have.

He is married to your sister?—He is.

You recollect the time of your mother's death?—I do.

You were not in Dublin?—No; I was in the north of Ireland.

Do you know the day upon which she was supposed to die?—Sunday morning as I heard by an express I received.

Did you come to town?—The express did not arrive with me till very early on Monday morning; I was in town about six on Tuesday evening.

In what situation did you find your mother?—I cannot say, I went into the room that evening, but I was informed —

[This evidence was objected to.]

Did you see her the next day?—I did.

Was there any thing particular? Was she wrapped up in any thing?—Yes, in a pitched

sheet, and so disfigured by the pitch, that I could not discern a feature in her face?

You know the character of Mr. Reynolds?—I do, Sir; I have some reason to know it.

From your knowledge of his character and the man, do you think he deserves credit upon his oath in a court of justice?—Why, sir, from a recent circumstance, I must say, from what he asserted in this court upon a former trial —

But from your opinion of the man and knowledge of his character, is it your opinion, that he deserves credit upon oath?—It is a very painful question.

It is so, but you must give your opinion?—I think not, indeed.

Edward Witherington, esq. cross-examined.

Do you form that opinion from his general character taken up some time back, or do you take into your consideration any thing he swore during the last trials?—I must say, chiefly from what he swore during the trials.

Let me ask you if the point of his testimony was not as to something in which you yourself were concerned?—Yes.

Are you acquainted with the prisoner?—Not in the least; I never saw him to my knowledge till this day.

Did you attend as a witness upon the former trials?—No; but it is from some assertions in the public prints that I take it.

[The case closed on the part of the prisoner.]

William Cope, esq. examined on the part of the Crown.

How long have you been acquainted with Thomas Reynolds?—A great many years.

Have you had an intimate knowledge of him and his character?—Yes.

From your knowledge of the man and of his character, is he a person to be credited in a court of justice upon his oath?—He certainly is.

William Cope, esq. cross-examined.

You got the character you entertained of Mr. Reynolds in the month of February last?—Certainly.

Did you think he was capable of violating his oath of allegiance?—It never occurred to me.

If you had been asked, what answer would you have given?—I would have said that he could not.

Why?—Because if he had taken the oath of allegiance, I should think, he would not break it. But there may be circumstances; as for instance, the United Irishmen put a deception upon men's minds, and a man might think he was not breaking the first oath, when he took the second.

Did you ever hear of that little anecdote of his putting a pitched sheet about his mother-in-law?—Never, till I heard of it here.

And if you were asked about it in February,

you would have said you knew nothing about it?—Certainly, because I would not believe him capable of it.

Would you have said any thing about hurrying forward an old lady by a little tartar emetic, if you knew nothing of it?—I would not.

You see the advantage then of not knowing a thing. Had you ever heard at that time, that the old lady had taken this dose on Saturday and died on Sunday?—No, but I heard she drank a great deal of spirits, took plenty of them: she was almost constantly drunk.

Did you hear, that he swore he gave that potion on Friday, and she died on Sunday?—No.

And you had not heard, that the pitched sheet was put upon her the 4th day after her death?—I never heard a word of it.

Mr. Curran.—Do you not see, Mr. Cope, you know nothing of the matter? I might as well ask you about Buonaparté.

William Furlong, esq. sworn.

Are you acquainted with Mr. Thomas Reynolds?—I am acquainted with him.

Are you long acquainted with him?—Upwards of seven years.

You have had dealings with him?—I have.

From your dealings with him, your observations upon him and his character, is he a man to be believed upon his oath in a court of justice?—I think he is.

William Furlong, esq. cross-examined.

You were his attorney?—I was, for some time; I was attorney for his father.

Were you ever attorney for his mother-in-law?—Never; but I was for his mother.

And you knew very much of the pleadings and briefs and attested copies?—There were a great many.

He was a litigious client?—No, he was not; but his mother had some in that way.

Did any thing respecting the bolus come before you?—Never.

Nor the pitched sheet wrapped round the body, to prevent the lady from catching cold after she died?—No.

The sheets you are acquainted with are made of paper with wide lines?—Yes, Sir.

Ink instead of pitch, six words to a line for the improvement of counsel? This is a man of good motives and sound discretion?—He appeared to me a man of good motives and sound understanding.

Have you heard him take many oaths?—No; I heard him take one here.

He took that well?—He did.

The Rev. Thomas Kingsbury sworn.

Do you know Mr. Thomas Reynolds?—I do, sir.

How long have you known him?—About four years.

Do you know his general character?—Yes, sir.

From his general character, do you believe him credible upon his oath in a court of justice?—I do.

The Rev. T. Kingsbury cross-examined.

Pray, when were you applied to, to give evidence of the character of Mr. Reynolds?—I cannot exactly state as to the day, but I was subpoenaed for the trial of Mac Cann.

Was it you that married Mr. Reynolds?—It was not.

You attended his mother-in-law in her last sickness?—No, sir, not at all, I am not a doctor.

Do you not know there is a spiritual doctor, as well as a corporeal one?—Yes; but I am not of standing for a doctor.

Of standing! You are a clergyman?—Yes, but I am only a master of arts.

You have heard of the pitched sheet?—I heard some mention of it two minutes ago, but did not know what it meant.

Were you intimate in the family of Mr. Reynolds?—Very intimate.

You never heard any charge of an accident by some tartar emetic?—I never heard a word of it.

Had you any dealing with Mr. Reynolds?—What dealing do you mean? I had very intimate intercourse.

You walked in and walked out, and stayed some time, sitting or standing, and therefore you believe him?—I was very intimate there, and had an opportunity of knowing his character.

Did he ever tell you, that he would not perjure himself?—No, he never told me.

Did you ever tell him?—No.

Did you ever think upon the subject?—No.

Then what test had you by which to form your opinion?—From his general propriety and conduct.

Was there any sort of dealing between you?—No; but I speak from my intimacy with him.

What part of your intimacy made you of the opinion you have given?—The sentiments I have heard him express.

Is there no such thing as a hypocrite, doctor?—There is.

And a man's expressing himself an honest man will not make him one?—No, sir. But he never stated himself one or the other, and from his general conduct I form my opinion.

Do you recollect any particular fact?—I cannot recollect any particular fact, but I speak from general conduct.

Mr. Ponsoby.—My Lords and Gentlemen of the Jury; I am counsel for Mr. Bond, the unfortunate gentleman who now appears at the bar. I do not know that in the course of my life I have ever felt so much ashamed, or felt before at all ashamed of being an Irishman; I do feel ashamed, that the law of this country of which I am a member, should on

a charge of high treason depend, upon the single testimony of such a man as Thomas Reynolds.

I have been used to think there was something of equality between the English and Irish law, on the subject of high treason; the law indeed is in a most dangerous state, if the life of a man who is charged with a crime at the prosecution of the Crown, may depend upon the single testimony of any man the most blasted, and most infamous of mankind. Had Mr. Bond been accused and tried in Great Britain, there must be two witnesses to prove the overt-act, to conviction; the conviction must be in the most satisfactory manner. In Ireland, it is said one witness is sufficient to prove an overt act; but is an impeached witness's testimony, to deprive my client of his existence? must I now listen to, and learn such doctrine? I used to feel and think myself an Irishman. My lord and gentlemen of the jury, an act of parliament for the amendment of the law of high treason, passed in Ireland, it was an amendment of the statute of William 3rd of Great Britain; it does not imply, it was an act to guard the public liberty of the subject; the people in Great Britain were left in the enjoyment of their liberty; but by the law in force here, it would seem as if Irish subjects were the most infamous of mankind. The life of a British subject is protected, by its being required, that to convict a British subject of the crime of high treason, there must be two witnesses to prove the overt-act. In the present case, there has been but one witness to prove this most examinable charge against the prisoner, namely, Mr. Reynolds; if he had taken a thousand oaths, to challenge the life of the prisoner at the bar, yet what credit, gentlemen of the jury, would you give to him, when you have heard the account he gives of himself? He has told you he did swear to be true to the society of United Irishmen, and he told you he took the oath of secrecy to the society of United Irishmen. He told you, that he happened to go to Castle Jordan to sir Duke Giffard's, and having dined there, the conversation turned on politics, and on the proceedings of the United Irishmen; that Mr. Cope was one of the company; and on the next day, about the middle of February, Mr. Cope and Mr. Reynolds came to Dublin together, and Mr. Cope resumed the conversation of the preceding day, and Mr. Cope practised upon the tender heart of Reynolds; representing to him the ill consequences resulting from the society of United Irishmen, till at length Mr. Reynolds said he had a friend, who was a United Irishman, and he would endeavour to prevail on him to come forward and give information against them. Mr. Cope said such a man would deserve 1,000 or 1,500*l.* a-year, and a seat in parliament; Reynolds said his friend only wanted remuneration for losses he might sustain, which he imagined would amount to about

500 guineas, and did not mention it as a reward for services; Reynolds then gave every information respecting the society of United Irishmen, and declared he had sworn an oath of secrecy to United Irishmen; but it seems he afterwards changed his mind, and was determined to give evidence against them; Mr. Reynolds said he suspected his character was maligned. It seems that this honourable and feeling man—Mr. Reynolds, who was a member of the society of United Irishmen, considered himself as a man of high character, and says he did not intend to be a public informer. Let me ask, gentlemen of the jury, what credit you can give to the account, told you by Mr. Reynolds? you have heard his testimony; can you say he deserves credit upon his oath? You will observe he has sworn an oath of allegiance to be true to the king, and he has also sworn an oath to be true to the United Irishmen; you see he was not an unsuspected witness, as to his character; and you will determine what credit you will give to his testimony.

He has sworn that the prisoner at the bar was a United Irishman, and that Mr. Bond, the prisoner, did administer the oath to him; and that their meeting was for treasonable purposes. As to the written evidence produced, there was not one single word of it in the hand-writing of the prisoner; you cannot apply those papers against the prisoner: as to the meeting of the United Irishmen being held in Bond's house, I do not conceive that can prejudice Mr. Bond, any more than any other man in the community. What is the evidence laid before you? It depends solely upon the testimony of Reynolds; he says he was present on Saturday when Mac Cann asked Bond to let him have a room for the society to meet in, on Monday, March 12, and Bond gave Mac Cann the use of a room. Reynolds says, lord Edward Fitzgerald desired Reynolds to accept of the office of colonel, and Reynolds did accept it, and then goes to Bond, to ask him if he should accept it, after he had accepted of the commission; like a girl who first marries, and then afterwards asks the parents consent to be married; so Reynolds first accepted the commission of colonel, and then, if you believe him, he went to Bond's to ask him for his advice whether he should accept of being colonel or not. Can you believe Reynolds in this story he has told you merely to implicate Bond in that transaction? I am sure you cannot believe him; see in what situation he comes forward as a public informer; he takes a pride in mentioning his crime; he swore that Mr. Bond administered the United Irishman's oath to him; he ventures to swear that Mr. Bond gave him that oath.—The next charge is, that the United Irishmen met at the house of Mr. Bond, on the 12th of March; upon this subject the evidence is somewhat better; he told Mr. Cope, that the United Irishmen were to meet at Bond's on the 12th of March, but

he did not find Bond sitting at the head of that meeting—but in the warehouse of his house in Bridge-street. There was no proof that Bond was a member of that society; Bond did not preside at that meeting; if Mr. Bond was connected with that meeting, no doubt Reynolds would have stated it, but he dared not do it. How can you, therefore, connect the meeting at Bond's and say it was the act of Bond, or connect Bond with lord Edward Fitzgerald, in a conversation held between lord Edward and Mr. Reynolds at Leinster House, where Bond was not present. I do say it had nothing to do with Mr. Bond; and as to the papers, they were not found on Bond himself, but in Bond's room, when the society met, but Bond was not present; there was nothing criminal in any written paper found on Bond: he cannot answer for the criminality of other persons. He did not call a meeting of the United Irishmen on the 12th of March last; the fact rests on Reynolds's evidence alone, that Mr. Bond knew of the purport of that meeting. The facts sworn to by Reynolds only amount to a conspiracy. All other parts of the case are only grounded on what Reynolds says. Reynolds wrote a letter to Bond, to apologize for his not attending the meeting, as Mrs. Reynolds was ill. That is in the handwriting of Reynolds, found in Bond's pocket; and yet this letter is to implicate Bond;—for what reason? Is Reynolds's desiring Bond to make an apology for his non-attendance, to fix criminality on Bond?—You have heard all the testimony of Reynolds; you are now to consider whether you will give such credit to his evidence, as to induce you on your oaths to say that Mr. Bond is guilty of high treason, and take away his life. You have no written evidence in the hand-writing of Mr. Bond; you have nothing but the evidence of Reynolds to affect the life of Mr. Bond, and you are to judge whether you believe Reynolds or not.

As to the paper produced in the hand-writing of Mac Cann, it is not on that evidence that you can take away the life of the prisoner at the bar. Reynolds would have you to believe that Bond knew of the purpose for which he lent the room to the society on the application of Mac Cann. If any of you, gentlemen of the jury, knew a man who had broken his oath, would you believe him on any other oath he might take? To get the evidences of witnesses to prosecute others, rewards may be held out, or punishments inflicted; in Russia they apply the bow-string, or the knout, here a witness has received 500 guineas; if a witness appears to give evidence, as a public informer, his evidence and his credit should be very scrupulously attended to, more especially when you have only one witness, on which you are to found your verdict, to take away the life of a fellow-creature. We have produced the two Mr. Witheringtons, and Mr. Valentine O'Connor to impeach

the character of Reynolds; they told you they would not believe Reynolds on his oath; those gentlemen did not give their testimony before, therefore you have more ground to reject Reynolds's testimony than former jurors had. Will you then impute criminality to Bond, merely upon the evidence of any impeached witness? You will, therefore, most maturely weigh in your own consciences whether you think you can or ought to take away the life of the prisoner at the bar, upon the bare testimony of Reynolds. You will not do it through solicitation, or to show your loyalty. As to the papers found in Bond's possession, they not being in his hand-writing, cannot, as I have already mentioned to you, affect the life of the prisoner at the bar; you are then reduced to the evidence of one single witness, namely, Reynolds; is the life of Mr. Bond to be taken away, on a charge of high treason, by the oath of one single impeached witness? By the Jewish law of Moses, the Jews, to prove a crime against a Hebrew, required the oaths of two witnesses to the fact. I do not say, the law with regard to the Hebrews, is the law in Ireland, but there ought to be the positive testimony of two credible witnesses, before the life of a fellow-creature is to be taken away. Though two witnesses are required in England to prove an overt-act of high treason, yet in Ireland it is held that the oath of one witness is sufficient to take away the life of a fellow subject; if therefore the oath of one witness is, in Ireland, sufficient to take away the life of any man, how much more incumbent is it on you, gentlemen of the jury, to protect the life of a man, by attending more minutely, to see that that single witness is a man of irreproachable morals, and to observe that his testimony is such as that you can believe him upon his oath. By the common law of England, which is the common law of Ireland, it is enacted, that there shall be two witnesses to prove an overt-act of high treason, but the Crown will tell you, that in Ireland one witness is sufficient to prove an overt-act of high treason; it would therefore be the greatest presumption in me, to contend for the contrary position; I shall only press upon your minds, that if you can take away the life of your fellow man, upon the testimony of one single witness, you, gentlemen of the jury, must be fully satisfied, that there is no just exception to the credit of that single witness.

It is of the highest moment, gentlemen of the jury, for you to consider that this witness has been impeached in his credit by one of the honestest men in the community, who told you he would not believe Mr. Reynolds upon his oath. Let me refer you to Mr. Reynolds's own declarations; he told you of the many oaths he has taken; he gives a recommendation of himself by his taking oaths and breaking them; I call upon you, first to determine whether in your consciences you

can give any credit to the testimony he gave; I call upon you to decide on that point before you find your verdict against the unfortunate prisoner at the bar. You will consider the distressed, painful, critical situation of those two military gentlemen who have given their testimony, that Reynolds ought not to be believed upon his oath. It could not be agreeable to them to come forward to give their evidence, as it might prevent their rising in their profession; can you, therefore, gentlemen of the jury, say upon your oaths, that you think Reynolds is worthy of credit upon his oath? If you are of that opinion, you are the only twelve men in the world who would be of that opinion, neither do I believe there is any man out of this court, or in this court, who would give him credit upon his oath. Let me appeal to your humanity and sensibility to consider, that though the law does not positively enjoin, that in Ireland there shall be two witnesses to prove an overt-act of high treason, yet I do beseech you, for the sake of securing the liberties of Ireland, that you will not consider a single witness in the latitude that has been mentioned, and where you have heard witnesses to impeach his credit, that therefore you will not find your verdict of condemnation of a fellow subject, on the evidence of one single witness, and that you will not transmit to posterity, a precedent of your verdict being found upon the testimony of a single witness, even if he was not impeached in the manner he has been.

Gentlemen, you do not know the number of prisoners to be tried; as to the former trials, the evidence against Reynolds was not so great as on this day, and therefore the precedents of other verdicts, found on other evidence, ought not, and will not have the smallest weight with you in the verdict you are on your oaths called upon to give. You cannot say that Reynolds's credit is not impeachable, you cannot say his evidence is supported and corroborated by other witnesses; you cannot say he is not an abominable man; and therefore upon the whole, you ought to reject his testimony.

Gentlemen of the jury, the learned and ingenious advocate for the prisoner at the bar, has exerted so much ability, and mentioned to you every circumstance of our client's case in his speech to you, that he has left me little to say; but I will venture to observe, that it will promote the public good, that the public should know that they enjoy the blessing of trials by jury, and that the jurors are inflexible in deciding only on the evidences before them; you have heard the witnesses to the prisoner's character, and it has been given in evidence, that he has gone through the principal part of his life in this city, as a fair and a respectable merchant, that he has a wife and several small children, and that to deprive him of his existence, would be to visit his crime upon his posterity,

VOL. XXVII,

upon his nearest and dearest relations. If the lives of any of your fellow subjects are to be taken away by the swearing (perhaps the false swearing) of a single witness, what man in the country can guard against the perjury of a single witness? If the oath of a single witness is to convict any man, it may be said, there is no man in the community that may not have a charge preferred against him, and an accusation of this sort supported by the evidence of a single witness; thus one witness might destroy the safety of all the subjects of this country.

Gentlemen of the jury, for the space of four months has my unfortunate client remained in gaol, and all that time, till very lately, been ignorant of the grounds of this prosecution, and has not been able to know the charges made against him, until he got a copy of the indictment, nor been able to find out witnesses who could prove that Reynolds was not deserving of credit upon his oath. Let me ask, would you, now you have heard the evidence on behalf of the prisoner at the bar, condemn him on the bare evidence of Reynolds—to death?—I shall only beseech you in the words of the great Saviour of the whole world—"do unto others, as you would they should do unto you;" let humanity, let compassion, let reason herself induce you to consider the situation of the prisoner at the bar, now upon trial for his life, when there is none but a Thomas Reynolds who can say aught against him. Gentlemen of the jury, take into your mature deliberation which do you think most conscientious and agreeable to your oaths, to pronounce a verdict against the life of the prisoner, and establish the evidence of Reynolds—or to reject his evidence, and find your verdict of acquittal of the prisoner?—But let me ask, can you on your oaths, establish the character of the single witness, and say he is a respectable and credible witness in this court, to take away the lives of other men, to interrupt their happiness, their safety, and their quiet? Will you attach upon this single witness, a greater veracity in his testimony, or will you say he is not a fit person to be believed in any thing on his oath?

Gentlemen of the jury, I now leave the case of my client to your justice, and to your humanity, and I trust that on neither, you can deprive the prisoner at the bar of his life, upon the testimony that has been given.

REPLY.

Mr. Saurin.—My lord and gentlemen of the jury; the learned counsel for the prisoner at the bar, has in his speech mentioned some points, upon which it is my duty, as counsel on the part of the prosecution, to make some observations.—He would infer, that the evidence that has been brought forward to substantiate the charges against the prisoner at the bar, does not prove criminality on the part of the prisoner; that there is

but one witness to prove that the prisoner has been guilty of the charges stated in the overt-acts. The prisoner has not produced any evidence in support of his defence; he relies on his witnesses whom you have heard to support the position, that Mr. Reynolds ought not to be believed in a court of justice. In all cases of a conspiracy, the proof of it can never be expected to be established by any person who has not been a *particeps criminis* in such conspiracy; if the jury believes the single evidence of one man, that is all the law requires; the jury are to determine on the sufficiency of the evidence, to justify the verdict they may give—and a single witness is all that the law of this kingdom requires. The jury must be satisfied, whether the accused is fully proved to have committed the crimes imputed to him, or not. If you do in your consciences believe that Mr. Reynolds is such a character that he ought not to be believed in a court of justice, in that case, you will acquit the prisoner; but there does not, in this case, appear any evidence on which you can draw that conclusion. Mr. Cope and Mr. Kingsbury say, they do believe that Mr. Reynolds is worthy of credit in a court of justice; on the other hand, the three witnesses, Mr. Witheringtons, and Mrs. Fitzgerald say, they are of a contrary opinion. Mr. Reynolds himself told you he was under suspicions; he was suspected by both parties; the expression that a witness made use of was, that he was a double traitor. He has told you, he was an United Irishman, and out of a sense of shame and remorse, he came forward and gave information, as might tend to the safety of the state. He did not come forward as in the ordinary case of an informer, having been accused of the crime he would foster on another. Would you believe that Reynolds is unworthy of credit upon his oath in a court of justice, upon the idle and ridiculous story about a bond for 50*l.* given by Reynolds to Mrs. Cahill, that when she afterwards gave the bond to him to calculate the interest due on it, on returning the bond, he gave her in mistake the draft of a bond and warrant that lay in his desk? It appears he owed her 75*l.* and has paid her the whole of it, except 10*l.* which note he sent to take up—but on which note, she might have proceeded against him, in the common and ordinary way, if any fraud had really been committed by Reynolds in that transaction.

I shall not, at this late hour, after the trial has lasted near sixteen hours, recapitulate the whole of the evidence; it is sufficient for me to observe only upon the most prominent parts of the evidence which has been given. Much stress has been laid on the circumstance, that when Mr. Reynolds's mother-in-law was on her death-bed, he gave her the medicine of tartar emetic, on the Friday, and she died on the Sunday following; and Mr. Reynolds told you, that captain Witherington

had said, that he did believe that Mr. Reynolds had poisoned Mrs. Witherington. If such an abominable crime had really been committed, her sons, as nearest of kin, would, no doubt, have prosecuted Reynolds in a criminal way; for if Reynolds had really poisoned his mother-in-law Mrs. Witherington, in so public a place as the metropolis of Ireland, and that the fact had really happened, it must have been capable of proof, and if so, it was a duty incumbent on her sons to have proceeded against him in a criminal way; and the servants that attended the deceased might have given evidence of that transaction, if Mr. Reynolds had really poisoned his mother-in-law; but the fact turns out, by the evidence that has been given, that Mrs. Witherington having been very ill of a complaint in her stomach, Mr. Reynolds advised the medicine of tartar emetic, a medicine that had been of great efficacy to himself, at the time when he had been attacked with the same disorder, and he told you that that medicine was administered to her by her servant; but that servant has never been produced to give her evidence, as no doubt she would have been, had there been any truth in the fact alleged to have been committed by Mr. Reynolds; therefore, upon the whole of the evidence given in this trial, relative to the allegation that Mr. Reynolds had poisoned his mother-in-law, you have no ground to believe, that any such crime was ever committed by him.

A great deal of stress has been laid, in order to impeach the moral conduct of Mr. Reynolds, that he had, on the night of her death, directed that her remains should be wrapped up in a pitched sheet; whence they would infer, that Mrs. Witherington had not died in the common and usual way, but through the administration of poison; now, how does the fact turn out? If you believe the witness, that Mrs. Witherington being extremely ill, and not expected to live, and there were present in the house with her one of her sons, and the servant who immediately attended her person, Mr. Reynolds sent off an express to her other son, then in the country with his regiment, to come to town immediately, as his mother was dangerously ill, but he did not arrive in Dublin for four days, owing to the circumstance, as Mr. Witherington himself has told you, that he was not at the place at which the messenger was directed to find him, and did not, for a day or two, get Mr. Reynolds's letter, to come off immediately to his mother's house; not arriving until the fourth day after the decease of Mrs. Witherington, it was judged necessary then, to put her remains into a pitched sheet; as it was the wish of Reynolds, that captain Witherington, her son, should see her remains previous to interment. One witness said, the pitched sheet was put over the body of the deceased on the first night after she died, and another witness says it was not put over her

until the fourth day after her decease; that recourse was had to that expedient to keep the body from putrefaction, till her son arrived in Dublin, who was then every moment expected. There is a variance in point of time between the two witnesses, but it is for you to judge, which you will give most credit to; but let me ask, as you are upon your oaths, if you can say, you do not believe Mr. Reynolds upon his oath on this trial, because Mr. Witherington said he did believe Mr. Reynolds had poisoned Mrs. Witherington? or will you on your oaths say, that Mr. Reynolds is not to be believed on his oath, because one of the witnesses told you, that Mr. Reynolds directed the remains of Mrs. Witherington to be put into a pitched sheet, the night after her decease? You have not, in my opinion—notwithstanding so many hours investigation, relative to the belief of Mr. Witherington that his mother was poisoned, of the fact of which you have no proof whatever, and notwithstanding all the body of evidence that you have heard about the pitched sheet—any ground on which you can, on your oaths, say, that Mr. Reynolds is not, on his oath, to be believed in a court of justice. I should not dwell so long about the allegations brought against Mr. Reynolds, charging him with poisoning his mother-in-law, and with precipitately directing her remains to be wrapped up in a pitched sheet, had not so great a stress been laid upon those circumstances, in order to depreciate and weaken the credit of Mr. Reynolds, as if you were to believe, he was not, nor is worthy of being believed by you, in the testimony which he has this day given—a testimony, in which I conceive him to be consistent throughout, and as far as it had reference to the evidence of Mr. Cope, it has been corroborated by the evidence of that respectable gentleman, as well as by the written evidence that has been produced, proved, and read, in the course of a long and a patient investigation of the charges exhibited against the prisoner at the bar. And, gentlemen of the jury, there has been another circumstance resorted to by the gentlemen on the part of the prisoner, to induce you not to believe the evidence of Mr. Reynolds, and it was this: evidence has been produced to you, of money transactions between Mr. Cope and Mr. Reynolds at one time, relative to a mortgage of land to Mr. Cope, for 5,000*l.*, and of Reynolds's personal security for 1,000*l.*; and it was said, that in those money transactions there was a sum of 1,000*l.* which Mr. Reynolds contended he had a right to be given credit for; on the other hand, it was said, Mr. Cope insisted upon the justness of his demand, and Mr. Val. Connor, a merchant of Dublin, was written to by Mr. Reynolds, to come to an adjudication and settlement of the accounts between Mr. Cope and Mr. Reynolds, it being said, that as to one item in the account of 1,000*l.* it was not a fair transaction on the part of Mr. Reynolds, and upon

that ground they would attack the moral character of Mr. Reynolds, in order to induce you to believe, that Mr. Reynolds ought not to be believed upon his oath in a court of justice. The counsel on the part of the prosecution called on Mr. Cope to give his evidence, and that gentleman has told you, upon his oath, that as to any accounts that related to money matters between him and Mr. Reynolds, which had been settled, it made no manner of impression upon his mind whatever against Mr. Reynolds, and declared he considered him as a man that ought to be credited upon his oath in a court of justice. Mr. Valentine O'Connor was the next witness produced; he told you, he received a letter from Mr. Reynolds, then in the country, to adjust and settle the accounts then subsisting between Mr. Cope and Mr. Reynolds, as to the item of 1,000*l.* in the account; and Mr. O'Connor said, that from Mr. Reynolds's conduct in that money transaction, he was of opinion, that Mr. Reynolds ought not to be believed on his oath in a court of justice. The gentleman most interested in that transaction, and who must certainly know all the particulars of their dealings together better than any other man—Mr. Cope—has told you, that he has no unfavourable impression against Mr. Reynolds; and he has also told you, that you ought to believe Mr. Reynolds upon his oath in any court of justice. Gentlemen, it is your province to determine on the degree of credit you will give to any witness; and on the evidence which you have heard, you will determine whether Mr. Reynolds is deserving of credit upon his oath or not. If you shall believe that the charge of poisoning Mrs. Witherington, was an idle and unsupported charge; if you shall believe, that as to the pitched sheet, no blame could attach on Mr. Reynolds; if you shall believe Mr. Cope, that with respect to the money transactions between him and Mr. Reynolds, they were such as made no unfavourable impression on Mr. Cope's mind, you will, no doubt, have no hesitation in declaring, by your verdict, that you believe the testimony of Mr. Reynolds, and that he ought on his oath to be believed in any court of justice.

Many of you, gentlemen of the jury, are engaged in extensive dealings; it may be observed that in money transactions, a man may pay attention to his own interest, and may scruple to comply with the demands of the person he has money dealings with, as was the case here. Mr. Cope had a mortgage for five thousand pounds, on the lands of Castle Jordan, and Mr. Reynolds, on the death of his father, had not so very large a property as he had reason to expect; and he gave Mr. Cope his personal security for a hundred pounds, he afterwards gave up the mortgaged premises; and then wished to exonerate himself from the personal security. There was nothing improper in endeavouring, by the medium of Mr. O'Connor, a merchant

of Dublin, to come to some terms with Mr. Cope, to take up his personal security. And Mr. Cope very candidly has told you, he has no ill impression upon his mind, against Mr. Reynolds, on account of any money transactions between them; but admitting that Mr. Reynolds paid a greater attention to his own interest in money transactions than he had a strict right to do, yet can you on your oath believe that Mr. Reynolds, who has been a trader of some eminence in Dublin and must be known to most or all of you, can you on your oaths believe, that Mr. Reynolds, who had been intimate with Mr. Bond, and frequently dined with him, would now come forward, in a court of justice upon his oath, to take away the life of an innocent man? Can you on your oaths believe, that Mr. Reynolds is such a monster?—You have no ground whatsoever to warrant that conclusion. Can you believe that Mr. Reynolds, who has retained the friendship of men of the fairest character in your country, for a series of years—who has the good opinion of mankind in general—who was in habits of intimacy with the Rev. Mr. Kingsbury for a great length of time past, and who has told you that Reynolds does deserve credit in a court of justice—can you believe that Mr. Reynolds, a man whose character was so much esteemed, would now be such a monster, as to come forward in a court of justice, and on his oath to swear away the life of an innocent man; a man, against whom he had no grudge, no malice, no spleen whatever?—Can you believe, that Reynolds could fabricate all the evidences of the transactions, of the meetings of the United Irishmen, in which society Bond, he has told you, swore Reynolds in a member, and administered the oaths of that society to him?—Can you believe that all the evidence he has told you, of the primary, the baronial, the county and the provincial meetings, is all a falsehood, and that Bond did not know of the meeting of the United Irishmen, at his house on the 12th of March, that there was no such meeting, contrary to the evidence of Mr. Swan and serjeant Mac Dougal? Can you believe that all the evidence of Reynolds is fabricated, and that he does not deserve credit on his oath? Can you believe any witness, who should tell you that Reynolds is a double traitor, and that he has come forward, to take away the life of an innocent man, and that you ought not to give credit to his declarations on oath?

The prisoner at the bar, if innocent, has had opportunities of bringing forward witnesses to prove his innocence; a great length of time has been granted to him to do that—has he produced one single witness, to support his innocency if innocent? he has produced none.—The charge against the prisoner at the bar, is a charge of high treason; he has had full, and ample knowledge of the crime imputed to him, and to come prepared to take his trial. He has now produced a

single witness in his own justification, not one witness to disprove any one of the numerous acts given in evidence, as done by him to support the overt-acts laid in the indictment.—The prisoner at the bar, has only produced Mr. Fitzgerald, Mr. O'Connor, and Mr. Witherington, to say they believe that Reynolds ought not to be credited in a court of criminal jurisdiction. Consider the recent rank of the prisoner at the bar; a merchant of extensive dealings—a man of considerable property, and resident in the centre of this metropolis—a man well known to all, when you consider the locality of his situation—can you believe that if he could disprove any one of the overt-acts of high treason charged against him in the indictment, but he would have brought forward some witness or other, to disprove the charges made against him? He had full opportunities so to have done, but he has declined to bring forward any one evidence whatever, in his defence, to contradict in the whole, or in part the charges laid against him in the indictment—charges of the most serious kind, of the highest import—charges of high treason, as compassing and imagining the death of the king and adhering to the king's enemies. I shall say nothing farther upon this subject, as the charge has been so often repeated to you; and in the hearing of the prisoner at the bar. I will not hurt his feelings, by a repetition of all the overt-acts laid in the indictment.

Leaving Reynolds's evidence out of the case, I contend for it, that the written evidence, and Mr. Swan and Mac Dougal's evidence substantiates the guilt of the prisoner. I lament, that the prisoner at the bar, from his talents, his understanding, and his rank in life, as a considerable merchant, has not taken another course in life than he has done. It has been proved he has uniformly for some years past, been in the habit of holding conspiracies, with men called United Irishmen, for the avowed purpose of overturning by force the constitution of this kingdom. How a man who has any regard for his native country, could enter into plots and conspiracies, to overwhelm his country in blood, and involve thousands of his own countrymen, friends and relations in blood, cannot be accounted for. The prisoner's counsel with their usual and great abilities, have introduced into their arguments a great deal of extraneous matter, which does not immediately, if at all, belong to the question in issue, as to there being two witnesses required in England, to prove an overt-act of high treason; but the law here does not require two witnesses to prove an overt-act of high treason, though it does require that there shall be sufficient evidence to satisfy the mind and consciences of the jury, to substantiate a charge of high treason against any man accused. It is agreed by the counsel on both sides, that the jury are not to take notice of any extraneous matter out of doors they are

not to be impressed with any, the remotest degree of prejudice; they are to come fairly and indifferently to determine on their oaths, on the guilt or innocence of the prisoner at the bar; the jury are to judge of their decision, by the evidence which has been given before them; they are the sole judges of the credit they ought to give to the witnesses; it is solely left to the jury, to determine on this case; they are the constitutional judges of matter of fact.

Before I conclude, let me bring to your recollection, the evidence that Mr. Swan gave; he told you he went to the house of Bond, whom he arrested on the 12th of March last; on his going to Mr. Bond's, he met at the door a Mr. Dillon, who was taken into custody and afterwards liberated, but has since been apprehended; Mr. Swan told you, he went into the room, where about fourteen persons were assembled, as it was mentioned they would be in the information Mr. Swan had previously received—those persons Mr. Swan apprehended, and the papers taken on them have been produced in court, and proved and read in evidence. There was one piece of written evidence produced, that plainly shows the intention of the society of United Irishmen, and it is the letter written by Hugh Wilson from Cork, wherein he says, he was cooped up since he came to Cork, and had he known the situation of the place, that he would not for any emolument he should receive, encounter such distresses before a change in the present government took place; he said if the people would rest quiet for some time, the progress that science was making would astonish the world, and so forth.—This Wilson was one of the secretaries of United Irishmen, of which the prisoner at the bar was a member; compare this with the evidence of Reynolds, that lord Edward Fitzgerald did desire Reynolds to be a Colonel, and Bond said to Reynolds he wished Reynolds to be Colonel; you cannot doubt the acts of Bond, as a member of the United Irishmen; you have not a tittle of evidence to prove to you, that Bond was innocent of these charges against him. Bond was one of the conspirators, it was a matter of public notoriety, and proves the overt-acts laid in the indictment. But, gentlemen of the jury, it is unnecessary to dwell on trivial circumstances; there can be no doubt, that Bond was a United Irishman, and knew of the meeting, and purpose of the meeting, at his house on the 12th of March, and the written evidence shows the purpose of that meeting, to be on the means of raising armed men to overturn the constitution of this country by force. You cannot doubt of the fact of that meeting, on the 12th of March, information of which was given to Mr. Cope before the meeting took place, and also the pass word to be used "is Mr. Mac Cann come? is Mr. Ivers of Carlow here?" Upon the whole of this case it is, gentlemen of the jury,

your province to determine on this question. I have mentioned to you such observations as I think, may be material; you will, if you have any rational doubt on your mind, acquit the prisoner, and I have no doubt you will give such a verdict as may be agreeable to the justice of this case.

SUMMING UP.

Mr. Justice *Chamberlain*.—Gentlemen of the Jury; The prisoner is indicted for two species of high treason—one is compassing and imagining the death of the king, the other adhering to the persons exercising the powers of government in France, being the enemies of the king, and at open war with him. Upon the law of the case there cannot be any diversity of opinion; because no lawyer can maintain that a conspiracy to depose the king and to overthrow the constitution by force, is not high treason. There would be little safety for the state indeed, if a plain and direct conspiracy to enter into rebellion were not to be deemed high treason, within one branch or other of the statute made to declare what shall constitute that offence. Such a conspiracy has always been held to be an act of compassing the death of the king, as tending probably and naturally to bring his life into danger; and it matters not whether the king is resident at the time of such conspiracy in this or the other kingdom, or elsewhere.

The law is also perfectly plain upon the second charge made against the prisoner—that of adhering to the king's enemies—an offence which consists in any act, conspiracy, or attempt, directly or indirectly, to assist any power at war with the king, and for the public safety it has been always held that this offence is complete, although such conspiracy or attempt shall not have been attended with success; and I cannot give a stronger instance of this species of treason than entering into a conspiracy (in time of war) to raise an armed force of the king's subjects to act against his authority, and with an intent to call for the assistance of the enemy should they invade the kingdom.

The very imagination of compassing the king's death, constitutes the crime; but it must be manifested by a plain overt-act, which is some step taken or measure calculated to carry that design into effect. Any conspiracy to overthrow the government by force, or to assist the foreign enemy, collecting men, or levying money for these purposes are plain overt-acts of each species of treason.

Now, gentlemen, let me turn your attention to the means stated in this indictment for carrying the designs of the prisoner into effect. It is charged, that he conspired to depose the king—that is by settled law, an overt-act of compassing his death, because by natural and probable consequences, it brings the life of the king into jeopardy.—

Another act stated is, that he became a member of a treasonable society of United Irishmen, with design to overturn the government, and by rebellion and force to change the constitution, which society was then adhering together for that purpose. Another fact with which the prisoner is charged as the means of carrying his treason into effect, is, that he did administer an oath to a person of the name of Thomas Reynolds, by which he was to become a member of this treasonable society. Another is, that he did solicit and urge Reynolds to become a colonel of a regiment formed for the purposes of carrying on this rebellion. There are many other acts laid; but my brethren and I are of opinion that those are the facts stated in this indictment to which your consideration should be most particularly pointed; because the evidence appears to be most applicable to them, and because it is not incumbent upon the prosecutor to prove all the overt-acts laid in an indictment. If one overt-act be proved, and you are satisfied that the prisoner did it for the purpose of compassing the king's death, or of adhering to his enemies, that is sufficient to maintain a conviction.

You have heard a great deal of the law of England, as to the necessity of two witnesses to establish the charge of high treason; but I must tell you, that was not the rule of the common law, which in this respect was the same in treason as in felony. It is true, that certain acts of parliament were passed altering the law in the case of treason as to the proof—the last of which acts, the 7th of William 3rd, for regulating trials in cases of high treason, and requiring two witnesses with great strictness, had not passed many months when the same parliament found the inconvenience of it, and attainted sir John Fenwick* upon the evidence of one witness.

But whether that act was expedient or not, it is sufficient for me to say, that the Irish parliament have never adopted its regulations, and without entering into the question of what evidence would be considered as proof of the fact by two witnesses within the meaning of that act, it appears to my understanding, that the plain consistent narrative of a single witness, confirmed by strong circumstances proved by others of unimpeached credit, is more satisfactory than the evidence of two witnesses to distinct acts of the same species of treason, each of them unacquainted with the facts sworn to by the other, which would satisfy the words of the English act of parliament, although both those witnesses should state themselves to be accomplices, and although no circumstances should be proved tending to corroborate the testimony of either.

Of what description the evidence in this case is, it will be for you to determine, whether as the counsel for the prisoner have in-

sisted, the proof of charges against him rests upon the sole unsupported testimony of Reynolds, who states himself to have been an accomplice, or whether his testimony is supported and confirmed by circumstances proved by others, which it is scarcely possible to account for, if Reynolds's evidence be false.

Reynolds has sworn that the prisoner administered the oath of the United Irishman to him in the prisoner's own house, in the beginning of the year 1797, in the presence of Richard Dillon—he has given an account of the constitution of that society, and he has sworn that their object, as he collected at their meetings, and from their proceedings, was, to overturn the government and constitution, and to establish a republic, and to make use of the assistance of the French to forward those views in case of an invasion. That shortly after he was sworn, he attended a meeting of that society at the Brazen Head, in Bridge-street, at which the prisoner and Hugh Wilson (at that time a clerk in Finlay's bank), and others, were present. That at another meeting of delegates from this society, held in February or March 1797, shortly after the French had departed from Bantry-bay, the prisoner stated a plan for taking possession of the strong places in the city of Dublin.

That in the month of November last lord Edward Fitzgerald, who was also an United Irishman, urged him to become colonel of a regiment of United Irishmen, in the county of Kildare, called the Kilkea regiment, from the name of a barony in that county—that the prisoner advised him to accede to the proposal, saying, it would be of advantage to the cause. He has sworn, that having been elected colonel of this regiment, and also treasurer of the barony of Kilkea and Moon; he was of course delegate of that barony, and entitled to attend the county meeting; that on the 18th of February he accordingly attended the county of Kildare meeting of baronial delegates, where he, Daly from Kilkullen, and Cummins from Kildare (who was afterwards taken at the prisoner's house) were appointed delegates to the Provincial Assembly, which it is observable, he swears was to meet the next day at the house of the prisoner, as they were informed by Michael Reynolds, of or near Naas, who, as he states, had acted as secretary to the County Meeting for some time previous to that day. He has stated that it was his duty, as a county delegate, to lay an account before the Provincial Meeting of the number of men, arms and ammunition, ready and provided by that county,—but that from his having been elected the day before it was impossible for him to attend that meeting, and that he wrote a letter to the prisoner, desiring him to apologize to Mac Cann (secretary to the Provincial Meeting) for his non-attendance, saying, that he could not take the bills that day, by which he meant the returns, an expression, which it appears

* See his case, vol. 13, p. 537..

from the evidence of Reynolds, the prisoner understood—for he told Reynolds, upon his arrival in Dublin, that he had made his apology for him, which it was impossible he should have done in the sense and meaning of Reynolds's letter, unless he was apprized of that part of the duty and business of that meeting that was (according to this evidence) to have been held in his house.

Reynolds has sworn, that upon his arrival he enquired from Bond when the next Provincial Meeting was to be had, that he referred him to Mac Cann, who appears to have been the secretary of the meeting; that he accordingly applied to Mac Cann, who refused to inform him, because he had not produced the return of the strength of the county, from which he was a delegate—that having afterwards procured the return, he went to Bond's house on Saturday the 10th of March, when Mac Cann applied to Bond (in the presence of Reynolds) for a room in his house for the delegates to the Provincial Meeting, who answered (as Reynolds swears), that they should have the room they had before; and that on Sunday the 11th of March, Mac Cann informed him the meeting was to be on the next day at the house of the prisoner. This is the substance of the evidence given by Reynolds, immediately connected with the acts and conduct of the prisoner; and if this evidence be credited by you, there cannot be a doubt that, in point of law, he is guilty of both the species of treason charged in the indictment.

But, gentlemen, in determining upon the credit due to this witness, it is most essential that you shall consider whether his evidence has been supported or not by circumstances that can hardly err—either arising out of the evidence of Reynolds himself, or sworn to by other witnesses, whose credit has not been impeached.—One circumstance to which I would point your attention is, the number of persons by whom this witness has made himself liable to be contradicted, if he has sworn falsely.—Richard Dillon, a man resident (as I understood the witness) in this city, who might contradict Reynolds as to a leading fact in this case, and which is stated as one of the overt-acts of the treason in this indictment; namely, the prisoner's having administered the oath of United Irishmen to the witness—Hugh Wilson, who might have denied, if it be false, the meeting at the Brazen Head in Bridge-street, at which the prisoner is sworn by Reynolds to have been present.—Daly of Kilcullen, and Reynolds of Naas, and others sworn to have been present at the County Kildare Meeting, on the 18th of February, at the Nineteen-mile House, one of whom, Reynolds, is sworn to have informed that meeting, that the Provincial Meeting was to be held on the next day, at the house of the prisoner.—Dr. Kennedy, of Augier-street, and Mac Cann, the apothecary, of Grafton-street, in this city, who might contradict the witness,

if he swore untruly, as to some matters of which he gave evidence, with respect to lord Edward Fitzgerald: you must see how material it would have been for the prisoner to have contradicted this witness, as to any of those facts, for the truth of which he has pledged his veracity; and you will judge whether this might reasonably have been expected or not, considering the place where this trial is had; the number of hours it has taken, and that this is the third time, as it has appeared on this trial, that Reynolds has been examined on the subject of this conspiracy.

Another remarkable circumstance is, that Reynolds swears that on Saturday the 10th of March, in his presence, Bond told Mac Cann the Provincial Meeting should have the same room in his house that they had before; and that Mac Cann apprized him (the witness) that the meeting was to be held in that room on Monday at ten o'clock in the forenoon.—Now Mr. Cope swears that Reynolds gave him information on Sunday the 11th of March, of the hour and place of that intended meeting on the next day; and of their intended business, viz. that they were county delegates to the Provincial Meeting, just as Reynolds has described; that Reynolds told him the names of several of those delegates, and that their design was to unite the forces of their several counties against the government, and that Reynolds also informed him of the pass-word by which admittance was to be obtained.—Mr. Cope gave information of this to the government, as was his duty, and Mr. Swan, the magistrate, was informed of all those particulars, and of the pass-word.

Now, gentlemen, observe attentively the scene that was exhibited upon Swan's going into the house of the prisoner:—fourteen persons are found in a back room in that house—upon being seized, they respectively declare that they have come from different parts of the kingdom, but all from counties in the province of Leinster—according to Reynolds's representation to Mr. Cope, and among them is Cunnmins, who (he swears) was his co-delegate from the county of Kildare. Serjeant Galloguely, who had been sent forward, entered the shop, and there found the prisoner—upon the serjeant giving part of the pass-word, viz. "where is Mac Cann?"—the prisoner made a bow, as if of assent—if you consider this as an assent to his admission, surely it is a circumstance among others well worth your consideration in determining whether Bond was privy to the purposes of that meeting held under his own roof or not—it is true, that Bond himself was not in the room, nor could he have been there according to the constitution of that meeting, as described by Reynolds, unless he was delegated from some county, and had brought a return of its men, arms and ammunition—a requisite insisted upon (as you may remember) by Mac Cann, according to the evidence of Reynolds.

Now see the papers found in that room, some of them upon the table, some on the floor, and some near the fire-place—and here you are to determine whether this meeting were using those papers or not—if so, examine their contents.

No. 1. "I do declare that I came duly elected," according to Reynolds, the preliminary oath, before the business could be proceeded upon—and here you will recollect a prayer-book was also found in the room.—Examine Number 2, and determine whether it is or not a return of the number of men in each county, and remember that some one of the persons seized declared at the moment he had come from some county named in that paper.

See the resolution that each county should make a list of three persons to be chosen adjutant-general, to be transmitted to the executive, through the provincial meeting or some other authentic channel, who should appoint one of those persons. Observe the paper "ten in the morning this day three weeks," if that be understood, as is contended by counsel for the crown, to mean an adjournment from the 19th of February, which was that day three weeks, to that day the 12th of March, it is a strong confirmation of Reynolds's evidence, that a similar meeting had been held on Monday the 19th of February.—Another paper contains a declaration, that if the other provinces be in equal state of preparation with Leinster, they will proceed to act—and that the executive should be requested to procure an union of the different provinces.

But among those papers, one particularly calls for your attention. The resolution "not to pay any attention to any attempt made in either House of Parliament, to divert the public attention from the grand object, as nothing short of complete emancipation of their country would satisfy them." This meeting is held upon the 19th February, the very day, when it is notorious, a motion was made in the House of Lords to conciliate those who had been anxious for Catholic emancipation (as it is called) and parliamentary reform—and if on that day the delegates to the Leinster provincial meeting of United Irishmen entered into that resolution, you will say whether this test as administered by the prisoner to Reynolds (as he has sworn) discloses the real objects of that institution or not—if you fix the use of those papers upon those men so assembled in the prisoner's house, you will judge whether Reynolds has not sworn truly, where he has told you that the object of the United Irishmen was to overturn the government and constitution by force, and to establish a republic. He has formed this opinion, not from any information given him by the prisoner, but from the acts, declarations, and proceedings of that body, and you, gentlemen, are to say, whether you are of a different opinion.

In what Reynolds told Mr. Cope of the meeting of those persons having been appointed, and the hour and place of their meeting, it is impossible to doubt Reynolds's truth, without attributing to him the spirit of a prophet:—whether the prisoner was privy to the purpose of that meeting or not, you will judge from all the circumstances disclosed; among those you will recollect the apology made by the prisoner for Reynolds, for not having attended the meeting of the provincial delegates on the 19th of February—if you believe that circumstance, say whether it shows a privy or not; recollect the conduct of the prisoner when serjeant Galloghery gave him the pass-word that was to gain admission to that meeting of the 12th of March in his own house—and look at the papers found in the possession of the prisoner himself when he was taken—one a letter, dated Cork, 6th of March, 1798, addressed to the prisoner from Hugh Wilson, (sworn by Reynolds to be an United Irishman, and to have been present at one meeting of that society at the Brazen Head in Bridge street.)

"You can but faintly imagine how matters are going on here, give the people but a little time, and rest assured the progress science is making will astonish the world—the enemies of the human race are much alarmed! The revolt of the Dublin County Militia has encreased their fears." This is evidently the letter of a man entertaining opinions, if not designs, highly criminal and dangerous to the state, and you will judge under all the circumstances, whether it was written to a man unconnected with the author and innocent.

See another paper found in the possession of the prisoner, entitled—An Address of the County Committee of Dublin city to their constituents—every part of it deserves attention—but particularly consider that part cautioning them not to be led into any rash insurrection.

"For the only hope of your tyrants is to create an opportunity of putting down the spirit of the country before the arrival of any event which would make it irresistible—they can never be more powerful than they are now—you (rely upon it) will shortly be all powerful—be patient, be firm, be ready"—you will judge whether this paper may in any manner be connected with those found in the room or not.

This advises against rash insurrection, and one of those contains a declaration, that if the above provinces be equally prepared, they will proceed to act. Some of those papers, if you adopt the exposition given them by the counsel for the crown) contain returns of great strength, and show great confidence in this society in consequence thereof—and this address tells them they will shortly be all powerful. If this address lets you into a knowledge of the designs of that association, judge whether the prisoner could be ignorant

of them. Certainly that letter and address might have been possessed by a man perfectly innocent—but you will judge, whether under all circumstances and situated as the prisoner was at that moment, their having been found in his possession, does or does not confirm the positive testimony of Reynolds, that the prisoner was one of this society, apprized of their objects, and co-operating in their completion.

Opposed to this evidence, you, gentlemen, are to consider the several objections taken to the credit of Reynolds—he was an accomplice, and in entering into this abominable conspiracy as described by himself, he violated the oath of allegiance, which he had previously taken, and he had taken also an oath of secrecy, and those circumstances, no doubt, form an objection to his credit: in the violation of that oath of secrecy however, (which is objected to his credit) I must say, he performed a duty not only imposed on him by his allegiance, but by morality; an oath to do that which is unlawful or wicked in itself, can have no manner of force.—Suppose a man swears not to pay his debts, is he the less dishonest for paying them? Or if he swear to commit murder, shall he therefore perpetrate that crime? Then if he shall swear to keep secret a conspiracy that is to depose his king, overthrow the constitution of his country, and cause the blood of thousands of his fellow-subjects to flow, by what rule of religion, or of morality is it, that he shall be bound to keep so horrible a secret?

At first he resolved not to become a witness against any of the persons engaged in this conspiracy, but merely to disclose sufficient to frustrate them in the attainment of their object, and to leave the kingdom; and he proposed to Mr. Cope that he should be reimbursed the mere expense of his taking such a proceeding. To this Mr. Cope readily assented, and the witness has actually received the sum of 500 guineas; but you will recollect, that he swears he did not consent to become a witness until after he had received the money, and if he swore falsely in this respect, he must be sure to have been contradicted by Mr. Cope; but it is for you, gentlemen, to decide whether the receiving this money taking the transaction as it stands, does found an objection to his credit or not.—You will consider the situation in which this man stood, when, as he states, he resolved to become a witness, he found himself strongly suspected by his own party—he had received a summons to abide his trial for having betrayed them, and expected (possibly you will think with good reason) that his assassination was to be the consequence. Among all loyal men he found himself considered as a traitor, and held, as he says, in contempt, and naturally too for refusing to bring the authors of this wickedness to punishment. In this miserable situation to which he had reduced himself, he took the resolution (as he says)

VOL. XXVII.

to appear before a jury of his countrymen, who should judge of the whole of his conduct. You, gentlemen, will determine whether this is a natural account of the workings of his mind under the circumstances in which he stood.

Mr. Valentine O'Connor, who has known Reynolds from his infancy, Ann Fitzgerald, who is his aunt, and his two brothers-in-law, Messrs. Witherington, who ought to know the witness thoroughly, all declare he does not from his character deserve to be believed upon his oath; but you are to examine their reasoning as well as their assertion.—Mr. O'Connor founds his opinion partly on the transaction between Reynolds and Mr. Cope—but Mr. Cope himself has received no such impression therefrom, for he has appeared to support this man's credibility—and in truth, as the circumstances have been related by Reynolds, I do not see any thing fraudulent in his conduct—of that however, you are the judges.

You will attend minutely to Mrs. Fitzgerald's reasons in support of her evidence as to Reynolds's not deserving credit, and decide whether they are satisfactory—her brother, it appears, has been accused of having entered into this conspiracy—she has dropped some expressions with respect to Reynolds's having become an informer—if she conceives it to be a man's duty not to discover of his accomplices in so horrible a treason as has been sworn to—if this be the only foundation of her opinion, of which you are to judge, it ought not to have much weight.

As to Mr. Henry Witherington, he appears to have formed his opinion upon the circumstances of his mother's death, and his evidence is calculated to make an impression upon your minds that Reynolds committed the horrible crime of poisoning that lady, to whose daughter he was married; strictly speaking, such an inquiry ought not to be entered into for the purpose of impeaching the character of a witness, because neither the witness nor the person producing him to give testimony upon a totally different matter, can be supposed to be prepared to rebut such a charge; but if this accusation be considered, neither this gentleman, who to be sure was very young at the time of his mother's death, nor any of his family, ever prosecuted Reynolds for this dreadful crime. Mr. Fitzgerald, the apothecary, who attended the lady, has not been produced; and it has not been shown, that Reynolds had any temptation to commit so horrible a crime. Some contradiction, however, has taken place between this gentleman and Reynolds, as to the time when the body was inclosed in a pitched sheet, and you will judge how far that is material.

As to major Witherington, his principal reason for impeaching the credit of Reynolds, is some circumstance reflecting upon the conduct of this gentleman himself, which Reynolds swore upon a former trial, as appears in

some newspaper report of the trial; but whether the statement in that newspaper be accurate in that report, he has not taken any pains to inquire. In support of Reynolds, Mr. Cope and Mr. Furlong, who have had considerable dealings with Reynolds, and Mr. Kingsbury, all agree in stating he is a man who, from his general character, deserves to be believed.

Gentlemen, those are the observations which have occurred to me upon the evidence in this case; and I again recommend it to you to consider, whether the charge against the prisoner rests upon the single uncorroborated evidence of Reynolds, and whether you can reasonably account for the circumstances which have appeared, if his evidence be false. I would advise you to decide, as a preliminary question, whether the prisoner was a member of this society of United Irishmen. Next, what was the object of that institution. However trite it may be, I must remind you of the maxim, founded in humanity—that if you have any rational doubt, then as fair, honourable men, you must acquit. But if, upon weighing the evidence of Reynolds, and all the circumstances of this case, you believe the prisoner to have been a United Irishman, and that society to have entertained the treasonable purposes laid in the indictment—and that the prisoner, knowing those purposes, assisted in endeavouring to effect them—then, as fair, honest, and firm men, you are bound to find him guilty.

After the jury had retired, Mr. Bond requested that a paper, which he held in his hand, might be sent into the jury-room, for the perusal of the jury. He said it was a written declaration of Mac Cann, after his conviction, that he, Mr. Bond, was ignorant of the business of the meeting.

The Court refused this application.

After seven minutes deliberation, the jury returned with a verdict of—GUILTY.

Mr. Attorney General.—My lords, I have a very painful duty still remaining:—I feel much affliction; but I am humbly to pray judgment upon the prisoner.

Mr. Bond was then put to the bar, his indictment read, and he was asked, what he had to say, why judgment of death and execution should not be awarded against him?

He made no answer.

*Mr. Justice Day.**—Prisoner at the bar! After a very patient, dispassionate, and impartial trial, in the course of which you have had the assistance of as able, acute, and zealous counsel, as the bar of Ireland affords; you have, without hesitation, been found guilty by a most respectable jury of your

* *Mr. Justice Chamberlain* being much fatigued with the late sitting and the charge to the jury, requested of *Mr. Justice Day* to pronounce the sentence.—*Orig. Ed.*

country, of a crime at which every loyal, honourable, and feeling heart recoils with horror—nothing less than a foul conspiracy with a society of remorseless traitors, of whom indeed you appear to have been a prime mover, whose acknowledged purpose was to wade through the best blood of the country, to the subversion of the state, and to substitute for the British constitution (the source of all our comforts, prosperity, and glory) a wild and fierce republic, upon the model of France. One natural, and no doubt foreseen, consequence of this flagitious plot has already taken effect, in the disastrous carnage of many thousands of our fellow-subjects, the unhappy and deluded victims of their ferocious and abandoned instigators and leaders.

It is a melancholy subject of reflexion, that a gentleman of your condition and figure in life, who, under the existing laws and constitution, which you would have subverted, have flourished and accumulated great property—in the prime of life and vigour of health—endued by nature with rare accomplishments of mind and person, should have unfortunately, not only for yourself and your afflicted family, but for that country to which you might have been an ornament, perverted those precious gifts of Providence, and have made so unhappy and calamitous a use of them. I am sure nothing is so far from my mind, as to aggravate, by any terms of reproach, the sufferings of a gentleman, fallen, by his own criminal infatuation, from a proud eminence in society into the most abject and degraded state of which human nature is susceptible. Your own good understanding will open but too plentiful sources of bitter and agonizing reflection; but I trust it will awaken you, at the same time, to a due remorse and contrition. In that anxious wish, let me entreat of you to turn your back upon that world which is now closing fast upon you, to look forward to a brighter and a better world, into which you are soon to be launched, to make the only remaining atonement to your injured country by a full and candid disclosure of that malignant plot, and thus to give the best evidence of that deep and heart-felt sorrow, which is the only fit preparation for the awful presence of that just and merciful Judge, before whom you must shortly appear.

Nothing remains for me, but, as the organ of the law, to perform a duty, which I do with unaffected sympathy and concern, that of pronouncing the following dreadful sentence upon you:—

That you, Oliver Bond, be taken from the place in which you stand, to the gaol from whence you came, and thence to the common place of execution, there to be hanged by the neck, but not until you are dead, for while you are yet living, your bowels are to be taken out and thrown in your face, and your head is to be cut off, and your head and limbs to be at the king's disposal; and the Lord have mercy on your soul.

Mr. Bond afterwards received a conditional pardon, but was carried off by an attack of apoplexy, before he had an opportunity of complying with the conditions.

635. Trial of THEOBALD WOLFE TONE for High Treason, before a Court Martial holden at Dublin on Saturday, November 10th, together with the Proceedings in the Court of King's Bench on Monday, November 12th: 39 GEORGE III. A. D. 1798.

[“ Mr. Tone was one of the most active promoters of the designs of the United Irishmen; and, according to the concurring testimony of all his co-temporaries, was the ablest man who had given his support to that cause. He was originally a member of the Irish bar, where his talents could not have failed to have raised him to distinction; but the principles of the French revolution, and the hope of successfully applying them to change the condition of his own country, soon diverted his ardent mind from legal pursuits, and involved him in that political career which subsequently occupied his life. In this new field he, at a very early period, became conspicuous for his zeal in supporting the claims of the Roman Catholics, who appointed him a secretary to their committee, and voted him a sum of money * as the reward of his exertions. He was also one of the original projectors of the plan of combining the popular strength and sentiment, which was afterwards matured into the Irish Union. That association existed some years before its object was to effect a revolution; but it has already been shown, that, as early as 1791,† Mr.

Tone recommended precisely the same views which the future leaders vainly attempted to accomplish. In 1794, when Jackson arrived in Ireland upon his secret mission from the French government, he soon discovered that Mr. Tone was one of the persons the most likely to approve and assist his designs. He accordingly communicated them to him, and was not disappointed in his expectation. Mr. Tone so cordially embraced the proposal of an invasion of Ireland by the French, that had not the urgency of his private affairs prevented, he would have passed over to France, in order to confer in person with the French authorities upon the subject. Some of the discussions upon this topic took place in the prison of Newgate, in the presence of Cockayne and Mr. Hamilton Rowan, the latter of whom was at that time under sentence of confinement for the publication of a libel.* Jackson being shortly after arrested upon the information of Cockayne, Mr. Rowan, who was aware that the evidence of that witness would equally involve himself, effected his escape, and fled to France. Mr. Tone remained. Whatever his more private communications might have been with Jackson, upon whose fidelity he relied, he conceived that the amount of Cock-

* See Jackson's case, *antè*, vol. 25, p. 811.

† “ By the test of the more early of these societies” [of United Irishmen], “ the members pledged themselves ‘ to persevere in endeavouring to form a brotherhood of affection among Irishmen of every religious persuasion, and to obtain an equal, full, and adequate representation of all the people of Ireland in the Commons House of Parliament.’ In the year 1795 the latter words were struck out, in order to accommodate the test to the revolutionary designs that began to be generally entertained.—Report of the Secret Committee 1798.

“ It is a received opinion, that the celebrated Theobald Wolfe Tone was the author of the constitution of the later United Irishmen; but the writer of this work is informed by a gentleman now in Ireland, who was intimately connected with Mr. Tone, that he himself denied this to be the fact. ‘ He assured me (adds the gentleman

alluded to) ‘ that captain Thomas Russell, to whom he was for many years so warmly attached, was the person who drew up that remarkable paper, and that he (Tone) was not a member of the close society of United Irishmen till the eve of his embarking at Belfast for America, in the summer of 1795.’ It is, however, certain that Mr. Tone, as far back as 1791, strongly recommended to the societies of United Irishmen, then in their infancy, to attempt a revolution, as appears from his letter written in that year to the society at Belfast.—Report of the Secret Committee—(Appendix)” 2 *Life of Curran*, 11, note.

* As to these proceedings, see the cases of Jackson and of Stone, vol. 25, pp. 783 and 1155, and the case of Mr. Hamilton Rowan as there referred to.

ayne's testimony could convict him of no higher an offence than misprision of treason. Considerable exertions were also used by his private friends to dissuade the government from a prosecution; and, in consequence, he was not arrested. The evidence upon Jackson's trial, however, having publicly shown that some degree of treasonable connexion had subsisted between him and Mr Tone, the latter was advised, if he consulted his safety, to withdraw from Ireland. He accordingly, in the summer of 1795, transported himself and his family to America.* Here he did not remain many months. He tendered his services to the French Directory, and having met with all the encouragement he could desire, he procured a passage to France, where he arrived in the beginning of the year 1796. He was most favourably received, and appointed to a commission in the French army. His efforts to persuade the Directory to send an armament to Ireland have been previously mentioned.† The first expedition

* "The vessel, in which he was a passenger, no sooner arrived in sight of an American port, than she was boarded by a boat from a British man of war. Mr. Tone was (among others) impressed to serve as a sailor in his majesty's navy; but, after considerable difficulties, his own remonstrances, and the solicitations of Mrs. Tone, obtained his release."
—Curran.

† "The United Irishmen despatched an agent to France for this purpose" [to obtain military aid in order to effect a separation from England], "about the middle of 1796. Mr. Tone was then at Paris, and exerting all his influence to the same effect. In the first memorial which Mr. Tone presented to the French Directory, in order to induce them to send an expedition to Ireland, he stated that at that period more than two-thirds of the sailors in the British navy were Irish; that he was present when the Catholic Delegates urged this to lord Melville as one reason for granting emancipation, and that his lordship had not denied the fact. This statement was understood to have had great weight with the Directory, who immediately committed the whole of the subject to the consideration of Carnot (then one of the Directory) and generals Clarke and Hoche.

"The gentleman who has communicated the preceding circumstance has added the following anecdote:

"Soon after the question of an expedition to Ireland had been left to the decision of Carnot, Clarke, and Hoche, they named an evening to meet Tone at the palace of the Luxembourg. Tone arrived at the appointed hour, eight o'clock. He was ushered into a

having failed, a second attempt was made in the autumn of 1798. This was equally unsuccessful; and Mr. Tone, who was on board the *Hoche* French line of battle ship, one of the vessels captured by sir John Borlase Warren's squadron off the Irish coast, fell into the hands of the English government, and was brought to trial by court-martial in Dublin, on the 10th of November, 1798."—*Life of Curran by his Son*, vol. 2, p. 154—158.]

DUBLIN BARRACK,

Saturday, November 10, 1798.

The Court was composed of the following members:

Major-General LOFTUS, President.
Colonel VANDELEUR,
Colonel WOLFE,
Colonel TYTLER,
Lieutenant-Colonel DALY,
Major ARMSTRONG,
Captain CORRY.

MR. TONE was brought into court under a corporal's guard, from the Provost Marshal's sea, where he had been confined. He was dressed in the French uniform—a large and fiercely cocked hat, with broad gold lace, and the tricoloured cockade, a blue uniform coat, with gold and embroidered collar, and two large gold epaulets, blue pantaloons with gold laced garters at the knees, and short boots bound at the tops with gold lace.

"splendid apartment. Shortly after, the director and the generals made their appearance: they bowed coldly, but civilly, to Tone, and almost immediately retired, without apology or explanation, through a door opposite to that by which they had entered. Tone was a good deal struck by so unexpected a reception; but his surprise increased, when ten o'clock arrived, without the appearance of, or message of any kind from those on whom all his hopes seemed to depend. The clock struck eleven, twelve, one—all was still in the palace; the steps of the sentinels, on their posts without, alone interrupted the dead silence that prevailed within. Tone paced the room in considerable anxiety; not even a servant had entered of whom to enquire his way out, or if the director and the generals had retired. About two o'clock the folding doors were suddenly thrown open; Carnot, Clarke and Hoche entered; their countenances brightened, and the coldness and reserve so observable at eight o'clock had vanished. Clarke advanced quickly to Tone, and taking him cordially by the hand, said, '*Citizen! I congratulate you; we go to Ireland.*' The others did the same; and having fixed the time to meet again, the persons engaged in this remarkable transaction separated."—*Life of Curran*, vol. 2, p. 19, note. See also the note in p. 36 of the same volume.

At first, he seemed a good deal agitated, and called for a glass of water, having drank which, he seemed much composed and collected.

The charges were read by the Judge Advocate against Mr. Tone, implicating him as a natural-born subject of our lord the king, having traitorously entered into the service of the French republic, at open war with his majesty, and being taken in the fact, bearing arms against his king and country, and assuming a command in an enemy's army approaching the shore of his native land for the purpose of invasion, and acting in open resistance to his majesty's forces, with several other charges of a treasonable nature.

On the conclusion of the charges read against him, he was called upon to plead,* whether guilty or not guilty.

Mr. Tone, bowing to the Court, said, he presumed this was the time in which he might read to the Court the statements of a few points, which he had committed to paper, for the occasion of his trial.

He was asked, in the first instance, if he would plead to the charge against him guilty, or not guilty.

He answered, that it was not his wish to avail himself of any subterfuge, or to give the Court any unnecessary trouble; he was ready to admit the whole of the charge exhibited against him.

He was then asked what was his object in reading the papers in his hand; was it any thing which his own sense must tell him might be improper for the Court to hear?

Mr. Tone answered, the paper was certainly drawn up with a view to vindication, though possibly it could not be considered as a defence against the accusation on which he was now called to trial. He could not say whether it was a kind of defence which the Court might choose to hear. He had endeavoured in the formation to be as collected and moderate as his feelings could possibly admit, and if the Court would do him the honour of permitting him to read the paper, its contents would best suggest how far it was admissible as to the reading.

Court.—Sir; before you read that paper, you will do well to consider whether it contains any thing irrelevant to the question now at issue, or any thing which your own good sense may suggest the Court ought not to hear.

Prisoner.—In what I am about to read, I trust there is nothing irrelevant to my situation, nor any thing but what I should hope the Court will not think improper to hear. I have endeavoured to be as collected and moderate as possible; and I should not wish to offer any language offensive to the Court.

Judge Advocate.—Is there any thing in the

* "When asked what he would plead, he exclaimed 'Guilty! for I have never, during my life, stooped to a pervarication.'" Curran.

paper which you wish should go before his excellency the Lord Lieutenant?

Prisoner.—I have no objection.

A Member.—You have already pleaded guilty to the charge of having acted traitorously.—Do you mean by any thing contained in that paper to retract that plea?

Prisoner.—Certainly I have admitted the charge, and consequently the appellation by which I am technically described.

President.—It is not the wish of the Court, sir, to deny you any indulgence which, consistently with their duty, they can grant; but they must reserve to themselves the power of stopping you, if you shall utter any thing irrelevant to the case before them, or unfitting for them to listen to.

Prisoner.—The Court, no doubt, will reserve to itself that discretionary power, but I repeat that I have endeavoured to be as moderate as possible, and if any of my expressions should happen to appear objectionable, I shall be willing to substitute others less so.

[Here the President having given permission, the prisoner read the paper which was as follows:]

Mr. President and Gentlemen of the Court;—It is not my intention to give this Court any trouble respecting the purport of what has been alleged against me: my admission of the charge prevents a prolongation of those forms which could not be more irksome to you than they would be to me. What I have done has been purely from principle and the fullest conviction of its rectitude. I wish not for mercy—I hope I am not an object of pity. I anticipate the consequence of my captivity, and am prepared for the event. The favourite object of my life has been the independence of my country, and to that object I have made every sacrifice.

Placed in honourable poverty, the love of liberty was implanted by nature and confirmed by education in my heart.—No seduction, no terror, could banish it from thence; and seduction and terror have not been spared against me. To impart the inestimable blessings of liberty to the land of my birth, I have braved difficulties, bondage, and death.

After an honourable combat, in which I strove to emulate the bravery of my gallant comrades, I was forced to submit, and was dragged in irons through the country, not so much to my disgrace, as that of the person by whom such ungenerous and unmanly orders were issued.*

* Copy of a Letter from T. W. Tone to Major-General the Earl of Cavan.

Derry Prison, 12 Brumaire, an. 6.

My Lord; (Nov. 3, 1798.)

On my arrival here, major Chester informed me, that his orders from your lordship, in consequence, as I presume, of the directions of government, were that I should be put in irons. I take it for granted, those

Whatever I have written and said on the fate of Ireland, I here reiterate.

The connexion of England I have ever considered as the bane of Ireland, and have done every thing in my power to break it, and to raise three millions of my countrymen to the rank of citizens.

[Here he was stopped by the Court.]

Mr. President.—Mr Tone, it is impossible we can listen to this.

A Member.—It appears to me, that this paper has been produced here, with a design of making injurious impressions on the minds of persons who may be in this room.

President.—I cannot think there are any persons of that description here.

Prisoner.—I do not think either that there are any such persons here, nor have I read the paper with the intention imputed to me. What follows will be found less exceptionable.

Judge Advocate.—If what follows be of such a nature as you described to me yesterday, I really am of opinion, Mr. Tone, it must operate to your prejudice; you will therefore do well to consider before you read it.

[On the farther advice which the Court and the judge advocate humanely urged, the prisoner consented to cancel part of the most

orders were issued in ignorance of the rank I have the honour to hold in the armies of the French Republic. I am, in consequence, to apprise your lordship, that I am breveted as *Chef de Brigade* in the infantry since the 1st Messidor, an. 4; that I have been promoted to the rank of adjutant-general the 2nd Nivose, an. 6; and finally, that I have served as such, attached to general Hardy since the 3rd Thermidor, an. 6, by virtue of the orders of the minister at war:—major Chester, to whom I have shewed my commission, can satisfy your lordship as to the fact, and general Hardy will ascertain the authenticity of the documents.

Under these circumstances, I address myself to your lordship as a man of honour and a soldier; and I do protest, in the most precise and strongest manner, against the indignity intended against the honour of the French army in my person; and I claim the rights and privileges of a prisoner of war, agreeably to my rank and situation in an army, not less to be respected, in all points, than any other which exists in Europe.

From the situation your lordship holds under your government, I must presume you to have discretionary power to act according to circumstances; and I cannot, for a moment, doubt, but what I have now explained to your lordship, will induce you to give immediate orders, that the honour of the French nation and the French army be respected in my person, and of course that I shall suffer no coercion, other than in common with the rest of

exceptionable of what he read, and also some subsequent matter, which he said was only the expression of his thanks to the Roman Catholics, a body which he had once, he said, the honour of serving. He then desired to know if he might proceed?]

President.—It is a principle by which we shall be scrupulously ruled, to avoid most carefully every thing not immediately relative to your case and the ends of justice; and it is but fitting that we expect you to confine yourself simply to the charge made against you; a reverse conduct can tend to no good purpose.

Prisoner.—I have said nothing, nor do I mean to say any thing, that has not been already uttered, with respect to me, in both houses of parliament, where my name has been so often quoted.

[He was then suffered to proceed.]

Having considered the resources of the country, and being convinced they were too weak to effect her independence without assistance, I sought that assistance in France: and without any intrigue, but asking, in the open honesty of my principles, and that love of freedom which has ever distinguished me, I have been adopted by the French Republic;

my brave comrades, whom the fortune of war has for the moment deprived of their liberty.

I am, my lord,

With great respect,

Your lordship's most obedient servant,

T. W. TONE,

dit SMITH, Adjutant General.

Answer from Major General the Earl of Cavan to T. W. Tone.

Sir; Buncrana, Nov. 3, 1798.

I have received your letter of this date from Derry gaol, in which you inform me, that you consider your being ordered into irons as an insult and degradation to the rank you hold in the army of the French Republic, and that you protest, in the most precise and strongest manner, against such indignity.—Had you been a native of France, or of any other country not belonging to the British empire, indisputably it would be so; but the motive that directed me to give the order that I did this morning for your being put in irons, was, that I looked upon you (and you have proved yourself) a traitor and rebel to your sovereign and native country, and as such you shall be treated by me.

I shall enforce the order I gave this morning, and I lament, as a man, the fate that awaits you. Every indulgence shall be granted you by me, individually, that is not inconsistent with my public duty.

I am, Sir, your humble servant,

CAVAN, Maj. Gen.

and in the active discharge of my duty of a soldier, acquired what is to me invaluable, and what I will never relinquish but with my existence—the friendship of some of the best characters in France, and the attachment and esteem of my brave companions in arms.

It is not the sentence of any court that can weaken the force, or alter the nature, of those principles on which I have acted, and the truth of which will outlive those ephemeral prejudices that may rule for the day. To her I leave the vindication of my fame, and, I trust, posterity will not listen to her advocacy without being instructed.

It is now more than four years since persecution drove me from this country, and I need hardly say that personally I cannot be involved in any thing that has happened during my absence. In my efforts to accomplish the freedom of my country, I never have had recourse to any other than open and manly war. There have been atrocities committed on both sides, which I lament; and if the generous spirit which I had assisted to raise in the breasts of Irishmen, has degenerated into a system of assassination, I believe all who had any knowledge of me from my infancy will be ready to admit, that no man in existence could more heartily regret, that the tyranny of any circumstances or policy should so pervert the natural dispositions of my countrymen.

I have little more to say.—*Success* is all in this life; and, unfavoured of her, virtue becomes vicious in the ephemeral estimation of those who attach every merit to prosperity.—In the glorious race of patriotism, I have pursued the path chalked out by Washington in America, and Kosciusco in Poland. Like the latter, I have failed to emancipate my country; and, unlike both, I have forfeited my life.—I have done my duty, and I have no doubt the Court will do theirs.—I have only to add, that a man who has thought and acted as I have done, should be armed against the fear of death.

A Member.—This paper, then, which you have read, contains nothing in denial of the charge against you.

Prisoner.—What I have once done, I should be ashamed to deny.

[Here the prisoner having been asked by the judge advocate if there was any thing else which he wished to address to the Court, he replied, that if he was not to be brought up again before the decision of the Court, he would wish to say a few words more; which being permitted, the prisoner proceeded.]

I conceive, that I stand here in the same light with our *émigrés*; and, if the indulgence lie within the power of the Court, I would only request what French magnanimity allowed to Charette and to the count de Sombreuil—the death of a soldier; and to be shot by a file of grenadiers. This is the only favour I have to ask; and I trust that men,

susceptible of the nice feelings of a soldier's honour, will not refuse the request. It is not from any personal feeling that I make this request, but from a respect to the uniform which I wear, and to the brave army in which I have fought. From papers which I yesterday delivered into the hands of the brigade major, it will be seen, that I am as regularly breveted an officer in the French service, as any here is in the British army, and it will be seen that I have not my commission as a protection.

Judge Advocate.—I wish you to be aware, that your acceptance of a commission in the French service, amounts to positive proof of the charge advanced against you; but, from your admissions already, I suppose, that by the production of those papers, you merely want to show, that you were an officer in the French army.

Prisoner.—Nothing more.

[The papers were then produced, and were a brevet for the rank of Chef de Brigade, and a letter of service, both bearing the signatures of the president of the French Directory and the minister of war. By one of those it appeared, that his last appointment was to proceed to Brest, to join the Army of England; and to some questions asked of him, he answered, that he had been appointed to three several armies, destined on three several expeditions under BONAPARTE, HEORE, and KILMAINE, an Irishman. Having been asked, why he was designated, in the brevet and letter of service, by the name of SMITH, together with that of TONE, he explained by saying, that in proceeding from America to France, it was necessary that he should have a passport, and accordingly took the first that fell in his way, which happened to be made out in the name of SMITH. On entering France, he was accordingly registered by that and his real name, which he had added thereto:—"Indeed," said he, "almost every soldier in France has, what they call *Un Nom de Guerre*."—He repeated his desire to be indulged with death in the most honourable manner; and as he had no doubt of the decision of the Court, he expressed a wish, that the confirmation of it by the lord lieutenant might be had as soon as possible, and execution of the sentence immediately follow—within an hour, if it were practicable.]

The President replied, that the Court would proceed forthwith to a consideration and judgment of his case, after which no delay would take place in transmitting the proceedings to his excellency, and that it was probable, whoever went with them, would bring back the lord lieutenant's determination on the subject.

The Prisoner then thanked the Court for

the indulgence which had been extended to him.—He was brought back to the Provost Marshalsea.

Mr. Tone retired from his trial, surrounded by the guard which escorted him there, leaning on the arm of brigade major Sandys. There was a considerable number of yeomanry officers, and other loyal citizens, assembled, to witness this termination of the career in the political race of a man, viewed as uniting in his own person the *Alpha* and *Omega* of the Irish Union. He walked with an air of unconcern, and seemed to feel his situation as one who had fully made up his mind to the worst.

The whole of Saturday and Sunday, however, he expressed much anxiety to learn the decision of his excellency the lord lieutenant, concerning the request he had made as to the mode of his execution, having no doubt at all as to the sentence of the Court, and its confirmation by his excellency.

On Sunday evening he was informed, that his conviction and sentence of death had been confirmed by his excellency, but that his request as to the mode of execution could not be complied with; that he must suffer the same fate with the other traitors who were taken in war against their king and country; and that the peculiar circumstances of his case rendered it necessary, that his execution should be in the most public manner, for the sake of a striking example; that he must be executed in front of the New Prison, where his former accomplices had forfeited their lives to the justice of their country.

This, however, was an arrangement for which all his fortitude and philosophy could not string the nerves of Mr. Tone. Such a torrent of public ignominy was too much for reflection, and he took the resolution of anticipating the execution by his own hand, and relieving his mind from the intolerable load of horror which the manner of his approaching fate impressed; for, when the sentinel who watched in his room went to rouse him on Monday morning, he found him exhausted, weltering in his blood, with his throat cut across, and apparently expiring. The sentinel immediately alarmed the Provost Marshal; a military surgeon of the 5th regiment of dragoons immediately attended, and on examining the wound, pronounced it not mortal, though extremely dangerous; to which Mr. Tone faintly answered—"I find, then, I am but a bad anatomist."*

* "It was directed by the government that he should be executed in the ordinary form, and in the most public manner; but this the prisoner took the resolution of preventing, by an act, which, in his case, shews the uncertain security of any speculative determinations respecting suicide, against the pressure of the actual calamity,

The wound, which was inflicted with a pen-knife, intersected the wind-pipe between two of the cartilaginous rings which form that organ, and amounted to what surgeons style the operation of Bronchotomy;—it was dressed, but only with a view to prolong life till the fatal hour of one o'clock appointed for execution; to which end the cart was prepared, and an escort of cavalry and infantry under orders to attend.

In the interval a motion was made in the Court of King's Bench by Mr. Curran, on an

"or of the many other motives which impel a man to raise his hand against himself.

"Upon the evening before the Hoche sailed from Brest, the subject of suicide was fully discussed among the Irish, who formed a part of the expedition. They felt confident of success, should the French troops debark in safety upon the coast of Ireland; but they were equally certain, that, if captured at sea, they would all be condemned and executed. Upon this a question arose, whether, in the latter event, they should suffer themselves to be put to death according to the sentence and forms of law. Mr. Tone maintained that they ought; and, with his usual eloquence and animation, delivered his decided opinion, that, in no point of view in which he had ever considered Suicide, could he hold it to be justifiable. It is supposed, that, in his own particular instance, he did not at this time anticipate an ignominious mode of death; but that he expected, in case of capture and condemnation, to be allowed the military privilege, which he afterwards so earnestly claimed.* Disappointed in this hope, he now committed the act which he had so lately reprobated. He was induced to do so either by a natural impulse of personal pride, of which he had not previously contemplated the powerful influence, or (as is conjectured by those who best knew him) out of consideration for the army of which he was a member, and for whose honour, in his estimation, no sacrifice could be too great." 2 *Life of Curran*, 160, 162.

* "The gentleman who has communicated the above circumstances was present at the conversation. Independent of the moral arguments adduced against suicide, it was suggested by one of the company, that, from political considerations, it would be better not to relieve, by any act of self-murder, the Irish government from the discredit in which numerous executions would involve it—an idea which, he says, Mr. Tone warmly approved. He adds, that when it appeared that the Hoche was likely to be captured, a boat was despatched to her from the *Biche* (a small, fast sailing vessel, which afterwards escaped into Brest), in order to bring off all the Irish on board; but that Mr. Tone could not be persuaded to avail himself of the opportunity." *Curran*.

affidavit of Mr. Tone's father, stating that his son had been brought before a bench of officers, calling itself a court martial, and by them sentenced to death.

"I do not pretend to say," observed Mr. Curran, "that Mr. Tone is not guilty of the charges of which he was accused;—I presume the officers were honourable men;—but it is stated in the affidavit, as a solemn fact, that Mr. Tone had no commission under his majesty, and therefore no court-martial could have cognizance of any crime imputed to him, while the Court of King's Bench sat in the capacity of the great criminal court of the land. In times when war was raging, when man was opposed to man in the field, courts martial might be endured; but every law authority is with me, while I stand upon this sacred and immutable principle of the constitution—that martial law and civil law are incompatible; and that the former must cease with the existence of the latter. This is not the time for arguing this momentous question. My client must appear in this court. He is cast for death this day. He may be ordered for execution while I address you. I call on the Court to support the law. I move for a *habeas corpus* to be directed to the provost marshal of the barracks of Dublin, and major Sandys to bring up the body of Mr. Tone.

Lord Chief Justice [Kilwarden].—Have a writ instantly prepared.

Mr. Curran.—My client may die while this writ is preparing.

Lord Chief Justice.—Mr. Sheriff, proceed to the barracks, and acquaint the provost-marshal that a writ is preparing to suspend Mr. Tone's execution; and see that he be not executed.

[The Court awaited, in a state of the utmost agitation, the return of the Sheriff.]

Mr. Sheriff.—My lords, I have been at the barracks, in pursuance of your order. The provost-marshal says he must obey major Sandys. Major Sandys says he must obey lord Cornwallis.

Mr. Curran.—Mr. Tone's father, my lords, returns, after serving the Habeas Corpus: he says general Craig will not obey it.

Lord Chief Justice.—Mr. Sheriff; take the body of Tone into your custody. Take the provost-marshal and major Sandys into custody: and show the order of this Court to general Craig.

Mr. Sheriff (who was understood to have been refused admittance at the barracks) returns.—I have been at the barracks. Mr. Tone, having cut his throat last night, is not in a condition to be removed. As to the second part of your order, I could not meet the parties.

[A French Emigrant Surgeon, whom General Craig had sent along with the Sheriff, was sworn.]

Surgeon.—I was sent to attend Mr. Tone this morning at four o'clock, his windpipe was divided. I took instant measures to secure his life, by closing the wound. There is no knowing, for four days, whether it will be mortal. His head is now kept in one position. *A sentinel is over him, to prevent his speaking.* His removal would kill him.

Mr. Curran applied for farther surgical aid, and for the admission of Mr. Tone's friends to him. [*Refused.*]

Lord Chief Justice.—Let a rule be made for suspending the execution of Theobald Wolfe Tone; and let it be served on the proper persons.

[The prisoner lingered until the 19th day of November, when he expired, after having endured in the interval the most excruciating pain.]*

It was generally understood that Mr. Tone was to have been paraded through the streets previous to his execution, and some assign this to be the cause of his attempt on his life. He seemed on his trial unmoved and unterrified.

* "Mr. Tone had reached only his thirty-fourth year. His father was an eminent coachmaker in Dublin: he had sixteen children (thirteen sons and three daughters), of whom only five attained the age of maturity, and whose fates afford a singular instance of the wanderings and calamities of a single family. Theobald died as above related. Matthew was executed the same year, in Dublin barracks, for high treason; it is said that no more than five persons were present at the execution. William was killed in India, a major in Holkar's service. Arthur accompanied his brother Theobald to America; and was subsequently, at the early age of eighteen, appointed to the command of a Frigate in the service of the Dutch republic: he is supposed to have perished at sea, as no account was ever after received of him. Mary was married to a foreign merchant, and died at St. Domingo. Their aged mother survives, and now [1819] resides in Dublin.

"After the death of Mr. Wolfe Tone, his widow and infant children were protected by the French republic; and, on the motion of Lucien Buonaparté, a pension granted for their support." *2 Life of Curran* 166, note.

636. Trial of JOHN VINT, GEORGE ROSS, and JOHN PARRY, for a Libel (published in the Courier Newspaper) on his Imperial Majesty Paul the First, Emperor of all the Russias; tried by a Special Jury, before the Right Hon. Lloyd Lord Kenyon, Lord Chief Justice of the Court of King's Bench, at Guildhall, London, on the 4th day of March: 39 GEORGE III. A. D. 1799.

INFORMATION.

Of *Michaelmas Term* in the thirty-ninth year of the reign of king George the Third.

“ *London* } “ BE it remembered that sir
 “ *to wit* } “ John Scott knight attorney general of our sovereign lord the king who for our said lord the king in this behalf prosecuteth in his proper person cometh here into the court of our said lord the king before the king himself at Westminster on Tuesday next after the morrow of All Souls in this same term and for our said lord the king giveth the Court here to understand and be informed that before and at the time of printing and publishing the scandalous and defamatory libels hereinafter mentioned there was and still is a strict and firm friendship and alliance between our said present sovereign lord the king and his imperial majesty Paul the First emperor of all the Russias and during all that time there was and yet is mutual intercourse and commerce between the subjects of our said present sovereign lord the king and the subjects of his said imperial majesty in the exportation out of this kingdom to the dominions of his said imperial majesty of divers productions and manufactures of the dominions of our said lord the king and the importation into this kingdom from the dominions of his said imperial majesty of divers productions and manufactures of the dominions of his said imperial majesty for the use of the navy of our said lord the king and the ships of the subjects of our said lord the king and for other beneficial purposes to wit at London in the parish of Saint Dunstan in the West in the ward of Farringdon Without in London aforesaid And that his said imperial majesty is a great and illustrious prince eminently distinguished and renowned for his wisdom prudence justice clemency and every other princely virtue and endowment yet John Vint late of London printer George Ross late of the same place publisher of newspapers and John Parry late of the same place well knowing the premises but wrongfully and maliciously contriving and intending not only to defame traduce and vilify his said imperial majesty but also

“ as much as in them the said John Vint
 “ George Ross and John Parry lay to interrupt disturb and destroy the friendship good-will and harmony subsisting between our said sovereign lord the king and his imperial majesty and their said respective subjects and to create stir up and excite hatred jealousy and discord between our said lord the king and his subjects and his said imperial majesty and his subjects on the first day of November in the thirty-ninth year of the reign of our said present sovereign lord George the Third king of Great Britain &c. at London to wit in the parish of Saint Dunstan in the West in the ward of Farringdon Without in London did print and publish and cause and procure to be printed and published in a certain public newspaper called *The Courier and Evening Gazette* a most malicious mischievous and scandalous libel of and concerning his said imperial majesty to the tenour and effect following that is to say *The emperor of Russia* (meaning his said imperial majesty) is rendering himself obnoxious to his subjects by various acts of tyranny, and ridiculous in the eyes of Europe by his inconsistency, he (meaning his said imperial majesty) has now passed an edict prohibiting the exportation of timber, deals, &c. In consequence of this ill-timed law, upwards of 100 (meaning one hundred) sail of vessels are likely to return to this kingdom without freights to the great scandal and dishonour of his said imperial majesty to the great danger of creating discord between our said lord the king and his subjects and his imperial majesty and his subjects in contempt of our said lord the king and his laws to the evil example of all others in his like case offending and against the peace of our said lord the king his crown and dignity.

SECOND COURT — “ And the said attorney-general of our said lord the king for our said lord the king farther giveth the Court here to understand and be informed that the said John Vint George Ross and John Parry so contriving and intending as aforesaid on the first day of November in the thirty-ninth year of the reign of our said present sovereign lord George the Third

“king of Great Britain &c. at London aforesaid in the parish and ward aforesaid did print and publish and cause to be printed and published in a certain public newspaper called *The Courier and Evening Gazette* another most malicious mischievous and scandalous libel of and concerning his said imperial majesty to the tenour and effect following *the emperor of Russia* (meaning his said imperial majesty) *is rendering himself obnoxious to his subjects by various acts of tyranny and ridiculous in the eyes of Europe by his inconsistency to the great scandal and dishonour of his said imperial majesty to the great danger of creating discord between our said lord the king and his subjects and his said imperial majesty and his subjects in contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity whereupon the said attorney-general of our said lord the king who for our said lord the king in this behalf prosecuteth for our said lord the king prayeth the consideration of the Court here in the premises and that due process of law may be awarded against them the said John Vint George Ross and John Parry in this behalf to make them answer to our said lord the king touching and concerning the premises aforesaid.*”

Mr. Attorney General [sir John Scott, afterwards lord chancellor Eldon].—Gentlemen of the Jury; This is an information filed against three persons; John Vint, printer; George Ross, publisher; and John Parry, proprietor, of a newspaper called *The Courier*, which, from its extensive circulation, I have no doubt you have all of you had frequent occasions to see. The information states, that there was a strict and firm friendship and alliance between our present sovereign lord the king and his imperial majesty, Paul the First, emperor of all the Russias, &c. &c. &c.; and that the defendants, well knowing the premises, but wrongfully and maliciously contriving and intending, not only to defame, traduce, and vilify his said imperial majesty, but also, as much as in them lay, to interrupt, disturb, and destroy, the friendship, good-will, and harmony, subsisting between our said sovereign lord the king and his imperial majesty, and their said respective subjects; and to create, stir up, and excite hatred, jealousies, and discord, between our said lord the king and his subjects, and his said imperial majesty and his subjects; on the first day of November, in the thirty-ninth year of the reign of our said present sovereign lord, George the Third, king of Great Britain, &c. at London, to wit, in the parish of St. Dunstan in the West, in the ward of Farringdon Without, in London, did print and publish, and cause to be printed and published, in a certain public newspaper, called *The Courier and Evening Gazette*, a most malicious, mischievous, and

scandalous libel, of and concerning his said imperial majesty, to the tenor and effect following:—“The emperor of Russia is rendering himself obnoxious to his subjects by various acts of tyranny, and ridiculous in the eyes of Europe by his inconsistency:—He has now passed an edict, prohibiting the exportation of timber, deals, &c. In consequence of this ill-timed law, upwards of 100 sail of vessels are likely to return to this kingdom without freights.”

Gentlemen, I have been commanded to file the information now before you for trial, in order to vindicate the character of the emperor of Russia—a prince in amity with this country, defamed in a libel, contrary to the laws and usual policy of nations, which protect not only the magistracies, but the individuals of each other from insult and reproach.

With regard to the just limits of the liberty of the press, I have never entertained different opinions from Mr. Erskine, even when representing defendants at the bar; their applications of course create differences, and these are to be considered in this trial. I admit the right of free discussion, as it regards all subjects of importance to the interest or happiness of mankind; and that it is only the malevolent and useless excess which ought to be punished.

The attorney general, after several other preliminary observations, said—The emperor had made an edict against the importation of timber, which, in friendship to Great Britain, he had relaxed as to this country, and the paragraph in question not merely charges him with this act as one of foolish impolicy in the management of his own empire, but with a system of tyranny and oppression in various instances, wholly unconnected with the edict which it condemns. The principle, therefore, upon which the prosecution proceeds, is perfectly plain and simple; and I will not enlarge upon it, farther than to remind you of the consequences of permitting such unwarrantable publications to pass unpunished. I am aware that there are plausible and ingenious arguments which may occur to the learned advocate for the defendants, from whom you will no doubt have the gratification of a brilliant speech; but without rejecting the pleasure and information which may be fairly derived from it, I know you will still recollect the solemnity of your oaths, and the obligation you owe to the laws of your country.

[The treaty with Russia was then produced, and the publication of the newspaper proved.]

DEFENCE.

The Hon. *Thomas Erskine* [afterwards Lord Chancellor Erskine].—Gentlemen of the Jury; I never rose with so little anxiety as counsel for defendants in a criminal prosecution as I at this moment feel; because, I do not recollect to have ever before had to answer a

||

charge so completely and manifestly unfounded. My only embarrassment would be (if I were less accustomed to this place), that the Attorney-general had bespoke from me a brilliant speech; which is like suddenly calling in a large company for a song from a man but little of a singer, and the more disqualified by so unexpected a summons. The case, however, of the defendants requires neither eloquence nor music to set it off, being the plainest and clearest that can be imagined; whilst that of the crown (if it is seriously to be insisted on) demands the most determined resistance from all who wish to preserve that freedom and security of political discussion, the right of which the Attorney-general has so honestly acknowledged, and the value of which acknowledgment is so clear, because when principles are once ascertained and admitted by those who prosecute for the Crown, it must be the fault of juries only if the press is not free. It has been admitted, then, that it is the clear right of every man in England to examine every subject connected with its interests, and to observe upon the transactions of other nations and the general affairs of the world, and without that restraint which turns into a service of danger the propagation of useful information, and the sacred assertion of truth. Malicious mischief indeed, whether it appears in printing or in any other human action, ought to be punished; but the representation of facts acknowledged to be true, and the promulgation of useful opinions fairly connected with them, can never in conscience or in reason be accounted a misdemeanor, unless they are obviously directed and intended to excite disobedience and disaffection to the government of our own country,—a charge upon this occasion quite out of the question.

Is every writing necessarily to be adjudged a libel, which questions the wisdom or integrity of a foreign prince, or which condemns his councils as weak, capricious, and unjust, though manifestly injurious to our own people, merely because not being at war with his nation, he is styled as in amity with our state? This is a prosecution which cannot possibly be supported, without saying that the contemporaneous history of the world is shut out from the British press; because if it is open to it at all, it must be liberally, impartially, and fearlessly open to it, and ought not to be dependent upon the interests or passions of the transient rulers of the day. I am prepared fairly to examine this, and not speculatively, but practically as it appears from the whole reason, intelligence, and custom of our country, as it is embodied in all our publications, not merely from private presses without an instance of prosecution or interruption, but from the public councils of the kingdom. The world, gentlemen, is at this moment so singularly circumstanced, and the characters and conduct of foreign princes are unfortunately so inseparably connected with British interests, that there must be an universal and

perilous silence of the only rational policy of this empire, or a reasonable latitude must be allowed, not only to consider the transactions of foreign governments, but the dispositions and characters of their princes; because it is notorious that the councils of their nations are dependent upon their sovereign's will. At this very moment, gentlemen, above all others the British government, should be very slow indeed to lay down a rule which must shut the mouths, and break the presses of its own subjects and defenders, to prevent their showing that guilt and dishonour, which must be fixed somewhere, does not rest here, but with those princes of Europe, who, if protected by our laws from all examination of their conduct, *the disgrace must attach upon ourselves.*

It is by no means my purpose, either by assertion or insinuation, to bring before this Court and jury, who have no jurisdiction upon the subject, any reproach or reflection upon our own ministers or councils; I can appeal, indeed, *confidently* to the noble judge, that though as a private man I have a right to my own opinions, I have never mixed such topics with any pleadings, unless they were not merely relevant, but the very subject to be discussed; and I feel a pleasure that my duty to-day directs to me a very different course, and which will lead to the justification of this supposed misdemeanor. It is, indeed, the best defence of British ministers, or rather the only one they have against responsibility for our present condition, that no libel can be written upon the sovereigns of Europe; but that on the contrary, no language is sufficiently impressive or copious to express the indignation and contempt that every Briton who loves his country ought to feel for them; but even if it could be decided that the law may be set in motion against those who speak the truth concerning them, yet privilege of speech at the bar is above this legal jurisdiction, and if any one happens to be here who is writing correctly what I am now saying to you, I will send it emblazoned to their foreign majesties that they may know what *every body thinks* at least concerning them, even if nobody should have the privilege of *expressing it.*

Our country, to speak plainly, is at this moment in a most tremendous crisis of her affairs; no man can look forward to the future without affliction, nor the bravest without dismay:—Suppose, then, that any political writer, impressed with a sense of our danger, and actuated by the purest patriotism, were *thus* to address the councils of the king: “It is true that England stands at this moment the first amongst the nations of the world, and that her activities have been more honourable and more distinguished than at any former period in her history; but to what rational object have they been exerted? and what useful end are her exertions likely to produce?—Neither humanity nor reason would consent to tear to pieces the muscles

"of a noble animal for the mere exhibition of its strength—you ought to have known from the beginning that your contest with France would end exactly as with the present management it is most likely to do." Would this, if committed to writing, be a libel even upon our own government?—Against such a charge, could no defence be made consistently with our laws and constitution? Could the many worthy and independent men, who from honest principle (for opinions may be various upon such subjects) supported the war in its commencement, have no means of defence for exposing a mad and disgraceful waste of national strength without a national object?—Suppose a man to be convinced that if the war had been conducted with integrity and concert by all the powers engaged, it might in fair probability have been successful; can it be contended that such a person, though he saw the disgust of the people excited by such disasters against our own government, must nevertheless suffer it to take its unjust and dangerous course, for fear of offending those worthy and active allies which it has pleased God to bless us with? Might not a political writer publish in a pamphlet his opinion that the war had not miscarried from any default in our own arms or councils, and show to what causes so many reverses were fairly to be imputed? And would the Attorney-general prosecute, because truth impelled such a writer to cast the blame upon our allies? And who can doubt that truth must so direct and impel every writer upon the subject?

If the princes of Europe were convinced, as they declared themselves to be, that the very principles, even without the arms of the French republic, threatened the existence of their establishments, was not this an earnest to Great Britain of a most faithful and energetic confederacy, sufficient to overwhelm a power then in the first throes and convulsions of a sanguinary revolution?—Was not this state of things a signal for universal activity and concord from the Mediterranean to the Baltic?—Did it not promise a bond of union, more sacred and indissoluble than ever before had united nations in the leagues of war?—Was not their very existence as monarchs clearly at stake, whilst England from her insular situation was more secure?—And from the moment when their warlike confederacy was declared and acted upon, was there not then another and still stronger pledge for their fidelity, since having declared that republican France was incompatible with the safety of Europe, they could not but know that like the first law of nature in the action and reaction of matter, the motto of republican France would be the destruction of all thrones?—Now all this forms the defence of our own country and its government for carrying on the war; and could it possibly be considered as a libel in our courts of justice, to prove that from no fault of ours it had been

unsuccessful, and even disastrous?—Would it, I say, be a libel in a man fairly thinking and acting with government, and writing from unanswerable facts in its defence, to expose the causes which disappointed so just an expectation, and ended in the rout and discomfiture of this seemingly invulnerable phalanx? If then the right of defending our own government be admitted,—and the Attorney-general will not deny it—how, in God's name, could such a defence or history be written, without holding up to the ridicule and contempt of the world the very princes, concerning whose edicts it seems we must not dare to write, even though they most materially affect the commerce and prosperity of our country, and relate to nothing political, but only to the exportation of deal timber? For my own part, gentlemen, if I were to write my own thoughts concerning them, they would be very shortly expressed, but would throw very far into the shade the writing which is now prosecuted;—I should probably express myself in some such manner as this:—If the princes of Europe were not convinced, from the strongest and the clearest evidence, that the consequences of the French revolution *did* actually violate the freedom and independence of other nations *they ought to have been wholly neutral*; but if they were justified in thinking the contrary,—which it is not my province and therefore would not be a fair exercise of my privilege to agree to or deny in this place,—*then* they ought to have made an united, continued, and *unexampled* exertion, which no sacrifices, however great, or difficulties however perplexing, should for a single instant have disappointed or relaxed. Now, has this been their conduct? Directly the reverse; and for this reason the friends of our government, and all its subjects interested in its honour or security, have a right to complain in terms which no bitterness of sarcasm could adequately express, but which ought rather to be criticised for tameness than censured as a libel.

Gentlemen, this is not declamation, but a correct introduction to facts which I mean to state; and I will therefore first examine, to support it, the conduct of the late king of Prussia, who was the first to accede to the confederacy and to provoke the war.—He penetrated into the heart of France with a mighty army, and then, as if he had been predestinated to establish that invasion was impracticable, he turned quickly round as if he had seen a spirit in his path, and dissolved his army as by enchantment. At that *critical* time, the French were in a manner a naked and defenceless people, tearing from their sepulchres the transmutation of animal substances for the materials of war, which thus death itself was to furnish for the destruction of the living; whilst the bells of their churches and the irons that surrounded them, were the principal weapons she could present against the invading sovereigns of

Europe, though supported by their immense military establishments and the energies of their ancient governments, undisturbed by civil commotions or by external war.—Yet *this was the period* when these confederated princes, to whom all wisdom is it seems alone with safety to be imputed, lay upon their arms in slumbrous unison, whilst civil fury was preying upon the bowels of republican France!—Peace then be to the manes of the late king of Prussia.—He was succeeded by the present, who began his reign in an ominous vibration between peace and war, between empty threats and contemptible submission, suffering his nearest and dearest kindred to remain exiles from the countries and ancient inheritances of their fathers, whilst he was engaged in some slippery shabby compromise for his own security, magnanimously contending as he was at that moment with Hamburgh for the imprisonment of Napper Tandy, after having suffered without a remonstrance the ancient states of Switzerland to be overrun and subverted; whilst he himself, a leader and chief of the Germanic empire, with one hundred and fifty thousand men in arms was contented to suffer it to be dissolved for ever.

If this prince thought it better that France should prevail, and acted upon this principle; why was he not her ally? Why did he tamper and temporise? Why did he keep the word of promise to the ear but break it to the hopes of Europe? I apprehend, therefore, that it is out of the power, at least of a British subject, to libel the king of Prussia; and to defame the emperor of Germany would scarcely be less difficult.—They had played their parts of pusillanimity and folly together in rapid and disgraceful succession. The present emperor I have heard described as an amiable man, and it is therefore painful to speak of him when truth must be spoken. What was his conduct when he listened to the treaty of Campo Formio? Did he suppose that Buonaparté, the most able and enterprising general since the days of Alexander, would have offered him peace on his near approach to Vienna, if he had had full confidence in his own security? That sagacious officer knew the contrary; he knew that Italy was conquered, *but not organized*, and might follow his steps in the revulsion of conquest; and other impending dangers suggested the treaty. The bait to the emperor was Venice—A bauble to please a child, to be taken away again when it went to sleep:—Yet for this, he gave up the key of Italy. It may be said that this was an act of necessity; but if it was, why did he not yield to its imperious dictates, and, if the continuance of the war was impolitic, act fairly upon the principles of peace? but he did neither; and, when he saw danger approaching the thrones of Tuscany, Naples, and Sardinia, instead of calling out the legions of Bohemia and Hungary, and making one great and last effort to baffle the gigantic pro-

jects of France, he contented himself with sending a harlequin into Italy to assist at a carnival. Now I desire to ask the Attorney-general, whether it would be a libel to publish that the timidity and distracted weakness of this prince had contributed to exhaust the finances, and to defeat the objects of the ministers and parliament of Great Britain?—and if it must be admitted, for this reason, to be no libel, can any writing be declared one which stands upon the same principles, merely because it is considered one by the Crown?

As to the emperor of Russia,* whose character is to be supported by this prosecution of a transient publication in a daily newspaper, he might have laid for it a lasting foundation, if he had consulted his own honour and security; he had been bred in the school of adversity, and the world looked up to him with high expectation, realised by some acts of sound policy and wisdom on his first coming to the throne; but he had afterwards but too much vindicated the paragraph complained of. Instead of endeavouring, like one of his great predecessors, who worked in dock yards of England, to carry the useful arts of the world into his own country, no man could enter it for purposes of trade or science, without a passport, and even personal recommendation—a regulation founded upon the weak imagination that evil principles could be imported like corporeal pestilence, and shut out by a police on the principle of quarantine—an idea which reminds me of what Milton says, in his *Areopagitica*, of a wise country gentleman who raised the wall of his park to keep out the crows.

Gentlemen, I shall close here this disgusting history; for the introduction of which, or any part of it I ought to apologize to the Court, but for its direct and unanswerable application.—I persuade myself that there is not a man in England, who would consider as a libel, any of the instances I have insisted on by way of example; and if the principle is once admitted, it is impossible to draw any rational line in the application, except the one I have freely admitted, viz. whether the writing be honestly intended, or malicious. If malicious, I abandon the justification.

As to the danger to the state from these sort of writings, more especially as when in this case there has been no kind of complaint, I should think that Russia from its immense distance, and from the circumstance that our newspapers do not circulate there as in France and Germany, and that our language is but little known among the inhabitants, was of all instances of apprehension on that score the most singular to select; and if it succeeds I expect to see very soon an information filed for a libel upon the planet Saturn, setting forth that the printer of some London newspaper, maliciously in-

* Paul.

tending and contriving to disturb the laws of gravitation, and to create great disorder and mutiny amongst the planets, had printed and published that Saturn had no dependence on the Sun, and was not governed in his orbit by its influence; with another count for publishing that he had only four satellites, whereas in truth, and in fact, he had five.

Gentlemen, this may be thought a ridiculous parallel, as the laws of nature could not be changed by a paragraph in a newspaper, but so neither can any relations amongst states that are worth preserving. The only thing the resemblance fails in, is that Saturn does not send an Ambassador to the earth; but I have already said, and I am ready to prove, that the Russian ambassador has neither directly nor indirectly interfered.

I have already, gentlemen, or rather with the most tiresome tautology very frequently, admitted that none of the cases I have troubled you with by way of illustration and example apply to cases of *malicious falsehood*; but where a jury can plainly see that the writing, however severe, was intended to be real history and observation, it does not fall, upon any just or useful principle, under the acceptance of a libel.

Since the Libel act, the judge cannot say what is a libel as a judgment of law; he can only give his opinion as I have, upon general principles, though with the high authority of his station; but the jury after all are bound upon their oaths, to decide from all the circumstances of the case, and I feel myself obliged to say cannot in the present instance decide against the defendants without manifest injustice. Writers, in all times, have not only written with impunity on such subjects, but the press has literally teemed with them without censure or question. Paragraphs, ten times more severe than the present, against the emperor and king of Prussia have been in great circulation within these few hours past, which the Times and True Briton have reprinted, and I confess I see no fault in it; but, be that as it may, I will for a most trifling premium underwrite their security, because they are truths which nobody can deny, and which all England has an interest in exposing.

Mr. Erskine here read the letters from Mr. Sharp, the British consul at St. Petersburg, to the governor of the Russia Company, to prove that the edict was in fact issued and existed as represented in the Courier by the article in question, and made a forcible appeal to the feelings of the jury upon the injustice of subjecting innocent men perhaps to an ignominious punishment, as the punishment was discretionary, and the judgment of the Court when a humiliating sacrifice was to be made to a supposed insult upon a foreign ally on the principle adverted to, might not be easily satisfied. I do not wish, continued Mr. Erskine, to see the laws relaxed; but it would be still worse to see them strained for

any foreign power, however deserving, in opposition to the liberal policy of our ancestors, and the freedom of the British constitution, both of which would be grossly violated by a verdict against any of the defendants.

Mr. Parry I know personally to be a liberal gentleman incapable of malicious falsehood, and it has been candidly admitted by the Attorney-general himself, as well as established by proof, that the paragraph was a literal narration of a fact extremely important to be generally known, and which had therefore been circulated by the Russia Company, for the express purpose of communicating it to the mercantile world. Thus, what related to the edict was *strictly the fact*, not enlarged upon in any manner whatsoever; and as to the introduction so much complained of, it was general and just observation, quite within the scope of history upon the transactions of the great political world; for who ever heard of a history which confined itself to facts only, without the qualities and characters which belonged to them? Justice too, should be impartially administered; the matter complained of did not originate with the Courier, but notoriously came to it from the Caledonian Mercury, whose proprietors or publishers have never been questioned by the Crown. If, therefore, the proprietor, printer, or publisher now before you are to be held responsible and deprived of their liberty on such an account as this, our boasted liberty of the press is but an empty sound.

EVIDENCE FOR THE DEFENDANTS.

Mr. Forster the governor of the Russia Company was called to prove Mr. Sharp's letters; which were brought by the waiter of Batson's coffee-house, where they had been sent for the information of merchants.

The *Attorney General* objected to their admissibility, but said he waved the objection.

Lord *Kenyon*, however, disapproving of the production of the papers, the admission was therefore taken, without reading the letters.

REPLY.

Mr. *Attorney General*.—Gentlemen of the Jury; It is plain that I have not much embarrassed my learned friend, by bespeaking from him a brilliant speech. After twenty years experience of him, I knew I might safely do it; I knew also his clients had bespoke it, and were not likely to be disappointed. I never desire to deprive defendants of their defences, and the argument of their learned counsel is entitled to attention; but I trust, that you, gentlemen, will distinguish between the charges which the councils of nations may have against each other, and the unauthorized invectives of newspapers. These libels might produce the very coldness and indifference complained of. The ques-

tion is just what I stated it in the opening to be, namely whether the paragraph is a libel, and whether the defendants printed and published it. In the case of Mr. Reeves,* perhaps, I hardly conducted myself as I ought to have done, having from delicacy abstained in the House of Commons, from taking any share in the debate; whereas, I ought rather to have followed the example of lord Hardwicke, and have spoken my sentiments upon it, and after the address was voted, have begged that his majesty might command the alleged libel to be prosecuted by some other of his servants. I admit the paragraph complained of in the book of Mr. Reeves was improper, but upon reading the whole of it, I thought it manifest, that the author had no evil intention. In the present case I have no doubt, gentlemen, that you will decide according to the sound rule and principle of law, and rather take the noble and learned judge for your guide in that respect than either Mr. Erskine, or myself.

As to the punishment, it does not follow that it must be severe. The conviction is the legal consequence of the offence against the law; but the ambassador of the emperor at our court, is a man of mild and amiable manners, concerned of course for the dignity of his sovereign, but greatly attached to the subjects of Great Britain; and proper representations might obtain for the defendants what the law in its just administration could not possibly confer.

SUMMING-UP.

Lord Chief Justice *Kenyon*.—Gentlemen of the Jury; I shall make no apology for any punishment which the Court of King's-bench has ever ordered any individual to undergo, during the time I have been one of its judges. They, and all their proceedings, are before the public; they may be brought before parliament, and they are liable to punishment themselves in case of misbehaviour. They are bound by their oaths to discharge their duty to the king and his subjects, and to discharge it conscientiously, as the king himself is bound to do, who by his coronation oath is sworn in the most solemn manner to administer justice in mercy. I shall say nothing, therefore, on the anticipation of justice from the judges; I trust they are fully conscious of having always discharged their duty.

The learned counsel for the defendants has told you, that the situation of the country is critical and awful; and I am afraid he has drawn too faithful a picture of some of the causes to which it may be ascribed.

That the contest is left chiefly to our own exertions, and that our nearest and dearest interests are embarked in it, is most true. What remains at the foot of this account I know not, but the whole seems now to rest upon the emperor of Russia and ourselves.

* See it, *anté*, vol. 26, p. 529.

The learned counsel has very properly avoided all political discussions unconnected with the subject, and I shall follow his example. Courts of justice have nothing to do with them, but I admit that his observations as they regard the princes of Europe, were relevant to the cause, and open to him to enlarge on, as illustrations that the press could not be free if discussions of that nature were held to be illegal; but it is pretty plain to me that the learned counsel presented with great dexterity—and indeed who is more dextrous?—the best part of his case, concealing from you that which was vulnerable, drawing his arguments from materials so very near the subject as to appear convincing, though differing in fact, when you had freed yourselves from the delusion. What could have induced the princes of Europe to the conduct some of them have pursued, I will not venture to investigate; but sitting in a court of law, I am bound to say that it does not absolve states from enforcing a decent respect to the magistracies of each other,* and to the persons of sovereigns executing the law, &c. A breach of these rules might produce discord. In the last century, when there was less connection between us and the powers of the continent, and when perhaps the assistance of the court of Russia was less important, the legislature thought it wise to interpose. In the reign of queen Anne, if I mistake not, when an ambassador had been detained on a civil suit, which was complained of as contrary to the law of nations, an act of parliament was not only passed to protect the persons of foreign ministers from detention against civil demands, but the act was sent over to the capital of that kingdom.

All governments rest mainly on public opinion, and to that of his own subjects every wise sovereign will look. The opinion of his subjects will force a sovereign to do his duty, and by that opinion will he be exalted or depressed in the politics of the world. Our papers, it is well known, are not only circulated over Europe, but much farther; and the sentiments they contain are interesting and popular, so that if poison appears in them without its antidote, the effect might be fatal to ourselves; as it might be reasonably concluded, that if government winked at or slumbered over such a publication, it was disposed to adopt it. Letters from the consul to the Russia Company were produced; and it was proposed, on the part of the defendants, that they should be received. They were not however read, and it was well for the government of that company that they were not; they were state papers, and were very improperly brought into court. They related to the interests of a great commercial company, whose concerns no person charged with having committed a crime

* See the case of Lord George Gordon, *anté*, vol. 22, p. 212; and that of *Peltier*, *anté*, 1803, *infra*.

deinstitute, had any business to untravel. There was no power upon earth to force them here, without the consent of their owners, and most strangely had they mistaken their duty in producing them. There was no real interest of any served by their production, and the interests of the company, and through theirs, those of the commercial world, might be materially injured by it, if it became a precedent.

As to the paragraph itself, gentlemen, you have heard it; the substance of it is, that the emperor of Russia is a tyrant to his own subjects, and ridiculous in the face of Europe. Between the sovereign and the people of every country there is an express or an implied compact for a government of justice; by which the former is most solemnly and emphatically bound not to be tyrannical or unjust: yet here he is wantonly said to be a transgressor against all decency in the administration of his trust. I can only say, that if one were so to offend another in private life in this country, it might be made the subject of an action; and when these papers went to Russia and held up this great sovereign as being a tyrant and ridiculous over Europe, it might tend to his calling for satisfaction as for a

national affront, if it passed unrebated by our government and in our courts of justice.

It is for you, gentlemen of the jury, who come out of that rank which enables you to judge of the interests of the commercial world, to pronounce whether this is or is not a dangerous publication. I am bound by my oath to declare my own opinion; and I should forget my duty, if I were not to say to you that it is a gross libel.

The Jury withdrew, and, after remaining out of court nearly an hour, returned a verdict of Guilty against all the defendants.

Court of King's Bench, May 30th, 1799.

Sentence was this day passed upon the proprietor, the printer, and the publisher of the *Courier* newspaper for their libel on the emperor of Russia. The proprietor to be confined six months in the King's-bench prison, to pay a fine of 100*l.*, and to give security for his good behaviour for five years, himself in 500*l.* and two sureties in 250*l.* each. The printer and the publisher to be confined one month in the same prison.

637. Proceedings on the Trial of JOHN CUTHELL, for publishing a Seditious Libel; tried in the Court of King's Bench, Westminster, by a Special Jury, before the Right Hon. Lloyd Lord Kenyon, on Thursday the 21st day of February: 39 GEORGE III. A. D. 1799.,

Sittings at Westminster, Feb. 21, 1799.

INDICTMENT.

Of Hilary Term in the thirty-eighth year of King George the Third.

Middlesex } BE it remembered that on Monday next after the Octave of the Purification of the Blessed Virgin Mary in the thirty-eighth year of the reign of our sovereign lord George the Third by the grace of God of Great Britain France and Ireland king defender of the faith &c in the court of our said lord the king before the king himself at Westminster in the county of Middlesex upon the oath of twelve jurors good and lawful men in the county of Middlesex now here sworn and charged to enquire for our said lord the king for the body of the said county It is presented as followeth that is to say Middlesex to wit the jurors for our lord the king upon their oath present that at the time of printing and publishing of the several scandalous malicious and seditious libels hereinafter mentioned and long before there was and yet is an open and public war carried on between our said lord the king and the per-

sons exercising the powers of government in France and the French to wit at the parish of Saint Andrew Holborn in the county of Middlesex And the jurors aforesaid upon their oath aforesaid do further present that at the time of the printing and publishing of the several scandalous malicious and seditious libels hereinafter mentioned it was publicly rumoured and reported among the liege subjects of our said lord the king that the said persons exercising the powers of government so being enemies of our said lord the king did intend and were preparing to invade this kingdom with an armed force and in an hostile manner to wit at the parish aforesaid in the county aforesaid And the jurors aforesaid upon their oath aforesaid do further present that *John Cuthell* late of the parish of Saint Andrew Holborn in the county of Middlesex bookseller being a malicious seditious and ill disposed person and being greatly disaffected to our said sovereign lord the king and to the government and constitution of this kingdom and most unlawfully seditiously and maliciously contriving and intending to traduce vilify and bring into hatred and contempt

among the Nege subjects of our said lord the king the government and constitution of this kingdom both in church and state and now by law established and also our said lord the king's administration of the government of this kingdom and the persons employed by our said lord the king in the administration of the government of this kingdom and thereby to withdraw the affection and allegiance of the liege subjects of our said lord the king from our said lord the king and his government and also most unlawfully maliciously and seditiously devising and intending to dissuade and discourage the liege subjects of our said lord the king from resisting and opposing the said enemies of our said lord the king in case the said enemies should make an hostile invasion into this kingdom on the third day of February in the thirty-eighth year of the reign of our said sovereign lord George the Third king of Great Britain &c at the parish of Saint Andrew Holborn in the county of Middlesex wickedly maliciously and seditiously did publish and cause to be published a certain scandalous malicious and seditious libel containing therein among other things divers scandalous malicious and seditious matters of and concerning the people nobles ecclesiastical dignitaries government and constitution of this kingdom and of and concerning the administration of the government of this kingdom by our said lord the king and of and concerning the persons employed by our said lord the king in the administration of the government of this kingdom and also of and concerning an hostile invasion into this kingdom to be made by the said enemies of our said lord the king in one part thereof to the tenor and effect following that is to say (page 10) *Undoubtedly if the contest to be presumed to subsist between one ministry and another the bishop of Llandaff may be deemed as much as any man similarly situated an independent man but in a more extended view of this appellation and agreeable to some remarks already advanced in the preceding pages this independence cannot be so easily conceded to him For in fact very fortunately for the cause of liberty and human happiness the competition is no longer partial and unimportant between two parties in and out of place but is become a contest of principles of a general and most interesting kind between corruption and reformation The present ministry (meaning the persons employed by our said lord the king in the administration of the government of this kingdom) therefore and the abuses in church and state (meaning the church and state of this kingdom) are indivisibly interwoven with each other and every man alive who profits by these enormous inequalities can by no means be esteemed independent but must be considered in the eye of reason as an interested supporter of our existing forms (meaning the existing forms of the government of this kingdom) forms which I with many others regard as utterly inconsistent with the true welfare of*

the community and in another part thereof according to the tenor and effect following that is to say (page 22) The established conduct of these ministers (meaning persons employed by our said lord the king in the administration of the government of this kingdom) constitutes an indubitable proof of their ill faith in this transaction and a proof deduced also from the immutable operation of human passions they have burthened the country with an immense overwhelming debt by an unexampled prodigality of the public money they have reduced thousands and tens of thousands to wretchedness and beggary they have occasioned a devastation of the human species infinitely tremendous beyond the most merciless tyrants of ancient or modern times the death of a fellow-creature is no more to them than the fall of an autumnal leaf in the pathless desert land and sea is covered with the carcasses of their slain they have engendered sham plots false alarms and visionary assassinations for the purposes of deluding the unwarly and to establish their own power by a military despotism in due time over England like that which now tramples bleeding Ireland to the earth they have persecuted unto death they have exiled to the ends of the world and they now imprison (meaning imprison) with inconceivable rigour (I speak what I have seen and know) their fellow-citizens for trivial and venial offences against every principle of constitutional law pure justice and sound policy After a long course of these and other enormities can such men I ask in an instant become benevolent pacific haters of bloodshed and lovers of their country (Page 35) Add not insult to our sufferings On the contrary I am fully satisfied that if the French (meaning the aforesaid enemies of our said lord the king) could land a considerable army in this country to the number suppose of 60,000 (meaning sixty thousand) or 70,000 (meaning seventy thousand) men (which nevertheless appears to me utterly impracticable with our present naval superiority) the kingdom would be lost for ever the same cause which has facilitated the progress of the republicans on the continent would operate as powerfully for them in this country also namely a degree of poverty and wretchedness in the lower orders of the community which especially in their present state of depravity and ignorance will render the chances even from confusion of any change desirable I believe from my soul that within three miles of the house where I am writing these pages there is a much greater number of starving miserable human beings the hopeless victims of penury and distress than on any equal portion of ground through the habitable globe a fable of our old friend Esop is extremely apposite on this occasion (which I shall present to the reader in the simple style of Croxall 'Plain truth dear Murray needs no flowers of speech w take it in the very words of Creech' — The Sensible Ass—An old fellow was feeding an ass in a fine green meadow and being alarmed with the sudden approach of the enemy was impatient with the ass to put himself forward and

fy with all the speed that he was able The ass asked him whether or no he thought the enemy would clap two pair of panniers upon his back The man said no there was no fear of that Why then says the ass I will not stir an inch for what is it to me who my master is since I shall but carry my panniers as usual The application of this fable shows us how much in the wrong the poorer sort of people most commonly are when they are under any concern about the revolutions of a government all the alteration which they can feel is perhaps in the name of their sovereign or some such important trifle but they cannot well be poorer or made to work harder than they did before Thus far Dr. Crossall (meaning and insinuating thereby that the poorer sort of liege subjects of our said lord the king would not be prejudiced by a revolution in the government of this kingdom effected and brought to pass by the said enemies of our said lord the king and that the said last-mentioned liege subjects would be in the wrong if they should resist the said enemies of our said lord the king in case of an hostile invasion by them made into this kingdom And in another part thereof according to the tenor and effect following that is to say (p. 38) *It follows I think most unquestionably that no distinctions in society should prevail but what arise from personal merit and public services that the father's honours which have been justly paid him should be regularly transmitted in connexion with various privileges and immunities to his undescending children is a stupidity I should think which few will be forward to defend but no circumstances are the aristocratical dignities of this country something alas! besides virtue is nobility in England an advocate for inequality like this shall receive no commendations at my hands he deserves well neither of humanity nor the gospel and in another part thereof according to the tenor and effect following (page 39)—As to an ecclesiastical establishment in alliance with the state or rather dependent on it I consider such a confederacy as a monstrous usurpation in Christian polity as a fraudulent usurpation over that liberty "with which Christ has made us free" as an impious prostitution of the simplicity and sincerity of the gospel a scheme of universal philanthropy and freedom to secular and interested purposes in short as the prominent characteristic of that Anti-christian tyranny which is now ripe for summary vengeance and eternal extirpation I regard (to use great plainness of speech) your archbishops bishops deacons canons prebendaries and all the muster roll of ecclesiastical aristocracy (meaning the archbishops bishops deans canons prebendaries and all the dignitaries of the church of this kingdom) as the despicable trumpery of priestcraft and superstition and a grievous domination over the weak principles of evangelical sobriety but I am utterly incapable as God is my witness of the least disaffection to the persons of these churchmen or of the slightest wish to injure them because their opinions are not con-*

sonant to mine and in another part thereof according to the tenor and effect following that is to say (page 43) *If the French (meaning the aforesaid enemies of our said lord the king) come (meaning come into this kingdom in an hostile manner) they shall find me at my post a watchful centinel in my proper box my study among the venerable dead sometimes investigating the origin of man and primeval history by turning the dark lanthorn of heathen records or trimming the everlasting lamp of Moses sometimes musing with the divine professors of the tuneful art on subjects of taste and fancy and sometimes meditating with the men of Galilee on mortality—No systems of "the many made for one" no seal in support of frontless corruption and "every evil work" shall dip my hands in the blood of men! Non res Romana perituraque regna Let those who have an interest in these fooleries and sins Let those who have brought us to this most alarming crisis step forwards in the day of danger and fight the battles of their Baal and their Mammon Let these I say buckle on their panoply in defence of monarchy (meaning the monarchy of this kingdom) against republicanism and stand up for domestic robbers against a foreign spoiler We sons of peace or see or think we see a gleam of glory through the mist which now envelops our horizon great revolutions are accomplishing a general fermentation is working for the purpose of a general refinement through the universe incipient magni procedere menses—we will wait the event "through evil report and good report" in defiance of penalties and pains of persecutions imprisonments and deaths with trembling hope but with a firm and tranquil resignation "Know now whether this be thy son's coat or not" A minister and believer of the gospel should be well assured of the rectitude of his cause before he becomes crusader under the pretended banners of order and religion If I saw a government whether monarchical or republican devoted solely to the moral and intellectual melioration of its subjects steadily and systematically bent on the promotion of their temporal comfort and accommodation by beneficent and equal laws that government should find me as zealous and uniform in its support as the most forward of its champions but when I see all consideration of the public welfare swallowed up in a domineering profligacy venality and selfishness When I behold the most hideous crimes daringly perpetrated under the pretence of preserving regularity and subordination When I see religion employed as a state engine of despotism and murder by a set of men who are worse than heathens and infidels in their lives When I observe these and other enormities which the time would fail me to enumerate committed without scruple and without remorse to maintain forsooth a degenerate constitution (meaning the constitution of this kingdom) of ideal excellence and practical depravity and am called upon to defend it against invaders I recoil at such an audacious impo-*

sition and pity the understanding that can be duped by such despicable artifice I know the difference between Christianity and secularity between vice and virtue between public blessings and natural calamities between peculation and patriotism between freedom and coercion between simple uncostly justice and ruinous law chicanery between liberal religion and a venal creed between fancies and realities as well as the generality of my superiors in rank and station In contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity

SECOND COURT—And the jurors aforesaid upon their oath aforesaid do further present that the said John Cuthell so being such person as aforesaid and unlawfully seditiously and maliciously contriving and intending to traduce vilify and bring into hatred and contempt among the liege subjects of our said lord the king the Commons House of parliament of this kingdom and the persons employed by our said lord the king in the administration of the government of this kingdom particularly the right honourable William Pitt being one of the persons employed by our said lord the king in the administration of the said government and to insinuate and cause it to be believed that the persons employed by our said lord the king in the administration of the said government were unwilling to make peace with the aforesaid enemies of our said lord the king upon reasonable and proper terms and thereby to withdraw the affection and allegiance of the liege subjects of our said lord the king from our said lord the king and his government on the third day of February in the thirty-eighth year of the reign of our sovereign lord George the Third now king of Great Britain &c at the parish of Saint Andrew Holborn in the county of Middlesex wickedly maliciously and seditiously did publish and cause to be published a certain other scandalous malicious and seditious libel containing therein among other things divers scandalous malicious and seditious matters of and concerning the persons employed by our said lord the king in the administration of the government of this kingdom and particularly the said William Pitt and of and concerning the Commons House of Parliament of this kingdom to the tenor and effect following that is to say (page 26) *The tyrannical temper and the violent measures of the present administration* (meaning the persons employed by our said lord the king in the administration of the government of this kingdom) *exemplified by a transgression of the liberal policy of our ancestors and the confessed principles of constitutional freedom in such numerous and momentous instances form so great a contrast to the free energies of republican equality as will not allow me to suppose for a single moment that Mr. Pitt* (meaning the said William

Pitt) and his colleagues (meaning the persons employed together with the said William Pitt by our said lord the king in the administration of the government of this kingdom) entertained a sincere wish of a hearty reconciliation and friendly intercourse with the French government they must be sensible how much a commerce sooner or later must dissolve an usurpation of power in which they have fenced themselves by a copious manufacture of their staple commodity posts and peerages by a diffusion of corrupt humours through every vein of the body politic even to the evanescent ramifications of its capillary vessels and by a prostitute majority of borough-mongers loan-jobbers military officers pensioners and official sycophants in the lower House (meaning the Commons House of Parliament of this kingdom) Nay through such an amplitude of circumference is their vicious and contaminating influence now propagated in every direction that their power is irresistible throughout the country Notwithstanding all their miscarriages and misconduct Notwithstanding their palpable inability and the acknowledged inefficacy of their measures for I almost question whether a dozen men at all distinguished for intellect and virtue and political disquisition who are at this hour the advocates of the present ministry (meaning the persons employed by our said lord the king in the administration of the government of this kingdom) can be found in Britain from Old Belerium to the Northern Main not connected in fact or expectancy by themselves or their relatives with some who depend on the emoluments of the established system as church men officers in the army or navy contractors money-lenders lawyers or civil place men In contempt of our said lord the king and his laws to the great scandal of our said lord the king and his government to the evil example of all others and against the peace of our said lord the king his crown and dignity.

THIRD COURT—And the jurors aforesaid upon their oath aforesaid do further present that the said John Cuthell so being such person as aforesaid and unlawfully wickedly and seditiously contriving and intending to scandalize defame and bring into hatred and contempt among the liege subjects of our said lord the king the government and constitution of this kingdom in church and state as now by law established and especially the ecclesiastical dignities of this kingdom on the third day of February in the thirty-eighth year of the reign of our sovereign lord George the Third king of Great Britain &c at the parish of Saint Andrew Holborn in the county of Middlesex wickedly maliciously and seditiously did publish and cause to be published a certain other scandalous malicious and seditious libel containing therein among other things divers scandalous malicious and seditious matters of and concerning the government and constitution of this kingdom in church and state and of and concerning the

ecclesiastical dignitaries of this kingdom to the tenor and effect following that is to say (page 39) *As to an ecclesiastical establishment in alliance with the state or rather dependent on it I consider such a confederacy as a monstrous solecism in Christian polity as a fraudulent usurpation over that liberty with which Christ has made us free as an impious prostitution of the simplicity and sincerity of the gospel a scheme of universal philanthropy and freedom to secular and interested purposes in short as the prominent characteristic of that anti-christian tyranny which is now ripe for summary vengeance and eternal extirpation I regard (to use great plainness of speech) your archbishops bishops deans canons prebendaries and all the muster-roll of ecclesiastical aristocracy (meaning the archbishops bishops deans canons prebendaries and all the dignitaries of the church of this kingdom) as the despicable trumpery of priest-craft and superstition and a grievous domination over the meek principles of evangelical sobriety but I am utterly incapable as God is my witness of the least disaffection to the persons of these churchmen or of the slightest wish to injure them because their opinions are not consonant to mine In contempt of our said lord the king and his laws To the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.*

FOURTH COUNT—And the jurors aforesaid upon their oath aforesaid do further present that the said John Cuthell so being such person as aforesaid and unlawfully maliciously and seditiously contriving and intending to scandalize defame and bring into hatred and contempt among the liege subjects of our said lord the king the hereditary nobility and the House of Lords of this kingdom and thereby to withdraw the affection fidelity and allegiance of the liege subjects of our said lord the king from the government and constitution of this kingdom as now by law established on the third day of February in the thirty-eighth year of the reign of our sovereign lord George the Third king of Great Britain &c at the parish of St. Andrew Holborn in the county of Middlesex wickedly maliciously and seditiously did publish and cause to be published a certain other scandalous malicious and seditious libel containing therein among other things divers scandalous malicious and seditious matters of and concerning the hereditary nobility of this kingdom to the terror and effect following that is to say (page 38) *It follows I think most unquestionably that no distinctions in society should prevail but what arise from personal merit and public services that the father's honours which have been justly paid him should be regularly transmitted in connexion with various privileges and immunities to his underserving children is a stupidity I should think which few will be forward to defend But on circumstances are the aristocratical dignities of*

this country (meaning the hereditary nobility of this kingdom) something alas! besides virtue is nobility in England an advocate for inequality like this shall receive no commendations at my hands he deserves well neither of humanity nor the gospel In contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.

FIFTH COUNT—And the jurors aforesaid upon their oath aforesaid do further present that the said John Cuthell so being such person as aforesaid and unlawfully seditiously and maliciously contriving and intending to traduce and vilify and bring into hatred and contempt among the liege subjects of our said lord the king the government and constitution of this kingdom as now by law established and the administration of the government of this kingdom by our said lord the king and thereby to withdraw the affection and allegiance of the liege subjects of our said lord the king from our said lord the king and his government and also most unlawfully maliciously and seditiously devising and intending to dissuade and discourage the liege subjects of our said lord the king from resisting and opposing the said enemies of our said lord the king in case the said enemies should make an hostile invasion into this kingdom on the third day of February in the thirty-eighth year of the reign of our sovereign lord George the Third king of Great Britain &c at the parish of Saint Andrew Holborn in the county of Middlesex wickedly maliciously and seditiously did publish and cause to be published a certain other scandalous malicious and seditious libel containing therein among other things divers other scandalous malicious and seditious matters of and concerning the government and constitution of this kingdom and of and concerning the administration of the government of this kingdom by our said lord the king and also of and concerning an hostile invasion into this kingdom to be made by the said enemies of our said lord the king to the tenor and effect following that is to say *If the French (meaning the aforesaid enemies of our said lord the king) come (meaning come into this kingdom in an hostile manner) they shall find me at my post a watchful centinel in my proper box my study among the venerable dead sometimes investigating the origin of man and primæval history by turning the dark lunthorn of heathen records or trimming the everlasting lamp of Moses sometimes musing with the divine professors of the tuneful art on subjects of taste and fancy and sometimes meditating with the men of Galilee on mortality and immortality No systems of "the many made for one" no zeal in support of frontless corruption and every evil work "shall dip my hands in the blood of men Non res Romanae periturae regna Let those who have an interest in these fooleries and sins let those who have brought us to this most alarming crisis step for-*

ward in the day of danger and fight the battles of their Baal and their Mammon Let these I say buckle on their panoply in defence of monarchy (meaning the monarchy of this kingdom) against republicanism and stand up for domestic robbers against a foreign spoiler We sons of peace or see or think we see a gleam of glory through the mist which now envelops our horizon great revolutions are accomplishing a general fermentation is working for the purpose of general refinement through the universe—incipient magni procedere menses—we will wait the event “through evil report and good report” in defiance of penalties and pains of persecutions imprisonments and deaths with trembling hope but with a firm and tranquil resignation know now whether this be thy son’s coat or not A minister and believer of the gospel should be well assured of the rectitude of his cause before he becomes crusader under the pretended banners of order and religion if I saw a government whether monarchical or republican devoted solely to the moral and intellectual melioration of its subjects studiously and systematically bent on the promotion of their temporal comfort and accommodation by beneficent and equal laws that government should find me as zealous and uniform in its support as the most forward of its champions but when I see all consideration of the public welfare swallowed up in domineering profligacy venality and selfishness when I behold the most hideous crimes daringly perpetrated under the pretence of preserving regularity and subordination when I see religion employed as a state engine of despotism and murder by a set of men who are worse than heathens and infidels in their lives—when I observe these and other enormities which the time would fail me to enumerate committed without scruple and without remorse to maintain forsooth a degenerate constitution (meaning the constitution of this kingdom) of ideal excellence and practical depravity and am called upon to defend it against invaders I revolt at such an audacious imposition and pity the understanding that can be duped by such despicable artifices I know the difference between Christianity and secularity between vice and virtue between public blessings and national calamities between speculation and patriotism between freedom and coercion between simple uncostly justice and ruinous law chicanery between liberal religion and venal creed between fancies and realities as well as the generality of my superiors in rank and station In contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.

SIXTH COUNT.—And the jurors aforesaid upon their oath aforesaid do further present that the said John Cutbell so being such person as aforesaid and again unlawfully maliciously and seditiously contriving and intending to traduce vilify and bring into hatred and contempt among the liege subjects of our said lord the king the government and

constitution of this kingdom as now by law established and to withdraw the affection fidelity and allegiance of the liege subjects of our said lord the king and his government and also most unlawfully maliciously and seditiously devising and intending to dissuade and discourage the liege subjects of our said lord the king from resisting and opposing the said enemies of our said lord the king in case the said enemies should make an hostile invasion into this kingdom on the third day of February in the thirty-eighth year of the reign of our sovereign lord George the Third now king of Great Britain &c at the parish of Saint Andrew Holborn in the county of Middlesex wickedly maliciously and seditiously did publish and cause to be published a certain other scandalous malicious and seditious libel containing therein among other things divers scandalous malicious and seditious matters of and concerning the government and constitution of this kingdom and of and concerning the administration of the government of this kingdom by our said lord the king and also of and concerning an hostile invasion into this kingdom to be made by the said enemies of our said lord the king to the tenor and effect following (that is to say) (page 43) *If the French* (meaning the aforesaid enemies of our said lord the king) come (meaning come into this kingdom in an hostile manner) *they shall find me at my post a watchful sentinel in my proper box my study among the venerable dead sometimes investigating the origin of man and primeval history by turning the dark lanthorn of heathen records and trimming the everlasting lamp of Moses sometimes musing with divine professors of the tuneful art on subjects of taste and fancy and sometimes meditating with the men of Galilee on mortality and immortality No systems of the many made for one “no seal in support of frontless corruption and every evil work” shall dip my hands in the blood of men Non res Romanae perituraque regna Let those who have an interest in these fooleries and sins let those who have brought us to this most alarming crisis step forward in the day of danger and fight the battles of their Baal and their Mammon Let these I say buckle on their panoply in defence of monarchy (meaning the monarchy of this kingdom) against republicanism and stand up for domestic robbers against a foreign spoiler We sons of peace or see or think we see a gleam of glory through the mist which now envelops our horizon great revolutions are accomplishing a general fermentation is working for the purpose of general refinement through the universe* In contempt of our said lord the king and his laws To the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.

SEVENTH COUNT.—And the jurors aforesaid upon their oath aforesaid do further present that the said John Cutbell so being such person as aforesaid and unlaw-

fully seditiously and maliciously contriving and intending to withdraw the affection fidelity and allegiance of the liege subjects of our said lord the king from our said lord the king and his government and to dissuade and discourage the liege subjects of our said lord the king from resisting and opposing the said enemies of our said lord the king in case the said enemies should make an hostile invasion into this kingdom on the third day of February in the thirty-eighth year of the reign of our sovereign lord George the Third king of Great Britain &c at the parish of Saint Andrew Holborn in the county of Middlesex wickedly maliciously and seditiously did publish and cause to be published a certain other scandalous malicious and seditious libel containing therein among other things divers other scandalous malicious and seditious matters of and concerning an hostile invasion into this kingdom to be made by the said enemies of our said lord the king to the tenor and effect following that is to say (page 35) *On the contrary I am fully satisfied that if the French (meaning the aforesaid enemies of our said lord the king) could land a considerable army in this country to the number suppose of 60,000 (meaning sixty thousand) or 70,000 (meaning seventy thousand) men (which nevertheless appears to me utterly impracticable with our present naval superiority) the kingdom (meaning this kingdom) would be lost forever The same cause which has facilitated the progress of the republicans on the continent would operate as powerfully for them in this country also namely a degree of poverty and wretchedness in the lower orders of the community which especially in their present state of depravity and ignorance will render the chances even from confusion of any change desirable I believe from my soul that within three miles of the house where I am writing these pages there is a much greater number of starving miserable human beings the hopeless victims of penury and distress than on any equal portion of ground through the habitable globe A fable of our old friend Æsop is extremely apposite on this occasion which I shall present to the reader in the simple style of Croxall ' Plain truth dear Murray needs no flowers of speech so that it in the very words of Creech'—*The Sensible Ass—An old fellow was feeding an ass in a fine green meadow and being alarmed with the sudden approach of the enemy was impatient with the ass to put himself forward and fly with all the speed that he was able The ass asked him whether or no he thought the enemy would clap two pair of panniers upon his back The man said no there is no fear of that why then said the ass I will not stir an inch for what is it to me who my master is since I shall but carry my panniers as usual The application of this fable shows us how much in the wrong the poorer sort of people most commonly are when they are under any concern about the revolutions of a government all the alteration which they can feel is perhaps in the name of their**

sovereign or some such important trifle but they cannot well be poorer or made to work harder than they did before Thus far Dr. Croxall (meaning and insinuating thereby that the poorer sort of liege subjects of our said lord the king would not be prejudiced by a revolution in the government of this kingdom effected and brought to pass by the said enemies of our said lord the king and that the said last-mentioned liege subjects would be in the wrong if they should resist the said enemies of our said lord the king in case of an hostile invasion by them made into this kingdom In contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity

The names of the special jurors returned by the sheriff having been twice called over, only ten out of the twenty-four appeared.

Lord Kenyon.—Mr. Attorney-General, do you pray a *tales*?

Mr. Attorney General [sir John Scott, afterwards Lord Chancellor Eldon].—My lord; Although I have more than once had occasion to complain, and now have to complain of the default of the special jury, yet it does not appear to me to be proper to keep the defendant before the Court from time to time without a trial, and therefore I pray a *tales*.

Lord Kenyon.—I have been informed that many of those whose names appear upon the list of persons returned to serve as special jurymen in this case are dead, and therefore the list is defective. The freeholders' name-book at the office ought to be amended.

The Jury having been sworn, the indictment was opened.

Mr. Attorney General.—May it please your lordship. Gentlemen of the jury; This is an indictment against the defendant, a bookseller, for publishing a pamphlet by the Rev. Gilbert Wakefield, in answer to the Address of the bishop of Llandaff to the People of England,* upon the subject of raising a large sum of money for the exigencies of the state, by means of assessed taxes.

Free, manly, and rational discussion is open to every man in this country upon all subjects; and juries should never be called upon to convict, except they find that the publication has deviated from the path of manly discussion, and has gone into abuse and invective without argument; for such species of publication cannot be met by reasoning, and therefore cannot, in the weak minds of those who believe them, be refuted by reasoning. Such publications have at all times been deemed to be libellous and dangerous, and therefore have, from time to time, been made the subjects of prosecution in courts of justice;

* As to this Address, see Anecdotes of the Life of Bishop Watson, vol. 2, p. 49, 2nd ed.

and the present publication has been already pronounced libellous by two special juries, and by one grand jury, namely two juries by whom Mr. Johnson and Mr. Jordan* were tried, and the grand jury who have found the bill of indictment which is now before you. That, however, I admit is not binding upon the present jury; you will be guided solely by the conviction of your minds founded upon a full consideration of the whole case as it shall appear in evidence before you.

[The learned gentleman then read from the book the several passages set forth in the indictment, and explained his ideas of the tendency of them as he went on. He then proceeded:]

Gentlemen of the jury; every man who publishes a book is answerable for the contents of it, whether he knows them or not; and when a man publishes a book he takes his chance; if it be an innocent book it is well, if a libel the publisher is answerable for its contents. In such a case the fate of the publisher, as to guilt or innocence, depends upon the character of the book. All circumstances that relate either to the inadvertency of the publication, or the publisher's ignorance of its contents, may be made topics for the consideration of the Court in mitigation of punishment, but cannot be received as manifestations of innocence; and therefore, as you, gentlemen of the jury, have only to pronounce upon guilt or innocence, and the Court alone has the power of ordering the punishment, there can be no difficulty in the present case, unless you should find reason to disbelieve the evidence.

[The pamphlet was then produced, and proved to have been sold at the defendant's shop.]

DEFENCE.

The Hon. *Thomas Erskine* [afterwards Lord Chancellor Erskine.†]—I rise to address you,

* I much regret that my endeavours to obtain reports of these cases have hitherto been unsuccessful.

† "The following speech of lord Erskine, in the court of King's-bench, at Westminster, on the 21st of February 1799, for Mr. Cuthell, the bookseller, in Holborn, becomes peculiarly interesting at the present moment, from the verdict of a special jury very lately at Guildhall, London, in the case of Mr. White, the proprietor of the Independent Whig, as the doctrine upon which that verdict appears to have proceeded, was strongly insisted upon by lord Erskine in Mr. Cuthell's case, and every possible argument employed to support it; but the doctrine was then over-ruled by lord Kenyon, at Westminster, as it was lately by lord Ellenborough at Guildhall; and, indeed, lord Erskine appears to have been so sensible of the current of authorities against

gentlemen of the jury, with as much anxiety as I have ever felt in the course of my professional life.—The duty I have to perform is difficult and delicate.—I am counsel for Mr. Cuthell only, who is charged merely as publisher of a writing, for which the reverend gentleman now in court (*and who is to plead his own cause*) is immediately afterwards to be

him, which would, at all events, be binding on a single judge proceeding on such a trial, whatever he might think of the propriety of former decisions on the subject, that he appears to have pressed the jury to bring in a special verdict in Mr. Cuthell's case; finding the publication, or even a negligent publication, but negating the criminal intention charged by the indictment; so as to bring the question before all the judges, and even before the House of Lords, in the dernier resort—whether such a verdict would support a judgment on the record. The case of Mr. Cuthell was shortly this: The bishop of Landaff, in the year 1798, had published a pamphlet inculcating the duty of the people of this country, to exert themselves to the utmost in the critical exigency of its affairs, in consequence of the French revolution, and the danger of an invasion from France, and inculcating the propriety of submitting to a regular system of high taxation within the year, for supplying every necessity of the state. To this pamphlet the Rev. Mr. Gilbert Wakefield, well known and remembered as an eminent scholar, published a reply, on the appearance of which in the shops of London; the late Mr. Johnson of St. Paul's Church-yard, and another bookseller who had sold it; were prosecuted by the Attorney-general, and convicted; lord Kenyon and the two special juries who tried the causes at Guildhall, having considered Mr. Wakefield's pamphlet to be a seditious libel, and the booksellers responsible as publishers.

"After these convictions, the Attorney-general indicted Mr. Wakefield himself as the author, and Mr. Cuthell, the bookseller, of Holborn, who had sold it in his shop. Mr. Cuthell's case was a very particular one. He was not a publisher of books or pamphlets on political or other transitory subjects, but dealt almost entirely in books of classical learning; and as such a bookseller had been selected by Mr. Wakefield to publish many of his learned works, but never any other; nor had, indeed, Mr. Wakefield written any other; nor did it appear that Mr. Cuthell had any reason to suspect that Mr. Wakefield had become a writer upon any political topics, as the bishop of Landaff, to whom he was publishing a reply, had written largely upon theological subjects.

"The reply to the bishop of Landaff was not printed by Mr. Cuthell, but by a Mr. Hamilton, a printer, employed by Mr. Wakefield himself, who directed some copies to be sent, for sale, to Mr. Cuthell's shop, as he had al-

tried, on another indictment, as the *author*. The rules of law would entitle Mr. Cuthell to a *double* defence; he might maintain the

ways been the publisher and seller of his many classical works. Mr. Cuthell began to sell them without due examination, but instantly stopped the sale upon the first intimation of the nature and character of the work.

"The indictment against Mr. Wakefield, the author, and against Mr. Cuthell, the bookseller, were appointed on the same day, the 21st of February 1799, for trial; and Mr. Cuthell being to be tried first, and Mr. Wakefield being to make his own defence as the author, lord Erskine appears to have taken his stand for Mr. Cuthell upon his particular situation, contending, that having always been the publisher of Mr. Wakefield's works upon subjects of ancient learning only; and that this pamphlet being brought to him by Mr. Wakefield himself, without any notice of so great a change of subject, he had suffered it to be sold upon the faith of Mr. Wakefield's character, and the abstract nature of all his other works, without suspecting that the subject was political, much less seditious; the shopman, who was called as a witness, having sworn that it would not otherwise, under his general instructions, and the nature of Mr. Cuthell's business, have found any entrance into the shop. To confirm this defence, Mr. Wakefield, the author, was called by Mr. Cuthell, but declined answering, as it might criminate himself. How the exculpation of Mr. Cuthell could have criminated Mr. Wakefield, beyond the writing of the book, of which the Crown was known to have had full proof, and which was not afterwards denied by Mr. Wakefield in his own defence, it is not easy to understand; but Mr. Wakefield had a most unquestionable right to refuse the aid of his testimony to Mr. Cuthell, whose case, however, suffered considerably from the want of it.

"As the law stands at present, from a current of authorities, it is undoubtedly not competent to any judge trying an information, or indictment, for a libel, to give any other direction to a jury, than that a publication, though proved to have been sold by a servant, without knowledge of the master, involves the master in all the criminal consequences of the publication, and subjects him to an information, or indictment, as a treasonable, seditious, or malignant publisher, as the case may be; and lord Ellenborough, therefore, upon a late trial, could give no other opinion to the jury at Guildhall, than that which was delivered by his lordship. But surely it may well deserve the consideration of parliament, whether the case of printing or publishing a libel should be left, as it is, such an anomaly in the law, and that juries should be called upon to pronounce, on their oaths, that a defendant published treasonably, seditiously, or malignantly, who was, from accident, or, if

VOL. XXVII.

innocence of the *book*, because *his* crime as *publisher* can have no existence unless the matter be criminal which he has published;

you will, even from negligence, unconscious of the existence of the publication which constitutes his crime.

"It is true that this case of mere negligence without evil intention, is difficult of proof. Yet it occurs frequently, and should be distinguished from a criminal publication; and the distinction would be most easy consistently with all the rules of criminal law.

"If the negligent publication of a libel, though without criminal intention, ought to continue to be an anomaly, and to subject the negligent publisher to an information, or indictment as well as to an action for damages; why ought not the law to be so declared or enacted, or even without declaration or enactment, such informations and indictments be drawn with distinct counts, or charges; one charging the criminal intention, so as to identify the criminal publisher with the author, and another charging a negligent publication; by which the crimes which are extremely different, and the punishments which ought to be equally so, would be distinguished from each other; whereas, according to the present course of proceeding, a mere negligent publisher must be found guilty of the indictment, charging a criminal publication only; and, after conviction, stands before the Court (as the case may be), as a treasonable, seditious, or malignant publisher, and cannot be received to mitigate his sentence as having been negligent only, being estopped by the record of the conviction; although the judges, from humanity and justice, are every day obliged, in the teeth of the record, to mitigate by a side-wind, the judgments of the law, upon principles which the law does not openly sanction. It is this anomaly which so often entangles the consciences of juries, and will continue to do so till the case is duly considered by the legislature, and the question, one way or the other, set at rest. From the same anomaly, the Rev. Mr. Bate Dudley was acquitted as not being a criminal publisher, many years ago, lord Erskine and Mr. Pitt, then at the bar, being his counsel. But the acquittal was against the opinion of lord Mansfield, who wholly over-ruled lord Erskine's argument, and directed the jury to convict.

"All that lord Erskine then and in the following case of Mr. Cuthell appears to have contended for, is, that if a negligent publication be an indictable offence, the party should be so charged, and ought not to be convicted on a count which charges a criminal intention, which he is in a condition to negative by satisfactory proof.

"A further evil, indeed, and no small one, attends the practice of not distinguishing the criminal from the negligent publication by distinct charges in the indictment. Judges and juries will occasionally differ totally from

and supposing it to be criminal, he might separate himself, by evidence, from the criminal purpose charged upon him by the record.—The first of these offices he must not be supposed to shrink from because of its difficulty, or from the force of the verdicts which the Attorney-general has adverted to as having been given in the city of London; Mr. Johnson, who was *there* convicted, stood in the ordinary situation of a bookseller selling a book in the course of his trade:—on that occasion I thought myself bound to make the defence of *the book*; but the defence of a book may be one thing, and that of its publisher another.—There can be no proceedings *IN REM* by an Attorney-general against a book, as against tea or brandy in the Exchequer.—The intention of the author and of each publisher involves another consideration, and it is impossible to pronounce what opinion the jury of London might have held concerning the book, if its author had been to lay before them his own motives, and the circumstances under which it was written. Even after Mr. Cuthell shall be convicted from my failing in his defence (a supposition I only put, as the wisest tribunals are fallible in their judgments), the verdict ought not, in the remotest degree, to affect the reverend gentleman who is afterwards to defend himself.—His motives and intentions will be an entirely new cause, to be judged of as if no trial had ever been had upon the subject; and so far from being prejudged by other decisions, I think that, for many reasons, he will be entitled to the most impartial and the most indulgent attention. These considerations have determined me upon the course I shall pursue.—As Mr. Cuthell's exculpation is by disconnecting himself wholly from the work as a CRIMINAL publisher, from his total ignorance of its contents, and, indeed, almost of its existence, I shall leave the province of its defence to Mr. Wakefield himself, who can best explain to his own jury the genuine sentiments which produced it, and whose very deportment and manner, in pleading his own cause, may strikingly enforce upon their consciences and understanding the truth and

each other. If the juries, finding verdicts of acquittal in such cases, against the opinion of the judge, are considered by the public, or any part of it, to have acted improperly, the trial by jury suffers in proportion; and if, on the other hand, such juries are considered to have properly resisted the opinion of the judge (although the judge had no jurisdiction to give a contrary opinion), the judicial authority then suffers in public estimation; whereas the constitution of the country actually depends upon the utmost reverence for, and confidence in, the administration of justice in all its parts, which never existed in any country in the world in such purity as in our own.—Editor of "*Erskine's Miscellaneous Speeches*."

integrity of his defence. Observations from me might only coldly anticipate, and perhaps clash with the arguments which the author has a just, natural, and a most interesting right to insist upon for himself.

There is another consideration which farther induces me to pursue this course. The cause, so conducted, will involve a most important question as it regards the liberty of the press; because, though the principles of criminal and civil justice are distinguished by as clear a boundary as that which separates the hemispheres of light and darkness, and though they are carried into daily practice throughout the whole circle of the law; yet they have been too long confounded and blended together when a *libel* is the crime to be judged. This confusion, gentlemen, has not proceeded from any difficulty which has involved the subject, because, of all the parts of our complicated system of law, it is the simplest and clearest; but because POLITICAL JUDGES, FOLLOWING ONE ANOTHER IN CLOSE ORDER, and endeavouring to abridge the rights and privileges of juries, have perverted and distorted the clearest maxims of universal jurisprudence, and the most uniform precedents of English law.—Nothing can establish this so decisively as the concurrence with which all judges have agreed in the principles of *civil* actions for libels, or slander, concerning which there never has been a controversy, nor is there to be found throughout the numerous reports of our courts of justice, a discordant case on the subject; but in *indictments for libels*, or, more properly, in indictments for *political* libels, the confusion began and ended.

In the case of a *civil* action throughout the whole range of civil injuries, the master is always *civilliter* answerable for the act of his servant or agent; and accident or neglect can therefore be no answer to a plaintiff, complaining of a consequential wrong. If the driver of a public carriage maliciously overturns another upon the road whilst the proprietor is asleep in his bed at a hundred miles distance, the party injuring must unquestionably pay the damages to a farthing; but though such malicious servant might also be indicted, and suffer an infamous judgment, could the master also become the object of such a prosecution? CERTAINLY NOT.—In the same manner, partners in trade are *civilly* answerable for bills drawn by one another, or by their agents, drawing them by procuration, though fraudulently, and in abuse of their trusts; but if one partner commits a fraud by forgery or fictitious indorsements, so as to subject *himself* to death, or other punishment by indictment, could the other partners be indicted?—To answer such a question here would be folly; because it not only answers itself in the *negative*, but exposes to scorn every argument which would confound indictments with civil actions. WHY then is *printing and publishing* to be an exception to every

other human act? Why, is a man to be answerable *criminaliter* for the crime of his servant in this instance more than in all other cases? Why is a man who happens to have published a libel under circumstances of mere accident, or, if you will, from actual carelessness or negligence, but *without criminal purpose*, to be subjected to an infamous punishment, and harangued from a British bench as if he were the malignant author of that which it was confessed before the Court delivering the sentence, that he never had seen or heard of? As far, indeed, as damages go, the principle is intelligible and universal; but as it establishes a crime, and inflicts a punishment which affects character and imposes disgrace, it is shocking to humanity and insulting to common sense.—The Court of King's-bench, since I have been at the bar (very long, I admit, before the noble lord presided in it, but under the administration of a truly great judge) pronounced the infamous judgment of the pillory on a most respectable proprietor of a newspaper, for a libel on the Russian Ambassador, copied too out of another paper, but which I myself showed to the Court by the affidavit of his physician, appeared in the first as well as in the second paper, whilst the defendant was on his sick bed in the country, delirious in a fever. I believe that affidavit is still on the files of the Court.—I have thought of it often—I have dreamed of it, and started from my sleep—sunk back to sleep, and started from it again. The painful recollection of it I shall die with.—How is this vindicated? From the supposed necessity of the case.—An indictment for a LIBEL is, therefore, considered to be an anomaly in the law.—It was held so undoubtedly; but the exposition of that error lies before me; the Libel act lies before me, which expressly, and in terms, directs, that the trial of a libel shall be conducted like every other trial for any other crime; and that the jury shall decide, not upon the mere fact of printing or publishing, but upon the whole matter put in issue, i. e. the publication of the libel WITH THE INTENTIONS CHARGED BY THE INDICTMENT.—This is the rule by the Libel act; and you, the jury, as well as the Court, are bound by it.—What, then, does the present indictment charge?—Does it charge merely that Mr. Cuthell published, or negligently published, the Reply to the Bishop of Landaff?—No. It charges, “that the defendant being a wicked and seditious person, and malignantly and traitorously intending to secure the invasion of Great Britain by the French, and to induce the people not to defend the country, had published, &c. SETTING FORTH THE “BOOK.” This is the charge, and you must believe the whole complex proposition before the defendant can be legally convicted. No man can stand up to deny this in the teeth of the Libel act, which reduces the question wholly to the intention, which ought to be a foundation for their verdict. Is your belief of

negligence sufficient to condemn Mr. Cuthell upon this indictment, though you may discredit the criminal motive which is averred? The best way of trying that question is, to find the negligence by a special verdict, and negative the motives as alleged by the indictment; do that, and I am satisfied.

I am not contending that it may not be wise that the law should punish printers and publishers even by way of indictment, for gross negligence (*crassa negligentia*), because of the great danger of adopting a contrary rule. Let it, for argument's sake, be taken that such an indictment may, even as the law stands, be properly maintained; but, if this be so, why should not the indictment, in conformity with the universal rules of pleading, charge such negligence, by a distinct count?—Upon what principle is a man, who is guilty of one crime, to be convicted, without a shadow of evidence, or in the teeth of all evidence, of another crime, greatly more heinous, and totally different?

If upon a count charging a negligent publication, a publisher were convicted, he could only appear upon the record to be guilty from negligence; but, according to the present practice, the judge tells the jury, that though a defendant has only been negligent, he is guilty upon the whole record, which charges a treasonable, seditious, or malignant intention; and after such a conviction, when he appears in court to receive judgment, and reminds the judge, who inveighs against his traitorous, seditious, or malignant conduct, that the evidence established his negligence ONLY; he is instantly silenced, and told that he is estopped by the record, which charges a publication with these mischievous intentions, and of which entire charge the jury have found him guilty. I appeal, boldly, to the truly excellent and learned chief justice, whether this be conformable to the precision of the English law in any of its other branches, or to the justice of any law throughout the world.

But it has been said, and truly, how is the intention to be proved but by the act? I of course admit that the intentions of men are inferences of reason from their actions, where the action can flow but from one motive, and be the reasonable result but of ONE INTENTION.—Proof of such an action is undoubtedly most convincing proof of the only intention which could produce it; but there are few such actions; nor, indeed, scarcely any human conduct which may not, by circumstances, be qualified from its original *primæ facie* character or appearance. This qualification is the foundation of all defence against imputed crimes. A mortal wound, or blow, without adequate provocation, visible to a grand jury, is a just foundation for an indictment of murder; but the accused may repel that inference, and reduce the crime from murder to manslaughter, or to excusable, and even to justifiable homicide. Mr. Cuthell

asks no more:—he admits that on the evidence now before you he ought to be convicted, if the book is in your judgment a libel; because he stands before you as a publisher—and may be, therefore, taken to have been secretly connected with the author, or even to be the author himself;—but he claims the right of repelling those presumptions *by proof*; and the only difference between the Crown and me, will be, not as to the existence of the fact on which I rest my defence—but *whether the proof may be received as relevant, and be acted upon, if believed by you, the jury*. I am sorry to say, gentlemen, that it is now become a commonplace position, that printers and booksellers are answerable for simple negligence; yet no judge, in my hearing, has ever stated that *naked proposition* from the bench; it has been imputed as the doctrine of the noble and learned judge: *when and where* he delivered it I am ignorant—he has, on the contrary, tried indictments on the principles of the Libel bill, before the Libel bill existed; and on these principles Stockdale* was tried before him, and acquitted. Where a printer, indeed, has printed, or a bookseller has sold a book, written by an unknown or unproduced author, and cannot bring any evidence in his defence—he must, to be sure, in common sense, and upon every principle of law, be criminally responsible, if the thing published be a libel; but not for negligence only, but as criminal in the full extent of the indictment. A publisher, indeed, though separated in *original* intention from the criminal motives of the author, may be found to be responsible in law, for the publication, upon the legal presumption that he had adopted the *criminal sentiments of the author, and criminally circulated them by printing or publication*. But such a conviction does by no means establish the proposition, that *innocent* printers or publishers, *where they can show their innocence*, are criminally responsible for negligence only. On the contrary, it proceeds upon the criminality being *prima facie* established by the act of publishing in cases where the printer or publisher cannot show the negligence or accident which had led to the publication; but *where such mere negligence or accident can be established to the satisfaction of a jury, which not very often can be the case*, the criminal inference is then repelled, and the defendant ought to be entitled to an acquittal. The numerous convictions, therefore, of publishers upon the mere act of publication, establish no such proposition as that which the Attorney-general has contended for; because such publishers were convicted of the criminal intentions charged in the indictment, not upon the principle of criminal responsibility for an act of neglect only, but because it could not be established, in these cases, that the act of publishing arose from negligence only. By

* See his case, *antè*, vol. 22, p. 537.

the act of publishing matter from whence a criminal intention results, as an inference of reason, and, therefore, as an inference of law, the criminal mind is *prima facie* fairly imputable: and in the absence, therefore, of satisfactory evidence on the part of the defendant to repel the criminal conclusion, the guilt is duly established; but, then, this is not doctrine applicable singly to libels—it applies equally to *all crimes* where the most innocent man may be convicted, if from unfortunate circumstances he cannot repel the presumptions arising from criminal proof. But the doctrine which I shall ever oppose, as destructive of every human security, and repugnant to the first elements of criminal justice, is this, *that though the defendant, taking upon himself the difficult, and frequently impossible proof of accident or oversight, should be able to convince the jury that he never saw the matter charged to be a libel—that it was imposed upon him as a work of a different quality—or, that he was absent when a servant sold it, and to which servant he had not given a general licence to sell every thing which was brought to him—and who, moreover, could fortify the proof of his innocence by his general deportment and character; yet, that such a publisher must nevertheless be found guilty as a malignant publisher, by virtue of an abstract legal proposition—this I deny—and have, throughout my whole professional life, uniformly denied. It never has been adjudged in such a shape as to be fairly grappled with. I positively deny such a doctrine, and I am sure that no judge ever risked his character with the public by delivering it as law from the Bench. The judges may have been bound at Nisi Prius, as I admit they are, to decide according to the current of decisions. I will meet my learned friend, the Attorney-general, in the Lords' House of Parliament on that question, if you, the jury, will assist me with the fact to raise it by finding as a special verdict—"That the book, if you please, was a libel—that Mr. Cuthell, the defendant, published it; but that he published it from negligence and inadvertency, WITHOUT THE MOTIVES CHARGED BY THE INDICTMENT."—If you, gentlemen of the jury, will find such a verdict, I will consent never to re-enter Westminster Hall again, if one judge out of the twelve will, upon a writ of error, pronounce judgment for the Crown. The thing is impossible; and the Libel act was made for no other purpose than to suppress doctrines which had long been branded as pernicious and destructive to public freedom and security. The Libel bill was passed to prevent trials of libels from being treated as an anomaly in the law, and to put them on a footing with all other crimes; and no crime can possibly exist when the intention which constitutes its essence, can be separated from the act—"Actus non facit reum, nisi mens sit rea." If a man, without knowing the king, were to give him a blow, which might even*

endanger his life, could he be convicted of compassing and imagining the death of the king under the statute of Edward 3rd? Undoubtedly not—because the compassing or intention was the crime, and the blow was only the overt-act from whence the compassing was to be a legal inference, unless the prisoner repelled it by showing the circumstances of the accident and ignorance under which he assaulted the king. I of course admit that it is not necessary to prove that a publisher had seen the book he published; for if he authorizes his servants to publish every thing without examination, it would be sufficient proof, in the judgment of a jury, according to circumstances, that he was the wilful and criminal publisher or author himself, or secretly connected with the author, and criminally implicated in his guilt. But the present question is, whether, if he can convince you, the jury, of his innocence, you are still bound to convict him under an imperative rule of law, though you believed his mind to have been unconscious of the crime imputed by the indictment.

If a man were to go upon the roof of a house in the Strand or Fleet-street, and throw down large stones upon the passengers below, it would undoubtedly be murder, though a stranger only were killed, against whom no particular malice could possibly be suspected; i. e. it would be murder, if these facts were returned to the judges by special verdict. But would a jury be bound to convict him, even though they were convinced, by the clearest evidence, that he had mistaken the side of the house, and from inadvertence had thrown the stones into the street, instead of on the other side, which led to an unfrequented spot? This proof might be difficult; but if the proof existed, and the jury believed it, would it be murder? Common law, common sense, and common humanity, revolt alike at the idea.

The Attorney-general has admitted the true principle of the liberty of the press, as it regards the quality of a publication. He has admitted it, greatly to his honour, because he is the first Attorney-general who ever, to my knowledge, has so distinctly admitted it. He has, indeed, admitted the true principle in the very way I have always understood it in most of the criminal prosecutions which, in my time, have been the subject of trial. The questions have always arisen on the application of the principle to particular cases, and that is the sole question to day. He has admitted that every subject has a clear right freely to discuss the principles and forms of the government, to argue upon their imperfections, and to propose remedies; to arraign, with decency and fair argument, the responsible ministers and magistrates of the country, though not to hold them up to general, indiscriminating execration and contempt;—and he has admitted also, that it is the office of the jury to say, within which of the two

descriptions any political writing was to be classed. This admission comes strongly in support of publishers. For if an author could not write legally upon any such subjects, publishers ought then to reject the book altogether upon the very view of the subject, as collected from the title-page, without advert- ing to the contents. But if writings respecting our government, and its due administration, be unquestionably legal, a general bookseller has no such reserve imposed upon him from the general subject of the work, and must read his whole library in a perpetual state of imprisonment in his shop, to guard him from perpetual imprisonment in a goal. If he published, for instance, the Encyclopædia of Paris or London—and in the examination of all science and of all art in such a stupendous work, there should be found, even in a single page or paragraph, a gross attack on religion, on morals, or on government, he must be presumed to be malignantly guilty, and (according to the argument) not *primâ facie* merely, but conclusively, to be the criminal promulgator of mischief, with mischievous intentions. Surely this can never be even stated in a court of justice. To talk of arguing it, is ridiculous. Such a person might, indeed, be *primâ facie* liable; and I admit that he is so; but, surely, a Court and jury are invested with the jurisdiction of considering all the circumstances, and have the right of judging according to the just and rational inferences arising from the whole case, whether he was intentionally mischievous. This is all I contend for Mr. Cuthell; and it is a principle I never will abandon—it is a principle which does not require the support of the Libel act, because it never has at any time been denied. When lord Mansfield directed the jury to convict Mr. Almon as the criminal publisher of Junius, he told them that if Junius was a libel, the guilt of publishing was an inference of law from the act of publication, if a defendant called no witnesses to repel it, and that no witnesses had been examined by Mr. Almon. But he admitted, in express and positive words, as reported by sir James Burrow, in the fifth volume of his Reports, “That the publication of a libel might, by circumstances, be justified as legal, or excused as innocent, by circumstances to be established by the defendant’s proof.”* But according to the arguments of to-day no such defence is admissible. I admit, indeed, that it is rarely within the power of a printer or publisher to make out such a case by adequate evidence; insomuch, that I have never yet been able to bring before a jury, such a case as I have for Mr. Cuthell. But the rareness of the application renders it more unjust to distort the principle by the rejection of it, when it justly applies.

Having now laid down the only principle upon which Mr. Cuthell can be defended, if

* Vide Almon’s case, 5 Burr. 2086, and ante, vol. 20, p. 803.

the passages in the book, selected by the indictment, are libellous, I will now bring before you Mr. Cuthell's situation, the course of his trade and business, and his connexion, if it can be called one, with the work in question.

Mr. Cuthell, gentlemen, is not at all in the situation of many equally respectable booksellers; the course of whose trade, at the other quarters of the town, in the transitory publications of the day on all subjects, exposes them to the hourly risk of prosecutions on the most solid principles of law, without almost the possibility of such a defence as Mr. Cuthell has to lay before you. They who wish to mix in the slander, the fashion, and the politics of the day, resort for newspapers and pamphlets, to those gay repositories, filled with the active, bustling, and ambitious men of the world. In those places nothing is read or talked of but what is happening at the very moment;—a day generally consigning to oblivion, domestic events, however singular or afflicting; even the revolutions of empires giving place in a week to a newer topic—even to the favoured pantomime of the day. The bookseller who stands behind such a counter, collecting and exposing to view whatever may be thrown upon it, without perusal or examination; who can have no other possible reason for supposing that he sells no libels, except the absurd supposition that no libels are written—such a man is undoubtedly *primâ facie* criminally responsible; a responsibility *very rarely to be successfully repelled*. Sale of a libel by the master of such a shop, however pure in his morals, *without the most demonstrative evidence on his part to repel the presumption arising from the act*, is unquestionably evidence of publishing the book in the criminal acceptance of publication, because, *in the absence of such evidence*, he is justly taken to be the author himself, or acting in concert with him in giving currency and circulation to his work. I pray you, gentlemen, to recollect that neither now, nor at any former period, have I ever disputed a proposition built upon reason and matured by decisions into law. But Mr. Cuthell's shop is of a directly opposite description, and gives support to the evidence, by which I mean to repel the criminal presumption arising, *primâ facie*, from the act of publication.

He resides in a gloomy avenue of Holborn. No coloured lamps or transparent shop-glasses dazzle the eye of vagrant curiosity, as in the places I have alluded to. As in the shops of fashion nothing scarcely is sold which the sun has gone down upon, so in *his house* nothing almost is to be seen that is not sacred to learning and consecrated by time.—There is not a greater difference between Lapland and Paris, than between the shops I have adverted to, and that of Mr. Cuthell. There you find the hunter after old editions; the scholar, who is engaged in some controversy, *not concerning modern nations*, but people and tongues which have for centuries passed away, and which

continue to live only in the memory of the antiquary. Whilst crowds in the circles of gaiety or commerce are engaged at other libraries in the bitterness of political controversy, the pale student sits soberly discussing at Mr. Cuthell's, the points of the Hebrews or the accents of the Greeks. Mr. Cuthell, gentlemen, takes no personal merit from this distinction from other booksellers. It is not from superior taste or virtue, or from prudent caution, that he pursues this course, but because he finds his profit in adhering to a particular and well-known branch of bookselling, as every man will always find the surest profit in sticking to his own line of business. We lawyers find our profit, for the very same reason, in practising in one court instead of scouring Westminster-hall; because men are supposed, by their steadiness to one object, to know what they are about.

When I shall have made out this situation of Mr. Cuthell, and have shown his only connexion with the work in question from his literary connexion with its learned author, I shall have made out a case which will clearly amount to a legal defence as an innocent publisher.

I proceed to this defence with the greater satisfaction, as it is not only without possible injury to the defendant, but in every possible event must contribute to his safety. If I succeed, I am at no man's mercy; if I fail, even the very unsuccessful approach to a legal justification will present a case for mitigation, which the candour and justice of my learned friend will undoubtedly respect.

Mr. Cuthell had been applied to by Mr. Wakefield near a year before this little sudden performance had an existence, to sell *all his works* which had been sold before by a most respectable bookseller who had just retired from trade. It is but justice at once to Mr. Wakefield and to Mr. Cuthell, to say that the works of the former, which were numerous, were exemplary for their piety and learning, and that the character of the author fully corresponded with the inferences to be collected from his publications. He was a most retired and domesticated scholar, marked and distinguished by a warm and glowing zeal for the Christian religion; and what removed him from every possible suspicion in the mind of Mr. Cuthell, or of any man living, as being engaged in schemes for the introduction of anarchy and irreligion, his most recent publications, which had been committed to Mr. Cuthell for sale, were his answers to Mr. Paine's attack upon the doctrines of Christianity, which Mr. Wakefield had not merely refuted by argument, but *stigmatised in terms of the justest indignation*. This scorn and resentment at the works I have alluded to, was surely a full earnest of opinions which characterized a friend to religion, to harmony, peace, and good-will to men; and Mr. Cuthell knew at the same time when the selling of this Reply to the Bishop of Llandaff was first

proposed to him, that Mr. Wakefield had before written to him on subjects of religious controversy, and that that excellent prelate held his general character in respect. There is nothing, therefore, upon earth which amounts even to incaution in the little which follows to complete the statement of his case.

Mr. Wakefield having printed the pamphlet by Mr. Hamilton, his own printer, without the smallest previous communication with Mr. Cuthell, he brought him the form of the advertisement, when it was ready for sale, and desired him to send it for insertion in the newspapers marked in the margin of it; and, at the same time, desired Hamilton, his printer, to send the books, already printed, to his shop. This was overnight on the 31st of January. Some of the books were accordingly sent overnight, and the rest next day.

The advertisements having appeared in the morning papers, Mr. Cuthell was, of course, applied to for them by booksellers and others, and sold them accordingly, not because he sold every thing, much less works on political subjects; and, least of all, by unknown authors; but because his mind was fully prepossessed, that the work he was selling, was an added publication to the long catalogue of Mr. Wakefield's other writings, the character of all which for learning and morals had been universally acknowledged, and whose character for both had ever been undisputed. The book having become offensive, Mr. Cuthell was put in process by the Crown, and the service of it on his person was the first intimation or suspicion he had that the book was different from the many others which he had long been in the course of selling without offence or question. It is scarce necessary to add, that he then discontinued the sale, and sent back the copies to the author.

This, gentlemen, is the case as it will be established by proof. I shall not recapitulate the principle of the defence of which you are already in possession, much less the application of the evidence to the principle, which appears to me to be self-evident, if the principle can be supported; and if it be denied or disputed, I only desire to remark, that no person in my station who has ever made a point, desiring the law to be reserved to him, has ever been refused by the noble and learned judge: I mean the right of having the facts found by special verdict, that the law may be settled by the ultimate jurisdiction of the country; because judges at Nisi Prius must follow the current of authorities, however erroneous the sources of them may be. If you, the jury, therefore, shall, from the evidence, believe that Mr. Cuthell was innocent in intention, you may find the publication, and negative the intention charged by the record; by doing which, if the defendant be legally guilty, the Crown, notwithstanding

that negative, will be entitled to judgment; whereas, if you find a general verdict of guilty; the term guilty, in the general finding, will comprehend your opinion of the criminal intention charged, though it was not your intention to find it; and Mr. Cuthell will not be allowed to controvert that finding as a fact, although you, the jury, actually rejected it; his guilt being part of your verdict, and conclusive of the intention which you disbelieved.

With regard to the book itself, though I leave its defence to its eminently learned author, yet there are some passages which I cannot help noticing.—[Here Mr. Erskine commented upon several of them, and then concluded as follows.] I was particularly struck, indeed, that the following passage should have made any part of the indictment: “We sons of peace, or see, or think we see, a gleam of glory through the mist which now envelops our horizon. Great revolutions are accomplishing; a general fermentation is working for the purpose of general refinement through the universe.”

It does not follow from this opinion or prepossession of the author, that he therefore looks to the consummation of revolutions in the misery or destruction of his own country; the sentiment is the very reverse: it is, that amidst this continued scene of horror which confounds and overwhelms the human imagination, he reposes a pious confidence, that events, which appear evil on the surface, are, in the contemplation of the wise and benevolent Author of all things, leading on in their consequences to good, the prospect of which Mr. Wakefield considers “as a gleam of glory through the mist which now envelops our horizon.” I confess, for one, that, amidst all the crimes and horrors which I certainly feel mankind have to commiserate at this moment, perhaps beyond the example of any former period, crimes and horrors which, I trust, my humanity revolts at as much as any other man's, I see nothing to fear for our country or its government, not only from what I anticipate as their future consequences, but from what they have produced already: I see nothing to fear for England from the destruction of the monarchy and priesthood of France; and I see much to be thankful for in the destruction of papal tyranny and superstition. There has been a dreadful scene of misfortune and of crime, but good has, through all times, been brought out of evil. I think I see something that is rapidly advancing the world to a higher state of civilization and happiness, by the destruction of systems which retarded both: the means have been, and will be, terrible; but they have been, and will continue to be, in the hand of God.—I think I see the awful arm of Providence, not stopping short here, but stretched out to the destruction of the Mahometan tyranny and superstition also.—I think I see the freedom of the whole world:

maturing through it; and so far from the evils anticipated by many men, acting for the best, but groping in the dark, and running against one another, I think I see future peace and happiness arising out of the disorder and confusion that now exists, as the sun emerges from the clouds: nor can I possibly conceive how all this ruin, falling upon tyrannous and blasphemous establishments, has the remotest bearing against the noble and enlightened system of our beloved country.— On the contrary, she has been the day-star of the world, purifying herself from age to age, as the earliest light of heaven shone in upon her; and spreading with her triumphant sails, the influence of a reformed religion and a well-balanced liberty throughout the world. If England, then, is only true to the principles of her own excellent constitution, the revolt of other nations against their own systems cannot disturb her government. But what, after all, is my opinion, or the judgment of the Court, or the collective judgment of all human beings upon the scenes now before us? We are like a swarm of ants upon an ant hill, looking only at the surface we stand on; yet affecting to dispose of the universe, and to prescribe its course, when we cannot see an inch beyond the little compass of our transient existence. I cannot, therefore, bring myself to comprehend how the author's opinion, that Providence will bring, in the end, all the evils which afflict surrounding nations, to a happy and glorious consummation, can be tortured into a wish to subvert the government of his country.

The Attorney-general has admitted—I notice it to his honour, because all Attorney-generals have not been so manly and liberal,—the Attorney-general has admitted that he cannot seek, in this land of liberty, to deny the right of every subject to discuss, with freedom, the principles of our constitution—to examine its component parts, and to reason upon its imperfections, if, in his opinion, imperfections are to be found in it. Now this just admission cannot be qualified by a harsh and rigorous scrutiny into the language employed in the exercise of this high and useful privilege. It never can be said that you may tickle corruption with a straw, but that you must not shake it at its root. The true criterion, therefore, comes round again, at last, to THE MIND AND INTENTION, which, by taking the whole work together, and the character of its author into consideration, it is your office to determine; and the concluding sentence of this publication, in which Mr. Wakefield must candidly be supposed to have summed up the purpose and application of his work, is quite decisive of its spirit and purpose, viz. that instead of looking to new sources of taxation to support the continuance of war, the safety of our country would better be consulted in making an effort towards peace; which, if defeated, by the fraud or ambition of our enemy, would unite every

heart and hand in our defence. Hear his own concluding words:—"RESTORE the spirit of your constitution, correct your abuses, and calm your temper; THEN (and surely they, who have been successful in their predictions through all this conflict, have more reason to expect attention to their opinions, than those who have been invariably wrong), THEN, I say, solicit peace; and, take my word for it, the French republic, so far from insisting on any concessions of humiliation and disgrace, will come forwards to embrace you, will eagerly accept your friendship, and be proud of a connexion WITH THE FIRST PEOPLE IN THE UNIVERSE. Should I be mistaken in this event, and have formed a wrong judgment of their temper and designs, still the good effect of this advice will be an inestimable acquisition, a vigorous and generous UNANIMITY among ourselves."

In the defence I have made, there are but few passages I have noticed; respecting those, I am entitled to the protection of your candour; but you are not to conclude that the others are indefensible, because I do not defend them—the defence of the book (as I before observed to you) being placed in other hands more fit to manage it, and it would have been out of my province, in Mr. Cuthell's case to have entered more at large into the subject.

The Rev. GILBERT WAKEFIELD was called to prove that he had brought the book to the defendant, but Mr. Wakefield declined answering a question that was put to him with a view of obtaining that information, saying that he was not willing to answer any question to criminate himself, because he was unwilling to put himself in the power of men who were acting so scandalous a part as those who were carrying on these prosecutions. That was his reason for refusing to answer.

The Defendant's Shopman proved that the book was brought to Mr. Cuthell, and that he thought it was the work of Mr. Wakefield, upon the faith of whose integrity he caused it to be published merely because he was the publisher of the various works of Mr. Wakefield; and that he would not have published this or any pamphlet, or any political work, on any condition whatever, but in the confidence of the name of Mr. Wakefield: That the defendant is a dealer in old, rare, and valuable works, and is what is called in the trade "An old bookseller," and never had or wished to have any thing to do with politics: That about seven hundred and fifty of these pamphlets were sold at the defendant's shop. All that were left were sent back to the author, when the defendant found that the work was objected to.

Mr. Payne, junior, of the Mew's-gate, Mr. Egerton, and Mr. Ogilvy, booksellers, Mr.

Mour, jun. Mr. Brown, solicitor of Liverpool, and several other respectable gentlemen bore the most ample testimony of the excellent character of the defendant, and stated that he was the very reverse of a man who had any seditious wishes, and that his dealings were all in the way of old and valuable books; he never had any thing to do with the sale of pamphlets, or of any of the fleeting publications of the day.

REPLY.

Mr. Attorney General.—Gentlemen of the Jury; Notwithstanding all that has fallen from my learned friend who has so ably and eloquently addressed you on behalf of the defendant, I maintain the doctrine with which I set out upon this prosecution, namely, that every man who publishes a book does so at his own hazard; if it be a libel, whether he knew it or not, he is answerable criminally, just in the same way as an apothecary would be answerable if he sold any poison mixed by another person, but which he had not examined, and which he sold as an innocent medicine. The evil is the same as if he knew it,—the guilt I admit is not the same,—but I maintain that that is matter for consideration in the season for affixing the punishment, and a point with which the jury have no concern; for I hold, that if it were clear that the defendant published the work, and clear also that the contents were libellous, the publication is in law an offence.

With regard to the character of the defendant, I am ready to confess that it has been proved to be a very good one, and such as entitles him to lenity ten thousand times more than that given in the case of Mr. Johnson, who has been already convicted for publishing the same book.

SUMMING UP.

Lord Kenyon.—This cause has gone into very considerable length; you, gentlemen of the jury, have paid great attention to it, and indeed it has undergone the consideration of a number of gentlemen of the rank and station of those who are now to determine it, namely, a grand jury of the county of Middlesex.

But before I enter upon the cause itself, I think that what has been said in the course of this trial calls upon me to make a few observations. I beg leave then to say, that I see no good in what has lately taken place in the affairs of another country alluded to by the learned counsel for the defendant;—I see no good in the murder of an innocent monarch;—I see no good in the massacre of tens of thousands of the subjects of that innocent monarch;—I see no good in the abolition of Christianity;—I see no good in the deprivations made upon commercial property;—I see no good in the overthrow and utter ruin of whole kingdoms, states, and countries;—I see no good in the destruction of the state of a noble, brave, and virtuous people—that of

Switzerland. In all these things I confess that I see no good. In contemplating these dreadful and horrid practices,—which, by the way, were also preceded by the most scandalous libels, and if there were in this country any attempts to publish the sentiments which preceded these horrors, it is the duty of those who have the power, by law to put an end to those causes for fear of similar effects,—we are all pledged deeply to do all we can to prevent such evils, unless we are convinced that out of those disorders harmony will immediately arise.

The law of libels has been alluded to in the course of the present trial. I certainly, in my legislative capacity, opposed the last bill* that was before parliament upon that subject;—not because I thought that the bill introduced a word or a syllable that was not law before, but because it was unnecessary, and there was in it nothing to improve the minds or alter the duties of those who were to discriminate between the two jurisdictions of the Court and Jury; and I am sure that my conduct before the passing of the Libel act was exactly conformable to the principles of that act, as indeed the law commanded it to be before this act took effect. The truth is, that in passing this bill through parliament, it was a race of popularity between two seemingly contending parties; but in this measure both parties chose to run amicably together.

The liberty of the press is dear to England; the licentiousness of the press is odious to England: the liberty of it can never be so well protected as by beating down the licentiousness. It was owing to that licentiousness, that in the last century—a period not very auspicious to liberty—under the house of Stuart, a licenser of the press was appointed,—and we have now libellers who, impiously I had almost said, allege, that England has no constitution; but passing them by,—the licenser of the press was continued under the auspices of the greatest men this country can boast;—my lord Sommers, and all those who fought the hard battles of the country, and who procured our glorious Revolution, all thought that a licenser of the press was not inexpedient in those times, and it continued so until, and indeed some time after, the arrival of our deliverer king William. I must, however, guard against any misconception or misapprehension of what I say; I do not mean to say that the office of a licenser of the press ought to be revived; I am not of that opinion; and I say so to prevent misinterpretation, and to prevent what I have said being distorted by calumny. I said that the liberty of the press was dear to Englishmen, and I will say that nothing can put that in danger but the licentiousness of the press.

The defence which has been urged to-day was made up of materials which have been

* See in vol. 22, p. 306, the Lords' protest against the passing of the Libel act.

often used before, sometimes eloquently, sometimes a little unskilfully, but always eloquently by the learned counsel who defended this cause; but the materials are all the same, although they have been wafted over the Atlantic, and have been there again most eloquently handled.—I mean the general right to the liberty of the press. After all, the truth of the matter is very simple when stripped of all the ornaments of speech, and a man of plain common sense may easily understand it; it is neither more nor less than this, that a man may publish any thing which twelve of his countrymen think is not blameable, but that he ought to be punished if he publishes that which is blameable. This, in plain common sense, is the substance of all that has been said upon the subject.

There are two questions submitted to the consideration of the jury; the first is, whether the publication be a libel or not? Upon that question I am a little too deeply pledged, to give an unbiassed opinion upon the matter. I know I am most fallible, and therefore ought to distrust my own judgment; but in support of that judgment two special juries of the city of London have pronounced without the least hesitation, and one jury of the county of Middlesex has done the same thing. The very able, eloquent, and learned counsel for the defendant in this case, was counsel also for the defendants in the other causes, where the same book was in question: so absolutely convinced was that able advocate that the publication was a libel, that he never moved the Court to arrest the judgment upon the ground that it was not so, although he had power to do so by law. Every body knows that his zeal is never wanting in the service of his client, and if no defect appeared to his penetrating mind in the charge of this publication being a libel, there is no great danger in concluding there was no defect, and that it is a libel.

The defendant has most unquestionably had a very good character. It has occurred to me often in my time, at another part of the town (the Old Bailey), to observe very frequently upon the effect of character. When any case is doubtful, credit should be given to a good character, and the defendant ought to be acquitted, but that is only when the case hangs in doubt. It is valuable also to any person convicted, when the day of punishment arrives; and I think it convenient to the affairs of mankind that character should have this effect, as it is an incentive to virtue; but farther than being of use in doubtful cases, before conviction, the good order of society does not require that it should go.

As to the publication in question, it has been proved that Mr. Cuthell had a great number of the libels sent to him; but it has been said, that Mr. Cuthell did not mean any injury to any body by this publication: God only knows the hearts of men, and we can collect their meaning only from what they do;

we are only to pursue their overt acts, and draw our conclusions from them; I am aware these are fallible means of arriving at knowledge, but we have no better, and we must pronounce men innocent or guilty according to this standard.

Some men might think there ought to be no law against these things. Some enthusiasts have looked upon man as so wretched a being, that this life was a life of misery, and that the sooner he was out of it the better for him. Thus the poignard might be put into the hand of the assassin, and he might be desired to put to death every man he met, for that in so doing he was doing good inasmuch as he was sending all he could out of a world of misery into a world of happiness. These doctrines might be contemplated in the closet, but they would not suit mankind in any of the transactions of life. I will not discuss these systems of philosophy, if philosophy they can be called, I shall only say that of practical use in society they are none.

But returning to the subject, I am bound to say that this publication is a libel; in this I am fortified by three times twelve gentlemen of the city of London and of the county of Middlesex, and also by the acquiescence of the learned counsel for the defendant. But after all this, you, gentlemen of the jury, are not bound to say that this book is a libel because I have said so, or because three other juries have said so, or because the defendant's counsel has said so, for this he virtually has done by acquiescing under the former verdicts. There are however passages in the book which you will remember, said that the monarchy is useless trumpery, the House of Lords also useless trumpery, the House of Commons also useless, or something worse than useless, by being a body of general corruption. If you think that it is possible to keep government together with such publications passing through the hands of the people, you will say so by your verdict, and pronounce that this is not a libel; but in my opinion that would be the way to shake all law, all morality, all order, and all religion in society.

The question has been amply discussed on both sides, by the best abilities the bar could afford, and perhaps I ought not to have said so much upon it: however the point is most momentous to this country, and you are now to determine upon it, and to say whether the law is to be preserved, or whether every thing should be thrown into confusion.

The Jury found the defendant GUILTY.

On the 18th of April, 1799, John Cuthell appeared in court to receive sentence, and was committed to the custody of the Marshal, having filed the following affidavit in mitigation.

In the King's Bench.

THE KING against JOHN CUTHELL.

John Cuthell of Middle-row in the parish of Saint Andrew Holborn in the county of Middlesex bookseller maketh oath and saith that he this deponent hath for about twenty years resided in Middle-row aforesaid where he has carried on the business of a bookseller in what is termed the old way and which is in collecting and dealing in scarce and valuable literary works That this deponent hath known the Rev. Mr. Gilbert Wakefield for about five years and that his knowledge of him arose from his frequenting this deponent's shop searching after ancient works and sometimes purchasing them That after frequenting his shop for sometime the said Mr. Wakefield introduced in conversation that Mr. Deighton a bookseller who lived a few doors from this deponent (but who was then removed to Cambridge) had for a long time sold his works but on Mr. Deighton's leaving London he had taken them to Kearsley of Fleet-street but as he was partial to the situation of the Middle-row for the sale of his works he solicited this deponent to take the sale of them And this deponent further saith that he for a long time resisted those applications but being from time to time very earnestly urged by said Mr. Wakefield he at length gave way and about the month of March in the year one thousand seven hundred and ninety-seven said Mr. Wakefield's works consisting of about thirty-six articles were sent into this deponent's from Mr. Kearsley's all of which had been sold by other booksellers previous to their being brought to this deponent's And the only new articles which said Mr. Wakefield brought afterwards were "Euripidis Hecubam" written in Greek and Latin and printed about September one thousand seven hundred and ninety-seven the second and third volumes of Lucretius which compleated that work and his Reply to the Bishop of Landaff The two volumes of Lucretius were sent in about the middle of January one thousand seven hundred and ninety-eight and the Reply in the evening of the thirty-first of the same month of January but previous to the latter work being sent in that is about the middle of the same day said Mr. Wakefield brought to this deponent an advertisement of the sale of this Reply ready prepared and desired he would get it copied and sent to the papers therein mentioned at the same time signifying that some of the copies would be sent to him as of the same evening to answer the demand the next morning And this deponent positively saith that the receipt of this advertisement was the first inti-

mation or knowledge he had of this work And this deponent further saith that the said Mr. Wakefield did not at that interview or at any time afterwards intimate or give this deponent to understand what nor did he otherwise directly or indirectly know what was the subject of this Reply nor had this deponent directly or indirectly any communication or concern with Mr. Hamilton the printer of this work any further than this deponent's understanding that the work as printed came from Mr. Hamilton nor had he any knowledge or communication touching the same from any other person or persons whatsoever And this deponent further saith that he this deponent having implicit faith and credence in the establishing literary character of the said Mr. Wakefield and knowing that his former works were on classical criticisms and divinity he had not the least suspicion that this was of a political nature nor did he know even the subject matter of the Bishop of Landaff's Address to which this work was a reply. And this deponent further saith that on this account he did not at that time or at any time till after he was in custody for publishing this book read the same or had he directly or indirectly any knowledge of its contents but on the contrary had he known that it was on politics however in other respects unexceptionable he would not on any account whatever have sold or permitted it to have been sold at his shop inasmuch as he this deponent has always as far as in him lay carefully avoided allowing pamphlets of any kind to come into his shop and more particularly those of a political nature as it is wholly contrary to the line of his business to have any thing to do with them And this deponent further saith that among the articles so delivered from Mr. Kearsley as above deposed to there were a few copies of a pamphlet under the title of "A Letter to William Wilberforce, Esq." and at the same time said Mr. Wakefield sent in a second edition of this Letter from Mr. Hamilton the printer to which he had taken the liberty of prefixing this deponent's name without consulting him on the subject but which he did not object to having as before said not the least idea that said Mr. Wakefield would have published any thing that was wrong and this deponent further positively saith that he has never even to this moment read the said letter to Mr. Wilberforce or is by any means acquainted with the contents thereof save and except what he heard on the subject in the court of King's-bench pending the proceedings against him And this deponent further saith that he had not the slightest idea or conception that there was any thing

wrong or offensive in that work until at the sittings after last Michaelmas term it was communicated to him by Mr. Pearson his solicitor that this work was also offensive to his majesty's attorney-general whereupon he this deponent immediately collected what remained of this pamphlet in his shop tied them up and very soon afterwards sent them to the author And this deponent further saith that immediately upon his understanding that the above Reply was offensive to government he this deponent used his utmost endeavours to stop and suppress the further sale and publication thereof

and also upon his this deponent's discovering there was a low priced edition of it in circulation he took abundance of pains and trouble to discover the printer of that work with a view of apprising government of such a discovery

JOHN CUTHELL

Sworn at my chambers in Serjeant's inn Chancery-lane this sixteenth day of April 1799 Before
Ex. N. GROSE

On April 24th, the defendant was brought up and sentenced to pay a fine of thirty marks; which he paid in court, and was discharged.

638. Proceedings on the Trial of an Information exhibited Ex Officio, by his Majesty's Attorney General, against GILBERT WAKEFIELD, Clerk, for a Seditious Libel; tried in the Court of King's Bench, Westminster, by a Special Jury, before the Right Honourable Lloyd Lord Kenyon, on Thursday February 21st: 39 GEORGE III. A. D. 1799.

Court of King's Bench, February 21st, 1799.

JURY.

Edward Price, of Featherstone-buildings,
Edw. rd Phillips, of Great James-street, Bedford-row, coal merchant,
John Reed, of the same street, coal merchant,
Webb Marratt, of Hatton-garden, cornfactor,
Daniel Burkett, of the same, dry salter,
Robert Lec, of the same, merchant,
William Flower, of Guildford-street,
Thomas Coverdale, of the same street, stock-broker,
James Sparks, of Doughty-street,
Thomas Harrison, of Gray's-inn-lane, cow-keeper,
John Field, of Field-place, builder,
John Delamaine, of Margaret-street, Cavendish-square, wine-merchant,—esqrs.

The Information was opened: it was as follows:

INFORMATION.

Of Michaelmas Term in the thirty-ninth year of the reign of king George the Third.

Middlesex } BE it remembered that sir John Scott knight attorney general of our present sovereign lord the king who for our said lord the king in this behalf prosecuteth in his proper person cometh here into the court of our said lord the king before the king himself at Westminster on Tuesday next after the morrow of All Souls in this same term and for our said lord the king giveth the Court here to understand and be informed that at the time of the making writing printing

and publishing of the several scandalous malicious and seditious libels herein-after mentioned and long before there was and yet is an open and public war carried on between our said lord the king and the persons exercising the powers of government in France and the French to wit at Hackney in the county of Middlesex And the said Attorney-general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that at the time of the making writing printing and publishing of the several scandalous malicious and seditious libels hereinafter mentioned it was publicly rumoured and reported among the liege subjects of our said lord the king that the said persons exercising the powers of government in France so being enemies of our said lord the king did intend and were preparing to invade this kingdom with an armed force and in an hostile manner to wit at Hackney in the county of Middlesex aforesaid And the said Attorney-general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that Gilbert Wakefield late of Hackney in the county of Middlesex clerk being a malicious seditious and ill-disposed person and being greatly affected to our said lord the king and to the government and constitution of this kingdom and most unlawfully seditiously and maliciously contriving and intending to traduce vilify and bring into hatred and contempt among the liege subjects of our said lord the king the government and constitution of this kingdom both in church and state as now by law established and also our said lord the

king's administration of the government of this kingdom and the persons employed by our said lord the king in the administration of the government of this kingdom and thereby to withdraw the affection and allegiance of the liege subjects of our said lord the king from our said lord the king and his government and also most unlawfully maliciously and seditiously devising and intending to dissuade and discourage the liege subjects of our said lord the king from resisting and opposing the said enemies of our said lord the king in case the said enemies should make an hostile invasion into this kingdom on the thirtieth day of January in the thirty-eighth year of the reign of our said present sovereign lord George the Third king of Great Britain &c at Hackney in the county of Middlesex aforesaid maliciously and seditiously did make write print and publish and cause to be made written printed and published a certain scandalous malicious and seditious libel containing therein among other things divers scandalous malicious and seditious matters of and concerning the people nobles ecclesiastical dignitaries government and constitution of this kingdom and of and concerning the administration of the government of this kingdom by our said lord the king and of and concerning the persons employed by our said lord the king in the administration of the government of this kingdom and also of and concerning an hostile invasion into this kingdom to be made by the said enemies of our said lord the king in one part thereof according to the tenor and effect following (that is to say)

1st edit. page 10.—*Undoubtedly if the contest be presumed to subsist between one ministry and another the bishop of Landuff may be deemed as much as any man similarly situated an independent man but in a more extended view of this appellation and agreeably to some remarks already advanced in the preceding pages this independence cannot be so easily conceded to him For in fact very fortunately for the cause of liberty and human happiness the competition is no longer partial and unimportant between two parties in and out of place but it is become a contest of principles of a general and most interesting kind between corruption and reformation The present ministry (meaning the persons employed by our said lord the king in the administration of the government of this kingdom) therefore and the abuses in church and state (meaning the church and state of this kingdom) are indivisibly interwoven with each other and every man alive who profits by these enormous inequalities can by no means be esteemed independent but must be considered in the eye of reason as an interested supporter of our existing forms (meaning the existing forms of the government of this kingdom) forms which I with many others regard as utterly inconsistent with the true welfare of the community and in another part thereof according to the tenor and effect following (that is to say)*

1st edit. page 22—*The established conduct of these ministers (meaning persons employed by our said lord the king in the administration of the government of this kingdom) constitutes an indubitable proof of their ill faith in this transaction and a proof deduced also from the immutable operation of human passions they have burthened the country with an immense overwhelming debt by an unexampled prodigality of the public money they have reduced thousands and tens of thousands to wretchedness and beggary they have occasioned a devastation of the human species infinitely tremendous beyond the most merciless tyrants of ancient or modern times the death of a fellow-creature is no more to them than the fall of an autumnal leaf in the pathless desert land and sea is covered with the carcasses of their slain they have engendered sham plots false alarms and visionary assassinations for the purposes of deluding the unwary and to establish their own power by a military despotism in due time over England like that which now tramples bleeding Ireland to the earth they have persecuted unto death they have exiled to the ends of the world and they now emprise (meaning imprison) with inconceivable rigour (I speak what I have seen and know) their fellow-citizens for trivial and venial offences against every principle of constitutional law pure justice and sound policy After a long course of these and other enormities can such men I ask in an instant become benevolent pacific haters of bloodshed and lovers of their country? Add not insult to our sufferings—and in another part thereof according to the tenor and effect following (that is to say)*

1st edit. page 35—*On the contrary I am fully satisfied that if the French (meaning the aforesaid enemies of our said lord the king) could land a considerable army in this country to the number suppose of 60,000 (meaning sixty thousand) or 70,000 (meaning seventy thousand) men (which nevertheless appears to me utterly impracticable with our present naval superiority) the kingdom (meaning this kingdom) would be lost for ever the same cause which has facilitated the progress of the republicans on the continent would operate as powerfully for them in this country also namely a degree of poverty and wretchedness in the lower orders of the community which especially in their present state of depravity and ignorance will render the chances even from confusion of any change desirable I believe from my soul that within three miles of the house where I am writing these pages there is a much greater number of starving miserable human beings the hopeless victims of penury and distress than on any equal portion of ground through the habitable globe A fable of our old friend Aesop is extremely apposite on this occasion which I shall present to the reader in the simple style of Croxall 'Plain truth dear Murray needs no flowers of speech so take it in the very words of Creech' —The Sensible Ass—An old fellow was feeding an ass in a fine green meadow and being alarmed*

with the sudden approach of the enemy was impatient with the ass to put himself forward and fly with all the speed that he was able. The ass asked him whether or no he thought the enemy would clap two pair of panniers upon his back. The man said no there was no fear of that. Why then says the ass I will not stir an inch for what is it to me who my master is since I shall but carry my panniers as usual. The application of this fable shows us how much in the wrong the poorer sort of people most commonly are when they are under any concern about the revolutions of a government all the alteration which they can feel is perhaps in the name of their sovereign or some such important trifle but they cannot well be poorer or made to work harder than they did before. Thus far Dr. Cressall meaning and insinuating thereby that the poorer sort of the liege subjects of our said lord the king would not be prejudiced by a revolution in the government of this kingdom effected and brought to pass by the said enemies of our said lord the king and that the said last-mentioned liege subjects would be in the wrong if they should resist the said enemies of our said lord the king in case of a hostile invasion by them made into this kingdom. And in another part thereof according to the tenor and effect following (that is to say)

1st edit. p. 38—It follows I think most unquestionably that no distinctions in society should prevail but what arise from personal merit and public services that the father's honours which have been justly paid him should be regularly transmitted in connexion with various privileges and immunities to his undesigning children is a stupidity I should think which few will be forward to defend but so circumstanced are the aristocratical dignities of this country something alas! besides virtue is nobility in England an advocate for inequality like this shall receive no commendations at my hands he deserves well neither of humanity nor the gospel and in another part thereof according to the tenor and effect following (that is to say)

1st edit. page 39—As to an ecclesiastical establishment in alliance with the state or rather dependent on it I consider such a confederacy as a monstrous solecism in Christian polity as a fraudulent usurpation over that liberty "with which Christ has made us free" as an impious prostitution of the simplicity and sincerity of the gospel to a scheme of universal philanthropy and freedom to secular and interested purposes in short as the prominent characteristic of that Anti-christian tyranny which is now ripe for summary vengeance and eternal extirpation I regard (to use great plainness of speech) your archbishops bishops deans canons prebendaries and all the muster roll of ecclesiastical aristocracy (meaning the archbishops bishops deans canons prebendaries and all the dignitaries of the church of this kingdom) as the despicable trumpery of priestcraft and superstition and a grievous domination over the meek principles of evangelical sobriety but I am utterly incapable as God is my wit-

ness of the least dissection to the persons of these churchmen or of the slightest wish to injure them because their opinions are not consonant to mine and in another part thereof according to the tenor and effect following (that is to say)

1st edit. page 43—If the French (meaning the aforesaid enemies of our said lord the king) come (meaning come into this kingdom in an hostile manner) they shall find me at my post a watchful centinel in my proper bar my study among the venerable dead sometimes investigating the origin of man and primeval history by turning the dark lantern of heathen records or trimming the everlasting lamp of Moses sometimes musing with the divine professors of the tuneful art on subjects of taste and fancy and sometimes meditating with the men of Galilee on mortality and immortality—No systems of "the many made for one" no zeal in support of frontless corruption and "every evil work" shall dip my hands in the blood of men! Non res Romana periturque regna. Let those who have an interest in these follies and sins. Let those who have brought us to this most alarming crisis step forward in the day of danger and fight the battles of their Baal and their Mammon. Let these I say buckles on their panoply in defence of monarchy (meaning the monarchy of this kingdom) against republicanism and stand up for domestic robbers against a foreign spoiler. We sons of peace or see or think we see a gleam of glory through the mist which now envelops our horizon—great revolutions are accomplishing a general fermentation is working for the purpose of general refinement through the universe incipient magni procedere menses—we will wait the event "through evil report and good report" in defiance of penalties and pains of persecutions imprisonments and deaths with trembling hope but with a firm and tranquil resignation "Know now whether this be thy son's coat or not" A minister and believer of the gospel should be well assured of the rectitude of his cause before he becomes crusader under the pretended banners of order and religion. If I saw a government whether monarchical or republican devoted solely to the moral and intellectual melioration of its subjects steadily and systematically bent on the promotion of their temporal comfort and accommodation by beneficent and equal laws that government should find me as zealous and uniform in its support as the most forward of its champions but when I see all consideration of the public welfare swallowed up in a domineering profligacy venality and selfishness. When I behold the most hideous crimes daringly perpetrated under the pretences of preserving regularity and subordination. When I see religion employed as a state engine of despotism and murder by a set of mortals any worse than heathens and infidels in their lives. When I observe these and other enormities which the time would fail me to enumerate committed without scruple and without remorse to maintain forsooth a degenerate con-

stitution (meaning the constitution of this kingdom) of ideal excellence and practical depravity and am called upon to defend it against invaders I revolt at such an audacious imposition and pity the understanding that can be duped by such despicable artifice I know the difference between Christianity and secularity between vice and virtue between public blessings and national calamities between speculation and patriotism between freedom and coercion between simple uncostly justice and ruinous law chicane between liberal religion and a venal creed between fancies and realities as well as the generality of my superiors in rank and station In contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity

SECOND COUNT—And the said Attorney-general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that the said Gilbert Wakefield so being such person as aforesaid and unlawfully seditiously and maliciously contriving and intending to traduce vilify and bring into hatred and contempt among the liege subjects of our said lord the king the Commons House of parliament of this kingdom and the persons employed by our said lord the king in the administration of the government of this kingdom particularly the right honourable William Pitt being one of the persons employed by our said lord the king in the administration of the said government and to insinuate and cause it to be believed that the persons employed by our said lord the king in the administration of the said government were unwilling to make peace with the aforesaid enemies of our said lord the king upon reasonable and proper terms and thereby to withdraw the affection and allegiance of the liege subjects of our said lord the king from our said lord the king and his government on the thirtieth day of January in the thirty-eighth year of the reign of our sovereign lord George the Third now king of Great Britain &c at Hackney in the county of Middlesex aforesaid unlawfully maliciously and seditiously did make write and publish and cause to be made written printed and published a certain other scandalous malicious and seditious libel containing therein among other things divers scandalous malicious and seditious matters of and concerning the persons employed by our said lord the king in the administration of the government of this kingdom and particularly the said William Pitt and of and concerning the Commons House of Parliament of this kingdom to the tenor and effect following (that is to say)

1st edit. page 40—*The tyrannical temper and the violent measures of the present administration* (meaning the persons employed by our said lord the king in the administration of the government of this kingdom) ex-

plified by a transgression of the liberal policy of our ancestors and the confessed principles of constitutional freedom in such numerous and momentous instances form so great a contrast to the free energies of republican equality as will not allow me to suppose for a single moment that Mr. Pitt (meaning the said William Pitt) and his colleagues (meaning the persons employed together with the said William Pitt by our said lord the king in the administration of the government of this kingdom) entertained a sincere wish of a hearty reconciliation and friendly intercourse with the French government they must be sensible how such a commerce sooner or later must dissolve an usurpation of power in which they have fenced themselves by a copious manufacture of their staple commodity posts and peerages by a diffusion of corrupt humours through every vein of the body politic even to the evanescent ramifications of its capillary vessels and by a prostitute majority of borough-mongers loan-jobbers military officers pensioners and official sycophants in the lower House (meaning the Commons House of Parliament of this kingdom) Nay through such an amplitude of circumference is their vicious and contaminating influence now propagated in every direction that their power is irresistible throughout the country Notwithstanding all their miscarriages and misconduct Notwithstanding their palpable inability and the acknowledged inefficacy of their measures for I almost question whether a dozen men at all distinguished for intellect and virtue and political disquisition who are at this hour the advocates of the present ministry (meaning the persons employed by our said lord the king in the administration of the government of this kingdom) can be found in Britain from Old Belerium to the Northern Main not connected in fact or expectancy by themselves or their relatives with some who depend on the emoluments of the established system as churchmen officers in the army or navy contractors money-lenders lawyers or civil plasemen In contempt of our said lord the king and his laws to the great scandal of our said lord the king and his government to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.

THIRD COUNT—And the said Attorney-general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that the said Gilbert Wakefield so being such person as aforesaid and unlawfully wickedly and seditiously contriving and intending to scandalize defame and bring into hatred and contempt among the liege subjects of our said lord the king the government and constitution of this kingdom in church and state as now by law established and especially the ecclesiastical dignities of this kingdom on the thirtieth day of January in the thirty-eighth year of the reign of our sovereign lord George the Third king of Great Britain &c at Hackney in the

said county of Middlesex unlawfully maliciously and seditiously did make write print and publish and cause to be made written printed and published a certain other scandalous malicious and seditious libel containing therein among other things divers scandalous malicious and seditious matters of and concerning the government and constitution of this kingdom in church and state and of and concerning the ecclesiastical dignitaries of this kingdom to the tenor and effect following (that is to say)

1st edit. page 39—*As to an ecclesiastical establishment in alliance with the state or rather dependent on it I consider such a confederacy as a monstrous solecism in Christian polity as a fraudulent usurpation over that "liberty with which Christ has made us free" as an impious prostitution of the simplicity and sincerity of the gospel a scheme of universal philanthropy and freedom to secular and interested purposes in short as the prominent characteristic of that anti-christian tyranny which is now ripe for summary vengeance and eternal extirpation I regard (to use great plainness of speech) your archbishops bishops deans canons prebendaries and all the muster-roll of ecclesiastical aristocracy (meaning the archbishops bishops deans canons prebendaries and all the dignitaries of the church of this kingdom) as the despicable trumpery of priest-craft and superstition and a grievous domination over the meek principles of evangelical sobriety but I am utterly incapable as God is my witness of the least disaffection to the persons of these churchmen or of the slightest wish to injure them because their opinions are not consonant to mine In contempt of our said lord the king and his laws To the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.*

FOURTH COUNT—And the said Attorney general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that the said Gilbert Wakefield so being such person as aforesaid and unlawfully maliciously and seditiously contriving and intending to scandalize defame and bring into hatred and contempt among the liege subjects of our said lord the king the hereditary nobility and the House of Lords of this kingdom and thereby to withdraw the affection fidelity and allegiance of the liege subjects of our said lord the king from the government and constitution of this kingdom as now by law established on the thirtieth day of January in the thirty-eighth year of the reign of our sovereign lord George the Third king of Great Britain &c at Hackney in the county of Middlesex aforesaid unlawfully maliciously and seditiously did make write print and publish and cause to be made written printed and published a certain other scandalous malicious and seditious libel containing therein among other things divers scandalous mali-

icious and seditious matters of and concerning the hereditary nobility of this kingdom to the tenor and effect following (that is to say)

1st edit. page 38—*It follows I think most unquestionably that no distinctions in society should prevail but what arises from personal merit and public services that the father's honours which have been justly paid him should be regularly transmitted in connexion with various privileges and immunities to his underserving children is a stupidity I should think which few will be forward to defend But so circumstanced are the aristocratical dignities of this country (meaning the hereditary nobility of this kingdom) something alas! besides virtue is nobility in England an advocate for inequality like this shall receive no commendations at my hands he deserves well neither of humanity nor the gospel In contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.*

FIFTH COUNT—And the said Attorney general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that the said Gilbert Wakefield so being such person as aforesaid and unlawfully seditiously and maliciously contriving and intending to traduce and vilify and bring into hatred and contempt among the liege subjects of our said lord the king the government and constitution of this kingdom as now by law established and the administration of the government of this kingdom by our said lord the king and thereby to withdraw the affection and allegiance of the liege subjects of our said lord the king from our said lord the king and his government and also most unlawfully seditiously and maliciously devising and intending to dissuade and discourage the liege subjects of our said lord the king from resisting and opposing the said enemies of our said lord the king in case the said enemies should make an hostile invasion into this kingdom on the thirtieth day of January in the thirty-eighth year of the reign of our sovereign lord George the Third king of Great Britain &c at Hackney in the county of Middlesex aforesaid unlawfully maliciously and seditiously did make write print and publish and cause to be made written printed and published a certain other scandalous malicious and seditious libel containing therein among other things divers other scandalous malicious and seditious matters of and concerning the government and constitution of this kingdom and of and concerning the administration of the government of this kingdom by our said lord the king and also of and concerning an hostile invasion into this kingdom to be made by the said enemies of our said lord the king to the tenor and effect following (that is to say)

1st edit. p. 43—*If the French (meaning the aforesaid enemies of our said lord the king) come (meaning come into this kingdom in an hostile*

manner) they shall find me at my post a watchful centinel in my proper box my study among the venerable dead sometimes investigating the origin of man and primeval history by turning the dark lanthorn of heathen records or trimming the everlasting lamp of Moses sometimes musing with the divine professors of the tuneful art on subjects of taste and fancy and sometimes meditating with the men of Galilee on mortality and immortality No systems of "the many made for one" no zeal in support of frontless corruption and "every evil work" shall dip my hands in the blood of men *Non res Romana perituraque regna* Let those who have an interest in these fooleries and sins let those who have brought us to this most alarming crisis step forward in the day of danger and fight the battles of their Beal and their Mammon Let those I say buckle on their panoply in defence of monarchy (meaning the monarchy of this kingdom) against republicanism and stand up for domestic robbers against a foreign spoiler We sons of peace or see or think we see a gleam of glory through the mist which now envelops our horizon great revolutions are accomplishing a general fermentation is working for the purpose of general refinement through the univeree incipient magni procedere mensis we will wait the event "through evil report and good report" in defiance of penalties and pains of persecutions imprisonments and deaths with trembling hope but with a firm and tranquil resignation "Know now whether this be thy son's coat or not" A minister and believer of the gospel should be well assured of the rectitude of his cause before he becomes crusader under the pretended banners of order and religion If I saw a government whether monarchical or republican devoted solely to the moral and intellectual melioration of its subjects stoutly and systematically bent on the promotion of their temporal comfort and accommodation by beneficent and equal laws that government should find me as zealous and uniform in its support as the most forward of its champions but when I see all consideration of the public welfare swallowed up in a domineering profligacy venality and selfishness when I behold the most hideous crimes daringly perpetrated under the pretence of preserving regularity and subordination when I see religion employed as a state engine of despotism and murder by a set of men who are worse than heathens and infidels in their lives—when I observe these and other enormities which the time would fail me to enumerate committed without scruple and without remorse to maintain forsooth a degenerate constitution (meaning the constitution of this kingdom) of ideal excellence and practical depravity and am called upon to defend it against invaders I revolt at such an audacious imposition and pity the understanding that can be duped by such despicable artifice I know the difference between Christianity and secularity between vice and virtue between public blessings and national calamities between paculation and patriotism between freedom and oppression between simple uncostly justice and

ruinous law chicanery between liberal religion and venal creed between fancies and realities as well as the generality of my superiors in rank and station In contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.

SIXTH COUNT.—And the said Attorney-general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that the said Gilbert Wakefield so being such person as aforesaid and again unlawfully maliciously and seditiously contriving and intending to traduce vilify and bring into hatred and contempt among the liege subjects of our said lord the king the government and constitution of this kingdom as now by law established and to withdraw the affection fidelity and allegiance of the liege subjects of our said lord the king from our said lord the king and his government and also most unlawfully maliciously and seditiously devising and intending to dissuade and discourage the liege subjects of our said lord the king from resisting and opposing the said enemies of our said lord the king in case the said enemies should make an hostile invasion into this kingdom on the thirtieth day of January in the thirty-eighth year of the reign of our sovereign lord George the Third now king of Great Britain &c at Hackney in the county of Middlesex aforesaid unlawfully maliciously and seditiously did make write print and publish and cause to be made written printed and published a certain other scandalous malicious and seditious libel containing therein amongst other things divers scandalous malicious and seditious matters of and concerning the government and constitution of this kingdom and of and concerning the administration of the government of this kingdom by our said lord the king and also of and concerning an hostile invasion into this kingdom to be made by the said enemies of our said lord the king to the tenor and effect following (that is to say)

1st edit. page 43—If the French (meaning the aforesaid enemies of our said lord the king) come (meaning come into this kingdom in an hostile manner) they shall find me at my post a watchful centinel in my proper box my study among the venerable dead sometimes investigating the origin of man and primeval history by turning the dark lanthorn of heathen records or trimming the everlasting lamp of Moses sometimes musing with divine professors of the tuneful art on subjects of taste and fancy and sometimes meditating with the men of Galilee on mortality and immortality No systems of "the many made for one" no zeal in support of frontless corruption and "every evil work" shall dip my hands in the blood of men *Non res Romana perituraque regna* Let those who have an interest in these fooleries and sins let

those who have brought us to this most alarming crisis step forward in the day of danger and fight the battles of their Baal and their Mammon Let these I say buckle on their panoply in defence of monarchy (meaning the monarchy of this kingdom) against republicanism and stand up for domestic robbers against a foreign spoiler We sons of peace or see or think we see a gleam of glory through the mist which now envelops our horizon great revolutions are accomplishing a general fermentation is working for the purpose of general refinement through the universe In contempt of our said lord the king and his laws To the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.

SEVENTH COUNT.—And the said Attorney-general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that the said Gilbert Wakefield so being such person as aforesaid and unlawfully seditiously and maliciously contriving and intending to withdraw the affection fidelity and allegiance of the liege subjects of our said lord the king from our said lord the king and his government and to dissuade and discourage the liege subjects of our said lord the king from resisting and opposing the said enemies of our said lord the king in case the said enemies should make an hostile invasion into this kingdom on the thirtieth day of January in the thirty-eighth year of the reign of our sovereign lord George the Third king of Great Britain &c at Hackney in the county of Middlesex aforesaid unlawfully maliciously and seditiously did make write print and publish and cause to be made written printed and published a certain other scandalous malicious and seditious libel containing therein among other things divers other scandalous malicious and seditious matters of and concerning an hostile invasion into this kingdom to be made by the said enemies of our said lord the king to the tenor and effect following (that is to say)

1st edit. page 35—*On the contrary I am fully satisfied that if the French (meaning the aforesaid enemies of our said lord the king) could land a considerable army in this country to the number suppose of 60,000 (meaning sixty thousand) or 70,000 (meaning seventy thousand) men (which nevertheless appears to me utterly impracticable with our present naval superiority) the kingdom (meaning this kingdom) would be lost for ever The same cause which has facilitated the progress of the republicans on the continent would operate as powerfully for them in this country also namely a degree of poverty and wretchedness in the lower orders of the community which especially in their present state of depravity and ignorance will render the chances even from confusion of any change desirable I believe from my soul that within three miles of the house where I am writing these pages*

there is a much greater number of starving miserable human beings the hopeless victims of penury and distress than on any equal portion of ground through the habitable globe A fable of our old friend Æsop is extremely apposite on this occasion which I shall present to the reader in the simple style of Craxall 'Plain truth dear Murray needs no flowers of speech so take it in the very words of Creech'—*The Sensible Ass—An old fellow was feeding an ass in a fine green meadow and being alarmed with the sudden approach of the enemy was impatient with the ass to put himself forward and fly with all the speed that he was able The ass asked him whether or no he thought the enemy would clap two pair of panniers upon his back The man said no there was no fear of that why then says the ass I will not stir an inch for what is it to me who my master is since I shall but carry my panniers as usual The application of this fable shows us how much in the wrong the poorer sort of people must commonly be when they are under any concern about the revolutions of a government all the alteration which they can feel is perhaps in the name of their sovereign or some such important trifle but they cannot well be poorer or made to work harder than they did before Thus far Dr. Craxall (meaning and insinuating thereby that the poorer sort of the liege subjects of our said lord the king would not be prejudiced by a revolution in the government of this kingdom effected and brought to pass by the said enemies of our said lord the king and that the said last-mentioned liege subjects would be in the wrong if they should resist the said enemies of our said lord the king in case of an hostile invasion by them made into this kingdom In contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity*

EIGHTH COUNT.—And the said Attorney-general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that the said Gilbert Wakefield so being such person as aforesaid and unlawfully maliciously and seditiously contriving and intending to traduce vilify and bring into hatred and contempt among the liege subjects of our said lord the king the government and constitution of this kingdom both in church and state as now by law established and also our said lord the king's administration of the government of this kingdom and the persons employed by our said lord the king in the administration of the government of this kingdom and thereby to withdraw the affection and allegiance of the liege subjects of our said lord the king from our said lord the king and his government and also most unlawfully maliciously and seditiously devising and intending to dissuade and discourage the liege subjects of our said lord the king from resisting and opposing the said enemies of our said

lord the king in case the said enemies should make an hostile invasion into this kingdom on the tenth day of August in the thirty-eighth year of the reign of our said present sovereign lord George the Third king of Great Britain &c at Hackney in the county of Middlesex aforesaid maliciously and seditiously did make write print and publish and cause to be made written printed and published a certain other scandalous malicious and seditious libel containing therein among other things divers scandalous malicious and seditious matters of and concerning the people nobles ecclesiastical dignities government and constitution of this kingdom and of and concerning the administration of the government of this kingdom by our said lord the king and of and concerning the persons employed by our said lord the king in the administration of the government of this kingdom and also of and concerning an hostile invasion into this kingdom to be made by the said enemies of our said lord the king in one part thereof according to the tenor and effect following (that is to say)

3rd edit. page 5.—*Undoubtedly if the contest be presumed to subsist between one ministry and another the bishop of Landuff may be deemed as much as any man similarly situated an independent man but in a more extended view of this appellation and agreeably to some remarks already advanced in the preceding pages this independence cannot be so easily conceded to him For in fact very fortunately for the cause of liberty and human happiness the competition appears no longer personal and unimportant between two parties in and out of place but is become a contest of principles of a general and most interesting kind between corruption and reformation The present ministry (meaning the persons employed by our said lord the king in the administration of the government of this kingdom) therefore and our political abuses are indivisibly interwoven with each other and every man alive who profits by these enormous inequalities can by no means be esteemed independent but must be considered in the eye of reason as an interested supporter of the existing administration (meaning the administration of the government of this kingdom) an administration which I with many others regard as utterly inconsistent with constitutional freedom and the true welfare of the community and in another part thereof according to the tenor and effect following (that is to say)*

3rd edit. page 12.—*The established conduct of these ministers (meaning the persons employed by our said lord the king in the administration of the government of this kingdom) constitutes an indubitable proof of their ill faith in this transaction and a proof deduced also from the immutable operation of human passions they have burthened the country with an immense overwhelming debt by an unexampled prodigality of the public money they have reduced thousands and tens of thousands to wretchedness and beggary they have occasioned a devastation of the*

human species infinitely tremendous beyond the most merciless tyrants of ancient or modern times the death of a fellow-creature is no more to them than the fall of an autumnal leaf in the pathless desert land and sea is covered with the carcasses of their slain they have engendered sham plots false alarms and visionary assassinations for the purposes of deluding the unwary and to establish their own power by a military despotism in due time over England like that which has trampled bleeding Ireland to the earth they have persecuted unto death they now exiled to the ends of the world and they have emprison with inconceivable rigour (I speak what I have seen and know) their fellow-citizens for trivial and venial offences against every principle of constitutional law pure justice and sound policy After a long course of these and other enormities can such men I ask in an instant become benevolent pacific haters of bloodshed and lovers of their country? Add not insult to our sufferings—and in another part thereof according to the tenor and effect following (that is to say)

3rd edit. page 19.—*On the contrary if the French (meaning the aforesaid enemies of our said lord the king) could land a considerable army in this country to the number suppose of 60,000 (meaning sixty thousand) or 70,000 (meaning seventy thousand) of their best men (which nevertheless appears to me utterly impracticable with our present naval superiority) this kingdom would find itself I think in a most alarming state of calamity and danger the same cause which has facilitated the progress of the republican arms on the continent would operate as powerfully in this country also namely that degree of poverty and wretchedness in the lower orders of the community which especially in their present state of depravity and ignorance will render the chances to such uncultured minds even from confusion of any change desirable I believe from my soul that within three miles of the house where I am writing these pages there is a much greater number of starving miserable human beings the hopeless victims of penury and distress than on any equal portion of ground through the habitable globe and in another part thereof according to the tenor and effect following (that is to say)*

3rd edit. p. 20.—*It follows I think most unquestionably that no distinctions in society can prevail consistently with the general welfare of that society but what arise from personal merit and public services that the father's honours which have been justly paid him should be regularly transmitted in connexion with various privileges and immunities to his undeserving children is an institution which few wise men will be forward to defend But so circumstanced are the aristocratical dignities of this country! Something alas! besides virtue is nobility in England an advocate for inequality like this whatever his station or abilities may be shall receive no commendations at my hands he deserves well neither of humanity nor the gospel*

and in another part thereof according to the tenor and effect following (that is to say)

3rd edit. page 21—*As to an ecclesiastical establishment in alliance with the state or rather dependent on it I consider such a confederacy as a monstrous solcism in Christian polity as a fraudulent usurpation over that "liberty with which Christ has made us free" as an impious prostitution of the simplicity and sincerity of the gospel which professes to be a scheme of universal philanthropy and freedom to secular and interested purposes in short as the prominent characteristic of that Anti-Christian tyranny which is now ripe for summary vengeance and eternal extirpation I regard your distinctions of archbishops bishops deans canons prebendaries and all the muster roll of ecclesiastical aristocracy (meaning the distinctions of archbishops bishops deans canons prebendaries and other dignitaries of the church of this kingdom) as the despicable trumpery of priestcraft and superstition and a grievous domination over the meek principles of evangelical sobriety but I am utterly incapable as God is my witness! of the least disaffection to the persons of these churchmen and much more of the slightest wish to injure them because their opinions are not consonant to mine and in another part thereof according to the tenor and effect following (that is to say)*

3rd edit. page 24—*If the French (meaning the aforesaid enemies of our said lord the king) come (meaning come into this kingdom in an hostile manner) they shall find me at my post a watchful centinel in my proper box my study among the venerable dead sometimes investigating the origin of man and primæval history by turning the dark lanthorn of heathen records or trimming the everlasting lamp of Moses sometimes musing with the divine professors of the tuneful art on subjects of taste and fancy and sometimes meditating with the men of Galilee on mortality and immortality—No systems of the many made for one no zeal in support of frontless corruption and "every evil work" shall dip my hands in the blood of men! Non res Romana perituraque regna Let those who have an interest in these fooleries and sins Let those who have brought us to this most alarming crisis the ministry (meaning the persons employed by our said lord the king in the administration of the government of this kingdom) and their retainers step forward in the day of danger and fight the battles of their Baal and their Mammon domestic robbers against a foreign spoiler We sons of peace or see or think we see a gleam of glory through the mist which now envelops our horizon great revolutions are accomplishing a general fermentation is working for the purpose of general refinement through the universe incipient magni procedere menses—we will wait the event in defiance of penalties and pains of persecutions imprisonments and deaths with trembling hope but with a firm and tranquil resignation Know now whether this be thy son's sout or not A minister and believer of the gospel*

should be well assured of the rectitude of his purpose and the purity of his cause before he becomes crusader under the pretended banners of order und religion If I saw a government whether monarchical or republican or of whatever form devoted wlely to the moral and intellectual melioration of its subjects steadily and systematically bent on the promotion of their temporal comfort and accommodation by beneficent and equal laws that government should find me as zealous and uniform in its support as the most forward of its champions but when I see all consideration of the public welfare swallowed up in a domineering profligacy venality and selfishness When I behold a most hideous war begun and protracted under the lying pretence of preserving regularity and subordination When I see the name of religion usurped and prostituted by a set of men who are worse than heathens and infidels in their lives When I observe these and other enormities committed without scruple and without remorse simply to continue a set of corrupt apostates in their lucrative appointments and am called upon to defend them against invaders I revolt at such an audacious imposition and pity the understanding that can be duped by such despicable artifice I know the difference between Christianity and secularity between vice and virtue between public blessings and national calamities between peculation and patriotism between freedom and coercion between simple uncostly justice and ruinous law chicanery between liberal religion and a venal creed between fancies and realities as well as the generality of my superiors in rank and station In contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity

NINTH COUNT—And the said Attorney-general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that the said Gilbert Wakefield so being such person as aforesaid and unlawfully seditiously and maliciously contriving and intending to traduce vilify and bring into hatred and contempt among the liege subjects of our said lord the king the persons employed by our said lord the king in the administration of the said government of this kingdom particularly the right honourable William Pitt being one of the persons employed by our said lord the king in the administration of the said government and to insinuate and cause it to be believed that the persons employed by our said lord the king in the administration of the said government were unwilling to make peace with the aforesaid enemies of our said lord the king upon reasonable and proper terms and thereby to withdraw the affection and allegiance of the liege subjects of our said lord the king from our said lord the king and his government on the tenth day of August in the thirty-eighth year of the reign of our sovereign lord George

the Third now king of Great Britain &c at Hackney in the county of Middlesex aforesaid unlawfully maliciously and seditiously did make write print and publish and cause to be made written printed and published a certain other scandalous malicious and seditious libel containing therein among other things divers scandalous malicious and seditious matters of and concerning the persons employed by our said lord the king in the administration of the government of this kingdom and particularly the said William Pitt and of and concerning the Commons House of Parliament of this kingdom to the tenor and effect following (that is to say)

3rd edit. page 14—5. *The tyrannical temper and the violent measures of the present administration* (meaning the persons employed by our said lord the king in the administration of the government of this kingdom) *exemplified by a transgression of the liberal policy of our ancestors and the confessed principles of constitutional freedom in such numerous and momentous instances form so great a contrast to the free energies of republican equality as will not allow me to suppose for a single moment that Mr. Pitt* (meaning the said William Pitt) *and his colleagues* (meaning the persons employed together with the said William Pitt by our said lord the king in the administration of the government of this kingdom) *entertained a sincere wish of a hearty reconciliation and friendly intercourse with the French government they must be sensible how such a commerce sooner or later must dissolve an usurpation of power in which they have fenced themselves by a copious manufacture of their staple commodity posts and peerages by a diffusion of corrupt humours through every vein of the body politic even to the coarcescent ramifications of its capillary vessels and by a prostitute majority of borough-mongers loan-jobbers military officers pensioners and official sycophants* (meaning a prostitute majority of borough-mongers loan-jobbers military officers pensioners and official sycophants in the Commons House of Parliament of this kingdom) *Nay through such an amplitude of circumference is their vicious and contaminating influence now propagated in every direction that their power is irresistible throughout the country Notwithstanding all their miscarriages and misconduct Notwithstanding their palpable inability and the acknowledged inefficacy of their measures for I almost question whether a dozen men at all distinguished for intellect and virtue and political disquisition who are at this hour the advocates of the present ministry* (meaning the persons employed by our said lord the king in the administration of the government of this kingdom) *can be found in Britain from Old Belerium to the Northern Main not connected in fact or expectancy by themselves or their relatives with the emoluments of government as churchmen officers in the army or navy contractors money-lenders lawyers or civil placemen* In contempt of our

said lord the king and his laws to the great scandal of our said lord the king and his government to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.

TENTH COUNT—And the said Attorney-general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that the said Gilbert Wakefield so being such person as aforesaid and unlawfully seditiously and maliciously contriving and intending to scandalize defame and bring into hatred and contempt among the liege subjects of our said lord the king the government and constitution of this kingdom in church and state as now by law established and especially the ecclesiastical dignities of this kingdom on the tenth day of August in the thirty-eighth year of the reign of our sovereign lord George the Third king of Great Britain &c at Hackney in the said county of Middlesex unlawfully maliciously and seditiously did make write print and publish and published a certain other scandalous malicious and seditious libel containing therein among other things divers scandalous malicious and seditious matters of and concerning the government and constitution of this kingdom in church and state and of and concerning the ecclesiastical dignities of this kingdom to the tenor and effect following (that is to say)

3rd edit. page 21—As to an ecclesiastical establishment in alliance with the state or rather dependent on it I consider such a confederacy as a monstrous solecism in Christian polity as a fraudulent usurpation over that "liberty with which Christ has made us free" as an impious prostitution of the simplicity and sincerity of the gospel which professes to be a scheme of universal philanthropy and freedom to secular and interested purposes in short as the prominent characteristic of that anti-christian tyranny which is now ripe for summary vengeance and eternal extirpation I regard your distinctions of archbishops bishops deans canons prebendaries and all the muster-roll of ecclesiastical aristocracy (meaning the distinctions of archbishops bishops deans canons prebendaries and other dignitaries of the church of this kingdom) as the despicable trumpery of priestcraft and superstition and a grievous domination over the meek principles of evangelical sobriety but I am utterly incapable as God is my witness of the least disaffection to the persons of these churchmen and much more of the slightest wish to injure them because their opinions are not consonant to mine In contempt of our said lord the king and his laws To the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.

ELEVENTH COUNT—And the said Attorney-general of our said lord the king for our said lord the king further giveth the Court here

to understand and be informed that the said Gilbert Wakefield so being such person as aforesaid and unlawfully maliciously and seditiously contriving and intending to scandalize defame and bring into hatred and contempt among the liege subjects of our said lord the king the hereditary nobility and the House of Lords of this kingdom and thereby to withdraw the affection fidelity and allegiance of the liege subjects of our said lord the king from the government and constitution of this kingdom as now by law established on the tenth day of August in the thirty-eighth year of the reign of our sovereign lord George the Third king of Great Britain &c at Hackney in the county of Middlesex aforesaid unlawfully maliciously and seditiously did make write print and publish and cause to be made written printed and published a certain other scandalous malicious and seditious libel containing therein among other things divers scandalous malicious and seditious matters of and concerning the hereditary nobility of this kingdom to the tenor and effect following (that is to say)

3rd edit. page 20—*It follows I think most unquestionably that no distinctions in society can prevail consistently with the general welfare of that society but what arise from personal merit and public services that the father's honours which have been justly paid him should be regularly transmitted in connexion with various privileges and immunities to his underserving children is an institution which few wise men will be forward to defend But so circumstanced are the aristocratical dignities of this country! (meaning the hereditary nobility of this kingdom) something alas! besides virtue is nobility in England an advocate for inequality like this whatever his station or abilities may be shall receive no commendation at my hands he deserves well neither of humanity nor the gospel In contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.*

TWELFTH COUNT—And the said Attorney-general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that the said Gilbert Wakefield so being such person as aforesaid and unlawfully maliciously and seditiously contriving and intending to traduce and vilify and bring into hatred and contempt among the liege subjects of our said lord the king the administration of the government of this kingdom by our said lord the king and the persons employed by our said lord the king in the administration of the said government and thereby to withdraw the affection and allegiance of the liege subjects of our said lord the king from our said lord the king and his government and also most unlawfully maliciously and seditiously devising and intending to dissuade and discourage the liege subjects of our said lord the king from resisting

and opposing the said enemies of our said lord the king in case the said enemies should make an hostile invasion into this kingdom on the tenth day of August in the thirty-eighth year of the reign of our sovereign lord George the Third king of Great Britain &c at Hackney in the county of Middlesex aforesaid unlawfully maliciously and seditiously did make write print and publish and cause to be made written printed and published a certain scandalous malicious and seditious libel containing therein among other things divers other scandalous malicious and seditious matters of and concerning the administration of the government of this kingdom by our said lord the king and the persons employed by our said lord the king in the administration of the said government and also of and concerning an hostile invasion into this kingdom to be made by the said enemies of our said lord the king to the tenor and effect following (that is to say)

3rd edit. p. 24—*If the French (meaning the aforesaid enemies of our said lord the king) come (meaning come into this kingdom) in an hostile manner they shall find me at my post a watchful centinel in my proper box my study among the venerable dead sometimes investigating the origin of man and primal history by turning the dark lanthorn of heathen records or trimming the everlasting lamp of Moses sometimes musing with the divine professors of the tuneful art on subjects of taste and fancy and sometimes meditating with the men of Galilee on mortality and immortality No systems of "the many made for one" no zeal in support of frontless corruption and "every evil work" shall dip my hands in the blood of men Non res Romana perituraque regna Let those who have an interest in these fooleries and sins let those who have brought us to this most alarming crisis the ministry (meaning the persons employed by our said lord the king in the administration of the government of this kingdom) and their retainers—step forwards in the day of danger and fight the battles of their Baal and their Mammon domestic robbers against a foreign spoiler We sons of peace or see or think we see a gleam of glory through the mist which now envelops our horizon great revolutions are accomplishing a general fermentation is working for the purpose of general refinement through the universe—incipient magni procedere menses We will wait the event in defiance of penalties and pains of persecutions imprisonments and deaths with trembling hope—but with a firm and tranquil resignation know now whether this be thy son's coat or not A minister and believer of the gospel should be well assured of the rectitude of his purpose and the purity of his cause before he becomes crusader under the pretended banners of order and religion If I saw a government whether monarchical or republican or of whatever form devoted solely to the moral and intellectual melioration of its subjects steadily and systematically bent on the promotion of their temporal*

comfort and accommodation by beneficent and equal laws that government should find me as zealous and uniform in its support as the most forward of its champions but when I see all consideration of the public welfare swallowed up in a domineering profligacy venality and selfishness—when I behold a most hideous war begun and protracted under the lying pretence of preserving regularity and subordination when I see the name of religion usurped and prostituted by a set of men who are worse than heathens and infidels in their lives When I observe these and other enormities committed without scruple and without remorse simply to continue a set of corrupt apostates in their lucrative appointments and am called upon to defend them against invaders I revolt at such an audacious imposition and pity the understanding that can be duped by such despicable artifice I know the difference between Christianity and secularity—between vice and virtue—between public blessings and national calamities—between percolation and patriotism—between freedom and coercion—between simple uncostly justice and ruinous law chicanery—between liberal religion and a venal creed—between fancies and realities—as well as the generality of my superiors in rank and station—In contempt of our said lord the king and his laws To the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity

THIRTEENTH COUNT—And the said Attorney-general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that the said Gilbert Wakefield so being such person as aforesaid and again unlawfully maliciously and seditiously contriving and intending as last aforesaid on the tenth day of August in the thirty-eighth year of the reign of our sovereign lord George the third now king of Great Britain &c at Hackney in the county of Middlesex aforesaid unlawfully maliciously and seditiously did make write print and publish and cause to be made written printed and published a certain other scandalous malicious and seditious libel containing therein among other things divers scandalous malicious and seditious matters of and concerning the administration of the government of this kingdom by our said lord the king and also of and concerning the persons employed by our said lord the king in the administration of the government of this kingdom and also of and concerning an hostile invasion into this kingdom to be made by the said enemies of our said lord the king to the tenor and effect following (that is to say)

3rd edit. page 24—*If the French (meaning the aforesaid enemies of our said lord the king) come (meaning come into this kingdom in an hostile manner) they shall find me at my post a watchful centinel in my proper box my study among the venerable dead sometimes investigating the origin of men and pri-*

meval history by turning the dark lanthorn of heathen records or trimming the everlasting lamp of Moses sometimes musing with the divine professors of the tuneful art on subjects of taste and fancy and sometimes meditating with the men of Galilee on morality and immorality No systems of "the many made for one" no zeal in support of frontless corruption and "every evil work" shall dip my hands in the blood of men—Non res Romana perituraque regna Let those who have an interest in these fooleries and sins let those who have brought us to this most alarming crisis the ministry (meaning the persons employed by our said lord the king in the administration of the government of this kingdom) and their retainers step forwards in the day of danger and fight the battles of their Baal and their Mammon domestic robbers against a foreign spoiler We sons of peace or see or think we see a gleam of glory through the mist that now envelops our horizon great revolutions are accomplishing a general fermentation is working for the purpose of general refinement through the universe—In contempt of our said lord the king and his laws To the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity Whereupon the said Attorney-general of our said lord the king who for our said lord the king in this behalf prosecuteth for our said lord the king prayeth the consideration of the Court here in the premises and that due process of law may be awarded against him the said Gilbert Wakefield in this behalf to make them answer to our said lord the king touching and concerning the premises aforesaid.

Mr. Attorney General [sir John Scott, afterwards Lord Chancellor Eldon].—May it please your Lordship; Gentlemen of the Jury; This is a prosecution against the defendant as the author, and also as the publisher of the same book, for the publishing of which the last defendant has just been found guilty.*

A variety of passages taken from the book were quoted in the information, which stated the publication to be an infamous libel upon the constitution and the government of the country, and upon all the persons entrusted with its administration,—a libel upon the Monarchy, the Nobility, the Church Establishment, the House of Commons, every order of the state, and all that is venerable in the country.

The circumstances of the case are aggravated by this consideration, that after a grand jury of the county had found a bill of indictment against Mr. Cuthell the original publisher, after two persons had been found guilty upon the charge of publishing the pamphlet, Mr. Wakefield did publish a third edition at his house at Hackney, after three juries of the county had thus pronounced it to be a libel. The offence was farther aggravated by another circumstance: The last edition contained

* Mr. Cuthell: See the preceding case.

some additional matter which did not appear in the two former editions. Mr. Wakefield, in this last publication, addressed himself to the public; and appealed from what he called "the minions of a court and myrmidons of power" to the unbiassed judgment of the public.

What the defendant will say in his defence, I am really at a loss to conjecture. Will he say, that there ought to be no prosecutions for libels? I think he will scarcely venture to say that; and, if he does, it is evident that it can have no weight with a jury of a country where punishment for libels makes a part of the law of the land.

Having made these few observations, gentlemen of the jury, I do not think it necessary to say any thing more on the subject.

After the fact of publication shall have been proved, the passages of the book referred to in the information, will be read.

Walter Probart deposed, that he had purchased the book of Mr. Wakefield himself at his house at Hackney.

The Rev. *Gilbert Wakefield* asked how he came to know that the book now produced was the one he had purchased from him?

The witness said, he had marked it.

The Rev. *Gilbert Wakefield* said, that the mark to which the witness referred gave no assurance of the book being that which he said he had purchased; it proved nothing more than the title page. The mark was only upon one leaf, and the book consisted of several detached sheets stitched together. How could the witness be certain that the leaf he had marked had not been taken off, and stitched on above other leaves?

Lord *Kewson* said it was evidence to go to the jury, and they would judge what weight ought to be given to it.

The Rev. *Gilbert Wakefield* said it was not evidence to any thinking mind.

[*The Preface* to the last edition, and several passages from the book were then read.]

Probart was called again to prove the first edition, which he purchased at Mr. *Cuthell's*.

Mr. *Cuthell* was next called; he deposed that he had sold the book to the last witness, upon the account and by the direction of Mr. *Gilbert Wakefield*.

Mr. *Pitt's Patent*, as Chancellor of the Exchequer, was then put in and read.

Mr. *Hancock* stated, that at the commencement of last year there was a rumour of an invasion of this country by the French.

[These two pieces of evidence were given to support averments in the Information.]

DEFENCE.

The Rev. *Gilbert Wakefield*.^{*} Gentlemen of the Jury; I had prepared for this occasion a very long defence, of much thought and labour; but various considerations have prevailed on me to abandon it altogether.

In the first place, your attention, I thought, would be exercised sufficiently by the tediousness of many passages from the information, by openings and replies still more tedious from the counsel for the Crown, and finally by an address from the judge, in an unkindly season of the year, particularly to some of you, who may usually reside at a distance from the metropolis; without a speech of three or four hours from myself. I could not endure, therefore, to levy so enormous, and, I hope, so unnecessary, a contribution on your time and patience.

In the second place, truth and integrity require in general but few and simple words for their vindication: they disdain alike all superfluity of language and all artifice of composition. Let him love stratagem and darkness, before simplicity and light, whose implement is hypocrisy, and whose deeds are evil. Though several topics of high importance and profitable discussion, neither unseasonable to the occasion, nor uninteresting to themselves, are involved in the present cause; I reflected that, if a plain and shorter statement should be unable to convince you, not merely of the inoffensiveness, but of the meritoriousness, of my intentions, a prolix oration "from morn to noon, from noon to dewy eve," must prove equally inefficient; because something more would then be wanting to your conviction, than arguments and demonstrations: and more is not in my power.

Thirdly, the smallness of this court, well calculated for private causes, which admits but few hearers besides yourselves, its officers, and the gentlemen of the law, renders all pomp of oratory, as if to a public audience, an elaborate impertinence of ostentation, and every exertion, on my part, frivolous, except a simple exhibition of the case, directed to the good sense, the candor, the benevolence, and religious seriousness of my jury only. Religious seriousness, I say: for, if ye be not, like myself, deeply penetrated with the awful truths of Revelation, but expect, with the proud persecuting minions of ambition and secularity, that injustice and tyranny will be buried with you in your graves, and there sleep for ever, unrecorded in the register of divine remembrance; I could not expect, in combating such a host of alarms, and prejudices, and power, and malignity, even with an angel's tongue, to

* See the note to the Reverend Defendant's Address to the Court of King's-bench on the 18th of April, *infra*.

drop the accents of persuasion upon your hearts.

And, lastly, I have so accustomed myself from my very infancy to consider pure and undisguised truth as the only valuable acquisition of our lives, and to repose my confidence and consolation on the approbation of my Maker only, with a comparative contempt for all human judgments and all human greatness, as to contemplate, not merely with entire indifference, but supreme disdain, all personal embarrassments from a zealous discharge of duty in my station to the extent of my knowledge and ability: nor shall any men, or terrors of men, however dignified by titles, despotic in power, swollen with insolence, hardened by official inhumanities, and schooled in the diabolical rhetoric of punishments and persecutions, turn me aside from the path, which conscience has prescribed to my feet,—the path which all the heroic benefactors of our species have trod before me—“till this mortal have put on immortality.”

These and other forcible inducements have determined me to trouble you merely with a summary of those reasonings, which I had digested with much accuracy, and enforced with numerous authorities. I shall then detail the personal peculiarities of this cause, and so leave you to your decision. Suffer me, however, to premise one request. I entreat you, gentlemen! if I deliver my sentiments in terms emphatical beyond the ceremonious insipidities of a neutral advocate, not to ascribe these energies of expression to a complexional malignity, but to an ingenuous love of truth, paramount to all semblances and formalities; to a hearty detestation, not of the persons, but the vices, of my opponents; to a frankness and intrepidity of nature, confirmed by reflection, and sanctioned by the example of the noblest witnesses to virtue in every country and in every age of man. Truth mental is the conformity of our conceptions to the realities of things: truth verbal is the consonance of our language to those conceptions. Hence a language, not correspondent to the subject, appears to my mind an essential failing in the speaker; excuseable, if it arise from constitutional timidity, or inadequacy of apprehension; but extremely culpable, if it result from deficiency of zeal, and temporising suggestions of fear or interest.

I had endeavoured then, in my larger defence, to prove, that the Attorney-general, who has made himself a judge of my pamphlet both by an official information, and by an invective against it in conjunction with Mr. Pitt in the House of Commons, could not claim the character of a competent and impartial censor. Now the very appointment of Attorney-general has been esteemed so essentially destructive of all honour and integrity, by those, who have observed the uniform conduct of these law-officers in succession, that the biographer of my lord chancellor Bacon, on the infamous conduct of Sir

VOL. XXVII.

Edward Coke at the trial of Sir Walter Raleigh, makes the following remark: “The offices of attorney and solicitor-general have been rocks, upon which many aspiring lawyers have made shipwreck of their virtue and human nature. Some of those gentlemen have acted at the bar, as if they thought themselves, by the duty of their places, absolved from all the obligations of truth, honour, and decency.” What follows, is too severe for me to quote on this occasion. Therefore, to establish my position respecting the incompetent judgment of the Attorney-general, be his actual merits what they will, and my opinion of them what it will, I was under no necessity of disputing the benignity of his nature, the purity of his dispositions, and the disinterestedness of his views: I reasoned abstractedly and universally, from motives, which must ever operate on mortal frailty, and which therefore operate on him. I asserted truths, experimental, uniform, immutable; never to pass away, when the earth and the heaven shall be no more. The artillery of my literary war in the prosecuted pamphlet was levelled against what I deemed the hypocrisy, the venality, the cruelties, the impieties, of our present administration; an administration, of which the Attorney-general is a part. Though his learning and abilities in the law were equal, I believe, to the first emoluments of his profession without the patronage of ministers; still they are in fact the prolific fountain of his honours and expectations: and for him, so circumstanced, to arrogate an exemption from the partialities of selfish influence in what most intimately concerns the character and condition of his patrons, is to arrogate a superiority over all the weaknesses of human nature, and an equality with the divine. Kings may confer what distinctions they please of external decoration on their favourites; but there is not lodged in all their treasury of gifts and privileges a single dispensation from the ordinary imperfections of mortality. No harmony can be devised by a regal council for inconsistencies; no reconciliation for contradictions. As the philosopher of old said to his offending slave, “If I were not in a passion, I would chastise thee;” so my accuser might say with some plausibility of reason, “If I were not Attorney-general, and especially if I did not expect to be something greater than Attorney-general, I would prosecute this pamphlet.” But now, for him to set up a claim of unprejudiced and unbiassed judgment, is not only an insufferable insult to our understandings, but a dereliction of shame and decency in him. We will accept his pretensions, when invariable causes have suspended their activity: when night no longer follows the departure of the sun; when the moon ceases to be eclipsed by falling into the shadow of the earth.

And these axioms, gentlemen! of mm^u

z z

table morality (for I am not standing here, as a crouching and terrified petitioner of mercy; to betray truth and honour for compliments and forms, to surrender my integrity to personal convenience, to sacrifice the laws of God in the constitution of humanity to a miserable worship of dust and corruption like myself); these axioms, I say, in morals are applicable, but in a less degree, to the judge upon the bench: and it is your duty, as feelingly conscious of these inevitable influences, as sworn to justice, as responsible to an all-seeing Arbiter in the dreadful remunerations of eternity, to make every proportionate deduction (and large deductions should be made) from the opinions and asseverations of agents so specifically involved in the question of this day. Nay, it is a fact on record, that former judges, in the case of these libel prosecutions by the Crown, have shown themselves most distinguishingly partial; unmindful of the Supreme Judge in heaven, and the solemn responsibility of their hallowed office. In these remarks, gentlemen! unless ye will suppose the joint testimonies of philosophy, reason, and experience, to be contradicted by the voice of Revelation, there can possibly be contained no offence against the spirit of that Christian charity, which loves the persons of all our species; which, "hopeth all things, and rejoiceth not in iniquity, but rejoiceth in the truth." Of one thing at least I am perfectly persuaded: with the education of this Attorney-general, with such distinction in society, such professions of honour and generosity and sensibility and religion, this illiberal seizure of me, a helpless and painful student, with the iron grasp of obdurate tyranny, will leave in the estimation of all considerate and benevolent observers, a stain upon his character, which no future titles will varnish over, no course of time will wear away from the memory of his contemporaries: nor shall he escape that damning fame, which immortalizes, in the execrations of posterity, such barbarous accusers, such unsympathising persecutors, of their brethren. Thankful am I to the supreme Disposer of events for an absence from these temptations, for an incapacity of so much mischief! May no peaceful slumbers revisit these eye-lids more, no transports of self-congratulation ever warm this breast, if an idea, so characteristic of ignorance and barbarity! should occupy my mind for a single moment to the latest period of my existence; an idea of inflicting bodily punishment on a creature of the same feelings and infirmities with myself, for the errors or perversities of his understanding! Let me never deserve the friendship, nor regret the enmity, of men like these! Their approbation is indelible reproach; their persecution, the truest panegyric. "O! my soul, come not thou into their secret! Instruments of cruelty are in their habitations."

I had intimated also in my ample defence,

with the firm tone of intrepid truth, but in terms devoid of acrimony, that the very unceremonious language, in which the noble and learned judge had declared his opinion of my pamphlet on a former trial, left me but a slender expectation of indulgent interference from him on my behalf, except peradventure the personal peculiarities of my case should influence his mind; though the laws of our country, I believe, regard him as my counsel; but that all my hopes were concentrated in you.

I then discussed most copiously a topic of incomparable dignity, very superficially apprehended even by philosophers themselves, the Liberty of the Press; and proved, I persuade myself, from arguments irrefutable by human wit, that no forcible interference with this unalienable privilege of free men can be supported, but by the mere brutish principle of arbitrary power, impressing its own persuasions on another by the coarse ratiocination of threats and punishments; an instrument of conviction fit only for ruffian tyrants or infernal spirits:—that no pretence for prosecuting my opinions can be set up by the Attorney-general, which I in my turn might not as justly set up for prosecuting his, the savage law of force; no pretence, which would not justify the Jewish and heathen magistrates in their crucifixion of Jesus, their murder of his apostles, and all the primitive professors of Christianity; ferocities, to which the persecutors of this day would certainly have lent their aid: no pretence, which would not justify the burnings of Cranmer, Latimer, Ridley, and the noble army of protestant martyrs at the Reformation, with all those imprisonments, and tortures, and mutilations, and executions of our species, for mere differences of opinion, which time has registered on the black roll of history in characters of human blood:—that whoever sanctions this scheme of violence, by the most trivial specimen of correspondent practice, or by a passive encouragement, gentlemen! of such practice, is a prime accessory to any conflagration which a spark of this active and spreading principle may finally produce:—that all impediments to a communication of thought and intellect, on every assignable subject of debate, infringe the rights of society, the laws of humanity, and the prerogative of heaven:—that all our civilities, all our institutions for mutual happiness, moral, political, and religious, are derived from the dissemination of knowledge by inquisitive and learned men; and that, consequently, an obstruction of the press, the chief medium of this knowledge, tends to an introduction of universal barbarism through the earth, and fastens therefore on the obstructor that enormous guilt of a direct unqualified antipathy to God and man.—One hour of your time at least would have been engaged by this disquisition only; a disquisition certainly of prime importance, and peculiar con-

nection with this trial: for, had I been able to establish this point to your satisfaction, the prosecution of my pamphlet would appear of course an act of illiterate sottishness, despotical barbarity, and sacrilegious usurpation.

What the Attorney-general has incidentally advanced on the subject to-day, are the remarks of a man who is miserably unacquainted with all philosophical principles and liberal information on such points, and deserves nothing but contempt from me, as the wretched babblings of one blinded by education, or corrupted by his office.

After this discussion, since an indisposition to all hostility and war, and an inculcation of pacific sentiments on the minds of my countrymen, as became, I thought, a disciple of the Prince of Peace and a son of the God of Peace, in opposition to a ministry, breathing out, like unregenerated Saul, threatenings and slaughter against their brethren; since this indisposition, I say, is perverted into one article of seditious charge against me (strange to believe, and incredible to utter, in a Christian country!) I had shown at large, to demonstration, from the precepts of our Lord, from the whole tenour of the Scriptures, and the essential spirit of the gospel, an absolute inconsistency of war, in all its denominations and all its forms, with the profession of Christianity. I had placed every objection in its strongest light, and solidly refuted them, not only by fresh arguments, but by explicit testimonies of the most pure and wise and learned sons, that the Church of England ever bred; so that I forbear to lay this part of my projected defence before you with considerable regret; for I had presumed on a more than ordinary title to your attention here, from a perpetual study of both Scriptures, and, to the best of my knowledge, by any public documents, a more extensive acquaintance with their original texts, and all their versions in all ancient languages, Western and Oriental, than any one scholar of these days, since that prodigy of literature, that high-priest of liberty, that glory of our species, Sir William Jones, has rested from his labours, and gone to his reward.

Now, without farther reference to these questions, and omitting also, for your convenience, a long and circumstantial vindication of my pamphlet from the charges of the information, I shall give you what I have since proposed instead of my first defence, with as much brevity as justice to myself and duty to my country, whose best interests of liberty and learning, of pure religion and civilised manners, are inseparably interwoven with this trial, will permit. Let me premise only, that, if my prosecutor were asked, why he has chosen you in preference to a common jury, he would inform you, with a face of most fictitious gravity, how "he had been induced to this measure by the depth and subtlety of the question;" whereas nothing

plainer and clearer can possibly fall under the cognizance of the human understanding. The truth is, he fondly hopes, and assuredly believes, in the true spirit of impartiality and honour, that ye are seized, like the generality of your rank and station, with that irrational epidemical alarm of French principles, which is the bugbear engine of the day, and has been most successfully played off on the credulity of the public by him and his hypocritical complotters. Whatever his motive, I do assure you, with the most perfect sincerity, that gentlemen of your description are beyond measure preferable, in my estimation, to a common jury. Your liberal and well-informed minds are much better calculated to apprehend my reasonings, discern my views, appreciate my character, and sympathise with one accustomed to similar comforts and enjoyments with yourselves. I have also a farther remark on this subject, not in reference to you individually, with whom I feel entirely satisfied, or to other jurors, but to the general constitution of special juries, without any personal application whatsoever. It is a most unquestionable truth, that a large majority of gentlemen in your situations, from the prodigious extension of ministerial influences, are strongly biased in their political affection towards the minister and his views. I am passing no censure on any man's opinions, but merely stating an indisputable fact. Now out of 48 names selected for jurors, we must be sensible, that a fourth part, either antiministerial or indifferent, is as great a ratio as can possibly be conceded. This fourth part, or 12 in the 48, are expunged by the Attorney-general, who is furnished with all the means and instruments of detection: so that 24 are left, whose devotion, generally speaking, to his sentiments is absolutely certain. Now he and his coadjutors may call this crafty management by the names of truth and equity, and whatever else they please; and such violations of decency may pass unnoticed and uncensured in daily practice: but, for my own part, where a nation, like our's, prides itself on a religious dispensation of justice, on its inestimable privilege of a trial by jury, on its equal laws, and thus leaves the defendant of a libel so utterly destitute, in this and other points, of all equitable consideration, I discover no adequate punishment for such enormity of sanctified mockery and methodised oppression, but torrents of fire and brimstone from the Lord out of heaven, as on Sodom and Gomorrah in the patriarchal ages.

Now the slightest acquaintance, gentlemen! with human affairs and the operations of the human heart must demonstrate, with irresistible cogency, that no assignable motive, but extreme uneasiness at the galling truths of my pamphlet, could have excited Mr. Pitt's invective against it in the House of Commons, and this prosecution by the Attorney-general. It were a needless parade of

learning for me to show, from the moralists of all ages, that no exasperation is produced on a liberal mind, conscious of its own purity, by the false accusations of a slanderer, or that vexation is an incontestable proof of guilt, and a proof intelligible to all mankind. There can exist no difference of sentiment on this point with reasonable men, as long as the sun and moon endureth. If I charge the ministry with dissimulation and duplicity in their negotiations with the French; if I call them the aggressors in this war, because they refused to see and hear and receive a messenger of peace, and sent their armies beyond sea to invade the very territories of the enemy; and, if this ministry, instead of regarding and despising me as a frivolous calumniator, feel resentment, and, like tyrants, exercise that resentment on my person by penalties and prosecutions; ye have an evidence of their guilt and the pertinency of my accusations, which countervails at once all their own clamours of sincerity, however loud and solemn, upon every principle of philosophy, and every document of experience. And will ye condemn me for speaking truth? Words are not to be accepted in opposition to realities; nor the pretences of interested agents against the invariable operations of human nature. We are furnished, gentlemen! with two admirable specimens of this antipathy between depravity and truth, and of the disposition in fraudulent profligates to avenge themselves, by personal injury to the reprover of their vices, in the divine oracles of salvation. When Peter and the rest of the apostles, determined as they then were, and as I am this day, to obey God rather than men, charged the Jewish ministry with the murder of their master, these demure pretenders to religion and social order, instead of loving and admiring the boldness of their reprovers, instead of acknowledging their own misdeeds, and repenting in sack-cloth and ashes, were filled with indignation, and had recourse, not to the keen dexterities of argument, but to the club-reasoning of baffled and despotic villany: they put the apostles in a common prison, says the Scripture; and consulted how to take away their lives!—Again: when the proto-martyr Stephen accused the same Jewish magistrates with the persecution of the prophets, and the betraying and murdering of Jesus, what was the result? They were cut to the heart: they gnasht upon him with their teeth: they stoned on the spot this undaunted rebuker of their crimes, this conscientious victim to his integrity.—Gentlemen! the things that have been written aforetime in the Scriptures, were written for our learning; and these awful examples of honest intrepidity on one hand, and tyrannical depravity on the other, are recorded for our admonition, upon whom the ends of the world are come.—I have presumed, in the spirit of my original profession, on the office

of Peter and Stephen and the apostles, the perilous and unwelcome office of rebuking boldly the wickedness of men in high places. I am conscious to myself of weakness and fallibility in a thousand instances: I am aware also that deep humility is the proudest distinction of a creature, ignorant and erring, like myself; but this violent retaliation of our rulers on my person, demonstrates that I was not mistaken in my charges of perfidy, cruelty, and irreligion. The scribes and lawyers and high-priests and pharisees of the Jews, pronounced again and again by Christ to be blind and fools and hypocrites, our ministers have made the pattern of their imitation by persecuting me. Will ye give a verdict against one, who is undeniably declared by a fact to have exposed wickedness, and to have exposed it justly? Prepare not for yourselves, gentlemen! those sharp stings of conscience, which will goad your bosoms to the last moment of your lives, by sanctioning and quickening the mischievous activity of these deluded mortals, who take refuge from the lashes of correction in vindictive violence; and have no better or wiser method to evince their innocency, than that of trampling with the hoof of oppressive power their adversary in the dust!

Gentlemen! the libel-bill of Mr. Fox, which forms the basis of your verdict, and to which, as the law of your country, ye have sworn obedience, empowers you to look beyond the overt-act of publication to the motives, the disposition, the character, of the writer. The information states, that I, being a seditious, malicious, and ill-disposed person, have written so and so, not that I did write so and so: and therefore am that person. My seditiousness and malice and ill-disposition are presumed, as manifestly existing and undeniably notorious; not inferred by conclusion from a fact demonstrated. He, who denies this statement, may be, for aught I know, very learned in the law, but is an absolute ignoramus in the sense and construction of his native language. Now, gentlemen! I think myself able to prove my freedom from seditiousness, and malice, and ill-disposition, to every thing but prejudice incurable, by evidence, internal and extraneous, as complete and satisfactory, as most men in this country could adduce in their own behalf: and, if ye then, with a good conscience, with no doubt upon your minds (a condition necessary for your vindication, not merely from malevolence, but the sin of perjury) can pronounce me that pestilential person, as to every particular alleged in the information—peace be with you! not as men deliberately criminal, but involuntarily mistaken, and unhappily deluded, by an inadequate apprehension of the case, or the misrepresentations of a sophistical accuser.

These points of innocent intention and un-seditious conduct I shall establish by three

decisive and independent proofs: 1. From the circumstances of publication. 2. From the spirit of the pamphlet. 3. From my own manners, occupations, and modes of life. And these proofs I had intended to corroborate by the testimony of a few witnesses; no spies, no informers, no apostates; such as some people are accustomed to employ for their precious purposes; but men of high rank and respectability in the community; chiefly, however, of political and religious sentiments very different from my own, but selected by me because of that difference; that their attestation might have impressed you with all the force, of which evidence is capable. Now I will tell you explicitly what inclined me to desert the intention of calling witnesses altogether. 1. It seemed a disgrace for a plain man, no vagabond nor stranger in society, to think any vindication of his character necessary from the aspersions of persecutors, who have no better reason for their conduct to me this day, than a determination to retain undiminished and unammended all their peculations and corruptions, and to oppress by tyranny and injustice every advocate for reformation: peculations and corruptions, lately reproved with severity by the judge upon the bench, and which no man could enumerate, without a hundred tongues, a hundred mouths, and lungs of brass, before the sun would set in the western sky, and involve this court in darkness. 2. The shortness and uncertainty of the time allowed for these trials, utterly inconsistent with a pure regard to justice, makes the whole interval suspense and trepidation; and this season of the year encumbers the attendance of distant residents from town with inconveniences, which I could not impose, with entire satisfaction to myself, on friend or foe: and their attendance in this case was actually impossible from these very causes. The witnesses proposed were in general old associates, and intimately acquainted with my manners and dispositions; eight in all: three willing, five unwilling, to appear. One willing witness, prevented only by ill-health and distance, the duke of Grafton has delivered his opinion of me in terms, which I beg permission to lay before you.* My next witness, George Hibbert, esq. merchant and alderman of London, was also ready to attend, and express his estimation of me: and I dare say, gentlemen! it is unnecessary to inform you, that no man deservedly ranks higher in the opinion of his fellow-citizens than he. His letter is the short reply of one fully engaged in commercial occupations, but declaratory of friendship and affection. My next willing witness was a gentleman, not less distinguished by amiable manners, than his profound attainments in mathematics and philosophy, the Rev. Samuel Vince, F.R.S. and Plumian professor of experimental phi-

* See the following note.

losophy in the university of Cambridge. His letter also I have with me. The five remaining were unwilling witnesses: all of them, like Mr. Vince, my intimate friends or contemporaries at Cambridge, and well acquainted with me since, either by epistolary correspondence, intermediate friends, or personal intercourse: Dr. Beadon, bishop of Gloucester; Dr. Pretymann, bishop of Lincoln; Dr. Sutton, bishop of Norwich; Dr. Pearce, master of Jesus-college, Cambridge, and dean of Ely; and Dr. Kennell, master of the Temple.* All of these were far off in the

* In the Appendix to his Defence, Mr. Gilbert Wakefield published the following account of the answers which he received, from the several eminent persons, to whom he had made application for testimonials of his good character.

“ Hackney, Feb. 23rd, 1799.

“ When my trial was notified for decision during the sittings after last term, I wrote to the duke of Grafton, the bishops of Gloucester, Lincoln, and Norwich, the dean of Ely, George Hibbert, esq. and Mr. Vince, to request of them a general attestation to the integrity and sincerity of my manners; as a measure which might be essentially contributive to my acquittal, and perhaps save me from a rigorous imprisonment. The following is the duke of Grafton's letter; which, I am persuaded, he will not be displeased with me for presenting to the reader, as a testimonial very honourable to me, and, I hope, not disgraceful to himself.

‘ Rev. Sir; *Euston, Feb. 2, 1799.*

‘ I am rendered, by a most irksome disorder, which has not allowed me to stir out of the house, except for air and a little exercise, for many months past, totally incapable of appearing any where in public. This will deprive me of the satisfaction I should otherwise have had in giving my personal testimony of that consideration, in which I hold your character, esteeming you for that integrity, conscientiousness, and sincerity, which direct you in all your actions; and which add much lustre to your learned labours in the cause of virtue and religion.

‘ The same grievous complaint, which disables me from being present at the trial, rendered me unfit to attend my duty last session in parliament; and, I fear, will likewise prevent me this year from the discharge of that as well as other functions. I am, Rev. Sir, with sincere regard and esteem,

‘ your faithful and obedient servant,

‘ GRAFTON.’

‘ To the Rev. Gilbert Wakefield,
‘ Mare-street, Hackney.’

“ Though my acquaintance with the bishop of Gloucester had been longer suspended than with the rest, and my communication with him, since I left college, had been con-

country, or would be before the trial; as might be seen from their letters in my possession; and could not appear without con-

tinued only by the mutual exchange of two letters many years ago, he returned a very polite answer to my request; and, whatever insufficiency I may impute to his excuse, he has not forfeited that opinion of benevolence and liberality, which I have ever annexed to his character. To the bishop of Lincoln's letter I request the particular attention of the reader, and his comparison of it with the subjoined extracts of former letters.

'Sir; I received your letter this morning, and according to your desire I take the earliest opportunity of answering it. That I once thought well of you, and that I felt a real regard for you, I shall ever be ready to declare; but I must beg to call to your recollection, that my acquaintance with you was prior to any of your writings upon religion or politics. For these last twenty years I have known you only by your publications; and it is with pain I say, that those publications would not allow me to speak favourably of your intention and disposition. I sincerely lament the change of my opinion; but I think it right to state to you without reserve, that in my judgment the declaration of my present sentiments concerning you would be injurious rather than useful to you upon your trial. I am, sir,

Your obedient servant,

G. LINCOLN.'

'Buckden Palace, Jan. 31st, 1799.'
'Rev. Gilbert Wakefield, Hackney.'

'Dear Sir; The expectation of being able very soon to call upon you at Richmond, has constantly prevented my answering your letter. I will not, however, any longer delay to assure you, that it will give me real pleasure if I have an opportunity to recommend any pupils to your care. I am thoroughly satisfied that you will do them the most ample justice. Believe me to be, dear sir, your most faithful friend,

G. PREYMAN.'

'Downing-street, Aug. 11, 1784.'
'The Rev. Gilbert Wakefield,
Richmond, Surrey.'

'Dear Sir; I received the favour of your letter, and beg leave to express to you my sincere acknowledgements for your kind congratulations: they were truly acceptable to me, as coming from a person whom I respect as well for the qualities of his heart as for his literary attainments. I shall be very glad to give you an opportunity of judging whether difference of situation has caused in me any difference of behaviour; if any thing should bring you to town, or into my neighbourhood in the country, I hope you will not forget your old Cambridge acquaintance. Mr. Pitt has, I believe, felt no small pleasure in giving this substantial testimony

of his friendship and good opinion of me. I confess to you, otherwise reluctant, regarding me less affectionately and respect-

of his friendship and good opinion of me. If I know my own heart, the greatest satisfaction which I derive from my present situation, arises from the reflexion that I owe it to the man whom I most love and admire; I may add, whom I really believe to be the greatest and most amiable character I ever knew or heard of.—You see I write to you as an old friend. Believe me with great truth and respect, dear sir, your sincere friend and obedient servant,

G. LINCOLN Elect.'

'Great George-street, March 2, 1787.'

'The Rev. Gilbert Wakefield,
Nottingham.'

'Dear Sir; I received the favour of your letter this morning, and am very glad that you have given me an opportunity of explaining my behaviour, which must appear very strange to you.....

I sincerely hope that I may be more fortunate upon any future occasion of the same sort: if any thing should bring you to Buckden, or to town, I shall be truly glad to see you.

I thank you very much for your new edition of Virgil's Georgics; I am going towards the sea in a few days, and shall take it with me. I am very glad that you have leisure, and retain inclination, for such pursuits. I have to regret, that my time is almost wholly occupied by the duties of my situation. Believe me, with great regard, dear sir, your faithful friend and obedient servant,

G. LINCOLN.'

'Buckden Palace, July 22nd, 1788.'
'Rev. Gilbert Wakefield, Nottingham.'

Lymington, July 21st, 1789.

'Dear Sir; Your letter found me at this place, and I should have taken an earlier opportunity of acknowledging it, if I could have answered it in a manner more conformable to my wishes and feelings.....

I flatter myself that you will not suspect that any alteration has taken place in that respect and friendship which I always professed for you. Be assured, that it will give me most sincere pleasure, if, contrary to my expectations, I should ever have it in my power to promote your wishes. I am, dear sir, your very faithful friend and obedient servant,

G. LINCOLN.'

'The Rev. Mr. Wakefield, Nottingham.'

'In addition to these letters, it has been signified to me, since I came to Hackney, several times within these last seven years, through intermediate acquaintances and relations, that the bishop would be gratified by seeing me at the deanery in London; and his particular compliments were conveyed to me by a relation on a visit to him in town, a former pupil of mine, who came

fully than heretofore; because I had incurred that inexcusable crime of thinking differently on politics and religion from themselves. The truth is, gentlemen! these fathers of the church, who have been accustomed to converse with me as freely and familiarly as a man converses with his brother, have not only received all their preferments from Mr. Pitt, but expect as much more as they can possibly get from the same patron of the clergy. And where men, like these, possess preferments of great value, whose duties are insignificant or none; or different preferments, of which the duties are incompatible; and live therewithal in a state of perpetual suitorship for more; not only is their judgment unavoidably perverted and heart depraved, but all the benevolent affections and kindly sensibilities of nature gradually sink down and disappear for ever in the bottomless pit of an insatiable and all-devouring selfishness. When their daily occupation partakes so much of depredation on the community; a reaping, where they did not sow, and a gathering where they had not scattered; no wonder, if a man may perform all the precepts of the gospel, and all the offices of humanity, and still be in their

opinion a dangerous and malicious person; because he prefers not their articles to our Scripture, and the liberty, wherewith Christ hath made us free, to the slavery of ecclesiastical impositions; but feels more satisfaction in a frugal subsistence from literary labours and an unbribed worship of his Creator in spirit and in truth, than in babbling repetitions of pharisaic prayers. Dr. Bennet also, bishop of Cloyne in Ireland, who has continued his friendship, amidst all the differences of opinion, during a term of three-and-twenty years, is disabled by distance from appearing in my behalf. Dr. Newcome too, archbishop of Armagh and primate of Ireland, has occasionally testified a spontaneous regard for me and an approbation of my studies, by various presents of his own works. I could enlarge on this subject; but ye would deem me vain and ostentatious. Now surely the kind notices of such men as these may easily console me under the charges of malice, seditiousness, and evil disposition from one, who recommends himself to his patrons by nothing more effectually than bold accusations and unrelenting persecutions of all, that have the honesty to condemn, and the resolution to chastise, their hypocrisy and crimes.

“ immediately from St. Paul’s to my house at Hackney. It must be noted also, that my most obnoxious and observable religious publications, my ‘ Commentary on St. Matthew,’ and ‘ Enquiry into the early Christian Writers,’ made their appearance in 1782 and 1784. What sort of testimony my old friend Pretyman could have given to my sincerity and integrity, I will not take upon me to affirm: but certainly I have enabled all men to discover what he has given to his own. The same remark is unhappily applicable to the following letters from the bishop of Norwich; and with most sincere sorrow of heart have I experienced, on this occasion, the melancholy operations of secularity and ambition in corrupting such an affable, unaffected, and intelligent man as Dr. Pretyman, and a person of manners so truly polite and amiable and engaging as Dr. Sutton. How should I have exulted on their account, as well as my own, if they had not abandoned me in an extremity, which would have done so much honour to that disinterested testimony in my favour, so reasonably expected from them; so much honour to their friendship and humanity!

‘ Norwich, Feb. 3, 1799.

‘ Sir; Your letter of the 29th ult. reached me yesterday, but, because of the intemperance of the weather, too late to be answered by that night’s post.

‘ The nature and extent of that evidence which I shall be competent to give, if called upon in a court of justice, respecting your character for veracity and integrity, you are as able to estimate as I am. The intercourse

‘ that subsisted between us, was at no time of that intimate nature that should entitle me to speak, of my own knowledge, to either. I respected, and respect you as a scholar: and of the rest of your character I knew and know nothing, but in common with the public. I have the honour to be, sir, your faithful humble servant,

‘ C. NORWICH.’

‘ Mr. Gilbert Wakefield, Hackney.’

‘ My dear Sir; Among the many letters of congratulation on my late advancement, none has given me more pleasure than that which I have this moment received from you. The favorable testimony of an old acquaintance, and a man of great learning, cannot but be highly flattering to me. If business should at any time bring you to London, I hope you will give me an opportunity of shaking hands with you in Wimpole-street. From, my dear sir, your sincere friend, and faithful humble servant,

‘ C. NORWICH.’

‘ April the 6th, 1792.’

‘ The Rev. Gilbert Wakefield, Hackney.’

‘ From Dr. Pearce, master of Jesus college, Cambridge, and dean of Ely, I received a very short and impudent epistle.

‘ Sir; As I have nothing to say, that can be of any service to you on your trial, I hope you will not give me the trouble of appearing on the occasion. I am, sir, your most obedient servant,

‘ W. PEARCE.’

‘ Jesus Coll. Jan. 31, 1799.’

‘ The Rev. Mr. Wakefield, Hackney.’—Appendix to the Defence of Gilbert Wakefield.

Ye may be sure also, that many private friends, equally respectable, could have been brought forward by me on this occasion; but their testimony might appear too strongly tainted by an infusion of personal affection and general coincidence of sentiment, to be regarded by you as unequivocally disinterested and unsuspecting. Indeed, this whole process of defence and proposed testimony is employed by me for the gratification of my relatives and the possible benefit of the public through your steadiness and virtue. I should have acted in my own opinion with more true dignity, with more conformity to that disdainful sense of injury, that conscience of desert, which inspires and exalts my feelings, had I submitted unresistingly to all the consequences of persecution from ignorant, unmerciful, and graceless men. These rude oppressions of laborious and pacific students are as sure a proof of merit, as a luminous body is certainly inferred from the shadow of an interposing object. I find an invaluable maxim in an invaluable book, delivered by a most illustrious and fearless champion of truth and freedom, Paul of Tarsus: all, who live godlily in Christ Jesus—all the defenders of truth and justice and religion and rational equality against the devourers of the toil and trampling on the happiness of their fellow-citizens, shall suffer persecution. I can very well endure the practical enemies of God and man, lovers and promoters of war, duellists, and apostates, to be enemies to me.

1. Gentlemen! I shall evince the fairness and uprightness of my intentions from peculiarities attending the publication of my pamphlet: and how extremely cautious ye should be in deciding the intentions of another, a transaction of last week in this very court is sufficient to demonstrate. A judge, of advanced years and long experience, asserted from yonder bench, uncontradicted by the other judges, in these or equivalent terms, that "my motive for blaming the great characters, who have had the expenditure of the public money, was the proper application of that money in crushing the Irish rebellion, and thus thwarting my hopes." Now it so happens, that my pamphlet was published in January 1798, and the Irish rebellion was not known here to have broken out till the latter end of May in the same year, four months after. Ye see, gentlemen! what mistakes it is possible even for judges to commit, when they exercise their uncharitable censure with such exemplary decency on the secret motives of other men. I hope better things of you; who must be sensible, that many crimes may be committed with impunity, which deserve, beyond any felonies, the severest indignation of the law.

Animated by conscious rectitude, nor afraid of acknowledging any action, which I am not ashamed to commit, I never heitated to give every proof of being the author of that pamphlet; and, when my unsuspecting and un-

offending publisher was apprehended, I was ready to substitute myself, as the only possible offender in this transaction. The size of the print and the goodness of the paper, if ye will observe them, gentlemen! disprove a contemplation in me of general dispersion among the public, and without this view of general dispersion, I am at a loss to conceive, how a charge of sedition can be maintained. A price also, correspondent to these external appearances, rendered the pamphlet inaccessible to many purchasers of such writings: nor did the title, "An Answer to the Bishop of Landaff," hold out any invitation of acceptable materials to the lovers and sowers of sedition. Gentlemen! all these are arguments of an intelligible and simple character: no artifice, no concealment, can be lurking here. Ocular inspection and common sense alone confer upon them a validity which no exaggeration can enforce, no sophistry impair. The composition also is learned and scholastic, or, if you will, pedantic, interlaced with Latin and Greek quotations; refuting instantaneously all imputation of seditious application to the passions of the multitude, and demonstrating an exclusive appeal to the more enlightened classes of society. I employed also but one bookseller, the regular vender of all my publications; who never published any pamphlet, but this, either before or since, for me or any other author, in his life. Gentlemen! if these allegations in behalf of honest purpose both in him and me be not imperiously decisive, and incapable of confutation, the Attorney-general must demonstrate me a most crafty knave, or I will confess myself an idiot.

2. My intentions, gentlemen! are apparent from the context of the pamphlet; and, if some things should seem to you inconsiderately or warmly written, I dispute not the propriety of your opinion; only be so equitable as to reflect in your turn, that minds are differently constituted, so that every individual has his peculiarity of sentiments and language; and, perhaps, where one charges me with too much acrimony, I should retort a charge on him, with more propriety, of treacherous lukewarmness in the cause of liberty and virtue; which to my fancy, is a supremely reprehensible defect. Nor am I not furnished with high authority for this judgment by that volume, which is the sole directory of my conduct. I there find in the Revelations of St. John, that the church of the Laodiceans was rejected with every expression of abhorrence by the Lord and judge of men, because they were neither cold nor hot, but lukewarm practitioners of virtue and religion—Consider also, that a superior freedom of remark is usually conceded to an answerer, who is repelling an aggression, which he deems unfriendly to social happiness. For, if the foes of freedom and the retainers of ministry may vilify, not

only the persons of dissentients from them, but all that is praise-worthy and venerable in the estimation of their opponents, and no attempts at refutation be endured, what must the end be, but oppression without measure, and corruption without redress?

Now my principal intention was simply to produce on the minds of others that complete disapprobation of the present ministry, which an attentive observation of their conduct had produced on myself; and more particularly to discourage and repress that horrible rage for war, which appears in my imagination to have brutalised our times and country.

I laboured to create an absolute indisposition to all exertion in behalf of those sanguinary measures, which have been so long and fatally pursued by a ministry, whom I regard, without any condemnation or dislike of those, who think differently from me, not merely as the capital enemies of those constitutional rights transmitted by our ancestors, but of the whole human race: because this indisposition to their measures would render their resignation absolutely necessary to the salvation of the country, either by peace, or by unanimous defence under better ministers. Our political condition appeared to my fancy so debased and corrupted by the pestilential operations of our present rulers, as to leave but little inducement to activity in defence of our lives and liberties in opposition to a foreign foe; nor could I discover any excitement of this activity, and of zeal in behalf even of our dearest interests, but in the removal of that torpor and despair, which depressed all our energies to the earth by a weight of exactions, increasing daily with most enormous and most fatal accumulation. — Who shall dare to contradict, as if he were in the place of God, a searcher of the thoughts, this unsophisticated statement of an honest heart, but a shameless and uncharitable slanderer?—I speak also, in the same breath, of a French invasion, as morally impossible, from the naval superiority of our island; and, what leaves indisputable the intentions here specified, I propose a plan of redress, not by an abandonment of the country to its invaders, but by a moderation of our military phrensy, and a change of ministers, as the sole expedient of deliverance from all our dangers and embarrassments. I hope, gentlemen! when the Attorney-general has finished, if ye have any doubt on your minds, ye will do me the justice, thus relying on my own efforts and the support of conscious integrity alone, to take the pamphlet with you, and peruse it, particularly the conclusion. Whatever your determination may be, it is a debt of reason both to me, to your country, and to yourselves, that ye return a verdict free from all imputation of inconsiderate precipitancy, and subsequent to an actual examination of those peculiarities, which ye will find to have been fairly and honourably stated; and, after all,

VOL. XXVII.

be my notions innocent, or be they dangerous, they are but the visions of a peaceful and retired scholar, revealed to enlightened and speculative men. In short, (which is my real crime) I look on Mr. Fox as the angel of redemption, and on Mr. Pitt as the demon of destruction, not to our own country only, but to all European monarchs, whom this curious deliverer, with singular success and industry, is daily dashing from their thrones. But my proposal for recovery from our perilous condition, by a change of administration, either falsifies all accusation of seditious purpose, or implies a most dark dissimulation and subtle management in the fabrication of this pamphlet: but dissimulation and management are not, I believe, generally considered as ingredients in the composition of my manners. Besides, the general scope of the pamphlet, namely, an attack on the ministry and their measures, is the proper object of your consideration, and the clue, by which detached passages are to be interpreted and explained: but these detached passages, torn violently from the context, must not be made a standard for the explanation of the pamphlet; because such a mode of interpretation is preposterous and unfair, nor allowed to be legitimate by candid reasoners in any other instance. And such phrases, as that employed by the Attorney-general, “a treasonous incentive to traitorous inactivity,” are not only absurd, contradictory, and unintelligible in themselves, but most ridiculously contemptible; and are delusively employed from an inability of making a specific charge in the clear language of reasonable men. Finally, gentlemen! I profess to have been swayed by these purposes on that occasion: should the Attorney-general, or any other man, arraign my veracity, what is to be done? I can only say, that I will undertake, at any hazard, to bring more disinterested witnesses into this court, respectable for their intellectual accomplishments, their amiable manners, their beneficence to their fellow-creatures, their practice of every virtue, that recommends our religion and dignifies our nature, to pronounce an opinion of my sincerity, than Mr. Attorney-general and all his majesty's ministers put together could summon to attest the moral respectability of their characters. How far his veracity will bear a comparison with mine, ye shall judge from a circumstance now to be laid before you; since there seems to be implied a competition of integrity between us: and I feel more charitableness, than to wish my bitterest enemy incapable of clearing himself from so horrible an imputation. If he be incapable, he will rue that evil hour, when he first thought of prosecuting me. This defence will go before the public; and all his pretensions to veracity and honour are forfeited for ever!

In this very court, when Johnson was called up for judgment, Mr. Attorney-general, by way of occurrence to a tacit accusation of

discriminate selection in the subjects of these trials, asserted "a determination to have prosecuted any other booksellers as well as Jordan and Johnson, could he have attained the same evidence of publication against them." or words to this effect. Will he stop and contradict me here? Now I can prove, and am ready to prove, by the oaths of eye-witnesses eminently respectable, nay, by the oaths of the very agents, the booksellers themselves, that my pamphlet was actually sold, and in some instances very largely, by almost every bookseller in London and Westminster; and lay for sale upon the same counter in the same shop with the bishop's pamphlet at his publisher's. I give then to sir John Scott which horn he pleases of this going dilemma: "he either sent his emissaries to other booksellers, or he did not." If he did send, and can prove that he sent them, I will forfeit my life, if I cannot prove, that they might have bought my pamphlet at the most respectable shops in town: if he did not send them, he stands self-convicted of as gross a prevaricating falsehood as tongue can utter.

Now, be this as it may, gentlemen! I leave you to your own reflections, and him to the acquittal, or the torments, of his own conscience; only, I beseech you, suffer not the insidious surmises and malevolent insinuations of any man, disciplined in the school of artifice, to ensnare you into a mistrust of my sincerity in this account of my intentions: nor allow yourselves to be drawn aside from the contemplation of my real character by the false glare of names, Jacobin, republican, an opposer of the civil and ecclesiastical constitution of his country, or any other stigmatical denominations, easily devised by base impostors to vilify the patriotic principles of a generous enemy to their corruptions. Truth, not opinion, is the proper object of regard. Remember, there was a time, when Christianity itself was so reviled; when the apostles and evangelists were branded, like myself, by the slanderous tongues of venal politicians, as troublers of the city, as pestilent fellows, as sowers of sedition, as turners of the world upside down. Nay, the Saviour of mankind himself was accused, as I am accused, of perverting the people, of opposing Cæsar, and alienating their affections from an allegiance to their lawful king. Gentlemen! such unsubstantiated and undistinguishing reproaches evince nothing but the virulence and depravity of their inventors; and no flower of reputation, however fair and flourishing and fragrant, can escape the pestilential blast of a defamer. Be my political persuasions what they will, to others they are innoxious, to their owner they are not disgraceful; for they have no connection with the mischievous atrocities of public men, and are but the dormant speculations of a musing visionary, whose soul is panting day and night for the melioration of his savage countrymen, as the hart panteth

for the springs of water. Most assuredly my life at least proclaims me an enemy to all violence in human things, but the tranquil violence of reason, directed to the docile understanding and uncorrupted heart. My maxim, of universal application, is the kind and generous maxim of him, who loved his species as never man loved, who spake as never man spake; a maxim, which should be worn upon the forehead, and engraven upon the heart, of all politicians in authority, as a memento to check every rising propensity to a persecution of thought and intellect: whose hatn ears to hear, exclaims the meek Interpreter of divine wisdom, let him hear. Mild and ingenuous appeals to the spontaneous affections of his hearers, not threats and force and informations and imprisonments, were the instruments of confutation and reformation to our great exemplar, the Son of God. Those outrages of all humanity and religion and brotherly regard, the sole badge of his disciples, he leaves to be practised by cursed children, the children of disobedience who are none of his, nor deserve to be called by his name. I had rather live under the most despotic tyranny in peace, and a complacent acquiescence of the subject, than in the midst of tumult and alarm under the freest commonwealth, established and maintained by the sword.

But, gentlemen! I stand here as an apologist, not a suppliant; as Socrates before the Athenians, and, in my proportion and the proportion of the circumstances, as Jesus before the Roman governor, an assertor of my integrity, an undissembling deliberate approver of my conduct in this whole transaction. Still I regret that the book was ever published; nor, should I survive another century, would I publish a single syllable on politics again, under such a paroxysm of alarm and phrensy, and rulers of such despotical complexion. Not that my opinions have undergone a change: no; my antipathy to wickedness is durable as my existence, and persecution is not acknowledged to be a legitimate process in changing the opinions of reasonable men: but because I feel too powerful an interest in the comforts of my fellow-creatures, to wish their annoyance from the infelicities of my conduct. I lament exceedingly, that publishers are suffering so severely in body and estate for my liberty of speech and boldness of rebuke. I wish it were in my power to indemnify all their losses by personal inconvenience, and to become their substitute in prison for all the moments of all their sufferings. I should welcome these sacrifices in their behalf, as the truest test of evangelical love, that a Christian can exhibit for his brethren; I would thank my accuser for this indulgence of alleviating their burden by placing myself beneath it. Yet, I repeat it, gentlemen! ye behold not in me a repenting suppliant, but a challenger of your applause. Your verdict

is of much more importance to you, than to myself. "My days of life are few and evil." They cannot be expended better, nor shall be otherwise expended, than in witnessing a good practical confession for truth and peace and righteousness before my countrymen, against corruption in all its forms. But a final reckoning of high solemnity is appointed for yourselves, and me, and all men. The judge, who is subject to no alarms, no influence, no partiality, no prejudice, is standing at the door. The measure that ye mete, "will be measured to you again."

3. As to the third proof of laudable intention from my life and manners, accept favourably this short and plain detail: and, if it appear boastful and ostentatious, ye will candidly recollect, that such seeming indelicacy was demanded and is excused by the occasion: for Plutarch, the great moralist of antiquity, in a specific dissertation has determined my case, that of a man maliciously accused by an ill-disposed narrow-minded adversary, to be a case, which renders self-commendation not only pardonable, but opportune and necessary.

No student lives now, or has ever lived, of a purpose more devotedly applied to the improvement of his understanding and the acquisition of useful and ornamental knowledge, than myself. Men, capable of more intense exertions, of superior abilities, of better opportunities, there are, and have been, many; but none more resolutely and unremittingly engaged by affection to literary objects. My few and short and trivial publications, of a political complexion, have been the casual production of an hour unwillingly stolen from more agreeable occupations, from important illustrations of revealed truth, from a defence of Scripture in opposition to the shrewd, but unlearned arrogance of Thomas Payne, by a momentary impulse of public duty and a desire of public service. They have not collectively employed my attention in proportion of a minute to a day. Not to harass you with a long catalogue of my performances for the last nine years of my residence in this neighbourhood, which have excited an admiration of diligence and regularity even in students indefatigably laborious themselves, my late work, an edition of Lucretius, professes to display a larger compass of critical investigation in its kind, and an exertion of expense and industry and learning, beyond those of any individual, under similar circumstances and with equal expedition, since the revival of letters in this country. This edition, unrivalled for correctness and magnificence, though introduced by a most malicious, seditious, and ill-disposed dedication to Mr. Fox, and an unsparing castigation of the present ministry, still disproportionate to their deserts, has the honour of appearing in his majesty's library at Buckingham-house; a library, well worthy of a magnificent and potent monarch: nor has yet

another official information advertised me of rebellious mutinies in that superb collection, or of a battle among the books, since the introduction of my dangerous volumes thither.

I am not now, nor ever was, a member of any one political society: no frequenter of public meetings, no speaker at public dinners; nor ever attended a lecture or debate on political subjects in a single instance, on any occasion whatever, in all my life: not that I presume to censure or disapprove these practices in others, but because of their absolute inconsistency with my regular, studious, sober, pacific, and domesticated modes of living. I have never written a single political article in any review, magazine, or other periodical publication, of any name, character, or description. The education of my own children, and occasionally of a stranger, family assiduities, the cultivation of most valuable friendships, the interviews of a very numerous acquaintance, literary communications, avocations incessant and of various description, amidst a multiplicity of untowardly embarrassments, ungracious for me to specify, and uninteresting for you to hear, form those occupations, which are conducting my feet, that decline no labour, but wish for rest, by an even and tranquil tenor, to the termination of their pilgrimage in the house appointed for all the living. Every opportunity of worldly elevation and ecclesiastical emolument have I promptly and largely sacrificed on the altar of liberty and conscience: and I stand alone, like a hermit in the wilderness, reaping a scanty harvest from the hard and barren soil of learning, unpreferred, unpatronised, unpensioned, unregarded, amidst my contemporaries, whom I see risen and rising round me daily to the highest situations in church and state, with original pretensions to distinction far less flattering than my own.

Are these the habits, gentlemen of the jury! these the propensities, these the employments, these the principles, this the life, of a seditious, malicious, and ill-disposed person, as I am insolently styled by my accuser in the opprobrious rudeness of his information? If he be not callous to the compunctious visitings of conscience, if the vestiges of shame be not worn utterly from his forehead, and a plate of triple brass superinduced in their room; instead of defending his scandalous behaviour, he will apologise before you with confusion and contrition for his mistake: the sole compensation in his power for such a misapplication and prostitution of authority in this remorseless persecution.

And now, gentlemen! I will trouble you with but two more particulars, before I address a few words in conclusion more expressly to yourselves.

1. Mr. Reeves,* a gentleman with whom I have occasionally conversed, apparently of

* See his case, *anté*, vol. 26, p. 529.

mild and amiable manners, wrote a pamphlet in which he spake of the two Houses of parliament, the Lords and Commons, as a sort of unnecessary appendages to the constitution; which, he seemed to think, might proceed very well without them, under a king only. For my own part, I see no harm in the entertainment of this opinion by Mr. Reeves or any other person, especially in writing; because sentiments should be free, and because I firmly believe his majesty to be a much more respectable person, than the majority of either Lords or Commons: and I should as soon have thought of turning Cyclops, and gobbling up Mr. Reeves and his kindred, quick and raw, at a meal, as of prosecuting him for his pamphlet. However, I do not pretend to be the wisest man in this kingdom; and Mr. Reeves's book was adjudged an abominable libel on the constitution by the House of Commons, and a prosecution eventually enjoined on the Attorney-general. If I rightly recollect, the noble and learned judge now upon the bench did not differ from the House on the seditious tendency of the paragraph; but became the advocate of Mr. Reeves, very humanely and very justly in my mind, from the general character of that gentleman; and on the plea of innocent intentions he was acquitted by the jury. How far I shall experience from the same quarter the same zealous patronage and kind construction, is known only to the judge himself: but be ye careful, gentlemen! to remember, that his opinion, if he deliver it agreeably to the libel-statute (which he is not directed, as I have heard maintained in court this day, but simply permitted, to give), is the mere opinion of a common man, not the promulgation of a law; and of a man, as I before maintained, and every one must see, from inevitable circumstances, not impartial in the present case: but particularly be careful, that his conduct in the case of Mr. Reeves's publication act with suitable impression on your minds. I tell you fearlessly and undisguisedly, ye alone are my polar star during the perilous navigation of this day. If I look above, clouds of formidable blackness, and big with thunder, seem ready to burst upon my head. If I look below, behold! a sea, foaming out its own shame, swollen with billows, and eager to engulf me in its merciless abyss. Hold out your hands, as our compassionate master held out his hand to Peter; and save me, when I am sinking.

2. It is not improbable, gentlemen! as cases and precedents weigh ten times more with some people, than truth and reason and the gospel, that ye may be told of a verdict already given by former juries against my pamphlet in the case of the booksellers. Ye will immediately perceive, without my premonition, what an insult this would offer, not only to your understandings as men, but to your sacred function as a jury, sworn personally and individually to judge of me by my

intentions. These intentions are not the intentions of another man; nor is my case the case of another man; nor yet your consciences the consciences of other men. Suffer not the magic spells of a sorcerous accuser to transform you into the puppets of his will, or reduce you to mere non-entities. Be impartial, but independent. Reverence your own characters and feelings; redeem the honour of your countrymen; spurn the dictatorial maxims, which sway these profane idolaters of seals and parchments; or they will presently set up the very perjuries of other juries, the juries of a Raleigh, a Russell, and a Sidney, as pure and infallible examples for yourselves.

Such doctrine is also most explicitly and pointedly contradicted by the Attorney-general's own references on a late occasion in the House of Commons. "He had heard it also alleged, after the state trials and acquittals of 1794, that a verdict of Not Guilty negatived all ideas of the existence of a conspiracy: but we had now come back again to common sense, and did not maintain, that, because there was an acquittal, there could not be any ground of accusation.—He then took a view of the cases at Maidstone, and maintained, it was clear from them and some subsequent proceedings, that men may be acquitted of high treason, and yet it shall appear afterwards to the satisfaction of the world, that they were guilty of high treason."* Now, certainly, if men may be acquitted, and ground still remain for condemnation; if they may be absolved by juries from a charge, and still be guilty of that charge; ye have his own authority for the fallibility at least, if not the culpability, of juries; and a direct concession from himself, that former verdicts may have been unjustly given against my pamphlet by former juries; and, in any case, these verdicts have certainly never been given against me.

I have now offered you an account of my intentions, and have strengthened this account by some detail of my manners and employments; manners and employments, utterly incompatible with a character, which this prosecutor would fix upon me; because out of the abundance of the heart the mouth speaketh; because sweet and bitter waters cannot bubble from the same spring; because a good tree cannot bear corrupt fruit. If an administration charge a subject of my habits and occupations as a seditious and ill-disposed person, ye have a presumption bordering on certainty, that the fault resides in this administration, not in me. I need not punishment, but they correction. It was not Elijah, but Ahab, who troubled Israel. It is not I who have desolated Europe of her inhabitants

* "Attorney-general's speech on Mr. Pitt's motion for the second reading of the bill for the suspension of the Habeas Corpus act, on December 21st, 1798, in the House of Commons, from the Morning Chronicle."
—*Wakefield*.

and her kings; who have brought my country to poverty, bankruptcy, and requisition; but the minister and his confederates. Should this account of my intentions present itself to your understandings as ingenuous and sincere, as conformable also to the life of one, not unknown and undistinguished in society, it is your duty, as men sworn to decide by the laws of their country and their own consciences, as detesters of perjury and supreme injustice, to acquit me of those evil intentions, which are not proved to your clear and irresistible conviction: nay, if ye doubt, the same laws of your country, the laws of all civilised nations, the laws of humanity, the laws of the Gospel, demand a verdict in my favour: yea, an unfriendly sentence were inexcusable, unless ye find yourselves demonstrably and unequivocally satisfied, that I am totally and truly, without qualification or reserve, that malicious, seditious, and ill-disposed person of the prosecutor's information: and this, I am certain, is impossible. That the bishop of Landaff did not regard me as such a person, letters, which I have received from him, since the publication of the pamphlet, would unexceptionably ascertain; and, if this prelate had been eager to discharge an act of benevolence and justice, he would have given a spontaneous attestation in this court this day to the inhumanity and iniquity of prosecuting a man perfectly known to him through a variety of circumstances and connexions.* If the Attorney-general in his reply (an advantage, most unreasonably refused to the defen-

* "These publications of mine," says bishop Watson, "had excited the displeasure of Mr. Wakefield (one of the first scholars of the age), and unfortunately for himself, he published a pamphlet against them. The administration prosecuted him for some expressions in his pamphlet, which they thought were seditious, and he was fined and imprisoned. I took some pains to prevent this prosecution, thinking the liberty of the press to be the palladium of the constitution; but I did not succeed in my endeavours; nor did the ministry acquire any credit from their over-watchfulness. I received from Mr. Wakefield the following letter:—

My Lord;

As my trial will take place some time from the 12th to the 20th of next month, and Mr. Fox's Libel bill makes these causes almost wholly a question of character and veracity, it might be materially serviceable to me, if, from your knowledge of me through Mr. Tyrwhitt and otherwise, you were able to give a favourable opinion with respect to the sincerity and conscientiousness of my conduct in general, without any reference to political and religious sentiments. Your lordship's answer will much oblige your obedient servant,

GILBERT WAKEFIELD."

Hackney, Jan. 29, 1799."

dant; and which no man of worth and honour, solicitous for the prevalence of unperverted, uninfluenced justice, could prevail on his feelings to employ) should be able to bring any proof, beyond vain surmise, of pernicious principles and evil manners, I consent that ye regard me as a base impostor, and the most treacherous of mankind: but listen not, I beseech you, to unauthenticated mis-statements of my motives and demeanour.

The third edition of my pamphlet was in-

" My Answer.

' Great George-street, Jan. 31, 1799.

' Sir;

' I cannot think that it will be in my power, how much soever it will be in my inclination, to serve you on your trial, since, to the best of my knowledge, I never either saw or spoke to you in my life. That Mr. Tyrwhitt did esteem you I know, and I have no reason to believe that he does not continue to esteem you; but on this point I cannot speak with certainty, not having seen Mr. Tyrwhitt for several years. Of one thing I am well persuaded, that Mr. Tyrwhitt is incapable of esteeming any man whose moral character will not bear the strictest scrutiny. I join with the world in admiring your talents: I have not the shadow of ill-will to you on account of your attack on my pamphlet, and shall sincerely rejoice at your being extricated from your present difficulty.

" I am your obedient servant,

R. LANDAFF.'"—*Anecdotes of the Life of Bishop Watson*, vol. 2, p. 54—56, 2nd ed.

The following is extracted from the second volume of the *Life of Gilbert Wakefield*, p. 122:—

"The prelate to whom it" [the imputed libel] "was addressed returned the following acknowledgment for a copy sent him by the Author; which, as it cannot be considered in the light of a private confidential communication, we feel ourselves at full liberty to insert.

' Great George-street, Westminster,

Feb. 3, 1798.

' Sir;

' I last night received your reply to some parts of my pamphlet, and, apprehending that I am indebted to you for the present of it, I take the first opportunity of returning you my thanks. I will not enter into any discussion of the points on which we differ, being too conscious of the fallibility of my own judgment to be eager in pressing my opinions on any one. I have always held your talents and industry in the highest estimation, and have a sincere hope, that the time will come when they will be noticed as they ought to be. I am, sir, your faithful servant and well-wisher,

R. LANDAFF."

tended to show a desire of correcting, softening, and omitting, expressions of unnecessary roughness; and it passed, paragraph by paragraph, under the inspection of a professional gentleman personally unknown to me: at whose suggestion such alterations were adopted, as rendered it unexceptionable to his judgment, even in these times of terror and persecution. In truth, the liberty of the press, as to all political subjects in hostility with the measures of the present administration, is completely extinguished in this country, unless your verdict should call it into new existence: and it is a fact, that no bookseller will now engage in publications of such description. The friends, indeed, and associates, and pensionaries of the minister, are left at their free disposal to disperse in their *Anti-jacobin Magazine* all those atrocities of defamation, which are sympathetically congenial to the dispositions of men, or rather fiends in the shape of men, who riot in luxuriance of carnage, and minister to Moloch, their best and greatest deity, in copious libations of human blood. But I should have forbore even an allusion to the torrents of falsehood and scurrility which have been emptied on my head, since the commencement of these prosecutions, from the plash of that filthy publication, did it not evince a want of consistency and candor in this faction and those prosecutions, demonstrative of obduracy to all liberal and virtuous sensation. These dark assassins have my full permission to the most licentious indulgence of their appetite for calumnies, which are known to me merely from the report of others, and are incapable of disturbing my repose. Should the censure be just, it is my duty to amend my conduct, not to blame, or wish to punish in any wise, my censurers: if malicious, the disgrace redounds upon themselves. To all, I say, but these humane, pacific, constitutional libellers, in support of ministerial crusaders, the press is actually become impracticable: so that an attempt to punish me (distinct from that ruffian ferocity, which characterises all persecution of this nature) when even no state utility can be proposed from it, is the pure diabolical revenge of self-condemning wickedness.

Consider also, gentlemen! how afflictive this prosecution has been already. More than twelve months have elapsed now, since these proceedings were begun. Ye will be sensible (for the habitual inhumanities of office have not hardened your hearts to stone) of the alarms which have agitated my family and friends, unaccustomed to these operations of brutal savageness, through so long a period; particularly females, mother, wife, and daughters; who view the black apparatus and grim-practitioners of judicial tyranny with sentiments of horror disproportionate to the real terror of the objects, as presented to the less-confused contemplation of manly souls. My humane persecutor, a man of academical edu-

cation, a tutor forsooth! of an Oxford college, humanised by letters and philosophy, a father of a family, renowned for his prodigal appeals to sensibility of feeling, his pious ejaculations, his solemn invocations of the Supreme Being to an audacious excess of most disgusting and profane familiarity; this man, I say, has behaved to me and mine with the gracious long-suffering of the Cyclops Polyphemus in Homer's *Odyssey*; who promised, in the plentitude of indulgent bounty, to devour Ulysses the last of his companions. He has behaved to me and mine with the dark fraudulency of Tiberius, as depicted by the philosophical historian: that monster of fell dissimulation used to "treasure up his enmities for future opportunity, that he might bring them from the store-house of his resentment envenomed with additional malignity."—He has behaved to me and mine with the deliberate cruelties of Caligula; who commanded his miscreant executioners not to kill their victims at once, but by gentle and repeated strokes, that "they might feel the lingering tortures of dissolution." Consider also the enormous expenses of these prosecutions, inconceivable to those unexercised in such odious rencounters, and of comparative insignificance to the wealthy, but most oppressive to men like me. One specimen of that uncouth justice, which I satirise in my pamphlet, was gloriously exemplified in my very information. Some court, or some office, of some denomination, extorted six guineas for a copy of the charge against me: so precious, so dearly purchasable, are the favours of this indulgent gentleman! In short, if I were in reality that mischievous person of the information, my penalties of mind, body, and estate (which are not half-exhausted even on a propitious issue of this trial,—a mere beginning of sorrows) my penalties, I say, from a grievous interruption of my studies, to me an irreparable injury; the enormous expenses of the law, and the distractions of my family and relatives; these penalties surely preponderate above the mistake, into which I may possibly have fallen from a perversity of purpose or opinion. But are ye aware what I may endure hereafter, an exclusion for years from all interview, except through iron grates, with friends and kindred; if ye leave me to the tender mercies of my exasperated persecutors? Should I escape the extreme severities of their rage and rancour, reserved for libellers, that is, reprovers of their crimes, no obligations will be due to the tenderness of their sensations, or any hesitating indisposition to ferocity; but simply to an apprehension of that infamy, which such severities might bring upon themselves, and possibly to some latent fear of a sad vicissitude, whilst their ears are daily stunned with the hideous crash of ancient governments thrown prostrate by the arms of violence in horrible and irretrievable destruction round them. I shall only add, gentlemen! on this unwelcome and shocking subject, that an actual know-

ledge for a long time past of their conduct at the Bridewell in Cold-bath-fields, under the tuition of the Rev. Samuel Glasse, D. D.!!! from the most satisfactory information of the parties and my own ocular inspection, no hearsays and reports, constrain me to exclaim in the dying words of Jacob to his sons, Simeon and Levi: "Cursed be their anger, for 'it is fierce; and their wrath, for it is cruel."

We live, gentlemen! in the midst of perturbations and suspicions, most singular and unexampled. Former days in other countries and in these respects were far better than our own. Aristotle, in his book on politics, makes no secret of a predilection for republican government, in competition with monarchical; not apprehensive, that Alexander, like the unbookish bigots who are molesting me, would take offence at the speculations of his preceptor; nor have I read in the monuments of attic genius, that the Macedonian Attorney-general filed an information of scurrility and lies against the philosopher of Stagira. Nay, even the reign of our second Charles was more liberal than this. John Milton, an angel of eloquence, a prophet of liberty, and a saint in life, after a bold apology for the father's murderers, and the bitterest invectives against kings and kingly government, was generously permitted by the unresentful son to close the evening of his days in the calm sun-shine of peace and glory.

Gentlemen! I have demeaned myself through life from deliberate principle by the standard of the scriptures, the perpetual subject of my studies, as uniformly and punctually as most men. I have so demeaned myself in the transaction, which now awaits your verdict. Grant, that I be deluded in my judgment, and mistaken in my purpose; these persecutions are not the proper methods of enforcing truth, or refuting error, or reforming manners. I contemplate with a mixture of indignation and sorrow, of compassion and abhorrence, that unhappy creature, who delights in tormenting his fellow-men for the operations of intellect and the free communication of opinion: a practice, not less ignorant and irrational, than intolerant and unchristian. I look down upon such a man, be his station what it will, with sentiments of inexpressible superiority; as a civilised being, as a votary of letters, as a disciple of universal love, looks down on a perverter of religion, a museless worldling, and a stranger to humanity.

Gentlemen! ye may live long, ye may be concerned hereafter in many transactions of importance; but ye never can be implicated as ye are this moment. Respect not my safety or convenience, but the liberties and happiness of your countrymen, your own probity, and the approbation of your consciences. Suffer not the present impression to be dissipated from your minds by sophistry and calumnies, which I could easily refute, when unjustly compelled to be silent. Consider, whether your hours of solitude and darkness

and decaying nature will be cheered and brightened and supported by congratulating yourselves on your equity, your tenderness, your charitable judgment, in consigning such a one as me to the inexorable cruelties of law and the gloomy horrors of a prison. For myself, I tell you freely, no sentence of this Court, or any other terrestrial tribunal, no malice of an illiberal accuser, with all his opportunities and propensities of injustice and oppression, no persecutions, no fines, no imprisonments, shall tear from my breast the glorious consolations of this day; the glory of resisting and exposing a system, as I esteem it, of irreligion, venality, and murder, at the hazard of all personal convenience, with resolution unshaken and integrity unswayed. I could go out, I trust, from this court, with complacency and exultation, even to the scaffold, in the cause of humanity and the gospel, of civil freedom, and its associate, civil happiness, in opposition to all the malignity of their mercenary and depraved adversaries: so that the worst which can befall me, will come upon a soul prepared to endure and triumph. But, for you, the alternative is pre-eminently formidable; and will affect your comforts beyond the horizon of time and place, beyond the precincts of this short existence, through a boundless succession of eternal ages. If ye condemn me, with a shadow of uncertainty upon your minds, with a single step on this side an indubitable conviction of my guilt, such condemnation precludes all forgiveness of your own great and manifold offences; a forgiveness, which ye supplicate at the throne of Supernal mercy, by that measure, which ye have measured to your brethren: but to pronounce against me, when I am clearly innocent, no malicious, seditious, and ill-disposed person, as stated in the information, were a sin of transcendent heinousness; and, whether committed by you, the umpires of this cause,—by him, my prosecutor,—or by my advocate, the judge upon the bench,—will not finally pass unpunished by that omnipotent "Avenger of iniquity, who is no respecter of persons, "and rewardeth every man according to his "work!"

REPLY.

Mr. Attorney General.—Gentlemen of the Jury; The defendant has cautioned you against attending to what he calls the sophisms which the Attorney-general will use in his reply; but I should think it very extraordinary indeed if, in addressing twelve such men as you, any reply were in this case necessary. With respect to the many observations which have been made upon my conduct, I am content that they also shall go to you, without any reply from me. You shall judge of my conduct yourselves, with the comment which this defendant has put upon it.

With respect to the case under consideration, it is not a prosecution for fairly canvass-

ing the conduct of the ministers of the country;—that is a right, the exercise of which has never been questioned by me;—but I will not admit that the men who compose his majesty's administration should be held up as murderers and robbers, and then that it should be said a defendant has reason to complain, if an Attorney-general should make it a question whether a book containing such calumnies was or was not a libel.

But the passages which have been quoted, are sufficient proofs that it was not merely the investigation of the conduct of ministers that the author had in view. What has abuse, poured forth upon the monarchy,—what have libels upon the nobility, upon the church, and upon the House of Commons, to do with the acts of individual ministers? But from what the reverend gentleman has said, he seems to conceive that there should be one law for him, and another for all the rest of his countrymen.

If, gentlemen, you see the question in the light in which I see it, as I believe you do, I should think that I degraded myself and insulted you, by offering to make any reply to what has fallen from the defendant; and if you do not see it in this light, you must say that Mr. Gilbert Wakefield lives in this country under one law, and all the rest of his majesty's subjects under another.

SUMMING UP.

Lord Kenyon.—Gentlemen of the jury: the defendant began his address by laying down a proposition to which I very cordially assent, and to which I sincerely wish he had been more attentive in the course of his defence. He told you, gentlemen of the jury, that where invective began, reason ended, and truth was not to be found.—You will judge how far he has conducted himself agreeably to that maxim.

The defendant has frequently appealed to the consciences of the judge and the jury; he has likewise appealed to his own conscience for the purity of his intention. I am no judge of the consciences of other men, I can collect their motives only from their actions; but I shall leave to him in the moment of calm reflection, if ever that moment arrive, whether any thing that had passed has been of such a nature as to call for that torrent of abuse with which he has overwhelmed the Attorney-general.

Although the Attorney-general has not thought this attack upon his character worthy of notice, and has felt himself superior to vindication, I hope I may be permitted to say a few words upon the subject; not that I think it necessary, but as this is a very crowded audience, it is proper that such a shameful invective should not go to the world unnoticed. The conduct of the learned gentleman who has been thus attacked is well known to the public. The world has long since formed its opinion of his character, and I

am sure there is not one person who knows the character of that learned gentleman, who would not be eager to repel the gross calumny which this defendant has thrown upon him. But how has his conduct in this case deserved so much abuse? What has he done which he ought not to have done, and which he was not bound by his duty to do? He has prosecuted a book, which by the verdict of three different juries had been found deserving of prosecution. Where then was the oppression in this case? Has the defendant been imprisoned, or has there been any thing done to him which is not done to every man so impleaded?

But the Attorney-general is not the only person whom the defendant has thought proper to calumniate. The learned and respectable judge,* who sometimes sits upon my right hand has been found fault with for stating what this pamphlet contained. Gentlemen, there is no veracity in the accusation which this defendant has made. He says his pamphlet was published before the rebellion in Ireland; but what that learned judge said, referred to the passage in which it speaks of trampling bleeding Ireland to the earth. While then the defendant accuses others of not fairly stating his case, he has wanted veracity himself.

I have been reminded that I sit here as counsel for the defendant. I certainly do so, so far as to interpose between him and the counsel for the prosecution, and to see that no improper use of the law is made against him, and that no improper evidence is given to the jury: but, gentlemen, the judge has another task to perform, which is that of assisting the jury in the administration of justice. Whether I have in this case betrayed my trust, I leave you to determine.

The letter from the duke of Grafton which the defendant read, and the allusions which he made to some reverend prelates, certainly were not regular in this case; but I indulged him with the liberty of proceeding with what he wished to state, for God forbid that I should bear hard upon a man unassisted by legal advice.

What he has said of the present administration, his calling Mr. Pitt the dæmon of destruction, and many other things I pass over: but why has he said of the bishops,—of those men of whose friendship he boasts,—that they are all of them corrupt, and that they do not appear here this day because they are looking for preferment? This is not the language of contrition: the present is not the season of punishment; but this certainly is not a trait which will be found favourable to the defendant: what he has in the course of his defence applied to others, will here apply to himself, "by their fruits shall ye know them." You have witnessed the fruits which in this case the tree bears, and by them you will judge.

* Mr. Justice Ashhurst.

The defendant has stated that his conduct is founded upon the doctrines promulgated by our Saviour; but surely he has this day shown himself to be very little influenced by them. Such are not the feelings and the conduct to which the Christian religion gives birth. "*In-
"genus didicisse fideliter artes emollit mores,"*" is an expression which has often been used, but the experience of this case has shown that it is not always correct.

Gentlemen, I forbear to trouble you farther, and now leave the case with you.

The Jury, without retiring, returned a verdict of GUILTY.

Lord Kenyon.—Mr. Attorney-general; do you pray any thing upon this verdict?

Mr. Attorney General.—I think I ought to ask Mr. Wakefield to give sureties for his appearance, in the same manner as Mr. Johnson was called upon to do after the verdict had passed against him: at the same time, I should be sorry to put Mr. Wakefield to any personal inconvenience.

Defendant.—I will give bail immediately.

Lord Kenyon ordered the recognizances to be, the defendant himself in 1,000*l.* and two sureties in 500*l.* each, for his appearance the first day of the next term, and from day to day afterwards, until he receives the judgment of the Court.

Mr. John Towill Rutt, of Upper Thames-street, merchant, and Mr. Samuel Lewin, of Queenhithe, flour-factor, became the defendant's sureties, as above required.

Court of King's Bench, April 18th, 1799.

Mr. Attorney General prayed the judgment of the court upon the defendant, the reverend Gilbert Wakefield.

Mr. Wakefield.* My lords; by a precipitate decision on the guilt of my intentions, without proof and against appearances, ye are now empowered, with a privilege of most awful responsibility, under which I had much rather be the sufferer, than the agent, to inflict punishment on me for the supposed

* Not having been accustomed to make extemporaneous speeches, the defendant had prepared beforehand, for the respective occasions, this address to the Court, and his former address to the special jury by whom he was tried. In deference to the prudent advice of some of his friends, he in both instances discreetly omitted in the delivery, several of the expressions which reviled other men, whose characters and conduct he introduced into the defence of his own. He afterwards printed and circulated reports of both speeches in which he took the opportunity of restoring the parts objected to; but not having been uttered in court, they are not inserted in the text.—*Ed.* [The Notes not marked thus are Mr. Wakefield's.]

errors or perversities of my understanding: an indignity, whose least important consequence to themselves will be a brand of indelible disgrace on my prosecutor and his employers. Now such punishment and such offences, whatever the irrational and indistinct conceptions of rude antiquity may have sanctioned by authority, prescribed by records, and established by precedent, are so essentially inapplicable to each other, that I may securely challenge the whole aggregate of human intellect to point out the least affinity between them.

Represent to yourselves the palpable distinction between transactions of this nature, and a case of active violence or positive hostility. Have I injured another by assault upon his person, or deprecation on his estate? Though I regard all corporal punishment as universally indefensible in itself, because infinitely pernicious in its effects, still the restraint of confinement becomes unquestionably a suitable expedient for the prevention of similar mischiefs from the same aggressor, till he be brought to a due sense of his injustice, and prove the sincerity of this conviction by such demeanour, as implies a radical reformation of his principles: otherwise, iniquity and confusion from the unrestrained intemperances of selfish and licentious men would sweep away the floodgates of society, and desolate the comforts of civil life. But, with respect to opinions and exertions of intellect, in written appeals to the understandings of men, who call themselves free, where actual violence is not only not exerted, but discouraged and condemned in explicit language; if the most shadowy pretence for personal incommodity of any kind can be ascertained by a rational manifestation of correspondency between these objects, I will readily contribute my assenting suffrage to any punishment, which shall be appointed for me: if however the proof of such connection transcend, as it certainly does transcend, all capacity of moral demonstration, I may be the sufferer, but others must be the criminals; and criminals of no ordinary magnitude.

In a pamphlet lately published, and which the uncertainty of rumour attributes to the pen of Dr. Glasse, in vindication of the Bridewell of Cold Bath Fields, a position to the following purport is propounded, as the basis of the penal regulations in that place: "Punishment and restraint must be employed, until the mind of the prisoner is subdued; the precise meaning of which words cannot be collected so well from any accuracy of expression in the maxim, as from the prevalent conceptions on the subject of corrective punishment in general; but the fundamental notion seems to be, "a supposition of melioration to the dispositions of an offender by a system of severity; an expectation, that repentance and reformation may be forced on the mind through violence and rigour."

Now it appears to me most indubitable, from every principle of reason and every deduction of experience, that effects of a nature extremely different must unavoidably take place from harshness and austerity: namely, exasperation and obduracy on the part of a person thus treated; not without a gradual extinction, in the punisher, of all those charities and sensibilities which alone redeem our natures from a degradation below the savageness of mere brutality. It may be the fond vision of a deluded imagination, but I have always cherished an opinion, that the very hypothesis of a rational agent, unamendable by benignity and compassion, and reclaimable by severities alone to humanity and virtue, is the bitterest satire on the wisdom of Omnipotence; as the Creator of the most sottish and perverse being in existence: and, beyond all controversy, if the religion of our gentle Master teach not his disciples a most affectionate consideration for all their brethren of mankind, and especially for those, who have gone astray, from the path of virtue,* it teaches nothing; because this love of our fellow-creatures is most peremptorily laid down by the favorite disciple, as the only genuine attestation of our love for God himself; as the sum and substance of all moral excellence: but vexatious and harassing oppression has never yet been deemed an ingredient in the composition of evangelical benevolence; nor can a single syllable in support of such uncompassionate persuasions be produced from the Christian Scriptures. Were even a murderer committed to my custody, I should endeavour to impress upon his mind a deep sensation of the injustice and atrocity of his offence: I should labour to convince him that exclusion from society was indispensable, not only for the good of the community, but for the prevention also of accumulated guilt upon his own head: yet I would address him in the kind language of expostulation and rebuke: I would regard him with generosity and tenderness: I would prove myself his friend by every exertion of sympathetic attention in my power to his most calamitous condition: I would show, that I loved the man, though I abhorred his offence: if he were hungry, I would feed him; if he were thirsty, I would give him drink: nor should I despair of overcoming evil with good; of producing remorse unfeigned, and substantial reformation, by this lenient and peaceful process. Thus would my own benevolent affections be essentially improved, the great law of brotherly love, enacted in the gospel, fulfilled by a just obedience; and a brand plucked from the fire to repentance and salvation.

But present this subject to your attention in another and a very interesting attitude. All of us, I presume, are ready to confess,

* "Count him not as an enemy, but admonish him as a brother." 2 Thess. iii. 15.

that we have repeatedly violated our rule of life, the precepts of Christ, in opposition to the convictions of knowledge and the voice of conscience. Now, can we discover a plan in the dispensations of divine government, to subdue our minds by punishment and restraint into a sense of religious duty? Or rather, must we not perceive an unceasing endeavour on the part of our heavenly Father to recover the affections of his children by indulgences and mercies; conformably to our best conceptions of a placable and gracious being; by making his sun to rise on the evil and on the good, by sending rain from heaven and fruitful seasons, to gladden the hearts both of the just and unjust?

Did not the Saviour of the world assiduously cherish deluded sinners* with peculiar commiseration and most affectionate regard, as needing beyond all others the medicinal application of his restoring love to the maladies of their hearts and understandings? Now those severities and oppressions which the high and lofty One, who inhabiteth eternity, does not practise on the reptile man, shall that reptile presume to practise, under I know not what pretence of subduing forsooth to reformation, on a creature of the same feelings and infirmities with himself?

But an adversary, perhaps, will be forward with this objection: "The opinions, maintained and propagated by you, are calculated to create dissatisfaction with the measures of government, and eventually to overthrow our establishments in Church and State." My reply is this: If our constitution be radically defective, nor intrinsically adapted to promote the moral and intellectual happiness of the subject, the true end of civil institutions; it is the duty, ye will all allow, of every man, a duty paramount and antecedent to any political connection, to point out those deficiencies, and to labour their correction by every pacific operation in his power; I mean, by the rational procedure of argumentative persuasion unaccompanied by any species of violence and coercion; which are modes of reformation, fit only for barbarians to employ on brutes: again, if governors be conscious to themselves of their own rectitude and virtue; if their primary motive be a purely patriotic wish to advance the welfare of the governed without too partial a respect to their own interests and aggrandisement; such governors have no reason for solicitude from the calumnies of any factious writer, who has undertaken the hopeless task of arguing men out of their feelings and experiences, and of urging them to destroy those salutary institutions, which render them virtuous and prosperous and happy. No: pure and upright ministers may safely deride the impotent malignity of their opponents. Abuse and calumny, so far from endangering the condition of such ministers, will contribute to

* Matt. ix. 10-13.

their reputation and security: as the mist, which obscures the horizontal sun, forms gradually under his potent influence those silver fleeces, that add new glories to his meridian resplendency. The importunate croakings of rooks and ravens * cause no disturbance or interruption to the king of birds, as "he sails with supreme dominion through the fields" of æther.

Or I might say, that all human institutions must ever remain imperfect, and susceptible of improvement, from the very nature of their authors; that my efforts are exerted for the rectification of our political dispositions by means altogether alien from persecution, animosity, and bloodshed: and that a forceful molestation of such attempts to reform what was originally defective, and what time the great destroyer, without occasional interference, must daily and hourly vitiate with clandestine ravages, is a crime much more heinous than the crime of sedition in a state; in proportion as a violation of institutes merely human falls short in guilt of an opposition to the divine purpose in the regulation of the universe. And in this case, where the competency of judgment in the contending parties may be reasonably taken into the general account, the opinions of men, become unstable by whirling in the giddy sphere of interest and ambition, may peradventure be justly deemed less respectable, than the sober decisions of those, who stand aloof from such perverting influences, and have discarded the gorgeous and fascinating idolatries of a lucrative ambition for the simple and sober worship of unendowed philosophy.

But I will propose a case striking and decisive, with reference to my own: wherein, though the dignity of the respective characters will admit no comparison, the transactions themselves come attended with every correspondence of circumstance; and are indeed intrinsically the same. My example shall be taken from the conduct of the primitive Evangelists: and in the mean time, I cannot but premise a declaration of most problematical astonishment; by what machinations of self-imposing sophistry, we, who pride ourselves on a veneration of Christianity, and are so much engaged in hearing, at least, if not reading and meditating, the repositories of sacred truth, not only replete with rules of morality directed to the understanding, but with substantial occurrences adapted to daily practice; I cannot but marvel, I say, by what secret illusion we reconcile our hearts to so total a disregard in our conduct of these living oracles, as if they were no more than obsolete statutes, or antiquated institutions, superseded by the wise discoveries of a more illuminated æra; as if they were but a dead letter of neutral speculation, not a spiritual energy, to be transfused

into the life and conversation of believers. But unquestionably nominal professors, and practical contemners, of the gospel incur a criminality abundantly exceeding the guilt of any avowed irreligion or undisguised atheism, so petulantly, so undistinguishingly, imputed to our neighbours. They may be truly audacious and irreverent; but we aggravate that audacity and irreverence by a most odious hypocrisy.

With this introduction, they, who sincerely venerate the gospel, will come properly prepared for my statement. Propose to your dispassionate attention that transaction in the Acts of the Apostles, where Peter and his brethren are summoned before a council of Jewish magistrates to give an account of their conduct for presuming to disobey the injunctions of the Sanhedrim by executing their evangelical office in preaching to the people. Let us exhibit to our minds as accurately as we can the different apprehensions and motives of the accusers and the defendants in this example. The accusers, men of learning, distinction, and authority, but inattentive, as this description of people are uniformly represented in the Scriptures, to every object not immediately connected with their own emolument or power, probably knew nothing of the apostles but from rumour, and the relation of those, who had apprehended them, in consequence of what was deemed a tumultuary concourse in the city. Common fame had stigmatized them as seditious innovators, disturbers of the public peace, enemies to Cæsar and to the civil and political constitution of their country. Under these impressions and appearances, will the history of mankind allow us to wonder at the severities exercised in various instances on these faithful followers of their divine Master; the severities of bodily castigation and imprisonment? And in fact what was the tendency of those doctrines, which the apostles were commissioned to teach, with a woe unto them, if they taught them not? Most undeniably an abolition of the Mosaic ritual and its appendages, with a demolition of the Jewish magistracies united, as every part of their constitution was, to the temple and its services; because these unsubstantial shadows of better things to come could not fail to disappear in process of time before the pure radiance of a system, whose fundamental supposition is the equality of mankind, and whose grand principle an universal and undistinguishing benevolence, alive to the interest, and active in the service, of the whole human race. Certainly then, if any men were ever chargeable with seditious acts and traitorous designs, these primitive preachers of the gospel were those men: and, if ever magistrates were justifiable in punishing mere encouragers of sedition by word and writing, these Jewish magistrates appear sanctioned by custom and authorised by every pretext of political expediency in

* Pind. Ol. ii. 157.

checking by rigorous interference such obstinate votaries to enthusiastic zeal. Yet I suppose we are all very ready to acknowledge the culpability of the Jewish rulers on these occasions, and the laudable perseverance of the apostles in their purpose. But observe in one instance, where the simple fact is a tumultuous assemblage in the city, and a presumption of mischievous incitement to confusion lies against Peter and his brethren; observe, I say, in one instance, when they were examined for these appearances of outrage before the Sanhedrim, what was the result: a result, which all governors in every age, who profess any reverence for the Scriptures, are bound to respect and imitate, at their peril, in similar examples of abstinence, on the side of the arraigned party, from actual violence to the community. Whilst the majority of the judges were recommending or approving the severest punishments, under the influence, I presume, of the modern notion, that "Minds must be subdued by rigour and oppression to a love of virtue," Gamaliel, one of their number, a man of learning and distinguished reputation, interposed with this plain and sensible advice: "Refrain from these men, and let them alone: for, if this counsel, or this work, be of men, it will come to nought; but, if it be of God, ye cannot overthrow it, lest haply ye be found even to fight against God."* The Jewish magistrates, with singular wisdom and moderation, adopted this counsel. The apostles were discharged, and left to their pacific employment of refuting error and enforcing truth after their own discretion, without punishment or molestation.

Now every propagator of an opinion, fraught with benevolence and instinct with universal happiness, though he be the most insignificant of all his species, must be allowed so far at least in a similar situation with the Apostle Peter and his associates. And it will be acknowledged, I trust, that a belief in the sinfulness of war among Christian nations, for example, and in the efficacy of peace, as essential to the happiness of the world, are opinions, not only inoffensive in themselves, but extremely consonant to the spirit of Christianity. I go farther; and make no scruple of declaring, before men and angels, without any hostility to those who disapprove my sentiments, or any fear of their displeasure, that real Christianity, divested of these pacific dispositions and pacific practices, has no existence, and can have no existence, beyond an idle name and an unmeaning ceremonial among men; and that all military operations are as inconsistent with such a system of peace and love, as light with darkness, as Christ himself with Belial. This propensity to war, and a restless incitement of other European states to its horrid deeds by the ministers of this

country, in conjunction with the unutterable enormities of our traffic in human flesh, is that great offence, that monstrous exhibition of gigantic wickedness, which must pour down the choicest phials of divine wrath on a land of most pre-eminent blood-guiltiness; which must render our utter obliteration, as a sovereign people, from the map of nations, a judgment of God, almost essential to the very preservation and continuance of our species on earth. The accomplishment of providential purposes comes not with observation. Our state may seem to some as secure and prosperous as they could wish: but of what avail are the magnificent battlements of a fabric, whose foundations rest upon the sand or are mouldering into dust? The Babylonians, Samaritans, and inhabitants of Jerusalem in former times, the Roman empire of Constantinople in a later period, the monarchies of France, Sardinia, and Naples of yesterday, said to themselves, as we say now, peace and safety;† but sudden and irremediable destruction was at that very moment falling on their heads. Perhaps, even now the sentence of fiery indignation is written down against us by the recording angel in the register of supernal vengeance, as a just retribution for our ferocious principles; and that column of our empire, than which a fairer and more stately would not have towered among the political structures of mankind, will be thrown down speedily with extensive and horrible convulsion, for a most awful memorial of abused blessings, and opportunities misemployed, to the future generations of mortality.

Vis consilii expers mole ruit sua:

Vim temperatam Dii quoque provehunt

In majus: iidem odere vires

Omne nefas animo moventis.‡

For myself,‡ I regard the friend of war and slaughter as an epitome of all mischief, as the true man of sin, visually exhibited in a human shape: and no considerations of worldly benefit, no supposed political advantages, should ever prevail on me to lift up with deliberation a murderous hand against a fellow-creature of any character or country; nor will I prefer a temporary prosperity in the perishable communities of the earth to a polity secure and permanent in the heavenly Jerusalem, in a city which hath foundations, whose contriver and builder is God. But these sentiments are uninfected with the slightest antipathy to the persons of those who differ from me, or the most latent wish of injury and revenge: unless it be injurious and revengeful to wish them deprived of their ability to aggravate their guilt by re-

* 1 Thess. v. 3.

† Hor. od. iii. 4. 65.

‡ An article on this subject in my pamphlet was the chief accusation brought against me.

* Acts, v. 38, 39.

peated mischiefs: unless it be injurious and revengeful to wish them at the least distance possible from sincere contrition and divine forgiveness. I subscribe to the noble and philanthropic sentiment of the Roman orator: "Causa orta est belli," says he in an epistle to a friend: "quid ego prætermisi aut monitorum aut querelarum; cum vel iniquissimam pacem justissimo bello anteferrem?" However, it is for yourselves to determine, whether ye will follow the moderate and humane counsels of Gamaliel, and let me alone; or imitate the fierceness of others in the Sanhedrim by punishing me in person and estate; whether ye will pursue that conduct which is approved, or that which is condemned, not by reason only, but by the revealed will of God: this, I say, is a point, in which your characters for consistency and justice, as Christian magistrates, are most deeply and momentously involved: for I challenge any man to demonstrate the inapplicability of the case which I have stated, to the respective circumstances of yourselves and me at the present hour. To myself the alternative is comparatively most transitory and insignificant. My feelings are exactly those of the Pagan deity in Euripides, when he is threatened with bonds and imprisonment by the Theban king: a scene thus finely represented from the Greek tragedian by a Roman poet,* in language doubtless more intelligible than his original to the majority of this audience:

Virbonuset sapiens audebit dicere, "Pentheu!
"Rector Thebarum! quid me perferre patique
"Indignum coges?" Adimam bona. "Nempe,
pecus, rem,

"Lectos, argentum. Tollas licet." In man-
nicis et

Compedibus sævo te sub custode tenebo.
"Ipse Deus, simul atque volam, me solvet."

Permit me now to request your indulgence, whilst I recall to your memories some examples of true wisdom and magnanimity in princes of ancient and modern times; which will at once illustrate and confirm a sentiment in the former part of my address, touching the security and unconcern of good governments at the censures of malicious, disingenuous, or mistaken writers. And these examples of liberality and heroism, it may be observed, have commanded the applause and admiration, not only of every reader, but of the historians, who have recorded them.

Philip the 2nd of Spain released from prison a man, whom the council of state had condemned to die for harsh animadversions on the measures of his government; generously remarking at the same time, that "a king is never more secure from the malice of his people, than when their discontents are suffered to evaporate in complaint."†

* Hor. epist. i. 16. 74. Eur. Bacch. 497.

† Wrexall's History of France, vol. i. p. 96.

Even Caligula at the commencement of his reign, as we are informed by Suetonius,* refused to receive informations relative to his own personal safety by secret communication; declaring with a noble sublimity of mind, that "he had done nothing to deserve an enemy; and that he had no ears for an informer."

Timoleon,† the deliverer of Syracuse from the tyranny of Dionysius, told his friends, who were urging him to punish a slanderer of his virtuous achievements, that "his primary motive to all his painful enterprises had been the security of free speech to the meanest citizen."

Nay, Tiberius himself (for the worst of these Roman emperors admitted an occasional dilution of their rancour and ferocity from the copious draughts of elegance and wisdom, which they had imbibed at the fountain of the Muses) even Tiberius would often say, when instigated to the punishment of libellers, that "the tongues and minds of men in a free country should be free."‡

But I forbear to trespass on your patience by a more full detail; and will only recite a few sentiments on this subject from the most virtuous and intelligent of mankind.

Socrates was accustomed to declare, that "the sun might as easily be spared from the universe, as free speech from the liberal institutions of society."§

It was a saying of Demosthenes, that "no greater calamity could come upon a people, than the privation of free speech."||

Tacitus mentions with singular complacency, and even triumph, the pre-eminent felicity of his own times, the reign of Trajan, in the privilege of free sentiments and the free utterance of those sentiments.¶

But these noble specimens of just and generous conceptions illuminate with wonderful richness and variety the pages of ancient literature, whether in their poets, philosophers, or historians; so that I shall solicit your indulgence only to one quotation more from the works of a man, whose name is sacred to genius and to virtue; I mean John Locke. This illustrious philosopher mentions a society, which required from every member at his admission an explicit declaration of assent to these three propositions:**

1st. That he loved all men, of what profession or religion soever.

2nd. That he thought no person ought to be harmed in his body, name, or goods, for mere speculative opinions, or his external way of worship.

3rd. That he loved and sought truth for truth's sake; and would endeavour impar-

* Vit. Calig. sect. 15.

† Corn. Nep. xx. 5, 23.

‡ Sueton. in Tiber. sect. 28.

§ Apud. Stob. eth. ecl. xiii. || Id. ibid.

¶ Hist. i. 1.

** Works, vol. iv. p. 643. last edition.

tially to find and receive it himself, and to communicate it to others.

Surely now the examples and opinions of such heroes, whose heads and hearts conspire to recommend each other with most amicable reciprocation, their philosophy sanctified by their virtues, and their virtues illuminated by their philosophy; the lives and sentiments, I say, of men like these are calculated, I should think, to excite some mistrust in minds, not self-opinioned and obdurate respecting the reasonableness and equity of their proceedings in such prosecutions, of which it is my fortune this day to have become a victim. I, however, can do no more than present these impressive documents to your dispassionate deliberation: yet one observation at least I may be permitted to subjoin without offence. He, who approves persecution for writings and opinions, and gives his suffrage for the punishment of men so persecuted, whatever his station, his intellect, his abilities, or virtues be, that man most assuredly bears no resemblance in this respect to the noblest of his species, to Demosthenes and Tacitus, to Socrates and Locke.

I might argue also, in vindication of my own conduct, from the practice of satirists in all ages and under every form of government, despotic and free: for such examples are pertinent to me, who am no political machinist; nor was ever occupied in the tumultuary conflicts or the fraudulent intrigues of rival partisans. Charges of general corruption are made against all orders of society, from the highest in rank and station to the meanest individuals, by the Roman satirists in their days, and by bishops Latimer and Hall, by Young and Pope especially in our's, to omit innumerable others, in language of the most unreserved asperity. The truth is, and a melancholy truth it may well be deemed, there has never yet been found that perfection of patriotism in public men, which rendered occasional reprobation of their misconduct unseasonable from censures uncorrupt in manners, and of peaceful occupations; particularly those devoted to the studies of morality and the meditations of religion; whose lives give sanction and dignity to their reproofs. Indeed such writers may be denominated with propriety "the salt of the earth;" that pure and salubrious ingredient, which preserves the entire mass of society from an irrecoverable putrefaction of immorality and licentiousness. These, through many ages of the world, have been lights shining in a dark place, to illuminate the paths of the chosen few, when the shroud of ignorance and vice had enveloped the horizon round them; when, through the moral and intellectual creation, the stars had been quenched in their spheres, and the sun dethroned from his pavilion in the sky:

Cum caput obscurâ nitidum ferrugine textit,
Impiaque æternam timuerunt secula noctem.

And, though it be a motive of inferior consideration, it may not misbecome you to reflect, how far the reputation of this country, as pretending to enjoy a liberal and happy government, will be consulted among the polished nations throughout Europe by the servile punishment of one, whose writings have furnished a subject for the inaugural orations of professors in foreign universities; of one, who has been honoured by the unsolicited correspondence of the first scholars on the continent, whose names are consecrated to immortality. One opinion at least, I am well persuaded, must be formed by men of letters both in the present and the future generations of the world, an opinion, to which I join my suffrage with complete conviction and cordiality: that they, who can prevail upon themselves so to prosecute and so to punish such writings as my pamphlet, and such characters as its author, bring a charge of ferocity against their neighbours with no sensations of shame and decency. This prosecution differs in degree only, not in kind, in form and semblance, not in principle and spirit, from the most sanguinary excesses of the blackest tyranny. We know how great a quantity of matter a little spark can kindle. The same power of nature, which precipitates a pebble to the ground, consolidates the globe itself, and retains the planets in their orbits.

I had at one time persuaded myself, that a respect for literature would have restrained my prosecutor from this rude violation of her character in the person of one, who has cultivated her provinces with some success; but untowardly associations, rather than his own native urbanity of temper, have led him to break through the fragile texture of this delicate impediment: for the promotion of solid learning, or indeed of any laudable and peaceful arts, enters less into the views of our present ministers, than into those of any civilized governments, which have yet existed amongst mankind.

Carmina tantum

Nostra valent, Lycida! tela inter Martia,
quantum
Chaonias dicunt, aquilâ veniente, columbas.

They, however, on whom the power of decision is at length devolved, are actuated, perhaps, by more noble and liberal sensations.

Nor will it appear incongruous to this occasion, if I presume briefly to suggest, that as my life is a life of unremitted study, an imprisonment will suspend the execution of those works, which have no tendency indeed to embody armies, to desolate mighty empires, and evacuate the thrones of monarchs; but lead to triumphs, much more signal and meritorious over gross and brutal passions, by humanising the mind to every complacent and gentle feeling; by communicating those intellectual pleasures, those unutterable trans-

ports of mental vision, to a heart of sensibility, which raise the possessor above the ordinary condition of mortality.

Another topic also, of trivial significance to the opulent, but of primary concernment to one similarly situated with myself, ought not to pass unnoticed on this occasion. My children depend on me for their education. I am in possession of no resources for furnishing them with suitable instruction in any other manner at all conformable to my wishes and their reasonable claims; especially at this period, of all others the most calamitously inauspicious to those, who principally subsist on the slender and uncertain produce of literary labour; when the still small accents of the muses are stifled by the din of arms, and a storm of tremendous desolation has covered those fields, from which our industry was accustomed to reap a scanty, but sufficient, harvest for unaspiring and continent philosophy, with deluges of human blood.

And, at the instigation of my family and friends, I shall not hesitate to mention another particular for your consideration; but, to prevent any misconception in your minds, as if I were inclined to win by supplication, rather than claim by justice and extort by reason, I must beg leave to preface that communication by some remarks, not very acceptable, perhaps, for all to hear, but absolutely necessary for me to utter.

I mean not, in any thing that I have now said, or may hereafter say, to insinuate the least possible contrition or change of sentiment on the subject of these proceedings. By no means. I understand, I hope, too well that dignified sentiment of a great philosopher, "a reverence of my own character;"* I understand too well the only proper inference from such persecutions of unambitious and pacific men by the children of this generation, the idolaters of secularity and power and preferment; I understand too well the veneration due to all that is lovely in morals and sacred in religion, to contemplate interminable war, and famine, and extirpation, with any other feelings than those of irreconcilable hostility to the measures themselves, and of alarm for the promoters of these measures, whenever my mind anticipates their presentment before his tribunal, who came not to destroy men's lives, but to save them. Upon these subjects I have constructed my opinions with too much deliberation, and on principles too solid to be shaken by this blast of persecution; which is rather calculated to fix their roots, encourage their growth, and invigorate their stability: nor is any other depraved and inhuman process at all likely to disabuse me of my mispersuasion, if such it be, whilst the Christian religion continues to be the direc-

tory of my conduct, and peace with good will universal and unbounded, not blood-guiltiness and war, the characteristic attributes of that religion.

After this provision for a just appreciation of my motives and a precise apprehension of my sensations, I proceed to notify, that, through a pertinacious constitutional tendency to watchfulness even from my infancy; an infelicity, which has made serious inroads on the enjoyments of life and the advancement of my studies; I sometimes, without a deprivation of all comfort, cannot stay from home more than a single night: and the invariable consequence of this watchfulness is, a tormenting pain in one shoulder, which, at several periods, has continued for months and years, so as to render existence all but insupportable and extinguished, for want of sleep. In defiance of all medical abilities:°

cessere magistri
Phillyrides Chiron Amythaonisque Melampus.

A detail of this peculiarity in conformity to the strictest truth would appear too singular for credibility, except to those who have been witnesses of its reality, or who know me sufficiently to confide in the veracity of my narration: and therefore I forbear to enlarge on this grievance; which may,† or may not, eventually recur with serious severity, and has my full permission to influence your determinations just as much and just as little as it pleases. The cause of liberty, of benevolence, of humanity, and the gospel, in which I feel myself engaged, is able to support me under a much heavier pressure of affliction than what any resentment of my persecutors may wish you to impose upon me. When I embarked on the ocean of public life, I could not but forebode some future tempests, and I am prepared to endure their fury. The vessel may be wrecked, but my purpose no catastrophe shall frustrate; and the voyager will reach his haven.

Besides, confinement in a prison, and absence from home, is not the same evil to me in many respects, as to a bookseller, for example, who can employ himself at a distance in regulating his concerns and settling his accounts, whilst the current business of the shop and warehouse is conducted with little detriment to the principal by diligent and faithful substitutes: whereas my connection with society, and the multifarious occupations of a literary life, must be essentially incommoded by the privation of a personal intercourse, without discontinuance and obstruction, both with men and books. If the implorers and dispensers of such punishments on others would pause a moment to represent, with a little more vivacity and conscientiousness, to their own minds, the

* *Περὶ τῆς ἀρετῆς καὶ τῆς ἀφροσύνης*
AUS. CARM. v. 12.

° Life of Wakefield, Vol. 1, p. 277, 549.

† Ibid. Vol. 2, p. 261.

Ed.

consequent inconveniences of such treatment to themselves; if they could be persuaded to consider any comforts but their own; they would be less forward, I presume, to a heedless and indiscriminate application of these severities to their neighbours; nor would they treasure up such materials for self-reproach at those awful moments when reparation will become impossible; when apathy or obduracy will give way to a fearful expectation, in their turn, of that recompense which their inhumanity has secured for themselves from the impartial Dispenser of retributory justice.

However, when every day and every year is employed, like those which have preceded them, in studies, that entrance the fancy, that enlarge the understanding, that refine the feelings, that amend the heart; in those heavenly contemplations, which transport the soul beyond the sphere of sublunary vicissitudes to the regions of blessedness permanent and unchangeable; such events as this, the formalities of these courts, the maxims by which they are directed, that authority and power, which gives them reverence, dwindle into diminutive and obscure frivolities, scarcely discernible amidst objects of such mighty magnitude and transcendent lustre. Can the child of true wisdom disquiet his mind with the solicitude of a single moment about his passage over that short isthmus which separates time and corruption from duration and immortality; which divides the scanty tribes now roving on the surface of the earth from the countless myriads of former generations entombed in her bosom;

— where e'en the great find rest,
And blended lie the oppressor and the oppress'd?

In these days especially we reap an additional consolation for all our sufferings, from a contemplation of those wonderful revolutions, which have been accomplished in our youth, and seem still accomplishing, through nations in every quarter of the globe. We are not so mistrustful either of his abilities or benevolence, as to suppose the great Ruler in human governments not occupied in educating tranquillity more durable and happiness more substantial from these calamitous transactions of turbulence and bloodshed. Nay, we are unequivocally certain, from the character of the agent, that such an emendation of our condition must be accomplished under better auspices, as will not only compensate all the sorrows of individual men, who have undervalued their own personal accommodation in comparison with the public good, but will leave nothing to regret in the demolition of antiquated systems, beyond the tardiness, and, possibly, the violence, of their catastrophe; because, in the estimation of a genuine benevolent reformer, no blessing can be specified, which would not be dearly pur-

chased at the expense of peace. And certainly, when every man, instructed by historic records and enlightened by the musings of philosophy, must acknowledge a superior frequency of penal severities, prosecutions, and proscriptions, to be invariably symptomatic of instability in governments; the exercise of such severities should awaken the minds of all concerned in their promotion to reflections of peculiar apprehension and distrust.

I may be told, perhaps, of the laws of my country, the wisdom of parliaments, and the constitutions of our ancestors. These are things, to which it will be my happiness, as well as interest, to pay all the respect and obedience in my power: but there are other laws, other wisdom, and other constitutions, of much higher dignity, of more deep concernment, and of uncontrollable authority; I mean, the laws, the wisdom, and constitutions of the gospel: nor, I apprehend, is it frivolous or presumptuous to suppose, that divine injunctions and municipal arrangements, the imbecility of man, and the infallibility of God, may be at variance, and even inconsistency, with each other. In such a case, I shall choose to say, in the words of Peter and John to the Jewish council; "Whether it be right in the sight of God, to hearken unto you more than unto God, judge ye."

One proposition is unquestionably true, and rests on the immovable basis of reason and experiment: violent and cruel measures, intimidation and persecution, cannot possibly conspire with the real happiness and improvement of man, in any form whatever; nor will they eventually complete the purposes, or promote the prosperity, of their employers, under a divine administration of the universe. The fire of tyranny may purify, but will never consume, the unalloyed gold of resolute and disinterested virtue. One race may be extinguished, but another of congenial principles will be raised from their ashes, to confront their adversaries:

— genus immortale manet; multosque per
annos
Stat fortuna domûs, et avi numerantur
avorum.

Truth and benevolence are the essential components of genuine felicity: but the antipathy between truth and force, between persecution and benevolence, is fundamental, irreconcilable, and eternal.

Impregnated by these persuasions, prompted by these motives, and cheered by these prospects, I acknowledge no offence; I have committed none. I deprecate no punishment; I have deserved none. An absolution from all suffering and censure would excite in my breast not so much a selfish joy for a mere escape from danger, as a generous gratulation on the exhibition in you of that sensibility and benevolence, which exalts the

human nature to a resemblance with the divine. Not that I am so estranged from the satisfactions of personal security, from the luxuries of literary leisure, and the comforts of domestic peace, as to view with indifference or complacency, much less to solicit, penalties and imprisonment: nor again, so uninfluenced by true dignity of character and the exhortations of unimpeachable integrity, as to enter into any commutation with a timid and temporising selfishness; as to surrender for mere animal existence all that renders life itself either valuable or supportable. I am equally provided for each alternative; for ease and freedom, with contentment and equanimity; for restraint and punishment, with fortitude and exultation. I have lived too long, and have endured too many conflicts; my consciousness of desert is too well corroborated by the consenting regards of estimable men; to enable such persecutions, on such principles, even to pollute the current, much less to extinguish the source, of my consolations.

In the mean time, I look forwards with enraptured anticipation to a removal of these unenlightened operations, these vexatious encroachments, of a mistaken policy, by those gentle triumphs of religion and philosophy, which will hereafter bind the whole creation in one indissoluble tie of benevolence and peace: when all attempts to eradicate opinions and produce conviction by oppressive force will be regarded as the very excess, not of injustice only, but of puerile delusion; as an extravagance no less disgraceful to humanity, than contradictory to common sense: and I now appeal, with entire confidence in the purity of my intentions, and the intrinsic meritoriousness of my conduct, from rash and inapprehensive ignorance to the sober votaries of philosophy and letters; from the perturbed spirits of my delirious contemporaries to the unalarmed judgments of future generations; from the reversible formularies of transient judicatures to the unswerving tribunal of changeless truth; from the perishable dispensations of worldly politics to the constitutions of the everlasting gospel; from the condemning sentence of frail and mistaken men, to the irrevocable decision of an absolving and applauding God.

Mr. Attorney General made a short reply.

The Court committed the defendant to the custody of a tipstaff, to be conveyed to the King's-bench prison,* and brought up to receive judgment on the 30th of May next.

* "To his place of confinement he was attended by one of the present writers and another friend, whose solicitude on his account he relieved by his usual pleasantry. On arriving at the prison, the tipstaff, who behaved with great civility, fulfilled his duty by delivering up his charge at the gates.

Court of King's Bench, May 30th, 1799.

At half past ten o'clock this day, lord Kenyon and the other judges came into Court, and the Reverend Gilbert Wakefield* having been brought up in custody of the marshal,

Mr. Justice Grose passed sentence upon him in the following words:

Gilbert Wakefield; you have been found guilty by a jury of your country, of a crime which is disgraceful to you as a clergyman, and an Englishman.

The epithets bestowed upon that publication, for which you stand here to receive sen-

"It presently appeared that no more attention is paid to the accommodation of a prisoner, when first brought within these dreary walls, than if he were an animal of an inferior order, confined for security in a pound. The miserable victim of the law acquires, indeed, by long residence, a right to an apartment on the payment of a small rent. Of this the more destitute avail themselves by crowding into one room, and letting the rest for a considerable profit.

"To such a resource the marshal, on an application from two of his friends, now referred Mr. Wakefield, as the only plan he could suggest. But the prison was at that time so thronged, that even one of these apartments, after several hours spent in the inquiry, could not by any means be procured. Thus he had no alternative but to pass the night without shelter from the inclemency of the weather, or to become, as he describes it, 'the associate of vice, vulgarity, and wretchedness in the extreme,' by remaining in the common tap-room.

"In this emergency it was deemed advisable to bring before the marshal an argument of more weight and influence than merely the cruel embarrassment to which a scholar and a gentleman was thus exposed. Upon offering him his own terms, through the medium of one of Mr. Wakefield's friends, with whom he happened to be personally acquainted, an order was procured, the same night, for the use of a room usually occupied by one of the inferior officers of the prison. Although this room (as might naturally be expected) was meanly fitted up, and the furniture entirely provided by himself, for the use of it for less than eight weeks, the marshal had the moderation to demand of Mr. Wakefield 'Fifty pounds and a copy of his quarto Lucretius.' With the former part of this demand he immediately complied; the latter, by the advice of his friends, was very properly disregarded." *Life of Gilbert Wakefield*, Vol. 2, p. 147—149.

* An address which Mr. Wakefield had intended to deliver on this occasion, but which he had not an opportunity of doing, was afterwards printed by him.—Ed.

tonce, the Court is of opinion, were well applied; it was malevolent, scandalous, and seditious. You have traduced the government of the country, and the administration of the public affairs of these realms; and by these means endeavoured, as far as it was within your power, to induce the people of this realm to withdraw their allegiance from his majesty, his crown and government. You have, in fact, given an invitation to sixty or seventy thousands of our enemies to invade this country, in order that they might destroy all that is valuable in a well-regulated society, namely, our laws, our religion, our property, and our national liberty and security—to root out every thing that is dear and valuable to us as Englishmen and freemen, under the same vain, ideal, and false pretext of promulgating liberty, by which they have so successfully attacked and plundered Switzerland, Italy, and Egypt. They have involved in one mass of ruin, those countries which never did, or intended to molest or attack them. You have dissuaded, or rather attempted to dissuade your countrymen from opposing these monsters of iniquity, who, in less than ten short years, have been Catholics, Deists, Atheists, and Mussulmen,—who have expelled their clergy, defiled the holy altars of their forefathers, dishonoured their God, and murdered their king; you have even dared to recommend to your countrymen, that they shall not oppose such destroyers of the human race, and of all human happiness and social order;—men who, in the first struggles of their paroxysm, called out for a war of extermination against this country,—whose motto was “*Delenda est Carthago.*”

You said you had a right to be heard, and you have been heard; but your address has aggravated your offence, both as an Englishman, a Christian, and a minister.

You have, in your speech, recommended peace; but does your book, when it invites an implacable enemy, carry such a recommendation?—The Attorney General saw through the whole of your artful design; and his excellent arguments fully refuted, and exposed your insidious attempts. There is one consideration which affects the Court much, your family:—the Court wish they could separate the innocent offspring from the guilty parent; but they find it impossible: it is the inevitable fate of guilt, to involve all its nearest and dearest relatives in one common ruin. But why did not this sacred charge enter into your own mind? why, in the first instance, commit a crime that you knew must abandon those to whom you had, under Providence, given existence? This is a sad and melancholy circumstance; and I assure you the Court feel it, but cannot relieve it.

Another circumstance is your slender property: the Court have inquired into this matter:—you are, no doubt, a fit object for a

heavy fine; but they have discovered, that in your situation it would operate as a perpetual imprisonment, which the Court neither wish nor will permit;—the object of all punishment is correction for the past, and, by the example, prevention in the future. The Court, therefore, taking into their consideration all the circumstances of your case, doth order and adjudge, that for this offence, you be imprisoned in his majesty's jail of Dorchester, for the county of Dorset, for the space of two years, and that you give security for your good behaviour for the term of five years, to be computed from the expiration of that term, yourself in the sum of 500*l.* with two sufficient sureties in 250*l.* each, and that you be farther imprisoned till such sureties be given.

May the hours of your imprisonment produce contrition, and sincere repentance in your heart; and may the rest of your life be an uniform scene of atonement to your king, your country, and your God!

The Prisoner bowed, and retired.

“Mr. Wakefield immediately returned to the prison in custody of the tipstaff. We had the painful duty of accompanying our friend upon this occasion. His firm and manly cheerfulness was strikingly contrasted with that regret and anxiety which it was impossible not to feel, and which we found it so difficult to disguise. He was even facetious and jocose, till he came within sight of the prison, where he well knew that his wife and daughters were expecting his arrival in trembling solicitude. He now appeared almost overpowered by his sympathy for their situation, and said to his companions, ‘this is the great trial.’ Such indeed it proved. The scene of agitation and distress which immediately followed, we will not attempt to describe.

“The sorrow and concern excited by this sentence, which removed Mr. Wakefield to so great a distance, were not confined to his family and friends. It was felt even by the attendants and many of the prisoners in the King's Bench. In their minds his affable deportment and uniform readiness to oblige and befriend, had excited considerable interest and respect.

“It now occurred to one of Mr. Wakefield's friends, that the present opportunity of improving his slender fortune, in some permanent manner, ought not to be neglected, while the severity of his sentence was fresh in recollection.

“The design was immediately adopted by two or three other friends. Nor had they reason to complain of the want of generous support. They encountered, indeed, in a few instances, the discouragement of a refusal, where they had promised themselves the most prompt and liberal assistance. These disappointments were amply compensated by

the zeal and readiness which other opulent persons discovered to indulge their generous feelings upon this occasion. Many also, in humbler life eagerly proffered their contributions, the honourable fruits of economy and self-denial.

“ It was intended, if possible, to keep this design from the knowledge of Mr. Wakefield till it should be completed. However, before he had any intimation of it nearly fifteen hundred pounds was raised, and in the sequel the subscription amounted to more than double that sum. With the addition of two munificent tokens of regard, chiefly, if not entirely, presented to him on the same account, he received about five thousand pounds. For this increase of fortune he pleasantly says, that he was ‘ indebted to sir John Scott.’ That such was the intention of that gentleman, in originating this prosecution, is more than we can venture to assert.

“ We have mentioned that persons of different ranks encouraged this design. Among the rest, a great political character, whom we have lately named as honouring our friend with his correspondence, was not deficient in his attentions. Immediately after the sentence, he interested himself so far as to write to Mr. Wakefield to suggest the propriety of his publishing some work by subscription for the benefit of himself and his family. As soon as he heard that his kind purpose had been anticipated, he promoted this object as far as lay in his power. Besides other persons of rank, one especially, the late duke of Bedford, from whose merit even party-animosity has now ceased to detract, countenanced this project in a very handsome manner. A letter having been addressed to him by the friend of Mr. Wakefield, who was entrusted with the conduct of the subscription, he immediately sent the following reply:

“ *Bedford House, June 27, 1799.*

“ ‘ Sir; I heard but a few days ago of the subscription for Mr. Wakefield, and have since been endeavouring to find out to whom I should address myself on the subject. I am happy to find it is likely to be attended with so much success.

“ ‘ I have added a draught on my banker for one hundred pounds the amount of which you will have the goodness to appropriate to your very laudable design.

“ ‘ I am, Sir,

“ ‘ Your very obedient servant,
“ ‘ BEDFORD.’

“ We have already noticed the attachment borne to Mr. Wakefield by those who had been his pupils. They were forward to testify it upon the present occasion. Among several letters received from gentlemen who had the good fortune to enjoy that advantage, we select one which expresses the sentiments common to them all. It also well describes the leading object of the subscription.

“ Mr. Wakefield had long experienced how

little a scholar, independent and unpatronised, could contribute to the support of a family. This handsome addition to his fortune, therefore, afforded him a high gratification. He was enabled, by his own sufferings, to benefit those whose interest was so dear to him. ‘ A consummation devoutly to be wished,’ we fear, rather than generally expected, in all similar cases.

“ The letter which we have just mentioned was from a gentleman in a distant part of the country, who had been one of Mr. Wakefield’s pupils at Warrington. Their personal intercourse had been interrupted by distance of residence for many years. But his attachment to the tutor of his youth was unabated. He enclosed his liberal present of one hundred pounds in the following letter:

“ ‘ ———, June 11, 1799.

“ ‘ Sir; You have done me a favour by communicating to me the intention of Mr. Wakefield’s friends to raise a sum of money for the assistance of his family; and I have much pleasure in co-operating with yourself, and the other gentlemen who interest themselves in this laudable design, in the endeavour to shield him from the effects of a ministerial persecution, in that quarter where he will most sensibly, if not solely, feel its weight.

“ ‘ I send you the enclosed draft (which, I have reason to believe, will not be the only subscription from this neighbourhood) as a tribute of respect to Mr. Wakefield, for whom I entertain the highest regard, as my much esteemed tutor; and whom I consider as the victim of oppression for his independent exertions for the promotion of general liberty and free enquiry.

“ ‘ I shall esteem myself much obliged to you, sir, if you will take the first opportunity of conveying to Mr. Wakefield, through the medium of Mrs. W., the sentiments of sympathy with which I am impressed on his account, together with my sincere wishes for the future welfare of himself, and his amiable family.

“ ‘ I am, Sir, respectfully,

“ ‘ Your obedient servant,
“ ‘ ———,’

“ But a subscription from a few persons in his native town was not the least valuable instance of attachment to Mr. Wakefield. He had at different periods of his life resided at Nottingham, but had now left it nearly ten years. His relations in that place, and elsewhere, befriended him in every mode which their affection could devise. But they had no share in this testimony of esteem, which a few of his former associates conveyed in these respectful terms:

“ ‘ *Nottingham, Feb. 14, 1800.*

“ ‘ Wishing to succour the good man in whatever way distress may invade him, and in honour to great literary talents, constantly

devoted to the interests of truth and virtue, a few friends, without adverting to any political consideration, subscribe one hundred guineas, to be respectfully presented to the Rev. Gilbert Wakefield."—*Life of Gilbert Wakefield, Vol. 2.*

Some account of Mr. Wakefield's treat-

ment while under confinement in Dorchester jail, will be found in the second volume of the *Memoirs of his Life*, chapters 8 and 10.

He died aged 45, on the ninth of September 1801, only fourteen weeks after the expiration of his imprisonment.

639. Proceedings on the Trial of an Action brought by Mr. ———
WRIGHT against THOMAS JUDKIN FITZGERALD, Esq.,
sometime High Sheriff of the County of Tipperary in the
Kingdom of Ireland, for Assault and Battery; tried at
Clonmell Assizes March 14th: 39 GEORGE III. A. D. 1799.*

CLONMELL ASSIZES, March 14th, 1799.

Judges.—The right honourable *Berry*; *Lord Yelverton*; [afterwards Viscount Avonmore] *Lord Chief Baron of the Court of Exchequer*; and the honourable *Tankerville Chamberlain*, one of the Justices of the Court of King's Bench.

Counsel for the Plaintiff.—*Mr. Fletcher*; *Mr. Burrows*; *Mr. Yelverton*; *Mr. Lloyd*.

Counsel for the Defendant.—*Mr. Bushe*; *Mr. Driscoll*; *Mr. Dulrig*; *Mr. Goings*.

IN this case, which was an action brought by Mr. Wright, teacher of the French language, at the schools in Clonmell, against Thomas Judkin Fitzgerald, esq. late high-sheriff of the county of Tipperary, the damages were laid at one thousand pounds.

Mr. Fletcher, in a nervous and eloquent speech, stated the plaintiff's case.

The first witness called to support his statement was,

William Nicholson, esq.

Who deposed that he knew both plaintiff and defendant—remembered that the plaintiff, upon hearing that the high-sheriff had expressed an intention to arrest him, immediately went to surrender himself; not being able to meet defendant, he endeavoured to find Mr. Butler Lowe, a magistrate; and not meeting with him, he returned to his lodgings, where, in a very short time after, Mr. Stephenson, another magistrate, came, who meeting plaintiff at the door said, "you are my prisoner." Plaintiff replied, it was unnecessary for Mr. Stephenson to make him a prisoner, as he had been at his (Stephenson's) house, and at Mr. Butler Lowe's, for the purpose of surrendering himself, and could not find them at home. Mr. Stephenson wrote

to the high-sheriff, stating those facts.—Witness then accompanied Wright, the plaintiff, to the high-sheriff; in company with whom he found Mr. Butler Lowe. Witness told them that Wright had come to surrender himself; upon which, the defendant said to the plaintiff, "fall on your knees and receive your sentence; for you are a rebel, and have been a principal in the rebellion. You are to receive five hundred lashes, and then to be shot." Wright prayed for time, protested his innocence, hoped he would get a trial, and, if not found innocent, would submit to any punishment. Defendant answered, "What! speak after sentence passed." Witness had come there, to introduce Wright as one who had put himself under the protection of law, and sought for trial. Witness endeavoured to persuade the defendant, that Wright gave a proof of innocence by surrendering himself. Defendant replied, that Wright could not escape his vigilance. Witness did not, in direct words, offer to go bail for Wright; but plaintiff could not, by possibility, mistake his meaning to do so. Upon witness begging defendant to take bail and bring Wright to trial, defendant answered, that he would attend to his recommendation, if his time was not of too much importance to waste it in listening to persons speaking in favour of prisoners. Witness has known Wright from his childhood, and has known him to have been always a loyal man.—Wright gave his keys while at defendant's lodgings, to witness, and Mr. Butler Lowe.—They went to his lodgings, searched all his papers, found none amongst them which might not be amongst those of the most loyal persons. Witness knew Wright's religious and political opinions, and heard him in private companies argue in defense of revealed religion, and monarchical government.

Cross-examined.

Witness is a relation of Wright's; knows him since the age of seven:—Attended the

* From the report printed at Dublin in 1799.

execution of some men, who had attempted to rescue a prisoner whom witness was guarding.—Believes the defendant got much information which he ought not to have revealed, and that if the names of those who had given information were known, they might be assassinated; defendant offered to release Wright, if he would give information; but he gave no information, and was flogged. The man whom witness guarded to execution, had been found guilty at last spring assizes, of being in arms against the king. There was not much information obtained by the rewards offered. Has heard of general Fox, and other rebel generals; the discoveries made by Fox, were not greater after than before he was flogged.

Solomon Watson, a Quaker, was the next witness.

He affirmed, that he recollected the 29th of May last. Saw the defendant on that day, who addressed himself particularly to witness; said he was going to whip a set of rebels, and would shoot or hang Wright. Witness attended him very submissively, and was much afraid. Saw Wright brought to the ladders under a guard, had his hands to his face, seemed to be praying, saw him on his knees at the ladder; defendant pulled off Wright's hat, stamped on it, dragged him by the hair, struck him with his sword and kicked him; blood flowed; then dragged him to the ladders, selected strong men and cried, "Tie up Citizen Wright! tie up Citizen Wright!" Wright asked him for a trial; was refused, and called rascal, scoundrel, rebel. Witness was very near, afraid to be out of the sight of the defendant. Wright asked for a clergyman, was refused, and then ordered 50 lashes. The defendant then said, he would give reasons for flogging Wright; and pulling out a paper written in French, gave it to major Riall, who read it and returned it. Defendant then ordered 50 lashes more; after which, he asked how many lashes Wright had received; being answered 100, he said, "Cut the waistband of the rascal's breeches, and give him 50 on ———:" they were inflicted severely; defendant then asked for a rope, was angry there was no rope, desired a rope to be got ready, while he went to the general for an order to hang him. Defendant went down the street towards the general's lodgings. Wright was left tied during this time, from a quarter to half an hour; could not say, whether during this time, the crowd loosed the cords; if not, he remained tied while defendant was absent. Wright had taught French to witness's children, believed him to be a very loyal man, otherwise would not have kept him in his house. When defendant returned, he ordered Wright back to gaol; saying, he would flog him again the next day:—Saw Wright sent into gaol under a guard. The town of Clonmel was very quiet, until defendant

came there. The persons flogged by the defendant were almost all from the country, and brought in by him. Defendant flogged some labourers on account of the kind of waistcoats they wore, said he would punish any clergyman who would attend on Wright.

Cross-examined.

Has such a regard for the defendant, as an honest man ought to have for one who conducted himself in such a manner. Witness saw defendant knock down an old man in the street for not taking off his hat to him, and he saw a lad of 16 escape from him, and leap into the river to avoid a repetition of the flogging. Witness heard of the rebel general Fox, and other rebel generals.—Witness always gave what information he could to the magistrates, and he would do all in his power to put down rebellion. Heard that a large body of rebels attacked Cahir; information respecting this attack was obtained from one Innocent O'Callaghan, but not till he had been tied up, and threatened to be flogged; believes that Fox would not have made any discoveries if he had not been flogged. Mr. Fitzgerald, the defendant, at the head of 40 men, attacked a body of rebels and carried 37 carts of arms into Cashel.

Major Riall sworn.

Remembers the flogging of Wright; did not arrive at the ladders till he had received the first 50 lashes. Defendant produced two papers, one of them in French, which not understanding himself, he gave to witness to read, saying he supposed some reasons would be found there for flogging Wright. Witness read and returned it to the defendant, informing him it was neither treasonable nor disloyal, and that it was from a man who signed himself the baron de Clues, excusing himself for not meeting Mr. Wright at the hour appointed, being obliged to wait on Sir Lawrence Parsons. Wright was flogged by order of the defendant, after witness had communicated the sense of the French letter. Witness then went away; next day he went with defendant to see Wright in the gaol; saw him kneeling on the bed while speaking, unable to lie down with soreness. Believes that three innocent persons were flogged, of whom Wright was one; his reason for thinking them innocent was, that although flogged, they made no discoveries.

Cross-examined.

Heard part of the second or English letter read; was not there when the first part was read; what he did hear appeared to him to be a recital of public debates in the French convention; admitted what he had said in the first part of his evidence, that defendant might have supposed the French letter contained reasons for flogging Wright. Believes the people of Clonmel were disposed to be quiet, but one inhabitant of the town was

taken up; he was called Jerry Nippers, his real name was Dwyer, and had confessed he had been sworn in Youghall. Thinks the sheriff might have information which he could not have, but is convinced that from his situation as captain of the yeomanry corps, and his first lieutenant a most active magistrate, if the town had been organized he should have known of it.

Mr. *Minchin*, a practitioner of surgery and medicine, was the next witness sworn.

Knows the plaintiff; knew him previous to his punishment; was called to visit him; found his back and loins inflamed and ulcerated in several places; he was likewise jaundiced, not inclined to jaundice before his punishment; had considerable degree of fever; was not well for a fortnight. Witness advised him not to go out for a time; has scarcely known any person whose liver was affected, not to have repeated attacks; did not see him for five days after the punishment. Has been often in Wright's company, and always heard him reprobate French principles.

[Here the Plaintiff's counsel rested his case.]

Mr. *Fitzgerald*, the defendant, in an animated speech, which took up nearly two hours, stated his own case. His statement, for the most part, was a detail of his persevering exertions to put down the rebellion. He pointed out the necessity of that system of terror which he boldly avowed himself to have carried on with great success during his shrievalty, insomuch that men who refused to give any information on his first taking them up, did, after some flogging, make ample discoveries. He said, that when he had flogged Nippers, otherwise Dwyer, that then he told him that the plaintiff, Wright, was a secretary of United Irishmen; and this information he could not get from him before. That Mr. Wright himself was so convinced of his own guilt after a good flogging, that he too offered to give all the information he could; but, that under the pretence of being in too great pain at that time, to exercise the powers of his memory, he postponed giving his information to a future day, and being since entirely relieved from any fear of the cat-with-nine-tails, his memory had entirely failed him; that nevertheless, he the defendant, had by the terror of his name, and the severity of his flogging, succeeded most astonishingly, particularly at Carrick on Suir, where by the flogging of one man, who could not confess prior to flagellation, before 12 hours had expired, he and 36 others acknowledged themselves United Irishmen. He then assured the Court and the jury, that, while sheriff, he felt himself authorised to take every mode to obtain confessions, and that in order to discover the truth, if every other mode failed, he had a right to cut off their heads. This process of

coming at truth by extorting confessions, from dead men, a little discomposed the gravity of the Court.

Mr. *Fitzgerald* then called the following witnesses.

John Collins had been formerly employed in the revenue; has not exercised the business for two years; cannot say, whether at present he belongs to it, or not; though his office was that of hearth-money collector, he had seized some whiskey at one time, and took five guineas from the party for permission to take it back; only took it for the purpose of returning it to the party, as he began to doubt his own authority, and therefore would not keep the money. Witness swore that Wright, the plaintiff, had admitted a knowledge of the conspiracy; that on going to the gaol to get Wright to fulfil his promise of declaring all he knew, he replied, that being a young man, if he were to give any information, he would be ruined, unless he were sent off to England. Witness reported this to the sheriff, who answered, "Let him put down his information in writing; and then he would be able to say what reward he (Wright) ought to get."—Mr. Bagwell, of Kilmore, who was with him in the gaol, and took down in writing what Wright said, was not present when this conversation took place: defendant, before he flogged Wright, desired him to tell all he knew, and he should not be flogged; not obeying this command, was the reason he was flogged. Saw the English manuscript paper presented to Wright, which he at first denied to be his hand writing, but afterwards acknowledged. Wright was taken down from the ladders at the request of the witness, who, with others, attended him to gaol to declare all he knew; having so promised while under the flogging, though before he was flogged he said he did not know any thing of United Irishmen.

Henry White was the next witness.

Remembers the day Wright was flogged; found some papers belonging to him, which he took by order of the sheriff; witness may or may not have those papers; saw some pictures at Wright's which he gave to the sheriff. Very material discoveries were made at Nenagh relative to concealed arms, by flogging persons there, and the arms were got in consequence of the information.

[Here Judge Chamberlain remarked, that Collins, the former witness, had not proved any thing, unless he produced the papers mentioned by him; which it appeared were given to the Sheriff.]

Mr. *John Lloyd* sworn.

Had acted as secretary to the defendant, when sheriff; a great deal of information was obtained by flogging persons, their information was in general true; rebels had been

discovered by this information; amongst other rebels a general of the name of Morris was arrested in consequence of it; knows the man called Nippers; says he was transported.

The Court now called upon the defendant to produce the papers stated; as they could not receive secondary evidence of the contents, and they in possession of defendant. He did not produce them.

The defendant then offered evidence of what Nippers had said, and what he had written down, but not by affidavit; this the Court also refused to hear, because it appeared that Nippers was not transported, and Mr. Malcome deposed that he had seen him within ten days.

The defendant's case was then closed; and the plaintiff's counsel produced the Rev. T. Prior, fellow of Trinity College, Dublin to prove the moral character of their client.

Mr. Prior being sworn, deposed that he had known the plaintiff from his earliest youth, and that he had always conducted himself as an orderly loyal and moral man.

Mr. Justice Chamberlain then proceeded to charge the jury. His lordship said, that the jury were not to imagine, that the legislature, by enabling magistrates to justify under the Indemnity Bill, had released them from the feelings of humanity, or permitted them wantonly to exercise power, even though it were to put down rebellion. No; it expected that in all cases there should be a grave and serious examination into the conduct of the supposed criminal; and every act should show a mind intent to discover guilt, not to inflict torture. By examination or trial, he did not mean that sort of examination and trial which they were then engaged in, but such examination and trial, the best the nature of the case, and the existing circumstances would allow of. That this must have been the intention of the legislature, was manifest from the expression—"magistrates and all other persons," which proved that as every man, whether magistrate or not, was authorised to suppress rebellion, and was to be justified by that law for his acts, it is required, that he should not exceed the necessity which gave him the power; and that he should show in his justification, that he had used every possible means to ascertain the guilt which he had punished; and above all, no deviation from the common principles of humanity should appear in his conduct.

The plaintiff appeared, by evidence uncontradicted, to be a man of unimpeachable character, and to have been grossly and wantonly abused; he was therefore entitled to a compensation in damages;—what those damages should be, it was not his province to determine; but from the injury proved to have been sustained, if the jury should give the whole damages (1000*l.*) laid in the declaration, he would not think it too much.

He thought it but justice to the defendant;

to say, that he believed he had done much good in his capacity as sheriff, had suppressed rebellion in his county, and had proved himself to be a man of great courage and intrepidity.

Lord Yelverton said, he should add but one or two words to the admirable charge delivered by his brother Chamberlain; he subscribed implicitly to his construction of the statute, to his deductions of the facts proved, to his opinion of the damages, and to his character of the defendant. But all this did not warrant him in his conduct towards the plaintiff. The defendant had indeed manifested his loyalty most fully, for he had written it in blood, and imprinted his name on the plaintiff's back.

The jury retired, and found a verdict for the plaintiff 500*l.* damages and 6*s.* costs.

Proceedings in the House of Commons on the Petition of T. JUDKIN FITZGERALD, esq. praying Indemnity for certain acts done by him in the Suppression of the Irish Rebellion.*

Saturday, April 6.

Lord Mathew presented a petition from Thomas Judkin Fitzgerald, esq. late high sheriff of the county of Tipperary, praying to be indemnified for certain acts done by him in suppression of the late rebellion, not justifiable in common law. Lord Mathew bore testimony to the conduct of Mr. Fitzgerald, which he said, from a local residence in the county, he had frequent opportunities of observing, that he was an extremely active, spirited, and meritorious magistrate, and a very principal mean of putting down rebellion, preventing escapes, and preserving the lives and properties of his majesty's loyal subjects.

The petition was received and read at the table. It set forth, that "The petitioner had undertaken the office of high sheriff for the last year at the solicitation of the principal gentlemen of the county, with great hazard and inconvenience to himself, at a moment when the kingdom was menaced by invasion and rebellion, and that whole county organized for insurrection, and infested by United Irishmen, who held constant meetings in co-operation with the plan of treason for subverting the state. That about the month of May 1798, after the proclamation of martial law, petitioner, at the head of a party of militia and yeomen, had been obliged to fight a body of rebels in that county, whom he caused to surrender; but finding it impossible to stop the progress of rebellion there, as in many other parts of the kingdom, or to discover the

* These proceedings were subjoined to the original edition of the case of Wright v. Fitzgerald; and as they are closely connected with that case, they are here preserved.

various and horrid plans intended by traitors for the destruction of his majesty's liege subjects, he had been reduced to the necessity, in many instances, under the advice of several most respectable magistrates and gentlemen of the county, when all offers of pardon and pecuniary reward had failed, to order corporal punishment of whipping to many persons of whose guilt he had secret information from persons whose names he could not publicly disclose, as many persons, both before and since, had been murdered for giving such information; and therefore, in order to encourage persons to give such information the magistrates were publicly sworn to keep secret the names of informants. That in consequence of petitioner's exertions, in which he was obliged to do many acts not justifiable at common law, that county was saved from destruction. That for acts of notoriety done by him, in suppression of rebellion, many actions have been brought, and many more threatened, at the instance of persons who have entered into subscription to support them. That two such actions had been lately had at the assizes of Clonmel, in both of which verdicts had been obtained against petitioner; one for words spoken, and the other for corporal punishment inflicted publicly on the 29th of May in the town of Clonmell, which was to have been attacked two days afterwards by 8,000 rebels. The learned judges who presided at said trials being of opinion, in point of law, that unless petitioner produced information on oath of the grounds on which he acted, his case could not fall within the provisions of the Indemnity act passed last session; but that petitioner, not feeling himself justifiable to disclose, in a public court of justice, the nature of the information on which he had acted; and knowing that many of the informations on which petitioner acted were in the possession of several generals and other officers who have since been ordered out of the kingdom; that some of the persons who gave such information are since banished to foreign parts; and feeling he would be guilty of a breach of faith and duty in disclosing the names of his informants remaining in the kingdom, on whose informations secretly and confidentially given he was induced to act as aforesaid, he did decline such disclosure. Petitioner therefore prayed, that without exposing the persons who gave such information to the vengeance of their persecutors, the petitioner may be at liberty to have the same and the whole of his case investigated, and the truth thereof established in such manner as to the House shall seem meet; so as that the state may receive no injury, and that petitioner, and those under whose advice, assistance, and information he acted, may not be exposed to vexatious and ruinous proceedings at common law; and that honest men may not be deterred thereby from acting in perilous times for the safety of the state and protection of his majesty's loyal subjects." :

Mr. Holmes rose to move that this petition be referred to a committee; and bore testimony to the very meritorious conduct of the petitioner, who at a time of the most perilous hazard complied with the solicitations of the principal gentlemen of the county of Tipperary, in accepting the appointment of high sheriff; and to his vigilance, activity, firmness, and indefatigable exertions, did that county owe its preservation from all those horrors which devastated the counties of Wicklow, Wexford, Carlow, Kildare, and Meath.

At that very time, the whole county of Tipperary, though apparently in the most perfect tranquillity, was every where organized for rebellion;—the common people sworn to a man;—and all armed and officered in every department from a serjeant up to a general; yet in such dark and deep secrecy was this plot carried on, that no man, not in the secret, suspected it, until the very moment when it was about to burst forth, and overwhelm every thing that could be opposed to it. To the spirited determination of this bold and enterprising man, was owing the discovery by which the plans of rebellion were in that county anticipated, and put down; and however humanity must regret the necessity of treating men with severity, or punishing even the guilty without the due forms of common law, yet it was found by experience, that severity alone could develop those machinations in that county, which had well nigh overwhelmed the lives and properties of its loyal inhabitants, and for the discovery of which all other inducements were held out in vain. There was scarcely a man on whom corporal punishment had been inflicted to extort confession, who did not acknowledge guilt and discover widely-extended accompliceship in treason. Immense quantities of arms of every kind were discovered, and in consequence cart loads were daily brought into Clonmell from all quarters of the county; and thus, by the timely interposition of this spirited magistrate, were the lives and properties of the gentlemen and loyal inhabitants preserved, on the very brink of destruction.

When these important considerations were weighed, he thought the House in its wisdom and justice could not hesitate to give its protection to a man who had deserved so well of his country.

Mr. Secretary Cooke fully concurred in the sentiments expressed by Mr. Holmes, and was enabled from his own knowledge to state, that the most essential services had been rendered to the state and to the country by Mr. Fitzgerald. Sunk in a dangerous security, the gentlemen of the county of Tipperary were wholly ignorant of the extensive system of organization which prevailed in that county, when the activity, enterprise, and unwearied research of Mr. Fitzgerald developed a system of the most formidable, and

which would have been attended with consequences much more fatal and extensive, than in any other county in the kingdom.

A similar indolence and security had in the counties of Kildare, Wicklow, and Wexford suffered, and in some degree nurtured, treason, into open and terrible rebellion. Had the early, prompt, and vigorous activity, so happily manifested by Mr. Fitzgerald, been adopted in those ill-fated counties which he had mentioned, their principal inhabitants would not have lost their lives or their fortunes.

The *Attorney General* bore testimony from official information, as well as from local knowledge of the very spirited and meritorious conduct of Mr. Fitzgerald, and he trusted the House would cheerfully accede to the prayer of his petition.

The Hon. Mr. *Yelverton* said, he should be one of the last men to refuse indemnity or protection to any deserving magistrate or loyal men for acts warranted by justice or necessity, in putting down conspiracy or rebellion; but he would not sit silent and hear the falsehood attempted to be palmed on that House by this almighty sheriff in the petition now on the table. The petition stated that the judges who presided at that trial, who were Mr. Justice Chamberlain and lord *Yelverton*, had given their opinion in point of law, that unless Mr. Fitzgerald could produce the information on oath on which he could justify his flagellation of the plaintiff *Wright*, he could not come under the provisions of the Indemnity act. No such thing was ever said by either of the judges. He was present at the trial, and not a single tittle of evidence had come out in defence of Mr. Fitzgerald; nor was even a pretence pleaded that could found a scintilla of suspicion against the plaintiff, *Wright*, to justify those unparalleled cruelties exercised upon him, for which the jury—a most respectable one—awarded five hundred pounds damages, and which the learned judges declared ought to have been considerably more than the sum claimed.

With permission of the House, he would shortly state the facts, as they appeared on the evidence of several most respectable witnesses; and from those facts he would appeal to the House, whether such sanguinary, wanton, and unparalleled cruelties, were entitled to their sanction and indemnity.

The action brought by Mr. *Wright* was for assault and battery. It appeared that Mr. *Wright* was a respectable man, of most excellent character and education, and a teacher of the French language, of which he was employed as professor by two eminent boarding-schools at Clonmell, and the families of several gentlemen in the town and neighbourhood.

Mr. *Wright* had heard that Mr. Fitzgerald had received some charges of a seditious nature against him; and with a promptitude not very characteristic of conscious guilt, he immediately went to the house of Mr. Fitz-

gerald, whom he did not find at home, and afterwards to that of another magistrate, who was also out, for the purpose of surrendering himself for trial: he went again the same day, accompanied by a gentleman, to the house of Mr. Fitzgerald, and being shown into his presence, explained the purpose of his coming, when Mr. Fitzgerald, drawing his sword, said “down on your knees, you rebellious scoundrel, and receive your sentence.” In vain did the poor man protest his innocence; in vain did he implore trial on his knees; Mr. Fitzgerald sentenced him first to be flogged, and then shot. The unfortunate man surrendered his keys, to have his papers searched, and expressed his readiness to suffer any punishment the proof of guilt could justify: but no—this was not agreeable to Mr. Fitzgerald’s principles of jurisdiction: his mode was first to sentence, then punish, and afterwards investigate. His answer to the unfortunate man, was, “what! you carmelite rascal! Do you dare to speak after sentence?” and then struck him, and ordered him to prison.

Next day, this unhappy man was dragged to a ladder in Clonmell-street to undergo his sentence. He knelt down in prayer with his hat before his face. Mr. Fitzgerald came up, dragged his hat from him, and trampled on it, seized the man by the hair, dragged him to the earth, kicked him, and cut him across the forehead with his sword; then had him stripped naked, tied up to the ladder, and ordered him fifty lashes.

Major *Rial*, an officer in the town, came up as the fifty lashes were completed; and asked Mr. Fitzgerald the cause. Mr. Fitzgerald handed the major a note written in French, saying he did not himself understand French, though he understood Irish; but he, major *Rial*, would find in that letter what would justify him in flogging the scoundrel to death.

Major *Rial* read the letter;—he found it to be a note addressed for the victim, translated in these words;

“Sir; I am extremely sorry I cannot wait on you at the hour appointed, being unavoidably obliged to attend sir Lawrence Parsons. Yours

“BARON DE CLUES.”

Notwithstanding this translation, which major *Rial* read to Mr. Fitzgerald, he ordered fifty lashes more to be inflicted, and with such peculiar severity, that horrid to relate!—the bowels of the bleeding victim could be perceived convulsed and working through his wounds!—Mr. Fitzgerald finding he could not continue the application of his cat-o-nine-tails on that part without cutting his way into his body, ordered the waistband of his breeches to be cut open, and had fifty lashes more inflicted there! He then left the unfortunate man bleeding and suspended, while he went to the barrack to demand a file of men to come and shoot him; but

being refused by the commanding officer, he came back and sought for a rope to hang him, but could not get one. He then ordered him to be cut down and sent back to prison, where he was confined in a dark small room, with no other furniture than a wretched pallet of straw, without covering; and there he remained six or seven days without any medical assistance. Gracious God! said Mr. Yelverton, will any man say that such conduct is to be sanctioned, and indemnified by this House? Are the laws to be supported by trampling on them? Is the man, who could commit such barbarities without the colour of justice or necessity, or even the shadow of just suspicion, to come for protection to this House? I feel an indignation on this subject that almost deprives me of utterance: I have before said, that I would be one of the last men to refuse every reasonable indemnity to loyal magistrates, for acts done under the pressure of apparent justice, or necessity, for the suppression of rebellion; but I will never vote for protection and indemnity to a bloody tyrant, whose conduct, though it may have produced good in some instances, has been productive of infinitely more mischief; and on these grounds I shall give that petition every resistance in my power.

The right hon. *Attorney General* rose in reply. He said it would seem, from the arguments of the hon. and learned member, that the petition presumed to reflect imperiously on the conduct of the high and justly-venerated characters who presided at the trial to which he alluded. Had it so done, no man would be more prompt than he should be, to give it the strongest reprobation, or to argue that it ought to be flung back into the face of the person who had presumed to bring it for presentation. But the petition, to his observation, did no such thing. The petitioner, whose exertions had been productive of the happiest consequences, only complained of the persecutions to which he was exposed; his property, and, what was infinitely of more importance to an honourable man, his character, was at stake. What he claimed was investigation, and what he offered was proof upon oath of the guilt which he had punished; by which punishment he had incurred charges of wanton and unjustifiable severity, and actions for damages.

From what this gentleman stated in his petition, it appeared, all the magistrates were sworn not to disclose the evidence they had received confidentially and in private; this evidence was their justification, but could not be disclosed in their defence against such actions, without holding forth their informants, and exposing them to murder, as was the case at the very last assizes at Clonmell, when a witness was coming forward at the assizes to substantiate on a trial the evidence he had given before a magistrate, when he was murdered on his way near the gate of

the town. The petition appealed to the House, in its high judicial capacity; and therefore, the hon. member, who was one of those to sit in judgment upon its merits, would have acted more becomingly by awaiting in discreet patience the testimony offered by the petitioner, and deciding deliberately and dispassionately thereon, than by becoming an accuser in the first instance, and prematurely avowing strong indignation against the petitioner.

The hon. and learned gentleman has laboured to excite the indignation of the House against the petition, on the case of a man named Wright, at whose trial he was present, doing his duty as a very able advocate; but it was to be recollected, as before stated, that Mr. Fitzgerald was not at liberty to state the evidence for his justification; that evidence he now prayed to be heard, but under the circumstances of the case, as it heretofore stood, he was much mistaken indeed, in the temper and principles of the petitioner, if he would not rather stand ten thousand shots from an army of rebels, than disclose the evidence, or betray the names and the confidence of his informants. The conduct of Mr. F. and its salutary consequences, under the urgent necessity which prevailed, was vouched and approved upon the authority of the noble lord and the hon. member, who from the circumstance of local residence and experience, must be best able to judge, and therefore the authority in favour of the petitioner, was at least as respectable as that of the hon. member.

Mr. *Yelverton* said a few words in explanation and reply.

Dr. *Brown* could not see what measures a committee could adopt, to ground any proceeding of the House for the indemnification of the petitioner against all future actions for damages, for injuries done by him, whether justifiable or not. The bill of indemnity already passed, allowed, he thought, ample indemnification to every magistrate who could claim, or expect it on any reasonable ground; and therefore he could not see why the House was to be called on to exceed that bill for the advantage of such an individual.

Mr. *Edgeworth* said, he would endeavour, as far as it was in his power, to repress that indignation, which he was taught in his early years, to consider as one of the best guardians of virtue. He would calmly give his negative to this motion, believing it to be of most dangerous tendency.

With respect to the general character of the petitioner, he knew nothing of it; but from what he heard in that House, and from what he had seen in the public prints. He would take it for granted, that the petitioner's private character fully justified the eulogium which had been bestowed upon him by the noble lord, and that his public services had been as meritorious, and as successful, as the honourable and worthy member (Mr.

Holmes) had stated. But there were means in the power of the Crown sufficiently ample to reward every useful exertion, and, as a member of that House, to interfere between the sentence of the law and its execution, was what he never could be reconciled to. A verdict had been given by a jury, with which two judges of the highest character, had in the most explicit manner concurred. To interfere with that verdict, was to call those judges to the bar of the House. The Indemnity Bill had gone as far as possible to protect magistrates; but beyond the limits of that Bill to preclude any of his majesty's subjects from obtaining damages for personal injury, except where obvious mistakes of judgment had occasioned those injuries, was so grossly unconstitutional, as to call upon every real friend to the safety of the kingdom to resist it. He could not foretell what proceedings might be grounded upon this motion; he should therefore oppose it in the first instance; and he could not sit down without observing, that the right hon. gentlemen on the treasury bench, would serve their country better by leaving the execution of the laws to judges and juries, than by becoming partisans in support of any favourite system of men and measures.

Mr. *Holmes* replied, and in allusion to the argument of the hon. Mr. *Yelverton*, said the hon. member had practised a sort of *Sciamachia*; he conjured up an imaginary principle, and then fought that principle as if it was real.

Mr. *Ormsby* thought the reasons offered by the two hon. members, who preceded the last speaker, for not going into a committee, were the most extraordinary he had ever heard; namely, that they could not foresee what the committee could do on the subject. If this reasoning went to prevail, he fancied little business could be done in that House; but the best way for the gentlemen to improve their information, would be to attend the committee. He severely censured the hon. member (Mr. *Edgeworth*), who had endeavoured to excite the feelings and commiseration of the House, for the sore back of a fellow, who, he believed, would be found, on enquiry, to have very well deserved what he got: it was at least well known, that he had many bad connexions, and associated with men of such principles, as fully warranted the suspicion of his own.

Those who condemned the petitioner for severity to such criminals, seemed to forget that loyal men could hope for no mercy, who fell into their clutches. He trusted the House would extend ample protection to a man who had so well deserved it.

Colonel Bagwell (member for the county of Tipperary) said, it was not his intention to have spoken to the question then before the House, but to let the petition quietly go to a committee, had it not been for what fell from the honourable member who spoke last. He

was as ready as any person to give credit to the services rendered to the county of Tipperary, by the activity of the petitioner; but he was shocked and concerned to hear the sufferings of an innocent and respectable man treated with levity and indifference. As insinuations were thrown out against the character of Mr. *Wright*, he felt it his duty to declare what had come within his knowledge, respecting that unfortunate and much-abused man. He was present, during the trial of the action brought by Mr. *Wright*, against the petitioner, and it was but an act of common justice to say, that in his mind, not the remotest shade of suspicion attached to the character of the plaintiff in that case, nor did the investigation which took place on that occasion, furnish the most distant justification, for the severe and terrible punishment inflicted on him. A similar opinion of the unfortunate man's innocence and loyalty was expressed from the bench, by the revered characters who presided. As to the general character of Mr. *Wright*, it was most unexceptionable in point of morality, religion, and politics; and to that character, the best evidence was the very high estimation in which he was holden by the best and most respectable men in the town of Clonmell. He would beg leave farther to add, that this unfortunate man, who had been thus so severely dealt by, on the ground of a suspicion which it was, as yet, apparent his conduct had not justified, was nearly related to some of the most illustrious and best characters, which that country could boast of: the fact must be admitted, in the sense of rank allied to virtue, when he stated him to be a near relation of the late lord Clonmell, under whose patronage he had been educated, and sent abroad; he was also a near relation to that worthy, respectable, and lamented man, Robert *Shaw*, esq. and likewise nearly related to the present lord *Dunboyne*; and as far as he could gain acquaintance with his character, he had never disgraced a relationship, which must have conferred honour on any man. *Colonel Bagwell* concluded a short speech, by saying, that he thought the conduct of Mr. *Fitzgerald* generally very meritorious, and deserving the protection of government, against the consequences of errors committed in his zeal for the safety of the state; but it was too certain, that many innocent persons had suffered most severely from that zeal, and he thought it but conformable to every principle of humanity, justice, and sound policy, that that compensation which was in the power of the laws to make them, should be afforded; a compensation which, taken in every point of view, must fall infinitely short of their sufferings, and their claims.

The question being put, the petition was referred to a Committee.

After some routine business, the House adjourned to Monday.

Monday, April 8th.

Lord Mathew stated to the House, that the special committee appointed to investigate the merits of the petition of Mr. Fitzgerald, had come to a resolution, that they could not attain the object of their inquiry, unless the House should appoint them a Secret Committee.

Mr. Holmes read the resolution of the Special Committee, in his place, and moved that the order for the present Committee be discharged; which was agreed to. He then moved, that a Secret Committee, consisting of the same members, be appointed to consider the said petition, on account of the nature of the evidence to be brought forward by Mr. Fitzgerald, which could not, with safety, be disclosed in an open committee.

Colonel Bagwell said, he had on the last night opposed the Special Committee, and he should now oppose the Secret Committee on grounds still stronger. He would not pretend to say, that the conduct of Mr. Fitzgerald had not been, in many instances, very meritorious; but in many others, he had far exceeded the bounds of discretion, and had punished many innocent persons. Good God! then, were those persons to have no redress, no opportunity of vindicating their characters, thus branded with the stigma of rebellion and ignominious punishment? Was Mr. Fitzgerald to be permitted to give secret evidence before a Secret Committee, and say what he pleased against the characters of those persons, in his own justification, without giving them any opportunity of refuting his assertions? Was it not very well known, that vast numbers of those persons, whom Mr. Fitzgerald had punished in the county of Tipperary, still protested their innocence, and yet were afraid to show themselves in public, lest they should be hooted down, and insulted as traitors and rebels? Were those men to remain thus for life, the butt of public odium, and have no opportunity for vindication or redress? He trusted the House would not interfere between the justice of the country, and the innocent persons injured, or to set aside the verdict of a most respectable jury, which had done more to quiet the minds of the people in that part of the country, than any thing which had been done by Mr. Fitzgerald, or any one else.

With respect to the town of Clonmell, he could speak from his own knowledge and experience for years. And he never could hear, nor did he believe there was in that town, or its vicinity, a single person against whom the charge of being United Irishmen or rebels had been proved, notwithstanding the numbers who had been punished by this gentleman, but a man called Nippers. He was not in that part of the country at the time this business was going forward, but at another quarter of the kingdom with his regiment, but he had made every inquiry since

then, from men of the most general knowledge and respectable character, and he found what he had stated to be the fact, and in this he believed he could be corroborated by an hon. gentleman who sat near him [the hon. Francis Hely Hutchinson], to the exertions of whom, and of his noble brother, lord Donoughmore, that country stood peculiarly indebted for the restoration of its peace and tranquillity. No man should be less willing than he should, to debar Mr. Fitzgerald of every reasonable degree of indemnity, for acts done in the suppression of rebellion—but he was not less mindful of the justice due to innocent individuals, who had been punished through indiscretion, or caprice, nor could he consent to the unconstitutional proceeding of an *ex post facto* law, to set aside the verdict of a respectable jury, in redress of a gentleman, who had been most severely and unjustly punished.

Mr. Plunkett rose, not to direct any particular opposition to a secret committee, or to any other committee. His objection was to the partial and unconstitutional principle of passing an *ex post facto* law, for the peculiar indemnification of an individual, who appeared to have exceeded all bounds of humanity and discretion. He had made no opposition to the indemnity bill in its widest extent. He had made no opposition to any of those bills which were thought necessary to strengthen the hands of government, to repress rebellion, or to indemnify those who had acted against law, under the pressure of public necessity for the public good and the preservation of the state. If the indemnity bill which had already passed the House, did not go far enough, and it went as far as government thought it necessary to go, in the indemnification of every man who ought to be indemnified, let that law be amended by still farther extension, and he would vote for it. But let not the House of Commons interfere by a measure of personal partiality to give indemnification to one man, which was not to be extended to every other in the same situation, and which was by an *ex post facto* law to set aside the verdict of a most respectable jury;—a verdict not returned in a refractory spirit of party, in resistance to the direction of the bench, but a verdict returned in consonance with the advice and opinion of two of the most learned and justly venerated judges in this or any other country. Who were so competent to judge of the merits of Mr. Fitzgerald's conduct, and the character of Mr. Wright, as a respectable jury of the vicinage living on the very scene of action, interested as deeply as Mr. Fitzgerald could possibly be in the repressing rebellion, and able to judge of every necessity under which Mr. Fitzgerald acted? Gracious Heaven! what did his majesty's ministers seek, in the singular and extraordinary measure of vindicating this man, of sleeping between him and the justice of the country, and depriving an innocent injured man of that

retribution which a respectable jury of his vicinage on their oaths had awarded? Ministers, it appeared, could not find a jury so base, so degraded, as to violate the rights of the injured, or the principles of that most valuable of all constitutional rights—the trial by jury: and they do, what?—They come to parliament and ask them to do what a jury spurns at! Is this the light in which ministers wish to hold out the House of Commons to the people? What would the country say, if the doors of justice were to be shut in the face of the innocent and the injured, and indemnification and protection lavished upon those who had wantonly and cruelly violated every principle of justice, humanity, and sound discretion? He trusted that House would never sanction such a measure, and he should give it every opposition in his power.

Dr. Browne (of the college) condemned in the strongest terms a measure of partial indemnification, which besides precluding all future redress to those persons who had been undeservedly punished by the petitioner, would, by an *ex post facto* law, go to deprive an injured gentleman of that restitution which had been awarded him by a jury, and which was as much his right as the money in his pocket? This was not the only principle of the measure to which he objected: for the measure would not only go to screen the individual from the consequence of his unnecessary cruelties, but it would go to sanction a principle at all times declared to be abhorrent to the English constitution. That inflicting torture upon persons for the purpose of extorting confessions, every lawyer, and every constitutional man in that House must know, that it had uniformly been declared a thing not admissible within these realms. Archbishop Laud had attempted to introduce that custom into England, but it was utterly rejected as a thing only fit to exist in the most despotic and tyrannical governments. Nor, indeed, should any tribunal accept testimony extorted by such means. If men were guilty of treasonable practices, was not the military law competent to bring them to trial in the most summary way, and if they were proved guilty, punish them instantly? If they were detected in any act of rebellion, let them be put instantly to death. But to punish men on speculation, to force them by tortures to criminate themselves and accuse others, was a principle so truly tyrannical, and so totally subversive of every vestige of the British constitution, that if the Irish parliament should sanction it this night, by a proceeding to indemnify the petitioner, and to sanction that indemnification by evidence taken in secret, by which the petitioner might be enabled to excuse himself on the foulest charges of criminality against other men, which they would have no opportunity to refute, however unfounded; he declared to God, whatever might be the sentiments of his constituents, he should for himself think, the sooner that parliament was extinguished the better.

Mr. J. Claudius Beresford said, he knew nothing of the affairs of the county of Tipperary during the rebellion; he had enough to do at home during that period, but he would be glad to know how Mr. Fitzgerald could offer any evidence in his own justification except before a secret committee. The informations he himself received were in private, and under the solemn obligation of an oath to keep the names of his informants concealed. It was this kind of information on which Mr. Fitzgerald rested for his justification, in acting as he did; and every man must know, if the name of any of those men was to be disclosed, he would not live twenty-four hours. It was well known that no loyal man could come forward at the trial of Mr. Wright, or any other, to give evidence in justification of the magistrate, but at the certainty of being murdered. If rebels were to be suffered first to go to war with the loyalty of the country, and if unsuccessful there, afterwards go to law for compensation of injuries received in rebellion, the issue of the contest must be obvious. He could see no way left for Mr. Fitzgerald to make out his case for vindication of his conduct, but by being permitted to state the evidence he had received before a secret committee.

Colonel McDonnell observed, that from the situation of the county of Tipperary, at the time this gentleman had spiritedly stepped forward, at every risk, to detect and put down treason, if, instead of the prompt and decided measures he adopted, he had waited for the slow process of the trial by jury, many of the hon. gentlemen who this night censured his conduct, might, ere now, have been hanged at the lamp irons. It was a well-known fact, that a large subscription had been entered into, in that part of the country, for carrying on vexatious prosecutions, or rather persecutions, against this gentleman; and this subscription was filled by those very men whose treasons he had defeated. If, then, a gentleman who had no other object but the public good, in exerting himself to put down rebellion, were thus to be left open to litigating suits, to the ruin of his fortune, what loyal man would ever again exert himself for his country on such an occasion?—He was decidedly for the secret committee.

Mr. Yelverton was decidedly against the secret committee, or allowing Mr. Fitzgerald, by any statement he might choose to make in secret, to vilify the character of an injured man, who had no opportunity of rebutting that statement, and deprive him of the right of compensation vested by the verdict of a jury. Where could a more proper or a more just decision on the merits of the case be found than by a jury of the vicinage—a jury of Mr. Fitzgerald's own approving—in fact, of his own choosing, for the grand panel of the county was summoned on the occasion—a jury composed of as respectable men as any in that county—as loyal men—as wealthy

men—and as much interested in preserving the peace, and maintaining the laws of the country, as Mr. Fitzgerald could possibly be—men, who were the daily witnesses of Mr. Fitzgerald's proceedings, and who had an opportunity of investigating on the spot, the whole circumstances of the case, and the characters of the parties.—The judges who tried this cause, and whose integrity no man could presume to suspect, in their charge to that jury, were of opinion, that if they believed the evidence, on the part of Mr. Wright, the damages laid at double the sum awarded in the verdict, would be too small for the injury sustained; but that if they had a doubt of the guilt of the defendant, it was their duty to acquit. And what was now asked of this House? To permit Mr. Fitzgerald, by a statement of his own, before a secret committee of parliament, to do away the verdict of a constitutional and respectable jury, founded on evidence taken in open court. He never would consent to a measure so violating to every maxim of law and justice. If Mr. Fitzgerald could show that this suit was frivolous and vexatious, would he not have been sufficiently vindicated as the law stood, which, in case of a nonsuit on the part of the plaintiff, would entitle the defendant to double costs? Suppose Mr. Fitzgerald, in assuming those powers he exerted, under the pretence of putting down rebellion, had taken upon him to exert his authority on any man for the gratification of his own private resentment, will any man say the injured party has no right to redress? or that Mr. Fitzgerald is warranted in punishing indiscriminately the innocent and the guilty, upon the mere suggestion of his own suspicions, or the secret suggestion of any man, no matter who? With respect to the verdict in the case of Mr. Wright, awarded as it was by a most respectable jury, upon the fullest investigation of the case, and approved as it was by the learned judges who presided, he was warranted to say, it tended more to quiet the minds of the people in that country, exasperated as they were by the conduct of this gentleman, than any other cause whatever. But if the doors of justice were to be shut against the people, if they were to be taught to expect no share of protection from the laws, what attachment could they be supposed to retain for the government or the laws? and would they not be naturally taught to look to some other means of vindication? For his part, he would never consent to sanction, by his vote in that House, such bloody atrocities. He would vote most decidedly against the motion, and he would give every resistance to a bill, having for its object the indemnification of such a man—and which, if it should ever pass into a law, would be a disgrace to the statute book.

Sir John Blaquiere said, he had some conversation with the officer who was sent by Mr. Fitzgerald to seize on Mr. Wright's papers, who told him that he had examined

those papers, and from the judgment he could form on that examination, he had no hesitation in saying, Wright was a rebel.—He by no means meant to arraign the decision of the learned judges who presided at this trial, or the very respectable jury who gave the verdict, because on the evidence laid before them, the verdict might be extremely fair. He did understand this prosecution was carried on against Mr. Fitzgerald as an experiment, at the instance of a party, and that, if successful, it was to be followed up against other gentlemen and military officers; but he trusted, the House would not suffer gentlemen to remain exposed to persecutions for their loyalty.

Mr. Ormsby said, that he hoped when the House was told, that a subscription had been entered into for the purpose of running down this gentleman by legal persecution, he trusted the House would see the necessity of its interference, to rescue a loyal gentleman for exertions to save his country—[a call of no! no!].—Mr. Ormsby said he had unquestionable authority for saying yes! yes! A subscription had been entered into for this purpose, in which appeared the name of an individual for 100*l.*, and a whole corps of yeomanry subscribed one guinea each. This circumstance was sufficient to show, on the ground of general policy, the necessity of letting this matter go to a secret committee, in order to get such information as would be found to justify the House in an interposition to prevent a loyal gentleman from being ruined for the exertion of that loyalty. It had been said, the verdict in the case of Wright was obtained in a constitutional way before learned and upright judges, and a respectable jury—granted. But though Mr. Fitzgerald might adduce such proofs as would satisfy the minds of a secret committee, that he acted on such ground as would amply warrant the steps he had taken, those proofs were of a nature which could not be accepted by a judge, or suffered to go to a judge as legal evidence. He could not, for instance, under the nature of his oath of secrecy, bring forward the *vis à voce* evidence of those persons who had disclosed to him the guilt of the party. He could not plead the confidential information received from others, as his justification before a law court. But proofs of this kind of satisfactory evidence would be admitted in his justification, before a committee of parliament. It had been said, that tortures to extort confession had never been practised in England—to that he would answer, no similar occasion ever existed in that, or perhaps any other country on earth—and did any man imagine, if that system had not been resorted to, it would be possible ever to have developed the deep-laid, dark, and diabolical system which had pervaded this whole kingdom before it had burst, and overwhelmed every thing in destruction?

Gentlemen were extremely tender of the

constitutional rights of miscreants, who meditated the total destruction of the constitution itself. Gentlemen spoke with great feeling for the backs of fellows who contemplated nothing but treason, plunder, and massacre. They would never consent that those fellows should be flogged until they discovered their accomplices in treason—until they discovered depots of arms, and magazines of ammunition—and acknowledged the most widely extended conspiracy against the lives and properties of every loyal man in the country. To prove those facts as the result, and the justification of his proceedings, was all Mr. Fitzgerald desired. He could not openly disclose the names of his informants without exposing their lives to inevitable murder, and therefore he should vote for the secret committee.

The Hon. *F. H. Hutchinson* said, he was in that part of the country about the period alluded to, and witnessed a great part of the conduct of Mr. Fitzgerald. He would not deny that a melancholy necessity had in many instances existed for resorting to coercive measures not reconcilable with legal feelings, in order to put down rebellion, and he did not doubt but this conduct, on the part of Mr. Fitzgerald, was in some instances productive of salutary consequences; but upon the whole, he feared there was an exuberance in his severities, which could not be justified by circumstances, and which had produced some degree of exasperation in that part of the country. With respect to a subscription which had been mentioned, he did hear, and believed a subscription had been entered into by the corps of Carrick yeomanry, for the purpose of maintaining a suit against Mr. Fitzgerald, but it was in vindication of the character and honour of that corps and its officers, whom Mr. Fitzgerald had openly charged with disaffection and disloyalty, and on this principle he conceived the subscription not unjustifiable. But on what ground was the proposed indemnity called for? One would suppose, from the arguments used in support of it, that no indemnity bill had passed. He had heard, and not without just indignation, the particulars of the treatment Mr. Wright had received. He was present at the proceedings which took place on the trial in this cause. The jury were composed of most respectable men, and the learned judges who presided at that trial, in summing up the evidence against Mr. Fitzgerald, did distinctly charge the jury, if they believed what Mr. Fitzgerald had done in this case was necessarily done for the suppression of rebellion, they should find as against the plaintiff.—But the jury, on the fullest consideration of the case, found for the plaintiff. And would any man say that an innocent man, treated with the cruelty which Mr. Wright had sustained, ought to have no redress in a court of justice, because Mr. Fitzgerald, in other instances, might have

acted with a laudable zeal towards guilty persons? Mr. Fitzgerald, he must say, had, in many instances, done him the honour to pay some deference to his recommendations, and to liberate, at his instance, several persons from time to time, whom he had destined for punishment. But he was convinced Mr. Fitzgerald's zeal had, in a great many instances, carried him much too far, and excited a great deal of reprobation from many gentlemen in the country. There was one instance he recited, of a gentleman, in the town of Carrick, in that county, of very considerable property, of very general good character, and whom Mr. Fitzgerald thought proper to arrest at his house under an imputation of treasonable practices.—This gentleman requested not to be exposed through the country, and offered to give Mr. Fitzgerald on the spot 100,000*l.* security for his appearance to trial, but it was refused; and this gentleman, surrounded by a military guard, brought at noon-day, twelve miles through the country, to Clonmell, where he was imprisoned. This circumstance reached the ears of general St. John, then commanding in the district, and to whose humane and judicious conduct the safety and tranquillity of that country stood highly indebted. This general did Mr. Hutchinson the honour to send for and consult him on the occasion. He spoke of the circumstance of this gentleman's being arrested, observed that he feared Mr. Fitzgerald was carrying things much too far, and in reality doing more mischief than good in the country. That he requested of him (Mr. Hutchinson) to wait on the gentleman who was imprisoned, and to use his influence with him to tender bail for his liberation, which would be accepted. He did accordingly wait on that gentleman, and endeavoured to effect the object of his interview, but that gentleman did say, he had been many years a resident of that county, and no man ever before even ventured to impeach his loyalty. He had offered Mr. Fitzgerald any bail he chose to demand for his appearance to trial, only requesting he might not be exposed through the country, but Mr. Fitzgerald had refused him, and after exposing him to ignominy had committed him to prison. From that prison he never would depart until he was liberated, after a fair trial, by the laws of his country; and all the favour he would now solicit was, that he might be indulged with that trial as speedily as possible. Mr. Fitzgerald declined calling him to any trial. He did remain several days in gaol, and it was not until he was assured that the life of a very delicate lady, his wife, was in danger; and under the impression that his liberation was necessary to save her life, that he could be prevailed on to offer bail, and to quit that gaol; and though the character of this gentleman had been thus branded with infamy, Mr. Fitzgerald, though repeatedly solicited, had never since afforded this gentleman any

trial. There were a great many acts of this sort, and he had seen some in which the zeal of Mr. Fitzgerald had led him to deeds of horror. In the town of Clogheen there was a man of some property and good character, who kept an inn; and this man was brought out of his house by Mr. Fitzgerald, tied up to a ladder, and whipped!—When he had received some lashes, Mr. Fitzgerald asked him—“Who swore you?”—The man answered he was never sworn. After a few more stripes, the question was repeated, and received a similar answer. The remedy was resumed, with this additional suggestion—“If you do not confess who swore you, I’ll cut you to death!”—The man, unable to bear the torture any longer, did name a person, who, he said, had sworn him; but the moment he was cut down, he said to lord Cahir, “That was a lie, my lord, the man never swore me; but he said he would cut me to death if I did not accuse somebody, and to save my life I told the lie.”

Mr. Hutchinson said, it was extremely painful to him to state these circumstances; and he should not have done so, but to show that the zeal of Mr. Fitzgerald, in some instances, however justifiable, was accompanied by a degree of rashness in others, which was not to be excused.

Colonel Barry and Mr. Fitzgerald thought the Indemnity Bill comprehended every possible case to which indemnity ought to be extended. If they did not, then let those laws be amended; but let not an *ex post facto* law be adopted, which would deprive injured individuals of the just damages awarded them by juries. If Mr. Fitzgerald could show them, that what he had done was in suppression of rebellion, the law, as it stands, would fully indemnify him. But surely nothing could justify the passing of an *ex post facto* law, to screen him from the consequences of wanton and unnecessary cruelties.

Mr. W. B. Ponsonby vindicated the conduct of the Carrick yeomanry, in subscribing for the purpose of vindicating their officers and themselves, against the charge of disaffection openly made by Mr. Fitzgerald.

Mr. Attorney General said, that gentlemen, while they were assiduous to point out in Mr. Fitzgerald’s conduct an exuberance of zeal, were as assiduously silent on his pointed merit. They seemed to forget the outrages which were then hourly committing in every quarter of the country, under his very eyes. Might he be permitted to remind gentlemen of the peculiar situation of the county of Tipperary at that time? It was completely organized throughout, and ready to burst into open rebellion, when Mr. Fitzgerald, not of his own accord, but at the solicitation, by the advice and approbation of all the principal gentlemen of the county, did step forward at every risk to himself, to drag forward the conspirators, and force them to disclose their

accomplices and their crimes. A bill of amnesty had since passed in favour of those who were concerned in rebellion, for all crimes committed by them, and was there to be no indemnity to loyal men, who, in their zeal to prevent and put down these crimes had overstepped the boundaries of the laws? It is not now in the power of the petitioner to bring forward to the bar, the evidence to vindicate his conduct. He was solemnly sworn not to disclose that evidence, or the names of his informants, with injury to the state, or risk to them. He could bring neither forward for his vindication in a court of justice, nor could he disclose it any where with safety to the lives of his informants. He could not, therefore, in obedience to his oath, bring forward this evidence any where for his vindication in this House, but before a Secret Committee. If he did not there satisfactorily prove his case, his petition would fall to the ground; and if he should make it appear to the justice and candour of parliament, that he really deserved to be indemnified, surely the House would not refuse that indemnification. If the laws of amnesty were passed in favour of rebels, and a loyal magistrate was to be left open to persecution, for acts done with a laudable view to the suppression of rebellion, the loyalists and the rebels were not even on equal ground, for the loyalists were worst off. But a system of barratry was set on foot to tread down this gentleman, by the disappointed traitors of the country; and a subscription was entered into, and a very considerable sum subscribed, for carrying on law prosecutions against this gentleman, and amongst the subscribers was a whole corps of yeomanry—what was their ground of complaint?—why, truly, that the high sheriff of the county went to Carrick, and in the warmth of his zeal for the public service, had told the officer commanding a yeomanry corps—“Sir, I have received information, that there are disaffected men amongst your corps.” Was this injuring the reputation of the officers, or of the whole corps? Was this to warrant a subscription from the whole corps, for the purpose of persecuting the petitioner, avowed and vindicated this night by the hon. and right hon. gentlemen? He desired to tell the subscribers, that they were, in this instance, guilty of an illegal act of conspiracy for which they were liable to prosecution and punishment. The petitioner did not call for any proceeding to set aside the verdict in an action tried; if he had, there would indeed be the objection. He only prayed to be guarded against numberless other vexatious suits, which only awaited the success of the past one to be commenced against him. In the statements which had been made of the proceedings of this magistrate, a great deal of high colouring had been used; but, gentlemen should have the goodness to recollect, that while those harsh measures were dealt out to the traitors

at Clonmell, and other parts of that country, thousands of loyal subjects were bleeding by the pikes of their accomplices in Wicklow, Wexford, and those adjoining counties. That the peasantry of Tipperary were, to a man, organized, armed, and ready to take the field at a moment's warning. That a body of 8,000 rebels, were ready to attack the town of Clonmell. That in the county of Wexford, thirty or forty thousand rebels had actually taken the field, in open arms against the king's troops. That a battle had been actually fought, in which that gallant, and ever to be lamented nobleman, lord Mount Joy, had fallen a victim. Were those circumstances to stand as arguments for cool deliberation in an active magistrate, in an organized county, circumstanced as Tipperary stood? There was no honest man opposed to rebellion, who could preserve a cool and reflecting temper at such a moment. It was impossible for a man, under such circumstances, to be temperate, neutral, and loyal at the same time. In considering the case of Mr. Fitzgerald, the House should act from motives of general policy, and not suppose it was meant to bias their judgment by individual consideration for the petitioner. He felt the subject was of too much importance for decision in too thin a House, and therefore he was willing to postpone it till to-morrow. However, in considering the merits of this case, the situation of the country should also be considered; and at the same time, that every humane feeling should revolt at the justification of an act of wanton cruelty, it was the duty of parliament to protect loyal men, for acts done merely with a view to suppress rebellion, and not leave them open to endless persecutions, and litigious suits at law. For the present, he should wish to adjourn this question till to-morrow, and in the mean time, he should turn it more seriously in his mind.

Motion for the present withdrawn.

Tuesday, April 16.

Mr. Holmes moved for leave to bring in a bill, to extend the provisions of the last Indemnity Bill to all sheriffs, magistrates, and military officers, who, since the passing of that bill, had acted for the suppression of rebellion in a way not warranted by law, and to secure all such persons against actions at law for things so done, against whom no declaration had been filed previous to November term, 1798.—Leave being given, Mr. Holmes did accordingly present the same.

Colonel Bagwell said, he saw a principal part of the object of this bill was the case of an individual, and having already spoken his sentiments pretty fully on that subject, he should not now trouble the House by going into it again; he only rose to express his hope, that the hon. member would move for the second reading of the bill on a distant

day, and that the Bill should in the mean time be printed, in order to give time for aggrieved persons, who would be injured by the Bill, to be apprised of its objects, and to petition to be heard by counsel, and evidence against it. Many of those persons might live at a very great distance from town, and would be under a necessity of bringing up witnesses. He therefore hoped, the hon. member would see the necessity of postponing farther proceedings on the Bill to a distant day.

Sir John Blaquiere was against postponing the proceedings. The Bill was absolutely necessary for the protection of gentlemen, who had acted illegally under the propulsion of momentary circumstances for the suppression of rebellion, from vexatious law suits. The session was drawing close to its termination, and if the Bill was delayed for a long day, it would be totally lost.

Mr. Solicitor General thought the Bill indispensable necessary, and there could not be time for postponing it to a very long day.

Sir Henry Cavendish was of the same opinion.

Mr. O'Donnell condemned the precipitancy with which it seemed to be the uniform custom of gentlemen on the government side of the House to urge unprepared measures, against the rights of the people, without due time for discussion. The present bill was principally intended to screen an individual from the legal consequences of a most unparalleled cruelty inflicted by him upon an unfortunate man, merely upon supposition, and without the shadow of proof as to the guilt imputed.—A verdict was pronounced against that individual, by a respectable jury, to a considerable amount, in reparation of the injury sustained.—Here, then, was a bill to do away that verdict, to shelter the offender, and to deprive the injured of the protection and support of the laws.—He cautioned the House how they entertained measures of this kind to the sanction of charges wantonly committed, or how they impressed upon the minds of the common people, an idea that they had no chance of redress under the laws, or the government, and thus prompt them to dark and dangerous projects for obtaining both.

Mr. Holmes, and several other members, denied that this Bill was brought in with any peculiar view to an individual, or that it went to do away the verdict alluded to.

Mr. Stephen Moore said, whether the Bill was for a general, or peculiar object, was not matter of much importance, but if it was for the latter, the more strenuous would be his support of it.—He was not present on a former day, when a discussion took place in that House, relative to the conduct of the magistrate particularly alluded to, the late high sheriff of the county of Tipperary.—If he had, he should certainly have born testimony to the very spirited, active, and meri-

torious manner in which he performed the duties of the office which he filled, and he could state for the satisfaction of the House, that the conduct of that gentleman in the county of Tipperary, was such as very generally to excite the approbation of that county, who owed to his salutary exertions, the preservation of their lives and properties, and for proof of what he asserted, he would now state a strong fact—the grand jury of that county, at the last summer assizes, did unanimously vote their approbation and thanks to that gentleman for his meritorious conduct. He himself, as foreman of the jury, had the honour of bearing these resolutions to Mr. Fitzgerald, and he had the satisfaction to know, that in speaking their sentiments on this occasion, he spoke the sense of five-sixths of the gentlemen of the county; there were, to be sure, some gentlemen of property and clear understanding, who thought otherwise, and that Mr. Fitzgerald deserved the severest reprehension.

It did most unfortunately happen, that men acting in such very critical times, and pressing circumstances, with the very best intentions for the public good, did sometimes fall into errors.—This was a circumstance inseparable from human nature; but what he should consider in this case was, not the partial evil, but the general intention, and the general result, and if a magistrate in directing a system of severity against the guilty, for the prevention of rebellion, should accidentally reprehend an individual who happened to be innocent, he should nevertheless think such magistrate entitled to indemnity against legal prosecutions, on the ground of his general good conduct and laudable intention. He should, for these reasons, support the Bill, and be against any unnecessary delay.

Mr. *Solicitor General* thought no inconvenience could arise from postponing the Bill for a few days.

Monday, April 22.

INDEMNITY BILL.

The House resolved into Committee on this Bill.

Colonel *Mac Donald* rose to admonish counsel, who were called to the bar on behalf of Mr. M. Scott, (who brought an action for false imprisonment, and other outrages committed against him, by Thomas Judkin Fitzgerald, and who conceived, that this bill tended to frustrate the effect of that action) that they would confine themselves strictly to such clauses of the Bill as affected the particular case of their client, and that they should not presume to speak against the principle of the Bill.

General *Hutchinson** contended, that counsel had a right to show how the Bill in

any way affected the rights of their client, or what difficulties this Bill would throw in his way in seeking justice.

After some observations from Dr. *Duigenan*, tending to show that counsel should in no case be suffered to speak against the general expediency of the principle of the Bill, which was for the House to judge of,

Peter Burrozes, esq. as counsel for Mr. Scott, proceeded.—He began, by observing, that some time before, his client (Mr. Scott) who had petitioned that House, against the Bill then in progress, had commenced an action against Thomas Judkin Fitzgerald, late high sheriff of the county Tipperary; and that considerable difficulties would be thrown in his way in prosecuting this action, should a bill so framed as that now before the House pass into a law. It was, therefore, his duty, with the permission of the Committee, to urge such arguments against the Bill as tended to show, that by its present provision, the vested rights of his client would be defeated. It was not either his duty, or his inclination to urge any arguments against the general principles of the Bill. He meant not to question the power of parliament to pass a Bill of Indemnity, nor was it necessary to restrict him from arguing either against the competency of the House, or the expediency of the measure—for there was no man more ready than he to acknowledge, not only that parliament might enact such laws, but that in certain situations, it was their bounden duty to do so. He would contend, however, that as this Bill was constituted, it went to annihilate the vested right of his client, to compensation for injuries which he had suffered, or to impede, in a great degree, the prosecution of that right. It was manifest, he said, that before he began to argue against the Bill, he ought first to state to the Committee what those rights were, which Mr. Scott conceived this Bill would injure. He would then advert to the particular clauses of the Bill, from which his client apprehended injury, and against which, therefore, he was authorised by the custom of parliament to be heard by his counsel.

The right then, to support which Mr. Scott claimed the privilege of coming to the bar, and complaining against this Bill, was one which he had received from the injury he had suffered, and for which, by the law of the land, he had a vested right to reparation. This right, he contended, was as much his property as his horse, or his house, and which, therefore, no act of the House ought in any degree to abridge, or restrict, any more than they would deprive him of the money received for his horse, or his house, if they were taken from him by force, and he had received the amount of them by law. Mr. B. then proceeded to state the circumstances of his client's case, and which he conceived entitled him to reparation in a court of law. Mr. Scott was in June last, a merchant in the

* Afterwards Lord Hutchinson.

town of Carrick-on-Suir, dealing extensively, principally in corn. His character at that time was not only unimpeached, but unimpeachable; his conduct was marked with exemplary attention to the peace and good order of that part of the country in which he resided, insomuch so, that it would appear in evidence, that Mr. Scott knowing, that idleness was the parent of public as well as private evil, had raised a fund by subscription, to which he was a large contributor, for the purpose of promoting industry among the lower orders of the people, by lending them money interest free. He had also distinguished himself by purchasing a large quantity of oats, which he disposed of to the poor considerably under the market price. Thus actively employed, as a benefactor to the public, was Scott, when in June last, while he was enjoying the comforts of domestic life in the bosom of his family, Mr. Fitzgerald, at an early hour in the morning, entered Mr. Scott's house, and rushing into his bed-room, called on him to deliver himself up a prisoner, as a rebel and a traitor. Mr. Scott demanded to know what charge was against him to justify this treatment? Mr. Fitzgerald condescended to reply, that he had sent oats to Ross to the rebel army; and that he, Mr. Scott, had concealed in those oats a considerable quantity of pikes. Mr. Scott replied, that if any part of the charge was true, he would consent to go to instant execution. "I have dealt for many years as a public man; if I have ever sent any oats to Ross, I confess myself guilty; and call on you for proof." "Well," said Mr. Fitzgerald, "though you have not sent oats yourself, I know that your oats were sent, and in your boats, and that the pikes were concealed in them." "There again you are mistaken," said Mr. Scott, "for I consent to forfeit my life, if ever a boat of mine went to Ross." Mr. F. however would not be reasoned with—Mr. Scott therefore sent for some townsmen, persons of the first character and property in the county; these persons came and requested of Mr. Fitzgerald to make farther enquiry into the business before he proceeded, and in the mean time offered to become security for Mr. Scott to the amount of 100,000*l.*—they were men worth above 500,000*l.* They were willing to go farther, and to go security for any sum Mr. F. might require; he, however, would be satisfied with no security, and accordingly he committed Mr. Scott to the gaol of Clonmell. Mr. Scott solicited to be tried by a court martial, and application was made to general St. John for that purpose. General St. John thought it was reasonable he should either be tried, or bailed, or discharged; and this was mentioned to Mr. F.; "I will go to him to the gaol," said he, "but it shall be to double his irons." At length, however, the opinion of general St. John prevailed; and Mr. Scott was admitted to bail, and se-

curity was given for him to the amount of 20,000*l.* a fifth only of the sum to which security was offered for him to Mr. F. before his committal.

Mr. Burrowes said, he hoped it was needless to prove, that this wanton arrest, and unnecessary and illegal imprisonment, gave his client a vested right of action for compensation in damages; nor would he derogate from the sincere and high respect he entertained for the assembly to which he spoke, to suppose that they were capable of interfering with, or obstructing such a right, unless on the most pressing and indispensable necessity.

On being enlarged, Mr. Scott did not immediately think of bringing his action. His first object was, to do that which was of more importance to every man of honour, than any compensation which the law could give him—the vindication of his character. He accordingly did opportune a trial by every means in his power; he was willing and solicitous to be tried by every tribunal that could be resorted to—but being confined under no particular charge, it was not in his power by any method to hasten a trial;—he was obliged to wait the leisure of his prosecutor, and he would not indulge him with an opportunity of proving himself a loyal and an injured man. Having, therefore, patiently waited for several months, and seeing no likelihood that a trial would ever be had, he did at length, in December last, institute an action against Mr. Fitzgerald, for the wanton and gross injuries and insults which he had suffered from him. Prior to that time, the act of Indemnity had passed; to that act Mr. Scott never had, nor has he now, any objection; and had he the honour of being a member of that House, he would have supported it, for that bill enabled him to put his character in issue, and prove his innocence and loyalty before a jury of his country, and that had been for many months his great object. By that act the legislature, after reciting what was notorious to every man, that a wicked rebellion had existed in the country, in the course of which many illegal acts had been committed by loyal persons in their attempts to suppress it, indemnifies all magistrates and other persons, for all acts done with an intent to restore the peace of the country—against all actions brought against magistrates, or others, for acts done in suppression of the rebellion, this act indemnifies the defendants; and so extensive was this act acknowledged to be, that the man who ventured an action against such a person, did in fact put his character in issue, because it was competent to the defendant to give in evidence, consistently with the rules of evidence, whatever tended to prove not only that the plaintiff was a guilty man, but that he was even suspected. To this his client submitted. From the time when that act passed, no man who deserved

to be sheltered by the law for acts done for the safety of the state, had suffered either in his person or fortune. From that time no jury had ventured to outrage the principle of the act, by finding a verdict against any man whom it was designed to protect;—and if the judges of the land, who had witnessed its operation, ever consulted, they would be apt to say, that if juries were in any fault, it was that they were rather too prone to shelter than to punish men whose motives had been honest, though they were mistaken in their conduct. He had omitted to mention, he said, that his client brought his action under the hazard of the heavy penalty of double costs, which were given by the indemnity act against plaintiffs, who either misconceived their action, discontinued, or were non-suited. When Mr. Scott brought his action, he was fully apprized of this hazard—he was aware, that if Mr. F. could prove he had acted from a view of putting down the rebellion, or that his own character could be shown to be in any degree suspected, he would be punished with double costs. At all hazards, however, he brought his action, resting on the consciousness of his own innocence, and the extent of his most unmerited sufferings. If his action could have been supported under the act now in existence, and that it would be less likely to succeed under the present bill, if passed into a law, he conceived his client had as clear a right to come to parliament, and petition against this bill, as he would have to apply against a bill which went to take from him, without compensation, a part of his property.

Mr. Burrows now applied to show how clauses of the Bill tended to interfere with these vested rights of his client. The Bill, he observed, contained all the substance of the present law, and added to it this provision—that whenever the jury should find for the plaintiff in any such action, they should also find expressly, that the defendant had acted from malice, and not with an intent to suppress the rebellion. This provision, he contended, militated against the principle of the act of indemnity, and tended to encumber an action, such as that brought by his client with legal difficulties, which might ultimately defeat it. Whether or not a defendant acted from malice or not, was in all cases an inference of law, drawn from the facts of the case. The Bill therefore made it incumbent on the jury to go out of their own province, and find an inference of law which hitherto has been always the province of the judge—expounding the law, and applying it to the facts. Mr. B. laboured this point considerably, and proved, that in all cases of torts, or crimes, what the law calls malice, is not that kind of malice which the popular meaning of the word imports, but is that feeling, which is an inference that there exists in the mind a general malignity, or depraved disposition. In support of this doctrine, he cited Foster's

Crown Law, 256, 257, Coke's Reports, *Mac Cullogh's case*, and also the doctrine laid down in *Hawkins's Pleas of the Crown*, that if a man intending to burn one house, burns another by mistake, it is nevertheless arson of which he is guilty, the law inferring malice from the act. In slander also, he observed, the law inferred the malice from the words being actionable, without any express finding. To make it necessary, therefore, that the jury should expressly find malice, which in common cases arises by the presumption of law, was throwing a difficulty in the way of his client's acting, which it was his duty to deprecate.

Here Mr. B. was interrupted by colonel *Mac Donald*, who contended, that the counsel was now speaking against the principle of the bill which he ought not to do.

General *Hutchinson* said, that he had a right to argue as he was doing, to show that this particular provision went to divest or shackle the rights of his client.

Dr. *Duigenan* insisted, that he was speaking against the principle of the Bill. After some farther conversation, which terminated in Mr. Burrows being permitted to go on as he had done, he proceeded :

He said he was going on, as well as a limited understanding would enable him, to show, that particular clauses of this bill would put his client into an infinitely worse situation than he was at present. He could not conceive a greater misfortune, he said, that could befall him, than that it should be understood, that he had a repugnance in any degree to the principle of the Bill; for as self-preservation in many cases would justify the individual in outstepping the positive institutions of society, so a regard to its own safety, would in extreme cases justify a community in trampling upon all law in particular instances, when its preservation depended on this exercise of its power: he should be sorry, therefore, either by open argument, or covert insinuation, to oppose the principle of a bill of indemnity. But, without combating the general principle, he must insist, that this clause interfered with the rights of his client, by confounding the distinct provinces of the Court and jury, and making it incumbent on the jury to find malice, which is an inference of law, instead of matter of fact, to which they ought strictly to be confined; for he conceived there was no principle of British jurisprudence better established than that *ad questionem facti non respondent iudices; ad questionem legis non respondent juratores*.—But if they should be called on to find malice in all cases where they are inclined to find for the plaintiff, what would be the consequence? It would be this; malice as he had observed

before, had another meaning in common parlance from that which it bore in law—The jury would naturally understand it in this sense, and if they were told that they could never find that an act was not done in the suppression of the rebellion, unless they also found, that it arose from private malice in the defendant, they will refuse to find for the plaintiff in many cases, because they cannot conceive the defendant was actuated by private malice, though it may be clear as the sun, that the act was not done in the suppression of the rebellion. Thus, if from a motive of ambition, or to attract the notice of men in power, a man should be tempted to commit the most atrocious outrages on the person or property, or liberty of a subject, a jury who find by the evidence, that these parties never knew each other, and that, therefore, the defendant could not be actuated by private malice, would by this bill be compelled to find for the defendant, and thus the most unwarrantable actions, actions unconnected with any loyal or public motive, and flowing from the most wicked and malignant disposition, would be screened from justice. This could not be the intention of the Committee, and, therefore, this clause, in its nature mischievous and unnecessary, and interfering directly with his client's rights, ought to be expunged. Even if it were only doubtful, whether or not such a consequence would follow from it, it ought to be rejected.

He now adverted to the second clause,—that which gave the judge at *Nisi Prius* a power of annulling the verdict, if contrary to his charge, and authorised him to enter a non-suit. This, he contended, completely transferred the right of trial from the jury to the judge, and, therefore, as his client was entitled when he brought his action to the verdict of a jury, it was most manifest, that the present bill which went to divest him of that right, and commit him and his cause to the mercy of a judge, did him a most material oppressive and distressing injury, and justified him in calling on the House not to pass a bill which affected his rights in a manner so mischievous. His mind was incapable of conceiving any thing more monstrous, any thing more subversive of all the principles of British law, than that when a jury of twelve men had given a verdict on oath, declaring a man to have committed an offence against the law of the land, with any good motive, a single judge, perhaps a servant of the Crown, should have the power of giving the lie to that verdict, and trying the cause over again on his sole authority! It was such an interference with the great right of the subject—the TRIAL BY JURY—as had no example or precedent in any former times. Mr. Burrowes dwelt with much energy on the unconstitutional and dangerous tendency of this clause, and its necessary interference with the interest of his client: he showed that the act of the 21st and 22nd of the king,

which gave a power to the judge to certify for revenue officers, when prosecuted for acts done in the discharge of their office, had no analogy to this case; for the certificate of the judge did not interfere with the verdict;—it went only to mitigate the damages, where the action appeared to be vindictive;—but here the verdict was annulled at the discretion of the judge, and the unhappy plaintiff, though a verdict of his country had found that he was an injured man, was yet to be punished with double costs for presuming to bring before the justice of the country, a well-founded complaint.

Mr. *Bushe*, counsel for the petitioner. Sir, in arguing against the Bill now before you, as it affects the interests of my client, I shall be careful to confine myself within the limits prescribed to my learned colleague, by this hon. Committee, and I should derelict not more from my duty, and the respect which I entertain for this House, than from the feelings of my client, if I presumed to dispute the principle of the Bill. That loyal men, who have transgressed the strict bounds of law, in the irregularities of public spirit, which arose from the unhappy state of the times, that these should be indemnified, forms no part of the complaint of my client. He feels no reluctance, that such men should experience the protection of this House, but he very properly requires that innocent and suffering men, in whose persons every principle of law and justice has been violated, should not be debarred of redress. He is one of those innocent, and much injured men, who have a right and property in the laws as they stand at present, and which right would be invaded, controlled, and limited by the Bill now in Committee.

Sir, on behalf of my client, it is competent for me to argue on two propositions—one that this bill will injure the vested rights of my client—and the other, that it is not rendered necessary, by the exigency of the times—but it is impossible for me to establish those propositions, without calling the attention of the Committee, to the case of my client as affected by the existing laws; and permit me to state the provisions of the present indemnity act, and, in the consideration of them, to require the attention of the Committee, to the force and efficacy with which they meet the exigency of the times; and if I show that the Bill of Indemnity, already passed into a law, be sufficient to protect where protection should be afforded, I think I shall then have gone some way in establishing, that my client ought not to be affected by the Bill in progress. It requires, Sir, but little consideration of the present act, to show that its range and scope is unlimited in defending the man, who has acted under it in suppressing the rebellion. Its preamble recites its objects to be the protection of magistrates, officers, &c. &c. who, without authority of law, have taken up criminal and suspected persons, and

inflicted punishment on them, even unto DEATH. It goes the length of protecting the man, who has gone to the utmost extent of human suffering and affliction—the putting to death a fellow creature, on no other grounds than mere SUSPICION. It is not easy to conceive a protection more extensive than this;—an innocent man may be put to death, —and an act, which, by the common laws, and by the feelings of humanity, must be construed into the crime of murder, incurs no punishment under the present bill, if the unhappy victim has been but suspected, and the perpetrator is indemnified, if he but shows any probable cause for that suspicion! Now, Sir, such is the act at present in force—such is the act which, give me leave to say, is sought to be repealed by the Bill now before the Committee. Under this act, how wide and unfettered is the question for the jury, whatever be the offence of mistaken zeal and loyalty! Whether the violation of property or of liberty—the infliction of torture, or of death—whether the privation of civil right, or the privation of life—the question for the jury would be, whether the defendant had reasonable cause for suspicion; and if so, he is protected by the Indemnity Bill. Nor is it here, that the triumph and security of one party rests, and the defeat and suffering of the other; for if the defendant shall be thus borne out by the Bill of Indemnity now in existence, it imposes an additional and unnecessary violence on the plaintiff, in subjecting him to the payment of double costs; and at this risk it is, that at present, an innocent and injured man, brings his action.

Now, Sir, at that peril,—at the peril of disgrace—of his character being gibbeted by the verdict of a jury—at the risk of all those perils—conscious of his innocence, conscious that no probable cause of suspicion could be established against him, or justify the treatment he received, did my client bring his action against the late high sheriff of the county of Tipperary to recover damages. My learned colleague has stated to the House the facts alleged in the petition, and I have witnessed his offer of verifying these allegations, by proof at your bar; I will not therefore trouble this Committee, by again reciting those facts; nor will I disgust the feelings of gentlemen, by describing the violence which an innocent and highly respectable character sustained. I will content myself with merely stating, that my client suffered an injury, and brought his action for redress on the faith of an act of parliament—and between the bringing and trying this action, another act has been brought in to debar him from his rights. My client, Sir, solicits and implores this honourable Committee not to interfere between him and his redress. He solicits and implores the solemn scrutiny of a trial—not merely to prove that he is not a guilty, but that he was not even a suspected man; and he challenges the defendant to show that he

had cause of suspicion, for the wrongs which he heaped upon him, or that they were inflicted in the suppression of rebellion. He implores that he may be put upon his country, not only for the redress of injury, but for the exculpation of his character; and he challenges the investigation of all mankind, to determine whether he has been a suspected character. Having brought his action under an existing law, he implores this honourable Committee, that his rights may be guarded against the injury which would be done to him by the Bill now before it. As to that injury, it is not difficult to see, that under the present law, it is incumbent on the defendant to show a reasonable cause of suspicion in justification of his conduct, and, by a necessary inference, that his motives of action were loyal—but by the Bill now in progress, the plaintiff is obliged to exercise an attribute of omnipotency—he is obliged to search into the heart of the defendant, and show an intimacy with the motives and dispositions of a stranger, only known to him by his tyranny and oppression. That the injury he received has been the consequence of malicious intentions, it is impossible for him to prove, or that it has been done in the suppression of rebellion. Motives can only be inferred from actions, and it is for the defendant to show that his motives were such as to bear him out under the Bill of Indemnity. It is an hardship of the first magnitude for the plaintiff to be obliged to prove two positions—the one affirmative, and the other a negative—and both only in the knowledge of the defendant.

It is an unnecessary severity, Sir, to put upon the plaintiff to prove those two positions, and, after proving them, to have the verdict of a jury lie at the mercy of a circuit judge.

My client, Sir, complains, that the effect of the Bill now before you will not be an injury, which ranging over society, casually touches upon him, but he complains that it presses particularly on him, and, that should he obtain at the next summer assizes to be held in Clonmell, that verdict from a jury, which his innocence and his sufferings demand, he will then lie at the mercy of a judge. I wish, Sir, I could impress a sense of this hardship with more weight on the Committee, but I hope that argument will not lose its deserved influence, which applies equally to the feelings of justice and humanity. Under the present act of parliament, who is the victim of double costs? The plaintiff, who, by a vexatious action, attempts to arraign the necessary excesses of loyalty. But how will it be, if this Bill passes into a law? The man who shall have established his own innocence, and the guilt of the defendant on the verdict of twelve respectable men of his vicinage, deciding on oath, may, by lying at the mercy of the judge, not only have that verdict nullified, but also have to

pay the aggravated costs. Give me leave, Sir, to remind the Committee, that as allegiance is the first duty of the subject, so his first privilege is *protection from the Crown*, and, if necessary, FROM THE LAWS AGAINST THE CROWN. Sir, the twelve judges of the land are selected, for their integrity and talents, from the learned profession of the law, to administer justice to the subject; yet so obvious was it to the legislature, that human nature is liable to error, that an act of parliament was passed for the better administration of justice, constituting the judges independent of the Crown.

It would be a security for my client, to a certain extent, if one of the judges of the land were to preside at the trial of his action, but it is the practice of this country—I must suppose for the wisest purposes—to send the law officers of the Crown as judges of assize, a practice which leaves the right of action at the mercy of an acknowledged servant of the Crown; and my client has a right to suppose that this servant may mistake or misapply the duty of obedience, and nullify the verdict which a jury of twelve men upon their oaths may happen to give. This would be a grievance which my client would have ample right to complain of, if bringing his action under the bill containing such a provision; but how much more so, when he has brought his action under a law containing no such provision—when the merits of that cause which he has instituted under one act, are to be tried under the construction of another.

Now, Sir, give me leave to observe—and only as affecting my client—upon the difficulty and unconstitutionality of that clause of this bill, which obliges juries to find specially a malicious intention on the part of the defendant. Good God! Sir, let the word *malice* be understood ever so liberally by the framers of this bill, let the colloquial meaning only be annexed, yet give me leave to say, that the moment this bill passes into a law, the word will be fixed in a legal meaning, nor can any lawyer say, that it can be construed any other way. Now, sir, to explain the colloquial, and legal significations of the word *malice*, permit me to request the attention of those who are not in the habit of considering law subjects. In a colloquial sense, malice means ill blood between the parties, from previous intercourse of some kind. In a legal sense, it means a sentiment of depraved and vicious hostility, where the parties have never been known to, nor have ever seen each other before. It is the sentiment of which Mr. Serjeant Foster describes that of general hostility against all mankind—bent on mischief, and regardless of social order. It is that temper of mind which sends man, like the common enemy of his kind, roaming abroad for prey, intent on mischief and on blood, and eager to spread about him, devastation, sorrow, and death. It is a consideration worthy to engage the committee, what it

is they put on the jury to find: sir, I believe I say nothing but what is the unquestioned doctrine of the law of this country, that the term *malice*, when forming part of an indictment, and brought for the investigation of a court of justice, means that general emotion of depravity, cruelty, and vice, which I have already described; but even here again, this depends on a combination of ideas relative to mental motive, which it would be impossible to prove. That one man may feel another to be a *savage*, and apparently actuated by a sentiment of general hostility to human nature, is certain,—but the only way to prove those dispositions to a jury is, by the facts brought before it, and if it is the intent of my client to prove the defendant against whom he has brought his action, a cruel, a blood-thirsty, and remorseless man, wantoning in the pain and misery which he creates, he cannot do so by any other mode than by the actions which are the effects of such a disposition.

Here the learned counsel quoted the opinion of lord Mansfield in the case of Johnstone and Sutton, to show that facts were only to be found by the jury, and the malice to be inferred by the judge. This, said Mr. Bushe, is the law of the land; and my client requests that he shall not be stripped of his best and proudest right, the protection and the benefits of settled and constitutional principles of law. Give me leave to say, that the issue to go to the jury should be the reverse of that provided in this new bill. What is the fact for the jury to find under the present indemnity bill? “Whether there existed reasonable grounds for suspicion in the breast of the defendant. If it be not safe to leave such an issue to a jury, and if other words be necessary, let it be that there was or there was not cause of suspicion, but let the inference of law be left to the judge, the facts to the jury.

Sir, it is conceived by my client, that this House has not been aware of all the consequences of this bill, which in one part seems, and only seems, to extend its operation to words spoken, or actions of battery and false imprisonment; but this is only the ostensible influence of the bill, for by the preamble (which Mr. B. quoted) it is evident it may be strained to all causes of indictment. Now, suppose that a man indicted for murder, sets up a defence of homicide justified by the exigency of the times, the indictment would run in the usual way, describing a malicious and felonious intent, and if the defence should be clear, the verdict would, by the present laws, be manslaughter, according to the different degrees of justifiable homicide; but agreeably to this bill, the accused would be found not guilty, however clearly the facts may be established, unless also the evidence should unequivocally go to ascertain a malicious intention, and the murder might be manifest, although the intention of malice might be impossible of proof. Suppose again, that a public spirited character, in his own peculiar

construction of suppressing rebellion, thought it necessary to put his hand in a man's pocket and take from thence one thousand pounds, and that a verdict, directed by facts and by law, should pronounce this pickpocket exercise of public spirit a robbery, would it be necessary that the jury should add that such robbery was committed with a malicious intention? The same question presents itself in an action of *trover*, and it is impossible to say what operation this act may have towards my client, and the community at large. But, sir, it is easy to show, that it would be substantially injurious to him.—I have hitherto supposed, for argument's sake, that the jury receive the word *maliciously* in its technical acceptance; but, sir, they will not receive it thus—they will receive it in a popular sense—let me then show you what you are about to do; and I speak under conviction of the statutes and of the spirit of the constitution, when I say that criminality is not always lessened because not always produced by private malice, which, if it cannot always justify, is, in some instances, a palliation of offence, as it accounts for the injury in the weakness of human infirmity, or the impulse of hatred—but, good God! is it not an hideous aggravation of injury that it can be traced to no motive of personal dislike or malice? I do believe Mr. Fitzgerald knew nothing of Mr. Scott—I do believe that Mr. Scott knew nothing of Mr. Fitzgerald, therefore no private malice having existed, if the issue go to the jury no verdict can be had for the plaintiff. It is physically impossible that where the parties were utter strangers to each other, individual malignity could be a motive of action, and, therefore, it must be a consequence of this bill, that however enormous and grievous the injury inflicted by the defendant, he goes indemnified, and the plaintiff not only remains unredressed, but incurs additional injury for having sought redress. My client, sir, states, that it is impossible that malice could have had any share in producing the injuries which he sustained. He never had the misfortune of Mr. Fitzgerald's acquaintance; is it not most melancholy, then, that what aggravates the sufferings of Mr. Scott and the crime of Mr. Fitzgerald, should be the means, on appealing to a court of justice, of increasing the one and affording impunity to the other? The innocent and injured man seeks redress, and his oppressor has only to come forward and say, "I never knew the plaintiff, consequently could bear him no malice—I must therefore have a verdict, and he must be punished with double costs." Surely, Mr. Cornwall, such could never be the intention of this hon. House!—I think it impossible to enumerate all the outrages of man against man, or the crimes which might be committed without the perpetrator's being actuated by private malice. If a man, impelled by an instinctive love of blood, scores the back of an innocent man, casts him into prison, and

that chance alone interferes between him and the commission of murder, is he to be indemnified because not actuated by private malice? If he be not that beast and brute, whose carnivorous nature leads him, in his thirst of blood, to mangle the weaker and more defenceless animals,—he may be an idiot, he may be intoxicated with sudden power, and commit acts the most afflicting to humanity, without being at all governed by the influence of private malice. In troublesome times he may take it into his head that to be able to read and write is sufficient cause to render a man suspected of treason. He may go into the peaceful village, foaming in his delirium of power combined with ignorance, and supposing the schoolmaster or the exciseman traitors in right of their literary attainments, order them to be tied up to the ladders and whipped, because they were not as ignorant and idiotic as himself! All this he may do from want of intellect, not from any impulse of private malice, yet one degradation of man's nature is to vindicate another, and because he happens to be foolish he is to be excused for being wicked! Why, sir, there is no end to the cases in which absurdity and injury would go justified if private malice were to be made the criterion of guilt. Sir, the old law, as to malicious prosecutions, is strictly analogous to the present indemnity bill, with this difference, that by the one the defendant was tried for a malicious intent to commit an injury, but by the present Indemnity act, the malicious intention comes to be examined after the injury is done. In the one case the plaintiff suffers—in the other he is only in danger of suffering, but under the bill now in progress, a jury may find a want of probable cause of suspicion, but not being able to find a malicious intention, the aggressor goes unpunished! If accused of having inflicted corporal punishment, without information had on oath, yet he goes unpunished because no private malice is proved. He may say, "true, I did not even suspect the plaintiff, but I whipped him to extort confession;" and thus, if torture,—a principle the most odious and repugnant to the British constitution, agonizes all the land,—yet if inflicted without private malice, the torturer is to be indemnified!

Sir, I shall conclude my objections to the bill, by shortly observing on the peculiar effect it will have on the case of my client, should it pass into a law. Mr. Scott brings his action before a jury,—they find the facts, he disclaims acquaintance with the defendant, and therefore, as it is as impossible that there should exist any previous malice, as any subsequent friendship, this bill robs him of right of action, and it might as well preclude him from bringing his action altogether. Sir, my client states that the bill, if not meaning colloquial, must mean legal malice, and therefore gives to the jury an exercise of construction, which only should be given to the judge.

He states that if they should even leave him in this respect as he was before, yet it leaves the verdict at the mercy of a going judge of assize. He states that no precedent of law, or principle of the constitution, warrants a judge to determine on facts—but this bill not only impowers a judge (monstrous idea to a constitutional mind!) to declare on the fact, but empowers him to do so contrary to the oaths of twelve men, forming a jury of the vicinage, and most competent to form a true and impartial judgment. He states, that for the first time, it is about to be pronounced, that the next going judge, a servant of the Crown, shall have a power to annul the recent and fresh verdict of twelve men of the vicinage, determining on oath, and, with a word, he shall prostrate the function of a juror, and with it the dearest and most valuable privilege of our constitution. Sir, he relies upon what has already been stated, that the action which he has brought, on the faith of a former act, and the right which he would obtain from a verdict given under that act, are about to be snatched from him by the bill now in progress; and therefore he relies, that the bill in its future consideration, will be so modified as not injuriously to affect his right and interest.

The *Prime Serjeant* spoke in reply to the arguments of counsel. He said, it was argued as if this bill infringed the law as it formerly stood, and repealed the former act of Indemnity. He contended it did neither; it only carried into execution with more effect the provisions of the Indemnity act, namely, that when numbers were engaged in putting down a dangerous rebellion, and were obliged in many instances to act in opposition to established law, those persons having acted from a laudable and useful motive should be protected from the penalties of the law.—In acting in this way for the good of the state, the party was justified by his intention, and if any man were to act under such a pretext in a way which no reasonable man, no person of plain common sense, could be supposed to act for the public safety, then he saw no reason why the party should not be saddled with malice, the commission of the injury made a *prima facie* case for plaintiff—nor could there be any good reason why the defendant should not be cast, if he could not show probable cause—nor why the jury should not be obliged to find in their verdict true ground upon which they could find a verdict for the plaintiff. It was peculiarly necessary, in times like the present, that they should be bound to do so, to obviate the danger of finding a verdict without knowing precisely the ground on which it was found. The danger of juries finding popular verdicts against parties charged with offences which they have been led into from a regard to preserve the tranquillity of the country, afforded also a good argument for investing the judge with that controlling power over the verdict which

VOL. XXVII.

this bill gave him.—Indeed he already possessed this power to a certain degree, for it was the common and daily practice of the courts to set aside verdicts which were had against the direction of the judge. It was argued that it was hard an innocent man should suffer unmerited punishment and yet have no remuneration—he allowed it was hard, but it would be equally so if he were to be reprimanded out of the pocket of the man who had acted against him only with a view to save the country; and, in fact, it is not from the man who so acts that the injured party has suffered—it is rather from the circumstances of the times, which made that suffering necessary. With respect to the argument, that making the jury find express malice wherever they found for plaintiff would, in a great many instances, frustrate the plaintiff's action, that was the very object of the bill. It went to protect the loyalist against paying damages in cases where he had acted from a good motive. It was also an object of the bill to leave nothing in obscurity, but to make the jury state, in their verdict, the grounds on which it was founded. It was a strange assertion that had been made in argument against this bill—namely, that it compelled a jury to find a very unusual thing, namely, a negative—now nothing was more clear than that the jury, in almost every case where they found for a defendant, found a negative—they found that the defendant did not undertake—that he was not guilty—that it was not his deed, &c. &c. On the whole, therefore, he thought no good argument had been used against the bill, and therefore it should have his support in its present form.

Mr. *Uniacke* thought it was a good answer to Mr. Scott, to say that Mr. Fitzgerald had done nothing against him until he had received information on oath. Mr. F. went on the written evidence which had been given him by captain Tresham of the Louth Militia, which was sent in the first instance to general St. John, and afterwards sent by him to the sheriff, with directions that he should arrest Mr. Scott; it therefore became the duty of the sheriff, thus acting under the orders of the general of the district, to take Mr. Scott and lodge him in gaol—and Mr. Scott if he felt himself an honest man, could not have brought any action against the sheriff for thus doing his duty.

Mr. *Bagwell* said, the question was not whether Mr. Scott was illegally or oppressively arrested or not. If Mr. Scott thought himself injured, and had brought an action under the law as it then stood, the legislature ought not to deprive him of his action, or to throw any impediments in his way, or enact any law which would lessen his chance of obtaining compensation for the injury, if he had suffered one.—As to the principle of a bill of Indemnity, he agreed to it; but in this instance were some clauses to which he would never agree—such, for instance, was

3 F

that which made it necessary for a jury to find that the defendant acted with malice against the plaintiff, before they could give a verdict against him.—He thought it was impossible for any jury to dive into a man's motives against the injured man, or a motive of general malignity or ambition which actuated him in doing the act with which he was charged—and if it were this last motive which governed his conduct, surely he ought not on that account to be acquitted—nor would the House add a new injury to those the sufferers had already undergone, by depriving them of their legal remedy.

Mr. Lee agreed in almost every position laid down by the prime serjeant. He said that the House had already, in the course of this rebellion, passed two acts of indemnity for the rebels, and he thought it would not be too much to pass one effective act for the loyal men. He was a friend to the clause which made it incumbent on the jury to find the facts specially.—It had been already done in actions against revenue officers—where the judge had a power of “certifying probable cause,” to ease the officer of costs. Now, in the present case, as in those relating to revenue officers, he thought it lay upon the executive officer, who claimed the protection of this bill, to show that he had probable cause for what he had done—and if he could not show that to the satisfaction of a jury, he had no hesitation in saying, that they should find him guilty of malice against the injured party—then a man who should take up a man passing along the streets, and dressed perhaps in a yeoman's uniform, without information or reasonable suspicion against him, such a man could not shelter himself under this act, for he could not show probable cause, and a jury therefore ought to find malice against him.

He thought the expression, “with intent to suppress the rebellion,” an issue too difficult for the jury—and moved, as an amendment, that the word “purpose” be substituted for “intent,” as a term which might be more easily understood to apply to the facts coming before the jury.

The Hon. Mr. Yelverton said, he would not have risen in the debate, but for some very extraordinary positions laid down by his majesty's prime serjeant. That gentleman had said, the only object of this bill was, to protect the man who acted from a good and loyal motive.—If that were the case, then this bill was superfluous; for the intent was fully protected by the present indemnity act.—The right hon. gentleman had also said, that the mere commission of the injury by the defendant, his having imprisoned, assaulted, &c. made out a *prima facie* case for the plaintiff; and it was incumbent on the defendant to show the innocence of his motives, or the jury would find against him. Mr. Yelverton differed from the prime serjeant in this opinion—for, under this bill, it

would not only be necessary to show that the act was committed, but he must show a cause of action accruing to him—he must show also, that the act was done in malice against him, and that it was not done with intent to suppress the rebellion. It was now for the first time, that he had heard from his majesty's prime serjeant, that the defendant was to make out the plaintiff's case; he conceived it was not law in any case, and particularly it could not be so under this bill, if it should pass into a law. On the contrary, should any ferocious savage turn himself loose upon a county, and, like an unmuzzled bear, mark his footsteps with blood and ruin—should such a creature, in the form, but without any of the feelings of a man, attack indiscriminately all whom his avarice and malignity might think proper to mark as his victims? Mr. Yelverton contended, that, under this act the monster would escape with impunity, wherever the suffering object, to whom, perhaps, he was a perfect stranger, and therefore could not be actuated with personal malice against him, could prove the existence of that malice, which in fact did not exist, but the want of which was supplied by much worse motives. Another extraordinary position of the prime serjeant's was, that in many cases the jury found a negative, which was proved to them—and he instanced the general verdicts of *non assumpti*, not guilty, &c. &c.—But Mr. Yelverton informed the prime serjeant, that in all those cases, the jury found the verdict not on the negative being proved, but on the defect of proof to make out the affirmative—namely, that the defendant had undertaken to pay, or that he had committed the crime, &c. and therefore the prime serjeant, in this instance, had fallen into a very wide and manifest error, when he said it was common to prove, and the jury to find a negative. It was no such thing. A bill like the present, which made it necessary for a jury to do so, before they gave a verdict to an injured man, he would never support.—He never would support a bill which evidently went to countenance that which the British law so much abhors—TORTURE!—he never would support a law which went to sanction the inquisition. This bill, he observed, was evidently connected with the petition which was presented to the House some days back; it was traceable to that source, and calculated to meet every particular prayer in that petition. He allowed it was common to frame general laws and rules from particular cases—there was in fact no other way to do so—but it was not from such particular cases as that which had been laid before the House, that a general rule should be framed—it was not from the case of an individual who has proved himself the disgrace of human nature, and who has done every thing which can tend to degrade the human character, that a rule should be drawn to govern the conduct of ordinary

men.—It was not from the case of him who committed the worst crimes to gratify the most sanguinary dispositions, that a rule was to be drawn, which was to be a law of society. What pretext of motives such a man might plead, they should have very little weight with him; or if those acts of atrocity were committed by way of punishment for offences, the barbarity of the punishment bore no proportion to the guilt of the crime, and they were committed to force discovery. God forbid that he should ever sanction such conduct for so illegal a purpose.—With respect to this man, it was said he acted from no bad motive, if so, then the present law will indemnify him; if he did act from other motives than a regard to the peace of the country, surely the legislature would not screen such a man from punishment. As to what has been said, respecting the analogy between the laws which protected revenue officers from actions wantonly brought against them, and this, he showed it did not hold—those acts only enabled the judge to certify for the officer in order to lighten costs—they did not, like this bill, enable him to contradict the verdict, and give him an absolute control over the jury. God forbid that such an act should ever be the law of this country; for though he was convinced, the judges who now filled the benches, were incapable of making a bad use of such a power, yet we might again see a Bacon or Jefferies preside in a court of justice. He concluded by saying, he should move for the expunging this and the next clause.

Sir *W. G. Newcomen* said, he had a property in the county of Tipperary, though but small compared with that of other gentlemen; but what he did possess, he considered himself indebted for the present possession of to the exertions of the late high sheriff. To what he had done, he was driven by necessity, and the hon. baronet differed from Mr. Yelverton so far, that if this bill had reference only to the particular case of Mr. Fitzgerald, he would for that reason support it. He was not one of those kiln-dried loyalists, who, though they professed to support the Constitution, yet found fault with every man who dared to transgress the strict letter of the law in defence of it.

General *Hutchinson*, after adverting in warm terms, to the indecorous language of "kiln-dried loyalists," as applied to any members of that House (which sir *Wm. G. Newcomen* rose and said, he did not mean to apply to the hon. gentleman, or any member of the House) proceeded to say, that to his mind it did not appear that the conduct of Mr. Fitzgerald was such as entitled him to the interference or protection of parliament. Mr. Scott, the petitioner now at the bar, and Mr. Wright, the other gentleman whom he had so grossly injured, were both gentlemen equal to Mr. Fitzgerald himself, in every thing which constituted that cha-

racter, and he never could agree to any bill which went to sanction or cover the enormities he had practised upon each of those gentlemen. The principle of a bill of indemnity, he conceived to be, an exception of certain cases, from the operation of the general law, and as such it became necessary for every person claiming the benefit of the indemnity to show, that he came within the meaning of the exception. What did this bill? It says, "True, Mr. Fitzgerald flogged you, Mr. Wright, and wantonly imprisoned you, Mr. Scott, you shall have your remedy against him, but you can only have it on these terms—you must enter into his bosom—you must dive into the reservoir of his heart—you must explore secrets known only to the Almighty—and you must not only learn what were his secret motives and intentions, and whether he was actuated by any malice to you, or by a general principle of hostility to mankind, but you must also bring proof of this to lay before a jury! If you do this, you shall have justice—if you fail in doing it, you shall be punished with double costs, for daring to complain of what you have suffered." As a member for a commercial city, the general said, he could not help asking, gentlemen, whether if a magistrate, under colour of his office, and a pretence to suppress the rebellion, should take a thousand pounds out of a man's pocket, it would be necessary the jury should find malice against the defendant, before they would give a verdict against him in an action for money had and received? This was not an ideal case, the thing had actually happened, and in the county of Tipperary, so noted of late for enormous breaches of the law. The persons concerned in this transaction were Mr. Fitzgerald, the high sheriff of Tipperary, who now applies for indemnity, and an old man of the name of Burke, sixty-seven years of age. The circumstances of the case were these—this old man had the misfortune of falling under the suspicion of Mr. Fitzgerald, he was taken accordingly on some charge, of which he knew not the particulars, and was carried to the gaol of Clonmell; in this prison he lay confined for three weeks—he was threatened with being flogged if he did not make confession of his guilt, and discover of those he knew. He confessed nothing; it was therefore thought right by Mr. Fitzgerald, that he should be tried by a court-martial—he was tried and acquitted. After his acquittal Mr. Fitzgerald came to him and said, "Sir, you have been acquitted, but you are a wealthy man, and before you are liberated, you must pay a thousand pounds towards the voluntary subscription for carrying on the war." He then insisted on his passing a bond immediately for that sum. He did pass the bond, but whether it was made payable to the king, or to Fitzgerald, the old man, from the agitated state of his mind at the time, could not remember. Having executed this bond

he was remanded to prison, and kept there ten days longer, until he should pay the money. In this interval his friends were endeavouring to raise the sum, and having at length effected it, sent it by his son to Mr. Fitzgerald. Mr. Fitzgerald then told the son, he must pay a sum of twenty-four guineas, between a corps of yeomanry commanded by captain Otway, and the gaoler at Clonmell. The son assented, and the old man was liberated. Some time afterwards, when he had time to recollect himself, Mr. Burke sent to Mr. Fitzgerald, for the money which he had paid, and told him, that having been acquitted, he conceived that Mr. Fitzgerald had no right to retain that sum. To this request Mr. Fitzgerald paid no attention. At length an attorney waited on him, on the part of Mr. Burke to demand a restitution of the money. To this gentleman, Mr. Fitzgerald replied, that he should have an answer as soon as he should have an opportunity of speaking to the lord lieutenant. No answer being sent for some time, he was served with a *sub-pœna*, and then, and not before, the money was returned to Mr. Burke. Here was an attempt to levy money on the subject without the authority of parliament.—Here was another act of Mr. Fitzgerald in direct and flagrant violation, not only of the law of the land, but of all the principles of equity and justice. Had Mr. Fitzgerald inquired into Mr. Wright's character, he would have found him as loyal a man as himself. Had he inquired into Mr. Scott's character, or listened to the evidence, that was offered of his loyalty, he would never have imprisoned him: and, under no circumstances of Mr. Burke's case, was he justified in extorting from him the sum of 1,000*l.* He was not therefore, in any respect, a fit object for the interference of parliament. Two juries had already decided on his case, and they were the constitutional and best judges of it. He could not therefore think of supporting a bill, which, contrary to all the principles of British jurisprudence, bent the law to the case, and not the case to the law.

Mr. Uniacke, in answer to general Hutchinson, went into an explanation of the transaction with Mr. Burke. He stated, that Mr. Burke, being suspected of having been in the secrets of the rebels, had been arrested; that his friends had offered to compromise by giving two thousand pounds towards the voluntary loan, to prevent his being transported; that it was resolved by the magistrates at the sessions to accept the sum, if the sheriff concurred; that he did concur; that the sum of one thousand pounds was paid, and was applied by Mr. Fitzgerald to the uses of government; that after the rebellion was ended, this man applied for the money; Mr. Fitzgerald consulted government, whether the money should be returned, and government, not thinking it right to accept of money raised in this way, had ordered it to

be refunded, and it was so. As to Mr. Wright, he said, though that gentleman had a verdict in his favour, he was yet fully convinced, there was the best reason to believe that he had been connected with the rebels. Mr. Uniacke warmly defended Mr. Fitzgerald's character, and said, it was remarkable, that notwithstanding all that had been said of the ferocity and cruelty of Mr. Fitzgerald, yet in no instance had he taken any man's life. He had preserved the tranquillity of his county, without the loss of a single life.

Mr. Johnson (a new member) said, that he had many strong objections to the provisions of the Bill, which put upon the jury, to find the cause of actions to have been done maliciously; those objections he would submit to the Committee, without making any motion on them, conscious, that if they deserved any weight, the right honourable framer of the Bill would attend to them. It was alone the province of juries to find facts—the inference was for the judge—but according to the Bill before the Committee, on every action for false imprisonment, assault, &c. it must make a part of the record, that it was done with a malicious intent. If a man arrest another by mistake, it must be agreed that it was not done maliciously; yet by the Bill, the known and settled principles of the law, and of reason, were to be overturned, and the injured party have no redress. If applied to acts only done in suppression of the rebellion, there would be no use, or necessity at all in the introduction of the word *malice*; and, therefore, it was obvious, that it only tended to entangle and embarrass the Bill. Was it not sufficient protection to prove, that the act was done in suppression of rebellion? The defendant would then be indemnified; and surely, said Mr. Johnson, it cannot be the intention of the House, to cover acts not done in suppression of the rebellion. He disclaimed any intention of embarrassing the progress of the Bill, by the observations he had made, for he felt convinced, that if Mr. Fitzgerald had never come before the House, the passing of such an act would be necessary; but he stated his objections, respecting the operation of the Bill, not doubting, but that they will have all the weight they deserved with his right honourable friend.

The *Prime Serjeant* argued, in reply to Mr. Johnson, that unless the defendant could prove the act done in the suppression of the rebellion, the case would stand as at present, and it would only be for the jury to find the *malice* from the evidence adduced; indeed it would be a necessary inference arising from the failure of the other plea.

Mr. Johnson re-urged his objections, persisting in saying, that the word *malice* were better left out. He would not, however, pertinaciously adhere to his opinion, against that of the Committee.

Mr. Mac Lelland contended, that as the Bill was framed for a particular purpose,

there could be no reasonable apprehension, that it could possibly operate as a general law.

Mr. *Ormsby* said, that unless the defence set up shall be that of suppressing the rebellion, the action cannot refer to the Bill in debate, nor would the judge suffer such a defence to be set up, if the cause of action had not an apparent reference to the Bill.

Mr. *Grady*.—We have digressed much to Mr. Fitzgerald and his conduct; and gentlemen have argued, as if he were the professed object of the Bill—if so, I beg one word on this head. Mr. Fitzgerald claims it from me, as having been a principal counsel for him in a late case. Sir, I have it from the most honourable and virtuous characters in the county of Tipperary, that they never knew a man of purer heart, and higher honour than Mr. Fitzgerald. Differences of opinion, on political and private motives, may arise, but I will say, that the gentlemen of the county of Tipperary feel indebted to the intrepidity and vigour of Mr. Fitzgerald's conduct, that they now possess, either their lives, or their fortunes. Having said thus much on the general conduct of Mr. Fitzgerald, permit me now to offer one word, as to the particular case of Mr. Wright. In the action which he brought, I am convinced, that if the materials now before the court of Exchequer* had been laid before a jury, he would not have obtained sixpence damages. He may be a poor and innocent man, but it would most obviously appear, that Mr. Fitzgerald had acted upon probable suspicion. Documents were in the hands of a third person, and could not then be produced—papers found in the possession of Mr. Wright—one of which, in every line, manifested an intimate knowledge of the united system then going on. His counsel might say, that the paper was written in derision, but—

Mr. *O'Donnell*.—I call to order. While the issue of a trial is yet pending, and uncertain, I hold it improper such observations as these should be made.

Mr. *Grady*.—What I have said, has wholly arisen from my feelings, for the manner in which Mr. Fitzgerald has been spoken of; but while I wish the Bill to go as far as possible to meet the cause of Mr. Fitzgerald, and every other loyal subject in similar circumstances, I must deprecate the idea going abroad, that a law should pass this House, depriving the subject of his right, and I object to the Bill, as professing to give the plaintiff the advantage of a jury of his country, and then depriving him of the benefit of their verdict. I would rather, Sir, a bill should pass at once, covering Mr. Fitzgerald altogether from the consequences of his activity in suppressing the rebellion (and he well deserves it) than that this act should pass into a law as it now stands. Sir, you

* See the end of this case.

will never find twelve conscientious men, who can give a verdict according to this bill—they never can; and I think it would be equally effectual, if the word *malice* were expunged.

The *Attorney General*.—I beseech the House, for a moment to think where we are, and what we are doing. Just escaped from a dangerous rebellion, which for a while made it doubtful, whether we should at this day exercise the functions of legislators—I beseech gentlemen to consider, that if we let the idea go abroad, that the active loyalist is not to be indemnified, the most fatal consequences may follow. I beseech gentlemen at every side of the House, who agree in the principle of the Bill, not to object to its form. I have considered this subject, Sir, very much, and whatever my friendship for Mr. Fitzgerald may be, I trust it will be believed by every man who hears me, that I am not capable of keeping a particular case in view, in supporting this Bill as it now stands. When the state of this country is considered, and that there are thousands of honourable men in the same predicament with Mr. Fitzgerald; I am persuaded the Committee will concur in the Bill. Sir, in this very town, the best of men have inflicted death itself, for the purpose of saving the state, and in the confidence of the protection which this House would afford to them, and if I think any objection stands against this Bill, it is that of not going far enough. I have, on a former occasion, spoken at length on this Bill, as one founded on constitutional grounds, and I shall beg the attention of the Committee on the same head. There has not been a single bill of indemnity since the twelfth year of Charles 2nd, down to the present period, that has not obliterated all causes of action arising from those circumstances, rendering indemnity necessary. The 12th of Charles 2nd, after such a rebellion as that of Charles 1st, and the usurpation of Cromwell, was enacted to make all men in the state rejoice. The first principal act of the restoration was, to cover in oblivion, all acts relating in any way to the past rebellion, and all causes of action arising therefrom were obliterated. The same principle was acted upon in 1658, and let me say, Sir, that it was a most wise principle, and such as we should adopt in its fullest extent. We should apply

Some sweet oblivious antidote,
To pluck from forth the bosom of the state,
The memory of those perilous crimes,
So near to weigh it down.

As to our own history, in the law of William, in confirmation of the articles of Limerick, the same principle was observed. Now with regard to the Bill in progress, it gives a power to all his majesty's subjects in bringing their actions down to a period of three months, subsequent to its passing into

a law—nor can it relate to any subject not connected with the rebellion, for if it should appear otherwise, the judge would put the defence under this bill, wholly out of the consideration of the jury.—Here the Attorney General quoted the preamble of the Bill, to show that it could not possibly have application to any but acts connected with, and arising from the rebellion. In essence, and agreeably to the intention of the legislature, this bill gives no more indemnity or protection, than the Bill at present in existence.—Where then, it may be asked, is the necessity for another bill? I will tell you. A cause has come under trial, where the information acted upon could not be disclosed, nor, if it could, was the informant forthcoming—therefore, as the judges were not fully satisfied as to the construction to be given to the present Bill, it became absolutely necessary to enact a new one. Amnesty to rebels has been co-equal with indemnity to loyalists—and, Sir, I think it not less just than politic to obliterate all cause of contention on both sides. As to the difficulty which is said to arise with respect to the construction to be given to the words “*malicious intention*,” I contend for it, that they are not more vague than the word *suspected*: nor can I perceive any object which can be attained by the amendment proposed by my honourable friend, as I cannot distinguish the difference between *intent* and *purpose*; but this I am sure of, that as the intention constitutes the crime according to law, so it is fully competent for a jury to decide on intention. It is said, with regard to malicious intent, that it is very difficult to prove it; but I beg it to be recollected, that it is the general inference of the law, that the facts proved, malice becomes a necessary consequence, and if the introduction of the words into the Bill be at all liable to objection, it is that it throws the *onus probandi* rather too strongly upon the defendant. Sir, I hardly feel myself justified in saying thus much, for I feel that every moment consumed on this subject, is damping the ardour of men of loyalty and spirit, and it is impossible to calculate the mischief, which, perhaps, we have already done, by the difficulty we show of indemnifying such men.

I am desirous, Sir, that we retain in this country, the gallant spirit which has saved it, and I wish every remembrance of every action connected with the rebellion, were obliterated down to the present day. It has been said, that it is hard innocent men should suffer, and not obtain redress—but, Sir, innocent men have suffered on both sides. Lords O'Neill and Mountjoy have been murdered, most barbarously murdered, and yet those who murdered them, are still alive. Amnesty has been extended to them, and shall not indemnity be given to those who have endeavoured to repress their horrid crimes? Sir, multitudes of actions are at this

moment, awaiting to be brought by persons of the most equivocal character—I mean those persons who stood neutral when the state was in danger,—and gentlemen, circumstanced like Mr. Fitzgerald, instead of being ashamed, should be proud of that persecution which has been incurred by their zeal and loyal ardour. For my part, Sir, I should blush to have remained neutral, in a civil war. I do not hear, that the petitioner has taken an active part against the rebellion, and a neutral man, I look on to be little better than a concealed rebel. What, Sir, are men of active loyalty to expect in future, if this House shows such tardiness in protecting them? The nation, which, in some cases, deliberates, is lost, and the most fatal consequences may be the result of trying those men by the little rigid technicalities of law, who saved the state when there was no law to act upon. The House of Commons itself, by its address, proclaimed that there was no law, and called upon every armed man to stand by the state, and put down rebellion, when such men as Mr. Fitzgerald obeyed the call, and obeyed it with effect—but, Sir, the case of this gentleman, or the cases of those who may conceive themselves to have been injured by him, are too trifling and insignificant to interfere with a measure of great and general state policy—yet I must say, that if only for the sake of this individual, the Bill ought to pass. I recollect, Sir, when I was going down last May to the county of Tipperary, in my official capacity of solicitor general, I was met by two of the judges of this land, Mr. Justice Chamberlain, and Mr. Justice Downes, who had been also proceeding thither, but were obliged to turn back, although attended by a strong military escort. I was warned by them how I attempted to proceed where a spirit of rebellion had superseded the laws, and I accordingly took that advice, which I would have conceived it madness to have disregarded. Yet what did Mr. Fitzgerald do? He did that which the judges of the land, and the law officers of the Crown, dared not do—he took the justice and the peace of the country on his own shoulders—and shall we now set the example of persecution, and refuse indemnity to such a man? I said it in another place, and I say it now, that I should consider myself to be the happiest of men, if I could bequeath to my son, that spirit to save his country, which my persecuted friend has done. Sir, it would have been the wisest policy, I repeat it, at the first day, to have passed an act of oblivion, instead of an act of indemnity—the only objection that can justly be advanced to the Bill now before you, is, that it falls short of that protection to loyalty, which it should afford; and I conjure the House not to fritter away the protection which it does give.—Let us boldly keep up an ardent and undiminished spirit of loyalty in the country; if you do not, that country is lost.

Mr. French said, that he had assented to every bill of indemnity passed in that House for the last six years, and his objection to that brought in by an honourable member, whom he did not then see in his place, was not that it had a retrospective operation, for that a bill of Indemnity must necessarily have, but because it went to affect every cause of action for assault, trespass, &c. therefore the observations made by the right honourable member, as to the necessity of a retrospective action in the Bill, if intended, could not apply to him.

[Mr. Attorney General explained.]

The Hon. F. Hutchinson.—Sir, if I shall be favoured with the indulgence of the House, it is my purpose to enter at some length into the spirit of this bill; but first; I must express a hope, that the present is not a contest of loyalty between us, and am induced to do so, because the right honourable member has attempted to raise such a feeling in substitution of that conviction which should be the result of reason and argument. If there is any one man in this House, who more than another, would adventure every thing in defence of my king and country, I, Sir, will be bold to say, that I am that man; but I would make no merit of it, to divert the feelings of the House from the object which should strictly be kept in view. The right hon. and learned gentleman said, that none of the petitioners took an active part in suppressing the rebellion.

[Here Mr. Attorney General explained.]

Sir, the words were these: that none of the petitioners appeared to have taken an active part against the rebellion—Sir, I stand here in defence of a gentleman of most respectable fame and loyal principles, of a much injured individual, and I should be unworthy the honourable situation which I hold in this House, if I suffered his character to be hunted down—I will not suffer the character of an honest man to be vilified. I am as incapable, as the right honourable member, to prevent the errors of loyalty from being sufficiently shielded, but I never will hear the character of an honest man vilified—

Mr. Attorney General.—Sir, I call to order, when the hon. member uses the word vilify; I must say, that it is not an expression properly applying to me.

Mr. Hutchinson (in continuation). Sir, I claim the right hon. member's words; I am not to be put down by a loud tone of voice—I hope I shall not in any instance lose sight of the respect which I entertain for the chair; but I will not suffer a cry of loyalty to be raised against considerations of justice.—I am loyal, Sir, I believe it will be admitted that I am, but I will not suffer an individual, on the general principles of justice, to be injured by a personal bill brought in on motions of personal friendship—I say this. Bill ought

not to be brought in, and if it is pressed through parliament, it will disgrace this parliament in the estimation of this, and the sister country.

On the 19th of April, I presented a petition against a bill then introduced by an hon. member, for whom I have high personal friendship and esteem, and if he were now in the House, I would tell him, that the same motives which induced him to withdraw his bill, should urge him to oppose this, because it is to the self-same purpose and effect, with this difference, that it holds out to the injured subject the right of action, but precludes the possibility of recovery. I ask the honourable and learned member, if the law, as it now stands, would not answer the purpose of general protection? I declare, solemnly, that if the right honourable member can convince me, that the Bill now in progress is not calculated to debar an innocent man from his right of action, I will agree with it as it now stands. If there be one person more than another, who wishes to protect the loyal man to the utmost extent, I am that person, and I beg leave to remind gentlemen, that when first this bill was brought into the House, I said, if the motion was for a bill, to amend the general Bill of Indemnity, I would agree in that motion—and I am free to say, that if I had not seen how it could be amended, I would have opposed the committal of this Bill, which goes to debar the right of actions already brought, and does an irreparable injury to innocent and suffering men. Let me warn this House to take care how it passes a bill, which will prevent injured persons from obtaining redress. I am not much learned in the law,—but I call on the right hon. member to show how the person recovering under the present law, could have done so, had he brought his action under a bill such as this now in Committee? He has not convinced me, though he has talked much, how that recovery could be so had. Sir, I must observe on liberties which have been taken in the course of this debate, and excuse me if I should enter more at large on this head than would appear justifiable, as it is relative to the object before us. Mr. Cornwall, I happened to have been a resident in the south of Ireland, when the late rebellion broke out, and a noble lord now in hearing [we suppose lord Donoughmore] and I took some pains to suppress it—or to prevent its breaking out—the course which we took was somewhat different from that taken by others, and, if not thought irrelevant, I will take the liberty of describing that course [a general cry of Hear! hear!] In some parts of the kingdom, Sir, gentlemen kept their eyes too long closed to the storm that was gathering—but it was not so with us.—The first indications of actual rebellion were by nocturnal assemblages, and by breaking into houses to obtain arms.—As soon as those indications manifested them-

selves, the noble lord did from night to night execute the Insurrection Bill—and where arms were found unregistered, necessary punishment followed. For several weeks, this course was pursued without intermission, and what was the consequence? In the space of a very short time, the deluded people seeing that they could not defeat the vigilance of the noble lord, came voluntarily in crowds, giving up their arms, and taking the oath of allegiance—and to effect all this, no unnecessary severity was resorted to.—This I say in the hearing of gentlemen, who affect to treat too lightly, and with contempt, the cruelties inflicted on the lower orders. Sir, I say, that the lower orders ought to be attended to. I respect the law, Sir, and fear no man—and what seems to me to be for the benefit of society, that will I speak out. If it be the misfortune of this country, that a line of separation has been drawn between the higher and the lower orders of the people, I call with a warning voice on gentlemen, how they stronger mark that line, or turn away their ears from the complaints of the poor, or the injured. I state, that the connection between the higher and lower orders of the people ought to be drawn closer, instead of being widened, and I challenge any man to contradict me, when I say, that by the line of conduct I have described, the noble lord, of whom I have spoken, did gain the confidence of the people, who, for a circuit of six or seven miles, came in and delivered up their arms, and voluntarily promised to discover, if the conspiracy was attempted to be renewed, and in no instance did they break their faith, for in no instance did the noble lord break his faith with them. No person can presume to contradict me, when I say that without resorting to the torture, these good effects were produced, and rebellion prevented. The practice of torture was not necessary—I abhor it, Sir,—and if it be a mark of disloyalty to do so, I am disloyal—very disloyal—for I detest the torture!

The right hon. and learned gentleman has endeavoured to draw away the attention of the Committee from the real subject, and to induce the belief, that it is a question of loyalty. If I do not err, it is whispered across the table, that it is a question of loyalty, and if the assertion is renewed, I will content myself with saying, that it is at least a very strong assumption.

The right hon. member knows, that Mr. Scott is a loyal, as well as a suffering man, and therefore the clause has been brought into the Bill, to prevent him from obtaining redress. If he was not loyal, the clause would be wholly unnecessary. He knows that the case of his friend is contrary to the principle of the Indemnity Bill, and he is obliged to bring him within it, and a bill is so framed, that the injured party shall not only prove himself innocent and loyal, but he must dive into the heart of the defendant,

and manifest his secret motives of action; and I will only say, that any bill having such a monstrous tendency, and going to place a bar between injury and redress, is a bill from which I am justified in expecting the most fatal consequences, and which I adjure the Committee, in its sense of justice and sound policy, to reject.

Mr. *Prime Serjeant* denied, that there could have been any personal motive for the Bill, and if the case of an individual had suggested the necessity for a bill differing from that in force, it was brought in only because a vast number of other persons, who had been active in suppressing the rebellion, might be equally subject to persecution, from the deficiency of the present act to protect them.—He contended, that it was doing an injury to his right hon. friend, to suppose that he could be influenced in a public measure, by private or personal motives.

Mr. *Dobbs*.—Sir, I am happy to see a man in the place of the right hon. member who spoke last, who has manifested on the present occasion, such a constitutional respect for the laws, although I dislike the means by which he came there. In the consideration of this great national question, no man ought to feel for a county, or an individual; he should think only how closely a measure, contrary to law, can be made to assimilate to justice. Sir, I am rather inclined in every instance to approve where I possibly can, than to disapprove, and I confess my approbation of that part of the Bill, which limits the bringing of actions to three months after the Bill passes into a law, for I could conceive nothing a greater hardship, than that actions should be pendent over the heads of loyal but erring men; but at the same time, I regret that it can have any operation to debar rights had by virtue of actions already brought. What I have said on a former night, I now repeat—that I would not have men sacrifice the constitution, and their own principles to official situation. I shall be happy to praise those, who fill office with integrity and dignity, though of the contrary I shall say nothing. The second clause I look upon to be a monster in the law, and cannot conceive how any mind in the remotest habit of considering the constitution, can be reconciled to the provision, that after a jury shall have ascertained the facts in a case, and pronounced a verdict, a judge shall have the power to undo that verdict.—[Here Mr. Dobbs was desired by the chair, to confine himself to the motion before the House.] I have heard, Sir, a great many gentlemen speak before me, who were all indulged in a very great latitude of argument and objection.—[Here Mr. Dobbs was again interrupted, by a great cry of Hear! Hear! Order! Chair, &c.]

The *Chairman* said, that if other gentlemen had strayed beyond the limits of order, that did not justify the debate to be continued in the same manner.

Sir *J. Blaquiere* arose to order; he said, that in his humble apprehension, the hon. member ought not to be restrained, and that even if it were matter of indulgence, which he was not perfectly satisfied of, the hon. member should have that liberty extended to him, which had been extended to every gentleman who had spoken on the subject the whole evening.

Mr. *Dobbs* having been desired to proceed, he continued. Sir, if I had found that other gentlemen had confined themselves to a particular point, I should have done so too; indeed I have nearly said all which I had to say. I do repeat, that it is a novelty in the law, that a case should be laid before a jury for their decision, and then after a solemn verdict of twelve men on their oaths, a judge is at liberty to annul their decision; it is a monstrous novelty, against law, and against constitution, and I hope the Irish Commons will never disgrace itself by enacting such a law.

With respect to the clause, making it special with the jury, to find a malicious intention, it has been said, that it means nothing more, nor lays any other obligation on the jury, than would be done by the judge in his charge: if so, I will ask, why resort to this Bill? Is it to be supposed, are the gentlemen of this House such simpletons as to believe, that this Bill would have been brought in, if its operation was not intended to be different from that of the Bill already acting as a law? No! Sir, the true motive is to distract the judgment of the juror, and to render it useless for him to find the facts, which it is in his power to arrive at, because he cannot find the malicious intent, of which it is impossible he can have a knowledge.

Sir, you have passed bills of pardon to rebels, and bills of indemnity to loyalists, but not in one of them, have you taken care of the loyal man who has been punished. But as often as any indemnity bill comes before this House, I will remind you of the justice of making atonement to the loyal man, who has suffered through mistake. Sir, after the first resolution, I would move an amendment, directing the jury to find if the plaintiff was a loyalist, and after affirming the quantum of damages, his claim under the verdict should be referred to the commissioners appointed for liquidating the claims of suffering loyalists, who should discharge the sum awarded him, in the same proportions with other allowed claimants. A gentleman has talked of leaving a legacy to his child: I do not love to deal in the figurative, but I will tell you what I would leave to my child, if I were quitting a world which I find has not been much mended by its age; I would lay this injunction on him—my child, never do a wrong to any man, from political, or private motive; never commit evil, that good may come of it; never, my child, as you hope to be accepted in the eyes of the God of mercy,

VOL. XXVII.

never apply the torture to your fellow-creature! remember that however bad men may make to themselves gods in this world, and sacrifice every principle of justice, humanity, and virtue to the idol, you have a God, who is the God of peace, of love, of justice, and of mercy, and whose all-seeing eye marks the minutest actions of his creatures. Prefer his service to that of the world. Be just, and fear not.

Sir *J. Blaquiere* arose, he said, to combat some observations, that had been applied in the course of the debate, to Mr. Fitzgerald's conduct, not only generally, but particularly in the case of Mr. Wright. He did not doubt those observations were the result of a conviction, that they were just, but he was pretty sure, that if the gentlemen who spoke thus freely of the conduct of Mr. Fitzgerald, were possessed of the information which he had derived on the subject, their sentiments would suffer a very great revolution. Sir John then begged the attention of the Committee, to a letter which he received that day from London, addressed to him by an officer of high rank, character, and honour, who had been down in Clonmell at the time Mr. Wright was punished. This letter the right hon. bart. then read, and the substance of it was, that it bore testimony to the humanity and services of Mr. Fitzgerald, and that in a conversation which the officer had with Mr. Wright, the latter had concurred in the same opinion of Mr. Fitzgerald's humanity and honest motives, for the severities which he reluctantly, but of absolute necessity exercised. [Here there was a loud cry of Name! name! from the other side of the House, but Sir John declined naming the person aloud, although he was willing to put the letter into the hands of any gentleman who desired it.]

Mr. *Martin* generally supported the Bill, but his particular argument we were unable to collect with sufficient accuracy.

Mr. *Rochfort* said, that if the Bill of Indemnity, brought in under lord Camden's administration, had been amended with perhaps very slight alteration, all this difference of opinion might have been obviated. The Bill then before the House he considered to be inefficient in every part, except as to the time limited for bringing actions. He lamented that any thing persons! should seem to govern the Bill, it was the duty of parliament to soar higher; it would be more consonant to his ideas of state, justice, and policy, if the Bill were to be one involving in oblivion, all acts from the 23rd of May to the 22nd of August, murder excepted. If it were possible for a man to be seated on the throne of France, what should be his first act of government, certainly to shut out the remembrance of every action connected with the revolution and the republic; and the same policy will apply with equal force in this country.

Mr. O'Donnell said, he would not take up the time of the Committee at that advanced hour, but, however he felt inclined to notice the Tipperary voluntary contributions, and the new way of paying his majesty's troops, he would pass them over, and come to the subject at once. He said, any bill should have his hearty concurrence, which could tend to bury in oblivion all causes of animosity, between those whom the state of the times had set in array against each other. Any bill which could bring the people of Ireland back to their secure, friendly, and constitutional ground, and disarm the petty tyrants of the land, should have his most zealous support, and if the administration could effect such a measure, he would throw himself at its feet, and devote to it his services. It had been said in favour of the clause, obliging the jury to find malicious intention a part of their verdict, that it was no more than what had always been an inference of finding the facts; but he differed widely in this opinion—it applied only in a criminal case, and had nothing to do with an action of damages. The friends of the Bill in the form in which it then stood, had urged, that it would be a cruel thing for men of zealous loyalty to be subject to persecution; but was it not at least equally hard, that the injured should not be compensated? His idea, however, was, that the injured should receive compensation, but not at the expense of those who had acted from a loyal zeal, and submitted, whether it was not better to give the Bill the more collected consideration of another night, and let it go from the Committee a bill of public utility.

The question having been put on Mr. Lee's amendment, it was negatived without a division, and on the original paragraph standing part of the Bill, a division took place,

Ayes, 65; Noes, 14; Majority 51.—Teller for the Ayes, Col. Uniacke, for the Noes, Hon. F. Hutchinson.

Mr. Dawson then, on account of the lateness of the hour, and the exhausted feelings of the House, moved, that the chairman report progress—but the motion was negatived.

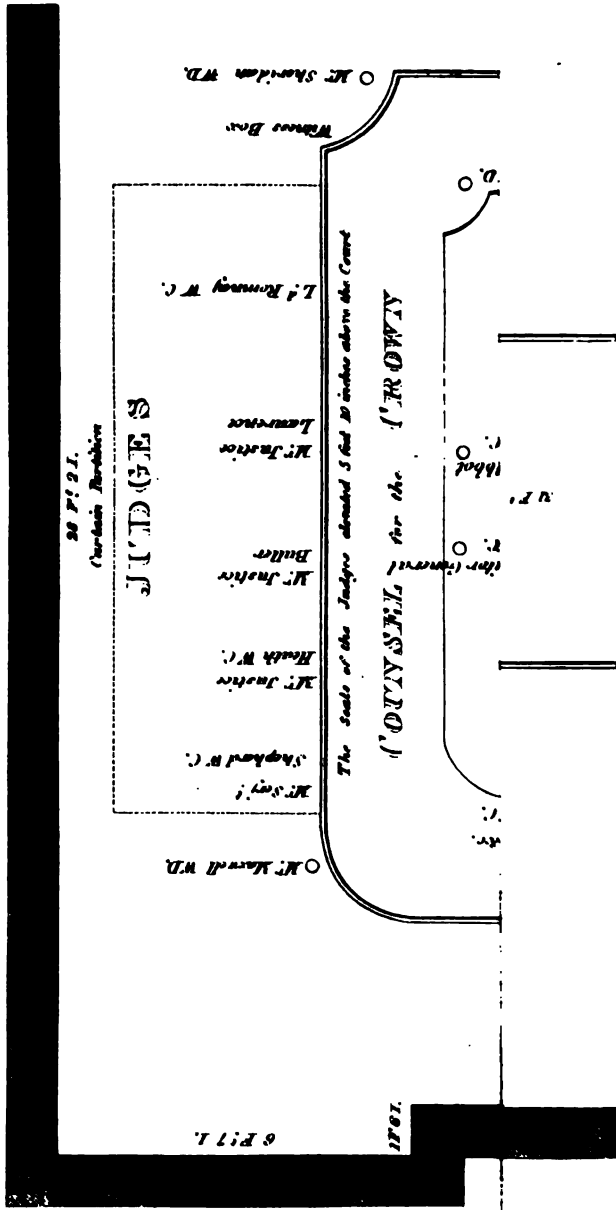
Mr. French then moved an amendment to the second paragraph, which was agreed to, and which paragraph, thus amended, passed the Committee.—Mr. French also moved, that when a verdict shall be set aside by the certificate of a judge, the plaintiff shall not be subject to double costs.—Agreed to.

All the clauses of the Bill having passed, the House was resumed, and after ordering the report to be received the next day.—Adjourned.

An application was made, on the part of Mr. Fitzgerald, in the Court of Exchequer, to set aside the verdict obtained against him by Mr. Wright, which was dismissed with full costs.

Mr. Fitzgerald,* the defendant in this case afterwards received a considerable pension for his active services in quelling the rebellion; he was also created a baronet of the United Kingdom.

* As to him see *Gordon's Irish Rebellions* 60, 61; *Musgrave's Irish Reb. Appendix*, No. xi; *Plowden's Hist. of Ireland*, vol. 2, p. 678, and vol. 3, p. 816. See also *Hansard's Parliamentary Debates*, vol. 36, pp. 1591, *et seq.*



20 FIG. 1.
Courtain Bench

JUDGES

Mr. Justice
Buller

Mr. Justice
Heath W.C.

Mr. Justice
Shapard R.C.

Mr. Justice
Lawrence

L^d Romney W.C.

COUNSELL for the CROWN

The seats of the Judges stand 5 feet 20 inches above the Court

Mr. Marshall W.D.

Wainscot Box

Theatrical Box

Mr. Sheridan W.D.

6 F 17 L

1797

6 F 17 L

1797

640. The whole Proceedings upon an Information exhibited Ex-Officio, by his Majesty's Attorney General, against the Right Honourable SACKVILLE, Earl of Thanet; ROBERT FERGUSON, Esq. Barrister at Law; GUNTER BROWNE, Esq.; DENNIS O'BRIEN, Esq.; and THOMAS THOMPSON, Esq.; for a Riot and other Misdemeanours; tried at the Bar of the Court of King's Bench, on the 25th day of April: 39 GEORGE III. A. D. 1799.

Court of King's-Bench, April 25, 1799.

JURY.

James Leigh Joynes, of Milton, near Gravesend, Esquire;
Nicholas Gilbee, of Chalk and Denton, Esquire;
Richard Carew, of Orpington, Esquire;
John Platt, of the same place, Esquire;
John Leader, of Bexley, Esquire;
Isaac Rutton, of Ospringe, Esquire;
John Bax, of Silgrove Borough, Esquire;
John Tempest, of Town Borough, Esquire;
John Osbourne, of South Borough, Esquire;
William Leighton, of Charlton, Esquire;
William Goodbew, of Saint Paul's Deptford, Esquire;
William Savary, of Greenwich, Esquire.

Counsel for the Crown.

Mr. Attorney General [Sir John Scott, afterwards Lord Chancellor Eldon];

Mr. Law [afterwards Lord Ellenborough, and Lord Chief Justice of the Court of King's Bench];

Mr. Garrow [afterwards a Baron of the Exchequer];

Mr. Adam [afterwards Lord Chief Commissioner of the Jury Court, and a Baron of the Exchequer of Scotland];

Mr. Wood [afterwards a Baron of the Exchequer];

Mr. Fielding;

Mr. Abbott [afterwards Lord Chief Justice of the Court of King's Bench].

Solicitor—Mr. White, Solicitor for the affairs of his Majesty's Treasury.

Counsel for the Defendants, the Earl of Thanet, Mr. Ferguson, and Mr. O'Brien:

The Honourable Thomas Erskine [afterwards Lord Chancellor Erskine];

Mr. Gibbs [afterwards Lord Chief Justice of the Court of Common Pleas];

Mr. Best [afterwards a Judge of the Court of King's Bench];

Mr. Mac Kintosh [afterwards Recorder of Bombay].

Solicitor—Mr. Lowten.

Counsel for the Defendant, Mr. Browne—Mr. Rous.

Solicitor—Mr. Foulkes.

Counsel for the Defendant, Mr. Thompson—Mr. Rayne.

Solicitor—Mr. Bonney.

THE Information was opened by Mr. Abbott, and is as follows:

Kent to wit Be it remembered that sir John Scott knight attorney general of our present sovereign lord the king who for our said lord the king in this behalf prosecuteth in his proper person cometh here into the Court of our said lord the king before the king himself at Westminster on Wednesday next after three weeks of the Holy Trinity in this same term and for our said lord the king giveth the Court here to understand and be informed that heretofore to wit on Monday the twenty-first day of May in the thirty-eighth year of the reign of our sovereign lord George the third now king of Great Britain and so forth a special session of oyer and terminer and gaol delivery was holden by adjournment in and for the county of Kent at Maidstone in the said county before sir Francis Buller baronet one of the justices of our said lord the king of his court of Common Pleas John Heath esquire one other of the justices of our said lord the king of his court of Common Pleas sir Soulden Lawrence knight one of the justices of our said lord the king assigned to hold pleas before the king himself Samuel Shepherd esquire one of the serjeants of our said lord the king learned in the law and others their fellows justices and commissioners of our said lord the king assigned by letters patent of our said lord the king under the great seal of Great Britain to inquire by the oath of good and lawful men of the said county of Kent of all high treasons and misprisions of high treason other than such as relate to the coin of our said lord the king within the county aforesaid done committed or perpetrated and the said treasons and misprisions of treason according to the laws and customs of England for that time to hear and determine and also

assigned and constituted by the letters patent of our said lord the king under the great seal of Great Britain to deliver the gaol of our said lord the king of the said county of Kent of the prisoners therein being and detained on the nineteenth day of March, in the thirty-eighth year aforesaid or who should be therein detained before the tenth day of April in the same year for or on account of any high treasons or misprisions of high treason other than such as relate to the coin of our said lord the king At which said session so then and there holden as aforesaid before the justices and commissioners above named and others their fellows aforesaid came Arthur O'Connor esquire in the custody of John Plumtre esquire sheriff of the said county of Kent and which said Arthur O'Connor was and had been detained in the gaol of our said lord the king of the said county of Kent before the tenth day of April in the year aforesaid to wit on the seventh day of April in the same year for and on account of high treason to wit at Maidstone aforesaid and the said Arthur O'Connor being then and there to wit at the said session so holden as aforesaid brought to the bar in his own proper person was then and there committed by the justices and commissioners above named and others their fellows aforesaid to the custody of the same sheriff and so being in the custody of the said sheriff was then and there at the same session so holden as aforesaid tried by the jurors of a certain jury of the county of Kent in that behalf duly impanelled and returned and chosen tried and sworn for and upon certain high treasons not relating to the coin of our said lord the king specified and charged upon him in and by a certain indictment theretofore to wit at a previous holding of the same session before the said sir Francis Buller and John Heath and others their fellow justices and commissioners assigned as aforesaid duly found returned and presented against him by the jurors of a certain other jury of the said county of Kent duly sworn and charged to inquire for our said lord the king for the body of the same county and to which said indictment he had theretofore pleaded that he was not guilty of the premises therein specified and charged upon him and the said Arthur O'Connor then being in the custody of the said sheriff as aforesaid was then and there at the same session by the jurors by whom he was so tried as aforesaid found not guilty of the premises in and by the said indictment specified and charged upon him as by the record and proceedings thereof more fully appears.—And the said attorney general for our said lord the king further giveth the Court here to understand and be informed that the right honourable Sackville earl of Thanet late of Maidstone in the county of Kent Robert Fergusson late of the same place barrister at law Thomas Gunter Browne late of the same place esquire

Dennis O'Brien late of the same place esquire and Thomas Thompson late of the same place esquire well knowing the premises aforesaid but unlawfully and maliciously devising and intending to impede the course of public justice and to break the peace of our said lord the king and to interrupt and disturb the justices and commissioners of our said lord the king above named and others their fellows aforesaid in the execution of their said office and to prevent and hinder the due and peaceable holding of the same session did together with divers other riotous and ill-disposed persons whose names are to the said attorney general as yet unknown in open court at the same session so then and there holden and at which the said trial was so had as aforesaid to wit at Maidstone aforesaid in the presence of the justices and commissioners of our said lord the king above named and others their fellows aforesaid and before any order or direction had been made or given by the same justices and commissioners above named and others their fellows aforesaid or any or either of them for the discharge of the said Arthur O'Connor from the custody of the said sheriff and before the said Arthur O'Connor was discharged from the custody of the said sheriff to wit on the twenty-first day of May in the thirty-eighth year aforesaid at Maidstone aforesaid in the county of Kent with force and arms make and cause to be made a very great riot rout tumult and disturbance and with force and arms riotously routously and tumultuously attempt and endeavour to rescue the said Arthur O'Connor from and out of the custody of the said sheriff so that he the said Arthur O'Connor might go at large whithersoever he would and also aid and assist the said Arthur O'Connor in an attempt by him then and there made to rescue himself and escape and go at large from and out of the custody of the said sheriff and the better to effect such rescue and escape did then and there at the same session so holden and at which the said trial was so had as aforesaid to wit on the twenty-first day of May in the thirty-eighth year aforesaid at Maidstone aforesaid in the open court aforesaid and in the presence aforesaid with force and arms and with sticks staves and fists unlawfully riotously routously and tumultuously make an assault in and upon one John Rivett one Edward Fugion and one Thomas Adams in the peace of God and of our said lord the king then and there being and them the said John Rivett Edward Fugion and Thomas Adams did then and there beat bruise wound and ill-treat and thereby then and there with force and arms did unlawfully riotously routously and tumultuously impede and obstruct the justices and commissioners of our lord the king above named and others their fellows aforesaid in the due and lawful holding of the same session and the execution of their office for a long space of time to

wit the space of one hour to the damage of the said John Rivett Edward Fugion and Thomas Adams to the great contempt disturbance and interruption of the justices and commissioners above named and others their fellows aforesaid to the great terror of all the liege and peaceable subjects of our said lord the king there being in contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity

SECOND COUNT—And the said attorney general of our said lord the king for our said lord the king further giveth the Court here to understand and be informed that the said Sackville earl of Thanet Robert Fergusson Thomas Gunter Thomas Browne Dennis O'Brien and Thomas Thompson well knowing all the premises aforesaid but unlawfully and maliciously devising and intending to impede the course of public justice and to rescue and cause to be rescued the said Arthur O'Connor, so being in the custody of the said sheriff as aforesaid from the custody of the said sheriff so that he the said Arthur O'Connor might go at large whithersoever he would did afterwards to wit at the same session so then and there holden and at which the said trial was so had as aforesaid and before any order or direction had been made or given by the justices and commissioners of our said lord the king above named and others their fellows aforesaid or any or either of them for the discharge of the said Arthur O'Connor from the custody of the said sheriff and also before the said Arthur O'Connor was discharged from the custody of the said sheriff to wit on the twenty-first day of May in the thirty-eighth year aforesaid at Maidstone in the county of Kent with force and arms aid and assist the said Arthur O'Connor in a certain other attempt by him then and there made to rescue himself and escape and go at large from and out of the custody of the said sheriff and the better to effect such rescue and escape as last aforesaid did then and there with force and arms and with sticks staves and fists unlawfully make a certain other assault in and upon the said Thomas Adams in the peace of God and of our said lord the king then and there being and in the aid of the said sheriff then and there also being and him the said Thomas Adams did then and there again beat bruise wound and ill-treat to the great damage of the said Thomas Adams to the great contempt disturbance and interruption of the justices and commissioners above-named and others their fellows aforesaid in contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.

THIRD COUNT—And the said attorney general of our said lord the king further giveth the Court here to understand and be

informed that at the said session so holden, and at which the said trial was so had as aforesaid to wit at Maidstone aforesaid in the county aforesaid the said Sackville earl of Thanet Robert Fergusson Thomas Gunter Browne Dennis O'Brien and Thomas Thompson unlawfully and maliciously devising and intending to break the peace of our said lord the king and to interrupt and disturb the justices and commissioners of our said lord the king above-named and others their fellows aforesaid in the execution of their office and to prevent and hinder the due and peaceable holding of the said session did together with divers other ill-disposed persons whose names are to the said attorney general as yet unknown at Maidstone aforesaid in the open court aforesaid and in the presence of the justices and commissioners above-named and others their fellows aforesaid to wit on the twenty-first day of May in the thirty-eighth year aforesaid unlawfully riotously rousously and tumultuously assemble and gather themselves together to break the peace of our said lord the king and to interrupt disturb and obstruct the justices and commissioners above-named and others their fellows aforesaid in the execution of their office and to prevent and hinder the due and peaceable holding of the said session and being so assembled and gathered together did then and there with force and arms at the said session so then and there holden and at which the said trial was so had as aforesaid in the open Court aforesaid and in the presence aforesaid with force and arms unlawfully riotously rousously and tumultuously make and raise and cause and procure to be made and raised another very great noise tumult riot and disturbance and thereby for a long space of time to wit for the space of half an hour interrupt disturb and obstruct the justices and commissioners above-named and others their fellows aforesaid in the lawful and peaceable holding of the said session and in and upon the said John Rivett Edward Fugion and Thomas Adams in the peace of God and of our said lord the king then and there being with force and arms did then and there make another assault and them the said John Rivett Edward Fugion and Thomas Adams did again beat bruise wound and greatly ill-treat to the great damage of the said John Rivett Edward Fugion and Thomas Adams to the great hindrance of public justice to the manifest disturbance and violation of the peace of our said lord the king to the great hindrance obstruction and contempt of the justices and commissioners above-named and others their fellows aforesaid to the great terror of all the liege and peaceable subjects of our said lord the king there being in contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.

FOURTH COUNT—And the said attorney general of our said lord the king for our said lord the king further giveth the Court here to understand and be informed that at a certain other special session foyer and terminer and gaol delivery holden by adjournment in and for the county of Kent at Maidstone in the said county on Monday the twenty-first day of May in the thirty-eighth year aforesaid before Sir Francis Buller baronet one of the justices of our said lord the king of his Court of Common Pleas John Heath esquire one other of the justices of our said lord the king of his court of Common Pleas sir Soulden Lawrence knight one of the justices of our said lord the king assigned to hold pleas before the king himself Samuel Shepherd esquire one of the sergeants of our said lord the king learned in the law and others their fellows justices and commissioners of our said lord the king by our said lord the king duly assigned and constituted to hold the same session the said Sackville earl of Thanet Robert Fergusson Thomas Gunter Browne Dennis O'Brien and Thomas Thompson unlawfully and maliciously devising and intending to break the peace of our said lord the king and to prevent and hinder the due and peaceable holding of the said last-mentioned session did together with divers other ill-disposed persons whose names are to the said attorney general as yet unknown in open court at and during the continuance of the said last-mentioned session and in the presence of the justices and commissioners last above named and others their fellows aforesaid to wit on the twenty-first day of May in the thirty-eighth year aforesaid at Maidstone aforesaid in the said county of Kent unlawfully riotously routously and tumultuously assemble and gather themselves together to break the peace of our said lord the king and to prevent and hinder the due and peaceable holding of the said last-mentioned session and being so assembled and gathered together did then and there with force and arms at the said last-mentioned session in the open court last aforesaid and in the presence last aforesaid unlawfully riotously routously and tumultuously make and raise and cause and procure to be made and raised another very great noise rout tumult riot and disturbance and thereby for a long space of time to wit the space of half an hour interrupt disturb and obstruct the justices and commissioners last above-named and others their fellows last aforesaid in the lawful and peaceable holding of the said last-mentioned session to the great hindrance of public justice to the contempt and interruption of the justices and commissioners last above-named and others their fellows aforesaid to the manifest disturbance and violation of the peace of our said lord the king to the great terror of all the liege and peaceable subjects of our said lord the king there being in contempt of our said lord the

king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.

FIFTH COUNT—And the said attorney-general of our said lord the king for our said lord the king further giveth the court here to understand and be informed that the said Sackville earl of Thanet Robert Fergusson Thomas Gunter Browne Dennis O'Brien and Thomas Thompson unlawfully and maliciously devising and intending to break the peace of our said lord the king did together with divers other ill-disposed persons whose names are to the said attorney-general as yet unknown on the twenty-first day of May in the thirty-eighth year aforesaid at Maidstone aforesaid in the county of Kent unlawfully riotously routously and tumultuously assemble and gather themselves together to break the peace of our said lord the king and being so assembled and gathered together did then and there with force and arms unlawfully riotously routously and tumultuously make and raise and cause and procure to be made and raised another very great noise rout tumult riot and disturbance to the manifest disturbance and violation of the peace of our said lord the king to the great terror of all the liege and peaceable subjects of our said lord the king there inhabiting and being in contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity

Whereupon the said attorney-general of our said lord the king who for our said lord the king in this behalf prosecuteth for our said lord the king prayeth the consideration of the court here in the premises and that due process of law may be awarded against them the said Sackville earl of Thanet Robert Fergusson Thomas Gunter Browne Dennis O'Brien and Thomas Thompson in this behalf to make them answer to our said lord the king touching and concerning the premises aforesaid

Wherefore the sheriff of the said county of Kent was commanded that he should not forbear by reason of any liberty in his bailiwick but that he should cause them to come to answer to our said lord the king touching and concerning the premises aforesaid

And now that is to say on Wednesday next after the octave of Saint Hilary in this same term before our said lord the king at Westminster come the said Sackville earl of Thanet Robert Fergusson Thomas Gunter Browne Dennis O'Brien and Thomas Thompson by Benjamin Burnett their clerk in court and having heard the said information read they severally say that they are not guilty thereof and hereupon they severally put themselves upon the country and the said sir John Scott who for our said lord the king in this behalf prosecuteth doth the like therefore &c.

Mr. Attorney General.—May it please your Lordships and Gentlemen of the Jury—I can very unfeignedly assure you, that I should have felt infinite satisfaction, if, in any view that I could take of what my country required of me, I could have determined not to have instituted the present prosecution.

Gentlemen, many reasons would have influenced me to act upon that wish. The first and the most important is, that I am obliged, by this information, to impute to a nobleman who is one of the defendants, and to the gentlemen whose names occur upon this record as the other defendants, an offence which appears to me to be one of the most heinous, the consideration of which has been offered, in the history of our law, to the decision of a jury.

Gentlemen, in so viewing the subject, I hope I may be allowed, though I am the prosecutor of this nobleman and these gentlemen, to express my regret that I am to make such an imputation in a court of justice with respect to any of them: but, gentlemen, when I consider that the pure administration of law in this country is the great security upon which all the public blessings known to the country rest; when I recollect that it is absolutely necessary for the free and uncontrolled administration of that justice, that those who have duties relative to any part of it should act under the impression that they are perfectly secure in the administration of the justice of the country, it is quite impossible for me to act upon any other principle but this, namely, that it must be known that the attorney-general of the country is bound, where there is a probable cause to impute to individuals that they have grossly violated that principle which requires that the administration of justice should be safe, to put upon them at least the necessity of satisfying a jury of the country that they are innocent of that charge.

Gentlemen, I agree that the charge is not to be made upon light grounds; that circumstances ought to be laid before the officer of the crown, which may justify him in the exercise of a fair and honourable discretion to bring forward the accusation; and I shall go along with my learned friends in admitting, that the circumstance of the accusation being made, by no means decides that it is *justly* made.—It is for you carefully and anxiously to examine the circumstances of the evidence, and then to decide whether the first appearances of guilt have been also attended with actual guilt.

Gentlemen, the information states to you, that at a special session of Oyer and Terminer, held at Maidstone in the month of May last, Mr. O'Connor, together with several other persons, were tried for the crime of high treason, of which they had been accused by a grand jury of the county of Kent. The information states, that the jury had found four of the defendants, Mr. O'Connor being one

of the four, not guilty of the offence with which they were charged. The information states, that before he was discharged, these defendants (and you will give me leave to point out particularly to you the substance of the different charges in this information) did, in open court, and before any discharge, make a riot, and attempt to rescue him out of the custody of the sheriff; that they assaulted three persons named in the first count of the information, John Rivett, Edward Fugion, and Thomas Adams; that they riotously impeded and obstructed the commissioners of his majesty in the due and lawful holding of the session. The second count charges them with having, before the discharge of Mr. O'Connor, assisted him to rescue himself out of the custody of the sheriff, and having assaulted Thomas Adams, who was acting in aid of the sheriff. The third count charges them with having made a riot in open court, and been guilty of the assault. The fourth count charges them with a riot in open court, without the circumstance of the assault; and the last count charges them with a riot, without any addition of circumstances: and it will be for you to determine whether they are guilty of all, or any of the charges stated in this information.

Gentlemen, I will endeavour now to open to you as much of this case as may enable you to understand as much of this evidence as is offered to you; not entering into the minutiae of the evidence, but endeavouring to assist you in the information you will presently receive from the witnesses, by stating so much of the case as may make it intelligible to you, without presuming to state more to you; because, perhaps, in all cases where justice is to be administered, more particularly in criminal cases, it would be my wish that the jury should learn it from those who are to state it upon their oaths, rather than receive any impression from the person standing in the situation in which I have the honour to address you.

Gentlemen, the trial at Maidstone was, as I need not tell those to whom I have the honour to address myself, an extremely long one. The witnesses on both sides had been desired to withdraw from the court previous to the commencement of the trial. In the natural course of proceeding, the witnesses for the defendants were called after the witnesses for the prosecution; and the noblemen and gentlemen who gave evidence in favour of Mr. O'Connor and the other defendants in that trial for high treason, after respectively giving their evidence, remained in court. It may be necessary for me here to state to you so much of the construction of the court as will enable you to understand what I am now representing to you; you will have plans of the court offered to you by-and-by, in order to make the evidence more intelligible.*

* See the plan at the beginning of the trial.

Give me leave to represent his majesty's commissioners to sit in the place where the learned judges now sit; you will consider the jury as sitting very nearly in the position, with respect to the judges, as you now sit with relation to the judges who now sit here. The counsel for the prosecution sat, I think, in that part of the court where that gentleman is now sitting with a yellow waistcoat; and above them was a place in which the several witnesses were examined.

The witnesses were, therefore, directly opposite the jury, and the prisoners at the bar were removed somewhat behind the counsel, who sat, as it were, in the place where I am now standing, there being some little distance between them and the prisoners, who were in the bar behind.

Gentlemen, after the several witnesses had been examined for the prisoners, most of them, I believe, remained in court; and I should not make the observation; if it did not appear to me material with reference to the present case. Indeed, I should not be justified in making the observation, if I did not find it to be material to the present case; for the circumstance of the witnesses having been removed out of court before the trial began was extremely favourable, I do not mean to say otherwise than justly so, to the prisoners, because, after the case had been proved, such as it was, on the part of the prosecution, one feels it a little difficult to believe, that if that evidence had been heard by the witnesses for the defendants, which had been given by the witnesses for the prosecution, the evidence that was given for the defendants could have been given; and this is material in this point of view, because, with respect to the noble lord who is one of the defendants upon this record, and with respect to some other defendants upon this record, although they had not heard the evidence in the course in which it was offered to the attention of the jury, yet, before the circumstances happened which are charged in this information as circumstances of criminal guilt, no one of the defendants, as far as I know, I mean, could have been ignorant of the circumstances actually proved with respect to Mr. O'Connor, as that evidence applied to his relation to England, or his relation to Ireland; and I will state presently the use I mean to make of that circumstance.

Gentlemen, in the course of the afternoon which preceded the conclusion of the trial, I have reason to believe that lord Thanet, and the other persons upon this record, very studiously and anxiously placed themselves in that part of the court in which they could act with effect with respect to the rescue of Mr. O'Connor.

Gentlemen, with respect to one of the defendants, whom, as a gentleman in the profession to which I belong, I certainly prosecute with all the regret that can belong to that circumstance, but which, at the same time, must not supersede the obligations I

owe to the public—that gentleman had been in court during the whole of the trial: he had been counsel for some or one of the prisoners; and he was placed, in consequence of the duty he had to discharge, in a situation in which, if he chose so to exert himself, he certainly could be useful in this attempt to rescue Mr. O'Connor. With respect to the noble lord, I need not, I am sure, in this place, state to you, that he holds in this country the character of an hereditary member of the constitution; and with respect to the last gentleman whom I mentioned, Mr. Ferguson, I take leave to say, besides the general duty he owed to the public in a matter of this nature, there was another very high duty imposed upon him, which I hope and trust gentlemen who sit behind me will never forget—that that gentleman, as a barrister, owed a duty to the Court—that it is their bounden duty, that it is a very sacred duty of theirs, instead of interrupting the course of justice, to assist it in every fair, honourable, and effectual way.

Gentlemen, a verdict of Not Guilty was given in the case of Mr. O'Connor; and here I am very ready to admit this, that if I could have persuaded myself that the circumstances which then took place, namely, that Mr. O'Connor, in consequence of that verdict, misconceiving that he was discharged, and acting under that impulse, had intended merely to mix himself with the rest of the Court, and that those who had been charged with the care of his interests, or those who thought well of him, had acted upon the impulse of the feelings of that moment, which might certainly have been such as to have misled men who, upon better consideration, would not have so acted, it would have become me to have hesitated before I determined, consistently with an attention to the public safety, and to the public interests, to have instituted this prosecution.

Now, gentlemen, before I proceed to state to you the circumstances to which I beg your serious attention, I will state to you the motives with which I do it. When I state the circumstance of a warrant having been issued to apprehend Mr. O'Connor, conceiving, as I do, that some persons either knew, or believed, or conjectured, that there might be some other demand of justice upon O'Connor, and that therefore they were determined he should not remain in court till he was regularly discharged, for the purpose of preventing that other demand of justice being made upon him—I say the offence, even in that way, is of so aggravated a nature, that I have no wish to charge it higher upon the record.

Then, gentlemen, I have to state this to you—When the verdict of Not Guilty was pronounced, Mr. O'Connor endeavoured (it will be for you to decide whether or not with the co-operation of the defendants whose names occur upon this record) to get out from

the place in which he stood as a prisoner, with a view to get out of court, and for the purpose of not being answerable to some demands of justice which he, and those who were acting with him, had reason to believe would be made upon him, if he staid till he was regularly discharged.

Gentlemen, one of the defendants in this case, I mean Mr. Thompson, a member of parliament, was bound, certainly, from his situation as a subject of this country, and bound from the high situation in which he stands in the country, not to be acting in the execution of such a purpose as this information imports; but you will find that he, together with Mr. O'Brien, had taken great pains, in the course of the afternoon, to sift from certain persons who will be called to you as witnesses, one of whom, indeed, I cannot call, because the hand of God has removed him by death; but who would have spoken of important circumstances—I mean Fugion, the officer; but I think you will find very satisfactory evidence independent of that; and I should not have mentioned his name, but his name will be introduced in a very striking manner by the witnesses: you will find that Mr. O'Brien and Mr. Thompson were, in the course of the afternoon, extremely anxious to inquire, and to know with certainty, whether there was any demand of justice upon Mr. O'Connor, supposing him to be acquitted of the present charge.

Gentlemen, you will hear and you will attend to the evidence that will be given upon that part of the case; and when the conduct of Mr. Thompson is stated to you by the persons who will relate how he acted at the moment when Mr. O'Connor first attempted to escape out of this court, you will then consider with yourselves, whether the case is not, by that evidence, most completely made out against Mr. Thompson.—I distinguish him in this part of the case, because, according to the evidence which I have now to offer you, I have no testimony to give with respect to Mr. Thompson, as to his conduct in what I call the second riot which happened; and I think it right to say so, that the case may be embarrassed in the first instance, and, in the second, that I may do him justice.

Gentlemen, you will hear what part Mr. Fergusson took in this: and here I cannot but observe, that it is quite impossible that I can do Mr. Fergusson the discredit to suppose, that he could believe, after the evidence he had heard, that it was so unfit that justice should make any other demand upon Mr. O'Connor, that it was fit that he should forcibly resist the execution of that demand if it was made. I must give him credit for his professional knowledge; I must give him credit for the accurate knowledge which he must have had upon the occasion.

But, gentlemen, it does not rest there; for the officer being charged to arrest Mr. O'Connor, the fact was made known to the Court;

VOL. XXVII.

and the learned judge who presided there, I mean Mr. Justice Buller, whose absence I cannot but lament, when I recollect that that absence is occasioned by extreme illness—Mr. Justice Buller expressly stated, that the prisoners were not to be discharged; and expressly directed, that all the prisoners, except that one upon whom sentence of death was to be passed, should be kept back for the present. This was, therefore, a distinct notice, that there was an act to be done upon the part of the Court.

Now, gentlemen, he so good, without my entering into a detail of that evidence, to attend to the circumstances as to the conduct of the different defendants, during the time the learned judge was executing the painful duty of passing the sentence of death—giving your attention also to what was the conduct of the several defendants, when this notice had been publicly given in Court, the moment that that sentence was finished; and unless I am deceived, indeed, with respect to the effect of that evidence, you will have no difficulty in coming to this conclusion, that those defendants did mean to take Mr. O'Connor out of the reach of the demands which it had been publicly declared justice had upon him.

Gentlemen, I do not know how the defendants are to deliver themselves from this charge; because I will give any case to my learned friend that he chooses to ask of me; I will suppose that he was absolutely discharged; I will admit that, under a misconception, that there was no other demand of justice upon him, they supposed he ought to be liberated immediately under the circumstances in which he stood, and that that was a mistake, a misapprehension; but, gentlemen, what is to become of the justice of the country, if such an example is to be set, that a peer of this realm, and a learned gentleman in my own profession, together with these other gentlemen named in this record, shall take the justice of the country into their own hands?—that you shall hear, in a court of justice, men saying to a prisoner, “Spring!” Another, “Put out the lights!”—In fact, the lights were put out, and a great deal of confusion ensued, which, if it had not been met with a great deal of spirit by the witnesses who will be called to you, no man could be answerable for what might have been the serious consequences attending it: and the duty imposed upon me is this—to take care of you—to take care of the learned judges—to take care of all who have either acted in the administration of justice, or who are present with those who are acting in the administration of justice; and I should have been deeply responsible if I had not instituted this prosecution, whatever may be your verdict upon the circumstances of the case, as a public lesson to all mankind that the courts of justice must be treated with respect.

Gentlemen, I presume we shall have evidence given, and it is very fit that it should be

given, whether these acts were done intentionally, or under a misconception. It may admit of an explanation of that sort—with reference to which, I beg leave to call your attention to circumstances very material for that attention, when you are determining upon the character of the acts done by the defendants, and the view with which they did those acts. It will be, for instance, for Mr. Fergusson to explain what could put into the hands of a professional man a stick, with which he attempted to strike at those who were executing their duty; it will be for him to explain what was the meaning of the expressions which he used: and with respect to the noble lord Thanet, I shall prove to you, that when advice was given to him that it would be better for him, in the high and great situation which he held, to recommend a peaceable demeanour, to endeavour that the quiet of the court should be kept, that that noble lord expressed himself to this effect, "It is but fair that he should have a run for it;" and when you couple that expression, as it will be proved by respectable witnesses, with his acts as they will be proved by respectable witnesses, I think you can have no doubt what was the character of the acts, and what the intention of that noble lord.

Gentlemen, having thus stated the circumstances, I shall proceed to call the witnesses. I am perfectly sure that you will give that attention which is due to the public, and to the defendants. It is not for the interests of justice, unquestionably, that any man should be convicted who ought not to be convicted; you will hear, therefore, the evidence with as favourable an eye to the several defendants as the nature and interests of justice will permit; but, on the other hand, I am sure you will remember, that no station or rank in life ought to protect any man from the operation of law; and in truth, in a moral view, the higher the situation of men who are guilty of offences of this nature, the higher the offence is, the more that offence calls for punishment.

EVIDENCE FOR THE CROWN.

John Stafford sworn.

Mr. Law.—My lord, I only call this witness at present, for the purpose of producing a copy of the record; I shall afterwards examine him more at large. You are clerk to Mr. Knapp, clerk of assize on the home circuit?—I am.

[Produces a copy of the record of the conviction of O'Coigly, and of the acquittal of O'Connor and others.]

Have you examined it?—I have.

[It was read by Mr. Barlow.]

Mr. Garrow.—We proposed to have troubled Mr. Justice Heath; but as he is not yet

come down, we will now call Mr. Serjeant Shepherd.

Mr. Serjeant Shepherd [afterwards lord chief baron of the exchequer of Scotland] sworn.
—Examined by *Mr. Garrow.*

We have collected from the record, that you were one of the commissioners appointed to try certain persons at Maidstone?—I was.

Did you attend upon the bench upon that occasion?—I did.

Do you remember the circumstance of the jury, after they had retired, coming into court to deliver their verdict?—I do.

Are you acquainted with the person of my lord Thanet?—I am. I had seen my lord Thanet examined as a witness on that day for Mr. O'Connor; I did not know his person before.

Are you acquainted with the person of Mr. Dennis O'Brien?—I am.

Are you acquainted with the person of Mr. Gunter Browne?—I cannot say I am. I knew Mr. Gunter Browne a great many years ago; I had no recollection of its being Mr. Gunter Browne, but I saw a person upon the table, after the riot was over, who was said to be Mr. Gunter Browne.

Are you acquainted with Mr. Fergusson, a gentleman at the bar?—I am.

Are you acquainted with Mr. Thompson?—I am acquainted with the person of Mr. Thompson; but I do not recollect seeing Mr. Thompson at Maidstone.

Be so good as state to the Court, whether, after the jury had given in their verdict, and judgment of death had been pronounced upon the prisoner who was convicted, you made any observation upon any of these persons, or their conduct?—After the jury had given their verdict, and, indeed, I think, at the time the jury gave their verdict, my lord Thanet was standing before the bar at which the prisoners stood, with his back to the prisoners, and his face, of course, towards the Court. I am not quite sure whether my lord Thanet was on the bench at which the solicitors for the prisoners stood, or whether there was any space between the bench and the bar; that I could not sufficiently observe.

Mr. Garrow.—It may not be improper here to state (and we shall certainly prove it), that there was no such space; I believe every body knows that the bench to which the learned serjeant alludes, was made for the accommodation of the solicitors, and was, as this may be, supposing this to be the bar—[describing it].

Mr. Serjeant Shepherd.—My lord Thanet stood with his face towards the Court, and his back to the prisoners; he was rather to the right hand of O'Connor; I do not mean upon a line with O'Connor, of course, but rather to his right hand.

Mr. Garrow.—May I interrupt you to ask, whether the right-hand side was the side upon which the gaoler was placed?

Mr. Sergeant *Shepherd*.—I am not quite sure whether it was the side on which the gaoler was placed; it was the side on which O'Coigly, the convicted prisoner, stood; and it was the side on which the Bow-street officers afterwards endeavoured to advance.

Mr. *Erskine*.—The side nearest to the great street of Maidstone?

Mr. *Garrow*.—Certainly so, which is the side on which we all know the gaoler is placed. You recollect the gaoler has a box on that side next the great street?—I recollect he has; and therefore it was certainly on that side on which the gaoler was placed. Mr. O'Brien stood, or sat, at that time, I do not exactly recollect which—but Mr. O'Brien was on the same line with lord Thanet, but rather to the left hand of Mr. O'Connor. Whether there was any person between my lord Thanet and Mr. O'Brien, I do not recollect.

When I interrupted you, you were about to state something of the Bow-street officers advancing?—I think something had been said before the jury brought in their verdict. When there was an expectation that they were coming, something had been said about the Bow-street officers being there. There was a sort of noise or buzz in court; and somebody said, I do not know who, that the Bow-street officers were making a noise. In consequence of that it was, that I observed one of the officers, I think Rivett—it was either Fugion or Rivett; I am not quite sure that I recollect the person of one from the other—

You had seen them, and heard them give evidence?—I had, and I rather think it was Rivett, whom I observed standing at the corner of the bar; and they were desired to be quiet—not particularly the Bow-street officers, but the Court desired that every body would be quiet; and they were quiet; and the jury then brought in their verdict. When the jury pronounced their verdict of Not Guilty upon Mr. O'Connor, some person, but whom I do not recollect, said, "Then they are discharged;" other persons sitting round the table said, "No, they are not discharged;" and at that time Mr. O'Connor, I think, had raised his knee to the bar, as if to get over; whether he was pushed back, or pulled back, I do not know; but he was restored to his former position behind the bar. A question was put to the Court by somebody—whether by the prisoners, or the counsel for the prisoners, or by-standers, I cannot tell—but some one said, "Are they not discharged, my lord?" or, "Have they not a right to be discharged?" or some such terms. Mr. Justice Buller, I think, said, "No, they are not to be discharged yet; put the other prisoners back, and let O'Coigly stand forward." I do not pledge myself for the exact words, but certainly to that effect.

I will trouble you to repeat that, according to the best of your recollection?—"Put the other prisoners back, and let O'Coigly" (who

was the convicted prisoner) "stand forward." I should have told your lordship, that when is was asked, "whether they were not be discharged?" before the riot, if I may so speak, began, one of the Bow-street officers, I think, got up upon the bench, or form, I should rather say, and said, "No, my lord, I have a warrant against Mr. O'Connor; whether he added, "for treason," or "for high treason," I do not recollect. It was immediately upon the officer's saying that, that Mr. Justice Buller said, "They are not discharged;" I do not mean in answer to that; but he said, as a direction of the Court, "they are not discharged; put the others back, and let O'Coigly stand forward."

I would ask you, whether that form, upon which the officer raised himself to address the Court, was near the place where, as you before described, the Bow-street officers were before the bar, and near lord Thanet?—Certainly. He set his foot upon the end of the form before which lord Thanet stood, with, certainly, I think, the interval of three or four persons.

Was that expression of the officer's addressed audibly to the Court?—Certainly; I heard it most distinctly, and, I think, every one must have heard it.

Did he produce a paper?—Yes; he said, "No, my lord, they are not to be discharged. I have a warrant against Mr. O'Connor;" and he certainly extended his hand with a paper in it.

After that direction which you have stated had been given by the Court, what then passed?—Mr. Justice Buller proceeded to pronounce sentence upon the prisoner O'Coigly. During the first part of the time that he was pronouncing sentence, my attention was particularly attracted to O'Coigly, the prisoner. I was looking at him, and attending to him.

The form of the sentence was introduced by a prefatory address?—Yes; during the former part of it, my attention was directed to him. Towards the conclusion of the sentence, I think just as Mr. Justice Buller came to that part of the sentence which pronounces the specific punishment, I observed lord Thanet and Mr. O'Brien standing in the same position as they had stood before, and I observed Mr. O'Brien turn round, and look up at Mr. O'Connor—I wish, my lord, here only to state what I saw, and not what my conjecture or construction was upon it.

I may take the liberty, however, of asking you, whether what you saw made an impression upon your mind? What that impression was, I shall not ask?—It did; he looked up at Mr. O'Connor, and then looked down to the place before him, which cannot be so well expressed in words as by an imitation of the manner; he looked down with a very slight motion, certainly an inclination of his head. Lord Thanet was standing with his back against the bar, behind which Mr. O'Connor stood. I can describe it no other way, than

standing square, as I do now. I did not see Lord Thanet make use of any motion or gesture, at that time, certainly. The moment the last word of the sentence had been pronounced by Mr. Justice Buller, the instant he had finished, Mr. O'Connor raised himself upon the bar; he jumped with his left foot upon the bar; he put his left hand upon the shoulder of Mr. O'Brien, and, I think, his right upon Lord Thanet's shoulder, jumped over the bar between Lord Thanet and Mr. O'Brien, passed Mr. O'Brien towards the door of the court, which was on that side next the small street of Maidstone—

That is, from the Bow-street officers?—Yes; then I lost sight of Mr. O'Connor. Whilst Mr. O'Connor was getting over the bar, which, though it takes some space to describe, was done almost in an instant, the Bow-street officers were pressing, endeavouring to get towards him, for the purpose of stopping him, I suppose.

That is, in the narrow pass between the back of the seat for the counsel for the prisoners, and the bench that was made for the accommodation of their solicitors?—Yes; Lord Thanet certainly stood in the position in which I had observed him. There was a great noise, of course, took place at that time, at the moment when Mr. O'Connor was getting over the bar; and some people calling to stop him, there was a great noise certainly. Lord Thanet stood, in the way that I have described to your lordship, in the pass; the officers were endeavouring to press by him; and he stood till, I think, in a very short space of time, he held up his stick with both his hands over his head. There was then a great deal of confusion; persons got upon the table; and there was a press, in the narrow pass, of officers and persons from that side of the court, attempting to press towards the door to which O'Connor had rushed; and other persons, whom I cannot say, appearing to me to push the other way, as if to prevent them from passing. I saw sticks raised, and fists raised, by individuals; but who did so, I cannot speak to. There became then a general confusion in that part of the court, so that I lost sight of particular individuals; the candles were some of them thrown down: they were upon the table; and there was a general riot and confusion, certainly, in that part of the court, and in most other parts of the court; at that time a great number of persons had got upon the table, and there was certainly a great deal of confusion. In a very short time, somebody called out, "O'Connor is stopped;" and he was brought back again to the bar. I should state to your lordship, that, just at the time that I lost sight of Lord Thanet, and of the particular individuals, a person had got upon the table (which drew off my attention from what was going on at the bar), and had drawn a sabre which was lying there.

That was part of the baggage of Mr. O'Connor, which had been produced upon the trial?

—It was. He drew that sabre, and placed himself between the judges and the part of the court where the confusion was, obviously to prevent any persons from advancing towards the judges—if I may use the phrase, to defend the judges. I did not at that time see the face of the person who had it; and, therefore, I had some apprehension it might be in the hands of some imprudent man, who might do mischief; if I had known who it was, I should have known that he had discretion enough not to misuse it.

It was Mr. Stafford, the witness, was it not?—Yes; I said to him, not seeing his face, "Don't strike!" When I saw who it was, I was satisfied. After the riot had ceased, a number of persons got upon the table towards the judges; some to ask questions upon the subject of the legality of this warrant; and others, whether the prisoners were not entitled to their discharge; and others, certainly, to allay the fervour that seemed to be at that time operating upon the minds of many persons who were in court; to restore order, in fact; I should, perhaps, use that phrase. The particular conversations and expressions that were used by any of those persons upon the table, I cannot pledge myself to recollect.

I will take the liberty of asking you,—I believe you were at a distance from the learned judge, Mr. Justice Lawrence?—I was. Mr. Justice Heath and Mr. Justice Buller both sat between me and Mr. Justice Lawrence.

Therefore, I would ask you, whether you had an opportunity of hearing any particular conversation addressed to the learned judge who is now present?—No; I think I remember Mr. Sheridan speaking to Mr. Justice Buller, or Mr. Justice Heath, or both; and I remember Lord Thanet being upon the table after Mr. O'Connor was brought back, apparently to me conversing with the learned judge, Mr. Justice Lawrence.

What he said, you did not hear?—I did not; for at that time there was a great deal of noise in the court.

Was it after that, that you observed Mr. Sheridan talking with the learned judge?—I think it was; the object of Mr. Sheridan seemed to be, to allay the tumult; and then he crossed the table, and conversed with the learned judges.

After the direction which you have stated to have been given by the Court, and after the sentence of death had been passed, was any order given by the Court for the discharge of Mr. O'Connor, or any intimation that he was to be discharged?—Certainly not; but it was broadly expressed by the Court, that he was not to be discharged.

Mr. Sergeant *Shepherd* cross-examined by Mr. *Erskine*.

I have very few questions indeed to put to you. You state, that when the verdict of Not Guilty had been pronounced, some per-

sons, but whom you do not know, seemed to inquire, as if for information, whether the prisoners were to be discharged or not?—Not quite so; not to inquire; but some persons exclaimed, "Then they are discharged."

Who those persons were, you do not know?—I do not.

You say that you observed lord Thanet standing fronting the Court, as I am now fronting the Court?—Yes, certainly.

With his back to the prisoner?—Certainly so.

He was in that position when the jury came in with their verdict?—I think so.

You have observed that Mr. O'Brien looked round to Mr. O'Connor, and then looked down, as you have described it; did lord Thanet continue all that time in the same position?—The time when Mr. O'Brien looked round, was a very short time before Mr. O'Connor jumped over the bar; from that time, certainly, lord Thanet had continued in the same position, standing as I described.

While the learned judge was passing sentence of death upon O'Coigly, did lord Thanet still continue in the same position?—Certainly he did.

He was standing, as you observed, not looking this way towards the jury-box, or that way towards the narrow street, but he was looking towards the Court?—Certainly; he had his back against the bar, and looking directly towards the Court?

You then describe, that upon the officers coming in, and pressing through this narrow place, the next that you saw of lord Thanet was, with a stick with both his hands up?—Yes; I did not mean that the officers came in then, but that they had come in some time before, having declared that they had a warrant; but, certainly, upon Mr. O'Connor jumping over the bar, the officers rushed forward to follow him; after they had made several pushes it was, that I saw lord Thanet in that position.

Did you ever observe any change in the position of lord Thanet, from the time you first saw him, till you saw him in the situation you have now described to the Court?—I did not observe any change.

But a stick over his head?—Yes; and, perhaps, I should say this—it seemed to be, when he held it in that way, that it was to defend his head.

The Rev. William Hussey sworn.—Examined by Mr. Adam.

I believe you are a clergyman of the church of England?—I am.

Were you at Maidstone at the trial of Mr. O'Connor and Mr. O'Coigly?—I was.

Were you there at the time the jury were out, deliberating upon their verdict?—Part of the time.

Were you in court at the time they returned with their verdict?—I was.

Do you remember seeing lord Thanet in court at that time?—I saw lord Thanet in court.

In what part of the court were you placed?—At that immediate period of time, I cannot expressly say in what part; I saw lord Thanet in two different parts of the court.

In what part of the court did you first see lord Thanet?—The first time, when he came to give his evidence; and the next time, at the table fronting the judges, and afterwards sitting under the bar at which the prisoners stood.

Upon a bench, with his back to the prisoners?—With his back to the prisoners.

Do you remember seeing the Bow-street officers there?—I saw a person who, I was informed afterwards, was a Bow-street officer. I did not know, at that period, that he was a Bow-street officer.

Do you recollect the jury delivering their verdict?—I do.

Can you state to my lord and the court, any thing that struck your attention upon the jury delivering their verdict of Not Guilty, with respect to Mr. O'Connor?—After the jury returned their verdict of Not Guilty, I observed Mr. O'Connor make a feint to get over the bar; he put up his foot, as if he would get over.

Did you observe any thing more pass at that time?—I cannot speak expressly as to the direct period of time at which I saw the circumstance happen; whether it was at that period, or a future period, I must say that I cannot immediately recollect.

What was that circumstance?—That the earl of Thanet was in that situation which I before mentioned, sitting with his back towards the bar, nearly under the prisoners, or under the gaoler; and as the person was pressing forward from that side of the court to get towards the prisoners—

Lord Kenyon.—What person?—I cannot say who the person was; I was informed afterwards he was a Bow-street officer; and, indeed, from the circumstance of his mentioning to the jury what was the matter—he said he had a warrant to apprehend Mr. O'Connor—I supposed him to be a peace-officer.

Mr. Adam.—Then, as this person, who held a paper in his hand, and pressed forward?—I saw no paper in his hand; lord Thanet seemed to press himself against the bar with his body inclined somewhat towards that person, apparently with an intention to interrupt his progress towards the prisoner.

In what situation was Mr. O'Connor at that time?—Mr. O'Connor, at that period, was standing at the bar.

Go on, and state what you saw after this.—Upon my word, from the confusion that was in the court, I do not recollect any particular circumstance that I can take upon me to speak to.

The right hon. Charles Lord Romney sworn.—
Examined by Mr. Wood.

Was your lordship in court at the time of the trial of the prisoners at Maidstone?—Yes.

In what part of the court did your lordship sit?—Next to Mr. Justice Lawrence, upon the bench.

Does your lordship know the defendant, Mr. Fergusson?—I did not know Mr. Fergusson before the trial at Maidstone; I had seen him so often then, that I knew him in his gown; if I were to see him out of his gown, I do not know that I should know him; I knew him perfectly in his gown.

After the riot began, what did your lordship observe?—When the riot first began, I looked very much towards the prisoner O'Connor, and saw him get over the bar, and go towards the narrow street. I looked at the other part of the court, where there were individuals forcing a passage through, which were the Bow-street officers; I saw them forcing their way, and blows were struck. I paid particular attention to Mr. O'Connor, and then, almost at the same moment, turned my eyes to a different part upon the table, where there was a sword brandishing about; I do not know whether it was drawn or not, for I could not see at that time; but I should imagine that it was drawn; upon which I thought things seemed to bear a very serious aspect, and I let myself down from the bench, where I was sitting, and crossed the table directly to where I saw the prisoner escaping from. I dipped my head under the broad sword that was brandishing about; I got immediately to the end of the table, near that part of the court where the prisoner escaped from; and as soon as I got there, I immediately saw the prisoner O'Connor brought back to that part of the table by several javelin-men and others. I then immediately said to the javelin-men, "Form yourselves round the prisoner, and let no one approach you," or, "Let no one come round you," or words to that effect; "for he is not yet" (I meant to say, and imagine I did say) "discharged." I was told afterwards that I had said wrong; for I had said, he was not acquitted; upon which I answered, I might very possibly make use of the word *acquitted*; but, if I did, it was a mistake; I meant *discharged*.

Mr. Garraw.—Will your lordship mention who it was that said that?—I think it was Mr. Fergusson: he said, "My lord, you are mistaken; you said, 'He is not acquitted'—he is acquitted." I think it was Mr. Fergusson. I have no doubt myself, as Mr. Fergusson mentioned it, but that I did make use of the word *acquitted*, in the hurry; I have no doubt of it: it was not my intention to say, he was not acquitted, but that he was not discharged; I meant to make use of the word that I heard Mr. Justice Buller make use of from the bench.

Mr. Wood.—Does your lordship recollect whether the Court had said any thing, before that, about his not being discharged?—Yes; and I meant to make use of the word *discharged*, because I had heard Mr. Justice Buller use the word *discharged*.

Publicly in court?—Yes; I had no private communication with Mr. Justice Buller at all, because Mr. Justice Lawrence sat between us.

Did your lordship notice any particular persons that were acting in the riot?—Really I felt myself so engaged in a thing of this sort, and I should have been so much hurt if, in the confusion, any disgrace had been brought upon a court of judicature generally, and for myself, in my situation in the county of Kent in particular, that I did not take such notice of the circumstances that were taking place, as I did to take care, with others, to prevent a rescue, which I should have considered an indelible disgrace and stain upon our county. I certainly could not say who it was in the passage that was struck by the Bow-street officers; for when I looked to that part, the confusion was very great, and the blows very frequent in that part.

Did your lordship hear any conversation between lord Thanet and Mr. Justice Lawrence, after Mr. O'Connor was secured?—It is really a very considerable time since the riot; and, at the same time, as many different things were going on at that moment, I cannot positively swear; and, therefore, unless I was perfectly convinced, it can be of no consequence.

Lord Kenyon.—It is my duty, and I am bound to say, your lordship must recollect as well as you can.—If your lordship will give me leave to say, that at this distance of time, ten or eleven months, I really cannot swear whether I heard it at the time, or whether it was a conversation afterwards, that such and such things had passed; and, therefore, as I cannot answer positively, I must, for myself, beg leave to decline answering it. I certainly had forgot it; and some time past, three or four months ago, after considering with myself, I thought I did recollect something of such a conversation passing; but it certainly had for some time slipped my memory; and, therefore, without I could absolutely ascertain it, I cannot speak to it; there was a great deal of confusion.

The Right Hon. Charles Lord Romney cross-examined by Mr. Gibbs.

You say, you intended to say that the prisoner had not been discharged; but you had been informed by some one, that you had said he was not acquitted; and then you corrected yourself, and said you meant to say, *discharged*?—I have no doubt but that, in directing my speech to somebody in the hurry of the business, I said he was not acquitted.

There was but one person who said that?—Mr. Fergusson said it repeatedly: and then I

said, "I meant to have said, *discharged*; if I had said *acquitted*, it was a mistake;" and then Mr. Plumer came up, and I told him that Mr. Fergusson had said so.

Lord *Kenyon*.—There can be no occasion to go into all that conversation.

Mr. *Gibbs*.—All I wish to have the honour of asking your lordship is this: there was a person who said to your lordship, "You have said he is not acquitted; and then you corrected yourself?"—Yes; and that person, to the best of my knowledge and belief, was Mr. Fergusson; and I told Mr. Plumer that Mr. Fergusson had said it repeatedly: three or four might have repeated it in the confusion of the court; I could not distinguish voices.

Sir *John Mitford* (his Majesty's Solicitor-General) sworn.—Examined by Mr. *Fielding*.

Have the goodness to describe what was your particular situation in the court at Maidstone?—You mean after the jury had withdrawn, I suppose?

If you please.—I went up to Mr. Justice Buller and spoke to him; and then I placed myself immediately under him, opposite to Mr. O'Connor, upon whom I kept my eye fixed when the jury came into court and gave their verdict. I observed Mr. O'Connor and Mr. Fergusson; I particularly fixed my eyes upon them. I observed Mr. Fergusson speaking to Mr. O'Connor, and Mr. O'Connor put his leg over the bar: I called out, "Stop him." Mr. Fergusson said, "He is discharged." I said, "He is not discharged." Mr. Fergusson then addressed Mr. O'Connor, and said, "You are discharged." I repeated, "He is not discharged," I believe more than once. I observed the gaoler leaning over towards Mr. O'Connor, and I think he took hold of him.

Mr. *Garrow*.—The other prisoners were between the gaoler and Mr. O'Connor, were they?—Two of them were, and the other two behind Mr. Binns and Mr. O'Coigly; and then Mr. Allen and Mr. Leary were behind. Then Mr. O'Connor drew back his leg: there was then a disturbance immediately under Mr. O'Connor, and some person or persons pressing forward, and Mr. Fergusson made some complaint to the court upon the subject; then Rivett, the officer, who appeared to be the person pressing forward, said—

Mr. *Fielding*.—When you say *pressing forward*, in what kind of direction was that pressure?—Towards Mr. O'Connor.

That was not forward towards the body of the court, but towards Mr. O'Connor?—It was towards the body of the court, in order to get to Mr. O'Connor, and place himself under Mr. O'Connor, as I conceived. Rivett said, he had got a warrant against Mr. O'Connor; and the gaoler also said something upon the same subject, but I do not recollect the particular words; and Mr. Justice Buller spoke to the officers, as I understood, to keep the prisoners back, or some expression of that de-

scription, and then almost instantly began addressing Mr. O'Coigly.

Lord *Kenyon*.—With a view to pass the sentence?—With a view to pass the sentence. I recollect that this was almost instantaneous; because I was about to speak to the Court; and it was so sudden, that I thought it was indecent to interrupt Mr. Justice Buller, otherwise should have spoken to the Court.

Mr. *Garrow*.—Mr. Attorney General had retired from the court?—He had retired from the court, and had desired me to speak to Mr. Justice Buller upon the subject, which I had done after Mr. Justice Buller had passed sentence upon Mr. O'Coigly. I fixed my eye particularly upon Mr. O'Connor, and I observed Mr. Fergusson, and some other persons whom I did not know, encouraging Mr. O'Connor to go over the bar. Mr. O'Connor appeared for a little while to hesitate, but it was only for a moment; he then sprung over the bar, and leaped into the lower part of the court, between the bar and the jury-box, which was on the right hand of the judges. From that time I did not see Mr. O'Connor until he was brought back by the officers; for at the same instant that Mr. O'Connor jumped over the bar, three or four persons whom I did not know leaped over from the box opposite the jury-box upon the table.

Mr. *Garrow*.—Was that box the box where the witnesses had been examined?—Where the witnesses had been examined, and where persons who attended the trial through curiosity had been. They went to the spot where the riot was, and jumped among the rioters: all the lights, except those before the judges, and the lights which hung in the middle of the court, in a kind of branch or chandelier; I do not recollect exactly what sort of a thing it was; it gave a considerable light—but all the other lights were extinguished.

Mr. *Garrow*.—The chandelier that hung over the prisoners?—In the middle of the court; there were, I think, three patent lamps in it; it gave a great deal of light. Mr. Fergusson, at the moment that Mr. O'Connor jumped over the bar, turned himself round, and appeared to me to follow Mr. O'Connor; but I cannot positively say that he did so, because the persons who rushed from the other side of the court, came between me and him; but I recollect that when they were passed I did not see him. I then attended to the prisoner O'Coigly, apprehensive that he might escape; and that attracted my attention in some degree from what was passing in the riot; he was perfectly tranquil, and I was convinced, from his behaviour, that he did not mean to stir; and therefore my attention was drawn back again to the riot. Mr. Knapp's clerk, Mr. Stafford, jumped upon the table, and drew Mr. O'Connor's sword (a kind of broadsword, I think), which was lying upon the table; and he flourished it over the heads of the persons who were engaged in the riot below. I got up to speak to him, to desire him

to put up the sword, which, after some time, he did; and soon after Mr. O'Connor was brought back. Mr. Stafford being between me and the rioters, prevented me from seeing what passed after the riot was over. I do not recollect any thing material except lord Thanet; that is, a person whom I understood to be lord Thanet. I did not know lord Thanet's person; that is, I did not recollect him; I had seen him many years ago. *I saw a person whom I understood to be lord Thanet, come across the table; and I saw him in conversation with Mr. Justice Lawrence; that conversation was a little warm, but I did not hear the particulars of it. When my lord Thanet left Mr. Justice Lawrence, and went across the table again, I heard him say, "I thought it was fair he should have a run for it."*

Was that addressed to the judge in parting from him and going across the table?—I think it was not addressed to the judge, but as he turned from the judge: *he said it rather in a tone of anger; I think it was in consequence of what had fallen from Mr. Justice Lawrence, which I did not exactly hear. I do not recollect any thing else.*

Mr. Fielding.—*Will you have the goodness to explain what you meant by "encouraging Mr. O'Connor to get over the bar?"—It was not immediately encouragement, by any words that I could hear; but by action, as if he was encouraging him to come over the bar, and by insisting that he was discharged.*

Sir John Mitford cross-examined by Mr. Best.

While Mr. Fergusson was speaking to Mr. O'Connor, he was in his place at the bar?—He was.

There was a vast number of other persons at the same time speaking to Mr. O'Connor?—Yes.

I believe it was generally understood in the court at that time, that Mr. O'Connor would be acquitted?—I do not know whether they were congratulating him; it was after he was acquitted.

You say he was in his place at the bar; do you recollect ever seeing him quit his place at the bar?—I have already said, I think he did: I have already stated, I am not positive as to the time, but that I did not see him when the rush that passed between me and Mr. O'Connor was made.

Mr. Justice Heath sworn.—Examined by Mr. Attorney-General.

Your lordship, I believe, was one of the commissioners of Oyer and Terminer at Maidstone?—I was.

Did your lordship observe any riot that took place?—I did; and if you will give me leave, I will state all that I observed. I was applied to in the course of the day by a messenger from the secretary of state, who informed me that a warrant was issued for the apprehension of Mr. O'Connor, in case he should be *ac-*
itted, and desiring to know if the Court

†

would permit him to execute that warrant if he should be acquitted; and we gave leave. After the verdict had been given, and, I believe, after sentence of death had passed, this messenger very unadvisedly went from that corner of the box where the prisoners were confined, to that corner which was near the door, and said aloud, "My lord, may I now execute my warrant?" Presently after, I saw Mr. O'Connor thrust one leg over the box, and then draw it back again: afterwards, in the space of a minute, I saw him leap over the box. I could not see any person between him and the door at that moment. Immediately a great scuffle and a riot ensued, and a great deal of fighting, such as I never saw before in a court of justice; it appeared to me to be between the constables with their staves on one side, and those who favoured the escape of O'Connor on the other. I know not from whence the favourers of Mr. O'Connor came; it being dark, I could not see exactly the number of the combatants; it was dark in that place where they were fighting; but from the exertion of the constables in plying their staves, it seemed to me that there must have been ten or twenty, I suppose, all fighting together. I saw a man with a naked sabre, brandishing it over the heads of the combatants. One of the officers of the court, I believe, came up to me with a brace of pistols, which, I believe, belonged to Mr. O'Connor, and lay upon the counsel table, saying, "I have secured these at last." This combat, I suppose, might last five, six, or seven minutes; I cannot exactly say how long; *but in the course of it, I saw Mr. Fergusson standing upon the table, together with many others; he turned round towards the commissioners, and said, I believe particularly addressing himself to me, "My lords, the constables are the persons that are the rioters; they are the occasion of it," or words to that effect. Before I could give him an answer, he turned round again towards the combatants; it was impossible, from the noise, for him to hear any thing I could say to him. My attention was chiefly turned from him to the more interesting scene of the fight; but I must do him the justice to say, that, in the very short time I saw him, which was not above a minute or so, I did not observe him say or do any thing to encourage the riot. I thought myself in great danger, and that we were all so. I could not guess at the view of the rioters, how far it extended, or whether they had any and what arms; indeed we were more alarmed, because we had intelligence before hand, that there was a very disaffected party in the town.—That is all I have to say.*

Charles Abbot, esq. sworn.—Examined by Mr. Law.

Were you in court when the jury brought in their verdict?—I was.

Did you observe any motion made by Mr. O'Connor towards quitting the bar?—I do recollect that Mr. O'Connor made a motion

with his body, as if he would leave the bar. Mr. Fergusson, almost at the same instant, said, "He is discharged." Mr. Solicitor General then called across the table, "No, stop him; he is not discharged." Just at the same instant, one of the officers, either Rivett or Fugion, but I cannot say which, got upon the form and pressed forward towards Mr. O'Connor, and at the same time said he had a warrant; there was then a little confusion for a short space of time, but not very long; the prisoners resumed their places, and Mr. Justice Buller proceeded to pass the sentence upon Mr. O'Coigly. During this time I had been sitting almost immediately under Mr. Justice Buller, very nearly so. At the very instant that Mr. Justice Buller had closed the sentence, I observed Mr. O'Connor leap over from the bar towards his left hand; a very great tumult and confusion immediately took place; and, shortly afterwards, I saw a person, whom I soon learned to be Mr. Stafford, draw a sabre, and went to that corner of the table where the confusion was. Mr. Garrow cautioned him not to strike; and he did not appear to aim the sabre at any body, but merely to keep it moving over their heads. When this second tumult began, I rose up and stood upon the form upon which I had been sitting; so that I was standing before Mr. Justice Buller and Mr. Justice Heath, with my back towards them. When the confusion began to abate, I turned round, and entered into some conversation with Mr. Justice Buller; and soon after this, while I was in that situation, I saw my lord Thanet standing on the table, nearly before Mr. Justice Lawrence, which was towards my right hand. I heard Mr. Justice Lawrence speak to lord Thanet to this effect, "I think it would be an act of kindness in Mr. O'Connor's friends, to advise him to go quietly to the prison, lest some mischief should happen." I do not pretend to state the learned judge's words; but the substance, I believe, I am correct in. Lord Thanet then turned abruptly round towards his right hand, which brought his back towards me; and I did not distinctly hear the first words that he uttered, but the concluding words were either "to have a run for it," or "fair to have a run for it." I will not be quite certain of the word "fair;" but of the words "to have a run for it," I am quite certain. I have the more particular recollection of this, because, shortly afterwards, I observed Mr. Sheridan at the same part of the table, and heard Mr. Justice Lawrence speak to him to the same effect that he had before spoken to my lord Thanet. Mr. Sheridan answered with great civility, either that he had done so, or that he would do it: it was the different manner of Mr. Sheridan to that of my lord Thanet that made me recollect that.

Do you recollect Mr. Justice Lawrence making an observation upon that?—Yes.

Mr. Erskine.—To whom?—To Mr. Sheridan.

In the presence of lord Thanet?—No; he

was gone: and I recollect that Mr. Justice Lawrence said to Mr. Sheridan, that he had made the same observation to another gentleman.

Mr. Law.—Have you any doubt of the words spoken by lord Thanet, "to have a run for it?"—I have not.

John Rivett sworn.—Examined by Mr. Garrow.

Did you attend at Maidstone as a witness upon the trial of O'Connor and others?—I did.

Was any application made to you by one of his majesty's messengers, to assist in apprehending Mr. O'Connor, if he should be acquitted by the jury?—Yes, there was.

Did you, in consequence of that, go into the court with a view to give that assistance?—Yes, I did.

Who went with you?—Fugion, my brother officer.

He was another officer of the police?—Yes, and the messenger; we all three went into the court together.

Is Fugion since dead?—He is.

After you had gone into court, do you remember seeing a gentleman of the name of Thompson?—I was informed that was the gentleman's name.

Should you know him now if you were to see him?—I think I should: I have never seen him since. I was very near the bar where the prisoners stood.

At which end of the bar were you? were you on the side the farthest from Mr. O'Connor, or the nearest?—Nearest to the gaoler, which was the right-hand side of the bar.

While you were in this position had you any conversation with a gentleman you understood to be Mr. Thompson?—Yes.

State it to the Court.—The gentleman whom I understood to be Mr. Thompson, a member of parliament, asked me, "What I did there?" I made him little or no answer. He then said, "What business have you here?" or words to that effect; "have you got any thing against Mr. O'Connor?" meaning, as I supposed, a warrant; I did not know what his meaning was; I replied, "No." I believe he asked Fugion likewise, to the best of my recollection.

You and Fugion had been both examined as witnesses upon the circumstance of the apprehension of Mr. O'Connor?—We had.

And, to the best of your recollection, Mr. Thompson put the same inquiry to Fugion?—He did.

What then passed?—I then observed a gentleman, whom I knew to be Mr. O'Brien, at the farther end of the Court: I observed Mr. O'Brien whispering something to Mr. O'Connor over the bar.

Describe particularly where Mr. O'Brien was placed during that time?—He was on the left-hand side of the bar, by Mr. O'Connor; I was on the right-hand side, and he was

left: a few minutes might elapse, when Mr. Thompson put up his finger to catch the eye of Mr. O'Brien, and beckoned to him; a few minutes might elapse, when Mr. O'Brien came to the same side where I stood.

Did Mr. Thompson still continue standing by you?—Yes, he did.

How long was this before the verdict was given?—While the jury were out, considering their verdict.

When Mr. O'Brien came to the place where you and Mr. Thompson were standing, what took place?—Mr. O'Brien and Mr. Thompson spoke to each other; but what they said I cannot tell. Mr. O'Brien then addressed me, and said, "Have you got a warrant against Mr. O'Connor?" I said, "No." Then he said, "Then Fugion has."

Do you mean that he made use of Fugion's name?—Yes; Fugion was present, and he answered immediately that he had not. He said, "Fugion, have you got the warrant?" He addressed himself to Fugion: Fugion said, "No." Then Mr. O'Brien said, "Then the messenger has."

Had Wagstaffe his badge as king's messenger on at that time?—I do not recollect.

Do you mean to say that he addressed himself to the messenger?—No; he said, "Then the messenger has." I then replied, "I can answer only for myself." Mr. O'Brien then said, "I will bet you three guineas," I think it was, to the best of my recollection, "that you have." Fugion said, "Done," I believe, or words to that effect. Mr. O'Brien then left the side of the court that I was on, and returned to the left-hand side where Mr. O'Connor was, and whispered something to Mr. O'Connor; but what I cannot tell.

What observation did you make at that time, with respect to any other persons in the court, as to any change of position?—It remained quiet till the jury were coming in: a number of gentlemen seated themselves directly before me in the place where I stood.

That was upon the bench made for the prisoners attorneys?—Yes.

Many gentlemen seated themselves there?—Yes.

Did you know any of those persons?—Not that were sitting down before me; some time had elapsed, when there was some noise when the jury were coming into court, "Make way for the jury," or something to that effect. I then endeavoured to get as nigh Mr. Watson, the jailor, as I possibly could. I went to step my foot up to get nigh the bar, and I was pulled down again by my leg; I turned round, and the person who pulled me down, I supposed, was Mr. Thompson.

Do you mean to say you know it was Mr. Thompson; or, from the situation he was in, that you apprehended it was Mr. Thompson?—Exactly so.

You do not aver the fact positively?—No; but when I turned round he was close to me. And therefore you conclude he was the

person that pulled you?—Yes. The jury then came in, and I endeavoured to get up again as near the bar as I possibly could.

When you use the expression, that you endeavoured to get up as near the bar as you could, was there any thing that prevented you from getting there?—Only the gentlemen sitting there.

With what view was that?—With a view to assist in securing Mr. O'Connor if he should attempt to make his escape.

Upon your endeavouring to get as near the bar as you could, what happened?—The jury were in, and the Court called "Silence." The jury had given their verdict—Mr. O'Connor and the others, Not Guilty; and Mr. O'Coigly, Guilty; and then I got up nigh the bar. I observed something in Mr. O'Connor that struck me as if he meant to make his escape; at that moment there was some noise in the Court, and Mr. Fergusson says, "What business has that fellow there, making such a noise?"

Lord Kenyon.—Whom was that addressed to?—It was addressed to the Court, I believe. Upon that I got up upon one of the benches, and addressed the judge, and told him my reasons for being there. I told his lordship I had a warrant from the duke of Portland to arrest Mr. O'Connor; the judge replied, "I should have him," or words to that effect; and desired the gaoler to take care of all the prisoners for the present.

Which of the judges was that?—Judge Buller; then the sentence was passed upon Mr. O'Coigly. As soon as the judge had so done, Mr. O'Connor immediately jumped out of the bar: there was then a very great confusion in Court; those gentlemen who had so placed themselves before me, stood up; I called out, "Shut the door, shut the door," several times.

After Mr. O'Connor had jumped over the bar, which way did he take?—He took to the left.

He took the direction going from you?—Yes.

That was as we have been describing, towards the narrow street?—Yes; I then endeavoured to get forward, but was prevented by those gentlemen who had so placed themselves quite before me and Fugion, and the messenger.

Now describe particularly what passed which prevented you, with your assistants, from following Mr. O'Connor?—I was pulled down, or shoved down, twice or three times; but by whom, I am not able to say. I THEN JUMPED FORWARD AS WELL AS I WAS ABLE, AND WAS ENDEAVOURING TO PURSUE MR. O'CONNOR; MR. FERGUSSON JUMPED UPON THE TABLE, AND WITH A STICK FLOURISHED IT IN THIS WAY, TO PREVENT MY GETTING FORWARD.

Flourished it over your head?—He flourished it with an intent, as, I presume, to stop me.

Was Mr. Fergusson in his professional dress?—Yes, he was. I THEN SPRUNG AT HIM, AND WRENCHED THE STICK OUT OF HIS HAND, AND HE RETURNED BACK TO HIS FORMER SITUATION.

He went from off the table, and returned to his place at the table?—Yes; otherwise I should have struck him with the stick which I had wrenched from him, if he had not that moment got away.

Describe what more took place?—As soon as I recovered myself, I was then knocked down by some person who drove against me—NOT WITH A STICK; AND AS SOON AS I HAD RECOVERED MYSELF, I SAW THE PERSON WHO HAD SO SHOVED ME DOWN; I IMMEDIATELY STRUCK HIM WITH MY STICK: I REPEATED MY BLOWS THREE OR FOUR TIMES; THAT PERSON CALLED OUT, “DON’T STRIKE ME ANY MORE.” I REPLIED, “I WILL; HOW DARE YOU STRIKE ME?” That person I so struck was, as I understood while I was in court, the earl of Thanet.

Are you quite certain that the person you struck and repeated your blows with a stick, was the person who shoved you down?—Yes.

And that person, whilst you continued in court, you understood was my lord Thanet?—Yes.

Should you know his person now?—I think I should.

Look round the court, in all parts of it, and see if you see his lordship here---is that the person you struck who sits next Mr. Gibbs?—I believe it is; I cannot positively say, because I have never seen the gentleman but once since that time.

From the appearance of his lordship, from his person and make, do you now believe him to be the person?—I cannot positively say.

Have you reason to believe that that gentleman is the person?—I have some reason to believe so, FROM HIS SIZE.

Did you afterwards, in the course of your continuance in court, see lord Thanet in any other part of the court?—He was pointed out to me immediately after.

Upon the spot?—Upon the spot.

I do not know whether you recollect how he was dressed?—No, I do not.

Who was the person that told you that the name or title of the person, with whom you had the contest, was lord Thanet?—Mr. O’Connor, after being secured and brought back again into the bar.

Mr. O’Connor gave the title of lord Thanet to the person with whom you had had the contest?—Yes.

Lord Kemyon---Was it a conversation addressed by Mr. O’Connor to you?—It was.

Mr. Garrow---After you had given these blows to the person supposed to be lord Thanet, what passed?—I observed Mr. O’Connor was in custody—he had been secured by the door-way; I then assisted in getting him back to the bar.

You described just now, that when you were attempting to push on to prevent Mr. O’Connor escaping, you were interrupted by the persons who had placed themselves before you?—Yes.

Do you mean that it was merely by the accident of their being there, or that they gave

you any obstruction?—While the jury were out, they came, and a great number more than had been there at the time of the trial, and placed themselves just before where I stood.

Are you acquainted with Mr. Gunter Browne?—No, I am not.

Do you remember any body remarkable in his appearance, or person, obstructing Fugion or Wagstaffe?—No, I did not observe it; I was so engaged myself.

John Rivett cross-examined by Mr. Erskine.

You have stated to my lord and the jury, that, from something that passed, you expected Mr. O’Connor to attempt to make his escape?—Yes.

I take it for granted, that the apprehension that he wanted to make his escape, induced you to go forward?—Yes: I got as near the bar as I could.

It made you more desirous, with the other officers, to push forward quickly?—Surely so.

If you had had no reason to suppose Mr. O’Connor was endeavouring to escape, and that others had a disposition to assist him, I take it for granted you would have gone on more leisurely?—No doubt.

But the apprehension that you had, that you might be disappointed in the execution of your warrant, made you go on with considerable rapidity?—I went swifter than I should have done if I had not been molested, no doubt.

The line that you were going in at that time, was a place not very unlike where I am standing now, immediately before the prisoners?—Yes.

That is to say, a place like that I am now standing in, divided by something like this from the place where the counsel sat?—Just so.

You say that you jumped forward as well as you were able, and were endeavouring to pursue Mr. O’Connor, when Mr. Fergusson jumped upon the table, and with a stick flourished in this way, to stop you?—Yes.

That was the first obstruction you met with?—No; I was pulled by the leg.

But, except that pulling by the leg, after you pursued your progress through the solicitors’ box, the first interruption you met with was by Mr. Fergusson jumping upon the table?—No: I had been pushed down before that.

Had you struck any body before that?—No.

Had you shoved or pushed any body?—I cannot tell that; in the confusion I might.

You had not seen lord Thanet till after this had passed with Mr. Fergusson?—To my knowledge I had not.

Lord Thanet is a very strong, big man?—Yes, he is so.

Then you had not seen lord Thanet till after you had been with Mr. Fergusson, at this time upon the table?—No, I had not.

And you had shoved against several others?—I probably might, in the endeavour to get forward.

I would ask you, how you came to leave the line of the solicitors' box, as you were advancing towards Mr. O'Connor to go up where Mr. Fergusson stood?—I did not go up to where Mr. Fergusson stood: the first time I placed myself was, by the right-hand side of the bar; Mr. Fergusson might have attacked me about the middle of the bar.

After you saw Mr. O'Connor jump over the bar, and when you were apprehending that you might be disappointed in arresting him, you went forth with all the rapidity you could. Now, how came you to leave the course which directly led to him, to go up to the table where Mr. Fergusson stood?—There had been a great many gentlemen in the corner, and I got a little farther to the right.

Towards the table where Mr. Fergusson was?—Yes.

He was standing upon the table, and you upon the ground?—No; upon the bench: I might be upon the ground sometimes; for I was up and down several times,

Mr. Fergusson was upon the table, flourishing a stick over you, in his wig and gown, and you forcibly wrenched it out of his hand?—Yes; and if he had not got away, he would have recollected me another time.

Now you take upon you to say, that when this transaction took place, he returned to the table, and went to his seat?—He turned back, and went from me to the table.

Did he go towards Mr. O'Connor?—No; he turned towards the judges.

Then it was not until after this transaction had passed, when Mr. Fergusson had flourished his stick in this manner, and had gone away towards the judges, that you met with lord Thanet?—Just so.

What interval of time might there be between Mr. Fergusson's going away in the manner you describe, and your meeting with lord Thanet?—A very few minutes; a minute or two.

Where was it you met with lord Thanet?—A very little distance from me.

Was he in the counsel's seat, or where?—I do not know what you call the counsel's seat; he was upon the benches. As soon as I turned from Mr. Fergusson, I was immediately shoved down.

Was the person you took to be lord Thanet upon a bench by where the table stood?—I cannot say.

Had he a stick?—He had no stick, that I recollect.

Then, lord Thanet having no stick, what assault did he make upon you?—With his fist, in this way, shoved me down as I was going forward; he shoved me back.

And then you struck him?—Yes; as soon as I recovered myself, I struck him two or three blows.

With what?—The stick that I took from Mr. Fergusson.

My lord Thanet had no means of parrying that blow?—No; he did not attempt to strike me afterwards.

Where was he at the time you struck him two or three times?—When I hit him the first time, he fell upon his side, this way.

Did you strike him after that?—Yes.

Mr. Fergusson was gone away?—Yes.

Mr. Fergusson did nothing to endeavour to extricate lord Thanet from you?—No.

Did you strike any body else but lord Thanet?—I do not know that I did; I might by accident.

If you struck any body else, besides lord Thanet, it was by accident?—Yes.

Did you see either Fugion, Adams, or Wagstaffe, who were there, strike any body?—No, I did not.

Mr. Garrow.—Do you remember seeing Fugion strike any body?—No.

You said you were not before acquainted with the person of Mr. Thompson?—No.

Should you know him again now?—I should think that little gentleman is him.

Mr. Gibbs.—This gentleman? [*putting his finger on Mr. Thompson.*]—No; the next gentleman.

This gentleman? [*putting his finger on Mr. Bonney.*]—Yes; I think that is him.

Sir Edward Knatchbull, bart. sworn.—Examined by Mr. Adam.

Were you at the trial of O'Coigly, O'Connor, and others, at Maidstone?—I was.

Were you present in court at the time the riot took place?—I was.

Will you state to my lord and the jury, whether you saw Rivett, the Bow-street officer, engaged with any person, and with whom?—Previous to the sentence being passed upon O'Coigly, I saw Rivett, the Bow-street officer, on the prisoner's right hand; he produced some paper, which I understood at the time to be a warrant from the duke of Portland, to secure the person of Mr. Arthur O'Connor; after that, there was some conversation passed between the judge and Rivett, which I do not immediately recollect. I saw lord Thanet seat himself under the prisoners at the bar, immediately at the conclusion of the sentence being passed upon O'Coigly. I saw Rivett, who appeared to me to be placed in a situation in order to prevent Mr. O'Connor's escape. I saw Mr. O'Connor put his right foot, I think it was, upon the bar, his left hand upon the railing, and his right hand either upon some person's shoulder that was sitting under, or else upon the rail, and jump into the crowd. I can only speak now as it struck me at the time; it appeared to me that lord Thanet rose from his seat as soon as Mr. O'Connor jumped into the crowd; he rose from his seat in order to prevent Mr. Rivett from securing the person of Mr. O'Connor. There was some person, who it was I cannot pretend to say, but it was some person with rather a bald head, a person whom I should not know again if I was to see him.

Can you tell how he was dressed?—No, I cannot; but there was some person who took hold of Rivett, at least it had that appearance

to me in the bustle; he took hold of Rivett, and pulled him, endeavouring to keep him back; lord Thanet was between Rivett and where Mr. O'Connor had leaped out of the pound. I know nothing farther; that is all I saw of the business. I cannot pretend to say what passed afterwards.

Did you see any fighting, or any blows struck?—It did appear to me, but I can by no means speak positively to it, that when a person, whoever it was, was endeavouring to keep Rivett back, Rivett, if I may make the gesture, for I do not know how to describe it, Rivett, in this kind of way, struck lord Thanet in the side, as it appeared to me; but I cannot say whether he struck lord Thanet or not, at that distance; nor did I see him make a blow at any person.

Are you sure that lord Thanet was standing in that part of the court?—I am quite certain that he went there when sentence had passed.

Thomas Watson sworn.—Examined by Mr. Wood.

You are the gaoler of Maidstone, I believe?—I am.

Were you in court at the trial of these prisoners?—Yes, I was.

Do you remember the judges giving any directions not to discharge the prisoner?—Yes.

When were these directions given?—Just before it ended.

Do you mean before the sentence of death was pronounced?—Yes, I believe it was, to the best of my knowledge.

Before the sentence was finished, did you say any thing to Mr. O'Connor?—I did; I said, "Mr. O'Connor, remember you are not to be discharged, though you may be acquitted." He said, "Why?" and I said, "Because I have no authority to discharge you, and therefore you must not go."

Was any thing said after that to Mr. O'Connor by any body?—A person just below him, after sentence was passed, said to Mr. O'Connor, "You are acquitted; what do you stand there for? why do not you jump over?"

You do not know who that person was, I suppose?—No: Mr. O'Connor said, "Mr. Watson says, I am not to go:" the gentleman below said, "Pshaw! you are acquitted: what do you stay there for? jump over." He instantly sprung, and I instantly caught hold of the skirt of his coat as he got over, and held him: I then cried out, "Stop him, stop him!" There were some of them shoving him behind, to shove him through the wicket, and others shoving him back; but he was so secured, that they got him back into his place again.

Did you see Rivett?—I did.

Did you give any directions to Rivett?—I called to him, or his companion, and said, "I wish you would go out and get some constables and assistants;" for I suspected there would be something amiss by-and-by.

Thomas Adams sworn.—Examined by Mr. Fielding.

You were coachman to Mr. Justice Buller at the time of the trial?—I was.

Tell my lord, and the gentlemen of the jury, what you observed in the court after Mr. Justice Buller had passed sentence of death upon O'Coigly. First of all, where was your situation?—At the wicket-door that leads into the body of the court, and that part of the court that the spectators stand in.

By the jury-box?—Yes.

Now, when sentence of death was passed, what did you observe going forward in court?—Some person said, "Spring," but who, I know not; immediately Mr. O'Connor jumped over the bar into the body of the court.

Did you observe the person of the man from whom the voice came?—No, I did not; he came to the wicket-door, where I stood, and I immediately caught him by the collar.

Then he had made his escape so far as to get to the place where you were?—He had; I caught him by the collar of the coat, and says, "I'll be damned if I let you go;" and immediately the wicket-door was opened; I took the wicket-door in my left hand, and pulled it to, and bolted it; and the moment I had bolted it, some person knocked me down.

Did you see that person afterwards, to know him?—My whole attention was, to stop Mr. O'Connor.

Then you do not know the person who knocked you down?—I do not; I immediately got up, and seized Mr. O'Connor again, and said, "I'll be damned if I let you go, let the consequence be what it will."

When you had recovered yourself, and caught him again, do you remember who were the persons immediately about Mr. O'Connor?—I saw several gentlemen between the officers and Mr. O'Connor.

Did you know any of them by name, as it appeared afterwards?—I saw my lord Thanet; his lordship was as close to me as possible, rather behind me.

How far was that situation, in which you saw lord Thanet, from the immediate front of the bar from whence Mr. O'Connor had escaped?—He might be as far from the bar, not quite so far, as I am from you; rather nearer to the wicket, where I stood.

Did you see lord Thanet do any thing?—I saw lord Thanet with a small stick in his hand in this position, directly behind me; and Rivett, the officer, came up, and struck at him with a stick; lord Thanet says, "What did you strike me for? I did not strike you."—"You struck me first," says Rivett.

Did you know any of the other persons that were by him?—I did not.

Did you see any person there with a bald head?—I did not take any notice of a bald head; I saw a gentleman with a black collar, and a pepper and salt coat on.

What did that person do?—I did not see.

him do any thing; he was in the passage among the other persons that were endeavouring to obstruct the officers from taking Mr. O'Connor: I called out to some person to come forward to my assistance, for he made a spring, and the wicket-door was opened again; I made a spring and shut it again, and then Rivett and Fugion came up.

How many persons do you think there were between you and the officers Rivett and Fugion who were coming up?—I cannot say how many there were; there might be seven, eight, or nine; or there might not be quite so many.

Do you know the persons of either Mr. Thompson, Mr. O'Brien, or Mr. Gunter Browne?—I do not.

Do you know the person of lord Thanet?—Yes, I believe I do know him; I saw his lordship give his evidence in court.

When Mr. O'Connor was last stopped by you, what became of him?—I delivered him up to two officers.

How near to the bar from whence he had escaped, did you come with him?—I came quite up to the end of the bar with him.

At that time, what was the number of the people standing about?—They were directly opposing the officers from coming, when I was at the corner of the bar with him.

Do you know the person of Mr. Fergusson?—I do not.

Did you see any person in a bar-wig and gown?—Yes.

In what situation was he?—He was one of those who wanted to obstruct the officers from coming forward.

What did you observe him to do?—I saw them stand all of a body together, so that the officers could not pass to take him.

Do you remember any complaint being made to the judge, by any person, of having their head broke?—Yes; a gentleman said, "What recompense am I to have? I have got a broken head;" but I do not know who it was.

Was that the person that you spoke of with a black collar?—I cannot say.

Had he a bald head?—I cannot say.

Henry William Brooke sworn.—Examined by *Mr. Abbott.*

I believe you have some situation in the secretary of state's office?—Chief clerk in the alien department.

Were you at Maidstone at the trials?—Yes.

Do you know the person of Mr. Dennis O'Brien?—I do.

Do you recollect seeing Mr. O'Brien in court during the time the jury retired to consider of their verdict?—I do.

Where did you see him? where was he?—I saw him near the dock, on the side where Mr. O'Connor stood.

Was he in conversation with any person that you observed?—He was in conversation with Mr. O'Connor.

Do you recollect what happened immediately after the jury had pronounced their verdict?—I recollect that Rivett, one of the Bow-street officers, attempted to get up on the side where the gaoler sat.

Did he declare the purpose of his attempting to go that way?—To the best of my recollection, he said, he had a warrant from the secretary of state to arrest Mr. O'Connor.

Did you observe that any attempt was made to resist this person who was endeavouring to come forward?—I observed some persons endeavouring to pull him back.

Do you recollect whether any direction was given to the gaoler with respect to the prisoners, by either of the learned judges?—Yes.

Lord Kenyon.—It cannot be necessary to go into that.

Mr. Erskine.—There can be no doubt of any of these facts.

Mr. Abbott.—Did Mr. O'Connor do any thing?—Mr. O'Connor placed, as far as I recollect, his left hand upon the side of the bar where he stood, and leaped over.

Did you hear any voices crying out any thing?—At that time the tumult became general: I heard some cry out, "Stop, stop;" and others, "Run, run."

Are you able to identify any person who was resisting Rivett?—I saw a person; to the best of my recollection, who was dressed in a gray coat and a black collar, and his head was bald on the top.

What did you see that person doing?—He seemed to have hold of the officer's coat.

Of Rivett's coat?—Yes.

Did you afterwards learn who that person was?—I afterwards understood that person to be a captain Browne.

Did that person, after the tumult was over, prefer any complaint to the Court that you recollect?—I cannot identify the person of the gentleman that endeavoured to make a complaint to the Court of ill usage; but there was some gentleman upon the table, who complained, whether generally, or to the bench, I cannot say, "Am I to be ill-treated in this way?" or to that effect.

Was that the person with a bald head and black collar?—I cannot say.

Did you know Mr. Fergusson the counsel?—I have not the honour of Mr. Fergusson's acquaintance: but I had his person pointed out to me as being Mr. Fergusson.

Did you see him do any thing?—He appeared to have something in his hand; but whether it was a stick or a sword that lay upon the table, or what, I cannot say—but he was brandishing it over the heads of the people.

Was he in his professional dress at this time?—He was.

Henry William Brooke cross-examined by *Mr. Erskine.*

Where was Mr. Fergusson standing when you apprehend, rather than express, that you

saw him brandishing something which you do not describe, but which you think was a stick or a sword?—He was standing near the side of the court upon which Mr. O'Connor stood.

Upon the court, upon the bench, or upon the table?—He appeared to me, as far as I can charge my recollection, to have been upon a bench; he appeared to be elevated from the ground.

This was after the sentence had been pronounced, and after Mr. O'Connor had gone out of the dock?—It was about that time, as far as I can recollect.

At the time of the confusion in court, was it not?—It was at the time of the confusion.

John Stafford called again.—Examined by *Mr. Law*.

I will not examine you to the preliminary circumstances which have been proved by several witnesses. Confine yourself now to the time that Mr. O'Connor was endeavouring to get over the bar. At that period of time, did you see any of the defendants, and particularly Mr. Fergusson or lord Thanet, do, or endeavour to do, any thing?—At the instant that Mr. O'Connor leaped over the bar, I saw my lord Thanet and Mr. Fergusson: I had been paying particular attention to Mr. Justice Buller in passing sentence: and the moment that he was done, I turned my eyes round to the bar, and saw Mr. O'Connor in the act of getting over; he had his left hand upon the bar, and his right hand extended: my lord Thanet stood next to him, to the right of him; Mr. Fergusson, at that instant, was in front of him, with his back to me, facing Mr. O'Connor.

Mr. Erskine.—Where did you sit at this time?—Supposing this to be the court at Maidstone, I sat directly under the jury.

Mr. Law.—You sat so that you could observe the whole of the transaction?—Clearly; but the whole of the transaction was of that sudden nature, that I was rising part of the time; I rose, and seized one of the sabres which lay upon the table, and which was a part of Mr. O'Connor's baggage.

Did you see lord Thanet or Mr. Fergusson do any thing in aid of Mr. O'Connor in the act of escaping?—When Mr. O'Connor extended his arm, he either laid it upon lord Thanet's shoulder, or Mr. Fergusson's arm; lord Thanet being between me and Mr. Fergusson, I could not distinguish on which of them he put his hand.

Did you see any obstruction given by them to any persons in passing from one part of the court to the other?—I did not observe lord Thanet make any obstruction; Mr. Fergusson had his back turned to that side of the Court from whence the officers were endeavouring to approach to the bar.

With his back towards the great street of Maidstone?—Yes. At the instant I am now speaking of, I was upon the table.

Did you see any thing in particular done by Mr. Fergusson?—Mr. Fergusson extended his arms in this manner, seemingly to me to keep the persons back who were forcing themselves forward. I saw no other act done by him.

Then did Mr. Fergusson appear to you to be putting himself in a position to stop the way?—Certainly so.

To stop the way for whom?—I said before, to stop the way of the persons who were approaching that side of the court where the officers were.

Were any persons at that time attempting to come from the side of the court where the officers were, to the side where Mr. O'Connor was?—Rivett and the Bow-street officers were. I at this time stood upon the table with a drawn sabre in my hand.

Did you see any body, before that, have hold of the flap of Mr. O'Connor's coat?—Yes; before Mr. O'Connor got from the bar, I observed that Mr. Watson the gaoler had got hold of the tail of his coat.

Was it at the same period of time when you saw the officers rush forward, and Mr. Fergusson attempt to stop the way in the manner that you have described?—Yes; the whole transaction was of the shortest duration possible: Mr. Fergusson forced himself between Mr. O'Connor and Mr. Watson the gaoler; Mr. Watson the gaoler reached across; he sat on the other side from where Mr. O'Connor the prisoner sat; he reached across behind Binns, and seized the flap of O'Connor's coat, as he was getting over the table; the coat was extended for a small distance between O'Connor and the bar, and Mr. Fergusson forced himself in between the two, and Mr. Watson let go his hold.

Do I understand you, that by the action of Mr. Fergusson, the gaoler was separated from his prisoner?—That I cannot say: the gaoler might have let go his hold without the action of Mr. Fergusson; it appeared to me to be in consequence of the action of Mr. Fergusson.

Do you know the person of Mr. O'Brien?—No, I do not; I saw a gentleman in court who spoke to Mr. O'Connor two or three times; that gentleman I had previously seen in the witnesses's box, standing by Mr. Sheridan, Mr. Fox, and the other gentlemen that were there; and I saw him afterwards; but I do not know, of my own knowledge, who he was at all.

You mentioned standing upon the table with this sabre in your hand: did you strike any body, or create any confusion?—I certainly struck no one; I menaced many that I saw, apparently to me, endeavouring to force Mr. O'Connor out; I brandished the sabre, and cried out very loudly, "Keep back," and made motions as if I would strike; but I did not strike any one.

From the observations you were enabled to make, to what cause and to what efforts did you attribute the riot?—The riot must be attributed, most certainly, to Mr. O'Connor's

attempt to escape, and the assistance that his friends gave him. I did not know of any warrant there was to apprehend him, till I heard Rivett call out in the manner I have described, before the sentence was passed.

Did you observe any other circumstances of actual assistance given by the friends of Mr. O'Connor to his escape, besides those you have mentioned?—No; the transaction was so short, it was impossible to observe minutely.

John Stafford cross-examined by Mr. *Erskine*.

This scene of confusion you represent as almost instantaneous, and to have continued but a very short time?—Yes.

You were sitting as clerk to Mr. Knapp, under the jury-box?—Yes.

And your face, of course, towards the great street of Maidstone?—Yes.

Now, after Mr. Justice Buller had pronounced sentence of death upon O'Coigly, did you see O'Connor jump out of the bar?—I did.

Where do you mean to represent that you saw Mr. Fergusson at that time?—*Mr. Fergusson did not attract my eye till I was upon the table; seeing the act of O'Connor, I immediately sprung up.*

You did not see Mr. Fergusson till the confusion had advanced?—It was just at the very instant; they all happened almost at the same time.

Mr. Fergusson did not attract your attention till you had got upon the table in consequence of that instantaneous confusion having begun?—I got upon the table in consequence of seeing Mr. O'Connor leap over.

Then, when your attention was first attracted to Mr. Fergusson, it was in the midst of the confusion?—Yes.

Several persons appeared to be pressing forward, and there seemed to be a scuffle?—Yes.

You observed lord Thanet very distinctly?—I had never seen lord Thanet before that day—I saw him give his evidence—I saw him afterwards, I think, sitting between Mr. Dallas and Mr. Fergusson; and I think I cannot err, when I say, I am sure it was lord Thanet.

Did you not see distinctly the person you took to be lord Thanet?—Most distinctly.

How far was he from you?—I am sure, not more than two yards; for the space between the table and the bar is very small; and it was between the table and the bar that I saw lord Thanet.

Where the counsel sat?—Not in the seat where the counsel sat.

At this time you were upon the table, and saw Mr. Fergusson in the midst of the confusion: was he upon the table where you were, or in his place?—Neither upon the table, nor in his place.

Where then?—Immediately behind where

he had formerly sat; he had sat in the front of O'Connor, and he had got just behind the seat where he had sat before.

You had a sword which you brandished for the purpose of keeping off any danger that might happen?—Yes.

Do you mean to represent that Mr. Fergusson was at that time in the solicitor's box?—I do not know whether I can call it the solicitor's box or not; *he sat at the extremity of the seat wherein the solicitors sat*—he was certainly directly before me at the end of the trial.

At that time, was not Mr. Fergusson surrounded by a great number of people, who were pushing and shoving, and making a disturbance?—The persons behind him were certainly crowding upon him; but there was a small space before him that was vacant.

Was there not a pressing upon him every way?—No, not from the table.

Were there not persons in the place where the solicitor's box was, pushing and crowding at the time Mr. Fergusson extended his arms?—Certainly; but I saw him only pressed on the side that I describe.

Do you mean to swear that you saw Mr. Fergusson shift his place where he had been, and go nearer to Mr. O'Connor?—No, I did not see him shift it.

Mr. Garrow.—There was a low-backed seat for the counsel for the prisoners?—Yes.

Behind that was a space and bench for the solicitors?—Yes.

And if I understand you right, Mr. Fergusson appeared to you to be over that low back to the counsel's seat?—Yes, certainly so.

Between the back of the counsel's seat and the bar?—Yes; I had not immediately before this observed where Mr. Fergusson was.

The Honourable *Robert Clifford* sworn.—Examined by *Mr. Garrow*.

I shall not trouble the Court to hear from you over again the detail of the circumstances. Did you hear lord Thanet examined as a witness upon the trial of Mr. O'Connor?—I did; it was a few minutes before five.

Very soon after that, I believe, Mr. Dallas summed up on the part of the prisoner?—He began to sum up, I believe, about five.

Did you observe where lord Thanet sat while Mr. Dallas was speaking?—Mr. Dallas left his place, which was exactly opposite Mr. Justice Buller, and lord Thanet came and sat in Mr. Dallas's place.

Mr. Dallas had removed from the place where he had sat, to a more convenient place for addressing the jury?—Yes; to the left hand of the counsel for the crown; lord Thanet sat opposite Mr. Justice Buller; the attorney's bench was between the prisoner and lord Thanet.

Did you, at any time after that, see lord Thanet move from that place, Mr. Dallas's seat, to any other?—He went over the back of the seat, and went into the attorney's place.

To that seat which was immediately under the bar?—Exactly: I do not know whether it was the first or second seat; there are two seats, one seat is directly against the wood, and then there is the thickness of a man: I do not know which of them he was upon.

When the jury returned, and had given their verdict, what observations did you make respecting either lord Thanet, Mr. Fergusson, Mr. O'Brien, Mr. Thompson, or Mr. Browne?—When they had returned a verdict of Guilty against O'Coigly, I observed Mr. O'Connor put his left leg over the bar of the dock, I believe they call it, leaning upon his left hand; lord Thanet rose up, and Mr. O'Connor's hand was within this distance (six or seven inches) of lord Thanet's left shoulder—it was below his head: I did not see it touch his shoulder, because Mr. Fergusson rose up, and was exactly between lord Thanet and myself.

Mr. Erskine.—Where did you sit?—I sat as marshal under the jury-box.

Mr. Garrow.—Be so good as describe that rising of Mr. Fergusson's?—They ran off all together—they followed Mr. O'Connor, as it appeared to me—I bent myself as far as I could to see, when so many people came jumping from the witness-box, that I was almost overpowered.

The witness-box was opposite the jury-box?—Yes; and they all went off to the left hand, behind the cryer's box.

Lord Kenyon.—Do you mean that they all ran off together?—Mr. Fergusson and the rest of them went off towards the narrow street of Maidstone.

Mr. Garrow.—There you lost sight of them, on account of the number of persons that came to intercept your view?—I was sitting here, and they all went there.

Did you see any thing more of the conduct of lord Thanet?—I saw no more of them after that; I saw a gentleman, that was almost bald, come and complain that he had received a blow upon his head, and asked, "Whether there was no redress for the blow he had received?"

Did you learn afterwards that that was Mr. Gunter Browne?—I understood his name was Browne.

Did you see him favouring the escape of O'Connor?—No.

Did you see Mr. O'Brien do any thing?—I saw a person in a grey coat hanging his left arm over the jury-box for some time, afterwards he came down, and was seated on the right of Mr. O'Connor, upon the bar that was there. Just before Mr. O'Connor made his escape, that person disappeared from that place, and I saw no more of him.

Thomas Wagstaffe sworn.—Examined by Mr. Adam.

You are a king's messenger?—Yes.

You went to Maidstone, in May last, with a warrant to apprehend Mr. O'Connor?—Yes.

VOL. XXVII.

Did you go into the Court with Fugion and Rivett for that purpose?—No; Fugion and Rivett were in the Court before I went in, and I went in to them.

Do you remember any gentleman coming and asking you any questions about your warrant?—Yes; a gentleman came and asked, if I had a warrant, or any thing against Mr. O'Connor?—I told him, No.

Did any other gentleman come to you?—No.

Do you know who that gentleman was?—No; I understood afterwards it was Mr. O'Brien.

Did any thing farther pass between you and Mr. O'Brien at that time?—He offered to bet some money with Fugion and Rivett.

Did any thing more pass?—No.

Had you your escutcheon as messenger on?—No.

William Cutbush sworn.—Examined by Mr. Garrow.

I believe you are a clock-maker at Maidstone?—Yes.

Were you in court at Maidstone when sentence of death was passed upon a prisoner of the name of O'Coigly?—Yes, I was.

Upon that occasion, did you see Mr. O'Connor do any thing?—Yes; I saw him get over the bar.

At that time did you see lord Thanet; and if you did, what did you see him do?—After that, I saw a man with a sword in his hand beating over a gentleman's head.

The Court have been sitting many hours, and have heard the general detail of the transaction; be so good as answer my questions: did you see lord Thanet?—I did.

Did you see his lordship do any thing, and what?—I saw Rivett strike lord Thanet over the back; I did not know it was Rivett at that time; I knew lord Thanet very well.

Where was lord Thanet at the time that Rivett struck him?—Two or three yards from Mr. O'Connor, or thereaway.

Was lord Thanet nearer to the great street of Maidstone, than he was to Mr. O'Connor, or to the narrow street?—They were all on the left side.

You were on the side on which Mr. O'Connor was endeavouring to get out?—Yes.

What was the first thing you saw?—I saw nothing till I saw the sword hit upon lord Thanet's back.

That was not Rivett?—Yes, it was; he hit lord Thanet upon the back with a sword; I did not know it was Rivett till afterwards.

Were any of the lights put out?—One.

Did you hear any expression about putting out the lights?—Yes; I heard some person say, "Put out the lights."

— Omrod sworn.—Examined by Mr. Adam.

I have but one question to ask of you: did

you see any body, at the time of the pronouncing of the verdict at Maidstone, in the case of O'Coigly and O'Connor, lay hold of Rivett, or any of the officers?—Yes; Rivett, Fugion, Wagstaffe, and I, were standing together; they wanted to cross the Court where Mr. O'Connor was.

What was done to Rivett?—Two gentlemen in black got up and opposed him very much: I said to one of them, "You must not obstruct this man; he is an officer of justice."

Robert Parker sworn.—Examined by Mr. *Garrow*.

Were you in court at Maidstone when the jury returned into court with their verdict, in the case of O'Connor and others?—Yes.

Were you near the under-sheriff?—I was very near; behind him.

Nearest the great street of Maidstone, and far from O'Connor?—Yes.

Did you see any thing happen upon that verdict being brought in?—Upon the verdict being brought in he put his leg over the bar, feeling himself discharged, as he afterwards explained; a Bow-street officer then stepped up and said, "There was a warrant to detain him;" Mr. O'Connor then put his leg back again, and said, "He thought he was discharged" and one of the judges said, "He was not to be discharged," or something of that sort; and he was quiet till sentence was over.

Did you see lord Thanet?—Yes; I saw him on a seat at the front of the bar; I am perfectly sure I saw lord Thanet.

After sentence had passed did you see the Bow-street officers make any attempt to pass the bar where Mr. O'Connor stood?—Mr. O'Connor jumped over the bar, and then the Bow-street officers both advanced in order to stop Mr. O'Connor; the gaoler called out, "my lord, am I to let him go?" or something to that effect, and there was a contention; several persons were assisting Mr. O'Connor to get out at the opposite door, and the Bow-street officers were attempting to stop him.

Did you at that time see lord Thanet?—I did.

In what situation? and what was he doing?—Lord Thanet evidently appeared to me to be obstructing the officers in their attempt to stop Mr. O'Connor.

Did you see any other person engaged in the same attempt?—Not any one whose person I then knew.

Did you observe any person whose dress was remarkable?—I saw a gentleman in a bar gown and wig endeavouring to assist the escape of O'Connor; but at that time I did not know the person of the gentleman.

Do you since know who that gentleman was?—I only know by report.

Did you see any other person in a gown and wig acting as you have described?—No, I did not.

Had you been in court during any considerable portion of the trial?—No, very little; I had been in, for five minutes at a time, perhaps, three times during the trial.

So that you had not an opportunity of observing that gentleman in the course of his professional duty?—No.

Robert Parker cross-examined by Mr. *Gibbs*.

You say, lord Thanet appeared to you to be obstructing the officers; did you see him do any thing?—I saw him resisting with his hands.

Pray when was this? before or after the sentence?—It began immediately after the sentence; it began upon Mr. O'Connor getting over the bar.

What did he do with his hands?—The Bow-street officers pushed forward; and against one of them it was that he was making resistance.

Pray which of them?—I cannot tell; I do not know which; I did not know either of them.

Did you see the warrant?—Yes; I saw it handed over to be read.

Can you tell whether it was against either of those two men, or against the messenger, that he was making that resistance?—I cannot.

But you saw him put his hand against one man that was coming forward?—Yes, certainly.

You said that you saw a gentleman in a bar-gown that appeared to assist O'Connor?—Yes.

What did you see him do?—I recollect that gentleman was ranged with the counsel for the prisoners; and then he turned round with his face to the bar, and was in that manner contending to resist their advancing towards the prisoner.

He was standing upon the ground and reaching over?—Yes.

Standing, as I may be standing now, supposing this to be the bar?—Yes; supposing you were turned round, it would be exactly so; he turned round towards the bar.

[*End of the Evidence for the Crown.*]

DEFENCE.

The Honourable *Thomas Erskine*.—Gentlemen of the Jury;—It now becomes my duty to address you; but for three of the defendants only: because, though nothing could possibly have separated their cases in argument, yet it was thought prudent not to embarrass the mind of any one advocate with so many facts and circumstances as the defence of all of them might eventually have involved. My learned friends who sit behind me, were, therefore, to have defended the other two gentlemen; but as they have not been at all affected by any part of the evidence, it may, perhaps, be thought advisable by the Court, that they should see no acquit-

ted, lest their testimony should become material hereafter for those who remain under trial.

Several observations were made by the attorney general, in his short and dispassionate address to you, well worthy of your attention. He told you, that he could not conceive a greater offence against the justice of any country, nor indeed against the very character of Justice itself, than an attempt to confound and overbear its judges and ministers in the administration of law. I admit it freely. The undisturbed and unruffled course of justice is the universal source of human security. Statesmen have, in all ages, distracted governments by their ambition; parties will always create animosities, and sometimes confusion, by their discordant interests; tumults will occasionally arise out of the best of human passions, in the best-ordered states; but where an enlightened and faithful administration of justice exists in any country, that country may be said to be secure.

It has pleased God to give us a long reign of that security in England. Indeed, if I were to be asked what it is which peculiarly distinguishes this nation from the other nations of the world, I should say, that it is in HER COURTS she sits above them; that it is to her judicial system she owes the stability of all her other institutions: her inhabitants have for ages lived contented under her laws, because they have lived in safety.

Gentlemen, the attorney-general had certainly no occasion to enter into any explanation of his own conduct in the course of this prosecution; it was never my purpose to impeach it. The question is, not whether he is justified in having arraigned the defendants, but whether, upon the whole evidence, they are guilty or not guilty? I say, upon the *whole* evidence; because, to secure myself an impartial hearing, I think it my duty to tell you, in this early part of my address to you, that I mean to call witnesses in their defence. You have heard attentively the accusing testimony: *AUDI ALTERAM PARTEM*. It is not two days ago that, in a similar stage of an important trial, the noble judge upon the bench took occasion to remark to a jury, that this was so sacred a maxim of justice, that we were frequently reminded of it by seeing it inscribed upon the very walls of our courts.

It has been also truly observed to you (as the observation applies to the first of the defendants upon the record, my noble friend and client, Sackville, earl of Thanet), that the charge against *him* is of a most deep and serious complexion. I think so too. He is a man of illustrious rank; an hereditary judge and legislator of the kingdom; and a judgment, therefore, against *him*, is of far greater consequence than to a mere private man. It is a great impeachment of such a person, that he infringes the constitution of his country, of which he is a dignified guardian; that he disturbs the execution of those laws of

which he is a high magistrate; and that, forgetting the duty annexed to his exalted station, the duty of giving the example to the people of order and obedience, he excites them to tumult, and violates even the sanctuary of justice with misrule and violence.—Mr. Ferguson, though inferior in rank to the noble earl, stands eventually in a situation, perhaps, of still greater delicacy, and is involved in deeper consequences. The son of a late eminent lawyer in the other part of the island, who filled also a high situation in its magistracy; himself bred to the English bar; not as a fashionable branch of education, or as a useful introduction into life; but engaged in it learnedly, honourably, and successfully, as a profession, and as a profession by which he must live—a young man, so circumstanced, has surely a most serious claim to your attention, and even to the most indulgent consideration. As to the other gentlemen, I need hardly speak of them; because, though their names have of course been reiterated in the questions put to the witnesses, nothing approaching to criminal conduct has been established against them. We are here, therefore, upon a mere question of fact. You cannot but have observed, that the attorney-general and myself, instead of maintaining opposite doctrines, perfectly agree upon the principles which ought to govern your decision. The single object of inquiry is, the truth of this record. Is the charge proved to your satisfaction? or, rather, *will* it be so proved, when the *whole* cause has been heard.

In adverting to what the charge is, I need not have recourse to the abstract I had made of the information. The substance and common sense of it is this:—that Mr. Arthur O'Connor had been brought, by legal process, into the custody of the sheriff of Kent; that a special commission had assembled at Maidstone, to try *him* and others for high treason; that, upon the opening of the commission, he had again been committed by the Court to the same custody; that he was afterwards again brought up to the bar, and found not guilty; and that, after he was so acquitted, but before he was, in *strict form*, discharged by the order of the Court, the defendants conspired together, and attempted to rescue him. This is the essence of the charge. The disturbance of the Court, and the assaults stated in the different counts of the information, are only the overt acts charged to have been done, in pursuance of this purpose, to rescue the prisoner. The *criminal purpose* to rescue Mr. O'Connor, is the fact; therefore, of which you must be convinced, to justify the verdict which the crown has called upon you to pronounce.

Before I proceed to address myself to you upon the evidence, I will do that which must make it manifest, that it is not my wish to confound your understandings in the investigation of facts; for I will begin by relieving your attentions from the consideration of all circumstances that are neither disputed, nor fairly

disputable, either as they are the result of what you have heard already, or as I think they must remain when the whole case is before you. I admit, then, that Mr. O'Connor, when he heard the verdict of the jury in his favour, was disposed to leave the court. The presumption, indeed, as it arises out of universal practice, as well as out of the law that warrants it, is, that he, as well as others, thought that the verdict of Not Guilty, entitled him to do so. Neither can it be disputed that a warrant did in fact exist, and that its existence was known, since it appears that the officers stated in open court that they had one; and it is not material for me to dispute, nor is it, perhaps, disputable, that Mr. O'Connor knew of their intention to arrest him; and, if he did know it, human nature is stronger than all the evidence in the world, to convince every man of his disposition at least to escape from it: and I admit farther, that a most honourable person, who gave his evidence with a candour which reflects high honour on his character, has added a circumstance which, though it could not be strictly received as proof, may be true, for any thing that touches the merits of the case, viz. that there had been a communication to the Court, that there were disaffected persons disposed to rescue the prisoner.

Having admitted these facts, I, in my turn, have a right to bring to your recollection, that it is an indisputable fact, resting upon the whole of the crown's evidence, that the officers, strongly impressed with this idea, rushed suddenly and impetuously forward, on Mr. O'Connor's stepping over the bar when the verdict of Not Guilty was delivered; and indeed Rivett, upon his cross-examination, distinctly admitted, that, owing to the apprehension of a rescue, he rushed into court with more precipitation than under other circumstances he could have justified; and that a great bustle and confusion existed before he approached any of the defendants, or even saw their persons. This admitted origin of the disturbance removes all difficulties from the consideration of the cause; and Mr. Justice Heath declared, that there was a scene of confusion and violence in court, such as he had never seen, nor could possibly have expected to see, in a court of justice. The single question, therefore, is, *What share the defendants had in it?* Did the disturbance arise from any original acts of their's? or were they, on the contrary, first pressed upon by the officers and their assistants, who, though they might be engaged in what they mistakenly supposed to be their duty, from an expectation of resistance, necessarily created confusion by their forcible entry into a crowded court? Were the defendants engaged in any conspiracy or combination to deliver Mr. O'Connor? That is the great, or rather the only question; because, if this does not appear from the evidence, all their acts, even if they were ultimately to remain as they appear at present, are perfectly con-

sistent with the conduct of gentlemen suddenly and rudely trampled upon in a tumult, though without, perhaps, being the particular objects of violence by those who created it.

The natural course of considering which of these propositions ought to be adopted by reasonable men, is, to set out with tracing a motive. There can be no offence without some corresponding inducement to commit it. It is not alleged that these gentlemen ignorantly or wantonly insulted the Court—an indiscretion which can only happen among the lowest orders of the people: the charge upon them is a *deliberate* and *pre-existing* combination to deliver Mr. O'Connor, by confusion and force, from a warrant which they knew to be impending: and the acts attempted to be proved upon them can find no place in any reflecting mind, but as they are believed to be the result of such a conspiracy.

Now, I have always understood it to be the great office of a court of justice, when evidence is to be opposed to evidence, to consider the probabilities of the transaction: indeed, a judicial decision is nothing else but the bringing up facts to the standard of reason and experience. I have already described the situations of the only two defendants whose cases you can have occasion to consider;—the one, as a high peer and magistrate of the kingdom, with the natural consciousness of the duties inseparable from exalted stations; the other, standing in a manner for his very existence upon the dignity and decency of his deportment in the courts, which habit, as well as principle, had taught him to reverence and respect. Yet the charge upon such persons is, that open undisguised acts of violence were committed by them, in a place which the attorney-general has, with great propriety, assimilated to the place where we now sit—because nothing more forcibly assists the judgment than bringing the scene under the immediate notice of the senses; and I am, besides, speaking to gentlemen of the county of Kent, who must themselves know the place without the aid of this comparison, though you cannot know it better than I do. I have spent many laborious hours of my life in the court at Maidstone; though the labour was always rendered delightful by the reflexion that I never had to plead in vain, before gentlemen of your description, in the cause of innocence or truth! The attorney-general, then, has assimilated the court of Maidstone to this court.—He says, that the prisoner sat where my learned friends now sit behind me; that the bench of the solicitors, where the confusion began, cannot be better described than by the place occupied by the king's counsel now sitting around me; the seat of the counsel may be considered to be placed where these gentlemen are now sitting before me; and the vacancy in the middle, between the bench and me at this moment, must be supplied by the table of

which we have heard so much; while the judges *there* must be considered to be placed as they are *here*, elevated in situation as in rank, and commanding the most distinct and immediate view of every part of the Court. Under these circumstances, you are asked to believe that lord Thanet and Mr. Fergusson—the one possessed of a large hereditary fortune in Kent, and who could not but know that his person was as well known to every man in Maidstone, as St. Paul's church to the inhabitants of Ludgate-hill—the other standing upon a table within six yards of the judges, in the robes of his profession, close by a large chandelier, described at that time by all the witnesses to have been fully lighted;—you are desired, I say, to believe, that these two persons, *without any motive upon earth brought home to them by any part of the evidence*, engaged publicly in a scene of audacious riot and violence, in the public face of the most dignified court; in the presence of all its numerous officers; of an acute and intelligent bar; of the sheriff and all his train; of a jury composed of the principal gentlemen of the county, and of all that concourse of attendants upon an important state prosecution which either duty or curiosity had collected. I maintain that the history of the world does not furnish an example of such a total departure from every principle of human action, and from all common sense and prudence, in the commission of a crime. The interest of the parties to commit it appears to be nothing—the project utterly impracticable—detection absolutely certain—the reproach, to men of character, severe and inevitable—the legal punishment, not less so; and all those consequences notorious to men of the meanest and most uncultivated understandings.

Gentlemen, the mind of man cannot avoid collecting and accumulating these absurdities; but they are too important to be thus run over; they must be viewed separately, to have their proper effect.

First, then, let us search for a motive strong enough to impel honourable men to encounter such desperate difficulties, in the pursuit of a dishonourable, useless, and impracticable purpose. Have you any evidence, have you the suggestion, have you even the insinuation of counsel, that the defendants ought to be classed amongst those evil-disposed persons, if any such existed, whom Mr. Justice Heath took notice of, but upon report only, as attendant on the trial? The noble earl came down, under the process of a subpoena, to give evidence for the prisoner; not even of any fact connected with his conduct, but merely to state what he knew of Mr. O'Connor as an acquaintance, and what he had collected from others concerning his character in the common intercourse with the world. But why should I seek by observation to remove the imputation of a motive corresponding with the misconduct which is imputed, when it is but common justice to

the attorney-general to admit that he did not even attempt to insinuate any thing of the sort? Yet my noble friend remains as a criminal before you, charged with the violation of that which is the most sacred in civil society, branded with the resistance of authorities the most dignified and important, in order that a person supposed to be an object of high suspicion by the government of the country, might be left at liberty to perpetrate the treasons which the duke of Portland's warrant had for its object to defeat—treasons which, if successfully perpetrated, were, in their most direct and obvious consequences, to strip the noble earl of all the splendid inheritance of rank and property descended to him from his ancestors through so many generations. Mr. Fergusson will forgive me if I say, that the principal property which he can die possessed of, must be the fruits of a profession which the same treasons were pointed to destroy; yet he, too, must be believed, *without a shadow of evidence, or even the suggestion of his accusers*, to have engaged in the desperate effort of affording shelter and opportunity for treasons which were to dissolve the courts in which he practises, to destroy that system of law which he has been bred to understand, and to set up, instead of it, a new order of things, by which he must descend from the eminence conferred by education and experience, and mix in the common ranks with ignorant and undisciplined competitors.

But, it seems, they were not indifferent to the deliverance of Mr. O'Connor; for, upon his acquittal, they hastened to the bar, and congratulated him on the verdict. They certainly did so, in common with many others; and although the impulse of personal kindness which directed them was honourable, it may be set down, not so much to the individuals, as to the characteristic benevolence of Englishmen. The characteristics of nations depend more upon their histories and their governments, than upon the temperaments of men arising from natural causes. The English constitution was always, in *theory*, a constitution of freedom; but it only became so in *practice* by the numerous and finally successful struggles of our free and virtuous ancestors against oppressive abuses of authority. Many eminent persons to whom this country is indebted for her liberties, having stood upon their trials, and having obtained deliverances from the tribunals of justice, has gradually produced a general sympathy in the minds of Englishmen, when men are standing for life or for death before their country. This is an almost universal, and peculiarly characteristic feature of the inhabitants of Great Britain. It is not confined to the vulgar, as an ignorant and even an immoral prejudice, but pervades all the classes of society. It is compounded of a principle of humanity, of a spirit of national pride and dignity in the freedom of our institutions, and of a sense of security derived from them. No reasoning,

therefore, can be more false than that, when men are accused, and even upon pregnant evidence, of conspiracies against the government, they who seem to feel an interest in their deliverance are alienated in their affections to the state. Englishmen of all descriptions receive their sense of innocence from their country's verdict; and they feel a sort of satisfaction which, I verily believe, exists in no other country. Irreligion and false liberty have been seen to delight in blood,—to rejoice in revengeful sacrifices,—to think it music to hear the agonizing groans of expiring sufferers, and a spectacle of triumph to gaze upon their mutilated bodies; but the sense of liberty in a country long humanized by the influence of a free government, shrinks back even from the consequences of the justest prosecutions,—looks with an eye of tenderness upon the accused even before the conscience is convinced of innocence, and feels an invincible impulse of pleasure in the legal deliverance from guilt. Long, long, may this remain the characteristic feature of our country! When Mr. O'Connor, therefore, was pronounced not guilty, was it any proof of a conspiracy to rescue him from other charges, that he was congratulated on his deliverance, which he was not only entitled to by the verdict of the jury, but which the evidence on the trial, and the judge's remarks on it, had previously and distinctly anticipated? The question, therefore, again recurs—Were the defendants the active authors of the rescue, for the purpose charged in the indictment? The motive is gone already—not only as wholly unascrivable from the total absence of evidence, but because my learned friend who laid the case before you was too much a man of honour (as I have already done him the justice to acknowledge) to ascribe, or even to insinuate, a motive which he knew did not exist, and which he had neither evidence nor reasonable presumption to support.

If, however, a criminal act, though without the proof, or even the imputation of a referable principle of action, may still be believed by a jury dispensing the mild and rational justice of this country; the next consideration, in weighing the probabilities, is, how this purpose, supposing it still to exist, without any corresponding interest, was possibly to be accomplished?—for men cannot be presumed to engage in the most perilous enterprises, not only without inducement, but without even a shadow of hope or prospect that their object is practicable. The situation of the court is not only present to your own recollections from your perfect acquaintance with it, but it is brought before your eyes by its just comparison with this. Mr. O'Connor stood at the bar where my learned friends now sit, surrounded by hundreds of persons not attempted to be implicated in any design to favour his escape; on the right, and on the left, and behind, were the public streets of

Maidstone, from whence no passage without observation was to be expected; and before they could even be approached, an outlet must first have been made through groves of javelins in the hands of those numerous officers which the exemplary attention of the sheriffs of Kent has always provided for the security and dignity of the Court. It was, therefore, not merely improbable, but *naturally impossible*, to deliver, or even hope to deliver, a prisoner from the public bar of such a court, in the view of all its judges, its counsel, and attendants, without the support of great force and numbers, and without, likewise, a previous concert and combination to direct them with effect. The next consideration, therefore, which directly follows these immutable principles of judgment, is the fact as it applies to them—Was there either FORCE exerted, or NUMBERS collected, or MEASURES concerted? The defendants cannot be made responsible for any act of violence which might be committed by any disorderly persons in the street. It is nothing to them, that Mr. Justice Buller's servant was knocked down in one of the avenues of the court, whilst they were admitted to have been in its centre. What act of disorder or violence do you find committed by Lord Thanet, by Mr. Fergusson, by Mr. O'Brien—or by Mr. Gunter Browne, who has been made a defendant, only because, without any offence on his part, he appears to have had his head broken! for this gentleman is literally not identified by any part of the proof as having been even in court at all, except as he was seen complaining to the judges of an assault committed on himself. Lord Thanet is a man of high spirit, and of a strong body; it must have been a warm interest, as I have repeatedly observed to you, that could have embarked him at all in such a business; and, when embarked in it, he must reasonably be supposed to have engaged with activity in the accomplishment of an object for which he risked so much; yet it has appeared already, by the testimony of one of the most respectable and the most correct of all the witnesses for the crown, and it will be made manifest hereafter beyond all doubt or question, that, at the very moment (and it was but a moment) when the evidence has the remotest application to any of the defendants, he lay back inactively, holding his stick with both hands across his body, to defend himself from the assaults of only one man, not stronger than himself, and whose blows he neither attempted to return, nor invited the aid of others to repel; so far from it, that Mr. Fergusson, who is supposed to have put his character and situation to so much hazard, though he stood close by, is not even charged with having exerted his strength on the occasion, but to have contented himself with flourishing a small stick in his hand without striking or aiming at any body—a circumstance neither true, nor possibly consist-

ent with the truth of the designs which are imputed to him; and no act of violence, or even gesture to incite it, is imputed to any other person near this supposed focus of confusion, at the only time when lord Thanet and Mr. Fergusson are affected even by the solitary evidence of Rivett. So much for the force exerted in the pursuit of a purpose which no force proceeding from a few persons could have accomplished; and as to any previous concert or combination amongst numbers which can possibly involve them, it is rendered absolutely incredible by the whole body of the evidence; for the attorney-general has proved that there were attendant on court a great number of gentlemen known to profess the same principles and opinions with the defendants, and most intimately acquainted with lord Thanet in private life—gentlemen who, I have no doubt, are here at this moment assembled by the just anxiety of friendship and affection; yet it is not imputed to any of those numbers I allude to, though all present in court, and within reach of whatever was transacted in it, that they took any part, directly or indirectly, by force, by speech, or by seeming encouragement, in the scene of disorder which took place. If lord Thanet, then, is a conspirator, *with whom* did he conspire? since, with the exception of the four other defendants, three of whom must be acquitted for want of evidence, accusation itself does not even attempt to implicate one man of his numerous friends and acquaintance, who must naturally be supposed to have been impressed with similar feelings, nor indeed any one man, high or low, whom he can be proved to have ever spoken to, or seen, in the whole course of his existence; and if obscure and unknown persons are to be taken to have been instruments in this confusion, there must have been some evidence of direction or encouragement to others proceeding from the defendants, which is not attempted to be sworn by any of the witnesses. This most important part of the case shall not, however, be left upon the failure of evidence, or even upon the absence of accusation: for I will call many of those gentlemen, who will tell you that they were wholly ignorant of any design to rescue the prisoner—that they saw no confusion or riot, except that which the precipitate entry of the officers occasioned; and who, by tracing the defendants in their eyes through the whole of the period in question, will be able positively to contradict the most material parts of the evidence which personally affects them.

Gentlemen, the next question upon the score of probability is this: supposing that, contrary to every thing either proved or asserted, the defendants *had* felt an interest in the escape of Mr. O'Connor, and *had* conceived it to be *practicable*, could they possibly have hoped to escape detection—more especially lord Thanet and Mr. Fergusson, whose persons were so notorious—the one, from his

high rank and residence in the county whose principal inhabitants surrounded him; and the other, from being in his professional dress, in the place assigned to him as counsel on the trial, and, in the very midst of his companions, engaged in the business of the Court? Lord Thanet, therefore, and Mr. Fergusson, upon the attorney-general's own admission, who has justly assimilated the Court at Maidstone to the one we are now assembled in, could no more have hoped to escape immediate detection and punishment for the riot they are supposed to have engaged in, than I could hope to escape from them, if, taking a strong interest, as I must be supposed to do, in the acquittal of my clients, and thinking there was no safety for them but by making such a confusion in court as to prevent your hearing the evidence or the judge's observations on it, I should, when I had finished my address to you, and the judge was beginning to sum up to you, publicly begin or join in a scene of noise and uproar, *under the eyes of the judges, as they now look at me—of the officers now sitting before me—of you, the jury, to whom I am speaking—of my numerous friends at the bar, whose honour is connected with the dignity of the Court—and of the whole crowd of spectators, hundreds of whom I am known to personally, and all of whom are acquainted with my person.*

Gentlemen, I can observe, from the absurdity and impossibility of the case I am putting, that I seem to be trifling with the subject; but that sensation, which I have no doubt is general, and which I cannot help even feeling myself, displays the irresistible force of the actual case before you; because I defy the wit, or wisdom, or imagination, of man, to attempt even a shadow of a distinction between the case I have put to you and that of Mr. Fergusson:—for, why should *he* be supposed, any more than *myself*, who am the object of comparison, to have embarked in this impracticable project of disgrace, dishonour, and injustice; in the dress of counsel, as much as I am, on the trial which engaged the Court; and in a place, the exact similarity of which to the room that holds us is no assertion of mine, but a fact so unalterably established by the whole evidence as to be employed by both sides as an assistant to the mind in judging of the accuracy and consistency of the proof?

The next recourse to probability, if your judgments, as in all other cases, are to be governed by reason and experience, is, if possible, still more unanswerable and decisive.

Supposing the defendants, *without interest or motive, and without the possibility of success, and without even a chance of escaping from detection and punishment*, to have, nevertheless, publicly insulted and disturbed the Court by acts of disorder and violence, who must have been the witnesses to such a scene? Who, for instance, must have been the witnesses, &c

Mr. Fergusson, as has been asserted, had stood upon the table of the Court—the table round which the counsel are ranged, directly under the eyes of the judges and the jury; and had flourished a stick round his head, to favour the escape of the prisoner, by preventing the officers from approaching him;—*who, I say again, must have been the witnesses to such a phenomenon?*—who, amongst the judges, or counsel, or officers, or spectators, but must have seen it?—who, that had seen it, could possibly have forgotten it?—and who, that remembered it, could have hung back from the proof of such inexcusable misconduct? Yet the proof of this fact, to which the whole Court must have been, as it were, but one eye, and an eye of indignation, is not supported by any one person, either upon the bench, or at the bar, or amongst the numerous officers of the Court. On the contrary, we shall see, by-and-by, the difference between the testimony of a reverend judge of England, and that of a Bow-street officer, when I come to advert to the evidence of Mr. Justice Heath, which is directly and positively inconsistent with Rivett's, on whose single and unsupported testimony this extravagant and incredible part of the case is alone supported.

But, it seems, they have given judgment against themselves, by their demeanor and expressions upon the occasion. Lord Thanet, it seems, said to Mr. Justice Lawrence, as Mr. Abbot expressed it, who did not hear what the learned judge had said, to which lord Thanet's words were an answer, "that it was fair he should have a run for it;"—words which cannot be tortured into any other meaning, more especially when addressed to one of the judges of the Court, than that, speaking in extenuation of Mr. O'Connor's conduct, who had visibly made an effort to escape, he thought it fair that a person so circumstanced should have a run for it, if he could; a sentiment which, by-the-by, no man in his senses would have uttered, more especially in such a quarter, if he had felt himself at all implicated in a criminal endeavour to assist him; and if lord Thanet did not speak at this moment with all that complacency which in general so much distinguishes him, nor offer, as Mr. Sheridan did, his assistance to the judges, it is not at all to be wondered at; for it must be recollected that he had just suffered in his person, not as you have it upon the evidence at present, but had been most roughly and severely assaulted. Mr. Justice Buller is proved to have said, that Mr. Sheridan conducted himself in a manner greatly to his satisfaction; but the very contrast which this evidence is introduced to furnish, instead of operating against lord Thanet, is an additional argument in his favour. Lord Thanet and Mr. Sheridan are as one man in every thing which relates to public opinions, and friends in private life. Upon what principle, then, can it be made out that Mr. Sheridan should be assisting the

judge, whilst lord Thanet, who had no connexion with Mr. O'Connor which did not equally belong to the other, should be behaving like a madman, unsupported by any of his friends or acquaintances, who were attending as witnesses upon the trial? But the time of this conversation, if I had before adverted to it, would have rendered all these observations wholly unnecessary; for it was after the riot (as it indeed must have been), that Mr. Justice Lawrence conversed with lord Thanet, saying to him, amongst other things, "that he hoped Mr. O'Connor's friends would advise him to submit to his situation." Now I may safely assert, that, high as lord Thanet's rank is, that learned judge would not have spoken to him as a person from whom he solicited and expected assistance, if he had himself observed him, or if he had known him to have been observed by others, disturbing the order of the Court. On the contrary, if there had been a reasonable ground for impeaching lord Thanet's conduct, the learned judge would have executed the law upon him;—he would have attached him for his contempt; and surely no person in court had a better opportunity of observing every thing that passed in it. Mr. Justice Lawrence was one of the youngest of the learned judges who presided at the trial, with stronger health than belonged to all of them, which enabled him to keep up his attention, and to observe with acuteness; he was, besides, deeply interested in whatever concerned the honour of the Court; and the elevation of the bench on which he sat gave him a full view of every person within it. Indeed, lord Thanet, at the time this misdemeanor is imputed to him, was directly before him, and under him, and not farther from him than lord Kenyon at this moment is from me. I have, therefore, a right to say, that not only nothing is to be presumed against lord Thanet from what he said, but that, on the contrary, a strong presumption arises in his favour when we hear the evidence from any other mouth than that of the learned judge himself; since, if *he to whom the discourse was addressed*, and who was the best judge of the fair construction to be put upon it, had considered it in the light it has been represented and relied on, he might have been called as a witness. Mr. Justice Heath, and Mr. Serjeant Shepherd, the judges in the same commission, were examined to matters infinitely less material.

Gentlemen, let us now pause a little, to consider the effect which I feel myself entitled to derive from these observations.—I consider myself to have advanced no farther in the argument than this—

First, That there was no assigned nor assignable motive for the criminal purpose charged by the indictment.

Secondly, That it was a purpose palpably impracticable, and which, therefore, no reasonable men could possibly have engaged in with any prospect of success.

Thirdly, That whatever might have been the probable issue of such an enterprise, detection and punishment were certain,

Fourthly, That admitting the evidence you have heard to be free from all errors, the defendants did not conduct themselves like men engaged in such a pursuit, nor appear to have been supported in a manner reasonably, or even possibly, consistent with the alleged conspiracy.

Fifthly, That, although the witnesses against them, if the transaction had been justly represented, must, probably, have been the greater part of the Court, and certainly all that part of it elevated both by situation and authority above the rest; yet that there has been not only no such concurrence of testimony against the defendants, but, on the contrary, the most correct and respectable witnesses have concurred in destroying the remainder of the proof.

Sixthly, That the expressions imputed to lord Thanet cannot possibly affect him, without supposing that he publicly gave evidence against himself, even to one of the judges, who, upon the evidence of his own senses, had authority to have punished him upon the spot.

Lastly, That it appears, by the whole body of the proof, that the confusion arose when the officers burst with improper and indecent precipitation into court; that it began and ended almost in the same breath; and that, during the short moment of its continuance, there was such a scene of tumult and confusion as to render it impossible for the most attentive observer to give any clear and distinct accounts of the transaction.

If these conclusions, gentlemen, be the unavoidable result of the crown's evidence when brought to the common standard of man's reason and experience, it appears to me, that you are bound to return a verdict for all the defendants, even if I should call no witnesses; because, to justify a verdict of *Guilty*, it is not enough to collect from the evidence that the defendants *may* be guilty, or *probably* are guilty—*No*;—their innocence must be quite incompatible with the fair result of the whole proof; for, if two different conclusions may be reasonably drawn from the same state of facts, you are bound in justice to adopt the one which is supported by the greater number of probabilities. Now, if this plain rule of judgment be not wholly departed from, and even trampled under foot, I take upon me to say positively and firmly, because I am making my appeal to men of understanding and liberal education, that the evidence for the crown, without any at all on my part to oppose it, taking it all together, and considering the fair result of it, is not sufficient to convict any of the defendants. This proposition, however, cannot be supported by general observations, nor by that general appeal to the proof which I have been engaged in; it must be examined accurately in the detail.

VOL. XXVII.

I shrink from no part of it. I will sum it up to you as if I spoke to you from the bench; and I pledge myself to make out, to the satisfaction of every unprejudiced mind, that all that I have hitherto said to you, though absolutely necessary by way of introduction, has suffered from its *generality*; and that the *particulars* of the proof will illustrate and confirm, beyond all question, every proposition of fact, and every principle of judgment, which I have already brought before you.

The first witness examined for the crown is Mr. Sergeant Shepherd who was joined with the judges in the special commission. This examination is highly important in every part of it; because, when it becomes necessary to compare the evidence of different witnesses in order to arrive at a safe conclusion from the whole, nothing can be so satisfactory as to find some person on whose testimony the judgment may repose with safety. My learned friend (as all who knew him must have anticipated) delivered his evidence with the greatest clearness and precision, and in a manner most dispassionate; and when you recollect, besides, that he is a man of singular ability, and that from his elevated situation in the court, he had the best opportunity of observing every thing that passed, you cannot fail to pay greater attention to his testimony, and to that of Mr. Justice Heath who immediately followed him, than to any other witnesses, however respectable.

In bringing before you Mr. Sergeant Shepherd's evidence, I will not trouble you with that part of it which went to facts which are now no longer disputed, but will take it up from the time when the jury returned into court. Mr. Sergeant Shepherd says, "*Lord Thanet was standing before the bar at which the prisoners stood, with his face turned towards the Court; he was rather to the right hand of Mr. O'Connor, nearest to the great street of Maidstone where the gaoler sat.*" Speaking of Mr. O'Brien, he said, that "*he stood in the same line, but rather to the left of Mr. O'Connor that something had been before said by the Bow-street officers, who were making a noise, and had been desired to be quiet. When the verdict of not guilty was delivered, some persons (but whom I know not) said, 'then they are discharged;' and somebody at the table replied, 'No they are not discharged.'*" And here I have no objection, that what Mr. Sergeant Shepherd omitted may be filled up by Mr. Solicitor general's evidence, and that the answer from the table was to Mr. Ferguson, who, on hearing the verdict pronounced, had said the prisoner was discharged; he said it, however, before the Court had declared the law upon the subject; as counsel for the prisoners, it was natural he should be interested in their deliverance; and he is not indicted for having mistaken the effect of the law, but for having conspired to obstruct the Court in administering it. The attorney general said,

3 L

very properly, "I bring the defendants before you, not for considering the prisoners discharged by the verdict, but for an attempt to rescue them by violence and tumult, after the Court had declared that they were in custody."—"At this time," continued the learned sergeant, "Mr. Justice Buller said to the Gaoler, 'Put the other prisoners back, and let O'Coigly stand forward;' when one of the Bow-street officers stood up on a form, and said he had a warrant against Mr. O'Connor." This, you observe, was the first time there was any mention of a warrant in court; so that what had before fallen from Mr. Fergusson was merely his sudden idea of the effect of the verdict of not guilty at the moment it was pronounced, and which, at all events, must, in a few minutes afterwards, have delivered the prisoner; and there is no evidence whatever, that, at the time he said so, a fresh custody was a matter of apprehension or contemplation.—"Whilst Mr. Justice Buller was passing sentence, my attention," continued Mr. Sergeant Shepherd, "was directed to O'Coigly; and when he had finished, I observed Mr. O'Brien turn round, and look at Mr. O'Connor and immediately afterwards look down with a very slight motion and inclination of his head." And here, gentlemen, it is impossible not to admire that delicate sense of justice which no man possesses more, than my learned friend the sergeant, and which dictated to him the remarkable reserve which accompanied this part of his evidence. He recollected, that a witness is not to put himself in the place of a jury, by drawing his own conclusions from his own testimony; but accurately to state what he hears and sees, and to leave the conclusion to those whose province it is to decide. He therefore with the utmost propriety, forbore from expressing what appeared to him to be Mr. O'Brien's purpose; but said to you, "I rather choose to describe his gesture;" which he accordingly did. This fact, therefore, delivered with the restraint which the integrity and understanding of the witness so properly suggested, affords no evidence whatever of evil design in Mr. O'Brien, much less of concert or combination with the other defendants; and indeed the proceedings of this very day have afforded an instance, how dangerous it would be, for the most sagacious persons to collect from gestures only, what passes in the mind of another.—When lord Romney, not choosing to advance in his evidence beyond what his memory with certainty suggested, declined giving a farther answer to a question put to him, the noble and learned chief justice interposed, and put the question to him again. I admit that it was his duty to do so—but his lordship will forgive me if I say, and I appeal to his honour for the truth of it, that he was convinced at the moment, not only that I thought the direct contrary, but that I had publicly and rudely expressed a sensation of dissatisfaction; since, looking at me

very significantly, his lordship told me that it was his duty to repeat the question. Nevertheless, I do declare upon my honour, and I appeal to Mr. Gibbs, to whom I was speaking at the moment on quite a different subject, that no such idea was passing in my mind as my gestures were supposed to have expressed; yet no man is a more acute observer of human nature than his lordship; and nobody, certainly, was ever better acquainted with my countenance. So much for gestures. It is, indeed, strongly in Mr. O'Brien's favour, that at the moment he looked down as described by the witness, he could not be acting in concert with lord Thanet; for serjeant Shepherd saw lord Thanet at the very same moment, and swore that he was standing with his face to the Court, and that he never changed this position. The serjeant added that "when the last word of the sentence was pronounced, Mr. O'Connor jumped with his left foot upon the bar, and his left hand upon the shoulder of Mr. O'Brien," but who does not appear to have held out his hand to assist him. Mr. O'Brien, on the contrary, though he could not have but continued in view for some time longer, is charged with no one act whatsoever; and it would be strange indeed, to convict a gentleman of a rescue, because, standing near a prisoner, meditating an escape he had laid his hand upon his shoulder. But this part of the case will be put quite at rest hereafter; because Mr. O'Brien is perfectly well known to several gentlemen of distinction, present in court at the time, and not at all implicated in the riot, who will all tell you that they saw him distinctly, and that he was not concerned in any violence or disturbance whatsoever. I am not, however, called upon to do this, because there is literally no proof to be answered.

The remainder of serjeant Shepherd's evidence, as it applies to lord Thanet, is so absolutely decisive, that you will be driven to pronounce by your verdict, whether you give credit to this most respectable and observing witness, or to a Bow-street officer, who was himself the author of the confusion; for the serjeant added, that "when Mr. O'Connor had jumped over the bar, and he had lost sight of him, the officers rushed into Court to arrest him, and a great noise ensued; and AT THIS TIME" (GENTLEMEN, THE TIME IS MOST MATERIAL AND CRITICAL, BECAUSE IT CAN APPLY TO NO OTHER THAN THE PRECISE TIME SWORN TO BY RIVETT), "I saw lord Thanet," said the serjeant, "standing as I have described him, with both his hands over his head,"—which he also described to you by putting himself in the same defensive posture, as far more expressive of his situation than any words could communicate. This, I say, is the single point of time to be looked at; for the remainder of the serjeant's original evidence, applying to a subsequent period, described a scene of great confusion, in which he said he could discover nothing distinctly; that many

persons were upon the table, some asking questions, and others endeavouring to restore order. It is not therefore, at *this* period that you are to look, since no part of the evidence at all applies to it: but at the moment when lord Thanet is alone affected by Rivett's evidence, the sergeant's testimony has a direct and decisive application; for, upon his cross-examination, he said in so many words. "*I never saw lord Thanet look round, or change his position as I have before described it, till the very instant the officers rushed into court; and then I saw him with his stick held as I before described it; but I am BOUND to say, that he appeared to me to be acting on the DEFENSIVE WHOLLY.*" This concluding evidence is an exculpation of lord Thanet, and must have been so intended. I did not even put the question to the witness; he himself conscientiously added, that he was BOUND (bound of course, in justice to lord Thanet, who was accused of *active violence*) to say, that he appeared to be only acting in his own defence. Now, gentlemen, there can be neither honour, nor advantage, nor security, bestowed upon the administration of government or justice, which this prosecution is avowedly instituted to support, if men can be punished, not merely upon doubtful evidence, but upon evidence which directly contradicts the charge. That a court of justice must not be insulted, or even disturbed, is a proposition which must be acceded to by every man acquainted with the first elements of civil life—that a charge of such a high misdemeanor well justifies the solemnity of a trial in this place, is another proposition which cannot be disputed—but the heinousness of offences, and the necessity of suppressing them by punishment, does not alter the quality of the proofs by which they are to be established; on the contrary, it was pleasant to attend to the just reserve in that respect with which the attorney-general laid the case before you; he stated his own evidence in general terms, but without commenting upon it, or enforcing it; reserving his observations till the evidence on both sides should be heard; but we are not even engaged at present in balancing contradictory evidence, but in showing that the accusing evidence is in itself defective, and even exculpatory.

Mr. Sergeant Shepherd was properly selected as the first witness for the Crown. He sat, from his station as judge, in an elevated position, where he had a better opportunity of observing than others; and he accordingly appears to have observed every thing which passed; yet, instead of fastening guilt on lord Thanet, he sees him from the time the jury returned into court, standing in one position; not looking round as if he was watching the motions of Mr. O'Connor, or engaged with others in attending to them; not even looking towards the side of the court from whence the arrest was to proceed, but upwards to the judges; not opposing his body as an obstacle in a narrow passage through which the offi-

cers were to pass: not presenting a front to them which a man of his strength, with the intentions imputed to him, must naturally have been expected to do; but standing as any other person attentive to the trial, till the officers, apprehending a rescue, rushed with violence into court, and pressed upon and assaulted him; for, had he not been pressed upon and assaulted, he could not have been seen by sergeant Shepherd in a posture of defence: and if he were first active in obstructing and assaulting Rivett, in the manner which he, and he only, has sworn to, why should not sergeant Shepherd have seen it? since his eye was so constantly fixed upon lord Thanet, from the time the jury returned with their verdict till the confusion became general, which is subsequent to the period of Rivett's evidence, as to enable him to tell you that he did not shift his position, nor make a gesture or motion, till the officers and others rushed in upon him; and *then, i. e.* immediately at the same moment to which alone the evidence has any application, he sees lord Thanet with a stick over his head, which he thinks himself BOUND to express and even to describe to you as a passive posture of defence. This evidence, which so completely exculpates lord Thanet, is not less applicable to Mr. Fergusson, for, if he who is placed by all the witnesses as standing close by him, had been an active conspirator, armed with a stick, which he was flourishing over the heads of the officers, can you possibly suppose that he would have withheld his assistance from lord Thanet who was visibly overpowered, or that a man of lord Thanet's strength, though assisted by Mr. Fergusson, who is above six feet high, and a young man of great activity and strength, should be perfectly passive under the blows of Rivett endeavouring only to save his person from violence, without retaliation, or even a motion to the accomplishment of his object?

The evidence of Rivett is farther exposed, by his having denied that lord Thanet had a stick—a fact established beyond all question; and by his swearing that he took the stick from Mr. Fergusson, and struck him with it; when it will appear by-and-by, that he took it from behind his own coat when he assaulted lord Thanet. This last fact, however, I ought to have passed over at present, because it arises out of my own evidence, which I do not wish at all to mix with my observations on the case of the crown.

Gentlemen, the other judges, with the exception of Mr. Justice Heath (whose testimony will also support the innocence of the defendants), have not been examined, though their positions in court were so highly favourable; neither has the bar been examined, who, if lord Thanet had been in the situation which some of the witnesses have described, must have all seen it to a man; and their not having been called, affords a strong inference that their evidence would not have been favourable.

Mr. Hussey, who was next examined, said, "I saw Mr. O'Connor attempt to get over the bar" (a fact never disputed); "and at that time lord Thanet was standing with his back to the prisoners. I saw somebody pressing forward, who said he had a warrant; but I saw no paper. Lord Thanet SEEMED to press himself towards the bar, and SEEMED to be desirous to interrupt his progress." I dare say, the rev. Mr. Hussey meant to tell you what he saw; but he has expressed nothing. What can be collected from such expressions? Can you convict any man upon evidence which imputes *no act*, but only a *seeming desirousness*? Lord Thanet SEEMED to press himself towards the bar, and *seemed* to be desirous of interrupting the officer's progress. Did the witness SEE him do the one or the other? If he had, he would of course have so expressed it; and if lord Thanet had actually done so, why should not Mr. Sergeant Shepherd have equally seen it, who observed him accurately *at the very same moment*? The same answer was given by the last witness, Mr. Parker; and from which one might have been desired also to conclude, that lord Thanet was an active rioter: HE SEEMED to be encouraging. But what did he do when he SEEMED to be encouraging? He put his hand so! What then? If I am not proved to be in combination or concert with any one, nor to have myself committed any act of violence, is riot or disorder to be imputed to me, only because, in the midst of a scene of uproar, I appear to be irritated from a sense of danger, or from insults which I have received? If, indeed, a person could not account for his presence in a scene of riot, the case might be different; the presumption might then supply the defect of actual proof. If people were engaged in the destruction of a house, or in the commission of any other violence, and I was seen bustling or making gestures in the midst of them, my very presence might be evidence against me: "How came you there, Mr. Erskine," might be the question, "at a distance from your own house, and in the middle of the night?" But these presumptions have here no application; for lord Thanet was attending as a witness under the process of the Court, and is described by one of the learned judges as standing originally in his proper place, and not changing his position. The whole of Mr. Hussey's evidence, therefore, amounts only to this—that lord Thanet SEEMED to press forward, and that too, *at the very same moment* when Mr. Sergeant Shepherd described him as unmoved and motionless, with his back to the prisoner, and his face, of course, towards the Court.

Gentlemen, I feel that it must be painful to you to be obliged to attend to these minute observations; but it is a solemn duty imposed upon me, to point out every fact and circumstance of the proof, by which you are sworn to regulate your verdict: the sameness and repetition are nauseous; but that is the very

strength of the defendants' case, because it shows the concurrence of the testimony which acquits them. How, indeed, can one expect variety in the discussion of a transaction, which all the witnesses say was like a flash of lightning, beginning on a sudden, when, from the apprehension of a rescue, the officers rushed into court, and ending (as far as the evidence goes) in the confusion which almost immediately followed; leaving only for your decision, whether, if, in such a crowd, it happens that I am rudely pressed upon, I am a criminal for defending myself? and whether, if, in the midst of such a scene of confusion, some of my postures or gestures are not understood by others who see me, and who may be unacquainted with what has happened to me, I am to be convicted of a crime which not only affects my property, but my personal liberty, and, what is still dearer to me, my personal honour and reputation?

Lord Romney is the next witness, whose evidence was just what might have been expected from a person in his situation—highly interested in the honour of the county where he has great hereditary estates and honours, where he has important duties to perform, and where, owing to a particular attention to the king's court, he felt, no doubt, a corresponding anxiety that it should suffer no disgrace nor interruption in its proceedings. He was placed, besides, in that part of the court where he was entitled by his rank to sit, from whence he had an opportunity of observing what was transacting. Thus circumstanced, he says, "I saw the Bow-street officers forcing a passage, AND STRIKING BLOWS:—whom they struck I do not know; there was a sword brandishing on the table. Thinking things bore a serious aspect, I crossed the table, and saw the prisoner escaping; he was brought back by the javelin-men. I said to them, 'Form yourselves round the prisoner, for he is not yet discharged.' I was told afterwards I had said, 'he was not acquitted.' I believe Mr. Fergusson said so: I have no doubt I made the mistake."—Gentlemen, undoubtedly lord Romney meant only to say, that Mr. O'Connor was not discharged; though the answer was not made to him by Mr. Fergusson; for I shall call the gentleman himself who answered him; not that it is in the least material, except that it proves that Mr. Fergusson was noticed at that time by lord Romney; and surely, gentlemen, if he had been acting like the fool and madman, and, I will add, like the kuave he has been represented to you; if, in his professional dress, he had been publicly flourishing a stick upon the table, lord Romney, who was close by him, must inevitably have observed him; yet his lordship does not speak of him as out of his place, or as engaged in any act of disorder or violence. Another most important fact is established by lord Romney's evidence; for, though his lordship said that he should have been so much hurt if the county had been disgraced, that

his attention was not directed to individuals, and that in the confusion he could not tell who had been struck in the passage by the officers, yet he added, that *VERY MANY blows were struck, and MANY persons hurt*; yet Rivett says, that Fugion struck no blows; that Adams struck no blows; that the messenger struck none; nor he himself any but those which were struck at lord Thanet. Rivett, therefore, according to his own account, was the only person engaged, and successfully engaged, against the rioters; yet you are desired to believe, that a large combination of strong and active conspirators were favouring an escape by violence. This is quite impossible; and the blows, therefore, which were observed by lord Romney, were the blows which the officers themselves wantonly inflicted; since it will appear hereafter, by witnesses whom the Court cannot but respect, and whose evidence cannot be reasonably rejected, that they rushed in like madmen, striking with violence the most harmless and inoffensive persons, which compelled others to put themselves into that passive posture of defence, that lord Thanet has been so frequently and so distinctly described in. There is nothing more that is material in lord Romney's examination.—Something was alluded to respecting a conversation with Mr. Justice Lawrence; but his lordship, with the greatest propriety, not choosing to advance beyond his most perfect recollection, did not particularize it; nor could it be material; for, besides that it appears to be supplied by other evidence, if it had been of any importance, Mr. Justice Lawrence himself would no doubt have been called as a witness. For my own part, I think it extremely likely that it has been already correctly represented: lord Thanet, smarting under the blows he had received, did not probably exhibit the same courtesy with Mr. Sheridan; but I have already observed to you, that this circumstance gives me another important witness—no other than Mr. Sheridan himself, whose deportment was thus remarked and approved of; for, besides that it is impossible to ascribe a criminal motive, either from public opinion, or acquaintance with the prisoner, which did not apply as much to the one as to the other, Mr. Sheridan will tell you, upon his solemn oath, that he observed all that passed; and he will be able, most distinctly, to exculpate both Mr. Fergusson and lord Thanet from every part of the charge.

Gentlemen, I will now state to you the solicitor-general's evidence. He says, "*I kept my eye fixed on Mr. O'Connor. When the jury gave their verdict, I observed him and Mr. Fergusson; I particularly fixed my eyes upon them. I observed Mr. Fergusson speaking to Mr. O'Connor, and Mr. O'Connor put his leg over the bar: I called out, 'Stop him!' Mr. Fergusson said, 'He is discharged.' I answered, 'He is not discharged.' Mr. Fergusson then said to Mr. O'Connor, 'You are discharged.' I repeated, 'He is not discharged.' I observed*

the gaoler lean over, and lay hold of Mr. O'Connor; some person was at this time pressing forward, and Mr. Fergusson complained to the Court. The officer was pressing into court, in order to get round to Mr. O'Connor."—Now, gentlemen, it is fit just to pause here a little, to consider this part of the evidence. The time filled by it is not above two or three minutes; for it is only the interval occupied by the sentence upon O'Coigly; and if a combination had existed between lord Thanet and Mr. Fergusson, and other persons in the secret, is it probable that Mr. Fergusson would have made himself the conspicuous figure which I am supposing the evidence truly to represent him to have done? His conduct, besides, appears quite different from Rivett's account of it. Did he enter into private resistance or altercation? No; he made a regular and public motion to the Court; the judge yielded to the suggestion; the officers were directed to stand back for the present, and then the sentence was pronounced. This is not the natural deportment of a person engaged in a conspiracy. Nothing but the purity of Mr. Fergusson's intentions, and the unconsciousness of offence, could have induced him to put himself so publicly forward by a regular motion to the Court; and such a conduct is surely very inconsistent with that of a person who was meditating at the moment to carry his point by violence in the teeth of the Court which he addressed.—The solicitor-general farther said, "*Rivett, the officer, said he had a warrant against Mr. O'Connor. Mr. Justice Buller spoke to the officers, commanded silence, and proceeded to pass sentence. When the sentence was finished, I observed Mr. Fergusson, and some other persons whom I did not know, encouraging Mr. O'Connor to go over the bar.*"—Here we must pause again.—Mr. Gibbs asked the witness, upon his cross examination, "*Did you hear him say any thing? Did you see him do any thing?*"—The solicitor-general proved no one thing which Mr. Fergusson said or did. I am sure I mean nothing in the least disrespectful to the learned gentleman; but it certainly did not occur to him at the moment, that it is not the office of a witness to pronounce by his own evidence that a man *encourages* or *supports*; but he is to depose what he heard him *say*, or saw him *do*; from whence the jury are to draw the inference which is fit. I really mean no sort of reflexion. Perhaps it arose from the habits of the court of Chancery, whose practice is different from our's, and where the depositions are of a very general nature; but suppose the solicitor were to die whilst I am speaking to you; and that, though you should be satisfied as to all the rest of the evidence, you wished to have it explained with precision what was intended to be conveyed when it was said Mr. Fergusson was *encouraging*, would you condemn Mr. Fergusson upon that evidence, without knowing distinctly what act he had committed? Could

you convict a fellow-subject upon the general evidence that he *encouraged* mischief, without knowing *what he did!* Certainly not; you must hear the *fact*; and it is then for *you*, and for *you only*, when you have heard it, to draw your own conclusion. The noble and learned lord, with whom we in a manner spend our lives in this place, is in the constant course of saying to witnesses, "Tell us what was *done*, and we will judge of its quality." By these observations I am not impeaching the evidence of the solicitor-general; I am commenting as a lawyer upon the result of it; and I do say, as a lawyer, that it is giving no evidence at all, to swear that a man encouraged, or *appeared* to be encouraging, without stating the *facts* on which that impression of his mind was founded. Mr. Solicitor-general went on to say, "*I did not see Mr. O'Connor till he was brought back by the officers; for at the instant that Mr. O'Connor jumped over the bar, three or four persons leaped from the witnesses' box upon the table, and mixed among the rioters; all the lights, except those before the judges, and the chandeliers, were extinguished. Mr. Fergusson, at the moment Mr. O'Connor jumped over the bar, turned round, and appeared to follow Mr. O'Connor; but I will not positively swear it.*" I am very glad, gentlemen, that he did not; because it would have been unpleasant to swear that positively, which will be positively contradicted; by those, too, who are of as good faith, and who had as good an opportunity of observing. It is a mere misapprehension; and I would say to the solicitor-general, if I were to see him at his own table, or at mine, *that he is mistaken.* Indeed, in a scene of confusion, no man can tell what he sees with any certainty or precision, and images are frequently confounded in the memory.—The solicitor-general then said, *that Mr. Stafford jumped upon the table, and drew a sword; and, speaking of lord Thanet, he said, he went across the table, and that he saw him in conversation with Mr. Justice Lawrence, the particulars of which he did not hear; but that, when he went across the table again, he said he thought it fair he should have a run for it: he said it rather in a tone of anger, in consequence of what had fallen from Mr. Justice Lawrence.* Gentlemen, this last part of the evidence applies to a point of time when the disturbance was at an end; after every thing had passed in the presence and observation of the Court; after the disturbance had given manifest and just offence to the judges, and after they had declared that their proceedings had been interrupted, and their authority insulted: you cannot therefore believe, that, under such circumstances, when lord Thanet could not but know that high offence had been given to the justice of the county, he should come voluntarily forward, in the hearing of the king's judges, and confess himself to be an accomplice in a high misdemeanor. These observations are not made to induce you to believe,

that lord Thanet's expressions have been misrepresented to you; but to convince you, that the making them at the time, and to the persons to whom they were made, arose from a consciousness that he had no share in assisting Mr. O'Connor: any other construction of the expression would amount to the confession of a crime, of the magnitude of which lord Thanet could not, from his education and knowledge, be ignorant; a crime which is, perhaps, put by the attorney general in a very modest shape on this record; for, without meaning to moot the point of law, I am not quite sure, that rescuing a person from a warrant for high treason, though impending, and not actually executed, is not felony at the least. The right of Mr. O'Connor to deliver himself from such a warrant, if he could escape before it was executed on his person, was an opinion which lord Thanet might correctly or incorrectly entertain; but to enhance the confession of such an opinion into an admission of the crime *in himself*, is contrary to every human principle and feeling, and, therefore, not a reasonable conclusion of human judgment.—Gentlemen, these are my observations upon the evidence of the solicitor-general, as it affects lord Thanet; and, as it applies to Mr. Fergusson, it is very important; for if Mr. Fergusson had been flourishing a stick in the manner which has been falsely sworn against him, what should have induced the solicitor-general to say, only in general terms, that he saw him *encouraging?* Will any of my learned friends maintain, that if the solicitor-general could have proved in terms, that Mr. Fergusson had a stick in his hand, till it was wrested from him by the officers in repelling violence by violence, that he would not have *distinctly stated it?* It is not, indeed, asserted, that the solicitor-general meant to convey that meaning by the term *encouraging* which he employed; nor is it possible that the attorney-general should not have stated a fact so material in his opening, if he had known he could establish it from the mouth of a gentleman placed in so respectable a station in the world.

Gentlemen, Mr. Justice Heath was next examined; and there is no part of the proof more important, particularly as it affects Mr. Fergusson, than the evidence of that very learned, and, I must add, that truly honourable witness, who was one of the judges in the commission, and presiding at the trial. He said, that "*a messenger from the secretary of state had applied to the Court for liberty to execute a warrant upon Mr. O'Connor; that permission had been accordingly granted.*" So that Mr. O'Connor was not to be ultimately liberated, but was to remain amenable to the process in the hands of the officers: that, "*after the verdict had been given, and the sentence pronounced, the messenger, VERY UNADVISEDLY, went to the corner most removed from the door, and said aloud, 'My lord, may I now execute my warrant?' Precisally afterwards,*

I saw Mr. O'Connor put one leg over the bar, and draw it back again." I have already reminded you, gentlemen, that at this time there was a doubt in the minds of some as to the effect of the verdict to liberate the prisoner; and I admit that Mr. O'Connor, when he put his leg over the bar, knew of the existence of the warrant, and intended to evade it. Mr. Justice Heath then said, "A violent riot and fighting took place, such as I never before saw in a court of justice. It seemed to me to be between the constables on one hand, and those who favoured the escape of the prisoner on the other." This shows plainly that Rivett did not speak the truth, when he said that the blows were all on the side of the rioters against the officers; whereas the fray, as described by Mr. Justice Heath, arose at first from the activity, if not the violence, of the officers; which I will confirm hereafter by the most respectable testimony. "It being dark," (continued the learned judge) "I could not see the numbers of the combatants; but I think there must have been ten or twenty engaged in it. I saw Mr. Stafford brandishing a sword over their heads. The combat might last for five or six minutes. I saw Mr. Fergusson, in his professional dress, standing upon the table with many others. He turned round, and said, 'My lord, the constables are the persons to blame; it is they that are the occasion of the disturbance.' Before I could give him an answer, he turned round towards the combatants; and then my attention was drawn FROM HIM to the more interesting scene of the fight."—Every part of this evidence is a decisive exculpation of Mr. Fergusson. WHEN was it that Mr. Justice Heath saw him upon the table? I answer, at the very moment, nay at the only moment when blame is attempted to be imputed to him. By whom was he thus observed? Not by a common person, unqualified to judge, or uninterested in the order of the court, but by one of its highest and most intelligent magistrates. It appears farther, that at the moment Mr. Fergusson publicly, and in the proper quarter, imputed blame to the officers (I do not mean such blame as should subject them to punishment, because they might be acting in the supposed discharge of their duty, but blame as it occasioned the disturbance), he did not endeavour to conceal his person from the judges at this only period of imputed disorder, but regularly addressed the Court in the dress of his profession, and openly complained of the authors of the confusion. It is therefore quite impossible, upon Mr. Justice Heath's evidence, to mix Mr. Fergusson with violence; for the learned judge distinctly stated, that after having seen and heard him as he described him to you, he observed him no longer, his attention being drawn from him to "the more interesting scene of the fight." Is not this a most positive declaration of Mr. Justice Heath, that the place where Mr. Fergusson stood, was not the scene of the fight, and that he was not

personally engaged in it? for he turned his eyes from him to the scene of the combat, and of course to the persons of the combatants; whereas, if Mr. Fergusson, with a person so remarkable, and in the dress of his profession, had been himself a rioter, the learned judge must have pursued him with his eyes, instead of losing sight of him, and must have seen him more distinctly. But the truly honourable judge does not leave the exculpation of Mr. Fergusson to any reasoning of mine, having concluded his evidence with these remarkable words: "I must do him the justice to say, that in the short time I saw him, which was not above a minute or two, I did not see him do, or hear him say, any thing to encourage the riot. I thought myself in great danger, and all of us also." This testimony, gentlemen, is ABSOLUTELY CONCLUSIVE. He saw, indeed, Mr. Fergusson for but a minute or two; yet it is the only period to which the evidence against him has any reasonable application: it was not a riot of long duration, in which a man might be guilty at one part of it, though not at another: it was almost momentary; and the whole of the scene within the observation of any one spectator. When we consider, therefore, that this learned and reverend person stood in the same situation with the first witness who was examined for the crown; that he had an opportunity, from his situation in court, of seeing every thing which belonged to the scene of combat, as he termed it; and when he nevertheless so separated Mr. Fergusson from it as to feel himself compelled to say what he did in the close of his testimony, we ought to give to his words a weight beyond the voice of a thousand witnesses. A judge can have no interest in such a subject; and you cannot justly appreciate such a testimony, without taking into your consideration his excellent character, his long experience in the world, and the deep regard which he cannot but feel for the faithful administration of justice.

Gentlemen, it is impossible for me to know how these observations affect you. Self complacency (too common among mankind) frequently makes false estimates of the effects of argument upon others, by measuring them with the results of one's own understanding; an infirmity which frequently leads us to repose upon them as finished and conclusive, when the most material parts belonging to them have been omitted. This, perhaps, may be my own case at this moment; but it does strike me, I confess (accustomed as I am to the proceedings of courts of justice), that I should be perfectly safe in now leaving in your hands the honours and characters of my clients, even if I had not a witness to bring before you in their defence: indeed, I have studiously avoided all consideration of my own evidence, in my remarks upon the case of the crown; in every thing that I have said, I have wished you to consider that I had none at all to offer and when I reminded

you, in the preface of my address, that I had witnesses to bring before you, it was rather addressed to the Court than to you, and rather directed to secure attention to my observations, than arising from any resolution to trouble you with hearing them. Nothing that I have hitherto advanced has been built upon any new fact to be introduced by me; I have been dissolving the evidence of the crown by its own weakness; I have been insisting that the respectable body of it is the strongest proof for the defendants, and that its only inconsistency is to be found where it affects them with guilt.

The next witness was Mr. Abbott, a gentleman at the bar. "He saw Mr. O'Connor make a motion to leave the Court, and heard Mr. Fergusson say he was discharged. Mr. Solicitor General answered, that he was not discharged; and then either Rivett or Fugion said he had a warrant; there was then a little confusion; but the prisoners resumed their places, and Mr. Justice Buller proceeded to pass sentence on O'Coigly. When that was finished, Mr. O'Connor leaped over the bar towards his left hand; a great tumult and confusion took place."—No part of all this, gentlemen, was ever disputed.—"I saw lord Thanet on the table nearly before Mr. Justice Lawrence." This is also nothing. If lord Thanet mixed in the riot, it could not be near Mr. Justice Lawrence, but in the other part of the court, where the prisoners were placed.—"The learned judge spoke to lord Thanet, and said it would be an act of kindness in Mr. O'Connor's friends to advise him to go quietly to prison, lest some mischief should happen. Lord Thanet then turned round, and said—I did not distinctly hear the first words, but the concluding words were, 'TO HAVE A RUN FOR IT,' or 'FAIR TO HAVE A RUN FOR IT.'" Gentlemen, I will not weary you with a long repetition of the same observations. I have observed more than once already, that if Mr. Justice Lawrence had considered lord Thanet as having done any thing to promote the riot, he would have acted accordingly; and it would be, therefore, trifling with your time and patience to detain you farther with Mr. Abbott's testimony.

Gentlemen, we are now arrived at Mr. Rivett; and, retaining in your minds the testimony of the crown's most respectable witness, on which I have been so long observing, I shall leave you to judge for yourselves, whether it be possible that what he says can be the truth, independently of the positive contradiction it will receive hereafter. Indeed, the evidence of this man administers a most important caution to juries, not to place too implicit a confidence in what is sworn with positiveness, but to found their judgments upon the most probable result from the whole body of the proof.

Rivett says, "I saw a gentleman, whom I was told was Mr. Thompson, and I have never seen him since. He asked me what business I had

there, and if there was any thing against Mr. O'Connor?"—evidently meaning a warrant, as he afterwards explained it. I need not, however, pursue this part of his evidence, because he did not identify Mr. Thompson, though he sat before him in court, but pointed to another person. I pass on, therefore, to that part where he described the state of the court: "Many gentlemen," he said, "were seated upon the solicitors bench," which has already been described to you as immediately before the prisoners, and without the counsel's seat, in which lord Thanet appears to have sat till he stepped into that of the solicitors, where he was heard to speak to Mr. O'Connor, and congratulate him on his acquittal. It was in this place, and before and after this time, that Mr. Sergeant Shepherd described him as standing unmoved, with his face to the court, and his back to the prisoners:—Rivett went on to say, "When the jury were coming in, I endeavoured to go nigh to the gaoler, when I was pulled down by the leg; and as soon as I turned round, I saw Mr. Thompson," who turns out not to have been Mr. Thompson. "I thought Mr. O'Connor looked as if he intended an escape. At that time there was a noise and violence; and Mr. Fergusson said to the Court, 'What business has this fellow here, making a noise?'" Now, gentlemen, this cannot be a correct statement as it respects Mr. Fergusson, since it has been sworn by all the crown's most respectable witnesses, that he made it a regular motion from the bar, and the officers were desired to stand back. "I told his lordship, I had a warrant from the duke of Portland to arrest Mr. O'Connor; and the judge said I should have him, and desired the gaoler to take care of the prisoners for the present. The sentence was then passed on O'Coigly; and as soon as it was finished, Mr. O'Connor immediately jumped out from the bar; there was then a great confusion in court; the gentleman who sat before me got up: Mr. O'Connor took to the left, and I called out to shut the door. I endeavoured to get forward, but was prevented by those gentlemen who had placed themselves before me and the other officers. I was pulled and shoved down two or three times; but by whom I know not. I jumped forward as well as I was able, and was endeavouring to pursue Mr. O'Connor, when Mr. Fergusson jumped on the table, and with a stick flourished it in this way, to stop me. Mr. Fergusson was in his gown. I sprang at him, and wrenched the stick out of his hand; and then he returned from the table, and went to his seat." I will not pause at this part of the evidence as it applies to Mr. Fergusson, but pursue it as it goes on to lord Thanet; because, if I can show you that its application to him is demonstratively false when compared with the rest of the crown's evidence, on which it must lean for support, it will destroy all its credit as it implicates Mr. Fergusson also. He says, "I was then knocked down by a per-

son who pushed at me with both hands, and I immediately struck that person three or four blows." You will here be so good, gentlemen, as to consult your notes, as I wish to be correct in stating his evidence. Will your lordships have the goodness to see how you have got it?

[Lord Kenyon and Mr. Justice Lawrence referred to their notes.]

Lord Kenyon.—I have it, "I struck him with my stick."

Mr. *Erskine*.—Gentlemen, you will now see, by the observations I am about to make upon this part of the evidence, that I could have no interest in stating it incorrectly; because, whichever way you take it, it involves a direct and palpable contradiction; but there is nothing like the truth, and it is always the best course to appeal to the authority of the Court. His words were, "He shoved me with both hands;" and, in his cross-examination he afterwards described it, "I struck that person three or four blows: he called out, 'Do not strike me any more;' I replied, 'I will; how dare you strike me?'" You observe that he describes lord Thanet as having no stick, and as having struck him: whereas Mr. Sergeant Shepherd saw lord Thanet, at what must necessarily be the same point of time, standing with his face to the judges, and his back to the prisoners, motionless, as I have repeatedly described him, till he must have received violence from some other person, since the Sergeant saw him leaning back, and depending himself with a stick which he held in both hands over his head—an account, which, if any corroboration of such a witness could be necessary, I will establish by eight gentlemen who were present, and who will add, besides, in contradiction of Rivett, that lord Thanet was himself beat severely, and never struck the officer with either fist or stick. That lord Thanet *had a stick*, is beyond all controversy: and, having one, is it likely that a man of his strength and activity, engaged in such an enterprise, would only push at his opponent with his hands, or that Mr. Fergusson, who is charged as being an accomplice, would have contented himself with flourishing a little stick over his head?

Mr. *Attorney General*.—I do not find that Rivett has at all said that lord Thanet had a stick.

Mr. *Erskine*.—I have been reading his original examination. I will state his cross-examination by-and-by, and then set both of them against the truth. He says farther, and to which I desire your most particular attention, "I saw Mr. Fergusson flourishing a stick about the middle of the table. I went that way, to avoid the persons who had stopped up the passage. He endeavoured to prevent me; but I wrenched it from him, and struck him. I HAD NOT THEN SEEN LORD THANET." Now, gentlemen, I have only to beg that you will have the goodness to make some mark upon

the margin of your notes of this fact, which the witness has had the audacity and wickedness to swear to. I use these severe expressions which I have applied to no other witness in the cause, because I never wantonly employ epithets that are unjust. He was in such a situation that he cannot be mistaken in what he swears; neither does he qualify it with his belief: but takes upon himself to marshal the proceedings in his memory, and to affirm POSITIVELY both as to persons and times. Yet I will prove Mr. Fergusson to have been within the bar in his place when Rivett speaks of him as on the table, and CERTAINLY WITHOUT A STICK. I will prove this—not by Bow-street officers, but by gentlemen as honourable as any who have been examined. Mr. Rivett told you too, "that he came along from the great street where the Star Inn is, towards the prisoner, to arrest him; but that he went to the table to avoid the gentlemen who interrupted him in his passage towards him." Lord Thanet is one whom he positively fixed on as having done so. Lord Thanet then interrupted him in his passage to the prisoner, which induced him to go to the table, where he had the conflict with Mr. Fergusson; and yet, according to his own deliberate declaration, he never saw lord Thanet till *after* the stick had been flourished by Mr. Fergusson over his head, and till after he had wrenched it out of his hand; for *then it was*, and for the first time, that he swears to have seen lord Thanet. This is totally inconsistent, not only with the whole course of the evidence, but even with his own. And I will prove, besides, by a gentleman who sat next his lordship, Mr. George Smith, the son of a late chairman of the East India company, a gentleman at the bar, and of independent fortune, that one of the first things Rivett did when he came into court, was, to press rudely upon HIM; and that lord Thanet, without having struck a blow, or offered any resistance, was attacked by these men in a most furious manner; which accounts for the attitude of defence in which he has been so often described.

No embarrassment or confusion can possibly attend the consideration of time; because from the evidence of Mr. Sergeant Shepherd, there could be no interval. It was all in a moment. He saw lord Thanet sitting down: he rose, and stood with his face to the judges; and then the confusion began. But, at this time, I engage to prove most positively by many witnesses, that Mr. Fergusson was in his place at the bar, that he was forced upon the table in consequence of the tumult after lord Thanet had been knocked down, and that he had NO STICK. This, indeed, is incontestibly established by the evidence of Mr. Justice Heath, who saw him in that situation till he removed his eyes from him to the scene of confusion, which he could not possibly have done if the confusion had not become general whilst Mr. Fergusson re-

mained in his place; and so far was he from seeking to mix himself with the riot which the officers were occasioning, that when sir Francis Burdett, a gentleman possessed both of strength and spirit if a rescue had been the object, was coming hastily across the table, from seeing the situation lord Thanet was placed in, Mr. Fergusson, knowing that it would only tend to embroil instead of abating the confusion, took hold of him to prevent him, carried him bodily towards the judges, desired the officers to be quiet, and, addressing the Court, said publicly, and in his place "My lord, it is the officers who are making all this disturbance."

What, then, is to be said for this Mr. Rivett, who swore that he never saw lord Thanet till after his conflict with Mr. Fergusson on the table, although Mr. Fergusson will appear to have at this time been in his place? Mr. Smith was as near lord Thanet as I am now, when Rivett rushed by him, and attacked him, Mr. Fergusson being still in his station at the bar.

Gentlemen, he said farther, in his cross-examination, that "he struck lord Thanet several blows; that lord Thanet desired him to desist, but that he had struck him once or twice afterwards." This was after Mr. Fergusson had gone across towards the judges; so that the scene he describes, as relative to lord Thanet, is not immediately upon his first coming into court, but afterwards, when, having gone out of his course towards the prisoner from the resistance he had met with in the passage towards him, he was obstructed by Mr. Fergusson at the table: whereas all the witnesses agree in placing lord Thanet in the solicitors box, the very passage which Rivett states himself to have left in consequence of resistance; and, therefore, he must have passed lord Thanet, in the solicitors' box, before he could have approached Mr. Fergusson at the table; and if he met with any blows or interruption from him at all, he must have met with them immediately upon his entering the court; for Mr. Sergeant Shepherd's evidence establishes, that at that period violence must have been used on lord Thanet, as he was in an attitude of defence. Rivett farther said, that "lord Thanet had nothing to defend himself against his blows," though sergeant Shepherd saw and described him with a stick; and that "he saw no blows struck by any body but himself." What, then, is the case, as it stands upon Rivett's evidence? That no blows were struck but his own: though a learned judge has sworn to have seen many struck, and upon many persons; that he received no blows from Mr. Thompson—none from Mr. O'Brien—none from Mr. Fergusson—none from any of the defendants but lord Thanet, nor from any other person in the court. It is for you to say, gentlemen, whether this statement be possibly consistent with a wide-spread conspiracy to rescue a prisoner by violence, of which the defendants were at the head.

Sir Edward Knatchbull saw no blow given to Rivett. He said, "I can by no means speak positively: but it appeared to me, that when somebody was endeavouring to keep Rivett back, he struck lord Thanet with his fist. I saw no blow given to Rivett." So that sir Edward Knatchbull's evidence, instead of confirming Rivett's story, mainly and importantly contradicts it.

Mr. Watson, the gaoler, was next examined. He remembers the directions given him, not to discharge the prisoner, which I will not detain you with; and says, that "after sentence was passed, some person said to Mr. O'Connor, 'You are acquitted—What do you stand there for?—Why do not you jump over?' that Mr. O'Connor answered, 'Mr. Watson says I am not to go;' but that, immediately afterwards he sprang over," &c.—Thomas Adams who was then Mr. Justice Buller's coachman, "saw lord Thanet with a stick in his hand, and saw it lifted up." We had got rid of that stick upon Rivett's evidence, and now it comes back upon us again when it is convenient to have it lifted up. He describes the stick as lifted up in this position (*imitating the witness*); whereas it could be in no such posture, as you must be convinced of from the observations I have already made to you; but this man's evidence is very material in this respect, viz. that in describing the assault of Rivett on lord Thanet, he says "I heard lord Thanet say to him, 'What do you strike me for? I HAVE NOT STRUCK YOU:'"—an expression of great importance in the mouth of such a person as lord Thanet; and falling from him at the very moment when it could have proceeded from nothing but consciousness; and an expression that I will confirm his having used by several of my own witnesses.

Mr. Brooks, who was next called, says, he "saw Mr. O'Connor when the jury returned. Mr. Fergusson held a sword or stick over the heads of the people." A sword, or something else, given to us in this confused manner, adds no force to the evidence; more especially when, upon being asked if he can swear with positiveness, he admits that he cannot.

Mr. Stafford was then examined, who says, "he sat under the jury-box and could see lord Thanet distinctly." I particularly asked him that question, and how far distant he was from him: he answered me, "Not above two yards from me—threetimes nearer than I am to you." He saw lord Thanet, then, distinctly, at two yards distance, and from the beginning to the end of the confusion; yet he swears, "he did not observe him engaged in any obstruction." Afterwards when the tumult became general, this witness has been described as brandishing a drawn sword—no doubt, from a sudden apprehension of danger, and to avert it from that quarter. Now suppose Mr. Stafford had come down, out of mere curiosity, to Maidstone to hear the trial

and had been seen flourishing this drawn sword in the midst of the affray—what should have prevented Mr. Rivett from considering this gentleman as the greatest rioter of them all? Why might he not the rather have represented him as brandishing it to favour the escape of the prisoner? One cannot, indeed, imagine a case of greater cruelty and injustice; but what could have been his protection if Mr. Fergusson can be convicted on the evidence you have heard? Was not his situation in court, as counsel at the bar, equally respectable as that of the clerk of the arraigns? and is not the presumption of an evil design against the dignity of the Court equally removed from both of them? Yet the one is only described as flourishing a small stick; whilst the other was so wielding his metallic tractor, that if he had not pleaded a flat bar to the assize in the manner he conducted this falchion, the issue must have been blood. Mr. Garrow said to him at the moment, “take care that you do no mischief” and undoubtedly Mr. Stafford neither did nor intended any; but that makes the stronger for my argument, and shows how little is to be built upon appearances which grow out of a scene of tumult. The case for your consideration, seems, therefore, to be reduced to this—whether you will believe the two learned judges, and the other respectable witnesses? or, whether you will depend upon the single and unsupported evidence by which violence has been imputed? Mr. Stafford who was within two yards of lord Thanet, has completely acquitted him; for had he been in the situation in which Rivett has placed him, what could possibly have prevented him from seeing it? It was also sworn by Rivett, that Mr. Fergusson had a stick; but upon appealing to Mr. Stafford's evidence, who sat just opposite to him, we find that he had none; but that *he extended his arms seemingly to prevent persons approaching that side of the Court.* Mr. Stafford admits, that when he saw Mr. Fergusson it was in the midst of confusion; and it would be a harsh conclusion indeed, that Mr. Fergusson is guilty of the conspiracy charged on this record, because, upon being forced out of his seat by the tumult which surrounded him, as I will show you he was by several witnesses, he had extended his arms in the manner you have heard. Mr. Stafford added, that the gaoler had hold of Mr. O'Connor's coat; that Mr. Fergusson forced himself between them, and that the gaoler stretched his hand behind Binns to take hold of the prisoner. This must be a mistake; for Watson sat as where my learned friend Mr. Wood is at present [*pointing to him*] and Mr. O'Connor stood as where Mr. Raine is now sitting [*pointing to him*] and at no part of the time is it even asserted that Mr. Fergusson was in the box of the solicitors, and consequently it was utterly impossible that he could have prevented the gaoler from keeping hold of the coat of the prisoner.

Mr. Clifford says, he sat near the marshal. I thought he had said that he sat there as marshal; and, not knowing the person of the hon. gentleman, I thought he had been the marshal of the court. There was no new fact introduced by this witness.

Next came Mr. Cutbush. My learned friends appeared to be soon tired of his evidence; and it seemed to produce an emotion of surprise upon the bench, that a witness, in such a stage of the cause, should give such extraordinary testimony. He said, “*I saw lord Thanet; he was two or three yards from Mr. O'Connor. I observed nothing particular till I saw Rivett striking lord Thanet on the back with a sword.*” Now, as it is admitted on all hands that no such thing ever happened, it affords another instance of the difficulty with which juries can collect any evidence to be relied on in a scene of uproar and confusion.

The evidence of the last witness, Mr. Parker, contains nothing which I need detain you with.

Gentlemen, I have now faithfully brought before you all that is material or relevant in the case of the Crown; and having accompanied this statement with the observations which appeared to me to apply to it, let me suppose that my task was finished; that I had nothing by which I could farther defend my clients; and that I were now to leave you to the attorney-general's reply, and the assistance of the Court. Were this my situation, I should sit down confident that you could not pronounce a verdict against them, upon such equivocal evidence, either honourable to yourselves, or beneficial to your country. I will not tire your patience by an extended recapitulation of arguments, which you have heard already with so much patience and attention; but I feel it to be my duty just to point out the inadequacy of the testimony.

The charge against the defendants is, a conspiracy to rescue Mr. O'Connor from legal custody by tumult and violence:—all the other acts, as they are put upon the record, and brought before you by evidence, being no otherwise relevant nor credible than as the means employed to effectuate that criminal purpose. Your belief of that purpose can therefore be the only foundation of a righteous verdict. Yet not only no part of the proof applies to establish it, but the existence of it is negatived by every principle which can guide the human judgment. No motive either built upon fact, or flowing from reasonable presumption, has appeared: none has even been suggested: the object thus pursued without an interest was palpably useless and impracticable—detection and punishment inevitable—the crime, if committed, committed before the whole court, its judges and officers, yet the evidence of it painfully and lamely extracted from a few, and that few overborne by the testimony of the most respectable wit-

nesses, best situated to observe, and best qualified to judge of what was passing. I have therefore no more to ask of you gentlemen, than a very short audience, while I bring before you the defendants' evidence.—My case is this :

It stands admitted, that the confusion had not begun when the jury returned with their verdict—that there was only a motion towards it when the officers were directed by the court to be silent, and to stand back. The period, therefore, to be attended to, is, the conclusion of the sentence on O'Coigly, when the officers, from their own account of the transaction, believing that Mr. O'Connor intended to escape from them, and giving them credit that such intention could not be frustrated without some violence and precipitation, rushed suddenly through the solicitors' box, where they met indeed with resistance, but a resistance which was the natural consequence of their own impetuosity, and not the result of any conspiracy to resist the execution of the warrant.

To establish this truth with positive certainty (if indeed it is not already manifest from the whole body of the proof), I shall produce, as my first witness, Mr. George Smith, whom I before named to you, and who was one of the first persons in their way on their entering the court. He sat as near lord Thanet as I now stand to where his lordship sits before you, and who, upon the principle of this prosecution, should, above all others, have been made a defendant; for he will admit freely, that he endeavoured to push them from him with his elbow, when they pressed upon him with great and sudden violence: he will tell you, that at this time Mr. Fergusson was in his place at the bar; that lord Thanet was in the place where sergeant Shepherd described him; that he was violently struck, without having given the smallest provocation, without having made any motion, directly or indirectly, towards the rescue of the prisoner, or even looked round at that time to the quarter where he stood: that lord Thanet, in order to escape from this unprovoked violence, so far from approaching Mr. O'Connor, endeavoured to get nearer where the counsel sat, when Rivett, instead of advancing straight forward in pursuit of his object, which was, to arrest the prisoner, levelled repeated blows at him, as he was obliged himself to admit, while lord Thanet lay back in the manner which has been so often described to you, protecting his head from the blows he was receiving.

In the same seat was Mr. Bainbridge, a gentleman educating for the bar, a near relation of the duke of St. Alban's, and a pupil, I believe, of my honourable and learned friend, Mr. Wood; a person who cannot reasonably be suspected of giving false testimony, to encourage violence and outrage against the laws of his country. Mr. Bainbridge will swear positively, that, when the

officers came forward, lord Thanet was in the solicitors' box, and Mr. Fergusson in his place at the bar, where he remained till the witness saw him forced out of his place, and obliged to stand upon the table, *and that he had no stick.* What then becomes of Rivett's evidence, who swore he never saw lord Thanet till *after* this period, although it is admitted that it must have been by the tumult, in which he falsely implicated his lordship, that Mr. Fergusson was driven out of his place? This is absolutely decisive of the case:—for it will appear farther, that Mr. Fergusson continued in his place after the period when lord Thanet was seen defending himself. It was rather insinuated, than sworn to distinctly, that there were gentlemen coming from the other end of the court, as if to lend their assistance; but this operates directly in exculpation of Mr. Fergusson, who prevented sir Francis Burdett from approaching to that quarter of the court. Sir Francis was certainly not advancing for the purpose of riot, but to extricate lord Thanet: yet Mr. Fergusson, lest it should add to the confusion, publicly prevented him, under the eye of the whole court.

The next witness I shall produce to you will be Mr. Charles Warren, son of the late highly celebrated physician—a most honourable young man, and who, I verily believe, will be as great an ornament to our profession, as his father was to his. Mr. Warren was placed at the table, attending in his gown as counsel, and had the most undeniable opportunity of seeing Mr. Fergusson, who sat near him, in his gown also. What Mr. Fergusson did, cannot be matter of judgment or opinion in such a witness, but matter of certainty: the conduct imputed, if it really existed, could neither be unobserved nor forgotten; it was exactly the same as if I were at this moment to break out into madness, and insult the Court. In such a case, would any of you qualify your evidence of such a scene, passing before your eyes, with *I think, or I believe?*—No:—you would say at once, I saw that gentleman hold up his fist, and insult and threaten the judges. Such extraordinary transactions address themselves directly to the senses, and are not open to qualifications of opinion or belief. For the same reason, Mr. Smith and Mr. Bainbridge must both be perjured, if the evidence of Rivett be the truth; and Mr. Warren (subject to the very same observation) will swear positively that he saw lord Thanet severely assaulted, and THAT HE DID NOT STRIKE. Is this a mere negative in opposition to Rivett's affirmative oath? Certainly not: for there are some negatives which absolutely encounter the inconsistent affirmatives, and with equal force.

Let me suppose any man to say at this moment, "Mr. Mackintosh" (who sits close by me) "*struck lord Thanet,*" who is just before me, whilst I was speaking to you, the

jury, and I were to answer that "*he did not*,"—that would, no doubt, be in *form* a negative proposition; but it would comprehend a *counter-affirmative* if I had seen Mr. Mackintosh in such a situation, relative to lord Thanet, as that he was not near enough to strike him, or that, if he had struck him, I must inevitably have seen him. Upon this principle, which it is indeed pedantry to illustrate, because common sense obtrudes it upon the weakest, Mr. Warren will tell you *POSITIVELY* that lord Thanet did *not* strike Rivett; and that, at the time when this violence is imputed to him, Mr. Fergusson, who is reported to have begun the affray, and who had, it seems, a stick wrenched from him, was in his place at the bar.

I will then call to you Mr. Maxwell, a gentleman of rank and fortune in Scotland, who lately married a daughter of Mr. Bouverie, member of parliament for Northampton. He stood under the witness-box, which may be as in that corner, [*pointing to a corner of the court,*] commanding a full and near view of every thing that could pass; and he will confirm, in every particular, the evidence of Mr. Warren, Mr. Bainbridge, and Mr. Smith. I will also call Mr. Whitbread, who attended the trial as a witness, who was near Mr. Sheridan, and, like him, did every thing in his power to preserve the peace. Mr. Whitbread's situation I need hardly describe to you. He is a man of immense fortune, acquired most honorably by his father in trade, and who possesses almost incalculable advantages, which are inseparably connected with the prosperity and security of his country: yet, from the mouth of this most unexceptionable witness, the most important parts of the evidence will receive the fullest confirmation. I shall also call Mr. Sheridan, who showed his disposition upon the occasion by his conduct, which was noticed and approved of by the judges. This will furnish the defence of lord Thanet and Mr. Fergusson.

As to Mr. O'Brien, it is almost injurious to his interests to consider him as at all affected by any part of the proof: he does not appear to have been at all connected with Mr. O'Connor. It has been said, indeed, that he proposed a bet to the officer on the existence of the warrant, and that he afterwards whispered Mr. O'Connor; but at that period it could not relate to an escape. It has been said, farther, that he was on the spot, and that Mr. O'Connor put his hand on his shoulder; but that was no act of Mr. O'Brien's; he neither touched him nor used any effort to assist him—no violence or obstruction is even imputed to him: even RIVETT HIMSELF has not attempted to say, that, in his progress towards the prisoner, he was insulted by Mr. O'Brien, or that he even saw him.

I am not counsel for Mr. Thompson or Mr. Browne; but I apprehend I have a right to call them as witnesses, and upon that, I

shall presently take the Court's opinion. Rivett was desired to look round, to identify Mr. Thompson, but pointed to another gentleman who sat next him, and who had no sort of resemblance to him in person. Mr. Thompson, therefore, is not touched by any part of the proof; and nobody has said a word concerning Mr. Browne (as I before remarked to you), except that there was a gentleman, in a grey coat with a black collar, who had the misfortune to have his head broken, and of which he made a complaint to the Court.

Gentlemen, I am now, therefore, very near relieving you from the painful duty which this important cause has imposed upon you; a cause which, independently of the attorney-general's privilege to choose the form of trial, was well worthy of the attention of this high tribunal. So far from complaining of a trial at bar as an oppression of the defendants, I acknowledge the advantages they have received from it, not only in the superior learning and discrimination of the Court, but in the privilege of being tried by a jury of gentlemen assembled at a distance from all local prejudices, which has enabled them impartially to listen to both sides with such equal and such patient attention. I have yet another advantage from a trial in this place, which it is fit I should advert to. It enables me to remind the noble and learned chief justice of a course of practice from which he has never deviated, and from whence my clients will receive most abundant advantage.

Throughout the numerous criminal trials which it has fallen to my lot to see his lordship judicially engaged in, I have observed this uniform course. Where the decisions will not fit exactly the interest of the accused, and where counsel, as far as professional honour will warrant, are driven in argument to qualify them, and to divert their rigorous application, the noble lord summons up all the vigour of his mind, and fills up the full scope of his authority to prevent the violation of the law; because the law is an abstract and universal rule of action, the application of which can suffer no modification; but when the *law* is clear, and the question only is, whether persons accused of a breach of it are guilty or not guilty upon *evidence*, above all, upon evidence which is contradictory—where testimony is opposed to testimony, and witness to witness, in such confounding equality as that a jury cannot with clearness arrive at the truth, I have a right to bring it to his lordship's own recollection, and, for his honour, to the recollection of others, that it has been his uniform practice, not merely to lean towards acquittal by his directions to juries, but even to interpose his opinion with the prosecuting counsel. In a civil case, indeed, where one man asserts that to be his right or property which his opponent controverts, a jury *must* give a verdict for the one or for the other; though the scales may appear to be

equal. In such cases a judge is frequently obliged to lament to juries that they have a task imposed upon them which neither the conscience nor understanding of man can fulfil with satisfaction; but I speak the language of his lordship, and of all judges, when I say, that *between the public and individuals* THERE CAN BE NO SUCH RACE FOR JUDGMENT. Far different is the character of English justice; and there occurs to my mind at this moment a recent and memorable example. While the attention of the House of Commons was attracted to the great cause of humanity, in its proceedings upon the abolition of the slave trade, a case was brought for the consideration of a jury, arising out of the ill-treatment of a negro in an African ship. The captain upon his oath denied the alleged cruelty, and a bill of indictment for perjury was found by a grand jury against him. I conducted that prosecution at Guildhall, and established the ill-treatment by several witnesses; and although not one man, who was in the ship at the time, was called to contradict them, yet on its only coming out, not from their admission, but upon the evidence for the defendant, that they had held a different language in an alehouse at Bristol, lord Kenyon interposed on my rising to reply for the crown. I had myself no doubt of the guilt of the defendant; but his lordship, though without even expressing that he himself entertained a different opinion, declared that the interests of the public never could be served by a conviction on such contradictory evidence. "We ought not," he said, "with such materials, to leap in the dark to the conclusion of guilt." I acquiesced, as it was my duty; and the defendant, without any appeal to the jury on the evidence, was acquitted. I should only weary you, gentlemen, by a repetition of similar instances which crowd into my memory at this moment. I am sure I could name above twenty, in this very place, upon proceedings for the obstruction of officers in the execution of their duty (proceedings most important to the public), where the evidence has been very contradictory, and where the noble and learned lord, not being able to detect perjury in the defence, has uniformly held this language to juries, and even to the counsel for prosecutions: "This is not a case for conviction; the defendant *may* be guilty, but there is not a sufficient preponderation in the evidence to pronounce a penal judgment."

These are the maxims, gentlemen, which have given to British courts of justice their value in the country, and with mankind. These are the maxims which have placed a guard around them in the opinions and affections of the people, which, I admit, is at the same time the sting of this case, as it deeply enhances the guilt of him who would disturb the administration of such an admirable jurisprudence. But, if the courts of England are, on this very account, so justly popular

and estimable; if they have been, through ages after ages, the source of public glory and of private happiness, *why is this trial to furnish an exception?* For myself, I can only say that I wish to do my duty, and nothing beyond it. Govern us who will, I desire only to see my country prosperous, the laws faithfully administered, and the people happy and contented under them. Let England be secure, and I am sure no ambition of mine shall ever disturb her. I should rather say, if I were once disengaged from the duties which bind me to my profession,

"Oh! for a lodge in some vast wilderness,
 "Some boundless contiguity of shade,
 "Where rumour of oppression and deceit,
 "Of unsuccessful or successful war,
 "Might never reach me more!"

To conclude—if you think my clients, or any of them, guilty, you are bound to convict them; but, if there shall be ultimately before you such a case, upon evidence, as to justify the observations I have made upon the probabilities of the transaction, which probabilities are only the results of every man's experience in his passage through the world;—if you should think that the appearances were so much against them as to have justified honourable persons in describing as they have done, their impressions at the moment, yet that the scene of confusion was such that you cannot arrive at a clear and substantial conclusion—you will acquit all the defendants.

[*The Attorney General retired from the court.*]

Mr. Rous.—My lord, I am of counsel for captain Browne.

Lord Kenyon.—When the attorney-general comes in I will put the question to him whether he thinks there is sufficient evidence against him or Mr. Thompson?

[*The Attorney General returned.*]

Mr. Garrow.—My lord, the attorney-general has returned; if your lordship pleases, I will put that question to him.

Mr. Attorney General.—I understand, since I went out of court (and I beg pardon of your lordships for so doing), that something has been said relative to Mr. Thompson and Mr. Gunter Browne. With respect to the former of those gentlemen, undoubtedly, his person having been mistaken here in court, I should think it extremely improper that I should withhold from these defendants the benefit of his testimony. With respect to Mr. Gunter Browne; I think there is some evidence against him, if I were struggling in this case, in a way in which I am perfectly sure your lordship knows the attorney-general never does struggle, for a conviction; but I am very ready, fairly to say, I should act very improperly if I showed any inclination to convict at all; and, therefore, I give up the prosecution with respect to him also.

Lord Kenyon.—If you mean to avail yourself of their testimony, now is the time.

Mr. Rows.—Mr. Gunter Browne is confined to a bed of sickness.

Lord Kenyon.—Gentlemen of the jury, as far as I can recollect the evidence, there is not sufficient evidence to call upon these gentlemen for their defence; if you think so, you will acquit them.

Mr. Browne, Not Guilty; Mr. Thompson, Not Guilty.

EVIDENCE FOR THE DEFENDANTS.

Mr. George Smith sworn.—Examined by Mr. Gibbs.

You were present at this trial?—I was.

The row in which the solicitors sat represents that where we are now sitting, and the counsel before us?—It does.

And the place in which the prisoners stand was behind?—Yes.

In what part of the court were you?—Almost during the whole of the trial I sat in the solicitors' seat.

Are you at the bar?—I am.

I believe the prisoners stood in the place allotted for them, three in the front, and two behind?—Exactly.

Who were the three in front?—Mr. O'Coigly, Mr. Binns, and Mr. O'Connor; Mr. O'Connor was on the left as he looked at the judges, and on the right as they looked at him; Mr. Binns in the middle, and Mr. O'Coigly next the gaoler; my seat was directly under the gaoler, at the end of the seat.

Do you remember the time when the verdict was brought in?—Perfectly.

Did you observe any thing happen at that time?—I recollect that Mr. O'Connor put his leg over the bar, and there was a press behind me, but a very trifling one, to get at him.

This was before sentence was pronounced?—Before sentence was pronounced.

Did that cease?—Yes: silence was called, and that disturbance ceased. The judge then proceeded to pronounce sentence; I was at that time sitting, as I have described, at the end of the seat directly under the gaoler; and I leaned against a projecting desk, looking up at O'Coigly during the whole of the sentence, so that my back was to the Bow-street officers: that instant that the judge concluded his sentence, Mr. O'Connor put his leg over the bar, and the gaoler caught hold of his coat.

At this time did you observe where lord Thanet sat?—At that particular moment I cannot say I saw my lord Thanet, but I know that he and Mr. Browne were both sitting on the solicitors' seat within one of me.

Where was Mr. Fergusson at this time?—I do not know; I did not observe him at that time.

You were proceeding to state what passed after the sentence was pronounced?—At the

same moment that Mr. O'Connor put his leg over the bar, before I had recovered myself from the leaning position in which I sat, one of the Bow-street officers, I am not sure whether it was Rivett or Fugion, set his foot upon my back. I immediately started up and drove the man off, and asked him what he meant.

How did you drive him off?—With my elbow, and by starting up.

What was his answer?—He damned me, and told me he had business, and would press on.

Was there good room for him to get by, or was this a narrow place?—It was so narrow that it was impossible two people should pass without contrivance; a short struggle followed between the officers and myself, for there were several people who were pressing behind, and I could not get out of the seat where I was without making that resistance.

How did you get out at last?—At last I struggled a great while with my elbows to make room for myself; I got up, stepped upon the division between the solicitors' and the counsels' seats, and from thence to the table; I then turned round immediately, and I then saw the same man pressing upon my lord Thanet, in the same way in which he had been pressing upon me.

You said lord Thanet and Mr. Gunter Browne were within one of you?—Yes.

Did you observe this immediately upon your extricating yourself?—The instant I extricated myself, I turned round and saw a man pressing upon lord Thanet, with this difference, that when I resisted him, I did not observe that he had any staff or stick, but when I saw him with lord Thanet, he was striking lord Thanet with a stick, but what the stick was I cannot say; lord Thanet stood with a short stick in both his hands, dodging with his stick, and receiving the blows of the Bow-street officer upon that stick.

Lord Thanet was guarding himself, with his hands up, from Rivett's blows?—Exactly so.

You do not know which officer it was?—I am not certain, I think it was Rivett.

Before this happened, Rivett had had a struggle with him?—I had had a struggle with Rivett in the first instance; and I should state, that during that struggle, Mr. O'Connor, who had endeavoured to get away, had effected his escape from the gaoler; and the consequence was, that the people pressed forward from the opposite end of the bench, to prevent Mr. O'Connor from effecting his escape; by which means every person who sat in that narrow seat, was placed, if I may say so, between two fires: for the Bow-street officers were pressing up from one side, and the crowd were pressing up from the other side.

You say, as soon as you got from Rivett, you saw him instantly engaged in this way with lord Thanet?—Yes.

Could Rivett, in the interval between the

struggle with you, and the struggle you instantly saw him have with lord Thanet, have got over to the counsels' table, and had a contest with a man who had a stick, and taken that stick from him?—Impossible; I think so at least; the interval was no longer than that which elapsed from my getting from the seat to the division, and from thence to the table.

Which you did as expeditiously as possible?—Certainly; for I felt myself in danger.

When you say impossible, I need not ask you whether you saw the thing happen?—Certainly not.

Had you your gown and wig on?—I had. Very shortly after I got upon the table, a man took up one of the swords, and drew it, and flourished it about over the heads of the people; very shortly afterwards I saw this sword coming in a direction immediately to my own head; I avoided the blow by springing off the table into the passage leading into the street.

Did you at any time see lord Thanet strike this officer, let him be whom he may?—I never saw lord Thanet in any situation but acting upon the defensor.

If lord Thanet had struck the officer, do you think you must have seen it?—Certainly; during the time I had my eyes upon him.

I think you told me you saw the officer first pressing by lord Thanet, and then striking him?—Yes.

And if he had struck the officer, you must have seen him?—Certainly, at that time.

Do you remember lord Romney coming down from the bench?—Perfectly well.

Do you recollect upon lord Romney's saying the prisoner was discharged, or acquitted, any person making an observation to him?—I remember there was an altercation between lord Romney and myself, in consequence of his saying that the prisoners were not acquitted.

There was a misapprehension between the words acquitted and discharged?—I apprehend so.

However, you were the person that had the conversation with him?—Yes.

Mr. George Smith cross-examined by Mr. Attorney General.

You insisted that they were acquitted, and lord Romney insisted that they were not acquitted?—Exactly so.

A Juryman. I wish to ask whether you left the court during the riot?—No, I did not; I jumped off the table in consequence of a blow that I saw coming at my head, and I shortly after returned to the table again.

Did you observe lord Thanet leave the solicitors' box?—No, I did not.

Do you know whether he did, or not, leave the solicitors' box?—I cannot say, for the riot lasted a very short time after I had left the table.

Lord Kenyon.—Was the blow aimed at your head?—By no means; it appeared to me that all the blows struck by that sword were struck

by a man that did not know what he was about.

Were there any wounds?—I heard there were, but I do not know of any.

Mr. Bainbridge sworn.—Examined by Mr. Best.

You are a student of the law?—I am.

Were you in court during the trials at Maidstone?—I was.

In what part of the court did you sit at the time of the riot?—When the jury returned, I left my place at the table, and went to the place where the solicitors of the defendants sat, to speak to Mr. Fergusson.

Did you observe Mr. Fergusson during this time?—Mr. Fergusson sat directly before me.

Did you observe lord Thanet?—Lord Thanet sat on my right hand, close to me.

So that you had a complete opportunity of observing them?—I had a complete opportunity till the fray began.

Do you recollect the Bow-street officers coming in?—I remember observing the Bow-street officers standing on the right hand side of the dock.

Do you remember seeing those Bow-street officers at the time the jury pronounced their verdict?—I did.

What did you observe them doing at this time?—I observed two standing with their eyes fixed upon Mr. O'Connor, as the impression struck me.

Do you recollect them after the sentence was pronounced?—Yes, I do.

What did you see them do at that time?—I observed one, whom I had from observation upon the trial known to be Rivett, put his knee upon the bench that came over into the solicitors' seat, and get over, and press directly forward.

You say he pressed forward: in what direction?—He pressed directly on to the bench where the solicitors for the defendants had sat, and the counsel, for the defendants had sat.

Where was lord Thanet at this time?—My lord Thanet was on the right hand of me, and in the place where the solicitor for Mr. O'Connor had sat, I believe most part of the day.

Where was Mr. Fergusson then?—Directly before me, IN HIS PLACE.

Was Mr. Fergusson at that time in the solicitors' place, or the place appropriated for the counsel?—Mr. Fergusson was IN HIS OWN PLACE, and the place which he had kept the whole day.

Did you see the Bow-street officers attempt to pass lord Thanet?—I saw the Bow-street officers attempt to pass lord Thanet: and lord Thanet, upon being pressed upon, moved, upwards, as if to prevent being overpowered or crushed, and got upon his legs.

Did lord Thanet do any thing to obstruct this officer?—To my opinion, nothing in the world.

I think you say, on the contrary, he moved up?—He endeavoured to get upon his legs; for the pressure of the people upon him was such, that, if he had not got up, he must have been totally knocked under the bench.

At this time did you see whether lord Thanet struck this Bow-street officer, or not?—I never observed lord Thanet strike the Bow-street officer, or any body else.

From the situation in which you were at this time, if he had struck him, do you think you must have seen him?—Certainly I must.

If lord Thanet, at this time, had been taking an active part in the riot, must you have seen that also?—I must have observed that too.

Did lord Thanet do any thing to aid the escape of Mr. O'Connor, or add to the tumult which then prevailed in court?—Nothing in the world, that I saw.

Did you observe Mr. Fergusson at this time?—I did.

Now I will ask you if Mr. Fergusson struck any body?—I never saw Mr. Fergusson strike any body; and, if he had struck any body, I think I must have seen it.

Did it appear to you that Mr. Fergusson encouraged Mr. O'Connor, or at all favoured him in his escape?—Not the least, quite the contrary.

Did you observe whether Mr. Fergusson had any stick?—I observed no stick whatever.

If Mr. Fergusson had at this time been brandishing a stick, do you think you must have seen it?—I must certainly have seen it from the situation I was in.

During this time did Mr. Fergusson continue in the same situation in which he was?—He continued in his seat till he was pressed upon, and the whole was a scene of confusion.

Did it then appear to you that Mr. Fergusson only left his seat in consequence of the pressure upon him?—That was the only cause, as it struck me

Do you recollect seeing Rivett engaged with lord Thanet?—I do; he appeared to me to be striking him, and trying to beat him down; in short he was in the act of offence, with his hand uplifted, as it appeared to me.

Do you recollect Mr. Fergusson saying or doing any thing at that time?—I remember Mr. Fergusson asking him to desist, and asking him if he knew whom he was striking.

Did he give any answer to that?—He, I think, made use of words to this effect: "I neither know nor care." Upon which Mr. Fergusson said, "That is lord Thanet, I insist upon your not striking him."

Do you recollect whether Rivett had a contest with Mr. Fergusson before he got to lord Thanet?—Not to my observation; I had seen none.

From the situation in which Mr. Fergusson was, could Rivett have got a stick out of Mr. Fergusson's hand?—I think, if he had had a stick in his hand, he might; I observed no stick in his hand.

Could he have struck him, and wrested the stick out of his hand, without your seeing it?—I think not.

You were there during the whole of this tumult?—I was in court during the whole of the trial.

Was Mr. Fergusson any part of that time in the place allotted for the solicitors?—Never.

Was he ever nearer to Mr. O'Connor than the place for the counsel?—Never; I was between them.

Where did he go, when he quitted that place?—Towards the judges and away from the tumult.

During the whole of this time, did Mr. Fergusson at all appear to encourage the tumult?—Quite the contrary I think.

Mr. Bainbridge cross-examined by Mr. Law.

You have said that Mr. Fergusson so far from encouraging this tumult, acted quite the contrary?—Yes.

Am I to understand you, that he endeavoured to dissuade them from riot?—I heard him say to Mr. O'Connor, "Be quiet and keep your place, nothing can hurt you."

Was that after the acquittal?—It was after the verdict of acquittal had been given, and before the sentence was passed upon O'Coigly.

But after the sentence was pronounced, did you observe Mr. Fergusson doing any thing that was quite the contrary?—He seemed to say, "be quiet;" and, from Mr. Fergusson desiring him to keep his place, and having complained to the Court of a person that wished to make a tumult, he appeared to me to be a person who wished to keep every thing quiet and in order.

You have told us, that, during the whole day, Mr. Fergusson kept the same place?—As to the same place, I believe he might have moved to the right; he might have been, perhaps, to the right of Mr. Plumer in the morning; but what I mean is, that he never moved out of the place where the counsel sat.

Then he must have been under your own observation the whole of the day?—Yes.

Did he never appear to be upon the table in the course of that day?—While the jury were retired, he went across the table, and, I believe, went to speak to somebody near the witnesses box; but at that time people were conversing and walking about, but there was no idea of a riot then.

Will you say, after the verdict was brought in, he was never upon the table?—*He was never upon the table that I know of, till he was pressed upon by the Bow-street officers.*

Did you during the day, see a stick in his hand, or that he had not had a stick?—I will swear that I did not see a stick in his hand.

And you had him so much under your observation, that you must have seen it?—As much as a person could do sitting in a court of justice; it was quite ridiculous to suppose he had a stick in his hand.

Were you a witness, or concerned in that trial?—No. I went from mere curiosity.

You did not go with Mr. Fergusson?—No.

And you will swear that he never had a stick in his hand?—I will swear I did not see a stick in his hand; and I think I must have seen it, if he had.

If you had him constantly in view, you must?—It cannot be supposed that I had my eyes upon him for fourteen hours.

WILL YOU VENTURE TO SWEAR THAT DURING THE RIOT HE HAD NO STICK?—I WILL.

A Jurymen.—Did lord Thanet leave the court during the riot?—Lord Thanet moved, as Mr. Fergusson did; upon being pressed upon, he got upon the bench; and when he moved up, Rivett was above him; and trying to strike him; and Mr. Fergusson then said, "Whom are you striking, sir?"

Jurymen.—Whether he saw lord Thanet, during any part of the period, near the wicket gate that leads to the narrow street?—I saw lord Thanet, I think, during the whole riot; and I think, instead of being there, he went when he did move, quite the contrary way, and not at all towards the gate.

Mr. Justice Lawrence.—From Mr. Fergusson complaining of a tumult, it seemed as if he wished to keep every thing in order; who was the person that he complained of?—Rivett.

That was before the sentence was passed?—Yes.

How far was Rivett from Mr. Fergusson at that time?—I think he must have been about three yards.

At that time was he not making use of this motion [*describing it*] and saying, "Keep back, where are you going?"—Yes, and I think Mr. Justice Buller then said, "What is the matter?" Mr. Fergusson then said, "Here is a person making a noise, and will force himself into the court." Mr. Justice Buller then said, "What do you mean sir?" He then said, "My lord, I have a warrant against Mr. O'Connor." He then told him to keep back.

Mr. Warren sworn.—Examined by Mr. Mackintosh.

I believe you were present at the trials for high treason at Maidstone?—I was.

Were you present the second day of those trials?—I was.

Where did you sit during the evening of the second day?—Just by the witness-box, opposite to the jury.

After sentence was pronounced upon O'Coigly, tell us what you observed of the confusion that arose in the court?—After the sentence of death was pronounced upon O'Coigly, the first part of the affray that I recollect was this; Mr. O'Connor endeavoured to get out of the dock; he got almost out of the dock on the left side; the gaoler who was on the other side of the dock, reached across the dock, and caught him by the coat; he

†

detaimed him for a very short space of time in that situation; the coat tore, or slipped through his hands.

At that time when the gaoler had hold of Mr. O'Connor's coat, did any body reach or step backwards between them?—Nobody.

Then Mr. Fergusson did not?—Certainly he did not. Mr. O'Connor got away, either from the coat being torn, or slipping through the gaoler's hands; he got down upon the ground, he soon mixed with the crowd, and I lost sight of him; as soon as he endeavoured at first to get away, two persons, who had before appeared to be officers from Bow street, with several others, rushed forward to apprehend him. In their endeavour to apprehend him, the first person upon whom they appeared to rush with any great violence, was Mr. George Smith, who was sitting at the end of the seat of the solicitors for the prisoners: he was forced from thence, and came to the place where I was sitting. The next person that I observed forced from his seat, was Mr. Dallas, one of the counsel for the prisoners; he came likewise and sat near me; the officers still rushed on towards the end of the counsels' seat, and of the solicitors' seat. At the farther end of the counsels' seat, or near the end of it, Mr. Fergusson was sitting to the best of my recollection.

Had he a stick in his hand?—No stick that I saw.

Had you your eye upon him? and if he had must you have seen him?—He is an acquaintance of mine, and he was in his professional dress; and if he had, I think I could not have mistaken it. Lord Thanet was sitting upon the solicitors' bench, almost immediately behind Mr. Fergusson. By this time the confusion had become general, and a number of people had got upon the table, from all parts of the Court.

If Mr. Fergusson had brandished a stick, or presented it to Rivett, must you have seen it?—I certainly must.

I need not ask you if you did see it?—I did not see it; Mr. Fergusson had risen up, and lord Thanet had risen up.

Supposing it possible that a stick had been in Mr. Fergusson's hands, and it had escaped your eye, do you think it possible, from time and place, that Rivett could have wrenched it out of his hands before he attacked lord Thanet?—I do not think it possible he could have a stick of any sort.

Was lord Thanet nearer to Rivett than Mr. Fergusson?—I think he was rather; one of the officers, but I do not know which, I do not know their persons, pressed very rudely, as it appeared to me, upon Mr. Fergusson; I believe that Mr. Fergusson might shake his shoulder when he felt the man's hand upon it; that is all the resistance I saw made on the part of Mr. Fergusson.

What did you see pass between these officers and lord Thanet?—The first thing I observed particularly of lord Thanet was, that he was

lying almost down upon his back upon the table, with a small stick or cane, which he held in both hands over his head or face, in this manner; one of the officers was striking him with a stick, and lord Thanet endeavoured, with very little success, to defend himself by the use of this stick, which he held in both his hands.

Now, before that period of which you last spoke, did you observe lord Thanet give a blow or any provocation, to this officer?—I never saw him give a blow; I never saw him give any provocation; I never saw him in any other way than I have mentioned, till he left his seat; how he left his seat I cannot tell; they had risen up upon their seats; when they were pressed upon, they rose towards the left-hand side of the prisoner, as the prisoner faced the judges.

Did they go out of sight?—No.

Did they go off that table?—They were not upon that table; Mr. Fergusson was upon the table afterwards, but not on the table at any time that I have yet spoken to—lord Thanet was then lying upon the table. I am not able to say how lord Thanet got from that situation; I do not know that I took particular notice of what passed after, with respect to lord Thanet; Mr. O'Connor was brought into court, and then the riot ceased.

Did you take any particular notice of Mr. Fergusson, between the last time you have been speaking of, and the time of Mr. O'Connor being brought into court?—No, I do not recollect any thing more.

I need not ask you if you saw Mr. Fergusson brandish a sword?—No.

Did you see Mr. Fergusson, after the sentence of death was passed, go back to his old place?—I did not.

Were your eyes fixed upon that part of the court?—They were, most particularly; I was placed in a situation in which I could very well see.

So that it was impossible for Mr. Fergusson to have gone backwards from his seat, without having struck your eye?—I think it was impossible.

Did you see Mr. Fergusson upon the table before lord Thanet was beat by Risett?—I did not.

Mr. Justice Lawrence.—In what part of the court were you?—Under the witness-box; I rose from thence, and got upon the table, as other people did.

Mr. Mackintosh.—Did you see lord Thanet or Mr. Fergusson take any part in any thing that had the appearance of disturbance or riot?—No, I did not. I saw lord Thanet defend himself; and I have stated, that I did not see Mr. Fergusson do any act at all, except shaking that man's hand off his shoulder.

Do you remember Mr. Dallas quitting his place before he began to address the jury?—I do, perfectly.

And Mr. Plumer also, I believe?—I do not.

Do you recollect Mr. Fergusson leaving his own place in consequence of that?—I am rather inclined to think it was so; but I cannot swear to that.

I understand you to swear most positively that Mr. Fergusson never interposed between the gaoler and Mr. O'Connor?—I do most positively swear I do not think he did, and if he had, I think I must have seen it.

Mr. Warren cross-examined by Mr. Garrow.

The dock or bar, by which the Bow-street officers were placed, could only occupy five or six persons?—No more.

Only the gaoler and the prisoners?—It might be three yards long, perhaps.

You stated that after the sentence of death had been passed, and Mr. O'Connor had been left upon the floor, the officer pressed forward to apprehend him; what induced you to think these were officers rushing forwards for that purpose?—I took them to be the persons who had produced the warrant in court: When they had forced themselves up to the end of the solicitors seat, Mr. Fergusson said; I think, "Here are two men obtruding themselves between the prisoners and the jury." Mr. Justice Buller said, "What are you about? sit down;" and one of them produced a paper saying either that it was a warrant to take up Mr. O'Connor, or a warrant upon a charge of high treason against Mr. O'Connor, or something to that effect; and, therefore, I supposed them to be Bow-street officers, or officers of justice.

I do not know whether you happened to be present in court when those two witnesses were examined as witnesses to prove the fact of apprehending Mr. O'Connor at Margate?—I should suppose I was in court, but I am not certain.

But before the judgment of death was passed, it is perfectly in your recollection, that one of those persons had hinted in court, that they had a warrant for the purpose of apprehending Mr. O'Connor?—That was after the jury had returned their verdict, and before that verdict was pronounced.

Do you know Mr. O'Brien?—I saw him the other day for the first time in my life.

You did not know him at Maidstone?—No, I did not.

Mr. Maxwell sworn.—Examined by Mr. Erskine.

Were you in court, at Maidstone, during any part of the trial of Mr. O'Connor and others?—I was, frequently.

Did you hear Mr. Justice Buller pronounce sentence of death upon O'Coigly?—I did.

In what part of the court were you at that time?—At that time I was immediately to the left of the witness-box, rather farther from the judge than the witness-box.

Were you elevated above the Court?—I was elevated above the table where the counsel sat.

Did that elevation and position give you a view of that part of the court where the Bow-street officers entered, and where the solicitors for the prisoners sat?—That gave me a distinct view of that part of the court.

Do you remember, when Mr. Justice Buller had finished pronouncing sentence upon Mr. O'Coigly, do you remember any persons rushing forwards, as if to seize Mr. O'Connor?—I remember some of the Bow-street officers, among whom I knew Rivett and Fugion, rushed violently to that place where Mr. O'Connor was.

At the time that those two persons, Rivett and Fugion, rushed forwards in the direction you have described, did you observe where lord Thanet was?—I did; my lord Thanet sat at that time in the solicitors' place.

Did you observe where Mr. Fergusson was at the same time?—Mr. Fergusson sat in his own place, where he had been as counsel for some time, on the bench before the solicitors' bench.

Which of them was nearer to that side of the court where the jury-box is, and where Mr. O'Connor was?—I think lord Thanet was rather, perhaps, the nearest of the two; but there was very little difference.

Did you see any thing pass between Rivett, the officer, and lord Thanet?—I did.

Describe to my lord and the jury what you saw.—After Rivett had forcibly overturned and driven from their places those who stood between him and Mr. O'Connor, he got to lord Thanet, who was one of the nearest. Lord Thanet, when he was pressed upon, got out of the place where he was, and went from the scene of tumult towards the table.

Was that farther from the prisoners than he was before?—Considerably farther from the prisoners than when he was first pressed upon.

When lord Thanet retired in that manner out of the solicitors' box, over towards the counsels' table, did Rivett pursue his course on towards the prisoners in the line of the solicitors' box, or how else?—He followed lord Thanet, and struck him repeatedly.

Had lord Thanet struck Rivett before he went over from the solicitors' seat towards the table?—Lord Thanet never struck Rivett before or after that.

Had you such a view of the situation in which lord Thanet was placed, and what he did, as to swear merely to your opinion and belief, or do you swear it positively?—I had such a view, that I swear it positively; by that time I had quitted the place where I was, and got nearer to lord Thanet and the other persons who were struck.

Were any other persons struck besides lord Thanet?—I saw several blows given, but I cannot say to whom, by the Bow-street officers, and those who followed them.

Do you know whether Rivett struck any person besides lord Thanet?—I do not positively know whether he struck any person or not.

But you swear positively Lord Thanet did not strike Rivett at all?—He did not; but merely put himself in a posture of defence, and lying back upon the table.

Had lord Thanet a stick?—He had a small stick, which he held up over his head to defend himself; he was leaning back upon the table, an attitude in which it would have been difficult to have acted offensively.

Did you see lord Thanet subsequent to the time that he was in that situation?—I did.

You say that the officers, and particularly Rivett, rushed into the court, and having passed one or two that were before lord Thanet, attacked lord Thanet; what length of time might elapse between Rivett first rushing in and the time he struck lord Thanet?—A very short space of time indeed.

Was it possible that before Rivett struck lord Thanet, he could have gone within the counsels' place, where you have described Mr. Fergusson to be, and have wrested a stick out of his hand before he came to lord Thanet?—Rivett did not go to take a stick out of his hand, for he had no stick in his hand; he did not go up to Mr. Fergusson, but immediately went up to lord Thanet and struck him.

If Rivett should have said here, that he never saw lord Thanet till after he had taken a stick from Mr. Fergusson, from what you observed, is that true or false?—I should certainly say it was false, without any hesitation.

During the time that you thus observed lord Thanet in the attitude of defence, retreating from the scene of tumult, and pursued by Rivett, where was Mr. Fergusson?—He was in his place, and remained in his place till he was pressed upon, and then he got out of the scene of tumult upon the table.

Did you see him while he was in his seat, and did you see him move from his seat to the table by the pressure that was upon him?—I did.

If, whilst Mr. Fergusson was in his seat, or if while he was pressed upon when he rose from his seat, if in either of these situations he had not only had a stick, but had brandished and flourished that stick, I ask, must you have seen it or not?—I must have seen it; he was so directly before me, that it is quite impossible but I should have seen it; I CAN SWEAR THAT MR. FERGUSSON HAD NOTHING IN HIS HAND, BUT A ROLL OF PAPER IN HIS RIGHT HAND.

And was in his professional dress?—He was.

If Mr. Fergusson had done any one act to encourage the tumult that was undoubtedly then existing, or done any one act inconsistent with his duty as counsel, or committed any one act of indecency or turbulence, must you have seen it?—I must.

Then let me ask you, upon your solemn oath, did he do any such thing?—He did not; on the contrary, he endeavoured to keep quiet in the court, by admonishing the people in court to be quiet. Mr. Fergusson said particularly to Rivett, when he was striking lord

Thanet, "Do you know whom you are striking? That is not a person likely to begin a riot."

Did you see where Mr. Fergusson went to after he was upon the table?—He got upon the table, and got farther from the scene of tumult; and I do not know whether he sat down upon the table or not; he went towards the crown lawyers.

Did you see sir Francis Burdett?—I did; he at first stood by me in the witness-box; and when the confusion began, he got nearer to the place of confusion at the same time that I did. I saw Mr. Fergusson remove sir Francis Burdett from the scene of confusion, and put him farther from it.

And you saw him also place himself at a distance from it?—Yes.

Did you afterwards see him go upon the table towards the judges?—I did; I saw him till all the violence was over.

Then can you take upon you to swear positively, that neither Mr. Fergusson nor lord Thanet, during the tumult, went towards Mr. O'Connor?—They went in a directly opposite direction.

Do you swear that from your own opinion and belief, or from certain knowledge?—I swear it positively from certain knowledge.

Mr. Maxwell cross-examined by Mr. Adam.

You saw Rivett and Fugion pressing forward?—I did.

Did you know them before?—I knew them from having seen them examined in court upon that trial.

Only from that circumstance?—Only from that circumstance.

During this affray you shifted your situation to another part of the court?—Yes; I got upon the table.

And you say you saw sir Francis Burdett shift his place?—He shifted his place at the same time.

From what part of the court did he come?—From the witness-box; he stood on my right-hand.

To what part of the court did he go?—He also went on to the table.

Do you mean that he remained upon the table?—I cannot say whether he remained upon the table, but he went there with me.

Did he remain on the table any considerable time?—The tumult was over very soon after that.

The counsel for the crown sat immediately under the witness-box?—They sat on the same side.

Round the angle?—Yes.

Therefore, it was necessary, when you and sir Francis Burdett shifted your places, that you should go over the heads of the counsel for the crown, to get to the table?—Exactly so; we jumped from the neighbourhood of the witness-box.

Do you remember, when sir Francis Burdett jumped from the neighbourhood of the

witness-box to the table, did he not jump immediately from the table into the crowd?—I cannot say whether he did or not; but I saw him standing upon the side of the table, or sitting upon the side of the table, till Mr. Fergusson removed him.

But that was near the conclusion of the affray?—It was.

What circumstance was it that brought you to Maidstone?—Merely to be present at the trials.

Mr. Erskine.—You are a gentleman possessing an estate in Scotland?—Yes.

And I believe married a daughter of Mr. Bouverie?—Yes.

Lord Kenyon.—Did you see Mr. O'Connor go out of the dock?—Yes.

How soon was he out of your sight?—I do not know that he was out of my sight.

Do you know the situation of the wicket?—Yes.

Where were Mr. Fergusson and lord Thanet during the time that elapsed between his leaving the bar and being brought back again?—Upon the table.

Did the crowd coming upon them prevent you from seeing them?—No: I was so situated that I saw them both distinctly; I was a great deal higher than they.

Samuel Whitbread, esq. sworn.—Examined by Mr. Gibbs.

You were present, I believe, at the time of this trial?—I was in court the latter part of it, after I had been examined as a witness.

In what part of the court were you?—After having been examined as a witness I retired out of the witness-box, behind, and came into the court again.

Whereabouts were you when the verdict was brought in?—Considerably behind the witness-box.

Had you from thence a perfect view of the court?—Of the lower part of the court.

Had you a perfect view of the dock in which the prisoners were, the solicitors' seat, and the seat where the counsel sat?—I had certainly a view of the whole of that part of the court.

Between the verdict and the sentence we understand some Bow-street people came in, and spoke of a warrant?—There was some tumult, and that subsided upon Mr. Fergusson calling the attention of the court to the cause of it. He waved his hand and spoke to them; he then turned to the bench, and said, "My lord," or some such word, just to draw the attention of the Court: upon that, Rivett, whom I knew before, said he had a warrant against Mr. O'Connor, and he thought he was going to escape. Mr. Justice Buller then said, "Patience," or some such word; and then sentence was pronounced.

After sentence was pronounced, did you observe O'Connor?—I observed him put his foot upon the front part of the dock, and get out of the dock: having carried my eye after him some time, my eye returned to the bar,

and there I saw Rivett violently attacking lord Thanet; he had a stick in his hand: I did not see him strike a single blow; I saw many blows struck at him, and he was endeavouring to ward them off.

Did it appear to you that lord Thanet made any attack upon Rivett to provoke this?—No; on the contrary, he was defending himself against a violent attack of Rivett's upon him.

Where was lord Thanet at the time that you observed this?—I think he was close to the table, leaning back upon the table in the act of defending himself, with his hands up, in which I think he had a stick.

Did you see at this time where Mr. Fergusson was?—I did not observe Mr. Fergusson at that time: before the tumult had quite subsided, I observed Mr. Fergusson upon the table, not far from the judges.

Had you your eyes upon lord Thanet from the time you saw Rivett striking him in this way?—No, I had not, because there was a great deal of tumult behind, and of persons trying to get out at the door behind the bench, and the bailiffs resisting their attempts, which engaged my attention some time.

Did you see Mr. O'Brien during this time?—I do not recollect that I did.

Did you know Mr. O'Brien well?—I knew him perfectly by sight.

If he had been acting in this scene, must you have noticed it?—In a scene of confusion many things must have escaped the observation of every person; but I think it is more than probable that I must have seen such a person as Mr. O'Brien, if he had been active.

Samuel Whitbread, esq. cross-examined by Mr. Attorney General.

How long did you remain at Maidstone?—The next morning, I think, I passed you on the road to London.

Mr. Attorney General.—I beg your pardon, I did not recollect that circumstance.

Previous to the officers approaching the place where Mr. O'Connor was, had you heard that there was to be a rescue?—I had not.

Richard Brinsley Sheridan, esq. sworn.—Examined by Mr. Erskine.

You were subpoenaed as a witness to attend the trials at Maidstone?—I was.

Were you in court at the time when the jury retired to consider of their verdict, and also when they returned with it?—I was.

And during the remaining part of the time till the tumult ceased?—During the whole of that time.

In what part of the court were you when the jury brought in their verdict?—Sitting with sir Francis Burdett in the witness-box, that box was raised very considerably above the table, so that I had a direct view of every thing passing in the court.

Had you then an opportunity of perfectly observing the place where the solicitors sat,

and the dock where the prisoners were, and the place where the counsel were?—A most perfect opportunity, without being in the least annoyed or mixed with the tumult.

Do you remember the gaoler laying hold of Mr. O'Connor; perhaps you did not see that?—The first that I observed of the tumult was prior to the sentence being passed upon O'Coigly; I did not see Mr. O'Connor make an attempt to go, but I had observed to the high sheriff that I fancied he would come out, for that I had observed at the Old Bailey, that they had left the bar immediately upon the jury pronouncing them not guilty. The riot then commenced, and I observed some men pressing very violently towards the box where Mr. O'Connor was; my attention was taken up with that: Mr. Fergusson then appealed to the court, and said, "Here are two riotous fellows," or something of that sort, "disturbing the peace of the court." Rivett then said, "I have a warrant to apprehend Mr. O'Connor." Mr. Justice Buller desired him to be quiet, and then put on his cap to pass sentence, and every thing subsided.

After that did you observe the Bow-street officers rushing in, in the way that we have heard of?—The first thing I saw was Mr. O'Connor getting very nimbly over the front of the dock, and going towards the narrow street, and these men rushing after him. Certainly the man who could have thrown himself most in the way of the men, was Mr. O'Brien, if he had chosen to do it.

Are you acquainted with Mr. O'Brien?—I know him intimately.

Is he a strong man?—Certainly he is.

If Mr. O'Brien had been desirous of opposing himself to the officers, and to prevent them from going after him, might he?—He was precisely in the best situation to have done it.

Had you an opportunity of seeing whether he did or not?—He did not, and I am sure he was not there in the subsequent part of the tumult.

Can you take upon yourself to swear positively that he gave no manner of assistance?—Positively.

And Mr. O'Brien had an opportunity of affording the most essential means of escape to Mr. O'Connor, if he had chosen?—I think the whole idea was folly and madness, and that no assistance could have effected it.

But Mr. O'Brien did the contrary?—Yes; he retired behind the box, and I did not see him afterwards. I was very attentive to the whole of it, and was making my observations with the high sheriff, who more than once endeavoured to persuade me to leave the witness-box, and endeavour to quell it.

Did you see lord Thanet at the time the officers rushed in?—I did not see him till the time he was struck; I saw him struck.

Did he return the blow, or show any thing like activity, or a disposition to activity?—I saw him when he was first pressed upon. It

was not a tumult merely near the dock, but the whole court was a scene of general tumult, and a scene of panic, and certainly with the least reason—there was a tumult behind us in the witness-box; there was a general calling-out not to open the doors, some calling out for soldiers and constables, and there did appear to me a sincere panic and apprehension that there was a planned rescue. I perceived plainly there was no such thing, and endeavoured all I could to persuade them so. The officers were beating down every body, forcing their way and pressing upon every body. Lord Thanet had a stick in his hand, with which he was parrying the blows, which came amazingly quick; it seemed to me an incredible thing that he was not extremely hurt, and he never returned a blow, but retired from the scene of tumult farther into the court away from the prisoners; sir Francis Burdett was with me; and by this time Mr. O'Connor was stopped, and they were bringing him back again; he had attempted to go towards the gate with the wicket, and I observed every body to put up their hands and stop him; he might as well have attempted to get through a stone wall; if there had been six or eight persons there who were so disposed, he might perhaps have got as far as the door, but he could not possibly have got farther. I then saw a person upon the table, brandising Mr. O'Connor's scimitar over the heads of the people; he seemed very much alarmed, and not knowing what he was about; I am sure it must have gone very near several persons heads, it seemed quite miraculous that he did not do some mischief; in short, it was difficult to discover whether he meant to keep the peace or break the peace. Sir Francis Burdett saw that they had collared Mr. O'Connor, was frightened, and said with great agitation to me, that they would kill O'Connor, and he jumped over the railing; he could not go from where we were without jumping upon the table, and he ran forward; Mr. Maxwell followed him, or went at the same time; they both went towards Mr. O'Connor; I then saw very distinctly Mr. Fergusson stop sir Francis Burdett, and use some action, saying, "You had better keep away, and not come into the tumult at all:" I could not hear what he said, but it appeared so to me.

Did you see Mr. Fergusson from the beginning of this scene, when sentence of death was pronouncing?—I saw him plainly in his place, after the judge had passed sentence of death.

Did you see the crowd press upon Mr. Fergusson, and did you see him get upon the table?—I did not see him get upon the table; but as the crowd pressed upon him, he was forced upon the table.

Did Rivett attack lord Thanet before he could possibly have attacked Mr. Fergusson, and wrenched a stick out of his hand?—He came immediately upon lord Thanet, when the tumult began.

He could have had no conflict with Mr. Fergusson till after the conflict with lord Thanet?—Certainly not.

Do you know Mr. Fergusson?—Perfectly.

If he had been upon the table flourishing and waving a stick, in the manner that has been described, in his bar dress, must you not have seen it?—Yes; it must have been a most remarkable thing, indeed, for a counsel in his bar dress to have a stick flourishing in his hand—HE HAD A ROLL OF PAPER IN HIS HAND.

Does that enable you to swear that Mr. Fergusson was not in that situation?—Certainly.

Do you think if he had taken such a part in the riot, in the presence of the judges, that you must have observed it?—I must have observed it.

Did lord Thanet or Mr. Fergusson ever go nearer to Mr. O'Connor after he had jumped out of the dock, or did not lord Thanet and Mr. Fergusson retire farther from the scene of tumult?—They certainly did:—Upon some farther conversation I got over this place myself, and went down, and the first thing I did was to speak to the man with the sword. I told him I thought he with his sword made half the riot himself; and he put it away. I passed lord Thanet, who, so far from staying in the riot, went towards the judges, as if he was going to make a complaint. I then went into the riot, and endeavoured to persuade them that there was no such thing as an attempt to rescue O'Connor; and a man that had hold of him, who knew me, said there was; and added, "These fellows are come down from London; they are Corresponding Society people, and they are come down on purpose to rescue him." One person in particular called to them not to believe me, and I laid hold of him, and said he should go with me to Mr. Justice Buller; I insisted upon his name and address, and he would not give it me. I then turned to the judges, and he ran away. So far was lord Thanet from going towards the wicket, that I passed him going up to the judges; and Mr. Fergusson remained with me, desiring them not to treat Mr. O'Connor so, and generally endeavouring to quiet them; the only moment they were out of my eye was while I was getting over this place.

Richard Brinsley Sheridan, esq. cross-examined by Mr. Law.

You saw lord Thanet distinctly from the time he was struck?—I do not mean with the stick:—I corrected that by saying, from the time he was assaulted and driven from the seat he was in at first.

Can you take upon you to say whether he gave a blow before he was struck?—I said from the time he was pressed upon or assaulted.

You say you saw lord Thanet going towards the judges, as if he was going to complain—Did you hear him make any complaint to the judges?—I did not hear him, certainly.

I will ask you, whether you do or do not believe that lord Thanet and Mr. Fergusson meant to favour O'Connor's escape, upon your oath?—Am I to give an answer to a question which amounts merely to opinion.

I ask, as an inference from their conduct, as it fell under your observation, whether you think lord Thanet or Mr. Fergusson, or either of them, meant to favour Mr. O'Connor's escape, upon your solemn oath?—Upon my solemn oath I saw them do nothing that could be at all auxiliary to an escape.

That is not an answer to my question?—I do not wish to be understood to blink any question; and if I had been standing there, and been asked whether I should have pushed or stood aside, I should have had no objection to answer that question.

My question is, whether, from what you saw of the conduct of lord Thanet and Mr. Fergusson, they did not mean to favour the escape of O'Connor, upon your solemn oath?—The learned counsel need not remind me that I am upon my oath; I know as well as the learned counsel does, that I am upon my oath; and I will say that I saw nothing that could be auxiliary to that escape.

After what has passed, I am warranted in reminding the hon. gentleman that he is upon his oath: my question is, whether, from the conduct of lord Thanet or Mr. Fergusson, or either of them, as it fell under your observation, you believe that either of them meant to favour O'Connor's escape?—I desire to know how far I am obliged to answer that question. I certainly will answer it in this way, that from what they did, being a mere observer of what passed, I should not think myself justified in saying that either of them did. Am I to say whether I think they would have been glad if he had escaped? that is what you are pressing me for.

No man can misunderstand me; I ask, whether, from the conduct of lord Thanet or Mr. Fergusson, or either of them, as it fell under your observation, you believe upon your oath that they meant to favour the escape of O'Connor?—I repeat it again, that from what either of them did, I should have had no right to conclude that they were persons assisting the escape of O'Connor.

I ask you again, whether you believe, from the conduct of lord Thanet or Mr. Fergusson, or either of them, upon your oath, that they did not mean to favour the escape of O'Connor?—I have answered it already.

Lord Kenyon.—If you do not answer it, to be sure we must draw the natural inference.

Mr. Sheridan.—I have no doubt that they wished he might escape; but from any thing I saw them do, I have no right to conclude that they did.

Mr. Law.—I will have an answer: I ask you again, whether from their conduct, as it fell under your observation, you do not believe they meant to favour the escape of O'Connor?—If the learned gentleman thinks

he can entrap me, he will find himself mistaken.

Mr. Erskine.—It is hardly a legal question.

Lord Kenyon.—I think it is not an illegal question.

Mr. Law.—I will repeat the question, whether, from their conduct, as it fell under your observation, you do not believe they meant to favour the escape of O'Connor?—My belief is, that they wished him to escape; but from any thing I saw of their conduct upon that occasion, I am not justified in saying so.

I will ask you, whether it was not previously intended that he should escape if possible?—Certainly the contrary.

Nor had you any intimation that it was intended to be attempted?—Certainly the contrary. There was a loose rumour of another warrant, and that it was meant that he should be arrested again, which was afterwards contradicted. Then the question was mooted, whether the writ could be issued before he was dismissed from custody? Certainly there was no idea of a rescue. There was no friend of Mr. O'Connor's, I believe, but saw with regret any attempt on his part to leave the Court.

From whom did you learn that there was such a warrant?—It was a general rumour.

From whom had you heard this rumour?—I believe from sir Francis Burdett; but I cannot tell.

At what time was that?—About four or five o'clock.

Have you ever said that the defendants were very blameable; lord Thanet, Mr. Fergusson, or any of them?—Certainly not.

At no time since?—Certainly never.

Mr. Erskine.—You were asked by Mr. Law, whether you believed that the defendants wished, or meant to favour the escape of Mr. O'Connor; I ask you, after what you have sworn, whether you believe these gentlemen did any act to rescue Mr. O'Connor?—Certainly not; and I have stated upon my oath, that every man in the narrow gateway endeavoured to stop him: I remarked it particularly; because, there being a common feeling amongst Englishmen, and he being acquitted, I thought they might form a plan to let him escape.

You have stated that you saw no one act done or committed by any one of the defendants, indicative of an intention to aid O'Connor's escape?—Certainly.

I ASK YOU THEN, WHETHER YOU BELIEVE THEY DID TAKE ANY PART IN RESCUING MR. O'CONNOR?—CERTAINLY NOT.

[End of the evidence for the Defendants.]

REPLY.

Mr. Attorney General;—Gentlemen of the Jury;—At this late hour of the day, I do not think that the duty which I owe the public can require me to detain you any considerable

time in reply to the observations of my learned friend.

Gentlemen, my learned friend has addressed you with great ability; and unquestionably with great but guarded zeal, on behalf of his clients;—this his duty called upon him to do; for certainly the best exertion of his great abilities was due to them. On the other hand, your attention is now to be occupied by a person who must address you upon principles which forbid him to have any zeal upon the subject.

The attorney general of the country, as it appears to me, has a public duty to execute, in reference to which he ought to conceive, that he has properly executed that duty, if he has brought a fit and proper accusation before a jury, and has proceeded to the length of honestly and fairly examining the several circumstances given in evidence in support of, and in answer to, that accusation; always recollecting that the jury will finally hear, from that wisdom which cannot mislead them, the true inferences that will arise upon facts which have been given in evidence on both sides. They will hear it from a person unquestionably less prejudiced than I can be (though I have endeavoured as much as possible to guard myself against any prejudice), because it belongs to the mind of man to be influenced by circumstances, which one's duty as a prosecutor obliges one to look at a little anxiously.

Gentlemen, having been charged with the duty of laying this important case before you, I have not the least doubt but you will discharge the duty which is now imposed upon you with a full and conscientious regard to justice; and I dismiss here all the observations my learned friend has made upon the high rank and situation of lord Thanet, upon the respectable situation in his profession of Mr. Fergusson, and of the situation of Mr. O'Brien; because it is quite enough for me, according to my sense of duty, to say this, that, as a jury sworn to make a true deliverance, you are not to convict any of them, whatever rank or situation belongs to them, unless you are conscientiously satisfied that they are guilty. You will deliver the same verdict that you would between the king and defendants of any other description.

Gentlemen, what has fallen from the last witness obliges me to take the character of the proceeding which gives rise to the cause, from his friend; who, when he was addressing you, in the course of this afternoon, said, and truly said, that such a proceeding in a court of justice, which the last witness represented as an idle panic, most loudly called for the interposition of the law. That witness may have represented those transactions, as I have no doubt he did, as it seemed just to him to represent them. Certainly I was not personally present; but I was within hearing, and I can say that that gentleman is a man of stronger nerves than any other man in this country, if

VOL. XXVII.

the representation he has given of this scene is a true one. By a true one, I do not mean that it is not one that the gentleman believes to be true; but the evidence of Mr. Justice Heath gives it a character which I believe every man in the county of Kent who was present would give it, namely, that it was a proceeding utterly inconsistent with the safe administration of justice; that it was attended with a degree of indecency and tumult that was never witnessed in a court of justice before, and I trust never will be witnessed in a court of justice again.

Gentlemen, having no anxiety about the fate of this or any other cause, except so far as it is fit for me to have an anxiety founded upon the public interests, whenever this cause comes to its conclusion, I think the noble peer, the defendant, who holds a situation high in this country, ought to join with all his fellow-subjects in thankfully acknowledging, that the attorney general, having reasonable accusing evidence to lay before a jury (whether it is satisfactory to their minds, is another consideration), should show to the country, that transactions of this sort shall not be carried on, without being brought under the notice of a court of justice.

Gentlemen, accusations of all sorts are tried in this country with great propriety; but if you acquit a man of treason, is a man to start up and say, that the public are to be indignant, because another warrant has been issued against him? I remember in this very court, in the last cause that was tried here at bar, my lord exerted himself with great vigour; by taking immediate notice of such an insult as was then offered to the Court. My learned friend says, why did not the judges, who were present, do their part, by taking notice of the fact at the moment? I will give the answer to that:—THE JUDGES OF THE COUNTRY ARE BUT MEN. Although they are placed in high, judicial, and honourable situations, yet they are placed in situations in which they are to see that their conduct is not only the best that they can pursue, but, when they proceed to acts of punishment, that their conduct is perfectly adapted to the subject with which they are dealing. If the five judges upon the bench had seen this as an idle panic, perhaps those judges would have treated it as an idle panic. But how does Mr. Justice Heath, upon whom my learned friend relies so much—how does he mention the scene that was passing? He says that he never witnessed such a scene before.—My learned friend says, I might have called another learned judge as a witness; but when I call witnesses who are above all suspicion, men as honourable as any men in this country, to state to you all that that learned judge would have had to state to you, I think I shall have acted neither unfitly for the public, nor the defendants. But with reference to that conversation (upon which I must farther observe by-and-by) that has been stated by Mr. Solicitor General and by

Mr. Abbot, to have passed between Mr. Justice Lawrence and lord Thanet, I should be glad to know what foundation there is for the reasoning of my learned friend, that Mr. Justice Lawrence ought to have committed or attached lord Thanet. I think I am entitled, under the circumstances of the evidence in this case, to represent him as perfectly ignorant of those causes which occasioned so much confusion in the court.

Mr. *Erskine*.—I never meant to say so.

Mr. *Attorney General*.—My learned friend certainly did not say it exactly in these words; but he will be sure, excuse me for putting him in mind of the expression he made use of, and I shall now endeavour to repeat the very words he used: "Mr. Justice Lawrence, instead of asking lord Thanet to do him a kindness, should have attached him."

My learned friend will not, I am sure, interrupt me again; for when I take notice of any thing that is said in so able a defence, I do not mean to lay it down that counsel are to be responsible for every expression that hastily falls from them; but expressions may have an application which I feel it my duty to remove; and I only wish to set right one of the most respectable, and indeed all those respectable characters who presided on the bench upon that day. I shall, therefore, say no more upon that subject.

Gentlemen, the question is now before you; and I am happy to have the testimony of my learned friend, that, taking this proceeding as a mere proceeding of accusation, it is a highly proper one; and when I state that, I mean to state merely the satisfaction I feel in the concurrence of his opinion with my own judgment.

Gentlemen, having said thus much, give me leave to concur most fully in all that my learned friend says, with respect to the beneficial effects of a lenient administration of the law, but not so lenient as to make the law ineffectual.

Gentlemen, it was hinted to me, before my learned friend began his address to you, that, with respect to two of the defendants, it might be consistent with the interests of justice, that the trial should end there; and why did I consent to that? There was evidence to go to the jury, as against Mr. Thompson; I admit, not evidence to convict him, not evidence, perhaps, with respect to his identity—but with respect to Mr. Gunter Browne, there was much more considerable evidence to go to you, subject still to the question of identity—But I know this, that the great interests of public justice are better satisfied, by not pressing for conviction, even when you can, perhaps, obtain it, if you think there are doubts whether or not you ought to obtain it.

Gentlemen, another circumstance is, that I thought it due particularly to one defendant, with respect to whom I think this the clearest case, Mr. O'Brien. I wished to give him the benefit of Mr. Browne's and Mr. Thompson's

evidence, if he thought proper to call them, with respect to some material circumstances.

Gentlemen, attend to what I am now stating:—When Mr. Sheridan is asked, whether, from the circumstances that fell within his observation, he believes that lord Thanet and Mr. Fergusson meant to favour the escape of Mr. O'Connor? he says: "From the facts that fell within my observation, I answer it in the negative." So I say in this case, it is not merely—for the rules of evidence permit one so to state—it is not merely from what does appear, that a jury is to judge, but also from that which does not appear. Now see what is the case on the part of the Crown, with respect to Mr. O'Brien. In the first place, you have the evidence of a most honourable person, Mr. Sergeant Shepherd. My learned friend says, that you, gentlemen of the jury, are not to attend to general questions, such as, "Did a person appear to do so and so?" but you are to have the facts as the grounds upon which that appearance is inferred. That proposition is to be carried this length, that, as far as the nature of the transaction will admit, instead of giving the impression of your mind, as collected from the circumstances, you shall give the circumstances which have created that impression. I am sure his lordship will remember, that in the case of Kyd Wake, who was tried for that detestable riot with respect to the king's person, a question was put, "Did he appear to be active in the riot?" and the jury concluded that which they did conclude, upon that circumstance; recollecting that the nature of the transaction was such, that they must be content with such an answer. And indeed my learned friends themselves put the question to Mr. Smith, and Mr. Warren, respectable witnesses unquestionably: "Did they" (the defendants) "appear to encourage the riots?" But permit me to say, it did not rest so with Mr. Sergeant Shepherd; for he told you, he wished to give you the evidence upon which he formed his opinion. Gentlemen, you will next observe, that, giving lord Thanet all the benefit that might arise upon this statute of 14 Geo. 3rd (upon which I shall say a word by-and-by), can Mr. O'Brien allege any thing of that kind? Rivett has told you distinctly (and so it turns out from Mr. Sheridan's evidence), that there was a rumour of a warrant, which created so much indignation; Mr. Sheridan admits, that there was that rumour, but Mr. O'Brien did not choose to rely upon that; he wanted to know how the truth of the rumour was; and accordingly, in the presence of Mr. Thompson, a member of parliament, he did make inquiries of Rivett, and coming to him, as Rivett relates, he, Mr. O'Brien, proposed a bet; he says, that Mr. O'Brien then went back again to where Mr. O'Connor was; there was some conversation between them, and when the verdict is brought in Mr. O'Connor attempts to escape. Now, I ask you, as honest jurymen, if this is not

true, why is it not contradicted? and if it is true, is it possible to acquit Mr. O'Brien?

Now, with respect to the case of my lord Thanet and the case of Mr. Fergusson, gentlemen, I declare to you most solemnly, that I respect the high situation of the one, as I respect the professional situation of the other; but in this case, gentlemen, the question, and the only question, is, "Did they make a riot?" I desire that the question may be put upon its true merits. My learned friend says, "It is a most extraordinary thing, that in such a case as this, stating that there was a general riot, we have not been able to fix the name of any other rioter with these five defendants." Has my learned friend denied that this was a general riot? has my learned friend denied that it was a very serious riot, affecting a great variety of persons? Now, though he is bound to admit the existence of a riot, my learned friend is just as much at a loss to find the names of the other persons as I am; and why? because the circumstances attending the transaction are such, that, if you will not attend to the conduct of the few individuals who have been pointed out, it is not in the nature of things, that you should bring any man to punishment, in such a case. Then my learned friend says, "What motive could lord Thanet have?" Mr. O'Connor, who has been represented as an extremely judicious man upon some occasions, was certainly so foolish, as to think such a project as this might have been practicable; but is it in fact imputed to these persons, that they meant to turn Mr. O'Connor loose, in order to subvert the constitution of this country? (for so my learned friend states it); and to do all this mischief which he is pleased to represent to you, must have been the consequence of Mr. O'Connor's escape? He seems to have forgot, that all I meant to impute (for aught I know, there may be men in the country who know more of it than I do), that all I am charging upon these defendants is, that they meant to rescue Mr. O'Connor from any farther demand that justice might have upon him. Whether Mr. O'Connor was immediately to take himself out of this country, into a situation in which he could do no mischief, or whether he was to remain in this country to do mischief, is a question with which I have no business.—I have no necessity either to impute to the noble lord or the learned gentleman, any particular knowledge or intention upon that subject. Then my learned friend says, "Do you think persons in the situation in which these two defendants are" (I mean lord Thanet and Mr. Fergusson), "would further such a purpose as this?" Why, gentlemen, if I am to give an answer to this question, I am bound (for I would not have brought this prosecution, if I had not thought it a fit question for the decision of a jury) to speak out plainly upon the subject; and I say, fairly, that if any man had asked me before this trial was over, whether Mr. Fergusson and lord

Thanet, having heard the particulars of the evidence, would not have removed to situations where they could not have been implicated in this charge, I should have thought the imprudence of doing otherwise so great, that it could not have happened. Mr. Fergusson knew all the particulars of the evidence, and so did lord Thanet, because he heard the evidence summed up, and I cannot help feeling here some degree of surprise, when the question was put to me, upon what was probable or what was improbable, after hearing the evidence upon that trial.

Gentlemen, that there was a riot, is clear beyond all doubt. Now let us see how it is occasioned:—Mr. O'Brien knew of this rumour, at the time the application was made to the Court, by Rivett and Fugion. He was aware, that Mr. O'Connor was not discharged. He learned, and lord Thanet learned, and I believe nobody doubts the fact, that every body learned this circumstance, not only that he was not then to be discharged (with reference to which I am happy to find that my learned friend and I agree upon the point of law), not only that he was not then to be discharged, but it was publicly taught to every body in court, what was the reason and what the cause for which his discharge was to be withheld from him. And here, without commenting upon that measure, which is supposed to have raised so much indignation, I take leave to say most confidently, that it does not belong to any person, of any rank or situation whatever, to interpose in the execution of a warrant, upon his notion whether the magistrate has acted right or wrong in granting it.—It is granted, and must be acted upon.—If the magistrate has acted improperly, the law of the country is not so feeble, as not to be able to reach the misconduct of the magistrate. If every man is to judge in such a case, surely the country is in a situation most embarrassing, most difficult, and most awful; for, remember, if men will take the law into their own hands where there are verdicts of acquittal, they may where there are verdicts of guilty. Well, then, the parties having distinctly learned, that there was a warrant, and having been authoritatively told, that this warrant having issued, Mr. O'Connor was not to be discharged, I shall call your attention to what I take to be the few circumstances that must decide this case:—Gentlemen, if you please, I will put it so, not to give Rivett any credit, if, upon any other part of the case, he is contradicted; but I should do that with great reluctance, till I am satisfied that he is not worthy of credit. But I will say this, that you may reject the whole of the evidence of Rivett, with respect to lord Thanet and Mr. Fergusson, out of the case, and say, whether out of the negative evidence given on the other side, you can get rid of the facts sworn and deposed to by persons whose characters are out of the reach of the breath of suspicion.

In the first place, with respect to the evidence of somebody, whose name I forget, upon the trial at Maidstone, a witness was asked, whether Mr. O'Connor wished to favour an invasion of Ireland? he said, Quite the contrary.—So here, a witness when he was asked, whether Mr. Fergusson appeared to be favourable to this rescue, he said, "Quite the contrary." This was a much stronger negation than that of the Maidstone witness; but upon being asked, what was the circumstance from which he inferred, that Mr. Fergusson's demeanor was quite the contrary? he says, he complained of the Bow-street officers' coming forward. Now, Mr. Fergusson must have known them to be Bow-street officers, because he was present when they were examined; and being a gentleman who wears the robe that I wear, he could not but understand, that they were not to be disturbed, *because* they were officers. The great proof of his demeanor, then, being quite the contrary, is, that he makes a complaint of these persons standing between the prisoner and the jury; whether the fact was so, or not, I do not know. Mr. Garrow says, he apprehends, from the state of the court, it could not be at that period of the trial. Then what is the answer to that? I will put it in plain intelligible words:—If Mr. Fergusson had been misled, by reading the statute 14 George 3rd, which says, "that gaolers shall not detain prisoners for their fees, but that they shall be discharged;" if he had not found out the difference between a verdict of not guilty, and that judgment which authorizes a man to go without paying his fees; if it had not occurred to him, that, when this discharge is given, detainers may be lodged in civil suits, or for other felonies, I hope in God we are not so revolutionized as to contend, that a man shall not be charged with two treasons, as well as with two felonies. Upon Mr. Fergusson being told, that there was this warrant (the warrant being publicly exhibited), it is not for me to examine, what it became Mr. Fergusson to do, because of that he is himself the judge. But I say, if, after he was apprized of that, he took any part, not by positive actual conduct, but by encouragement, capable of being exhibited to the understandings, and impressed upon the minds of the jury, as such (however differently persons may tell their stories, with reference to certain facts, in which they do not agree, however strongly individuals may speak with respect to facts that they did not observe, however negatively they may say they did not see this or that, and they do not think it possible, and so forth); if there are positive circumstances sworn, which amount to acts of encouragement, which a jury can feel and act upon, they must look to that positive evidence; and if, in this case, gentlemen, you find that positive evidence existing, however unwilling you may be to find *such* a verdict, you are sworn, upon your

oaths, to give a verdict according to law; and you must find a verdict, therefore, in support of this information.

Gentlemen, I will not go into a detail of the evidence, which you will hear from his lordship; but with reference to lord Thanet and Mr. Fergusson, I cannot part with the evidence given by Mr. Solicitor General; but I shall first make this observation upon the evidence of Mr. Sergeant Shepherd, to whose credit, honour, and accuracy, we all do justice, that where that evidence presses upon Mr. O'Brien, he says, that "Mr. O'Brien having turned round and looked up at Mr. O'Connor, it made an impression upon his mind;" and also that, as far as he observed, lord Thanet was defending himself." He judges, therefore, of appearances, both with reference to lord Thanet and with reference to Mr. O'Brien; and what he says of the appearances with reference to Mr. O'Brien certainly throws a great degree of credit upon his accuracy when he speaks with respect to lord Thanet. The same credit is due, I take it, to Mr. Solicitor General; and you will have the goodness also to attend to the evidence of Mr. Hussey; for if you believe what he states, that when the man was pressing forward to execute the warrant, lord Thanet inclined towards the bar, and put his person in the way; if that fact is proved to your satisfaction, lord Thanet is guilty upon this record. And if other facts are proved against lord Thanet, and similar facts are proved against Mr. Fergusson, you must decide upon all the evidence, and not from what other men did not see or observe; you are not to decide upon the eloquence of my learned friend, but upon the oaths of persons who depose positively to facts.

Then my learned friend made an observation upon the evidence of Mr. Solicitor General, with reference to whom, as a moral character, I say nothing, because he is above all praise that I can bestow upon him: I have no doubt that it was an extremely painful thing for him to give his evidence this day; but his evidence is extremely material, because he speaks to the circumstance of Mr. Fergusson crying out that Mr. O'Connor was discharged. He tells you the pains he took with his brother in the profession to tell him that he was not discharged; and he speaks to the warrant being produced, and, therefore, there was a public notice, that there were farther demands of justice upon Mr. O'Connor. He states upon his oath, that he did most distinctly and cautiously attend to the conduct of Mr. Fergusson and Mr. O'Connor; and then he says this; "I fixed my eye upon O'Connor, and I observed Mr. Fergusson, and other persons whom I did not know, encouraging Mr. O'Connor to go over the bar." Encouraging is a general word undoubtedly; but it is a word which expresses the impression which facts falling under his eye had made upon

his mind; and when he was asked what he meant by encouragement? he describes it to have been by his actions. But he not only gives his evidence in this way as to that particular fact, but he gives it also with a caution, which entitles it to the same degree of credit which Mr. Sergeant Shepherd's evidence derives from its accuracy; for when he comes to speak of a circumstance, with reference to which he is not certain, he tells you, "Mr. O'Connor jumped over the bar, and Mr. Fergusson turned himself round and appeared to me to follow Mr. O'Connor; but I cannot say that he did." He qualifies that apprehension in his mind, by telling you that he may be mistaken, and then he gives you the reason why he doubts whether that apprehension was or was not justly founded; and he finally states in his evidence a circumstance respecting lord Thanet, which I think will deserve a great deal of your consideration.

Gentlemen, a learned friend of mine behind me, Mr. Abbott, has told you, that he heard lord Thanet express himself in the manner which he has described, and I trust I shall not be told that the manner of an expression is not evidence of the import of the mind of the man from whose mouth the expression flows. He states to you the circumstance of Mr. Sheridan's conversation with the learned judge, and he was struck with the extreme difference of the manner in which Mr. Sheridan expressed himself to that learned judge, from the manner in which lord Thanet expressed himself. Am I to be surprised that lord Thanet could be engaged in such a project, if I can believe, that he, a peer of the realm, made use of such language to a judge of the country, that "he thought it fair that he, the prisoner, should have a run for it?"—a run, for what? why, a run to elude justice!—a run to get out of the hands of a court of justice—a run to prevent being brought to justice; and this is the sentiment of a peer of the realm—"he thought it fair to have a run for it." And, considering it to be fair, he acted upon that apprehension, as far as he had the power of acting. This is a circumstance requiring your anxious consideration. Whether this noble peer struck Rivett first, which I do not find Rivett say that he did, is of no importance. These men have a certain temper and degree of spirit about them, which might, perhaps, induce them to thrash a peer more than any body else, if they felt themselves ill-treated; but Mr. Rivett may take this advice of me—I hope, in future, he will not use such treatment if he can avoid it. But what presses upon my mind is, that if lord Thanet, treated in the manner he was by Rivett, had no connexion with this project of rescue; if he had not, either from the circumstances that fell under Mr. Sheridan's observation, or from other circumstances, manifested that he meant there should be a

rescue, is it the conduct of a man of considerable situation—is it the conduct of a man of common sense, instead of making a serious complaint upon the subject, instead of stating, as he naturally would have done, "this project of rescuing a man from the hands of justice, is that species of project, which, in my situation, it must be known I must feel to be inconsistent with propriety, duty, and honour, to have embarked in?" On the contrary, he is perfectly neutral; no complaint is made upon the subject. It appears to me, that if I had been struck two or three times by that officer, the manner in which I would have acted upon that occasion would certainly not have been to have immediately stated that "it was fair the prisoner should have a run for it," but to have made some application to have those punished of whose conduct I had a right to complain. Now, this evidence of the solicitor general is also confirmed by Mr. Abbott, and by Mr. Sergeant Shepherd, who states to you what lord Thanet did; and he states it to you, that he was not holding up his hands for the purpose of rescuing himself from the pressure of the mob, but was holding up his hands to defend himself against those persons who were pursuing Mr. O'Connor; and he gives his evidence in such a way, that you can have no doubt as to the personal conduct of lord Thanet.

Then when you have heard this evidence on the part of the prosecution, I mean the evidence that goes to positive facts, it will be for you to decide whether they are not all reconcilable with the negative evidence given on the part of the defendants. I have not gone into the whole of the evidence, because I feel that my lord has a painful and an anxious duty to perform, and whatever your verdict may be, I am confident and sure that this prosecution will have been very beneficial to the country. I hope and trust that I shall never see such another; but whenever I see an occasion which calls for it, whilst I hold the situation which I have the honour to fill, I will not fail to institute it.

Gentlemen, having said thus much, and having endeavoured to discharge myself of my duty, you will be good enough to say what is due as between the public and the defendants.

SUMMING UP.

Lord Kenyon: Gentlemen of the Jury;—If, consistently with my own sense of my duty, or consistently with the public expectations—consistently with the expectations of the bar on the one side and the other, and with your expectations—I could relieve myself from going through, in detail, all the particulars of this case, after considerable bodily and mental exertions already, I should certainly save myself from a great deal of trouble. But I will not shrink from the discharge of my duty, though it may be attended with labour and pain.

This is a case of the first importance. I do not remember any case that ever happened in my time, in the shape of a misdemeanor, of more importance to the public; and it has been conducted in the most solemn manner. It is brought before the whole Court, assisted by a jury of gentlemen from the county of Kent, taken from the highest orders of the people, and whose educations and stations in the world qualify them to decide causes of such importance. It is usual, in causes of this kind, where there is a number of defendants, and where the evidence does not extend sufficiently to them all, to submit to the jury, before the end of the cause, whether those upon whom the evidence does not attach, ought not to be acquitted, in order that the other defendants may avail themselves of their evidence, if they shall think proper. It was with a view to that very state of the question that I took the liberty to submit to you, that two of the defendants ought to be acquitted before the other defendants produced their evidence; and I did it with a view that the others might, if they thought fit, appeal to their evidence, to show, on the rest of the case, what the real state and justice of it was.

In dispensing the criminal justice of the country, we have sometimes an arduous task to perform. It is not a pleasant thing, most certainly, to condemn any one of our fellow-creatures to punishment; but those who are entrusted with the administration of the criminal justice of a country, must summon up their fortitude, and render justice to the public, as well as justice tempered with mercy to the individual. I have the authority of lord Hale, one of the greatest and best men that ever lived, for saying, that juries are not to overlook the evidence—that they are not to forget the truth, and to give way to false mercy; but, without looking to the right hand or the left, they are to weigh the evidence on both sides, and then, according to the best of their judgment and understanding, to do justice to the public, as well as to the defendants.

Before I proceed to sum up the evidence, I shall only make one other observation, which was made by Mr. Whitbread in giving his evidence, the tone of whose voice I never heard before. Having gone through his evidence, he gave us this *legacy*, as a clue to direct us in the decision of this case—“that, in a scene of so much confusion, there are many things which must escape the observation of every individual.” Having stated thus much to you, I will now proceed to sum up the evidence; and when I have done that, I shall make some few observations on it.

[*His lordship here summed up the evidence on both sides, and then proceeded as follows:*]

I now proceed to make a few observations of my own. There is no occasion to give you my authority, or the authority of those who

hear me, upon this point. There is no doubt that the prisoner was not entitled to be discharged; for, when a verdict of acquittal is entered, a judge may order a party to be detained, and compel him to answer other charges that may have been brought against him. On this point there is no difference of opinion; it is not even disputed at the bar; the case is clear; and there is no doubt upon earth that a prisoner, in many cases, though he may be acquitted, as in the case of an appeal of murder, cannot be discharged, though he be acquitted of the murder.

I have stated the evidence on the one side and the other; and although there is strong contradictory evidence, yet I think there is a great deal of evidence which goes in support of the charge. There were some observations made by the learned counsel for the defendants, which, perhaps, were not altogether warranted. Counsel are frequently induced, and they are justified in taking the most favourable view of their clients' case; and it is not unfair to pass over any piece of evidence they find difficult to deal with, provided they cite, fairly and correctly, those parts of the evidence they comment upon. The learned counsel for the defendants, in his remarks on the evidence, totally forgot the evidence of Mr. Parker. If his evidence is to be believed, and I know no reason why it is not, he certainly gave important evidence in support of this charge—that the defendants evidently appeared to be attempting to stop the officers, and assisting the escape of Mr. O'Connor. The learned counsel for the defendants did not choose to deal with this evidence, though he conducted the cause with all possible discretion, abilities, and eloquence. As I have before observed, there is apparently a great deal of contradiction in this cause. I must again state the observation of Mr. Whitbread, and which was obvious if he had not made it, that, “in such a scene of tumult and confusion, many things must pass which escape the observation of every individual.” But there is no doubt of one thing—one thing is clear: if Rivett had not the scuffle which he swears he had with Mr. Fergusson and my lord Thanet, and if he did not wrench a stick out of Mr. Fergusson's hand, he is palpably forsworn, and grossly perjured. For him there is no excuse in the world. What motive he might have, I do not know; he has no interest; and in weighing the testimony of witnesses, I cannot consider the rank of a person, nor his station. It is clear, if he has not told the truth, he is guilty of perjury. In this scene of tumult, men's minds must have been greatly distracted. It is for you to say what degree of credit you will give to all the witnesses. These are the observations I have to make; and I should retire from my duty if I had not made them to you.

It has been said, in the course of this cause, that it was against all probability. Was it probable that an attempt was meditated to

effect the escape of a person such as Mr. O'Connor, in a court of justice, in a large town, and in a public part of that town? Was it probable that this man himself should attempt that, which, Mr. Sheridan said, appeared to him to be an act of madness? Is it most likely that he should have attempted this with hopes of success, with or without assistance? This is matter for your consideration. It is very likely you have forestalled all the observations I have made; but still it was not less my duty to make them. The whole of this case is for your decision. It is a case in which the interests of the individuals, as well as of the public, are highly embarked.

At eleven o'clock at night the jury retired; and after being out about an hour, they returned with the following verdict:

The earl of Thanet, *Robert Fergusson*, esq. Guilty; *Dennis O'Brien*, esq. Not Guilty.

Friday, May 3rd.

Mr. Attorney General.—In this case of the King against Sackville, earl of Thanet, and Robert Fergusson, esq., I have to pray of your lordships the judgment of the Court.

Lord Kenyon—(to Mr. Erskine).—Have you any thing to say for the two persons convicted?

Mr. Erskine.—The cause having been tried at bar, your lordships are already apprized of every thing I could have to offer. I believe lord Thanet and Mr. Fergusson wish to say something to your lordships.

Lord Thanet.—My lords, before the sentence is pronounced, I beg leave to address a few words to the Court:—not for the purpose of impeaching the veracity of the witnesses for the prosecution, or of arraigning the propriety of the verdict: on those points I shall say nothing. What I mean to submit to the Court is, a short, distinct narrative of the facts, as far as I was concerned in them.

I attended the trial at Maidstone in consequence of a subpoena. When I had given my evidence, I retired from the court, without any intention of returning, until I was particularly requested to be present at the defence made by Mr. Dallas, the prisoners' counsel. At that time I had never heard of the existence of a warrant against Mr. O'Connor, nor of any design to secure his person if he should be acquitted. The place I sat in was that which Mr. Dallas had quitted, when he removed to one more convenient for addressing the jury. While sitting there, I heard, for the first time, from Mr. Plumer, that he had reason to believe there was a warrant to detain Mr. O'Connor. When the verdict was pronounced, I went into the solicitors' box, to shake hands with Mr. O'Connor, which I did without even speaking to him. Many others pressed forwards, apparently for the same

purpose. Upon a call for silence and order from the bench, or from one of the officers of the court, I immediately sat down on the seat under that part of the dock where Mr. O'Connor stood. At that period some confusion arose, from several persons attempting to get towards him, one of whom said he had a warrant to apprehend him, for which he appeared to me to be reprimanded by Mr. Justice Buller, in some few words, which I did not distinctly hear. The moment the judge had passed sentence on O'Coigly, a most violent pushing began from the farther end of the seat on which I sat. From the situation I was in, I did not perceive that Mr. O'Connor was attempting to escape. He was a good deal above me, and I sat with my back to him. I continued sitting in my place, until several persons on the same seat were struck, among whom, I imagine, Mr. Gunter Browne was one, from the complaint he afterwards made of ill-treatment, but whom I never saw before or since to my knowledge. I then began to feel the danger I was in; but the tumult increased about me so rapidly, that I was unable to get over the railing before me. I stood up, however, and used all the efforts in my power to go towards the judges, as to a place of safety; but at that moment, by some person or other, I was borne down on the table, where a man (who as I afterwards found was Rivett) struck at me several times with a stick, which I warded off, as well as I was able, with a small walking-stick. Rivett, as he struck me, charged me with striking him first, which I denied, and called out to him, as loud as I could, that I had not struck him.

I have now detailed, as clearly as I am able, my situation and conduct, during the disturbance; and I do most solemnly declare on my word of honour, which I have been always taught to consider as equally sacred with the obligation of an oath, and am ready to confirm by my oath if I am permitted to do so, that I never did any one act but what was strictly in defence of my person. It is not at all unlikely, that, in such a scene of confusion, I might have pushed others, who pressed against me, to save myself from being thrown down; but I most solemnly deny that I lifted my hand or stick offensively, or used any kind of violence to any person. I declare upon my word of honour, that I knew nothing of the existence of a warrant to detain Mr. O'Connor, until I heard it from Mr. Plumer; and that, even then, it never entered into my mind that it was to be served upon him in the court, until some person called out that he had a warrant. I declare upon my word of honour, that the obstruction which the officers met with on the seat where I sat, was perfectly unintentional on my part, and was solely owing to the situation I was in:—that I did nothing offensively, but, on the contrary, was violently attacked and assaulted; and that I retired from the scene of confusion as soon as I was able. And, finally, I do most

solemnly declare upon my word of honour, that I did not concert with any person the rescue of Mr. O'Connor, by violence, or by any other means whatsoever; that I had no idea of doing it alone; and that I was not privy to any consultation of other persons, either for the purpose of rescuing Mr. O'Connor out of the custody of the Court, or of preventing the execution of the warrant.

As I hold myself bound to state fairly, not only what I did, but what I said, as far as it is in my power to recollect what passed, with the agitation of such a tumult on my mind, I acknowledge that some words may have escaped me, which I ought not to have spoken. I am charged with having said, "that I thought it fair that he should have a run for it." I will not dispute about the exact words. I confess they were extremely inconsiderate. Some allowance, however, I think, may be made for the instant feelings of a man so ill treated as I had been.

My lords, I am not sanguine enough to expect any immediate advantage from these declarations. I know they will not avail me against the verdict: but the truth of them will not be suspected by those who know me; and hereafter, when all the circumstances of this transaction shall be coolly reconsidered, I am confident they will have weight with the public.

My lord, I have an affidavit prepared, if your lordship will accept of it.

Lord Kenyon.—To the same effect?

Lord Thanet.—Yes, my lord.

Lord Kenyon.—We cannot here receive an affidavit against the verdict of a jury; but I believe it may be ordered to be filed; I believe there is no objection to that.

Mr. Erskine.—I believe there is not, my lord.

[It was ordered to be filed.]

AFFIDAVIT.

The defendant, the earl of Thanet, maketh oath, and saith, that he attended at the special commission held at Maidstone, in the county of Kent, for the trial of Arthur O'Connor, esq. and others, for high treason, in consequence of a subpoena served upon him, to give evidence on behalf of the said Arthur O'Connor, and which was the sole cause of his attending at the said trial; and he saith, that after he had given his evidence, he retired from the court, and had no intention of returning thereto, till he was particularly pressed to be present to hear the defence of the counsel for the prisoners, merely as a matter of attention and countenance to the said Arthur O'Connor, who was his acquaintance; and he further saith, that at that time he had no knowledge whatever of the existence of any warrant against the said Arthur O'Connor, nor of any intention of securing his person, if he should be acquitted on the indictment. And this deponent further saith, that he sat in the place which Mr. Dallas had left, when he went to a

more convenient one for the purpose of addressing the jury; and that, whilst he was sitting there, he for the first time heard from Mr. Plumer, that he had reason to believe there was a warrant to detain Mr. O'Connor; and this deponent further saith, that on the verdict's being pronounced, he stepped into the solicitors' seat to shake hands with Mr. O'Connor, which he did without even speaking to him, and without any other motive than that of congratulating him as a friend on his acquittal, at which time many others were coming to the same place where this deponent was; that upon a call for order and silence from the bench, or from one of the officers of the court, he immediately sat down on the seat under that part of the dock where Mr. O'Connor stood, and at that period a slight confusion arose from several persons attempting to get towards Mr. O'Connor, one of whom said he had a warrant to apprehend him, for which he appeared to be reprimanded by the honourable sir Francis Buller, in a few words which this deponent did not distinctly hear. And this deponent further saith, that at the moment the judge had passed sentence of death on O'Coigly, the most violent pushing began on the seat on which he sat (this deponent not observing, that Mr. O'Connor was attempting to get away), and he continued sitting in his place till several persons on the same seat were struck, and amongst whom he believes was Mr. Gunter Browne, whom he never before, or since, had seen to his knowledge; and from that moment, this deponent began to feel the danger he was in, the tumult about him increasing so rapidly, that he was unable to get over the railing before him; that, however, he stood up, and used all the efforts in his power to go towards the judges as a place of safety; but he was instantly pushed down on the table, when a man, whom he has since found was John Rivett, struck at him several times with a stick, which blows he warded off as well as he was able with a small walking stick, the said Rivett charging this deponent, as he struck at him, with striking him first, which this deponent denied, calling out at the same time as loud as he could, that he had not struck him. And this deponent further saith, that he never did, during the said disturbance, any one act, but what was strictly in the defence of his person, though he admits that he might have pushed several persons that pushed against him, to prevent his being thrown down, but that he did not lift hand or stick, or use any violence whatsoever, to the said John Rivett, or any other person. And this deponent positively saith, that he was not privy to, or acquainted with, the existence of any warrant to detain the said Arthur O'Connor, until he heard of such warrant from Mr. Plumer, as before set forth; and that it never entered into his mind that it was to be served upon him in court, until the person before mentioned called out that he had a warrant.

And this deponent further saith, that the obstruction the officer met with on the seat on which this deponent sat, was perfectly unintentional on his part, and solely owing to the unfortunate situation in which he had accidentally placed himself, as the seat was so narrow that it was with great difficulty any person could pass that way. And this deponent further saith, that he did nothing with intention to offend the Court, or any other person; but, on the contrary, he was violently attacked and assaulted; and that he retired from the scene of confusion as soon as he was able. And this deponent further saith, that he doth most solemnly upon his oath declare, that he had not consulted, concerted, or advised with any other person or persons whomsoever, to favour the escape of the said Arthur O'Connor, either by violence, or any other means whatsoever; and that he had no idea of doing it alone; and that he was not privy to the consultation or agreement of any other person or persons, either for the purpose of rescuing the said Arthur O'Connor out of the custody he then was in, or preventing the execution of any other warrant upon him.

THANET.

Sworn in court the 3rd of May, 1799.

By the Court.

Mr. Fergusson:—My lords, I have nothing to offer to your lordships, either with respect to the charge itself, the manner in which it was proved, or with respect to my own peculiar situation, upon which your lordships' judgment, whatever it may be, must make a deep and lasting impression. I cannot so soon have forgotten the manner in which these topics were urged in your lordships' presence, in the course of that defence which was made for me by the most zealous of friends, the most able and eloquent of men.

I gladly, however, avail myself of the privilege of addressing your lordships, because it enables me thus publicly to say, that, whatever be the political opinions which some may choose to ascribe to me,—whatever be those which I do in fact entertain,—opinions which I believe to be strictly consonant to the best principles of the law and constitution of my country;—but whatever be those opinions,—whatever, even, my lords, be the appearances against me, standing where I now do,—still I can with truth and sincerity declare, that there is no man who hears me, who is more deeply impressed with a sense of the respect which is due to the administration of justice, of the strict obedience which should be paid to the proceedings of its courts, and of the honour and reverence which should ever attend the persons of its judges. Weak, indeed, must be the opinions, or wicked must be the views, of that man who wishes to degrade the authority of the law; for, without it, not one of the blessings of society can have security for one moment. My lords, I can safely acquit myself of this part of the charge, because my

VOL. XXVII.

reason, as well as my conscience, tells me, it is the last offence I am capable of committing.

I appear, however, before your lordships, to receive that judgment which your duty calls upon you to pronounce, in consequence of the verdict of a jury. That verdict I do not mean to arraign: it was given on contradictory evidence, the value and balance of which it was the peculiar province of the jury to weigh and to decide.

But if your lordships' long practice in courts of justice shall have shown you the fallibility of human testimony,—if it shall have shown you, still more, the fallibility of human judgment founded upon human testimony, I hope I may meet with your indulgence, if I here make a solemn declaration of that, with respect to which I alone cannot be mistaken.

My lords, upon the occasion which has given rise to these proceedings, I was of counsel for one of the prisoners who was tried at Maidstone. I was seated in the place which was allotted for the counsel for the prisoners; and being wholly engaged in the discharge of my duty, I solemnly aver, that whatever might be the previous consultations or conversations of others, with respect to the practicability or impracticability of a rescue, I never had even heard the rumour that a fresh warrant was in existence, until after the jury had retired to consider of their verdict. It was not till after they had so retired, and very shortly before they returned into court, that I learned that circumstance. I was in my place, seated where I had been during the greater part of the day, at the moment when the verdict was delivered: and I do most solemnly aver, that from that moment, until I was pressed upon by the crowd, I did not stir from that seat. I do farther declare, that when I was forced upon the table, I used no violence to any one; that the whole of my endeavours went to allay the ferment, and to remove those of my friends whom I loved and regarded, from the scene of disturbance, in order that they might not be implicated in any charge that might afterwards be brought against those who were the authors of it.

I can, therefore, say, in the presence of this court, and under the eyes of my countrymen—that which, in the name of my God, I have already sworn—that I am innocent of this charge.

[Here Mr. Fergusson put in an Affidavit, which he had previously sworn.]

AFFIDAVIT.

Robert Fergusson, of Lincoln's Inn, esquire, one of the said defendants, maketh oath, and saith, that he was of counsel assigned by the Court for John Allen, one of the prisoners indicted with Arthur O'Connor, for high treason, at a special session held at Maidstone, in May last, and that as such counsel he was employed in court during the whole of the day, in the night of which the riot charged in the information

3 P

tion took place; he saith, that he neither knew, nor had heard, of any fresh warrant against the said Arthur O'Connor, until the jury had gone to consider of their verdict, and very shortly before they returned to deliver it. And this deponent farther saith, that he was in the place allotted to him as counsel, when the jury returned into court with their verdict; and that about that time, he complained to the Court of the interruption which was given to its proceedings by the violence of a person who was pressing forward between the prisoners and the court; and that upon the complaint of this deponent, Mr. Justice Buller ordered the said person to be quiet. And this deponent farther saith, that from the time when the jury returned with their verdict, until after sentence was pronounced, and the disturbance began, the said deponent remained in his place as counsel, and did not leave it until compelled by the violence of those who pressed upon him from the bench behind. And this deponent farther saith, that when forced upon the table, he used no violence to any one, but used every means in his power to allay the ferment, and save the earl of Thanet from the blows of John Rivett, without offering any violence to the said John Rivett. And this deponent farther saith, that he had not, during any part of the disturbance, any stick, sword, or other weapon in his hand, and that he did not use, or offer violence to any one. And this deponent farther saith, that he neither attempted to rescue the said Arthur O'Connor, nor did he at any time agree with others to attempt such rescue, nor was he in any way aiding or assisting, nor did he at any time agree with others to aid or assist the said Arthur O'Connor, in any attempt to be made by him to escape.

ROBERT FERGUSON.

Sworn in Court the 3rd day of May 1799.

By the Court.

Mr. Attorney General.—My lords, in this stage of the business, I have very few observations to offer to your lordships' attention.—My lords, there is one fact established beyond all doubt—I mean, that at the trial at Maidstone, there happened a proceeding disgraceful to the country, inconsistent with the security of the administration of its justice, and which was in its nature such as most imperiously called upon me to use those means which the law had placed in my hands, to check such proceedings in future.

My lords, I owe it to the noble peer who stands before me, and I owe it to the learned gentleman who has been bred to my own profession, and I owe it to myself and to the public, to declare to your lordships, that no inducement could have persuaded me to institute this prosecution, but a conviction, produced by that evidence which was laid before me, that the noble lord and the other defendant were justly implicated in the charge. My

lords, I am very far from saying, that such a species of information as fully justifies and makes it my bounden duty to institute a prosecution, is always, therefore, that species of information upon which a verdict is due from the country against the defendants. It was my business to institute the inquiry; and if this cause had been tried before one of your lordships only, or if it had been tried before any other judges, and the circumstances of the trial had been reported to your lordships, it might have been my duty to have enlarged now upon the proceedings which passed upon the day of the trial. The whole case, however, was before all your lordships; your lordships know with what diligence it was investigated; your lordships know with what abilities it was defended; your lordships know what evidence was given upon the defence; and your lordships, also, cannot be ignorant what evidence might have been given, if that defence could have been sustained.

My lords, my principles with respect to all persons of rank, operating as fully with regard to lord Thanet as any man, and my habits with respect to my brethren in the profession, I assure your lordships, would press me at present, if I stood under a more convincing sense of duty, that it was my business to address your lordships at large: what I had in view in this matter was this—to inform the subjects of this country, that in Great Britain we have the true equality, EQUALITY UNDER THE LAWS; that the laws will afford protection, on the one hand, to the man in the poorest condition, against the man who would oppress him; and that the law, on the other hand, will secure the man in the highest condition in the enjoyment of that of which the poorest might wish to despoil him, and that the law will protect the public equally, and under equal sanctions, against the rich and against the poor, who are seeking to violate that law—against the man of rank, and the man of no rank.

My lords, having made these observations, I feel it to be my duty, addressing your lordships with respect to these defendants, as I would address your lordships with respect to the poorest individuals in the country,—I feel it to be my duty to forbear any observations upon any thing which your lordships have heard. The only one that I could make with propriety would be, to join in the application, that what your lordships have heard may have all the weight due to it; I mean, due to it according to the principles upon which your lordships here administer justice; and I assure your lordships will pay attention to it in cases of the lowest degree as well as of the highest.

Having done my duty to the public, according to what my notions of my duty require of me, I cannot do better than to leave the case where it is, and to call upon your lordships to do that which is right between these defendants and the public.

Lord Kenyon.—You have not alluded to any particular punishment that you supposed to be annexed to the offence. The indictment that has been read to us discloses an offence, which, though it is not new in our law-books, is rather new in the particular times in which we live. Nothing of the kind has recently happened; and the Court is certainly in an extremely anxious situation. A considerable degree of anxiety always attends the execution of the criminal justice of the country. Some cases administer more anxiety than others; and this, to say no more of it, is a case of great anxiety to those who are to administer the justice of the country in this case. We are to obtain information, as well as we can, by means of those who are advocates, especially when we are attended on each side as we are attended in this case, which calls upon them for assistance before we pronounce judgment. You may be sure we have not come to this stage of the proceeding without having considered and re-considered the case of these parties; but still justice is better administered when we have all the assistance that can be given us: therefore we wish, on a future day, to have it argued, whether the Court have any discretion in the sentence they are to pronounce? If there is a specific sentence, our discretion is taken away; the discretion is elsewhere, and not in a court of justice. If a man is convicted of murder, we have no discretion; but judgment of death must be pronounced: and so, in other cases, where a specific punishment is annexed by the law, it takes away all discretion from the Court. We wish, therefore, that it may be looked into and brought forward on some future day, that the Court may have all the assistance that the bar can give it. At present we cannot expect that assistance. It must stand over till the next term; and in the mean time, unless something is said to the contrary, these two persons must be committed.

Mr. Attorney General.—As to what your lordship has intimated with respect to the sentence, I should have felt myself in some degree blameable, if I had not considered that question. I do not mean to tell your lordship that I have come to the right conclusion, because that is for your lordship's judgment: but, unless I mistake the case, this is a case for discretionary punishment; and I will tell your lordship why, unless your lordship tells me that this is not the proper time to state it.

Lord Kenyon.—If you choose to argue the point, the Court will be very glad to hear you.

Mr. Attorney General.—I conceive that, if this had been an information for a rescue, there it would have been a specific sentence. I conceive also, that, if they had been indicted for actually striking in court, there it would have been a specific sentence; but this is an information for an endeavour to rescue.

Lord Kenyon.—Have you looked at all the counts in the indictment?

Mr. Attorney General.—I have read the information an hundred times.

Lord Kenyon.—You see, Mr. Attorney-general, we cannot but have a great deal of solicitude to go upon the best information; because, if there is a specific punishment attached to this offence, and we do not conform to it, a writ of error will lie, and there is an end of the judgment.—Writs of error have been brought where the sentence has not gone up to the extent of the punishment.—Not only in cases of treason, but also in other cases, judgments have been reversed.—We must, therefore, take care, in giving our judgment, that it is conformable to law.

Mr. Attorney General.—I certainly feel that the best execution of my duty will be; to attend to what your lordship was pleased to intimate; and with respect to any intimation I can give the Court, any day they shall appoint, it will be a duty incumbent upon me, as well as my inclination to give it.—It is necessary, however, that I should say this, that I do not pray a specific judgment, because I conceive I am not entitled to it.

Mr. Justice Grose.—Upon what point, Mr. Attorney?

Mr. Attorney General.—As I understand the subject, if there was an actual rescue, it is a specific sentence: so I apprehend also, if there is an actual striking, and the offence is laid to be *coram Domino Rege*, there it is a specific punishment; but here it is an endeavour to rescue.

Lord Kenyon.—It is expressly declared to be in the king's court, in the presence of the justices.

Mr. Attorney General.—I think your lordships will find it settled long ago.

Lord Kenyon.—It is on that very subject that hereafter we wish to have information.

Mr. Erskine.—Your lordship intimated that the noble lord and the learned gentleman must be committed, if nothing was said to the contrary: his grace the duke of Bedford, and the earl of Derby, are attending to offer themselves as bail.

Lord Kenyon.—That must depend upon the attorney-general.

Mr. Attorney General.—My lord, I feel that I should not do my duty as attorney-general of England, if I were to make any difference between lord Thanet and Mr. Fergusson, and any other defendants in this court.

Lord Kenyon.—We will give some early day in the next term.

Mr. Justice Grose.—The gentlemen who are of counsel for the defendants will be so good as look very particularly into the form of this information: we have looked into it, as our duty was, with great attention, and we find it to be a case of great difficulty.

Mr. Erskine.—Your lordships may depend upon all the assistance that I can possibly afford.

Mr. Justice Lawrence.—There is a case in Croke Charles expressly stating that the offence may be laid *coram Domino Rege*, or in the presence of the judges—Do you know of any other case?

Mr. Attorney General.—There is a case in Owen.

Mr. Justice Lawrence.—That is the same case as in Cro. Eliz.

Lord Kenyon.—The cases in Croke Eliz. are said to be not of such great authority as those in the latter part of Croke's life-time; I remember to have heard Mr. Justice Foster say so.

As soon as you are prepared, the beginning of the next term, to argue it, we shall be glad of your assistance.

Monday June 10th.

Mr. Attorney General.—My lords, I have the honour of addressing your lordships, on the part of the prosecution, in the case of lord Thanet and Mr. Fergusson, and to inform you, that since my last address to the Court on this subject, I have received, and have now in my hand, his majesty's royal command to cause to be entered a *nolle prosequi* on such parts of this information as have in fact raised any doubt whether the judgment of the court is discretionary. My lords, in obedience to his majesty's royal will and pleasure, I have accordingly caused to be entered a *nolle prosequi* on the first, second, and third counts of the information. My lords, his majesty's gracious disposition has, of course, made it my bounden duty not to act on these counts of the information with respect to the nature of the judgment on which any doubt might have been entertained.

In obedience to what your lordships were pleased to intimate, I certainly had taken the pains to make an extremely laborious investigation and research into the grounds on which I conceived this point turned. The result, certainly, has not been unsatisfactory to myself; but my duty at present, in obedience to his majesty's commands, is, to pray judgment on the fourth and fifth counts of this information. My lords, your lordships will allow me barely to state, that these counts charge a conduct highly dangerous, and utterly inconsistent with the orderly, and therefore with the safe administration of justice.

My lords, I conclude what belongs to the duties of my office, by repeating again, in the presence of your lordships and of the public, that my motive in commencing this prosecution was, to secure the orderly and safe administration of justice; and while his majesty does me the honour to entrust me with the execution of the duties of this office, in the discharge of my duty to him as the great conservator of public justice, in the discharge of my duty to the people, his subjects, for whom the justice of the country is administered, I

think it not improper to add, that I shall vindicate the honour of the laws, and the safety of those who administer them, on every occasion, and by every means within my power.

Mr. Justice Gross.—Sackville earl of Thanet and Robert Fergusson, you, and each of you, have been found guilty of a misdemeanor, by a verdict of a jury of your country, on an information filed against you by his majesty's attorney general, charging you with a riot, and an endeavour, in open court, before his majesty's justices of Oyer and Terminer to rescue Arthur O'Connor out of the custody of the sheriff, in which he had been detained during and after the trial for high treason, and thereby to enable him to go at large. There are some counts, stating it to have been accompanied with violence; but of those I have no occasion to take notice. Other counts charge you with having made a riot and disturbance in one of his majesty's courts of justice, and interrupting and obstructing his justices in the lawful and peaceable holding of that court.

The offences charged against you are ranked amongst the highest and most atrocious misdemeanors that can be committed in a country whose pride, whose boast, whose comfort, consist in the free and uncontrolled administration of its laws. Language cannot describe your offence more forcibly, and more eloquently, than that which your counsel used, when he stated, that it was properly attacking justice in its sanctuary. Impressed with the importance of this trial, as it concerned the public and the parties accused, the counsel on each side, in a most awful and exemplary manner, discharged their respective duties. The attorney general contented himself with stating the law, as delivered down to us by our ancestors—with stating the facts to which that law was applied; and he stated them as became an advocate of the public, plainly, but perspicuously, without a single comment of aggravation.

At the close of the case proved for the crown, upon an intimation dropped by the counsel that the evidence of some of the defendants might be material in exculpation of others of them, a question was put by the court to the attorney general, whether he thought the case was so clearly proved against two of the defendants, as to make it necessary for their counsel to proceed in their defence. The attorney general, knowing that, in an English court of judicature, offences were to be plainly proved, and not rest on doubtful evidence, consented to their acquittal; and they were immediately pronounced not guilty that such other of the defendants who thought their evidence necessary to their exculpation, might have the benefit of their testimony. Your counsel have eminently discharged their duty. The law as stated by the attorney general was admitted. The evidence of the witnesses to be called for the defendants, was

accurately and perspicuously stated; and every argument that ingenuity could suggest, taken in to its assistance. Every advantage that the most persuasive eloquence could give it, was used, to prove the improbability of the facts insisted on by the crown, and to establish your innocence. As to the jury, their conduct was most exemplary. Called from their distant homes in another county, they obeyed the commands of justice; they attended us with patience, and determined with deliberation: their attention was evident from their discrimination; they acquitted one defendant, and pronounced you guilty. The evidence was, in fact, convincing. Whoever recollects the prominent features of the case, as they were proved on the part of the crown, and that which was not proved on your part, can hardly entertain a doubt of the propriety of the verdict. We cannot but remember the loose rumour, in the town of Maidstone, of a warrant to detain Arthur O'Connor, in case he should be acquitted. There was an affected doubt whether it would be so, and that publicly notified; and there was as publicly a declaration from your lordship—whether from a knowledge of what was intended on mature deliberation, is best known to yourself—there was a declaration, that it was fair that he, against whom there was known to be a warrant for high treason, “should have a run for it.” I cannot but remember the attempt of you, Robert Fergusson, against your better knowledge, to induce the court to believe, that the officers who were known to be sent by persons authorized to send them, were the occasion of the tumult, when they were executing the very act which, within your knowledge, it was their duty to execute. We cannot but recollect how studiously you were placed in a situation well calculated to obstruct the officers, and to effect the rescue of Arthur O'Connor.

Observing therefore these, as well as the more minute circumstances, I wonder not that the jury pronounced you guilty of that intention, of which your witness, on his oath, did not dare to affirm he believed you innocent.*

* “Either I mistake wholly the evidence of Mr. Sheridan, or that gentleman did say upon his oath, not only that he believed us to be, but that we positively were, innocent of every thing with which we were charged. He swore that he observed us, and that we did not commit any one of the acts of riot and outrage imputed to us by the information.

“It is true that, in his cross-examination, being asked whether he believed that we meant to favour the escape of Mr. O'Connor? he answered, that his belief was, that we wished Mr. O'Connor might escape. Mr. Sheridan, no doubt, judging of the feelings of others by his own, believed, that those who might think Mr. O'Connor an innocent and a persecuted man, would have been

Thus tried, and thus defended, you stand convicted, by an English jury, of an offence (to the honour of modern times I speak it) which has been unheard of in this kingdom during the present century.—I know not whether, in all its parts, there was at any time so singular a transaction as the conviction of two persons, of whom the one is a peer of parliament, and an hereditary sheriff, the other a minister of one of his majesty's courts of justice, combining to break the peace in the face of that court which had been assembled to try men accused of the greatest offence to society the law knows, High Treason—attempting to rescue from the arms of the law a man, acquitted, it is true, of one High Treason, but charged with another—how justly, is not here the question. Certain it is, if his conscience could have whispered him that he was innocent, it was not probable he would have desired to escape. As certain is it, that those who believed him innocent, would have best consulted his reputation, as well as their own, by finding for him an opportunity, if otherwise he had not one, of proving himself innocent.

This is an offence very little known in this country; because, from their cradles, Englishmen are taught, that the proud distinctions they can boast between this and most other nations upon earth is, the regular and uninterrupted administration of its laws, without which no nation can be free; and without which most governments must be intolerable. Rare, however, as this offence has been, our ancestors, sensible of its enormity, ranked it in a class of crimes next to felony. Feeling the absolute necessity of preserving sacred that peace, that decorum, that awe, which is one of the very first principles of the adminis-

“glad that he had escaped. This is the belief of Mr. Sheridan, as to the supposed existence of a certain sensation in our minds. But surely our guilt or innocence did not depend upon what we wished, but upon what we did. It is one thing to have felt a wish that Mr. O'Connor might escape (which, whether we felt or not, no witness can with certainty say), and another to have attempted, by acts of violence and desperation, to rescue him.

“It was truly said, that to have attempted to rescue Mr. O'Connor, would have been an ‘act of insanity,’ the thing being impracticable. But it appears to me, that it would have been an act of still greater insanity, if the thing had been practicable. We were, it seems, to become felons or traitors ourselves, that Mr. O'Connor might escape! In judging of the probabilities in this case, I should have had no objection that each of my jury had put the question to himself, ‘Is there any friend for whom I would do as much?’

“R. F.”

Note of Mr. Fergusson to the original edition.

tration of justice as due to its courts, they adopted a remedy by a punishment all but capital—So we read in our earliest law-books. I shall observe, it is a remedy not to be found among our written statutes, but known from the earliest times, and interwoven with the very constitution. Human ingenuity is not equal to the task of imposing a punishment adapted to every possible case.—I am aware of the imperfections of human nature, of the finite extent of human wisdom, and of the impossibility of affixing punishments exactly suited to every shade and gradation of crimes: they will vary as much as the intellects, passions, and depravity of one man will exceed those of another. The same wisdom in our constitution has provided a remedy for this defect, by vesting in the king the brightest ornament of the crown, the prerogative of mercy—that beautiful appendage of royalty, by which his grace may mitigate, but his power cannot add to, the sentence of the law. Most sincerely do we rejoice that such is the constitution of this country. By a humane mind, the task imposed upon this Court, of passing discretionary sentences on crimes, would not be to be borne, if we were not supported by the consoling reflexion, that there resides elsewhere a power that can mitigate, and a wisdom that can correct, those errors which we, who know we are but men, feel that we, as men, may be liable to commit.—This shows, too, the wisdom of our ancestors in committing this sacred trust to the sovereign. To the discreet and amiable exercise of the prerogative of his mercy, that which has passed this day, the declaration which his majesty has given by his attorney-general, simply bears witness. The benevolent exercise of the one, proves the wisdom of the other. Those counts which describe an offence that must have been followed by a specific sentence, are, by order of the king, now abandoned; they are no farther to be prosecuted; and nothing of them will, in future, I hope, be remembered, except the extreme danger and punishment attending the crime, and the sovereign's grace in not requiring the sentence of the law to be inflicted on those who have been pronounced guilty of having committed it.

Your feelings cannot be gratified, on this occasion, by this seasonable and benevolent exercise of the prerogative, more than are the feelings of those on whom the painful task is imposed, of administering the penal justice of the country. Much, however, as has been remitted—much, too much, still remains on this record, to be passed over without animadversion, or considerable punishment. The offence described in the fourth and fifth counts, on which it is incumbent on this Court to give judgment, I must state again:—It is, that you, with others, unlawfully, and maliciously, to prevent the due and peaceable holding a session of Oyer and Terminer, during the continuance of that session, in the pre-

sence of the justices and commissioners, did unlawfully and tumultuously assemble to prevent the due and peaceable holding of it; and did unlawfully, riotously, and tumultuously, make a very great noise, riot, and disturbance, and did thereby interrupt and obstruct the justices and commissioners from the peaceable holding of that session. Thus you are convicted of having broken the peace, violated the law, and of having interrupted the administration of justice, in the presence of his majesty, virtually represented by his judges and commissioners, sent by him to do justice to his people.

The horror and dismay this tumult necessarily occasioned to the mind of every man, feeling for the honour of his country, and the support of its dearest rights, in preserving unsullied the proceedings of its courts of justice, it is more easy to conceive than to describe; and yet by one witness it was described as an idle panic.—I was astonished at the phrase, recollecting the evidence of the learned judge who was a witness to this disgraceful scene, and whose veracity and firmness no man who knows him will doubt; I say, recollecting that he, on his oath, states he felt great alarm, and thought himself and the other judges in great danger (and to the truth of that assertion the record bears witness), in this attempt to obstruct the justice of the country.

One great aggravation in the case of you, Sackville Earl of Thanet, is, the very high and important station you hold in the country, the duties of which station must have suggested to you, how incompatible with your dignity, how inconsistent with peace and order, and with the principles upon which civil society is formed, your conduct on this occasion has been. As a great peace-officer of the Crown, as hereditary sheriff of an opulent and populous county,* your duty called upon you to be the first man to keep the peace there, and to be the last man to break it any where. As a peer and hereditary judge, you should have had in constant memory, the decorum, the reverence, and the solemnity due to a court of justice. By your conduct you should have contributed to them yourself, and by your example enforced the sense of them to others. As a legislator you must have known how vain it is to make laws, if the observance of them is not to be enforced; and on the tablet of your memory this everlasting truth should have been engraven, that the rank, and honours, and dignities you enjoy, are the fruits of good order, of that good order which is essential to the preservation, as well as to the establishment, of a well-regulated, monarchical constitution. Be assured, that if the time should ever arrive (which God forbid!) when the boundaries of the orders of the constitution are broken down, that very instant your rank, your offices, your station, your honours, unsupported by the law of the land, must crumble into dust.

* The county of Westmorland.

As to you, Robert Fergusson, my farther address will relate to you, as a gentleman called to practise at the bar of an English court of judicature, as a member of a profession as proud, as independent, as honourable, as any that exists among men. Your respect for that profession, your duty to your sovereign, your love for your country, ought to have been motives in your breast powerful enough to have dissuaded you from having permitted, much less assisted in, any tumult which at that awful moment might disturb the attention of the people. You should have reflected on the consequence of a crime, that baneful crime which has ever sapped the foundation of all society, and been the cause of the subversion of all government, in affording any the slightest chance of escape to a prisoner, who, it is true, had been acquitted of one treason, but who stood charged with another. It was a duty which you owed to that court, of which you were an officer, and as such you were in the daily habit of being informed, that a prisoner in the custody of the law, can never be discharged, till the officer of the law, in whose custody he is placed, shall have an opportunity of having it certified, that there is no other warrant lodged against him, either on the part of the public, or any private individual. To hear this, was in your daily practice. If you had indeed been ignorant of it when you went into that court, the learned judge, to whose information you should have paid respect, had informed the by-standers and yourself that such was the law and the practice. Being totally inattentive to his observations, you did this, which argued too close a connexion * with the prisoner, in the

* "I think it necessary to make an observation here, that this expression may not be construed in a sense which I am convinced the learned judge cannot have meant it to convey.

"I can certainly have no wish to deny, that my connexion with Mr. O'Connor was the same as that which was avowed by the very honourable persons who gave evidence for him at his trial. As to what has since been disclosed relative to Mr. O'Connor's views in Ireland, it should seem, that he had not chosen to engage his friends in a species of confidence, equally useless and dangerous, respecting the affairs of a country with which they had no concern.

"For myself, I can very positively speak; and I do here most expressly and unequivocally disavow the having had, at any period, any knowledge (farther than that which might have been collected by every person from common report or conversation) of the views or schemes of any individual or body of men, such as have been disclosed to the world by the Reports of the Secret Committees of the two Houses of Parliament in Ireland.

"This is the simple declaration of a fact,

intimate knowledge of that which he intended to attempt, and of the means by which he meant to make that attempt. Obedience to the law is in our very first rudiments. The absolute necessity of it, by your daily attendance in this court, you were in the habit of hearing; and it is impossible you should have forgotten that very material chapter on the Crown law, which follows that on the misprision of treason, treating of the contempt of the king's courts, and describing accurately the offence of which you have been guilty, and for which you now stand to receive the judgment of the Court. Acquainted as you must have been with this subject, you stand here as an offender against your own conviction, and your own better knowledge.

To the nature of your case the court has paid great attention; and upon the most mature deliberation on the offences contained in the two last counts of this information, this court doth order and adjudge:—

That you, SACKVILLE EARL OF THANET, pay to the king a fine of One Thousand pounds; that you be imprisoned in the Tower of London for the term of one year, and that you give security for your good behaviour for the space of seven years, to be computed from the expiration of that period, yourself in the sum of ten thousand pounds and two sureties in five thousand pounds each; and that you be farther imprisoned till such security be given.

The sentence on you, ROBERT FERGUSSON, is, that you pay a fine to the king of One Hundred pounds; that you be imprisoned in his majestys' gaol of the King's-bench for the term of one year; and that you give security for your good behaviour for seven years, to be computed from the expiration of that period, yourself in five hundred pounds and two sureties in two hundred and fifty pounds each; and that you be farther imprisoned till such security be given.

Note. The defendants having been committed on the third of May, it is an imprisonment of one year and thirty-eight days.

SOME OBSERVATIONS

BY

ROBERT FERGUSSON,

ON

HIS OWN CASE,

AND ON

THE POINTS OF LAW

ARISING UPON THE INFORMATION.

I shall begin by considering what the charge is, as it appears upon the record.

"which I feel myself called upon to make; and by which I do not mean to give either praise or censure to the conduct of any man, whose misfortune it has been to have had a share in the politics of that unhappy country. ROBERT FERGUSSON."—Orig. Ed.

The information states, that ARTHUR O'CONNOR, being in the custody of the sheriff of Kent, was found *Not Guilty* of the high treason with which he had been charged; and that, *before any order or direction had been made or given by the commissioners, or any of them, for his discharge, and before he was discharged, the defendants did, in the presence of the commissioners,*

- I, Make a riot;
- II, Attempt to rescue Arthur O'Connor;
- III, Aid and assist him in an attempt made by him to escape:

And that, the better to effect such rescue and escape, they did,

- IV, Assault and beat John Rivett, Edward Fugion, and Thomas Adams:

And that they did,

- V, Obstruct and impede the commissioners in the execution of their office.

The second count charges, that Arthur O'Connor being in custody, &c. and before any order, &c. was given for his discharge, the defendants did, at Maidstone,

- I, Aid and assist him in an attempt made by him to rescue himself, and escape:

And that, the better to effect such rescue and escape, they did,

- II, Assault and beat Thomas Adams.

The third count charges, that the defendants did, in the presence of the commissioners,

- I, Make a riot,

And thereby obstruct and impede the commissioners, &c.

- II, Assault and beat John Rivett, Edward Fugion, and Thomas Adams.

The fourth count charges, that the defendants did, in the presence of the commissioners,

- Make a riot,

And thereby obstruct and impede the commissioners, &c.

The fifth count charges, that the defendants did, at Maidstone,

- Make a riot.

The charges thus variously laid in the information, may in substance be reduced to these:

- I, The attempt to rescue Mr. O'Connor;
- II, The riot, assault, and battery;

- III, The obstruction of the commissioners.

The first may be said to be the *intent*; the second, the *means*; and the third is not so much a separate charge of itself, as a necessary consequence of the second, if proved. The Jury had, in fact, but two questions for their consideration:

- I, Were the defendants guilty of the riot, assault, and battery charged?
- II, If they were so guilty, was it with a view to rescue Mr. O'Connor?

To sustain a general verdict of guilty upon all the counts of the information, it should have been proved, not merely that the defendants were engaged in an affray or tumult in the court—not merely that they were

parties to a scene of violence—not merely that they gave blows in the course of the tumult or affray;—but it should have been proved also, that they were in law the rioters; that the assault and battery charged was in law their assault and battery; and it should farther have been proved, that they attempted thereby to rescue Mr. O'Connor. Now, let us see what was the evidence, upon which a general verdict of guilty was returned in my case.

The Witnesses for the Crown were,

- Mr. Sergeant Shepherd,
- The rev. Mr. Hussey,
- Lord Romney,
- Sir John Milsford,
- Mr. Justice Heath,
- Mr. Abbott,
- John Rivett,
- Sir Edward Knatchbull,
- Thomas Watson,
- Thomas Adams,
- Henry William Brooke,
- John Stafford,
- The hon. Mr. Clifford,
- Thomas Wagstaffe,
- William Cutbush,
- Omrod, and
- Colonel Parker.

Mr. Shepherd, Mr. Hussey, sir Edward Knatchbull, Watson, Wagstaffe, Cutbush, Omrod, none of them speak to any fact which concerns me.

ADAMS and Colonel PARKER speak to something which was done by *some gentleman* in a wig and gown;* but neither of them know my person.

LORD ROMNEY speaks of an altercation he had with me about the words "*acquitted*" and "*discharged*;" which is no otherwise important than in this view, that one gentleman in a professional dress may be mistaken for another—for it was Mr. George Smith, as he himself relates, who had the altercation in question with lord Romney.

MR. ABBOTT, the counsel who opened the information, says, that when the jury brought in their verdict, I called out, "He" (Mr. O'Connor) "is discharged." I shall only observe, that this was before any warrant was produced, and before any direction was given by the judge for detaining Mr. O'Connor.

MR. JUSTICE HEATH, in his evidence—not pressed by any questions from my counsel, not strictly called upon by the examination of the counsel for the crown, but yielding to the dictates of his own honourable mind—in speaking of my conduct, makes use of these

* "I cannot help noticing this question, which was so often put to the witnesses for the crown, after they had declared that they did not know my person: 'Did you see any gentleman in a wig and gown' do so and so? Several of the counsel who put this question were themselves in wigs and gowns upon the same occasion." Fergusson.

words: "I must do him the justice to say, that in the very short time I saw him, which was not above a minute or so, I did not see him say or do any thing to encourage the rioters?"

There remains, then, the evidence of the Solicitor-General, of the honourable Mr. Clifford, of Rivett, Brooke, and Stafford.

THE SOLICITOR GENERAL says, that when the jury gave their verdict, I insisted that Mr. O'Connor was discharged; that after Mr. Justice Buller had pronounced sentence on O'Coigly, he saw me ENCOURAGING Mr. O'Connor to go over the bar—and that *not by words, but actions!* He swears, not merely to a gesture, but also to the meaning of that gesture! I have only to observe, that this gesture, apparently to the solicitor-general, of encouragement, might have been, and I have reason to believe was, the gesture with which I accompanied the words sworn to by Mr. Bainbridge as addressed to Mr. O'Connor: "Be quiet, and keep your place; for nothing can hurt you." The motion of my hand accompanying this exhortation, might, and no doubt did, appear to the solicitor-general to be for a very different purpose.

That gentleman farther says, that I appeared to him to follow Mr. O'Connor towards the narrow street of Maidstone. Mr. Clifford agrees with him in this point; but neither of them swear to any assault or battery—to any act of riot or violence on my part—to any obstruction given by me to the officers of justice, or to any attempt of any kind made by me to rescue Mr. O'Connor. The verdict cannot therefore have been founded upon their evidence.

NEXT COMES THE EVIDENCE OF RIVETT; and I need not inform any one who was present at the trial, that, without his testimony, there would not have been a case to go to the jury against any one of the defendants. This man swears, that when Mr. O'Connor jumped over the bar, he (Rivett) was prevented getting forward by persons who had placed themselves before him; and being asked to describe particularly what passed which prevented him, he answers, "I was pulled down, or shoved down, twice or three times; but by whom I am not able to say. I then jumped forward as well as I was able, and was endeavouring to pursue Mr. O'Connor. Mr. Fergusson jumped upon the table; and, with a stick, flourished it in this way, to prevent my getting forward.—I then sprung at him, and wrenched the stick out of his hand; and he returned back to his former situation." Rivett next describes what passed when he had thus wrenched the stick from my hand: "I was then, he says, he, "knocked down by some person who drove against me—not with a stick; and as soon as I had recovered myself, I saw the person who had so shoved me down, and immediately struck him." This person, the man afterwards told, was the earl of Thanet. In his cross-examination, being asked, how long there might be between

my going away and his meeting with the earl of Thanet, he says, "a very few minutes—a minut^e or two."

In the first place, the fact of my having had a stick at all, is positively denied upon oath by Mr. BAINBRIDGE, a gentleman now at the bar, who was seated immediately behind me, and had the best opportunity of observing the whole of my conduct. Mr. Law puts this question to him: "Will you venture to swear, that, during the riot, he (Mr. Fergusson) had no stick?" He answers, "I WILL."—Is this, let me ask, negative testimony? or, is it not a fact as positively sworn to, as that to which Rivett swears?

Mr. MAXWELL, after describing the violence with which Rivett pressed forward, and the manner in which he attacked lord Thanet, is asked, whether, before this attack upon lord Thanet, Rivett could have wrested a stick from my hand? Mr. Maxwell answers, "Rivett did not go to take a stick out of Mr. Fergusson's hand—for he had no stick in his hand: he did not go up to Mr. Fergusson; but immediately went up to lord Thanet and struck him." Mr. Maxwell is afterwards asked, Whether, if I had not only had a stick, but had brandished and flourished that stick, he must have seen it? His answer is, "I must have seen it: he was so directly before me, that it is quite impossible but I must have seen it. I can swear that Mr. Fergusson had nothing in his hand, but a roll of paper in his right hand." How is this again? is it positive or negative testimony? Mr. Maxwell swears, not only that I had no stick in my hand; but he swears to what I had in my hand—namely, a roll of paper.

Mr. SHERIDAN is asked, "Did Rivett attack lord Thanet before he possibly could have attacked Mr. Fergusson, and wrenched a stick from his hand?" Mr. Sheridan says, "He came immediately upon lord Thanet when the tumult began."—The next question is, "He could, then, have no conflict with Mr. Fergusson, till after the conflict with lord Thanet?" The answer is, "Certainly not."—Mr. Sheridan also says, that I had a roll of paper in my hand.

Mr. WARREN, a gentleman well known at the bar, relates the circumstances of Rivett's attack upon lord Thanet, and then says, "Mr. Fergusson was upon the table afterwards, but not upon the table at any time I have yet spoken to;"—that is, I had not been upon the table, much less had I flourished a stick upon the table, before Rivett struck lord Thanet, with a stick which he swears that he had wrenched from me when I was upon the table *some minutes before*. Mr. Warren also says that he did not see me have a stick; and that, if I had had a stick, he thinks it impossible but that he must have seen it.

Mr. SMITH, a gentleman at the bar, who had been in his professional habit, as I was in mine, relates, that it was he who had the

first scuffle with Rivett; that he struggled for some time, in his own defence, against Rivett's violence; and that it was with some difficulty he succeeded in extricating himself. What happened then, according to Mr. Smith? "*The instant,*" says he, "I extricated myself, "I turned round, and saw a man pressing "upon lord Thanet; with this difference, that "when I resisted him, I did not observe that "he had any staff or stick; but when I saw "him with lord Thanet, he was striking lord "Thanet with a stick." Mr. Smith swears, that he thinks it impossible that he could have wrenched this stick from me; but is it necessary that Mr. Smith should swear it? What must have happened in *this instant* described by Mr. Smith, *this instant which he took to turn round?* I must have jumped upon the table, attacked Rivett by flourishing a stick over his head; he must have sprung at me—struggled with me—wrenched it from my hand: I must have retreated; *then a few minutes must have elapsed;* and then and then only, he must have struck lord Thanet—and with what? with the stick he had wrenched from me, when; if Mr. Smith speaks true, Rivett must have been engaged in a scuffle with him, *without a stick,* only an instant before.

Let us next see how Rivett's evidence agrees with that of Mr. Sergeant Shepherd, the Solicitor General, and Mr. Clifford, witnesses for the Crown.

And, first, of Mr. Sergeant Shepherd. It is necessary to keep in mind the different facts which Rivett swears to have taken place, between the time of Mr. O'Connor's jumping over the bar, and that of Rivett's striking lord Thanet—his being shoved or pushed down several times—my getting upon the table, and advancing towards him—then my attack upon him by flourishing a stick—his springing at me, and wrenching it from my hand, and my retreat;—his being shoved or knocked down by some person—his recovering himself, and finding that it was the earl of Thanet—and his then striking lord Thanet with the stick which he had wrenched from me some minutes before. What says Mr. Sergeant Shepherd? "At the moment that Mr. O'Connor was getting over the bar, and some persons calling to stop him, there was a great noise certainly: Lord Thanet stood, in the way I have described to your lordships, in the pass. The officers were endeavouring to press by him; and he stood, till, I think, in a *very short space of time,* he held his stick with both his hands over his head." In his cross-examination. Mr. Shepherd says, "Upon Mr. O'Connor jumping over the bar, the officers rushed forward to follow him: after they had made several pushes, it was that I saw lord Thanet in that position." Here is one continued scene described by Mr. Sergeant Shepherd, from the moment Mr. O'Connor jumped over the bar, until Rivett was engaged with lord Thanet. He traces his

lordship, he traces the officers (among whom was Rivett), during this interval; and yet, during this interval, I am said by Rivett, full in Mr. Shepherd's view, to have been engaged in a conflict in which I must have made such a remarkable appearance. And with whom was I engaged? Whom did I attack? Who sprung at me? Who wrenched the stick from my hand? Who forced me to retreat? Rivett,—one of the officers whom Mr. Shepherd keeps his eye upon, and traces in his attempts to get forward from the moment Mr. O'Connor jumped over the bar until the time of the conflict with lord Thanet. From the situation where Mr. Shepherd was placed, from that which I am said to have left when I went to attack Rivett, and to which I returned when he had taken the stick from me, is it not clear, that, either in my advance upon the table, in the act of flourishing my stick, in my scuffle with Rivett, or in my retreat, I I must have intercepted Mr. Shepherd's view both of lord Thanet and of the officers?

What does Mr. Sergeant Shepherd further say? He describes lord Thanet as acting upon the defensive against Rivett's blows, and says, "There was *then* a great deal of confusion;—persons got upon the table." When did persons get upon the table? *When Rivett was striking lord Thanet.* Observe how this agrees with the evidence of Mr. Warren: After describing Rivett's striking at lord Thanet, he says, "Mr. Fergusson was afterwards upon the table, but not upon the table at any time I have yet spoken to;" and yet Rivett makes me act the strange scene upon the table several minutes before he came in contact with lord Thanet!

But, perhaps, Rivett's evidence will agree better with that of the Solicitor General, and Mr. Clifford. Let us see how this is.

The Solicitor General swears, and it is very material to be noticed, that he kept his eye particularly upon Mr. O'Connor and me. "Mr. Fergusson," says he, "at the moment that Mr. O'Connor jumped over the bar, turned himself round, and appeared to me to follow Mr. O'Connor; but I cannot positively say that he did so, because the persons who rushed from the other side of the court came between me and him; but I recollect, that when they were past, I did not see him."

The Hon. Mr. Clifford says, "When Mr. O'Connor jumped over, they all ran off together: they followed Mr. O'Connor, as it appeared to me." And afterwards, "Mr. Fergusson, and the rest of them, went off towards the narrow street of Maidstone."

Rivett says, that when he had forced me to retreat, I returned to my former situation; which situation, in his answer to the next question, he describes to be my place at the table. This he describes to have taken place when he was following Mr. O'Connor, who had just jumped over the bar. In this point, then, the Solicitor General and

Mr. Clifford agree with Rivett, that at the very beginning of the disturbance, *I left my place at the table.* But what happened then? According to the Solicitor General and Mr. Clifford, *I left my place,* and followed Mr. O'Connor towards the narrow street of Maidstone: According to Rivett, *I left my place,* jumped upon the table, advanced towards the main street, and flourished a stick over his head, to prevent his following Mr. O'Connor! The Solicitor General kept his eye upon me, until persons rushed upon the table from the other side. Mr. Clifford swears that I went off towards the narrow street: he says, "I bent myself as far I could, to see; when so many people came jumping from the witness-box, that I was almost quite overpowered;" and then he says, "They all went off to the left hand behind the cryer's box." Mr. Clifford describes me as one of the persons who so went off: he therefore follows me with his eye farther than the Solicitor General; for he sees me join those who jumped from the witness-box, the same persons whom the Solicitor General describes to have made the rush upon the table by which means he lost sight of me. If the Solicitor General and Mr. Clifford, therefore, speak true, I cannot have attacked Rivett till some time after those persons rushed upon the table from the witness-box.

The Solicitor General says, "that those persons went to the spot where the riot was, and jumped among the rioters; all the lights, except those before the judges, &c. were extinguished." It must, therefore, have been after the lights were put out, the riot general, and the confusion at its height, that I attacked Rivett; and yet, although it must have been after the lights were put out, and the confusion general, yet it was a considerable time, too, if we believe Rivett, before he attacked lord Thanet. Yet, if Mr. Shepherd speak true, the confusion did not take place, nor were the lights put out, till after Rivett was striking lord Thanet. Hear Mr. Sergeant Shepherd himself:—"He (lord Thanet) held up his stick with both his hands over his head: there was then a great deal of confusion, persons got upon the table, and there was a press, in this narrow pass, of officers and persons from that side of the court, attempting to press towards the door to which O'Connor had rushed; and other persons—whom I cannot say—appearing to me to push the other way, as if to prevent them from passing. I saw sticks raised, and fists raised, by individuals; but who did so, I cannot speak to. There became then a general confusion in that part of the court, so that I lost sight of particular individuals: the candles were some of them thrown down; they were upon the table, and there was a general riot and confusion."

What period, then, of the disturbance can we fix upon, as that at which I made the attack upon Rivett?

It cannot have been at the beginning of the disturbance, before other persons were upon the table, and before the lights were put out, and the confusion general; because, until that period, I am traced by the Solicitor General and Mr. Clifford towards the narrow street of Maidstone. It cannot have been after other persons were upon the table, the lights put out, and the confusion general; because the disturbance had not reached that period, according to Mr. Sergeant Shepherd, until Rivett had struck lord Thanet. It cannot have been after Rivett had struck lord Thanet; for he swears that he struck lord Thanet with the stick which he had wrenched from me.—So much for Rivett.

The evidence of Brooke is, that I appeared to have a sword, or stick, or something, in my hand. What that something was, has been explained by Mr. Maxwell and Mr. Sheridan.

There remains, then, only the evidence of Mr. STAFFORD, who says, "that Watson the gaoler seized the flap of Mr. O'Connor's coat, as he was getting over, &c.; Mr. Ferguson forced himself in between the two, and Mr. Watson let go his hold." I shall not appeal to the evidence for the defendants, by which this fact is flatly contradicted, particularly by Mr. Warren: I shall content myself with observing, that the Solicitor General, who kept his eye particularly upon Mr. O'Connor and me, did not see this; and that that gentleman describes me to have been in my place at the counsel-table, whereas Mr. Stafford says I was in the solicitors' seat. The Solicitor General also saw me leave my place—not to go into the solicitors' seat, but to go towards the narrow street.

Mr. Stafford further swears, that he did not see me until he was upon the table with a drawn sabre in his hands; and that, when he saw me, I was assisting Mr. O'Connor to get over the bar. The Solicitor General says, that this sabre was not drawn until the rush was made from the witness-box; and Mr. Sergeant Shepherd, until Rivett was striking lord Thanet. The rush, therefore, from the witness-box, and Rivett's attack upon lord Thanet, must have taken place at the moment I was assisting Mr. O'Connor to get over the bar. Yet Rivett says that I attacked him—had a scuffle with him—had a stick wrenched from my hand—had returned to my place;—and after all this a few minutes elapsed, and then he attacked lord Thanet. And Mr. Shepherd and the Solicitor General describe Mr. O'Connor as having almost got out of court, and the whole to have been a scene of confusion before Mr. Stafford, appeared upon the table with his sabre.

According to Mr. Sergeant Shepherd, the drawing of the sabre by Mr. Stafford, corresponds, in point of time, with Rivett's attack upon lord Thanet:

But according to Rivett, my attack upon him (Rivett) preceded, by several minutes, his attack upon lord Thanet:

Therefore my attack upon Rivett preceded, by several minutes, the drawing of the sabre by Mr. Stafford.—And again,

According to the Solicitor General, the rush made from the witness-box preceded the drawing of the sabre:

According to the same gentleman, my attack upon Rivett did *not* precede the rush from the witness-box:

Therefore my attack upon Rivett did *not* precede the drawing of the sabre.

And with this I take my leave of the evidence for the Crown.

I shall only remark, that it was proved upon the trial, that the seat in which I was placed when the disturbance began, was that which had been allotted for me by the Court, by whom I was assigned as counsel for one of the prisoners. It was not a place chosen by myself; and it did so happen that I, of all the counsel for the prisoners, was placed in that situation in which I could have been the least useful in giving any obstruction to the officers, if any such had been intended. It is a little hard that a counsel, who is placed by the Court in a situation where he may be enabled to discharge his duty to his client, should be accused of *studiously placing himself* in one where he may be useful in promoting an escape.

I have thus stated, and I hope fairly stated, the strength of the evidence against me. I have shown in what points it is contradicted by the evidence for the defendants; and I have examined how far, in its different parts, it is consistent with itself. I might have dwelt longer, if it had been necessary, on the unanimous testimony of five gentlemen of character and honour, who describe my demeanor as the most peaceable—my conduct through the whole of the transaction, as that of a person whose object was, not to make a riot, but to prevent every thing which was likely to lead to one; and who do, upon their oath, most expressly contradict the leading fact which was sworn against me by a Bow-street runner, and by him alone!

That there was a riot, is certain; but the question is, who were the rioters? And here let us consider how the charge is laid: it is, that the riot was made whilst Mr. O'Connor was in the custody of the sheriff of Kent; and in fact upon his trial—for it is expressly stated, that he was not discharged. If so, what right had any officer of justice to attempt, by violence, or otherwise, to take him out of that custody, and to seize him in the presence of those commissioners who were his judges, and who had given no orders, either for his discharge, or for his arrest? Observe, that the disturbance began with Rivett, before any order was given by Mr. Justice Buller for the detention of Mr. O'Connor; and when that order was given, it was not an order that the Bow-street officers should *arrest him in the face of the*

Court, before whom he was upon his trial. What right, then, had Rivett and Fugion (of whom I complained to the judge) to push forward with noise and violence, and blows, certainly to the impeding and obstructing the commissioners, and in contempt of the Court? And for what purpose? To seize Mr. O'Connor, who was then in legal custody, and under the protection of that Court, which had the right and the authority, and the means, of detaining him upon any fresh charge.

We were charged with an attempt to rescue Mr. O'Connor from the custody of the sheriff of Kent. The obstructions given to the officers are said to be evidence of *that* attempt. I might admit that such obstructions were given, and still deny the conclusion.—The Bow-street officers were not acting in the aid of the sheriff: they were, on the contrary, as it appears to me, attempting, illegally, to take a prisoner out of the custody of the sheriff; and those who obstructed them, if there were any who did so, so far from having attempted to rescue, may be said to have been acting *in the aid* of the sheriff; but such arguments are not necessary for me; nor do I insist upon them. I am perfectly willing to leave my case as it stands upon the evidence on both sides, weighed, compared, and appreciated by any impartial man.

Upon that evidence, the jury found me guilty of *all the charges* laid in the information; that is, not only of *every thing* which was sworn to by *any one* against me, but even of that of which there was *no evidence even attempted to be given.*

I appeared, therefore, before the court of King's-bench, to receive judgment—for what? as the Court seemed to think, for the enormous misdemeanor of STRIKING IN A COURT OF JUSTICE! Let any one peruse the evidence; and he will find, that *THERE IS NOT EVEN AN ATTEMPT TO PROVE THAT I STRUCK A BLOW.*

The attorney general was directed by the Crown to enter a *nolle prosequi* upon the three first counts of the information; and he thereby only anticipated the justice of the court of King's-bench, which would not have pronounced judgment for an offence, of which there appeared no evidence against me, upon the notes which the learned judges themselves took upon the trial.*

* "If it be objected to me, that being engaged in the same unlawful design, the act of one is the act of all; I answer the objection with this case from the Year Books.

MICH. TERM, 22 Ed. III.—Note, That a Knight and an Esquire were indicted, that before Robert Thorpe, a Justiciar assigned, &c. one J. made an affray, wherefore Thorpe attacked him; upon which the Knight and the Esquire made contention with Thorpe, by which J. escaped, &c.; and the jury were to inquire if the Knight and the Esquire were there in order to rescue J. from the attack-

no reason why judgment was not passed to lose the hand, but this, that the offence is not charged to have been committed *coram Domino Regina*. These words are, therefore, of absolute necessity.

In the other, we can find many reasons why this judgment might not have passed. 1st, There is no sword drawn. 2dly, The offence is not committed in Westminster-hall, and consequently, 3rdly, Not in the presence of the justices. 4thly, It is not laid *coram Domino Rege*. For want of one, or several, or all of these requisites, it might have been, that the judgment was not pronounced; and we should have been inclined to believe that it was *partly*, at least, because the indictment wanted these words of absolute necessity, *coram Domino Rege*.

But giving full weight to the case in Cro. Car. to what does it amount?—That this offence, if it had been alleged to have been committed before the justices in Westminster-hall, and among others (which is very material) the justices of the King's-court *coram ipso Rege*, who are named in the indictment, and who must therefore be understood to be of the justices of whose presence there is questions in the opinion of the Court—that this offence, committed, would have been punishable with the loss of hand.

It is worthy of remark, that neither of the offences charged in these indictments, is strictly the offence of striking in a court of justice; and they could therefore, perhaps, neither of them have been fairly cited as authority in this case. Both of the indictments conclude “against the form of the statutes.”—Neither of them, however, can be brought within the statute of Hen. 8, against striking in the king's palace, there being no blood drawn. They, perhaps, both come within the statute 2 Ed. 3, c. 3, whereby it is enacted, that no one “be so hardy to come before the king's justices, or other of the king's ministers, during their office, with force and arms, nor bring no force in affray of the peace, nor go, nor ride, armed, by night nor by day, in fairs, markets, nor in the presence of the justices, or other ministers, &c. upon pain to forfeit their armour to the king, and their bodies to prison at the king's pleasure.”

If the judges in Waller's case had made it a question, whether the pains of this statute could be inflicted, because the offence was not, perhaps, strictly laid in the presence of the justices, I could have understood it; but I confess I am quite at a loss to discover how sir William Waller's offence could ever have been punished with the loss of hand, however it had been laid.

In Carye's case, indeed, there is a weapon actually drawn, and an assault made with that weapon, in the hall of the King's palace, where the king's justices are present; but in Waller's case there is no weapon drawn, no blood shed, no blow actually given; and all

that is charged is an assault and affray in the King's-palace.

I think the opinion of the judges in Waller's case may be evidently traced to Br. Ab. tit, Paine 16. which I take clearly not to be law. It is in these words: *Vide, cesty que fist affray in presens des Justices, et ceus que luy rescue ou trahie weapon serrre disherite, et imprison in perpetuum et leur maines Coupes titulo For. in Fils. 21.* Now, in turning to Fitzherbert, we find that the case which he cites is that of the Knight and Squire from the Year Books, which decides nothing of the kind. It decides, that he who makes an affray in the presence of the justices, and rescues, and (not or) draws a weapon upon a judge, shall lose his hand, and have perpetual imprisonment, &c.; but that he who makes the affray, and rescues, but does not draw a weapon, shall not lose his hand.

I observe that the word “affray” is the very word used in Waller's indictment; and I am almost inclined to think, that this passage in Bro. Abr. did in fact mislead the judges in the opinion which they gave upon that occasion, if that reported in Croke be really the opinion given; although, at the same time, I do not admit, that that opinion, however well-founded, would have been at all decisive in this case, which is a case of striking before justices of Oyer and Terminer, and not in the King's-palace.

This question is therefore entire; and it is the question which I now mean to discuss.

My lord Coke says, that the specific judgment shall be given; “If before justices of assize, or Oyer and Terminer, and within view of the same, a man doth strike a juror or other,” &c. 3 Inst. 140. The cases cited in the margin of my lord Coke in support of this opinion, are, Fitz. Jug. 174. Coro. 280. Dyer. 188. and Bellingham's case, 2 Jac.—Let us see whether they will bear him out in the opinion.

The case in Fitz. Jug. is put shortly thus: *Nota que N. C. fuit endite en Banke le Roy de ceo que il en presens des Justices ferist (struck) un Jurour.* But this was a striking in Westminster-hall; and the record, which is in the crown office, states the affray to have begun in the King's-court, *coram ipso Rege*, and that the blows were given by the door of Westminster-hall, *coram Johanni de Malton et sociis suis*, justices of that court—19 Ed. III. Rot. 55.

The case in Fitz. Corone is in these words: *Homme fuit endite et arraigne de ce qu'il ferist un homme en la Sale de Westminster.*—Both the other cases are of a striking in Westminster-hall, *sedentibus Curia*. The authorities, therefore, cited by my lord Coke, decide nothing, as to the offence committed elsewhere than in Westminster-hall.

I therefore take a distinction between a striking in Westminster-hall, which is the King's-palace, and in the presence of that court in which he is supposed to administer

justice in person, the court *coram ipso Rege*, and the like offence committed in other places, and before other courts, as courts of Oyer and Terminer, or gaol delivery. In this distinction I am supported by no mean authority; for Staunford, in observing upon the above case in Fitz. Coro. says "*Quære, si issint terra, s'il luy ferist forsqu'en le Palais de Westminster.*" Quære, if so shall be, if he strike him, except in the palace of Westminster." S. P. C. 38.

Lord Coke speaks generally of justices of Oyer and Terminer, and says, that striking in the presence of such justices is punishable with the loss of hand, and yet in the next page he cites Holbrooke's case, which was, in fact (although he does not say so), a commission of Oyer and Terminer, as appears by the record in the Crown-office.

TERM HIL. AN. 3. ED. III. ROT. 116—*Johannes de Londham, Robertus de Insula, Thomas de Latem, et Will. Giffard, assignati fuissent per commissionem Domini Regis, in Suffolc, ad ostendendum et terminandum omnes transgressiones in eodem Comitatu factas, &c.*; "and there came Thomas de Holbrooke, who, having raised a noise and clamour in the court, was ordered to be committed, and who, upon that," *ipsi Johanni dixit quod ipse mentitus fuit, et ipsum cepit per Gulam, et jactabat ultra capita clericorum, &c. Et quia idem Thomas coram concilio cognovisset, quod predictum Justiciarium Domini Regis demeritus fuit, et manus violenter imposuit, &c. committitur prisione Turris London ibi custodiendum ad voluntatem Domini Regis.*—This was a commission of Oyer and Terminer, though not for the trial of treason and misprision of treason.

But there are precedents in the Crown-office, of assaults and strikings, even in Westminster-hall, in the presence of the justices, but where the sitting of the king's court, *coram ipso Rege*, is not particularly mentioned, and where the punishment was arbitrary, and not specific.

T. PASCH. 31. ED. III. ROT. 85.—*Cotina de Coureste cum lapidibus in Aula Westm. in PRÆSENTIA JUSTICIARORUM insultavit Thomas de Shene, and damages 20s.*

T. TRIN. 19. ED. III. ROT. 77.—*Apud Westm. Thomas de Whiteshegh percussus in pectore cum quodam Bodekins, in PRÆSENTIA JUSTICIARORUM per Willicium de Antingham Coteller, and a fine of 5 marks.*

In the following cases, judgment to lose the hand was given:

T. TRIN. 1. ED. IV.—*Johannes Davy, apud Westm. in magnâ Aula Placitorum Domini Regis, juxta Barram Banci ipsius Regis, CORAM IPSO REGE, Curii ejusdem Regis (videlicet) Curia ipsius Regis, CORAM IPSO REGE, Cancellarie et Comuni Banci apertis ac justiciariis Domini Regis in Curii, &c. presentibus, vi et armis, &c. in Ricardum Hayward insultum fecit, &c. et cum pugillo suo, &c. PERCUSSIT, &c.*—This is the case put in Dyer. 188.

T. HIL. 15. and 16. CAR. II.—*Willielmus Bockenham, apud Westm. in magnâ Aula Placitorum in et super quendam Robertum Harlestone, &c. Curia Domini Regis Cancellarie, Curia Domini Regis. CORAM IPSO REGE et Curia Domini Regis de Banco apertis, &c. et Justiciarius in Curii, &c. presentibus, &c. vi et armis insultum fecit, &c. et super faciem, &c. PERCUSSIT, &c.*

In these cases the offences were committed in Westminster-hall; but in the following case, where the offence was not committed in Westminster-hall, the punishment was discretionary.

APUD EBOR. T. MICH. 6. ED. III. ROT. 33. *Adam de Eoringham de Rockeley attachiatus fuit, &c. p. eo quod Johannem de Rockeley venientem ad Curiam Domini Regis ad persequendum, &c. insultavit, &c. et manu sua, &c. percussit.*—He was found guilty; *et quia transgressio et contemptus predicti perpetrati fuerunt in presentia Justiciarorum*, the judgment was, that he should be imprisoned during the king's pleasure.

Considering, therefore, the whole of these cases, and believing, as I do, that no precedent could have been produced to meet the present, I think I may conclude that the court of King's-bench would not have felt itself called upon to pronounce the specific judgment.

But there are other, as I think, fatal, objections to the MANNER in which the offence is charged.

First, the striking is not laid as an entire and substantive charge; and could not have supported a separate and distinct judgment from the other offences with which it is blended in the information.

This objection is peculiarly applicable to the first and third counts.

In these counts there is a riot charged; and also that the defendants did *unlawfully, riotously, routously, and tumultuously, in and upon, &c. make an assault, &c.*—Here I say that the riot is the substantive charge, and that the assault is only a part or aggravation of the riot.

Put this case, that the riot had not been laid "with divers others," I submit that no judgment of any kind could have passed upon the earl of Thanet and myself—not upon the riot, because two cannot make a riot, nor upon the assault and battery, for these are a part of the riot, and are so charged. I reason thus upon the authority of my lord Holt, in the King v. Heapes, Salk. 593, which is thus:

"Indictment, that the defendants *riotose et routose et illicitè assemblaverunt, et sic assemblati existentes riotose et routose insultum fecerunt in quendam J. Russel. &c.* Upon Not Guilty, the jury found two defendants guilty, and acquitted the rest: and it was moved in arrest of judgment, that two cannot make a riot, and therefore cannot be guilty of a riot; and that all are acquitted by this verdict. On the other side it was said, that the assault and

battery is charged in the indictment as well as the riot; and two defendants may, as they are found, be guilty of that."

Sed per HOLT, C. J.—"A riot is a SPECIFIC OFFENCE, and the battery is not laid as a charge of itself, but as a PART OF THE RIOT; FOR THE RIOTOSE' LT ROUTOSE' B'NS THROUGH ALL, and is ascribed to the battery as well as to the assembly. The consequence is, that these defendants, being discharged of the riot, are discharged likewise of the battery, and no judgment can be given, and judgment was arrested."

So in our case, I argue, that, being convicted of a riot, "with divers others," and the battery being charged as a part of the riot, we could not have had a separate judgment for the battery; and that therefore no other judgment could have been given than the JUDGMENT FOR A RIOT ONLY.

In the second count, as there is no riot charged, this reasoning cannot apply to it; but upon this count, as I have already observed, there was no evidence given of a battery; and therefore the Court would not have proceeded to give judgment upon it, but would have ordered a *new trial* to be had, the objection not being good in *arrest of judgment*.

In the second count, as well as in the first, there is charged an attempt to RESCUE Mr. O'CONNOR.

I come now to show, that the Court could not have pronounced judgment upon *this part* of the charge; for that, under the circumstances stated in the information, it does not appear that there could be such an offence as a rescue of Mr. O'Connor.

The information sets forth, that Mr. O'Connor being in the custody of the sheriff of Kent, was tried by a jury, and by them found NOT GUILTY of the premises charged upon him; and that "before any order or direction had been made or given by the same justices and commissioners above named, and others their fellows aforesaid, or any or either of them, for the discharge of the said Arthur O'Connor from the custody of the said sheriff, and before the said Arthur O'Connor was discharged from the custody of the said sheriff," &c. the defendants did, "with force and arms," &c. "attempt and endeavour to rescue the said Arthur O'Connor from and out of the custody of the said sheriff," &c.

Now what I submit is, that this offence is not sufficiently charged; and that it should have been averred, that an *order was given* to DETAIN, or that a warrant was served upon Mr. O'Connor, and that he was so detained or arrested, upon FRESH PROCESS.

The whole question is this;—Has the sheriff a right, and is he bound, in every case, to detain a prisoner in his custody, after such prisoner is acquitted, until the judge before whom he has been tried shall have given an order for his discharge? or, are there not, independent of such order of the judge, certain rules of law, and provisions by the act of parliament, whereby the sheriff upon the acquittal

of a prisoner, is bound to proceed with respect to the discharge of such prisoner?

I do not speak of those cases in which such prisoner is arrested or detained *at his acquittal* upon *fresh process*, which is not the case here, so far as we can learn from the information, and I need not say that such a material fact cannot be taken by inference or intendment.

In the first place, then, I find in my lord Coke, 2nd. Inst. p. 53, that "if a sheriff or gaoler detain a prisoner in the *gaol* after his *acquittal*, unless it be for his fees, this is false imprisonment.

Then by the act 14 Geo. 3rd, c. 20. it is provided that "Every prisoner who now is, or hereafter shall be charged with felony or other crime, or as an accessory thereto, before any court holding criminal jurisdiction within that part of Great Britain called England and Wales, against whom no bill of indictment shall be found, or who on his or her trials shall be ACQUITTED, or who shall be discharged by proclamation for want of prosecution, shall be IMMEDIATELY set at large in OPEN COURT."

But it may be said, perhaps, that this regards felony, and not treason; and that the words "other crime" cannot be taken to extend to a higher crime than felony.

Besides that taking up this narrow ground would be admitting my general proposition, there is this short answer to the objection:—The generic term "felony" comprehends treason; and although, in a statute enacting a penalty, it might not be so construed, yet, in one like this, which gives a remedy, it would. But it may further be objected, that we learn both from the title and preamble of this act, that it was framed for a particular purpose; to give relief to prisoners who might be detained for their fees. Be it so—It is giving them relief in the only case in which they could want relief; in the only case in which the sheriff or gaoler could legally detain them after their acquittal; namely, for their fees. But is it necessary to argue, that in no statute, above all, in no remedial statute, can the title or the preamble, which may, and usually do explain the general scope and intent of an act of parliament, be admitted to restrain the *express* provisions of its enacting clauses? My lord Hale, in his history of the Common Law, observing upon the statute of Henry 4th against appeals in parliament, says, "Though the petition," (which in the old statutes, it may be observed, was ever more extensive than any title or preamble can be,) "express only treason and felony, yet the act is general against all appeals in parliament; and many times the purview of an act is larger than the preamble or the petition."

So in this case, the act 14th Geo. 3rd, is general with respect to all persons, who, charged with felony or other crimes, shall upon their trial be acquitted; and it enacts that all such persons shall be "IMMEDIATELY set at large in OPEN COURT."

Surely, then, if a prisoner be indicted for an attempt to escape after he is acquitted, or if another person be indicted for having assisted him in that attempt, it is at least incumbent upon those who indict, to set forth the cause for which he was detained, and by reason of which he was not entitled to the benefit of this statute. It is necessary, that the Court may be enabled to ascertain that the indictors have not gone upon insufficient premises.

But the cause why he was detained, it may be said, does appear upon the information, namely, that the Court had given no order for his discharge.

Is it then contended, that no prisoner shall have the benefit of this act unless the judge chuse to give his order for that purpose: or in other words, that the judge dispense with the act of parliament? What mean these words, "Shall be immediately set at large in "OPEN COURT?" Do they mean any thing, or nothing; or do they mean any thing, or nothing, just as the judge pleases? How is a prisoner ever to have the advantage of being set at large in "Open Court" if the gaoler can take him back to prison until he shall have had an opportunity of having it "certified to him that there are no other warrants against him, either on the part of the public, or of some private prosecutor."

What if the judge neglect to give this order? The prisoner has already received the verdict of his country, but he is to be detained until he shall have received the verdict of the judge too. Is he to be kept in prison one—two—three—six months? How long does the power of imprisonment on the part of the judge last? If I can put any case in which this might be false imprisonment, (and are there not many?), I put a case in which it would be no offence in the prisoner to attempt to escape, nor any in a stranger to attempt to rescue him.

It cannot be supposed, that I deny the power of the judge, upon sufficient grounds, to have detained Mr. O'Connor; or the authority of an officer, upon a lawful warrant, to have arrested him the moment of his acquittal. But nothing of this appears on the Information. What should have been *averment*, may have come out in *evidence*; but that will not help the record. For any thing that appears in the information, Mr. O'Connor either was, or ought to have been *at large in open court*, for he was acquitted. The custody of the sheriff was at end, a prisoner being "delivered by due course of law," when the jury have "well and truly tried and true deliverance made between the king and the prisoner."

But I conceive further, that in this information the terms of art are wanting, necessary to constitute the offence of striking in a court of justice.

The words used in describing it are, "beat, bruise, wound, and ill treat," the form of a common battery. There is wanting the term

"percussit," or "struck;" and it should also have been charged to have been done, "maliciously." The part of the body on which the blow was given, and the particular hand or weapon with which it was given, I take it, are equally essential.

There are, I believe, in the Crown-office, only two indictments which will be found exactly to meet the present case. Those of Carye and Waller were, as I have already observed, for another offence.

The two to which I allude are,

IN DAVY'S CASE, 1 ED. 4.—The words there are, *vi et armis, vis. pugillo et baculo in presatum Ricardum insultum fecit, ipse que Johannes Davy predictum Ricardum cum PUGILLO SUOMANUSU DEXTRÆ super faciem suam PERCUSSIT, et cum quodam baculo quem idem Johannes Davy tunc tenuit in MANU SUA DEXTRA presatum Ricardum SUPER CAPUT SUUM violentèr et MALITIOSE similiter PERCUSSIT, &c.*

IN BOCKENHAM'S CASE, 15 AND 16 CAR. 2, the words are, *Insultum fecit, et ipsum Robertum Harlestone adtunc et ibidem, vi et armis SUPER FACIEM ET CAPUT SUUM, MALITIOSE et violentèr CUM PUGNO SUO DEXTERO adtunc et ibidem PERCUSSIT, ac ipsum Robertum adtunc et ibidem verberavit, vulneravit, et malectravit, &c.*

These precedents, at such a distance of time, but agreeing so entirely, the one with the other, seem to be conclusive as to the form of an indictment for this offence. In the necessity of the word "malitiosè" we are further confirmed by the analogy of the statute of Henry 8th affixing the penalty of the loss of hand to a striking in the King's-palace, attended with the loss of blood. The offence is there termed "MALICIOUS striking, by means whereof blood is shed."

There is this further to be observed, that in Bockenham's case (and it is most material indeed), the words "verberavit, vulneravit, et malectravit," "beat, wound, and ill treat," are, in fact, used, but not so as to dispense with the term of art "PERCUSSIT."

But I shall now take up the subject in a very different point of view. I shall suppose that there is nothing in any objection which I have yet urged;—I shall admit, for the sake of argument, that the battery charged in the three first counts of the information is so laid as to constitute that offence which is punishable with the loss of hand, &c.

I think I can show, that, in *that case*, the record was insufficient to support ANY JUDGMENT:

1st. Because offences which infer punishments of a different nature cannot be included in the same information or indictment:

2dly. Because, in the trial of an offence of which the punishment extends to the loss of

limb, the king's attorney general cannot proceed by information *ex officio*.

As to the first point, it was formerly held in misdemeanors, that two offences could not in any case be joined in the same indictment; and upon this principle was decided the case of the King v. Clendon, 2 Stra. 870, 2 lord Raym. 1572, for an assault upon two persons, where judgment was arrested;—so was the case of the King v. Roberts, in Carth. 226: and, *per* Holt, C. J. "A single offence ought to be laid and ascertained, &c. because each offence requires a separate and distinct punishment, according to the quantity of the offence."

It is true that in the King v. Benfield and Saunders, 2 Bur. 984, the case of the King v. Clendon was said not to be law; and it was held, that two libels on two persons might, under certain circumstances, be joined in the same information: but this point was more fully discussed in a late case—that of the King v. Young and others, 3 T. R. 101; and seems to have been there settled on the soundest principles.

This was an indictment for obtaining money under false pretences; and the transaction which gave rise to the false pretence was differently stated in the different counts, so as not to appear necessarily to be the same transaction. Among other points which were urged by the counsel for the defendants in arrest of judgment, was this—that two distinct offences could not be included in the same indictment or information; and the cases in Strange, lord Raymond, and Carthew, were relied upon. On the other side, the case in Burrow was cited; and *per* lord Kenyon, "The objection would be well founded, IF THE LEGAL JUDGMENT ON EACH COUNT WAS DIFFERENT; it would be like a misjoinder in civil actions:—But in this case, the judgment on all the counts is PRECISELY THE SAME; a misdemeanor is charged in each." This, to make his lordship's opinion consistent, must be understood of a misdemeanor on which legal judgment is *not* different.

Now, what is the case upon this information? In one count there is charged a riot without any aggravation, and which the Court might punish at their discretion with fine and imprisonment; in other counts there is charged (as we are to suppose) an offence, inducing the highest punishment which the law knows, short of death—an offence for which the party must lose his hand, suffer perpetual imprisonment, and which is followed by the forfeiture of goods and chattels, and the profit of lands during life: and in the pronouncing of which sentence the Court has no discretion. The question is, whether the *legal judgment* on these counts be different or the same? The answer will tell us whether or not they can be included in the same information or indictment.

I am, secondly, to show, that,

In a trial of an offence of which the pu-

nishment extends to the loss of limb, the king's attorney-general cannot proceed by information *ex officio*.

And I have first to observe, that the law of England, in the scale of offences and of their punishments, has ever classed by themselves those which affect life or limb. We find therefore, very early, that of such offences the king's courts could alone take cognizance, and that judgment of life or limb could only be given in these courts. Such offenders were to be imprisoned "*in prison ipsius quibus potestatem habet judicandi DE VITA ET MEMBRIS.*"—*Bracton de Corona*.

In our ancient statutes the same distinction is preserved. For instance, in that "*DE FRANGENTIBUS PRISONAM,*" 1 Ed. 2, it is provided, "*quod nullus qui prisonam fregerit subcat judicium VITÆ VEL MEMBRORUM, nisi causa pro quâ captus et inprisonatus fuerit tale judicium requirat,*" &c.: and therefore an indictment for so breaking prison must set forth a commitment for such an offence as is punishable with the loss of life or limb; and in 5 Edw. 3rd, we find, "That no man from henceforth shall be attached by any accusation, nor forejudged of LIFE OR LIMB, &c. against the form of the Great Charter, or the law of the land."

In the trial, too, of offences which go to life or limb, there are many circumstances common to both, and which are not applicable to other criminal cases. Thus, "in criminal cases of *life or member*, the jury cannot give a privy verdict, but they must give it openly in court." 1st Inst. 227, b.—And there we also find, that "a jury sworn and charged in case of *life or member*, cannot be discharged by the Court, or any other, but they ought to give a verdict." The consequence is, that the prisoner cannot be tried again for the same offence. This last maxim will be found very material in this discussion.

It is an admitted principle of law, that the king cannot be non-suited; for he is ever supposed to be present in court: and this applies to criminal as well as civil cases. But in the trial of misdemeanors by information for the king, his attorney general may enter a *nolle prosequi*, which operates as a non-suit. He may do it at any stage of the proceedings—even after verdict, and before judgment: he may do it at the trial, before evidence is called; or he may do it after evidence is called, and the *jury charged*; and the jury shall *not* proceed to a verdict. Then what becomes of the above principle, that a jury sworn and charged in a case of life or member cannot be discharged, &c.?—Here is a case of limb, in which the jury are sworn and charged, but do *not* proceed to a verdict—Why? Because the attorney-general enters a *nolle prosequi*, by which he reserves the right to try the defendant again.—Is it not an evident consequence, that the proceeding by information does not apply to such cases

It will not be said, that, in case of life, the attorney-general can proceed by information. The question is, whether he can so proceed in a case of limb? I shall show that they have both been *equally*, at all times, excepted from that species of process.

Whether informations were first given by statute, or whether they were at common law, it is not necessary here to inquire. What I shall endeavour to show is, that, neither by the provisions of the one, nor by the principles of the other, they could ever have been extended to an offence involving in its punishment the loss of limb.

In the first place, I think I hazard nothing in asserting that there is not a SINGLE PRECEDENT to be found, by which it appears that such an offence was so tried. I know there are none in the books truly stated; for the case of Bockenham, which in Keble and Levinz is said to be by information, is, in fact, by indictment, as appears by the record in the Crown-office.

I believe the whole learning on the subject of informations, or at least every thing which can be said for them, is to be found in 1 Shower, 106, in an argument intended to have been made by sir Bartholomew himself, in the case of the King *v.* Berchet and others, for a riot. It is one of the ablest, and certainly the most elaborate argument of that eminent lawyer. He seems to have had access to every record; and he has produced precedents, of one kind and another, of informations, for every offence in the shape of misdemeanor, from *premunire* down to the most trifling trespass; but none for this offence, nor for any offence, punishable with the loss of limb.

It was argued, in that case, by sir Francis Winnington for the defendants, that by the statute 2 Hen. 7, c. 3, informations were given; and that the statute being repealed by 1 Hen. 8, c. 6, informations were abolished with it. But it seems to have been held, that the statute of Hen. 7th, was only meant to extend, to justices of assize and justices of peace in the counties, the same power of trying by information which was before by common law inherent in the court of King's-bench. The words of the act Hen. 7th, may therefore explain to us what was the nature of this power, at common law, of trying by information in the court of King's-bench.

It cannot be supposed at least, that in that statute, which was made for the purpose of oppression and extortion, any offence would have been omitted, which was before legally the object of that species of prosecution in any Court.

In the modern editions of the statutes, according to a very inconvenient practice, an abstract only is given of this act, being repealed. In Ruffhead's statutes, the abstract is in these words: "The justices, &c. upon information for the king, shall have authority to hear and determine all offences and

"contempts (*saving treason, murder, and felony*) committed," &c.—The inaccuracy of this abstract in a very material point, and which makes indeed the whole of this case, will appear by a reference to Rastall's edition of the statutes, where the act is given at length.

It first recites, that many statutes had been made for punishing riots, unlawful assemblies, and a variety of other offences enumerated in the act: and, "for so much that, before this time, the said offences, &c. might, nor as yet may be conveniently punished by the due order of law, except it were first found and presented by the verdict of twelve men thereto duly sworn," &c.; it enacts, that the justices of assize and justices of peace, "upon information for the king before them to be made, have full power and authority to hear and determine all offences and contempts, &c.; PROVIDED ALWAYS, that any such information extend *not* to treason, murder, or felonies, nor to any other offence, wherefore any person shall lose life or member." In my lord Coke, in a marginal note upon the part of the statute, it is said, "But it extended to *premunire* and misprision of treason." 4 Inst. 42.

We find, then, that even under this law of oppression and extortion, for the advising and executing of which, Empson and Dudley suffered, this offence could not have been tried.

Let us next see, whether it could have been tried in the STAR-CHAMBER; that court which assumed such an extensive jurisdiction in the trial of offences by information; and so exercised that jurisdiction as no court will ever dare again attempt the like in England?

The court of Star-Chamber took cognizance of "oppression and other exorbitant offences of great men, whom inferior judges and jurors (although they should not) would, in respect of their greatness, be afraid to offend; bribery, extortion, maintenance, champerty, imbracery, forgery, perjury, dispersion of false and dangerous rumours, news and scandalous libelling, false and partial misdemeanors of sheriffs and bailiffs of liberties, frauds, deceits, *great and horrible riots*, routs and unlawful assemblies, single combats, challenges, duels, and *OTHER HEINOUS and extraordinary offences and misdemeanors.*" 4 Inst. 63.

Let any one attempt to make out a more formidable catalogue of offences which the court of King's-bench has, or ever had the power to try, or the attorney general to prosecute, by information *ex officio*.—Yet we find, that, enormous as was this jurisdiction of the Star-Chamber, it had these limits: "It extendeth not," says my lord Coke, 4 Inst. 64, "to any offence that concerns the life of man, or OSTRUNCATION OF MEMBER, the ears only excepted, and those only rarely, and in most heinous and detestable offences."

Upon the abolition of the court of Star-Chamber, it is said, that the common law au-

thority of the King's-bench, of trying by information, which authority had been almost extinct, "was again revived in practice;" 4 Com. 310; and that into the last court "reverted all that was good and salutary of the jurisdiction of the Star-Chamber." 4 Com. 266; but it has never been pretended that it succeeded to a higher jurisdiction in the trial of offences by this process of information. "This Court," says my lord Holt, "bath all the lawful power which the Star-Chamber had," Com. 142: and again, "The court of Star-Chamber was taken away, because the crimes were punishable here," 5 Mod. 464. What crimes?—crimes of which the punishment does not extend to life or limb, which I maintain cannot at this day, and never could at any time, be tried in England, "except they were first found and presented by the verdict of twelve men thereto duly sworn."

I conclude, then, that the court of King's-bench could not proceed to judgment against any one convicted of such an offence, upon an information filed *ex officio* by the king's attorney general.*

I have now done. It was incumbent upon me, as far as in me lay, to satisfy the public, or, rather, that small portion of the public whom any thing which regards me can interest, that I swore nothing rashly, when, under that sacred solemnity, I declared, that I was innocent of the whole and every part of the charge of which I had been convicted. I leave my case, then, in the hands of those for whom these observations were intended, particularly of those whose good opinion must ever be dear to me,—the members of that profession to which the humble labours of my life are to be directed. On the questions of law, more might have been said; but I fear that I have been tedious enough on a subject which cannot interest the public, and which, even to the profession, is perhaps more an object of curiosity and speculation, than of use. It is not likely that the case will ever again occur, unless when it shall happen, that the officer of the law who prosecutes, the learned counsel who defend, and the jury of the country who try, shall know as little as the person who is tried, what the offence is, with which he stands charged.

I shall only farther observe, that if the offence laid in the information under which I was tried, be really of that most serious kind, which some have supposed, I cannot do justice to the noble and learned judge who presided at the trial, without believing, that, upon that occasion, even his knowledge, accurate and extensive as it is, must have been at fault. Had it been otherwise, his lordship would have been induced, in fairness to the defendants as well as to the jury, to have stated, that were the different punishments annexed

* "To do the late attorney-general justice, he has not claimed the power of filing any such information." *Ferguson.*

to the different counts; and he would have told the jury, that if they found a verdict of Guilty upon some of the counts of the information, they would subject the defendants to perpetual imprisonment, their estates to forfeiture, and their bodies to mutilation!—a judgment, at which the humanity of a British jury would have shuddered.—Little, indeed, did this jury imagine that their verdict might revive the obsolete provisions of this savage law.

It must have been pleasing, therefore, to his lordship, and to other judges who assisted him at the trial, that in such a case, and under such circumstances, it was not reserved for them to drag from its tomb the remains of this forgotten judgment.

No case has ever occurred, which tends so strongly to inculcate the necessity suggested long since by the wisest of men,* of a revision of our penal code, that a number of barbarous and bloody laws may be blotted from its pages;—laws which are not dead, but sleep—which may be revived from day to day, as occasion shall require, and which are ever ready to fall as a "shower of snares" upon the people.

I cannot conclude, without touching upon one topic connected with these proceedings, and upon which my feelings must be cold indeed, if they allowed me to be wholly silent.—I allude to the conduct of my advocate and friend, Mr. ERSKINE. Of his defence, let those who heard it judge. It is sufficient to say, and more cannot be said, that it equalled any of those former exertions by which he has for ever shut out all higher praise. With respect to what is personal to myself, the marks of affectionate interest which he has shown towards me through the whole of this affair, deep as they have impressed themselves upon my mind, have caused, there, no new sensations: they are such as I have often before had reason to experience—*Studium suum, curaque de salute meâ, nullâ me novâ voluptate affecti.* I have long enjoyed a proportion, perhaps beyond my merits, of his countenance and friendship. It had ever been my study to seek the approbation of a man, whom, for the mild and amiable virtues of his private character, I esteem and love,—whom for the noble and manly features which mark his public conduct, I admire and venerate—of a man, whom the force of genius and eloquence has raised in his profession to that height, where he excites no envy (for he can have no enemy when he has no rival); and whose whole life—a life not untried on the slippery stage of politics, nor unexposed to all the temptations and allurements of a corrupt ambition—has been a life of honour, integrity, and independence. His has not been "a fugitive and cloistered virtue, unexercised and unbreathed, that never sallies out to meet her adversary, but slinks out of the

* Lord Bacon, 125071

"race where the immortal garland is to be run for, not without dust and heat."—During a period of twenty years, he has fought every arduous contest, in which the rights of his countrymen, and the cause of general liberty have been involved.—So many and splendid have been the triumphs of his elo-

quence, that they have left to him no further honors to attain.

— Nil iam, Theodore, relictum.
Quo virtus, animo, crescat, vel splendor honora.
Culmen utrumque tenes.

641. The whole Proceedings in the Case of BENJAMIN FLOWER, Printer, on a Commitment by the House of Lords, for a Breach of Privilege, in publishing a Libel on the Right Reverend Father in God, Richard [Watson] Lord Bishop of Llandaff: 39 GEORGE III. A. D. 1799.*

[To the original edition was prefixed the following

PREFACE.

THE principal part of the following proceedings of the House of Lords, has already appeared in the Cambridge Intelligencer; and although I, with many others, was anxious that the argument which shortly followed in the court of King's-bench, should be laid before the public, it was neither my wish nor intention again to have intruded myself on their notice; but it being the opinion of my counsel, and of those persons whom I had the opportunity of consulting in my late situation,—men whose characters stand high in the estimation of the independent part of the community, that I ought to re-publish my part, and having neither said nor done any thing throughout the whole of the late proceedings, of which I have reason to be ashamed, I have thought proper to comply with their request. The observations I have now to offer to the public, are not so much by way of apology, as by way of explanation.

Whatever may have been my remarks or strictures on the conduct of public men, either in the Cambridge Intelligencer, or any other publication, I have always endeavoured, from a principle of duty, to obey the laws of my country; and notwithstanding the numerous rigid prosecutions against printers, and authors, which have rendered our present ministers more famous than any of their predecessors, for centuries past, yea, which with their general conduct, will most assuredly "damn them to everlasting fame," I am persuaded, that had I, on a late occasion, been brought before an impartial and independent jury of my countrymen, and have had the usual fair trial

in cases of libel, their verdict would have been—Not Guilty. Had I been favoured with such a trial, my defence would, I own, have been somewhat different from my address at the bar of the House of Lords: but the situation in which I stood, must be acknowledged, by every man of reflexion, to have been peculiarly delicate. Hurried from my place of residence, and so far from having any opportunity of preparing for trial, or summoning witnesses, although lord Kenyon was pleased to suggest to the contrary, I had only two or three hours allowed me to arrange my affairs.* When in London, I had as little time allowed me, previous to my appearance at the bar of the House. In this situation, whatever doubts I might have entertained respecting the legality of the proceedings against me, all I could do was, to procure the advice of two or three friends, whom I thought best able to assist me. The learned gentleman whom I then consulted, observed he could be of no service to me, and advised me, on the present occasion to be particularly cautious. Had I attended to my own immediate feelings, I should have defended the paragraph, so obnoxious, to the best of my ability; but the friends here alluded to, informed me that such a mode of conduct would be considered by the Lords as an aggravation of my offence: that they had already

* "Had he not an opportunity of calling witnesses—had he not the same means of defending himself as in a court of justice?" [See lord Kenyon's Address *infra*.] the language of the deputy Sergeant at Arms, when he first showed me the resolutions of the House, sufficiently answers these questions:—"Sir, you will excuse me, but you must consider yourself as a prisoner, and in my custody, till you are at the bar of the House of Lords." Counsel, it will likewise be recollected, is not on such an occasion allowed.—*Orig. Ed.*

* From the report originally published by Flower.

declared me guilty of having published "a gross and scandalous libel," any attempt to justify which, even if I could prove its truth, would provoke a sentence the more severe; agreeably to the favourite sentiment of some legal characters—"the greater the truth, the greater the libel." Now, although I believe few people evince more firmness than myself, in maintaining their opinions, when conscious they are founded upon solid evidence, there is no one, I hope, who would be more willing to pause, when in doubt, or even to yield those opinions to the judgment of persons, who may be, from various circumstances, better able to determine. In my late situation, I was advised to address the Lords merely by way of mitigation of punishment. I consulted my friends on the principal points of my proposed address, and what I concluded upon, met their entire approbation.

It could not be supposed that any thing I might offer, would have much weight with such an assembly as the House of Lords; but it was my wish, I confess, to make use of the opportunity which presented itself of professing those principles I had on all other occasions maintained; thus answering, before those who probably misconceived my sentiments and character, the calumnies of those prostituted hirelings who can only breathe in the elements of calumny and falsehood, and who are sure to represent every friend to peace and reform, as an enemy to religion and social order; who yelp out the now ridiculous, and unmeaning word Jacobin, against every man who believes legitimate government to be somewhat different from despotism, or who maintains that the massacre of millions of the human race is not the best mode of defending the religion of Jesus. Conscious that my principles would bear the light, I had no scruple in professing them anew, and confirming them in the most public manner possible. There have been instances, in which a man's known and acknowledged principles, have proved the means of mitigating punishment, and of drawing down a very slight sentence, even when a jury have, after a fair trial, pronounced the verdict Guilty;* but in these cases the parties were avowed friends to the general measures of our present ministers. I had no merit of this kind to plead, and thankful am I to heaven, that I had not. My case, therefore, is an instance, that no principles, however constitutional, no regard to Christianity, however pure, can in the least benefit a man, who will not

go all lengths in the support of what he deems a system of corruption and wickedness—the system which has so long disgraced this country, and which is hurrying it to ruin.

Compelled to be my own counsel, I considered myself as having a right to make use of those pleas best suited to my purpose, without however yielding any principle, I had publicly professed. Had I vented opposite or different sentiments, from those I had inculcated from the press, I should indeed deem myself bound to lay before the public my reasons for so doing. A man who presumes to instruct the community, either by preaching or writing, ought to be particularly careful in preserving his consistency, that being the best proof of his integrity. Let his situation be what it may, let him be of any clerical order in the establishment, from an archbishop to a curate, or of any profession or calling among the different sects of Christians, a dissenting minister, or a printer:—if he stand pledged to the public for the truth and importance of his sentiments, should he afterwards pledge himself for the truth and importance of opposite sentiments; and neglect, or with pride and obstinacy, refuse, to lay before the public the evidence which has produced such a change, he must not be greatly surprised if those persons who judge, that amidst the various professions or opinions of the Christian world, an honest and good heart is the grand essential of Christianity*—if such persons should suspect the integrity of the changeling, or if they warmly feeling in this degenerate age, for the best interests of mankind, apply to him the term—time-server, or apostate.

This part of the subject appears to me of such peculiar importance, that I find myself impelled—*To speak that I do know, and testify that I have seen.* I have known men, who with me, have been enraptured with those sacred principles of civil and religious liberty, which, during an early period of the French revolution, shone so resplendently, and who even in the midst of its subsequent horrors, when contemplating the annihilation of a long established system of despotism, civil and ecclesiastical, pronounced that revolution "the most splendid event recorded in the annals of history:"—who, exulting on the downfall of "Mystic Babylon," with just severity reproved those ecclesiastics who lamented that downfall:—I have seen these very men apostatizing from those exalted sentiments which once appeared to fill their souls, and exerting the full force of their talents and eloquence in condemning, in

* "This was lately the case in the Court of King's Bench. The King *versus* the printer *of the Oracle.*"—*Orig. Ed.*

* Luke viii. 15.

toto, all revolutionary principles, holding up the Popish clergy as "the Christian priesthood," and their idolatrous temples and worship, as the "temples and worship of God:"—who once reprobating all civil establishments of religion, as the "natural and never failing means of promoting infidelity," and looking forward with exultation "to the ruin of all such establishments," are now earnestly recommending an union between those who (in the midst of this "crooked and perverse nation,") hold firm and steadfast the pure principles of Christianity, and the corrupt majorities of established churches, notwithstanding their "different principles, ceremonies, and practices."* With such awful ensamples before me, although I would not be high-minded, but fear, I cannot but declare, with heart-felt satisfaction, that the grand soul-ennobling sentiments of civil and religious liberty, which have been held sacred by the greatest and best of men in all ages, have long been, and still are, most dear to my heart; and that however revolutionary those sentiments may be deemed, as they have never ceased, so I trust they never will cease to be my glory.—So far from having yielded any one of my principles, every reader, who exercises common attention, must perceive, that in my late conduct, I have borne a fresh testimony to their truth and importance.†

If I expressed concern at having published the paragraph deemed by the Lords a libel, it requires but a small degree of penetration, or candour, to perceive, that this concern alluded to the circumstances in which I stood. I indeed was concerned, when reflecting on the state of the press, and that such a paragraph should have been made use of to subject me, without a trial, to arbitrary punishment: but I appeal to every one, whether that consciousness of innocence,

* In a long note, occupying fifty pages, the original publisher of this case, here animadverted upon the writings and conduct of a gentleman to whom he alludes in the text; such disquisitions not being suited to this work, that note and several others are omitted.

† "I am sensible of the misrepresentation and abuse to which every man is liable who perseveres in maintaining the original principles of the French revolution; but having, on another occasion (in the preface to "National Sins Considered"), so amply explained my sentiments, that they cannot be misunderstood by any honest man; while I am willing, on the one hand, to listen to any evidence that may tend to prove those sentiments erroneous, so on the other hand, I shall totally disregard every effusion of "malignity or falsehood."—*Orig. Ed.*

that confidence in my principles which appear throughout the address, do not demonstrate that I felt nothing even bordering on contrition.

With respect to my language concerning the bishop of Llandaff, I was anxious, I confess, to show, that so far from having been actuated by any party motives, I was not insensible to the lustre of his lordship's talents, or to the worth of his general writings; but will any one venture to say, I retracted my charge of inconsistency? On the contrary, what I said evidently tended to confirm that charge. "My panegyrics on the bishop were accompanied with that satisfaction, which it was impossible for me to feel, when any thing dropped from me of a contrary tendency." It was perfectly natural for me to conclude, that his lordship considered the insinuations I had thrown out against his character as injurious: and as we both of us professed sincerity in our belief of Christianity, I had a right to appeal to those common principles, held sacred by all its genuine followers.

What I said respecting political societies, has been thought, by some, to be a reflexion on such societies. Nothing could be farther from my intention. Mr. Gilbert Wakefield,* of whose courage, and of whose approach to the utmost point which true fortitude will allow, no one can doubt, made use of the very same argument in his address to the court of King's-bench, and for the same purpose as myself—to prove his love of peace and retirement. I was indeed more cautious on this subject than might have been expected, from a person who had so little time for preparation, in using the word *imputed*, when applied to the designs of some societies which had fallen under the peculiar displeasure of the legislature.

The general respect I professed for the Lords has been thought somewhat inconsistent with the opinion I am well known to entertain, of the general measures sanctioned by that House, and of some individual members; but is there not an evident difference between the Lords, considered as a part of the legislature, and their conduct in their individual and collective capacities? As an essential branch of our excellent constitutional form of government, it was impossible for me not to entertain for the Lords a very high respect; and every man who sincerely believes Christianity, or venerates the precepts and the example of one of its most illustrious champions, the Apostle Paul, must evidently perceive the distinction which that great man observed be-

* See his trial, *antè*, p. 679.

tween the individual in his private capacity, and on the seat of judgment; and the perfect respect he professed for the magistrate, of whose general character for injustice he was fully convinced, and whose decisions and personal conduct he must have reprobated.* Whatever may be my opinion of men and measures, my respect for every branch of the legislature continues undiminished.

Although I declined entering on any defence of the paragraph, reserving to myself the legal right of appeal to some other tribunal, respecting the proceedings against me (of the legality of which, unprepared as I was to controvert, I had strong doubts), I was somewhat desirous to escape with a slight punishment:—this was not from the fear of suffering. No. I had long suspected myself as being obnoxious to the present administration. Many an hour had I employed in seriously examining my principles, and whether they would support me under, not only the persecution of enemies, but what is much more afflictive to a feeling mind, the reproaches of those prudent friends who seldom fail to measure a man's duty by his interest.† Conscious that my principles and motives would fully support me, I could view, unappalled, not only imprisonment, and the loss of property, but at times, banishment from my dear native country, or the loss of life on a scaffold: but the reason I particularly wished for a mild sentence arose from that love of independence which I feel to be a portion of my soul. I was somewhat anxious to avoid the least pecuniary obligation to any one, more especially as I set out in public life, and have ever since continued therein, with the firm resolution, of not being dictated to in the discharge of my duty by any one. The public have, however, without any solicitation of mine, directly or indirectly, paid the expenses of my prosecution, and the loss I sustained by temporary, but unavoidable derangements in business. It would be pride, not independence, were I to omit on this occasion my most grateful acknowledgments for the obligation, which indeed more sensibly affects me, deriving it, as I principally did, from

persons with whom I had no previous acquaintance, and from distant places, where I had not the least expectation of support. Such patriotic conduct proves an attachment to principles, which demands esteem much higher than any personal compliment. Gratitude to those persons, and to a few old, tried, much-valued friends, whose attachment in this age of whim, self-interest, timidity, and dereliction of principle, has induced me to persevere in an employment, not, in such times as the present, the most safe, pleasant, or profitable, and which I had otherwise resolved to relinquish.

As to the sentiments expressed respecting the French Revolution, they are such as I have always inculcated, and of which, the longer I live in the world, the more I am convinced of their truth and importance. Some of the mistaken, but well-meaning friends to liberty, once much disapproved of those sentiments; and I have not, from the inconsiderate and the violent, escaped abuse. So far, however, from, in the least degree, apologizing for those sentiments—I glory in them. It affords me peculiar pleasure, when I reflect, that as I, on the one hand, uniformly maintained the original principles of the French Revolution, so, on the other hand, I have as uniformly protested against their abuses. The unprincipled insurrection of the Brissotines, the bloody horrors of Robespierre, and the more mild, but not less unprincipled, military usurpation and despotism of Buonaparté, have always been, and still are, though in different degrees, objects of my reprobation. On most of these events, many who once widely differed from me, are now of my opinion; but let parties or opinions fluctuate as they may, let the friends to mankind continually diminish, and if it were possible that, in defending the principles of eternal truth and justice, I should be left alone, may my language be, to the last minute of my life—Let God be true though every man should prove a liar.

To close this part of the subject, I endeavoured, in my late address, to unite, to the best of my ability, the *maximer in modo* with the *fortiter in re*. I have, perhaps, dwelt longer in the explanation of some passages in that address than necessary; but as it has led to the discussion of topics of no inconsiderable importance, I hope that discussion has not been altogether useless. The candid reader, even though he should, in some respects, differ from me in opinion, will, I doubt not, do justice to my motives. As for the opinions, misinterpretations, or abuse of the ignorant, the arrogant, or the malignant, I regard them not.

I must now solicit the reader's attention

* See Acts, xxiii. 1—6; xxvi. 24—30. Rom. xiii. 1—8.

† “The language of such persons frequently reminds me of an expression of that laborious and useful minister of the established church, the late Mr. Berridge, who observed—that although prudence was often a Christian virtue, yet, whenever it turned a man aside from the path of duty, or made him sacrifice his God and his conscience, such prudence is at best but a rascally virtue.”—*Orig. Ed.*

for a few minutes, to what I consider of equal consequence—my character and conduct as they respect the public. On the Journals of the Lords I stand recorded as a “gross and scandalous libeller.” My conscience, however, in the earliest stage of the business, pronounced me Not Guilty: it now confirms that verdict. I therefore again, before God and the world, protest my innocence.

I shall not, on this occasion, enter on the general doctrine of libels, or inquire whether, in any sense—Truth may be said to be a libel. Truth surely can never be said to be either “gross or scandalous.” I must therefore conclude, that the language used in describing my offence, implies what is understood by the vulgar term libel, and that the resolution of the Lords charges me with being guilty of calumny, malignity, or falsehood.

In answer to such a charge, I beg leave to reply—that however free I may at times have been in the censure of men, considered as the authors or supporters of certain measures, a freedom which, till the reign of the present administration, was ever deemed the birth-right of Britons, yet there is no one living, I hope, who has been more guarded in bringing unsubstantiated charges than myself. Let any one, in either an exalted or an inferior station of life, prove that I have libelled him, and I deem it my duty, as an honest man, and a Christian, not only to apologize, but to do him all the justice in my power. If any thing, indeed, could increase that natural detestation I have ever felt against libellers, it would be the mischievous effects produced by them in the social circle, and in the world at large. Where is the man, much conversant with society, who has not felt the tongue of the slanderer, “sharper than the serpent’s tooth?” Who has not witnessed the dreadful consequences so often

resulting from the indulgence of passions, unbridled, ferocious, and malignant? Yea, are there not men who, when casting forth their firebrands, arrows, and death, wounding the mind of sensibility, transpiercing the heart of a friend, can at the same time, madman like, laughingly exclaim—*Am I not in sport?* Are there not persons to be found, who, instead of checking such licentiousness, can, on account of the talents or wit, which sometimes characterise libellers of this description, smile at their intemperate sallies, and connive at and apologize for their wanton or wicked levity! Let such persons, however, seriously reflect, that they have an important duty to discharge, not only to society, but to the libeller himself. Their language to him, more especially if he makes a public profession of Christianity, or teaches it to others,

VOL. XXVII.

ought to be—*If any man among you seem to be religious, and bridleth not his tongue, that man’s religion is vain!—Thou, therefore, that teachest another, teachest thou not thyself?**

To pass on to libellers of other description—Let any one take even a slight retrospect of the occurrences which have, during the last ten years, taken place in the political and religious world:—Let him glance at the herd of spies and informers, who have endeavoured to libel away, not only the characters, but the lives of innocent men!—Let him look over a few of the daily effusions of those venal wretches, who have, with unblushing impudence, dared to libel every one, who, however pure his motives, or peaceable his conduct, has ventured to stand up for the RIGHTS OF MAN—abused, insulted, and trodden under foot!—Let him read a few of the sermons preached by all ranks and descriptions of the clergy, on Fast days, and other public occasions, more especially at those abominable profanations of things sacred, those mixtures of heathenism and Popery—consecrations of colours! Sermons, in which the preachers have, and too successfully, alas! raised and inflamed the very worst passions of the human breast. And, mark the awful effects!—the slaughter of millions in a war, in defence of which, notwithstanding the wretched pleas of mere worldly politicians, no man who understands Christianity, dares utter a syllable. Where is the man of humanity, where is the Christian, who can forbear weeping, with mingled sensations of pity and horror, at beholding the scenes which afflicted Europe has lately witnessed?—all the work of the grand libellers of the human race!—To what can we ascribe the prevailing infatuation which prevents the public avowal of these sensations?—When I know the sentiments of many on this subject, and compare them with their general timid, time-serving conduct, and with that respect they habitually show to libellers whose characters I have lightly glanced at, I cannot but suppose that such conduct, such respect, arises from a similar principle to that which actuates certain tribes of Indians, who are reported to worship the devil for fear he should torment them! While, however, I cannot but lament over such a disgraceful, cowardly disposition, it is impossible for me not to feel increasing disgust, against libellers of every description, private and public. I should have felt myself much obliged to Lord Grenville, who moved the resolutions of the House of Lords against me, and to any of the other lords who supported a resolution to censure me.

ported them, had they condescended to inform me,—what was the libellous part of the paragraph alluded to? As they did not, and as I am anxious that my character in this respect should stand clear with the public, as well as to avoid giving similar offence, I have, to the best of my ability, endeavoured to re-consider the subject. Although I shall not presume even to controvert the opinion of so high a branch of the legislature, yet I hope to clear myself, at least, from the imputation of guilt.

In the paragraph alluded to, I asserted that the bishop of Llandaff, who had long opposed Mr. Pitt, applied to him for further preferment. For this assertion I had the best of all possible evidence—that of his lordship's own hand writing. In a letter to Mr. Burdon, late fellow of Emmanuel college, written in answer to some letters publicly addressed to the bishop,* his lordship by way of apology for holding the valuable place of Regius Professorship of Divinity in this University, by deputy, remarked, that he had applied to Mr. Pitt for some further preferment in the church; adding that until he had further preferment, justice to his family would not allow him to resign the Regius Professorship.†

* "See three letters, &c. addressed to the bishop of Llandaff." *Orig. Ed.*

† "It may not be amiss, in justice to his lordship, to observe, that his *only* preferments, at the time of his application were, —The BISHOPRIC OF LLANDAFF, the ARCH-DEACONRY OF ELY, the RECTORSHIP OF CARETIL, and the REGIUS PROFESSORSHIP OF DIVINITY, with the VICARAGE OF SOMERSEHAM annexed. His lordship's private property, although it had considerably increased by a large fortune left him by his friend, the late J. Luther, esq. M. P. for Essex, was certainly not equal to that of some of his episcopal brethren." *Orig. Ed.*

The following extract from the recently published *Life of Bishop Watson*, will prevent any misapprehension of the value of the pieces of preferment above enumerated which this note of the original publisher of Flower's case might otherwise have occasioned:

"Three years before this time, I had intimated to Mr. Pitt my wishes for any piece of preferment which would enable me to resign my professorship; for even with it I was worse provided for than any of my brethren, and without it I should have had a church income of only about twelve hundred a year."—*Anecdotes of the Life of Bishop Watson*, Vol. 1, p. 258, 2nd. Ed.

In his letter of January 24th, 1787, to Mr. Pitt [see it in the *Life of Bishop Watson*, vol. 1, p. 260], the bishop states that his wishes "were not founded in avarice; they extended not so much to an increase of in-

I cannot here help however observing, that I never had the most distant suspicion, (nor I believe any one else) that it is a libel on the character of a bishop to say he has applied for further preferment in the church. I dare on this occasion humbly appeal to every one of their right reverend lordships. However holy and heavenly minded, much my lords, as your affections are set on things above, however tender your consciences, or ardently longing your souls are for a translation to a better world, I am persuaded you would not, such is your condescension, have the least scruple in soliciting for a translation to a more extended sphere of usefulness in this world—a larger and richer bishopric! Your souls, on the contrary, would be filled with gratitude to the statesman who would thus reward you, and your gratitude would be shown forth not only with your lips, but in your lives, by devoting yourselves to his service, and by your usefulness in church and state all the days of your life.

That the bishop of Llandaff, about the time, or shortly after his application to Mr. Pitt for preferment, became what is commonly called an alarmist, and supported the minister whom he had for sometime opposed, and that his sentiments, as displayed in his writings, were different to what they had formerly been, is a fact too notorious to be disputed. Besides, the mere change of sentiment is not in itself criminal; it is sometimes virtuous. Pointing out such a change cannot therefore, merely in itself considered, be justly deemed libellous. The inference however which I drew from the above indisputable facts, and the terms which I so unfortunately applied, were what it must be concluded, in the opinion of the House of Lords, constituted the libel; but here I must confess, that it is the first time I ever knew that the application of the word time-server or apostate, to any public man who changed his sentiments, was ever deemed libelling him: the public have always been left to judge, from the evidence laid before them, of the propriety or impropriety of the terms: the press is open to every man to vindicate himself, and this has been, in such cases, deemed sufficient. Has not Mr. Pitt, for his desertion of those great and excellent principles with which he entered on his popular career, been called a time-server and apostate, thousands of times, and will he not probably have the same terms ap-

"come as to a change of situation; and that I consider as a favour, which a life spent, and a constitution impaired, in the discharge of the most difficult offices of an University, entitled me to expect from any minister."

plied to his name while living, and to his memory after his decease, till time shall be no more;—and yet he never appears to have thought it necessary for the vindication of his honour, to prosecute any man for so doing; but let me recollect—Mr. Pitt, although his majesty's prime minister, is not a lord temporal or spiritual—he is not a right reverend father in God—he is not a successor of the apostles. This constitutes the difference: lords, and more especially spiritual lords, like kings, “can do no wrong.” I will therefore renew the engagement, which, in consequence of my judgment being enlightened, I have in the Cambridge Intelligencer, already entered into, and bow with all possible submission to the opinion of the House of Lords. I hope all authors, printers, and publishers, will take warning by my fate, and never cease to bear in mind, that to insinuate that a peer, temporal or spiritual, however he may change his sentiments, or whatever may be the circumstances attending such a change, can be an apostate or a time server, or be influenced by any undue motive, is a “gross and scandalous libel, and a high breach of the privileges of the House of Peers;” the punishment for which is, without a trial by jury, arbitrary fine and imprisonment.

Although I have suffered severely for an error in judgment, no suffering shall hinder me from making all possible atonement to the right reverend prelate, for the injurious insinuation that he could possibly be governed in any part of his conduct, by any other than the purest motive. No: his lordship has undoubtedly, throughout the whole of his conduct, since he was exalted to the episcopal bench, acted on the same conscientious principles which have guided him from his earliest years. As a member of the University of Cambridge—as a minister of the church of England—as a vicar—a rector—a regius professor of divinity—a bishop—when taking college oaths, or giving his “unfeigned assent and consent before God to all and every thing contained in the book of common prayer, and in the articles of the church of England, as by law established:”—whether residing at his episcopal palace in Wales, or at his charming country seat in Westmorland—whether as a legislator supporting or opposing the minister—in all situations and circumstances—inflexible integrity, disinterested patriotism, the most ardent love of God, and of Christ, a pure apostolical regard for the souls committed to his charge: these have been the motives which have guided Dr. Watson through life,—such is the course he has uninterruptedly steered!

If, however, after the sentence of the House of Lords, I was convinced of my having committed an error, yet conscious it was a mere error in judgment, and equally conscious of my not being a libeller, I was determined, if possible, to have that sentence legally investigated.—The reasons which determined me to take such a step, will be seen in the following narrative, by which it will appear I had the highest legal authorities, in this respect, for my justification.

With regard to what is by far the most important part of this publication, the argument in the court of King's-bench, and the postscript which follows; were I to indulge my own feelings, I should indeed prove to demonstration, that I possess a grateful heart; but any paucy-gyric of mine, after the impression which was made in a very full court on the most distinguished ornaments of the bar, of different political sentiments, would not only be feeble, but almost impertinent. Considering the times we live in, and the peculiar circumstances of the case, I cannot however help affirming, that the noble stand which has thus been made for the most important constitutional privilege of the subject—Trial by Jury, will render the name of Clifford dear to every true Briton, to the latest posterity.

I considered the late proceedings as affecting the dearest rights of my countrymen, and consequently of such importance, that I held myself ready to make a farther appeal, to one of the judges on the prorogation of the last sessions, and to have questioned the right of the House of Lords, to imprison for contempt or breach of privilege, beyond the period of their session; but the difficulty of meeting with any of the judges in London, and some other circumstances of little consequence to the public, induced me to follow the advice of those I had consulted in the former part of the business, and to decline the pursuit for the present, of all farther modes of relief.*—I say, for the present, for I will not give up

* “In the year 1799, Parker, the printer of the General Advertiser, was committed to Newgate, by order of the House of Lords, for a breach of privilege. When parliament was prorogued, Parker was brought by virtue of a writ of Habeas Corpus, before Judge Buller, who immediately discharged him. One of Parker's friends, who attended to give bail for his appearance at any future period, but which was not required, lately informed me, that the judge gave it as his opinion, that the House of Lords had in no case authority to commit, beyond the duration of their session.” *Orig. Ed.*

the hope, that the time may arrive, when the House of Lords will be induced, as the House of Commons have done, seriously to review their own proceedings. Petitioning for this purpose, is one of the modes recommended by a learned counsel, who has paid much attention to the subject [Mr. Hargrave]. I here pledge myself to the public, never to lose sight of this great constitutional question. More favourable times, for such a purpose may arrive: as the House of Commons, a few years since, expunged their vote, respecting the Middlesex election, from their Journals, considering it as inconsistent with the liberty of the subject, so the time will arrive, I trust, when the late vote of the House of Lords, sentencing a commoner, without a trial by his peers, to arbitrary fine and imprisonment, may likewise, on a similar principle, be expunged from their Journals, and that my character may stand as clear in the records of the House of Lords, as it does in society.

Whatever may be my opinion of the late proceedings against me, nothing will, I trust, render me insensible of the privileges civil and religious, which this nation still enjoys, and by which it is distinguished from the major part of the civilized world. After all the numerous encroachments made on our constitutional liberties, under the present ministers;—notwithstanding our debt and our taxes have been, by those ministers in a frantic contest against the liberties and independence of France—doubled! we have yet various valuable rights remaining: we have yet the best constitutional form of government which has hitherto been reduced to practice: we have still a greater degree of happiness political, civil, and social, left among us than among most other European states. The tenure by which we hold these blessings, is indeed from the degeneracy of our countrymen, extremely precarious; but as long as trial by jury is left us, as long as ministers (although they have by virtue of the continual suspension of the Habeas Corpus act removed the grand bulwark of our rights)—content themselves with singling out but a few objects on whom to wreak their vengeance:—as long as the persons of ministers are not declared inviolable, nor their measures a subject too sacred for examination or animadversion, I shall not cease, in the discharge of my public duty, to reprobate those measures as they appear to me to deserve. I will not cease, in my little circle, to warn my countrymen of that frightful abyss, to which their degeneracy, both political and religious, is hurrying them, and which degeneracy, will most assuredly draw down, unless prevented by

repentance and reformation, that divine vengeance, which has sooner or later, overtaken all states in a similar situation. With my confirmed opinion therefore, that the present ministers are the greatest scourge that Providence ever permitted to afflict a guilty country, I am determined to persevere in exposing measures, which tend to the ruin of every thing dear to us as men, as Britons, and as Christians. I can never behold the laws of my God and my country insulted, and his majesty's repeated proclamations against vice and immorality trampled under foot, by statesmen, who with matchless effrontery, can fight duels on a Sunday, and on every other day boast that they are fighting for, good government, law, social order, and religion!!!—without reprobating such conduct as it deserves.

I have already acknowledged my pecuniary obligations to the public, but I find it impossible to close this preface, without indulging some of the finest sensations of the human heart. I can however but feebly express the effusions of gratitude which, when reflecting on the personal attachment shown to me during my late imprisonment, I so warmly feel. This indeed is the more gratefully to be acknowledged, when I further reflect, that part of the system which has been pursued for several years past, and which indeed distinguishes it for wickedness from every preceding system, however corrupt, is the endeavour to poison the springs of friendship, to subdue the best feelings, not only of relationship, but of christianity; and in short, to separate those united by the social ties which alone render life desirable, on account of differences merely political. Although I may not have wholly escaped the effects of a system so completely abominable, yet so far from having reason to complain, I feel myself compelled to return my sincerest thanks to those of my old friends, and to those who for the first time, I have lately had the honour to call by that endearing appellation, for their kind visits, anxious inquiries, and repeated proofs of regard. Such friends have, under God, much contributed to the health, spirits, and tranquillity, I have almost uninterruptedly enjoyed. They will, I trust, accept this acknowledgment, however inadequately expressed: may my earnest prayers to God for their happiness, temporal and eternal, be abundantly answered.

To conclude,—I would endeavour with all the powers and faculties of my soul, to adore and praise that Almighty Being, who has never, even in the hour of severe trial, forsaken me. His gracious presence, the promises contained in his

inestimable gift to mankind, the gospel, have indeed proved to me the rich and never-failing sources of strong consolation. In this day of scepticism, and of not only speculative, but what is infinitely worse, as it abounds amongst professing christians—practical infidelity and atheism, I cannot but again bear my testimony to the truth, to the value of real, vital christianity. Blessed be God, I can add my testimony to that of numbers, who have in all ages, suffered in the cause of integrity, truth, and virtue. The fruits of true religion are, in all situations and circumstances, quietness and assurance. The exceeding great and precious promises of the gospel, the lively hopes of immortality, the pleasures of a good conscience, the divine presence—these can gild the bars of a prison, and render the hours spent in solitude and confinement, some of the happiest ever spent in this world, and the foretaste of that joy unspeakable, that fulness of glory which awaits the righteous in another and a better state of existence. Considering my late imprisonment, with all its circumstances, my heart cannot but expand with gratitude to that all-wise and all-gracious Providence, who in the concerns of individuals as well as in the concerns of the universe, brings order out of confusion, and good out of evil; whose counsel, in spite of all the machinations of wicked men, shall stand, and who will accomplish all his pleasure. Assured that the great Eternal, who rules kingdoms, empires, and not only this world, but unnumbered worlds, is equally attentive to the meanest concerns of the meanest individual, as if that individual were the sole object of his care, I would repose on his wisdom, power, and goodness with unbounded confidence, submit to his direction with the utmost cheerfulness, and, with the firm persuasion that not the least exertion for the welfare of mankind, will go unrewarded—persevere in the path of duty, as the only path of safety, and of happiness.

PROCEEDINGS, &c.

ON Thursday, May 2nd, about half past six in the morning, the printer of the Cambridge Intelligencer, as he was about rising, was informed by his servant, that a gentleman desired to speak with him. In a minute or two he went into the adjoining apartment, where he found Mr. Finch, the deputy serjeant at arms of the House of Lords, who after apologising for the nature of the business he came upon, served the printer with the following notice:

(Copy.)

“Die Mercurii, May 1, 1799.

“Complaint being made to the House of a

certain paragraph in a printed paper, intitled the Cambridge Intelligencer, Saturday, April 20, 1799, highly reflecting upon the honour of the Right Rev. Richard Lord Bishop of Llandaff, a member of this House; and containing a breach of the privileges of this House.

“The said paragraph was read by the clerk. Then Mr. Richard Barry was called in, and sworn, and says, he is clerk of the securities in the Stamp-office: and he produced an affidavit filed in the Stamp-office, dated 4th of August, 1798, and sworn by Benjamin Flower, of Cambridge, in the county of Cambridge, printer, in which the said Benjamin Flower swears that he is the printer of a certain newspaper, called the Cambridge Intelligencer, that he is the publisher of the same newspaper, and that he is the sole proprietor thereof.

“Then Mr. John Watts, gentleman, was called in and sworn, and says, he is the inspector of country newspapers, and he produced a newspaper, intitled the Cambridge Intelligencer, Saturday, April 20, 1799, which he says was sent up to the Stamp-office by the distributor of stamps, at Cambridge, to be filed. That from the said paper, Mr. Benjamin Flower is charged with the duties for advertisements inserted in the same. And from the foot of the same, the following extract was read:—‘Letters are to be sent (post paid) to the printer and publisher, Benjamin Flower, printer, Bridge-street, Cambridge, where this paper is printed and published.’ The said paper was read by the clerk.

“Resolved, by the Lords spiritual and temporal in parliament assembled, that the said paper produced and read, intitled the Cambridge Intelligencer, Saturday, April 20, 1799, is a gross and scandalous libel upon the Right Rev. Richard Lord Bishop of Llandaff, a member of this House, and a high breach of the privileges of this House.

“Ordered, that the serjeant at arms attending this House, do forthwith attach the body of the said Benjamin Flower, of Cambridge, printer, and bring him in safe custody to the bar of this House on Friday next, to answer for his offence, and this shall be a sufficient warrant in that behalf.

(Signed) “GEORGE ROSE, Cler. Parl.”

“To William Watson, esq. Serjeant at Arms, attending this House, his Deputy or Deputies, and every of them.”

The printer, as soon as he had read the above notice, informed the officer, that he wished to show the most prompt obedience to the order of the House of Lords; but hoped he should be allowed as much time as possible to arrange his affairs; after a short conversation, it was agreed to leave Cambridge at half past twelve the same day; during this short period, he was employed in giving a few directions respecting the publication of his

paper the following day, in selecting two or three papers from his file, which he conjectured he might have some occasion for, and in taking leave of his friends, some of whom displayed those feelings, which, he can truly say, affected him more than his own situation.

At the time specified he set out with Mr. Finch in a post chaise. It was indeed some consolation to the printer to find, that he had for his companion, not a rough brutal thief-taker, but a gentleman, whose urbanity and civility lessened the disagreeableness of the journey; and who did not for a moment display any appearance of that insolence of office, which though at all times disgusting, is peculiarly so in the hour of perplexity or distress. After a journey, in such circumstances as pleasant as possible, the printer was lodged at the house of a sheriff's officer, in Chaucery-lane, London, where he arrived about nine o'clock in the evening. He shortly retired to rest; and he recollects few nights on which he rested better, than that alluded to, and few mornings in which he found himself more refreshed by sleep than the succeeding one. The treatment he met with at the house was civil; but from the charge attending one night's lodging (seven shillings and six-pence, for the room merely), the propriety of such places being called sponging-houses cannot be doubted. The sum in the present instance, is so trifling, that the printer would not have noticed it to the public, on his own account; but when he saw five unfortunate persons, confined for debt in the same house, he could not but reflect on the necessity of a Reform, in this, as well as in other respects. From conversation with these persons, and from others, it is but too evident that sad abuses exist in some of the houses of this description, and which manifestly tend to the injury of both debtor and creditor. Whether the law, as it now stands, can effectuate the necessary reform, he knows not; but it is certainly a subject well worthy the attention of those in whose hands the administration of our laws is placed.

The following day, the printer employed the very few hours allowed him, in consulting one or two persons, on whose judgment, integrity, and disinterested friendship he could firmly rely, with respect to the line of conduct he should pursue at the bar of the House of Lords. He likewise conversed, for a few minutes, with a professional gentleman, with whom he had for some time been personally acquainted. He informed the printer, that counsel, in the present stage of the business, could be of no service to him. The learned gentleman, with the other friends alluded to, confirmed him in the opinion, he had indeed in some measure already entertained, that as the House of Lords had on the preceding day, the very first time of reading the paragraph complained of, adjudged it—

“A gross and scandalous libel on the bishop of Llandaff, and a high breach of the privileges of the House:”—And had in this summary way pronounced a verdict of guilty, nothing remained for him, but to address their lordships in mitigation of punishment. Conscious that, in this respect, his ground was firm, he resolved to avail himself of the right, or privilege (for he knows not which their lordships consider it) allowed to persons in such a situation, of throwing himself on the justice and clemency of the House. About two o'clock he was conveyed by the deputy serjeant at arms, to the House of Lords; and delivered into the custody of the serjeant at arms, William Watson, esq. In this gentleman the printer recognized an acquaintance of his youth: his behaviour was equally polite with that of his deputy. At four, Mr. Watson having informed the House that, in obedience to their lordships' commands, he had attached the body of Benjamin Flower, printer, of Cambridge, he was directed to bring him in. Strangers were ordered to withdraw, and the printer was brought to the bar between the serjeant at arms, and his deputy, who remained with him till he withdrew.

The proceedings of Wednesday were then read, and the Cambridge Intelligencer, of April 20th was shown to the printer. He was asked whether he was the printer; on his answering in the affirmative, the following paragraph which had before been read to the House, was then pointed out to him, and he was desired to read it.

“The Bishop of Llandaff has made a fine speech in support of the minister's plan of Union. The brief history for a few years past of this ‘humble retired churchman,’ as he modestly terms himself, is curious. For sometime he was an opposer of the minister: finding that was not the way to preferment, he suddenly became an alarmist, then *applied to Mr. Pitt for further preferment* (this our readers may depend upon as a fact), and has since supported his measures. The minister, however, has not yet thought the right reverend time-server and apostate worth paying, and he remains in the church—*In statu quo*, the ‘humble’ bishop of Llandaff, with a living, and what is nearly a sinecure in this University—the regius professorship of divinity. The public will doubtless give him all the credit for his sentiments he deserves.”

After reading the above paragraph, two or three formal questions were put to the printer:—Whether the paragraph was inserted by his order?—If he was the author, &c. to each of which he directly answered in the affirmative. He was then informed—“If he had any thing to say—That was the time:” on which he addressed their lordships, in substance as follows:

My lords; anxious from the moment I received the orders of your lordships, to show my perfect respect for this honourable House,

by an immediate compliance therewith:— Fatigued as I am in body, and in a state of mind, which I shall not attempt to describe, but which your lordships may easily conceive:—Unprepared, and unfitted to appear before your lordships, may I venture to hope, that these very circumstances will plead for me; and that I may, for a few minutes, be indulged with your lordships' attention. I more especially hope for this indulgence, when I at once inform your lordships, that it is my determination, not to say a single word in defence of the paragraph, which has incurred your lordships' displeasure. I am indeed sorry, that in the extreme hurry of business, in which as editor, printer, and publisher, of the paper in question, I am necessarily engaged, the said paragraph should unfortunately have escaped me.

With respect to the right reverend and learned prelate, to whom the paragraph alludes, I will venture to affirm, that no one has borne an higher testimony than myself, to the excellent writings and tracts of his lordship, and more particularly to those in favour of Christianity. Gratitude compels me to make this acknowledgment, when I reflect that by those writings, many of my doubts have been removed, and my faith has been confirmed in a system, which is now my only consolation. Feeble and insignificant as were my panegyrics, they were sincere; and accompanied with that satisfaction, which it was impossible for me to feel, when any thing dropped from me of a contrary tendency. As no one is better acquainted with the Christian system than his lordship, and as the characteristic features of that system, and which raise it above, not only those modern theories, which have been falsely termed philosophy, but above the superior theories of ancient philosophy are—The forgiveness of injuries—The love of enemies—it is surely impossible that his lordship should entertain the least desire for rigorous proceedings on the present occasion.*

* These proceedings against Flower are thus noticed in the Anecdotes of the Life of Bishop Watson, Vol. 2, p. 89:

"In a few days after I had made this speech" [on the Union with Ireland; see the speech in the New Parl. Hist. Vol. 34, p. 735], "I set forward into Westmorland. Whilst I was on the road, lord Grenville brought to the bar of the House of Lords, one Flower, of Cambridge, for having been guilty of a breach of privilege, in publishing something against my speech; what that something was, I never deigned to inquire. The punishment inflicted by the House was, as I remember, imprisonment for six months, and a fine of 100*l*. I sent the following letter to lord Grenville on the occasion; for I thought myself the more obliged to him, as I had no acquaintance with his lordship, and was wholly

With respect to your lordships, I do with the utmost sincerity of heart, most solemnly declare, that nothing could be farther from

"ignorant that I had been the object of Mr. Flower's abuse:—

"*Calgarth Park, Kendal, May 10th 1799.*"

"My lord; I yesterday learned from the newspapers what has passed in the House of Lords, relative to Mr. Flower. I am sensible that your lordship has taken up this matter from your great attention to the public service; yet I must beg you to allow me the liberty of returning you my thanks for the protection which you have thereby afforded to myself.

"I am an utter stranger to the person and character of Mr. Flower, and wholly ignorant of the magnitude of his offence; I cannot, therefore, with propriety, interfere in soliciting a mitigation of punishment; but if any application should be made to the House for that purpose, I will trouble your lordship to say, that the bishop of Llandaff, as an individual, will feel much more satisfaction in forgiving the man's malignity, than in avenging it.

"I have the honour to be, &c.

"R. LLANDAFF."

"Lord Grenville's answer, dated *Dropmore, May 14, 1799.*

"My lord; I was this morning honoured with your lordship's obliging letter. In the instance to which it relates, I have only discharged a public duty; but it was with pleasure that I availed myself of the occasion to express my respect for the character of a person, whose exertions in the defence of religion are, I am persuaded, the real cause of the scandalous and unprovoked calumnies against him.

"If any application is made to the House in behalf of Mr. Flower, I will not fail to obey your lordship's commands.

"I am, &c. GRENVILLE."

At a subsequent period, in reference to the proceedings in the case of Sir Francis Burdett, the bishop of Llandaff expressed his sentiments concerning the privileges of the House of Commons as follows:

"The power of expelling a member from the House of Commons is a privilege essential to the constitution of it as an House; but the committing a member, or not a member, to prison, and by military force, for a speech or writing which has not been found by a jury to be a libel, is a privilege, which I cannot prove to my own satisfaction to be either necessary to the constitution of the House of Commons, or useful to the state. What the decision of the present question may be, is wholly uncertain. Should it be in support of the Speaker's warrant, I think it ought to be followed by a law, prohibiting such violence in future, and defining, as far as can be

me, than the most distant idea of a breach of the privileges of this high, and essential branch of the British legislature; but your lordships have already pronounced me guilty of this offence. I do not come here to dispute; but will your lordships permit me, to endeavour to soften your lordships' displeasure, by an appeal to my habitual principles, and conduct; thus, proving to your lordships, that it is absolutely impossible that I should intentionally have committed the high offence with which I am charged. My lords, it is not my present professions merely, by which I wish to be judged. No, my lords, I repeat it—My habitual principles and conduct, claim, on this occasion, your lordships' consideration. Few of your lordships probably, know any thing of the Cambridge Intelligencer, but from the unfortunate paragraph which has drawn down your displeasure. But, my lords, if you will permit me to read one or two short extracts, you will be the better enabled to judge of the truth of my present declarations.

My lords, in my first address to the public, when presenting the plan of my paper, I thus expressed myself:

"With respect to the important branch of politics, the editor would deem himself unworthy of encouragement, were he not to be explicit in the declaration of his sentiments. On the present occasion, he deems it not only his duty, but his privilege as a Briton, to declare himself a zealous friend to the British constitution, composed of the three estates of King, Lords, and Commons; and as settled at the Glorious Revolution. Every attempt therefore, by fraud or by force, to undermine a constitution, contrived by the wisdom, and purchased by the blood of our ancestors, will meet, in the Intelligencer, with the most determined reprobation.

"The editor cannot, however, rest contented with declaring himself a friend to the theory of the constitution merely. The excellence of a theory consists in its being reducible to practice. He is firmly convinced, that the genuine principles on which the British government is erected, tend to raise, to a very exalted height, the prosperity of those who live under it. He, therefore, deems it necessary to declare his attachment to every branch of the constitution; and that while he is anxious for the preservation of the just prerogatives of the crown, and the due privileges of the peerage, he is no less anxious for the preservation of the invaluable and inalienable rights of the people, and in particular for the most important of those rights—An House of Commons, which, for its purity, integrity, and independence, shall at all times deserve

"done, the extent of privilege; for I must ever adhere to the maxim, *Ubi jus incertum, ibi jus nullum.*"—*Letter to Mr. Harrison, Life of Bishop Watson, Vol. 2, p. 403, 2nd edition.*

†

the title of the representative of an empire of freemen. A free, adequate, and frequent representation of the people, is what a distinguished writer, justly admired by all parties, (Judge Blackstone) styles—The spirit of our constitution.

"While the editor thus professes himself a friend to the reform of our representation, he is solicitous to be understood, that the only means he trusts his countrymen will ever adopt for the furtherance of this important object, are those which are peaceable and constitutional. It is a peculiar excellence of our form of government, that it contains within itself the principles of reform and improvement. Every attempt, therefore, to promote the reformation of even acknowledged abuses, by the principles of anarchy, or by means of riot and insurrection, (principles and means which must, by every honest man be abhorred) will in this paper be steadily opposed."

My lords, notwithstanding this declaration of my principles, it will not excite your lordships' surprise, if considering my present situation, I am somewhat apprehensive that the foul tongue of slander may have insinuated to your lordships, that I am a person tainted with Jacobinical principles, or addicted to Jacobinical practices. If your lordships should still harbour such a suspicion, what follows will, I trust, obliterate it for ever.

In my remarks on that happy event for France, and for humanity,—The fall of Robespierre, I expressed myself as follows:—

"We have now to congratulate our readers, the public, and the world in general, on the fall of a tyrant, who had too long disgraced his country, the cause of liberty, and the human species. That tyrant we need scarcely add, was Robespierre. Although possessed of but moderate talents, and destitute of every qualification to form the enlightened statesman, he contrived in the first stage of the French Revolution, to get himself elected a member of the National Constituent Assembly. In this situation, although the avowed friend of liberty and of limited monarchy, he was little attended to, and generally despised. After the completion of the new constitution, he joined the Brissotine faction, in the club of Jacobins, who, at the very time they were swearing with their lips to maintain the new formed constitution, were, as Brissot himself afterwards confessed, plotting in their hearts to overturn it. The consequences of this dishonest union were, the shocking insurrection, and the unjust revolution of the 10th of August. The Brissotines having thus accomplished their project, and seated themselves in power, hoped to have done with the work of insurrection and blood-shed, and to have modelled a government after their own wild imaginations. This by no means suited the aspiring Robes-

* Cambridge Intelligencer, July 20, 1793.

pierre, who, with the late Danton and Marat, his partners in iniquity, contrived the massacre of the second of September, in which so many innocent victims were sacrificed. Not sufficiently glutted with the blood of their fellow citizens, it was their design, as appeared by a letter of Danton, laid before the National Assembly by Roland, to have extended the massacre to every state prison throughout the empire! To the honour of the French nation, be it recorded, the order was almost every where successfully resisted. The power of Robespierre, however, continually increased, and as it increased, it became more despotic and bloody. He was one of the principal instigators of the murder of the King, the Queen, the princess Elizabeth, of those patriots, Bailly and Barnave, of the Brissotines, and afterwards of his associate Danton. Aspiring to a still larger share of power, he was contriving new plans of proscription and murder, when his associates, fearing for their own safety, first forsook him, and then brought him, and those of his immediate party, to the scaffold. This execrable tyrant died as he had lived, undaunted, persevering, and blood thirsty. In his last speech in the Convention, he lamented that the savage decree, the joint production of himself and Barrere, for giving no quarter to the English, had not, in a single instance, been put in execution.*

I will only trouble your lordships with one remaining short paragraph, containing reflections on an event, which I will affirm, could not possibly more harrow up the soul of any one of your lordships, than it did mine:—I mean the death of Louis the 16th. After reproaching the insincerity of the French Directory, in the negotiation set on foot by his majesty's ministers, about the commencement of the year 1797, I remark as follows:—

“We wish we could here finish our criminal charges against the Directory; but we find by the late Paris papers, that the anniversary of the murder of their king, has been again celebrated with disgusting parade as a festival. We will never suffer that day on which all the principles of truth, justice and liberty, the most sacred rights of man, were completely trampled under foot, to be thus celebrated, without endeavouring to raise the just indignation of our readers. The whole proceedings, from first to last, against that unfortunate—that patriotic monarch, would have disgraced a convention of savages! That the murderers should again glory in their shame, we do not wonder at. It affords however some consolation to find, this infernal festival has been so reprobated in France, that there is some reason to hope it will not be again repeated; and if the combined powers would but relinquish their designs against the French, there is farther reason to hope that the people may themselves do

justice to those men, who, to procure their ill-gotten power, first embued their hands in the blood of their king, and to preserve it, in the blood of their fellow citizens.”*

My lords, the extracts I have read are only a few I casually cast my eye over, during the very short time I had to arrange my affairs preceding my journey; these are from papers of different dates; and I can with the most perfect sincerity declare, that the sentiments I have inculcated on these subjects, have been invariably the same.

In farther proof, my lords, of not only my constitutional principles, but of my love of retirement, may I beg leave to mention—that I have never been a member of any political society; and that I have uniformly opposed the imputed designs of those societies well known to be peculiarly obnoxious to your lordships. I may add, that so far from having any thing within me of the leaven of faction, or from supporting even the opinion held by respectable gentlemen of different parties, that a systematic opposition to the measures of ministers, in general, is necessary, I can look back on a period, previous to the breaking out of the present awful war, when I ranked amongst the friends of his majesty's present ministers, and firmly defended their measures.

Had it not, my lords, been for the shortness of the notice for my appearance this day, and had your lordships permitted me, I could easily have called numbers of the most respectable witnesses in my favour:—Gentlemen of the university and town of Cambridge, of this metropolis, and of various other places:—those to whom I have been in the habit of unbosoming myself. They would all testify that the principles I have this day professed, have been the same in all companies, and on all occasions.

I trust, my lords, what I have thus presumed to offer has not been entirely irrelevant, but that it affords almost demonstrative evidence, that it is absolutely impossible I should have intentionally been guilty of libelling any one of your lordships, or of invading the privileges of this House.

Will your lordships allow me to mention my circumstances. Totally unconnected with party, and hoping I shall never be the dependant of any party, my sole dependance for support is on my daily labour. The paper which I have, amidst a variety of discouraging circumstances established, notwithstanding the extent of its circulation, is yet, owing to the scarcity of advertisements, a source of very small emolument. Permit me frankly to inform your lordships, that the statement of my income as lately delivered in to the commissioners of the town of Cambridge, is only one hundred and forty pounds per annum; a statement so just and satisfactory to the commissioners that their great number of returned

* Cambridge Intelligencer, August 23, 1794. VOL. XXVII.

* Cambridge Intelligencer, Feb. 4, 1797. 3 T

statements did not include mine. Trifling as this income may appear to your lordships, I term it—Independence; and when I reflect on the manner in which it is earned, I term it an honourable independence, the quiet enjoyment of which is all I wish for, to carry me to my grave. But, my lords, can such circumstances as these bear a fine?—Will not the very foes, which I am informed the rules of this House authorize your officers to demand, unless your lordships should, as in some cases, exempt me from their payment, bear hard upon me? What must be the effects of imprisonment, more especially if the place of that imprisonment is fifty miles distant from my stated residence, and where my business is conducted? Can the ruinous aspect of my affairs afford any pleasure to your lordships?—Impossible!

My lords, permit me to add, that the very reflection of my having thus publicly incurred the displeasure of this House, the language in your resolutions—the censure and reprimand of your lordships—These, to a man, who has ever been anxious to obey the laws of his country, and to show his perfect respect for every branch of the legislature, must be a punishment, sufficient surely to answer every purpose of justice; and will, I venture to affirm, constitute a safeguard, a perfect security against a repetition of the offence, which, as it is the first, will most assuredly be the last. Should your lordships thus dismiss me, I will not say such conduct will make me a friend to the genuine constitution of my country—No my lords—that friend, I repeat, I have been on all occasions, but it must naturally increase the gratitude I feel for the happiness I have hitherto enjoyed, under its protection.

I have, my lords, already detained you longer than I intended, but I cannot retire without addressing your lordships, for one minute, as Christians.

You have, my lords, this day, been offering up your prayer to Almighty God, for the “forgiveness of your trespasses;” you are in the daily habit of offering up this prayer.* You my lords, best know the disposition with which you have addressed this prayer to the great Searcher of hearts! Let me remind your lordships, that the period cannot be far distant, when we must all appear at a bar—infinitely more awful than that at which I now stand! At that bar, all our professions of Christianity will be brought to the touchstone: our actions must then determine, for ever, our real characters. Depending on divine mercy for the pardon of my offences, at the same time conscious that my habitual conduct proves the sincerity of my professions, I trust, that the religion, the consolations of which have supported me in trials of a private

nature, the most affecting to humanity, will support me in this public trial.—Yea, my lords, I feel those consolations now supporting me. Reflecting, that no event in this transitory life, is to me of consequence, but as it affects, and as it prepares me for a state of future felicity—with that felicity in prospect, I retire from this bar, throwing myself on the justice and the clemency of your lordships, at the same time experiencing that composure, that tranquillity, that calm sunshine of soul, yea, I will add, my lords, that heart-felt joy, of which nothing in this life can possibly deprive me!

The Printer then retired from the bar in the same manner as he was conducted.

Strangers being excluded, as usual when the House is in a committee of privileges, the parliamentary reporters were absent: we are therefore unable to give any farther account than what follows. The substance of Lord Holland’s arguments, we were since favoured with, and have the best authority for inserting.

Lord Grenville, who had complained of the breach of privilege, spoke for some little time on the extent of the offence, and moved—That Mr. Flower be fined one hundred pounds, and committed to Newgate for six months, to be there confined after the expiration of the said period, till he had paid his fine.

Lord Kenyon said a few words in favour of the motion.

Lord Holland observed, that rising after Lord Kenyon, added to the embarrassment which he felt on speaking what he was afraid might be misconstrued. He trusted however no professions were necessary to prove to the House, that he was, and always should be as anxious to preserve the character, honour and privileges of the House as any man there; as indeed the only sure method of preserving the dignity of the proceedings, and the ends of the existence of that branch of the legislature, as well from clamour, interruption, or violence, as from the encroachments of prerogative, or the still more baneful influence of ministerial corruption and intrigue. He should begin what he had to say with what might appear a whimsical confession—that he had never read or heard the paragraph in question, having arrived too late; but this circumstance at least would prove one point, and answer the otherwise possible imputation, that of personal disrespect to the right reverend prelate alluded to, or any approbation of what tended to diminish the respect due to his situation or character. His objection was, indeed, to the proceeding altogether, but particularly to a fine, and imprisonment for a time certain. He wished to persuade the House to abandon the practice of fining, as well as imprisonment for a time certain, as neither consonant with the general principles of English law, nor necessary for the security of their proceedings. He did not mean to combat their regulations, but to wish them to renounce it; he wished them only to abandon the exercise

* Some of our best friends in England do not “retire from the bar, always, as the public business is quiet hours.” *Chap. Edit.*

and practice of it, as involving in it questions of great magnitude, and ultimately likely to produce either unjustifiable and cruel proceedings, or discussions of a very delicate nature between the two houses of parliament. His lordship then defined the nature of breach of privilege and libel, and maintained that though a libel might be and often was a breach of privilege, and a breach of privilege often a libel, yet they were distinct in their nature, and yet more distinct in the proper mode of proceeding against them. The principle of punishment in case of libel was the same as in all other crimes, for the purpose of example: to constitute the crime, intention and overt act (if he might so call it) must be proved; but the breach of privilege was not of the nature of crime, nor proceedings against it of the nature of punishment. A court of judicature and *a fortiori* the legislature itself must have the power of doing away all obstructions, of removing all obstacles to the discharge of their duty; but it was not for the purpose of punishing the offender, but with the mere and simple object of preventing the interruption, that they should proceed; and if there be such interruption it must be done away; if there be such obstruction it must be broken through; if there be such obstacles they must be removed; though they be ever so accidental, and thrown in our way without any evil intention whatever. Now, to proceed in this case, imprisonment of itself ending with the adjournment was, he contended, sufficient: that the House of Commons considered it sufficient for the vindication of their own privileges, and that in some cases in Charles the Second's time, they seemed to have expressed strong opinions that they at least thought it sufficient for the House of Lords, and were far from approving such summary proceedings. He then referred to several cases, and particularly to that of sir S. Barnardiston, as they had been most ably stated in the opinion of Mr. Hargrave,* (in the case of Mr. Perry) in which it appeared the censure and proceedings of the Lords had been condemned by the Commons.—His lordship proceeded to observe, that with regard to the punishment of libel, he supposed it was not necessary to show their lordships that this was not a proper place to institute proceedings against crimes in the first instance, and at the suggestion of one of their body. It was not necessary for him to quote lord Hale, to allege that nothing ought to be punished by the House that is cognizable in the inferior courts: it was still less necessary to dwell on the peculiar hardship of such proceeding, and of its violation of the most general maxims of English law. The party was not tried by his peers, the guilt of the libel was previously declared, witnesses were examined in his absence, the court was a close court, and above

all, the House was accuser, judge, jury, and the injured party. What then could be said for that part of the proceeding against which he objected—he meant the fine and imprisonment for time certain? Nothing but that there were precedents, but even those he believed not so frequent, or so ancient as many noble lords seemed to imagine. Were it not for fear of fatiguing their patience, he would go through them, but he should simply observe, that this was the twenty-fourth or fifth instance since the reign of James the First, when the practice first began in the House of Lords, having been previously adopted in the House of Commons in Queen Elizabeth's time; and that a third of those precedents (he was sorry to observe it) had occurred in his present majesty's reign. How it had happened that the House of Commons had abandoned, and the House of Lords had preserved the practice, it might be superfluous to examine; but he confessed that he thought he could account for it with at least some degree of plausibility, though in a manner that would not strongly recommend the practice: their lordships once exercised an original jurisdiction: the manner as honourable to themselves in which they had acquiesced in the wishes of the Commons, and had allowed the exercise of a right (whenever it arose odious and useless) to fall into disuse, must be familiar to their minds; but while in the habit of exercising that jurisdiction, it was natural enough, though not perhaps strictly just, that they should blend the two proceedings together, and wherever a breach of privilege was also a crime, to adopt the two modes of proceeding in one; to remove the obstacle, and at the same time to punish the guilt; but their jurisdiction gone, they ought surely no longer to punish, since they were not the proper judges of the guilt, but merely to remove the obstacle; and it would be wise, prudent, and moderate, to abandon a practice which admitted of abuse so great, that he almost shuddered to suppose it; and violent as the feelings of men unfortunately were at this moment, yet the extent to which this summary proceeding admitted of abuse, would, he was sure, even now strike every man with apprehension and jealousy. They must consider that if they had the power to declare the guilt, to fine and imprison for time certain, *they had in fact the power to enact the crime, CONFISCATE THE WHOLE PROPERTY, AND IMPRISON FOR LIFE EVERY SUBJECT!* He did not mean to say that there was even now danger of such an abuse; but proceedings which in their principle admitted such a possibility, should not surely be resorted to unless absolutely necessary. The House of Commons, ever jealous of its privileges, had preserved them without it, and there was no reason to apprehend any diminution of their authority by abandoning so obnoxious and so unreasonable a practice. His lordship apologized for detaining the House so long; he said he did not expect to

* Published in Hargrave's Juridical Arguments, vol. 2, p. 183.

make much impression; neither the temper of the times, nor the nature of the argument, which at the first appearance might seem to attack the privileges and authority of the House, were such as to promise any very immediate success; and certainly arguments of this nature could not derive much weight from the authority of an individual whose habits, whose age, exclusive of all other personal disadvantages, rendered him a weak advocate in such a cause. He should be contented if what he had said should make one noble lord either now or hereafter when better times came (for worse times God knows) cannot be for the cause of liberty and justice) examine the grounds on which these proceedings stand, and reflect on the mischief to which the practice must ultimately lead. For himself, though he had argued these points, he certainly felt the greatest repugnance and disgust at all the late proceedings against the press. Persecutions for writings ought seldom, very seldom, he had almost said never be adopted; but if a strict and severe execution of the laws against public libels are to be resorted to, in order to preserve even the appearance of justice, some equality must be observed, and yet he had perceived with concern, that a paper was prosecuted for daring to do what the hearts of Englishmen felt, what all Europe acknowledged, and what crimes and misgovernment was committing over a large portion of Europe; namely, that the emperor of—* [Here his lordship made some strictures, in very energetic language, on a late prosecution.] A paper not friendly to ministers is punished for copying a paragraph from other journals, so jealous were we of our excellent allies; but another paper almost under the sanction of government [the Sun] is burnt by order of the Irish House of Commons for a gross and scandalous libel on that body; † yet no prosecution takes place, and that paper still continues to enjoy and deserve the patronage of ministers. Is then the House of Commons of Ireland less connected with us than the emperor of Russia—are we less interested in the dignity of the Irish legislature than in the free principles of the court of Petersburg? Were the principles of the Commons of Ireland less congenial with our own, than those of that court, and were they, as he most apprehended of all three, nearly the same? He begged not to be mistaken, he recommended the prosecution of no writing—God forbid that he should; but he maintained that justice (if prosecution of writings can be justice) could not be considered as such unless it was impartial.—Unless severity was the order of the day, and they were severe on both sides, that severity could not and would

* See the case of the publishers of the Courier, for a libel on the emperor of Russia, p. 627 of this volume.

† As to this proceeding, see 3 Plowden's History of Ireland, 920, 921.

not be considered as the strict and equitable exertion of justice, but as the angry and petty revenge of a faction.

Lord Kenyon said, that there was no ground for complaint on the score of severity of punishment on such an occasion, where the offence was manifestly flagrant. If the libel had been made matter of prosecution in the court of King's-bench, he was persuaded that the prisoner would not have come off with so slight a punishment. At length the following motion was put, and the question carried:—

“That the serjeant at arms do convey the body of Benjamin Flower, printer, to Newgate, to be kept in safe custody for the space of six months, and until he pay the fine of one hundred pounds.”

The printer after being informed, in conversation with some of the officers of the House of Lords, of his sentence, and waiting two hours while the order for his commitment was making out, was conveyed by the serjeant at arms, to Newgate, where he arrived about nine o'clock.

The following is the bill of fees presented by the serjeant at arms to the printer, charged, as he was informed, according to the rules of the House.

Copy.

	£.	s.	d.
To the Serjeant at Arms Attachment Fee - - - - -	5	0	0
Ditto Discharge - - - - -	5	0	0
Two days in custody at 1l. 6s. 8d. -	2	13	4
Yeoman Usher, Attachment Fee -	2	0	0
Discharge - - - - -	2	0	0
Clerk of Parliament for the order, for releasing a Delinquent* -	6	13	4
For the like order to the Clerk Assistant - - - - -	2	0	0
Order of Attachment - - - - -	1	1	0
Order to be brought to the bar -	1	1	0
Travelling to Cambridge and back again at 1s. a mile.† - - - -	5	10	0
	£.32	13	8

Which bill the printer discharged, taking the following receipt for which he paid fourpence.

Copy.

Received 4th May, 1799, Of Mr. Benjamin Flower, Thirty-two Pounds Eighteen Shillings, and Eight-pence, being the amount of Fees and Disbursements, as per account annexed.
 £.32 18 8 (Signed)
 J. FINCH, Dep. Serj. at Arms.

* “The reader will note, that by ‘Discharging and Releasing a Delinquent’ is understood,—Discharging and Releasing ‘him from the House of Lords to Newgate.’” *Orig. Ed.*

† “The Serjeant at Arms and his Deputy ‘when on public business, pass free of Turnpike.’” *Orig. Ed.*

The printer having merely heard his sentence in conversation, and by report in the public prints, and finding he had a right to a copy of the same, sent the following note.

“ May 8th, 1799.

“ Sir; I demand a copy of the warrant of commitment, or commitments, by which I am detained in your custody. I am, Sir, your humble servant,
BENJ. FLOWER.”

“ John Kirby, Esq. Keeper of his Majesty’s Gaol of Newgate.”

Which Copy was delivered to him as follows :

COPY.

Die Veneris, May 3rd, 1799.

The Sergeant at Arms acquainted the House, that Benjamin Flower had surrendered himself, and was in his custody.

Whereupon he was ordered to be brought to the bar, and being brought to the bar accordingly, he was informed of the complaint made against him, of his having printed and published a libel upon the right reverend Richard Lord Bishop of Llandaff, a member of this House, in the paper intituled “ The Cambridge Intelligencer, Saturday April 30, 1799;” and the said paper was shown him, and the said Benjamin Flower having been heard as to what he had to say in answer to the said complaint, and having acknowledged himself to be the printer and publisher of the said paper so complained of, and also that he was the sole proprietor of the same,—

He was directed to withdraw.

Then the said paper was again read.

Moved, to resolve by the Lords spiritual and temporal in Parliament assembled—That Benjamin Flower of Cambridge, printer, having presumed to publish a libel on the right reverend Richard Lord Bishop of Llandaff, a member of this House, in the paper intituled “ The Cambridge Intelligencer, Saturday, April 30, 1799,” is guilty of a high breach of the privileges of this House:

Which being objected to—
After debate

The question was put thereupon.

It was resolved in the affirmative.

Moved, to resolve by the Lords spiritual and temporal, in Parliament assembled—That Benjamin Flower of Cambridge, printer, do for his said offence pay a fine to his majesty of one hundred pounds, and that he be committed prisoner to Newgate for the space of six months, and until he pay the said fine.

The question was put thereupon.

It was resolved in the affirmative.

Ordered, That the sergeant at arms attending this House, his deputy or deputies, do forthwith convey the body of the said Benjamin Flower to the prison of Newgate, to be

kept in safe custody for the space of six months, and until he paid the said fine.

GROZOR ROSS, Cler. Parliamentar.

To William Watson esq., Sergeant at Arms, attending this House, his deputy, or deputies, and every of them, and to the keeper of Newgate, his deputy, or deputies, and every of them.

JOHN KIRBY, Keeper of his Majesty’s Gaol of Newgate.

The printer, whatever might be his own opinion respecting the sentence thus passed upon him by the House of Lords, would as an individual, have suffered the term of his imprisonment, and the further punishment of fine, fees, &c. &c. without complaining; but he considered he had an important public duty to discharge, and he determined not to shrink from it. When the case of the proprietor and printer of the Morning Chronicle was last year brought before the public, the printer of the Intelligencer, in some remarks on the subject, expressed himself as follows :

“ As both the printer and the proprietor of the above paper, are not chargeable with any contempt, but at once surrendered themselves, it becomes a very serious question, how far the power of their lordships extends? The fine, and the term of imprisonment in the present instance are comparatively speaking, trifling, and the high character, the perfect independence, and the unspotted purity of the present House of Lords, are doubtless securities against oppression. But the best governments in theory, have in the course of time, become the worst in practice; and imagination may suggest a future period, when a senate may be under the management of some profligate, abandoned, apostate minister, who by bribes, pensions and every species of undue influence, may have that senate so completely at his command, that any paragraph reflecting on himself, may be voted a libel on the senate, and a breach of its privileges. A great statesman in the reign of Elizabeth, Burleigh, was of opinion, that this country could never be ruined but by a parliament. Montesquieu predicted the fall of the British constitution, by means of the legislative power becoming more corrupt than the executive. May that period never arrive! In the mean time the question is of the utmost importance—Is the power of the House of Lords, without limits, and may it not adjudge a printer, without a trial by his peers—not only to three months imprisonment and fifty pounds fine, but to seven years imprisonment and to five thousand pounds fine !”*

The above reflections recurred to the printer, with additional force, when he considered his own case; and that he was suffering (not as the printer and proprietor of the Morning

* Cambridge Intelligencer, March 31, 1798.

Chronicle had suffered), for any reflections on the proceedings of the House of Lords, but for what had been pronounced by that House a libel on one of its members. His doubts therefore respecting the constitutional right of the House could not but be increased. When he perused the arguments of lord Holland, the opinion of counsellor Hargrave, and re-perused a letter of the hon. T. Erskine, on a subject nearly similar, he could not but feel additional anxiety to bring this great question legally before the public. Mr. Erskine's letter although, it appeared last year in the Morning Chronicle, and in the Cambridge Intelligencer, is too valuable to be omitted on the present occasion.

MR. ERSKINE'S OPINION OF THE PROCEEDINGS OF THE COURT OF KING'S-BENCH OF IRELAND BY ATTACHMENT; written to a gentleman in high reputation at the Bar in Dublin.

Bath, January 13, 1785.

"The right of the superior courts to proceed by attachment, and the limitations imposed upon that right, are established upon principles too plain to be misunderstood.

"Every court must have power to enforce its own process, and to vindicate contempts of its authority: otherwise the laws would be despised; and thus obvious necessity at once produces and limits the process of attachment.

"Wherever any act is done by a court which the subject is bound to obey, obedience may be enforced, and disobedience punished by that summary proceeding. Upon this principle, attachments issue against officers for contempts in not obeying the process of courts directed to them as the ministerial servants of the law, and the parties on whom such process is served may, in like manner, be attached for disobedience.

"Many other cases might be put, in which it is a legal proceeding, since every act which tends directly to frustrate the mandates of a court of justice is a contempt of its authority. But I may venture to lay down this distinct and absolute limitation of such process, viz.—That it can only issue in cases where the court which issues it has awarded some process, given some judgement, made some legal order, or done some act which the party against whom it issues, or others on whom it is binding, have either neglected to obey, contumaciously refused to submit to, incited others to defeat by artifice or force, or treated with terms of contumely and disrespect, in the face of the Court, or of its minister charged with the execution of its acts.

"But no crime, however enormous, even open treason and rebellion, which carry with them a contempt of all law, and of the authority of all courts, can possibly be considered as a contempt of any particular court, so as to be punishable by attachment, unless the act which is the object of that punishment

be in direct violation or obstruction of something previously done by the court which issues it, and which the party attached was bound, by some antecedent proceeding, to make the rule of his conduct. A constructive extension of contempt beyond the limits of this plain principle, would evidently involve every misdemeanor, and deprive the subject of the trial by jury in all cases where the punishment does not extend to touch his life.

"The peculiar excellence of the English government consists in the right of being judged by the country in every criminal case, and not by fixed magistrates appointed by the crown. In the higher order of crimes, the people alone can accuse; and, without their leave distinctly expressed by an indictment found before them, no man can be capitally arraigned; and in all the lesser misdemeanors, which either the crown, or individuals borrowing its authority, may prosecute, the safety of individuals and the public freedom absolutely depends upon the well-known immemorial right of every defendant to throw himself upon his country for deliverance, by the general plea of not guilty. By that plea, which in no such case can be demurred to by the crown, or questioned by its judges, the whole charge comes before the jury on the general issue, who have the jurisdiction co-extensive with the accusation, the exercise of which, in every instance, the authority of the court can neither limit, supersede, control, nor punish.

"Whenever this ceases to be the law of England, the English constitution is at an end!—And its period in Ireland is arrived already, if the court of King's-bench can convert every crime by construction into a contempt of its authority, in order to punish by attachment."

After reflecting on the above authorities, consulting with friends, and advising with counsel, the resolution of the printer was determined. Indeed if any doubts had remained in his mind, respecting the propriety of the step he was about to take, those doubts must have been completely removed by an observation of lord Kenyon, on the 3rd of June, in the court of King's-bench, when giving his opinion respecting the rule moved in behalf of Mr. Horne Tooke. His lordship expressed himself as follows:—

"He did not say there could be no case in which the House of Commons, and the House of Lords too, might carry their privileges beyond the law of the land; and when that was the case and the subject came judicially before a court of law, a court of law would not swerve from its duty, but would decide according to law."*

* I presume that the expressions attributed in the text to lord Kenyon, are quoted from some account of the case of the King against Wright, reported in 8 T. R. 493.

The printer therefore conceived that in bringing his case before the court of King's-bench, he was giving the best proof in his power, of that perfect respect he had uniformly expressed for the privileges of that essential branch of the British legislature, the House of Peers, the grand foundation and security of which privileges must be the rights of the people; and affording additional evidence of the sincerity of those professions he had so constantly made, of his being the sincere and the firm friend of the genuine constitution of his country.

Court of King's-Bench, Thursday, June 6th.

Mr. Clifford.—I humbly move your lordships for a writ of Habeas Corpus, to be directed to the keeper of Newgate, commanding him to bring into court the body of Benjamin Flower.—I move it on a very full affidavit made by Mr. Flower, which states—

Lord Kenyon.—Is not Mr. Flower committed by the House of Lords, for a breach of privilege.

Mr. Clifford.—Yes, for a libel and breach of privilege.

Lord Kenyon.—Then you know very well, Mr. Clifford, that you cannot succeed. This is an attempt which for the last half century has been made every seven or eight years; it regularly comes in rotation; but the attempt has always failed. You do not expect to succeed.

Mr. Clifford.—My lord, I do expect to succeed. I should not make this application unless I knew I could support it. The affidavit states, that on the second of May last, Mr. Flower, was taken into custody at Cambridge for a supposed libel on the bishop of Llandaff, published there: that he was carried before the House of Lords: that he was ordered to withdraw, and was afterwards conducted to Newgate. The affidavit also states, that he is not conscious of having published any libel on the bishop of Llandaff, or on any other person: that he has not been put upon his defence, nor been tried or convicted of any libel or other offence.

Lord Kenyon.—Does he swear that it is not a libel on the bishop of Llandaff?

Mr. Clifford.—He swears that he is not conscious that it is a libel.

Lord Kenyon.—Another part of his affidavit is also false;—that he was not put upon his defence: I happened to be one of his judges; I was in the House of Lords at the time, and heard him make a very long defence. File your affidavit, sir, that your client may be prosecuted. You shall take nothing by your motion.

Mr. Clifford.—I certainly intend to file my affidavit. The ground on which I make this application is—That it is a commitment for a libel published at Cambridge. The Lords have no power to commit for a contempt out of their House. I find it laid down as law, in

lord Shaftesbury's case * [2. State Trials, 615:] "That for a contempt committed out of the house, the Lords cannot commit; for it may be a matter whereof they are restrained to hold plea by the statute, 1. Hen. 4th for the word "appeal" in that statute extends to all misdemeanors."—The case of Mr. Fitton, in 1663 and 1667, is also in point. He was brought to the bar of the house for a libel on the lord Gerard of Brandon. He was sentenced to pay a fine of 500*l.* To be imprisoned in the King's-bench, till he produced the author of the libel, and to find sureties for his good behaviour during life. Upon this he petitioned the House of Commons, who referred his petition to a committee, consisting of the solicitor general Finch, Mr. Selden, serjeant Maynard, Mr. Vaughan, and some of the most eminent lawyers of that time. They thought this exercise of jurisdiction by the Lords, a breach of the privileges of the Commons, and reported it to be argued at the bar of the House. Besides; this being a case of libel, it may be tried hereby the course of the common law. There is no knowing what may be the consequence, if the Lords shall be allowed this power. They have only to vote an offence to be a breach of privilege, and withdraw it from your lordships jurisdiction. Thus they may screen a delinquent by passing a milder sentence than the common law would warrant. On the other hand (though I am sure it will not be attempted by the present House of Lords) they may use the same pretence for the ruin and oppression of any obnoxious individual. In either case they would act with impunity. Your lordships may be impeached if you act wrong, but there is no impeachment of the House of Lords. Moreover this is a commitment for a time certain, and not during the continuance of the session; this only—

Lord Kenyon.—Have they not uniformly exercised this power since the Revolution? Is there a single instance since that period where it has been denied them?

Mr. Clifford.—Yes, my lord, several.—In the case of Bridgman and Holt—

Lord Kenyon.—Was not that a case where the right of appointing to the office of clerk of this court was contested between my lord Holt and the duchess of Grafton?

Mr. Clifford.—It was, my lord.

Lord Kenyon.—It is very different from this case. It was a right tried between two parties in a civil action. It has nothing upon earth to do with this case.

Mr. Clifford.—Originally it was a civil case. But on the trial of the cause at the bar of this court, the counsel of the duchess tendered a bill of exceptions which the court refused to seal. For this refusal the judges were criminally arraigned before the House of Lords. They denied the jurisdiction of the Lords: and several precedents having been cited in

* *And* vol. 6, p. 1288.

support of it, they gave this memorable answer:—"Some persons perhaps have from a confidence of success, or from a slavish fear, of private policy, forborn to question the power of their superiors; but the judges must betray their reputation and their knowledge of the laws, if they should own a jurisdiction which former times and their predecessors were unacquainted with."

Lord Kenyon.—If you will have it, take your writ. It will be of no use to you. You move it merely by way of experiment, and without any view to benefit your client. I am very sure of that.

Mr. Clifford.—I do not.

Lord Kenyon.—You know it cannot benefit him. It is like the case of Alexander Murray, where two gentlemen who had not been at the bar, for forty years before, put on their wigs and gowns, to resist what they conceived to be an encroachment on the liberty of the subject. The consequence was that their client was sent back to prison, and they returned home as they came; and never appeared again in the profession.

Mr. Clifford.—The case of Alexander Murray was very different. It was the case of a contempt committed in the House of Commons.

Lord Kenyon.—No, sir. It was for a contempt committed out of the House.

Mr. Clifford.—It was for a contempt committed in the House. He was originally brought before the House for his conduct in the Westminster election, but the contempt for which he was committed, was the refusing to kneel at the bar, when ordered by the House.

The following affidavit was then delivered in and filed.

IN THE KING'S-BENCH.

BENJAMIN FLOWER of the town of Cambridge, in the county of Cambridge, printer but now a prisoner in the gaol of Newgate, in the city of London, maketh oath and saith, that on Thursday, the 2nd day of May last, this deponent was taken into custody at his residence in the town of Cambridge aforesaid, by Mr. Finch, the deputy serjeant at arms attending the House of Lords, and that the said deputy serjeant at arms showed this deponent a certain paper writing, by which it appeared that a certain paragraph inserted in a certain newspaper, intituled, the Cambridge Intelligencer, Saturday, April 20, 1799, and published by this deponent at Cambridge aforesaid, had been resolved by the House of Lords to be a gross and scandalous libel upon the right reverend Richard lord Bishop of Llandaff, a member of that House, and that thereupon the said House of Lords had ordered the serjeant at arms forthwith to attach the body of this deponent, and to bring this deponent in safe custody to the bar of the said House on Friday then next, to answer

for such offence; and this deponent further saith, that on Friday, the 3rd day of May last, he, this deponent, was brought to the bar of the House of Lords, when the proceedings of that House on Wednesday the 1st day of May last were read, whereby it appeared to this deponent that the information contained in the said paper, shown to this deponent by the said deputy serjeant at arms was true. And this deponent further saith, that he was soon afterwards ordered to withdraw from the said bar, and was conveyed to Newgate, where having demanded a copy of the warrant of his commitment, this deponent received the paper writing hereunto annexed from Edward Kirby, clerk of the papers at the said gaol of Newgate. And this deponent further saith, that this deponent is not conscious of having published any libel on the said bishop of Llandaff, or any other person whomsoever nor has this deponent been put upon his defence, nor tried nor convicted of publishing any libel, or of any other offence, or misdemeanor whatsoever, nor hath any judgment been passed upon this deponent, in the hearing of this deponent, nor hath this deponent to the best of his knowledge been guilty of any contempt or breach of the privileges of the House of Lords, nor hath this deponent been in the said House of Lords, for upwards of fifteen years last past, before the said 3rd day of May last.

Sworn in Newgate, the fifth day of June, 1799, before B. FLOWER. T. Platt, by commission.

On the evening of the same day the writ of Habeas Corpus was served on the keeper of Newgate, of which the following is a copy:

George the Third, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith: to the keeper of our gaol of Newgate or his deputy, greeting. We command you, that you have before us at Westminster-hall, immediately after the receipt of this writ, the body of Benjamin Flower, being committed and detained in our prison, under your custody (as is said), together with the day and cause of the taking and detaining the said Benjamin Flower, by whatever name the said Benjamin Flower be called in the same, to undergo and to receive all and singular such things as our court shall then and there consider of concerning him in that behalf: and that you have then there this writ. Witness, Lloyd Lord Kenyon at Westminster, the 6th day of June, in the thirtieth year of our reign.

By the Court,

TEMPER.

Monday, June 10.

Mr. Clifford.—My lords, in obedience to the writ of Habeas Corpus granted on Thurs-

* Shower's Parl. Cases, 122.

day last, the keeper of Newgate attends with Mr. Flower, and is ready to make his return. As it is so late, and my lord chief justice is to sit at *nisi prius*, the Court probably does not wish me to argue it now; but as the time allotted by the statute for making the return, expires this day, I must move that the return be filed, and shall argue it to-morrow.

Lord Kenyon.—As you please, sir.

Tuesday, June 11.

Mr. Clifford.—My lords, the keeper of Newgate attends with Mr. Flower. I therefore move that he be called in, and that the return be read.

The Keeper of Newgate, with Mr. Flower, was then called in, and the following return was read:

I, John Kirby, keeper of his majesty's gaol of Newgate, in the writ to this schedule annexed named, do certify and return to our sovereign lord the king, that, before the coming to me of the said writ (that is to say) on the 3rd of May, Benjamin Flower in the said writ also named, was commanded to my custody by virtue of a certain warrant of commitment, the tenor of which is as follows: [Here follows the warrant as inserted in a former page]. And these are the causes of the detaining of the said Benjamin Flower, whose body I have here ready as by the said writ I am commanded.

J. KIRBY, Keeper.

Mr. Clifford.—I am now to state to your lordships, the grounds upon which I conceive this commitment cannot be supported, and on which I mean to contend that Mr. Flower is entitled to his discharge;—but, before I proceed to argue the validity of the commitment, I feel it to be a duty which I owe to my client, to myself, and to the profession, to make a few prefatory observations on what fell from your lordship, when I had the honour of moving for this writ.

My lords.—When in the strict and regular discharge of my professional duty, I moved for it last Thursday, I little thought that I should now appear before your lordships in a twofold capacity: first, as counsel for Mr. Flower; and secondly as a delinquent having a common cause with him, and complaining of your lordships, for having adjudged me guilty of a contempt of court, in the same manner as Mr. Flower complains of the House of Lords; *videlicet*, without trial, without evidence, and without defence. Upon that occasion your lordship thought proper to assert, that I made the motion merely as an experiment, contrary to my own opinion, and without any view of benefiting my client.—If this be true, I most undoubtedly was guilty of a gross insult to your lordships, and of a high contempt of Court; such as called for the severest reprehension. But I then told your

lordships, what I now repeat, that I should not have moved for the writ, unless I could have supported it in point of law. I then thought I could; and the more I have reflected on the subject since, the more am I convinced that I can support it, by unanswerable legal arguments; but, although your lordship made this charge, you did not think proper to state the grounds on which you made it.—Of this, I have reason to complain.—I do not know what right your lordship has, without just foundation, to impute such unworthy motives to me; what your lordship sees in me; what there is in my conduct or behaviour, what has appeared in my practice in this court, that can warrant your lordship in casting so groundless an aspersions on my character.—So much for myself!

Your lordship also upon that occasion showed a considerable degree of indignation, and expressed yourself with much warmth at two points in Mr. Flower's affidavit; namely, where he swears that he is not conscious of having published any libel on the bishop of Llandaff, and that he has not been put upon his defence.—Mr. Flower, however, still maintains the truth of his affidavit, and notwithstanding the severe admonitions of your lordship, instructs me to repeat in his name, and in the very words of that affidavit —“That he is not conscious of having published any libel on the bishop of Llandaff, or on any other person whomsoever; and that he has not been put upon his defence.”

A libel consists of two parts; the act of publishing, and the guilty intention.—The House of Lords have indeed taken upon themselves to determine that the paragraph is a libel; but they have no power of deciding on the fact of intention. Mr. Flower thought that when he came to require justice at your lordships' bar, he ought to show himself deserving also of your favour. He declined to appear before your lordships stigmatized as a libeller; therefore, though he admitted the publication of the paragraph, he felt it to be his duty to negative the guilty intention.—There are two memorable cases, both tried before your lordship, which are peculiarly applicable to the present point. I mean the cases of Mr. Stockdale * and of Mr. Reeves.† In each of these cases the House of Commons had adjudged the party to be guilty of a libel; yet, when the trials came on, the juries, the only tribunal competent to decide upon intention, differed from the House of Commons; and notwithstanding the weight of their previous adjudications, nobly acquitted both Mr. Stockdale and Mr. Reeves, and pronounced them not guilty of any libel whatsoever. Now, had either Mr. Stockdale or Mr. Reeves, after the vote of the House of Commons and before the trial, come into this court and made an affidavit that he was not conscious,

* *Antd* vol. 22. p. 227.

† *Antd* vol. 26. p. 239.

of having published any libel, I have the authority of these two verdicts to say, that in either case such an affidavit would have been true; but, the truth or falsehood of an affidavit cannot depend upon the subsequent verdict of a jury; it must rest entirely on the intention entertained by the party at the time of publication, and on his feeling of that intention at the time of making the affidavit. On what ground, then, can that, which your lordships must admit would have been true and proper in the case of either Mr. Stockdale or Mr. Reeves, be tortured into the crime of perjury in the case of Mr. Flower!

As to the other point—that Mr. Flower was not put upon his defence.—Look to the proceedings of the House of Lords, and your lordships will perceive, that Mr. Flower had no opportunity of making one; at least, if by defence, be meant, the answering a charge before conviction. On the 1st of May, complaint was made to the House of Lords of the paragraph in question, which was immediately voted to be “a gross and scandalous libel on the bishop of Llandaff, and a high breach of the privileges of the House.” And this in the absence of Mr. Flower, who was then at Cambridge. Mr. Flower was thereupon ordered into custody; on the 3rd of May, when he was brought to the bar, the proceedings of the 1st of May were read to him, he was then informed of the charge against him; but, the question of *guilty* or not *guilty* was not before the House; that had been previously decided in his absence. Nothing then remained for the Lords but to give judgment. Whatever therefore he might say, thus circumstanced, cannot be called a defence against the charge. It was nothing more than an address in mitigation of punishment. Thus much by way of preliminary observation.

I shall now proceed to the main argument, which I shall divide into three parts.—I shall show—

1st. That the House of Lords have no power of imprisoning beyond the duration of the session.

2nd. That they have no power of imposing a fine.

3rd. Which is the principal point.—That the House of Lords have no power or jurisdiction to fine or imprison any commoner, not being an officer of their House, for any offence or contempt committed out of that House, such offence or contempt being triable or punishable in the ordinary courts of law.

Your lordships must perceive by the narrow ground which I have taken; narrow at least in comparison with that, on which I might and perhaps was expected to have argued, that I at once lay aside a large description of cases, which I might otherwise have brought for-

ward—I mean all those cases where the House of Commons have thought proper to punish their own members, or even commoners not members of their House;—for, whether or not the House of Commons may possess such power over their own members or immediate constituents, I shall not stop to inquire. It does not affect my client: the present question is, whether such a power over a commoner be vested in the House of Peers. And to this I intend strictly to confine my argument.

As to the first point:—That the Lords have no power of imprisoning beyond the period of the session—I shall begin with a kind of negative proof. It is laid down by Mr. Justice Blackstone in his chapter “of commitment and bail,” and mentioned by him as a proof of the wisdom of the law:—“That the court of King’s-bench may bail for any crime whatsoever; be it treason, murder, or any other offence, according to the circumstance of the case.”* He says, “the law has provided one court, and only one, which has a discretionary power of bailing in any case: except only, even to this high jurisdiction, such persons as are committed by either House of parliament, so long as the session lasts; or such as are committed for contempts by any of the king’s superior courts of justice.”†—Now, if it be law, that commitments by either House of Parliament, so long as the session lasts, or by the superior courts of justice for contempts, are the only exceptions to the general power of bailing vested in this court, it follows as a clear and necessary inference, that where, as in the present instance, the Lords exceed that period and commit, not “so long as the session lasts,” but for six months, or for any other time certain, which may extend beyond it, your lordships’ jurisdiction remains unimpaired and untouched; such a commitment being an excess of jurisdiction in the Lords and not within the exceptions.

In the case of Mr. Fitton, which with that of Mr. Carr, I shall have occasion to quote more at length hereafter, Mr. Solicitor-General Finch, afterwards lord chancellor Nottingham, denied this jurisdiction to the Lords. His eloquent argument on that occasion, was afterwards adopted by counsel at the bar of the House of Commons.‡ Arguing against the power claimed by the Lords of imprisoning generally, and for a time definite and certain, he used this forcible and appropriate expression.—“The court to die, and yet the contempt to last longer than their lordships last!—Upon prorogation, the parties are usually discharged.—When the court ceases, usually the punishment for contempt does so.”§ —But if the punishment for contempt

* 4. Com. 399.

† Ibid.

‡ 1st Grey’s Debates, 101.

§ Ibid. 103.

* See the proceedings of the House of Lords *antè*.

ceases with the court contemned, a commitment for a longer period is void of course, and the party detained under it is entitled to his discharge.

My lords, I also find, that in a conference between the two Houses of Parliament, on the subject of the petition of right,* the same doctrine is maintained by my lord Coke, in answer to his majesty's attorney-general, who had maintained that this power was vested in the crown. He said, "that he agreed with Mr. Attorney in the enumeration of all the kinds of Habeas Corpus; and if they two were alone, he did not doubt but they should agree in all things. Only, he said, that for a freeman to be tenant at will for his liberty, he could never agree to it; it was a tenure that could not be found in all Littleton."† If the House of Lords can imprison beyond the period of the session, there is no saying to what extent of imprisonment their power may not reach. If they may imprison for six months, why not for six years? Nay, what is there to prevent their imprisoning for life? In any case, if your lordships shall exceed your jurisdiction, or shall abuse it for the purposes of oppression, the law is open to the injured party. Your lordships may be impeached and punished for your offence. There is a limit to the power of this court. But if an arbitrary power of imprisoning be vested in the House of Peers, we all hold our liberties by that uncertain tenure; to use the expression of lord Coke, "every subject of this country is a tenant at will for his freedom to the Lords." If at any time they shall abuse their power, to whom shall we resort? Who is to impeach the House of Lords? If there were any mode by which they could be impeached, still themselves would try that impeachment. Unless therefore this court can interfere and hold forth its saving and protecting hand, the House of Lords may inflict what punishment they please; they may injure the subject with impunity, and the subject must submit to injury without redress. Can this be law under a free constitution?

With respect to the second point.—The power of the House of Lords to fine:—In one of the conferences relative to the petition of right, it is said by my lord Coke that, "the king himself cannot impose a fine upon any man, but it must be done judicially by his judges; "per justitios in curia, non per regem in camera," and so it hath been resolved by all the judges of England in 3 Rich. 2, fo. 11.‡ Now although this case of 3 Rich. 2. is quoted by lord Coke merely to show that the king cannot impose a fine, yet considering the times when it was decided, it seems to me, to be a strong authority to prove that

there is no such power vested in the House of Lords. For it is well known, and your lordships will find it so stated in many parts of Petyt's *Jus Parliamentarium*, and of lord Hale's treatise on the Jurisdiction of the House of Lords,* that, in ancient times, the terms *coram rege in parlamento*, *coram rege in concilio*, were constantly used, in order to denote the power and authority of the king exercised through the medium of his parliament and council, in contradistinction from the same authority exercised through the medium of his courts of law.

But can the House of Lords possess such power, if it be denied the king? "It cannot well be imagined" says Mr. Sergeant Hawkins, "that the law, which favours nothing more than the liberty of the subject, should give us a remedy against commitments by the king himself, appearing to be illegal, and yet give us no manner of redress against a commitment by our fellow subjects, equally appearing to be unwarranted."† And this in principle applies as well to the power of imposing fines as to the power of imprisoning.

But, my lords, none but a court of record can impose a fine; and the House of Lords are no such court. It is said by my lord Hobart, speaking of the House of Lords, in the case of the king v. the countess of Arundell and Howard:—"Now the Journals are no records, but remembrances for forms of proceedings to the record. They are not of necessity, neither have they always been. They are like the docketts of the Prothonotaries, or the particular to the king's patents."‡ Thus upon the authority of lord Hobart, the House of Lords are not a court of record.

Lord Mansfield. That is hardly a consequence. You surely do not mean to contend seriously, that the House of Lords are not a court of record. The Journals may not be records. But when the House of Lords give judgment, they must be a court of record. The minutes taken here are not records, but they are afterwards put into the shape of records. Yet I never heard it contended on that account, that this is not a court of record.

Mr. Clifford.—I conceive, my lord, that there is this distinction. The House of Lords have two characters, the judicial and the legislative. When they sit in their judicial capacity, as a court of error in the last resort from the courts of law, or of appeal from chancery, then undoubtedly they are a court of record. But when, as in the present case, they act in their legislative character, when in that capacity they proceed to punish a contempt, they are not a court of record. And it is when acting in this capacity, that lord Hobart speaks of them in the case which I have quoted. Lord Holt also was of this opinion.

* Anno. 1628.

† 8 Parl. Hist. 61. § New Parl. Hist. 324.

‡ 7 Parl. Hist. 421. § New Parl. Hist. 268.

* Vide chap. 1, 2, 3, 4. & 5.

† § Hawkins Pleas of the Crown, 170.

‡ Hobart's Reports, 110.

"The House of Lords," he says, "has a double authority, as parliament and the course of the House, between which we must distinguish by their style. Journals are no records of parliament, and therefore we cannot take notice of them."* Now the House of Lords, in their legislative capacity at least, have no records unless their Journals be such.

But if the House of Lords are not a court of record, they have no power of imposing a fine. In Godfrey's case, upon the question, "how far courts can fine;" lord Coke says, "no court can fine or imprison which is not a court of record."† In Griesley's case, he says, "it was resolved *per totam curiam*, that if any contempt or disturbance to the court be committed in any court of record, that the judges may set upon the offender a reasonable fine;"‡ and in the same case he says—"But courts which are not of record cannot impose a fine or commit any to prison."§ Lord Coke lays down the same doctrine, in Becher's case,|| and in the case of Dr. Bonham.¶ In the case of Groenvelt, v. Burwell, it is stated by lord chief justice Holt, that "wherever there is a jurisdiction erected with power to fine and imprison, that is a court of record; and, what is there done is a matter of record."**—So that upon this part of the argument you have the authority both of lord Hobart and lord Holt, that the House of Lords are not a court of record; I have the authority of lord Coke, that no court which is not of record can impose a fine; and I have the farther authority of lord Holt, that the giving to a court the power of imposing fines, immediately erects it into a court of record.

I now proceed to the third point. And my lords, I do not mean to contend at all in this case—that the House of Lords have no power to punish for contempts committed in the House, *in facie curie*. Undoubtedly for such contempts, both Lords and Commons have the power; and for the best of reasons. To them is intrusted the welfare of the state. Without such power their proceedings would be liable to constant interruptions, and they would not be able to go on with the business of the nation. The law, no doubt, "entrusts them with a power sufficient to vindicate themselves,"†† they have every power requisite for maintaining the due order and regularity of their proceedings. But their privilege extends no farther. "To make them final judges of their own privileges in other cases, exclusive of every body else, is to introduce a state of confusion by making every man judge in his own cause, and subverting the measures of all jurisdictions."‡‡ The House of Commons do not claim this power. It is acknowledged

* Salk. 511. *Rex v. Knollys*, which case is also reported *antiq.* vol. 19, p. 1167.

† 11 Co. 43, b. † 8 Co. 38, b.

‡ *Ibid.* || 8 Co. 60, b. ¶ 8 Co. 120, a.

** Salk. 200. †† *Per Holt*. C. J. 2 Salk. 503. *Regina v. Paty*. ‡‡ *Ibid.*

by all authorities, that they cannot imprison longer than the session lasts. But there is the same ground for granting this power to the House of Commons, as there is for granting it to the House of Lords. It is as necessary and useful for one branch of the legislature as for the other; nor can any reason or argument be adduced, why it should not be allowed to the House of Commons, if given to the House of Lords.

My lords:—My third and principal point is, that the House of Lords have no power or jurisdiction to fine or imprison any commoner, not being an officer of their House, for any offence or contempt committed out of that House, such offence or contempt being triable or punishable in the ordinary courts of law.—Now in the first place: What is the nature of this commitment? It is not as in the case of lord Shaftesbury and of many others, a commitment for divers misdemeanors or for divers high contempts and misdemeanors generally. The warrant positively states what the contempt is; namely, a libel upon the bishop of Llandaff. So that the question will eventually resolve itself into this—Whether the House of Lords have original jurisdiction in cases of libel; and, if they have not, whether the voting a libel to be a breach of privilege empowers them to commit for it? If a libel on an individual peer, be not necessarily a breach of the privileges of the House of Lords and an offence within their jurisdiction, "their judgment cannot make it so, nor conclude this court from determining the contrary."*

As to this claim of the House of Lords to original jurisdiction in matters of libel or other misdemeanor, I have not contented myself with looking into the statutes and cases previous to the Revolution, but profiting by the hint which your lordship gave me, have very assiduously searched the Journals for every case of the kind that has happened since that period. Nor has my search been unattended with success.

But before I begin to quote cases or statutes to your lordships, I beg leave to state, and in the outset I take upon me to assert, that in no case whatever, either before or since the Revolution have the House of Lords claimed to exercise this power and have been resisted, without their yielding finally to that resistance. And on this fact I am willing to rest the whole of my argument.

The first case that I have been able to find was in the year 1330, the 4th of Edward 3rd. The Lords had lately tried Mortimer, and some other peers for the murder of king Edward the 2nd, and of Edmund earl of Kent. And besides these, they had tried for the same offence and had condemned to death, sir John Matravers, sir Thomas Beresford, Gurney, and some other commoners, some of whom were executed according to their

* 2 Salk. 503. *Queen v. Paty*, per Holt, C. J.

sentence; but the Lords themselves perceived so clearly that they had exceeded their jurisdiction, and felt so strongly the dangers which might arise from such a precedent, that they caused the following entry to be made upon the rolls of parliament: "It is assented to and granted by our lord the king and all the lords *in full parliament*, that although the said peers as judges of parliament, had assumed to themselves in the presence of the king, to give judgment by assent of the king, on some who were not their peers; and this for punishment of the murder of our liege lord and the destruction of him who was so near the royal blood and son of the king, nevertheless, the said peers who now are, or those which shall be hereafter, shall not be bound or charged to give judgment on any but their peers; but, the peers of the land shall be henceforth and for ever quit and discharged thereof. And that the aforesaid judgments so given, shall not be drawn in example or consequence in time to come, whereby the peers shall be charged in future to judge others than their peers, *which is contrary to the law of the land*, if any such case should arise, which God forbid."*

Now, my lords, although this entry on the roll does not appear upon our statute book, I feel myself warranted in calling it a statute, because I find it stated to be one by lord Coke in his second institute,† and in Cotton's abridgment,‡ and because it was declared to be an act of parliament by the judges of this court in the case of *Bridgman v. Holt*.§ In another case also since the Revolution, upon the impeachment of sir Adam Blaine and others before the House of Lords, "a copy of this record was produced and affirmed by one of the peers to be genuine, he having compared it with the roll. This question was then asked the twelve judges: ||—whether the said record is a statute? The judges answer:—as it appears to them by the aforesaid copy they believe it is a statute, but if they saw the roll itself they could be more positive."¶

My lords, I shall make no comment of my own on this statute, because every thing which I can wish to enforce has been so ably stated by lord Hale, and in language so forcible and appropriate, that I cannot do better for my client, than to read to your lordships his words. In his treatise on the Jurisdiction of the House of Lords, he says, "though this declaration is in part to own their power, but to disown any compulsion on them to give judgment upon others than their peers; yet the conclusion tells us, that such a judgment is against the law of the land; and it is observable, that

though the case that is had is a judgment of death; yet the tenor of the declaration is general.—Some indeed have thought this declaration of *Edw. 3*, being done thus solemnly *in plene parlamento*, was a statute or act of parliament; but, that seems not so clear. But it was certainly as solemn a declaration by the Lords as could be made less than an act of parliament; and is as high an evidence against the jurisdiction of the Lords to try or judge a commoner in a criminal case as can possibly be thought of. 1st, Because done by way of declaration to be against law—second, because it is a declaration by the Lords in disaffirmance of their own jurisdiction, which commonly chuses rather to amplify, if may be, than to abridge."*

Lord Hale wrote before the Revolution. But since that great event the same construction has been adopted by the judges of this court in the case of *Bridgman v. Holt*. "This," they say, "was not only an acquittal from the trouble, but a clear denial of the power, as appears by the words before, *that they had assumed to themselves*, and the words subsequent, *that the like should not be done again*." The complaint was, because it was intermeddling with commoners after that manner."†

Can I urge a stronger argument to your lordships? Even at that early period, when the extraordinary interference of the Lords was necessary in order to the punishment of such flagrant offenders as the murderers of the king, who, on account of the troubles of the times, could not be brought to trial before the usual and established courts of law; the Lords felt their trying commoners in any case to be so contrary to law, and of so dangerous a tendency, that they left this memorial on the roll, lest it might become a precedent or be drawn into example.

My lords, there are also some other ancient statutes on this subject with which I shall trouble your lordships. The first is the 5 *Edward 3*, c. 9. "No man from henceforth shall be attached by any accusation, nor forejudged of life or limb, nor his lands, tenements, goods, nor chattels seized into the king's hands against the form of the great charter and the law of the land."—The 25 *Ed. 3*, stat. 5, c. 4, is to the same effect. "None shall be taken by petition or suggestion made to our lord the king or to his council, unless it be by indictment or presentment of good and lawful people of the same neighbourhood where such deeds be done in due manner or by process made by writ original at the common law: nor that none be ousted of his franchises, nor of his freeholds, unless he be duly brought in to answer and forejudged of the same by the course of the law. And if any thing be done against the same, it shall be re-

* Roll. 4 E. 3, No. 6. † P. 50.

‡ P. 7. § Shower's Parl. Cases, 125.

¶ Amongst whom were lord chief justice Holt, sir Henry Pollexfen, and sir Robert Atkyns.

¶ 14 Lords' Journals, 264. 2nd July, 1689, sir Adam Blair's case, *antè*, vol. 12, p. 1290.

* Hale's Jurisdiction of the House of Lords, 91.

† Shower's Parl. Cases, 125.

dressed and holden for none."—By the 28 Ed. 3, c. 3, it is enacted—that "no man of what estate or condition that he be, shall be put out of land or tenement, nor taken nor imprisoned nor disinherited, nor put to death without being brought in answer by due process of the law."—But, it should seem these statutes were not sufficient for the purpose; for in a few years after, it was found requisite to enact another.—By the 42 Ed. 3, c. 3, "It is assented and granted for the good governance of the Commons, that no man be put to answer without presentment before justices or matter of record, or by due process and writ original, according to the old law of the land. And if any thing from henceforth be done to the contrary, it shall be void in the law and holden for error."

Thus, my lords, it appears from these statutes, that in no case whatever can any person be attached or forejudged of his life, liberty, or property, or be in anywise taken, imprisoned, disinherited, or even put to answer without due judgment of his peers; that is, without a trial by a jury of his neighbourhood; or by due process of law. Now, as to the meaning of this phrase "due process of law:"—I find it clearly explained by the judges of this court in the case of *Bridgman v. Holt*, when they were arraigned at the bar of the House of Lords to answer criminally for their conduct. "*Magna Charta*," they say, "is express, *per judicium parium vel per legem terre*." "Now the latter" (that is, *per legem terre*) "only refers to such cases which are not triable *per judicium parium*."* Now, upon the authority of this case, I contend, that the true construction of these statutes is, that in every case cognizable by the courts of law, the party has a right to a trial by his peers: and, that in no case can a person be tried *per legem terre*, or by due process of law (that is) by the extraordinary interposition of the law, except in such cases as cannot from their nature be brought before a jury, or be tried by the course of the common law; and, I feel these statutes to be of still greater authority when I reflect that they have at all times been considered as the bulwarks of our liberties, and that their infringement has always been complained of as an intolerable grievance. They are recited in the preamble to the act for taking away the star-chamber, and one of the reasons therein given for abolishing that odious tribunal is, that the judges of that court, had not kept themselves to the points limited by these statutes, but had examined and determined matters there, which might have their proper remedy and redress and their due punishment and correction by the common law of the land, and in the ordinary course of justice elsewhere.†

The next statute is the 1 H. 4, c. 14. "It

* Shower's Parl. Cases 124, and Hargrave's Preface, 184, 187.

† Sec. 16, Car. 1, c. 10.

is ordained and established that all appeals shall be tried and determined by the good laws of the realm, made and used in the time of the king's noble progenitors. And moreover it is accorded and assented, that no appeals be from henceforth made or in any wise pursued in parliament in any time to come." Now the word "appeal" in this statute is not used in that narrow sense in which we at present understand it, when we say an appeal from chancery, &c. In this statute "appeal" means, any accusation, charge, or prosecution. At that time the court of parliament, or the House of Lords claimed and exercised original jurisdiction over all causes whatsoever, criminal and civil, and this act was passed in order to relieve the people from this inconvenience, and to restore them to the benefit of the common law.

Nor is this an unauthorized construction of my own. In the course of the impeachment of lord Clarendon, this statute was cited in his lordship's behalf, and doubts arising as to the meaning of the word 'appeal,' it was referred to the judges, who gave this answer. "Appellant cometh from the French word *appeller*, which signifies to accuse or *appeach*." "Appeal signifieth an accusation. And therefore to appeal a man is as much as to accuse;—and in ancient books he that doth appeal a man, is called *accusator*." The same explanation is given by lord Coke in his commentary upon *Littleton*.† And in an old law dictionary it is said "appal" (Fr. Appel) is as much as "accusation" with the civilians.‡ But in Lord Clarendon's case, which I have just cited, the judges further state "that this statute reacheth to all appeals, charges, accusations, or impeachments delivered in parliament, whereupon the person accused was to be put to his answer." So that I have the authority of this statute thus explained, that no person whatever can be legally charged with or accused of any offence before either House of Parliament, so as to deprive him of his right to a trial by his peers by the due course of law. I therefore claim for Mr. Flower the benefit of this act of parliament; and he is entitled under it to his discharge, unless it shall be contended with success that he is not within its purview, because, although he has been accused and charged before the Lords and sentenced by them, he was not put to his answer, or in the words of his affidavit, has not been put upon his defence.

But there is another set of statutes which bear immediately upon the offence here charged.§—I mean the statutes *de Scandalis*

* 2 State Trials, 556. † Howell's State Trials, 315.

‡ Sect. 189.

§ Blount's Law Dictionary, sub verbo *appeal*.

§ "In the hurry of delivery, this head of the argument was omitted in the court of

Magnatum. By these statutes a particular mode of trial and a particular punishment are appointed for libels upon peers. By the statute of Gloucester* which was passed in affirmance of the statute of Westminster the first † and was itself afterwards confirmed by the statute of Cambridge ‡ and by some other statutes § after reciting the dangers which may arise from such scandal, “it is straightly defended upon grievous pain, for to eschew the said damages and perils, that from henceforth none be so hardy to devise, speak, or to tell any false news, lies, or other such false things of *prelates*, lords, and of other aforesaid, whereof discord or any slander might rise within the same realm. And he that doth the same shall incur and have the pain another time ordained thereof by the statute of Westminster the first, which will, that he be taken and imprisoned till he have found him of whom the word was moved.” Commenting on these statutes, Mr. Justice Blackstone remarks|| that “the honor of peers is so highly tendered by the law, that it is much more penal to spread false reports of them and certain other great officers of the realm, than of other men; scandal against them being called by the peculiar name of *scandalum magnatum*, and subjected to peculiar punishments by divers ancient statutes.”—In another part of his commentaries he says:—“Words spoken in derogation of a peer, a judge, or other great officer of the realm, which are called *scandalum magnatum*, are held to be still more heinous; and though they be such as would not be actionable in the case of a common person, yet, when spoken in disgrace of such high and respectable characters, they amount to an atrocious injury; which is redressed by an action on the case founded on many ancient statutes; as well on behalf of the crown, to inflict the punishment of imprisonment on the slanderer, as on behalf of the party, to recover damages for the injury sustained.” ¶ Thus even were it to be admitted that the House of Lords ever had jurisdiction over misdemeanors, these statutes have taken it away in the case of a libel on a peer, by pointing out a particular remedy for that offence. The bishop of Llandaff therefore, if any libel has been published on him, might and ought to have resorted for redress to an action on these statutes, of which there are many precedents in the books.

Having now gone through the different statutes on this subject, I shall proceed to the examination of such cases as occurred previous to the Revolution; and here I must confess that I do not feel very anxious, nor

King's-bench; but I have thought it right to restore it here.—*Orig. Ed.*

* 2 Rich. 2, c. 5. † 3 Ed. 1, c. 34.

‡ 12 Rich. 2, c. 11.

§ 1 & 2 Phil. and Mar. c. 3, 1 Eliz. c. 6, &c.

|| 1 Com. 402. ¶ 3 Com. 123.

shall I trouble your lordships with any length of discussion of them. The times in which they were decided are not exactly those in which one would wish to search for the constitutional law of the country. In those times the personal liberty of the subject, and the rights of the people were not so much revered and protected as they have been since the glorious and instructive æra of the Revolution,* and particularly under some of the reigns with which the people of this country have been blessed since the accession of the House of Hanover. But from the midst of this almost universal gloom, some splendid rays of light shoot forth. And it will be a strong argument indeed, if even in that dark period so inauspicious to the freedom of mankind, cases shall be found where the Lords claimed to exercise this power, where the exercise of it was resisted and the claim denied, and where the Lords themselves submitted to the resistance and yielded up the claim.

The case to which I immediately allude, is that of Skinner, v. the East India Company. But I shall first quote to your lordships the case of Mr. Fitton, † which is prior to it in point of time, and is in almost every respect similar to that, which is now before your lordships.—Mr. Fitton had published a work, entitled “Grainger's Narrative,” accusing the lord Gerard of Brandon of various misdemeanors and offences. Complaint being made of it to the Lords, Mr. Fitton was ordered to be brought to the bar of the House. The work was voted to be a libel upon the lord Gerard, and to be a breach of the privileges of the House. Mr. Fitton was sentenced to pay a fine of one hundred pounds, and to be imprisoned till he should produce one Abraham Grainger, whose name was affixed to the narrative. Upon this, Mr. Fitton petitioned the House of Commons, stating that this sentence by the Lords was an encroachment on the rights of the Commons, and praying relief. Immediately upon the petition being read, a committee was appointed by the House of Commons, with instructions to examine into and investigate the jurisdiction and power of the Lords, and to report their opinion thereupon to the House. They soon after reported, “that the matter of the petitioner's complaint concerning the jurisdiction of the House of Lords, is fit to be argued at the bar of this House.” ‡

That the House of Commons were not actuated by any factious spirit, but on the contrary, that they were desirous, that the law should be clearly understood and the subject should be fully investigated, appears from the description of persons whom they named to be on this committee; persons whose authority I have no doubt, will have considerable

* An expression of Mr. Burke.

† *Vide* Hargrave's Preface, 99.

‡ Commons Journals, 22nd Feb. 1667.

weight with your lordships. Among them, I find the names of Mr. Prynne, Mr. Sergeant Maynard, Mr. Sergeant Charlton, Mr. Vaughan, afterwards lord chief justice, sir Edward Thurland; afterwards a baron of the exchequer, sir Robert Atkyns, afterwards lord chief baron; and Mr. Solicitor-general Finch, afterwards lord chancellor Nottingham. Upon the report, sir Robert Atkyns said:—"The business of Fitton not coming duly before the Lords, by way of writ of error from the courts of Westminster, and they having judged it, if that must be, all our liberties are struck off at a blow, and then no way to be redressed but by King, Lords, and Commons, by way of bill.—If the matter be wrong judgment of other courts, or if the Lords have usurped a jurisdiction, he would have it well inquired into, the Lords daily enlarging their jurisdiction; therefore, it being of so great consequence, he would have the matter asserted."† Mr. Vaughan said,—"The case, in short, is this; Grainger ‡ for libelling was sentenced, the party not being indicted, before the Lords proceed to judgment."§ This claim therefore of the Lords was so far from being acknowledged in 1667—that the House of Commons instantly on hearing Mr. Fitton's petition, referred the consideration of the question to the most learned men in their own body, who instead of reporting in favor of the right, found so many difficulties as to make them think it a fit case to be argued by counsel at the bar of the House. Some of the most respectable members of the committee went still further;—according to Mr. Vaughan; the Lords cannot proceed to judgment, unless where the party is indicted; and, in the opinion of sir Robert Atkyns, to allow such a power to the Lords, would be to strike off all our liberties at a blow. Instead of a right, he seems to have considered it as an usurpation by the Lords.

This case of Mr. Fitton was afterwards argued by counsel at the bar of the House of Commons. But, what became of Mr. Fitton in consequence, what farther was done by the House of Commons in his behalf, whether they deserted him, and for what reason, no where clearly appears. It probably was immersed with that of Mr. Carr, ¶ in the grand discussion of the question of Skinner, v. the East India Company, ¶ which occurred at that time and for some years occupied and

agitated both houses of Parliament. For a reason, which I shall mention in its place, none of the proceedings in this case, appear upon the Journals of either house of Parliament; but, they are to be found scattered up and down in various ancient publications, and have been very carefully collected, and very ably digested by Mr. Hargrave, in his most elaborate and learned preface to lord Hale's treatise on the jurisdiction of the House of Lords.

That was a case of civil complaint made to the House of Lords by Thomas Skynner merchant, against the East India Company, for having dispossessed him of his island of Barrilla, and for several other injuries. The House of Lords entered into an investigation of the complaint, and awarded him five thousand pounds by way of costs and damages to be paid to him by the East India Company. The company, instead of submitting and paying the money, petitioned the House of Commons, against this judgment of the Lords. The name of sir Samuel Barnardiston, their deputy governor, was subscribed to the petition. The Lords immediately took fire, and voted the conduct of sir Samuel Barnardiston, in presenting the petition, to be a breach of the privileges of their house. And here, your lordships will observe, that the breach of privilege complained of, was, the refusing to obey, and the interfering with the execution of the orders of the House of Lords, acting, not in their legislative, but in their judicial capacity. Sir Samuel Barnardiston was brought before the House, fined three hundred pounds, and ordered to be kept in the custody of the usher of the black rod till the fine should be paid. The parliament was prorogued on the same day before the House of Commons had time to notice, or were informed of this order of the Lords.

But the House of Commons, at that time the watchful guardians of the liberties of the people, took offence at the proceeding. Upon the next meeting of parliament, they immediately instituted an inquiry. They found that sir Samuel Barnardiston had been discharged out of custody; and that there was an entry upon the roll of the auditor of the receipt of the exchequer, that he had been discharged by order of the Lords, "he having paid his fine." Upon this, they summoned sir Samuel Barnardiston to their bar, and upon his examination it appeared that he had indeed been discharged by order of the Lords, but that he had paid no fine. The fact was, that the House of Lords were so conscious that they did not possess this power, and at the same time were so desirous of acquiring it, and to have a precedent to act upon in future, that they resorted to the mean expedient of ordering the usher of the black rod to discharge sir Samuel Barnardiston, and of privately instructing the auditor of the receipt of the exchequer to enter upon the roll, contrary to the fact, that he had paid his

* Commons Journ.

† 1st. Grey's Debates, 90.

‡ Probably a mistake, Grainger instead of Fitton.

§ Grey's Debates, *ibid.*

¶ "The case of Mr. Carr was in its circumstances and event exactly the same as that of Mr. Fitton; on that account I have omitted further notice of it." *Orig. Ed.*

¶ *Vide Hargrave's Preface, 103. 6 Howell's State Trials, 709.*

fine. A strong proof that they knew that they had exceeded their jurisdiction, and that they had no power to inflict this kind of punishment.

Finding that sir Samuel Barnardiston had constantly refused to submit to this jurisdiction of the Lords, the House of Commons resolved that he had acted as became a good subject and commoner of England. But the business did not end here: they did not think it right to let the matters slip by, without some positive declaration against the claim. They postponed all committees, and refused to enter upon any business till this question of jurisdiction should be settled. To frustrate their intentions, the king three times adjourned the parliament by his own authority, and prorogued it twice; but in vain; for, when the parliament met again at the distance of a year and a half, the House of Commons immediately resumed the subject, and again came to a resolution for suspending all committees, and for not proceeding in any business until this matter of jurisdiction should be decided, and the Lords should have abandoned their claim. This firmness of the Commons, at length produced a courteous message from the king, and a recommendation to both Houses to forbear any further discussion on the subject, advising them to settle the dispute by obliterating every trace of this proceeding. This proposal was acceded to, and both Houses ordered their resolutions to be erased from the Journals. I have therefore this strong and unanswerable argument, that the House of Commons then viewed this claim of the Lords as an encroachment on the liberties of the people, and victoriously resisted it:—that the House of Lords, after considerable discussion, agreed (by obliterating their resolutions) to the vacating of their judgment: so, that the result is an acknowledgment by the Lords themselves, that they had no jurisdiction, and that the judgment against sir Samuel Barnardiston, was void and unfit to stand upon their Journals. “And this,” to repeat the language of lord Hale, “is as high an evidence against the jurisdiction of the Lords as can be thought of, because it is a declaration by them in dis-affirmance of their own jurisdiction, which commonly chooses rather to amplify, if it may be, than to abridge.”*

Such was the case of sir Samuel Barnardiston, which, after much discussion, ended, notwithstanding the pertinacity of the Lords, in a full acknowledgment of the liberties of the Commons. Subsequently to that decision, and previously to the Revolution, I find but one case in which the Lords exercised this power; a case which may perhaps be brought in argument against me; that is, the case of Dr. Nicholas Carey, in 1676.—It had been contended by the duke of Buckingham

in the House of Lords and by others, that the prorogation of the long parliament of Charles 2, amounted in law to a dissolution, and consequently that both Houses were acting without authority, and were sitting contrary to law. Dr. Carey published a work, in which he maintained this position. For this he was censured by the House of Lords, and sentenced to be imprisoned, and to pay a fine. A few days after this, the Lord Cavendish brought the question forward in the House of Commons, where, however, it was got rid of by the order of the day. His motion was, to refer it to a committee. The reasons assigned in the debate for rejecting his motion were, that the question was not brought regularly before the House; that they had promised his majesty not to renew the discussion of the question of jurisdiction; that having so lately procured the judgment of the Lords against sir Samuel Barnardiston to be vacated, they had obtained every thing they wished; the law upon the subject was recorded, and the question sufficiently at rest; that as to Dr. Carey personally, he had no title to any favour at their hands, as his book was a libel on them as well as on the House of Lords.* The refusal, therefore, of the House of Commons to interfere on behalf of Dr. Carey, is far from being an argument against me; on the contrary under all the circumstances of the case, it makes strongly in my favour.

These, my lords, are the principal cases prior to the Revolution. I shall now proceed to those which have occurred since. But before I enter into an examination of them, I shall lay down a few general principles of law, which seem to me very applicable to the present question.

My lords, upon the subject of the Petition of Right, three resolutions were entered into by the House of Commons. They had been previously framed in a committee by my lord Coke, and Mr. Selden.—Mr. Littleton, who reported them to the House, introduced them by stating, that the committee had “proceeded in this great business with that gravity and leisure which would add much to their honour and resolutions.”† For the purpose of obtaining the concurrence of the Lords, a free conference was requested and had, between the two Houses; the Lords not only acceded to these three resolutions of the Commons, but produced a fourth of their own, to which the Commons assented.‡ These four resolutions were afterwards presented to the king, and formed the basis of the “Petition of Right,” a law, thus aptly called (according to Hume) “as implying, that it contained a corroboration or explanation of the ancient constitution, not any infringement of royal prerogative, or acquisition of new

* 4 Grey's Debates, 165. 4 New Parl. Hist. 837. Hargrave's Preface, 161.

† 1. Commons Journals, 878.

‡ Ibid. 26. April, 1628.

S X

* Hale's Jurisdiction of the House of Lords,

liberties.* This resolution of the Lords was, "that his majesty would be further pleased graciously to declare for the good contentment of his loyal subjects, and for the securing them from future fears, that in all cases within the cognizance of the common law concerning the liberties of the subject, his majesty would proceed according to the common law of this land, and according to the laws established in this kingdom and in no other manner otherwise." The petition of right, was passed expressly to secure the liberty of the subject in person and estate, and to secure him from fines and arbitrary imprisonment. The House of Lords clearly saw the danger of vesting this arbitrary power in the king; they declared, that he had no jurisdiction over cases within the cognizance of the common law. But there exists the same reason for not allowing this power to the Lords, as was then given for denying it to the king,—*videlicet*, "that if the king does wrong, there is no remedy against him; the party cannot have his action against him."† In the case of *Skinner v. the East India Company*, there is a declaratory resolution of the House of Commons, to the same effect: "that assuming and exercising jurisdiction over the case, the matter being relievable in the ordinary courts of law, is contrary to the law of the land, and tends to the depriving the subject of the benefit of the known law and introducing arbitrary power."‡

The ground upon which courts may punish for contempts is stated by my lord Coke, and his reasoning on the subject has since been adopted by lord chief justice De Grey in the case of *Brass Crosby the mayor of London*.§ "Every offence committed in any court punishable by that court, must be punished (proceeding criminally) in the same court or some higher; and, not in any inferior; and the court of parliament hath no higher."|| So that your lordships perceive, that the only ground upon which the House of Lords can rest their claim to fining and committing for contempts is, that they are not cognizable, and cannot be punished in an inferior court. What then becomes of this commitment of Mr. Flower, who, it is acknowledged, might in the usual course have been indicted for a libel, and still may be indicted for one, notwithstanding this judgment of the Lords, and even after he shall have undergone the punishment to which he has been sentenced?

But, my lords, the complaint now made against this claim of jurisdiction in the Lords, is the very complaint that was made against the star chamber. And yet that court had a better title to this power than the House of

Lords can show. It was a court established by statute. It was presided over by the judges of the common law, and had exercised this power without control nearly ever since its establishment.

The act for abolishing the star chamber* begins by reciting the acts of parliament which I have endeavoured to impress upon your lordships, and the mischiefs occasioned by departing from their strict observance. "Forasmuch as all matters examinable or determinable before the said judges or in the court commonly called the *Star Chamber* may have their proper remedy and redress, and their due punishment and correction by the common law of the land and in the ordinary course of justice elsewhere, and forasmuch as the reasons and motives inducing the erection and continuance of that court do now cease, and the proceedings, censures, and decrees of that court, have by experience been found to be an intolerable burthen to the subject and the means to introduce an arbitrary power and government."—It first dissolves the court of star chamber and determines its powers; † and then enacts that "from thenceforth no court, council, or place of judicature shall be erected, ordained or constituted which shall have use or exercise the same or the like jurisdiction as is or hath been used practised or exercised in the said court of star-chamber."‡ Thus not only the court of star-chamber was abolished, but all criminal jurisdiction of a like form or nature is completely taken away from every other court.§ —"Into this court of King's-bench," says Blackstone, "hath reverted all that was good and salutary of the jurisdiction of the court of star-chamber."|| The chief complaint against the star-chamber was, that they took upon themselves to decide cases that were examinable in the courts of common law. Cases of libel were among the number. I cannot therefore conceive how the House of Lords with that statute on the books, can maintain their right to exercise a similar arbitrary jurisdiction.

The Habeas Corpus act is also restrictive of their power. By that act your lordships are bound in every case, to bail the person brought before you "Unless it appear that the party committed is detained upon a legal process, order, or warrant out of some court that hath jurisdiction of criminal matters or by some warrant signed and sealed with the hand and seal of any of the justices of either bench, or of the barons of the exchequer, or some justice or justices of the peace, for such matters or offences for the which, by the law, the prisoner is not bailable."¶ In every other

* Hume's Hist. vol. 6, p. 246.

† Ephemericis Parliamentaria, p. 25, and 40

‡ Hargrave's Preface, 109.

§ 3 Wilson, 198, 9. 19 Howell's State Trials, 1147.

¶ 4 Inst. 15.

* 16 Car. 1, c. 10.

† Ibid. s. 3.

‡ Ibid. s. 4.

§ Hale's Jurisdiction, 43.

|| 4 Black. Com. 266.

¶ 31 Car. 2, c. 2, s. 3.

case of commitment your lordships are bound to bail.—Commitments by the House of Lords are not within the exceptions.

I have already quoted to your lordships, the case of my lord Shaftesbury, in 1677. In that case it was laid down as law, "that for a contempt committed out of the House, the Lords cannot commit, because the word *appeal* in the statute 1 H. 4, c. 14, extends to all misdemeanors." And it is there stated to have been so resolved by all the judges in the case of the Earl of Clarendon.

Lord Shaftesbury's was the case of a general commitment of a peer, for high contempts committed in the House of Peers, but without expressing in the warrant the nature of the contempt.* The arguments and admissions of the counsel against him, all of which were adopted by the Court, are very material. Mr. Sergeant Maynard, in support of the commitment, said, "The only question which their lordships had to decide was, not the general question of the power of the House to commit; but (narrowing his ground within the pale of the constitution) the particular question of that power over a member of their own House, for offences committed within the House during the sitting of parliament."—Can there be a more unequivocal proof, or at least a stronger implication, that in the opinion of Sergeant Maynard, such a commitment as the present could not be supported; else, why lay so much stress upon the circumstance that the party was a peer, and that the offence had been committed in the House during the sitting of parliament? But, the attorney general, Jones, is still more explicit. He said—"It is to be considered that this case differs from all other cases in two circumstances. 1st. The person is a member of the House by which he is committed. *I take it upon me to say that the case would be different if the person committed were not a Peer.*"† So that the attorney-general, arguing in this court in support of the commitment of lord Shaftesbury, lays it down as acknowledged law, that if he had been a commoner, the case would have been different and the commitment could not have been supported.—The solicitor general, Mr. Winnington, was of the same way of thinking. "In the case of the lord Hollis," he says, "it was resolved, that this court hath no jurisdiction of a misdemeanor committed in parliament;" thereby palpably inferring that it has no jurisdiction where the misdemeanor is committed out of parliament.

The court did not deny the law as laid down by the counsel against lord Shaftesbury.

* 1. Modern 144.—1. Freeman, 453; 3 Keble 792; 2 State Trials, 615; 6 Howell's State Trials, 1269.

† There is a material variation between this and what sir William Jones is reported to have said, *antè*, vol. 6, p. 1291. It is there, "I do not take upon me," &c.

On the contrary, they seem to have adopted it. In giving judgment, Rainsford, chief justice, said—"The consequence would be very mischievous, if this court should deliver the members of the Houses of Peers and Commons who are committed; for, thereby the business of the parliament may be retarded; for it may be the commitment was for evil behaviour or indecent reflexions on the members to the disturbance of the affairs of parliament. The commitment in this case is not for safe custody, but he is in execution on the judgment given by the Lords for the contempt. And therefore if he be bailed, he will be delivered out of execution, because for a contempt *in facie curiæ*, there is no other judgment or execution." Not a word here of the general power of the Lords to commit. The only ground on which the Court of King's Bench supported the exercise of it in the case of lord Shaftesbury was, that it was a contempt committed *in facie curiæ*, for which there is no other punishment: and what is very remarkable, the case of Dr. Carey in the year preceding is not once noticed, either by the court or any of the counsel. So little was it then considered an authority.

My lords, I shall now proceed to the cases since the Revolution. In the year 1693, a work entitled—"A brief, but clear Confutation of the Doctrine of the Trinity," having been sent to several of the Lords;—"It was voted by the House to be an infamous and scandalous libel;" it was ordered to be burnt in Old Palace-yard, by the hands of the common hangman, and was directed to be prosecuted by the attorney-general.* Here the Lords wisely considered, that the author would be sufficiently stigmatized by the burning of his work by the common hangman; and as to the libel, over which they had no jurisdiction, they left it to be punished according to the course of the common law.

The next is the famous case of Bridgman v. Holt, in this court, to which I have so often called your lordships' attention.† It is decisive of the question. It was a trial at bar, in order to ascertain to whom belonged the right of appointing the clerk of this court, whether it was vested in lord Holt as chief justice, or in the duchess of Grafton, who claimed under a patent from king Charles 2nd. Lord Holt being interested in the event, did not sit upon the bench. Upon the trial, a bill of exceptions was tendered to the judges, who refused to seal it. A verdict was given against the claim of the duchess. Judgment being entered up, a writ of error was sued out; and at the same time a criminal complaint was preferred to the House of Lords in the nature of a petition, arraigning the judges for their conduct in refusing to seal the bill. On the day appointed by the Lords, the judges delivered in their answer,

* 15 Lords' Journ. 332, 3rd. Jan. 1693.

† Shower's Parl. Cases, 111. Vide Hargrave's Preface, 184.

which they styled, "The answer of William Dolben, William Gregory, and Giles Eyre, knights, three of their majesties justices, assigned to hold pleas in their Court of King's Bench, at Westminster, to the petition of the most noble Isabella duchess of Grafton, and William Bridgman, exhibited by them to your lordships."—In this answer "they claim the benefit of Magna Charta," and of the other statutes which I have cited.—"They insist upon their right as commoners of England to defend themselves upon any trial that may be brought against them, for doing any thing contrary to their duty as judges, according to the due course of the common law."—They state, "That if the pretended bill was duly tendered to them, and was such as they were bound to seal, they were answerable for it, only by the course of the common law in an action to be brought upon the statute, which ought to be tried by a jury of twelve honest and lawful men of England by the course of the common law, and not in any other manner."*—That it is a complaint charging them with a crime "of a very high nature in acting contrary to the duty of their office, and so altogether improper for their lordships examination or consideration, not being any more triable by their lordships, than every information or action for breach of any statute law is, all which matters are by the common law and justice of the land of common right to be tried by a jury.—That the petition is wholly of a new nature without any example or precedent, being to compel judges, who are by the law of the land to act according to their own judgments without any restraint or compulsion whatsoever; and trenches upon all men's rights and liberties, tending manifestly to destroy all trials by jury.†—That inasmuch as the petition was a complaint in the nature of an original cause, for a supposed breach of an act of parliament, which breach, if any be, is only examinable and triable by the course of the common law and cannot be so in any other manner, and is in the example of it dangerous to the rights and liberties of all men and tends to the subversion of all trials by juries, they conceived themselves bound in duty with regard to their offices, and in conscience to the oaths they had taken, to crave the benefit of defending themselves touching the matter complained of in the petition by the due and known course of the common law, and to rely upon the aforesaid statutes, and the common right they had of free born people of England, in bar of the petitioners any farther proceeding upon the petition."‡

It was then argued, "that the complaint was beneath the honour and beside the jurisdiction of the House of Peers. That it was a complaint of a default in the judges, which cannot be tried in that place; that Magna

Charta was made for them as well as for others." Thus, when the judges were accused, they claimed and obtained the benefit of Magna Charta. They contended that it was made for them as well as for others. I hope I shall not hear to-day, that its benefits are fit to be imparted to the judges, but are not fit to be allowed to Mr. Flower.—It was farther argued—"That if the judges should offend against any rule of the common law or particular statute, whether in their personal behaviour or as judges they were triable only by their peers. That peers are only such, *qui pari conditione et lege vivunt*. That the crown and constitution of England had so far exalted their lordships in their state and condition, that it was beneath them to judge or try commoners. That all powers and privileges in the kingdom, even the highest are circumscribed by the law and have their limits. That it was a complaint of a great crime in the judges, a breach of their oaths, and with the insinuation of partiality to one of themselves; which if true, incurred loss of their offices, and forfeiture of their estates by fine, and of their liberty by imprisonment, and all this to the king, besides damages to the party grieved; and therefore thus it concerned them to have the benefit of the law."*

"By this means," they say "the judges lose the benefit of that legal trial by a jury of their peers which is their best fence and protection against power, art, or surprise, the best for indifference and discovery of truth." To Mr. Stockdale and Mr. Reeves, it was indeed a fence and a protection; I have no doubt but that it would prove the same to Mr. Flower. "The institution of the law is cautious and wise in its provision for both. Challenges are admitted below. It is derogatory to the honour of this court to suppose it necessary here; but to have it in Westminster-hall, is however reckoned a common privilege and birth-right." "There the law is determined by one, and the fact is ascertained by another. Here, both are in the same hands; not that any jealousy can be supposed of mischief by it in this House. But the practice of it now, may give precedent to future reigns and ages, in which there may be danger of a partiality.† If this House shall punish the judges, and commit them, and award damages, or make other order in favour of the petitioners, would such order bar or stop the legal process afterwards? Can any order made here be used below as a recovery or acquittal, as an auterfoits convict or auterfoits acquit? If there be any thing in it, it is a breach of the statute law, for which they are punishable at the king's suit. Will the proceeding here save them from the trouble of answering to an indictment or information for the same thing."‡ These are the

* Shower's Parl. Cases, 117.

† Ibid. 118.

‡ Ibid. c. 119.

* Shower's Parl. Cases, 131.

† Shower, 123.

‡ Ibid. 126.

grounds on which the judges of this court denied the criminal jurisdiction of the Lords. They stated that this method is not only against the general tenor and frame of the common law, but against divers acts of parliament and declarations of that House. And, they add, "to prevent the force of many precedents which might be cited on the occasion; the proceeding is against their consent, and therefore differs from all cases, where the parties concerned have answered the complaint. Some persons perhaps have, from a confidence of success, or from a slavish fear, or private policy, forbore to question the power of their superiors, but the judges must betray their reputation and their knowledge of the laws, if they should own a jurisdiction which former times and their predecessors were unacquainted with."* It is true, that the lord chief justice was not a party to this answer of the judges of this court. But, that his opinion was the same, appears from the judgment which he gave in the case of lord Banbury, and from his conduct when summoned by the peers to answer for that judgment.— After reporting the case, in which my lord Holt denied the claim of the lords, lord Raymond adds, "note, that this judgment was very distasteful to some lords. And therefore, Hilary, 1697-9, W. 3, the lord chief justice Holt was summoned to give his reasons of this judgment to the House of Peers, and a committee was appointed to hear and report them to the House, of which the earl of Rochester was chairman. But the chief justice Holt refused to give them in so extra-judicial a manner. But he said, that if the record was removed before the peers by error, so that it came judicially before them, he would give his reasons very willingly. But if he gave them in this case, it would be of very ill consequence to all judges hereafter in all cases. At which answer some lords were so offended, that they would have committed the chief justice to the Tower; but, notwithstanding, all their endeavours vanished in smoke."† So also in the former case the petition against the judges was dismissed.

Such, my lords, were the two important cases of *Bridgman v. Holt*, and the *King v. Knollys*, so honourable to the judges of this court. I feel them to have the more weight from the gravity of the persons concerned, from the dignified manner in which they proceeded, and, above all, from the circumstance that they were the two first cases of the kind which occurred after the Revolution; and that, at a time when the principles of the constitution were so well understood, and so faithfully carried into practice, this pretended power of the Lords was resisted by the judges of the land, and the Lords, as became them, yielded to their resistance.

* Shower, 122.

† 1 Lord Raymond 18. *Rex v. Knollys*, S. C. Salked, 511. *Howell's State Trials*, vol. 12, p, 1179. 17. *Lords' Journa.* 122

After vacating the judgment against *Samuel Barnardiston*, if any doubts remained of the law, these two cases must have entirely dispelled them, and have set the question at rest for ever. And such appears to have been the general opinion. † As far as it can be collected from their practice, it seems to have been the opinion even of the Lords themselves. For I flatter myself that I shall be able to convince your lordships, that the House of Peers have ever since abandoned all claims to fine and imprison for breach of privilege and libel, and have adopted a mode of proceeding more consistent with the rules of law.

In the year 1703, only five years after, a complaint was made to the House of Lords of a work of Dr. Drake's, intitled "A History of the last Parliament." The House voted it to be a libel, but instead of fining and imprisoning the author, they ordered the attorney-general to prosecute him for the libel.*

In 1707, the House of Lords being informed, that, in a book published by one Richard Kingston, intitled, "Remarks upon Dr. Friend's Account of the Earl of Peterborough's Conduct in Spain," there are contained divers scandalous reflections "on the earl of Peterborough:" Kingston was ordered into custody. On a subsequent day, the work was voted to be a libel. The attorney-general was ordered to prosecute, and Kingston was discharged upon payment of his fees. †

In 1719, "Hall's Sober Reply," a work against the Trinity, was voted to be a blasphemous libel. The attorney-general was ordered to prosecute, and the parties were discharged, on entering into a recognizance before the chief justice of this court to appear to the information ‡

In the very next year, 1720: "The Weekly Journal" was ordered to be prosecuted for a libel on the Protestants of the Palatinate. § And here your lordships will observe, that when the House of Lords first claimed this power, they made no distinction between a libel on a peer or on a commoner, or an ally of this country. Every libel was alike to them. The disgraceful sentence which they passed on Mr. Floyde, in the reign of king James the first, was for reflecting on the Electress Palatine. ||

On the 21st of April, 1728-9† complaint was made to the House of a printed pamphlet, intitled—"Who is the Impostor Discovered," or "the Vindication of John Curson from the

* 17 *Lords' Journals*, 123, 123. 6 *New Parl. Hist.* 19.

† 18 *Lords' Journals*, 427, 428, 430.

‡ 21 *Lords' Journals*, 229, 230, 231.

§ 21 *Lords' Journals*, 344.

|| "This shameful sentence is at length in "1 *Grey's Debates*, 153, and also in the "Journals of that date, both of Lords and Commons." *Orig. Ed.* The case of Floyde is reported in 1 *Howell's State Trials*, 1153.

¶ 23 *Lords' Journals*, 399.

Malicious Aspersions in the Daily Post of the 28th instant;" wherein is contained, as was alleged, reflections on the Lord Willoughby De Broke. The paragraph was ordered to be read, and the matter was referred to the committee of privileges.—On Monday the 28th of April, the lord Delaware reported from the committee of privileges, "that the said committee have considered the matter of the said complaint, and heard the said John Curson in relation thereunto, and are of opinion, that the said John Curson for writing and publishing the said pamphlet, is not guilty of a breach of the privilege of this House: which report being read twice by the clerk, was agreed to by the House."* On what ground the committee proceeded, whether they thought the paragraph was no libel, or that a libel on an individual peer was no breach of the privilege of parliament, I have not been able to discover. Nothing further appears upon the Journals. This however I may venture to assert, that whatever the pamphlet contained, if there were any reflections in it on the noble lord, they could not have been less offensive to the House than the paragraph objected to Mr. Flower. But however that might be, nothing can be more equitable and just than the mode then adopted by the House of Lords; they did not in the first instance proceed to judgment and condemn the party unheard. They received the complaint, and referred it to the committee of privileges. The committee summoned the party accused; heard him in his defence, and being satisfied with his justification, reported their opinion of his innocence to the House. Why was not this same mode adopted in the case of Mr. Flower?

The next case which I shall cite to your lordships is of great importance, though of a nature somewhat different. It is not a case of libel, nor did it arise upon the complaint of any individual peer. In the year 1740, a motion was made in the House of Lords and supported by all the power of the tory party, for an address to his majesty to remove the minister sir Robert Walpole from all his employments. The motion was negatived by a very large majority. What was the conduct of the supporters of that administration? They took the noblest revenge. As always has been the characteristic of whig administrations, they turned this attack upon themselves, to the advantage of the country, and recorded a standing memorial in behalf of the liberties of the people. They immediately proposed and carried the following resolution;—"That any attempt to inflict any kind of punishment on any person without allowing him an opportunity to make his defence, or without proof of any crime or misdemeanor committed by him, is contrary to natural justice, the fundamental laws of this realm, and the ancient established usage of

parliament, and is an high infringement of the liberties of the subject."—Now, this solemn declaration cannot by any strainings of reason, be tortured into a party decision, or be attributed to a factious spirit. The resolution was most vehemently opposed, and a protest entered on the Journals, signed by more than 30 peers. But they did not venture to deny that it was law. They said, that the House of Lords, had on all occasions acted according to the principles it contained. They contended that it therefore was unnecessary. They expressed their fears (and they were the fears of tories) lest by bringing forward such a resolution at that time, the justice of the House of Lords might be doubted and be drawn in question, and lest it might at some future period skreen and shelter a bad and arbitrary minister and prevent an investigation of his conduct.—Thus, in the collision of these contending parties, a spark of light was struck, which may guide and direct your lordships in the track you are to pursue in support of the liberties of the people.

Now, to apply the principles of this resolution to the case of Mr. Flower.—Sir Robert Walpole was not a member of the House of Lords; he had neither been impeached nor summoned to answer for his conduct. Had the address been carried, he would have been censured in his absence. But the acts of a minister are public and notorious, and require little proof. The motion was aimed not only at him, but at the administration of which he was the head, and of which many were members of the House of Peers, and ready to defend his measures.—Mr. Flower was adjudged guilty in his absence. No evidence was heard except to prove him the proprietor of the paper in which the paragraph appeared; no proof was given of any crime or misdemeanor. He was not called upon, nor was he even present before or at the adjudication, and therefore had no opportunity of making his defence. Therefore, if to have agreed to the address against sir Robert Walpole would have been "contrary to natural justice and the fundamental laws of the realm, a departure from the ancient established usage of parliament, and a high infringement of the liberties of the subject,"—much more so is the sentence on Mr. Flower. No man in his senses will maintain that six months imprisonment, and a fine of 100*l.* are no punishment; but it might perhaps be contended, that had the House of Lords agreed to the address, and sir Robert Walpole had in consequence been removed from his employments, it could not with propriety be called a punishment; we have been lately told from high authority, that it is the prerogative of his majesty to dismiss his

* Lords' Journals, Friday 13th February, 1740-1, Collection of King's Speeches and Lords' Protests, vol. 3, p. 385. 11 New Parl. Hist. 1017, 1217, 1223.

* 23 Lords' Journals, 407, 408.

servants whenever he thinks fit; and, that the dismissal of a person, without any reason assigned, from so high an official situation as that of lord lieutenant of Ireland, so far from being a punishment or censure, is not even an imputation of blame,

In 1750, a work entitled "Constitutional Queries earnestly recommended to the consideration of every true Briton," was voted to be an infamous libel on the King, Laws, and Constitution. The Lords requested a conference with the Commons; the consequence of which was, a joint address from both Houses of Parliament, praying his majesty to give orders for bringing the author, printers, and publishers to punishment.* Here, although the work was a libel on the whole frame and constitution of the state, and the power of both Houses was united, yet it never occurred that their authority thus concentrated was sufficient to punish the offenders, but they prayed his majesty to order them to be prosecuted according to the course of the common law.

I am now come to a case very similar to the present, excepting that I believe no one will compare the libel imputed to my client to the work to which I allude, or entertain the same opinion of him as of its author. In 1763, complaint being made to the House of a printed paper entitled "An Essay on Woman, with notes," to which the name of the right reverend doctor Warburton, bishop of Gloucester, a member of this House is affixed, in breach of the privilege of this House; and of another printed paper intitled, "The Veni Creator paraphrased:"—"Resolved, that a printed paper intitled, &c. highly reflecting upon a member of this House, is a manifest breach of the privilege thereof, and is a most scandalous, obscene, and impious libel."—Witnesses were called, who proved them both to have been written by Mr. Wilkes. An address was then voted to his majesty:—"That he would be graciously pleased to give the most effectual orders for the immediate prosecution of the author or authors of the said scandalous and impious libels, and for bringing them to condign punishment †

That, my lords, was a much stronger case. By the warrant of commitment, which the officer has read this day, it appears; that, "it was moved to resolve that Benjamin Flower is guilty of a high breach of the privileges of this House; which being objected to, after debate, it was resolved in the affirmative."—Being objected to—after debate!—Upon the face therefore of the warrant, the offence imputed to Mr. Flower is not a manifest breach of the privileges of the House. Now, what was the conduct of the House where the breach of privilege was manifest?—In that case, as in this, the party libelled was a bishop,

* 27 Lords' Journals, 1478. 14 New Parl. Hist. 868.

† 30 Lords' Journals, 414. 15. New Parl. Hist. 1346.

eminent for virtues and literary talents, which rendered him an ornament to the bench and the pride of his order, whose works had considerably diffused the light of knowledge, and by enlightening had greatly helped to the melioration of mankind.* In that case witnesses were called, who proved the copy of the work to be in the hand-writing of Mr. Wilkes, yet, although no doubt could be entertained of the author, and although in the opinion of the House the breach of privilege was manifest, they never thought of taking upon themselves

* "Whatever people thought of the political or religious principles of the bishop of Llandaff, he had, till of late, the merit of consistency, and was universally believed to be sincere. Tolerant and candid in the expression of his sentiments, religious and political, Dr. Watson treated every subject with a liberality which ensured it a favourable reception, and which, at the same time, reflected the highest lustre on his character. His politics were those of the Whigs, and were founded in the constitution of the country. His religion breathed the meek spirit of the gospel.—No man was a fairer opponent, or a more liberal antagonist. In support of his opinions, he disdained the use of any weapons but argument and reason.—Such was Dr. Watson.—A few months ago, he deserted his old political connexions, and coalesced with Mr. Pitt. Ever since, he not only has supported by his vote, but has spoken and written in favour of the ruinous projects, and the unconstitutional measures of the minister. He has been refuted beyond the power of reply. Indeed he has not ventured to attempt one.—But—mark the consequence—No less than five of his opponents have been doomed to imprisonment, and four of them have been also fined. Mr. Johnson, Mr. Jordan, Mr. Cuthell, Mr. Flower; and, O, shame! shame! that eminent character in literature, his friend and fellow-labourer in the vineyard of science, Mr. Gilbert Wakefield.—*Tantane animis caelestibus ire.*—Is this a proof that he feels either truth or reason on his side? Or, is the persecution of those who continue steadfast in one's late opinions, the only test that a conversion is sincere? To fit a Whig to be a Tory, is it necessary to degrade the man? Or, is it the bond of reconciliation between Mr. Pitt and those who have opposed him? The pursuit of literature, it is said, humanizes the heart, and soothes the angry passions. It may be so; but were Rousseau alive, I doubt whether he would not quote the prosecution of these gentlemen in proof of his favourite position, 'that the cultivation of the arts and sciences does not tend to the amelioration of mankind.'" *Orig. Edit.* But concerning bishop Watson's share in the proceedings against Wakefield and Flower, see the notes in pages 729 and 1006 of this volume.

to inflict the punishment, but addressed his majesty to give orders for the prosecution of the author or authors of the libel. Nor can it be said, that his majesty's refusal to comply with these addresses of the Lords has obliged them to resort to this extraordinary mode of punishing these offences.

In the same year another complaint was made against Mr. Wilkes, as author of the paper called "The North Briton." A conference was had upon the subject between the two Houses, who resolved, "That the paper intitled "The North Briton," No. 45, is a false, scandalous, seditious libel, containing expressions of the most unexampled insolence and contumely towards his majesty, the grossest aspersions upon both houses of parliament, and the most audacious defiance of the authority of the whole legislature.*" The paper was ordered to be burnt by the hands of the common hangman, and a joint address was voted to his majesty, praying him to prosecute the authors of this infamous libel.†

The times seem to have teemed with libels. In the very next year a complaint was made to the House of Lords of another work, entitled "Droit le Roy, or A Digest of the Rights and Privileges of the Imperial Crown of Great Britain." A conference was had between the two Houses, who came to a joint resolution, that it was a false, malicious, and traitorous libel, inconsistent with the principles of the Revolution, and an insult upon his majesty; tending to subvert the fundamental laws and liberties of these kingdoms, and to introduce an illegal and arbitrary power.— This work also was ordered to be burnt by the common hangman.‡

From these cases it should seem, not only that the House of Lords have no criminal jurisdiction over questions of libel; but also that they have pointed out the different line to be pursued in cases of simple libel, and in cases of libel mixed with breach of privilege. In cases of libel only, they left the authors to the course of the common law, and requested his majesty to order them to be prosecuted; where breach of privilege has been superadded, as this could not be noticed in the courts below, they have gone a step further, and have stigmatized the offender, by ordering his work to be burnt by the hands of the common hangman.

My lords; I flatter myself that I have now clearly established to your lordships' satisfaction and irrefragably proved, that the constant undeviating practice of the House of Lords from the Revolution to the year 1761, has been in favour of my positions. Since that time, I admit there have been some cases the other

* 30 Lords' Journals, 424. 15 New Parl. Hist. 1365.

† 30 Lords' Journals, 432. 15 New Parl. Hist. 1378.

‡ 30 Lords' Journals, 470, 480. 15 New Parl. Hist. 1418.

way. But they cannot affect my argument. In none of them has the right of the Lords been questioned, or the exercise of their power been resisted. The parties have submitted from some slavish fear, from the greatness of the expense, or some other motive. If the House of Lords had not this jurisdiction down to the year 1764; they cannot have acquired it by any subsequent decisions. Their jurisdiction must be founded either upon some statute, or on the constant undeviating usage of parliament. That it is founded upon a statute has never been pretended. That such has not been the usage since the Revolution, I have proved. But it is stated in the case of *Bridgman v. Holt*:—"That to make it the *lex terra*, there must be ancient and continual usage: no new practice can make a law." And I find that during the contest between the two Houses of Parliament in 1704, on the subject of the Ailesbury men, the House of Lords entered into this resolution: "Resolved, that neither House of Parliament hath any power by any vote or declaration to create to themselves any new privilege, that is not warranted by the known laws and customs of parliament."† Now that jurisdiction cannot well be intended to be warranted by the known laws and customs of parliament, which, in almost every case where it has been exercised, has been disputed and denied; which, in every case where it has been resisted, has been yielded up; which, before the Revolution, the Lords themselves abandoned in the case of sir Samuel Barnardiston; which immediately after that great era, the judges of this court opposed, and which from that time has been never exercised. If sixty years possession give us an indefeasible title to our estates, surely the practice of a century is a sufficient security to our persons against arbitrary imprisonment by the House of Lords.

But, my lords, there is a resolution in the case of Mr. Wilkes, which furnishes another very powerful argument. The two Houses of Parliament were so intent on the ruin of that gentleman, that in their eagerness to run him down, they overlooked their own concerns and consented to vote away their privileges. They resolved, "that privilege of parliament does not extend to the case of writing or publishing seditious libels, nor ought to be allowed to obstruct the ordinary course of the laws in the speedy and effectual prosecution of so heinous and dangerous an offence."‡ This resolution of the two Houses of parliament is not confined to the particular case of Mr. Wilkes, or to those cases where the party accused is a member of the legislature; it says generally, "that privilege of parliament does not extend to the case of writing or publishing a seditious libel."—And, for the best of

* Shower's Parl. Cases, 194.

† Lords' Journ. 28, Feb. 1704.

‡ See the Journals, 29 Nov. 1763. 15 New Parl. Hist. 1361, 1365.

reasons, because the offence is of so heinous and dangerous a nature, that the prosecution of it ought to be left to the ordinary course of the laws. What is there in this resolution that warrants the construction which must be contended for in order to support this commitment, viz. "that privilege of parliament shall not extend to the writing or publishing a libel where it may be for the benefit of the party charged, but shall extend to it in all cases where it is to his disadvantage." In the present case moreover, it ought not to be allowed as it obstructs the ordinary course of the laws by dooming a person to punishment for an offence of which he might, and still may, be convicted or acquitted by a jury of his country.

My lords, having travelled pretty much at length through the statutes and cases on the subject from the days of king Edward 2nd, down to the present time, I shall proceed to state some of the many dangerous consequences which, in my apprehension, may ensue from supporting this commitment.—When the Lords first made this claim, they maintained their right to jurisdiction in the first instance over all cases whatsoever, civil as well as criminal, and the same arguments were used in support of their right to original jurisdiction over civil, as over criminal cases. If this commitment be established, what shall prevent the renewal of this claim?—There are many cases of a civil nature, over which the House of Lords have better grounds to claim jurisdiction, than over cases of libel or other misdemeanor.

There is one description of civil cases in particular, which we hear too much of in this court, the investigation of which they might with great plausibility arrogate to themselves. I mean cases of adultery. Suppose a commoner to be guilty of that offence with a peeress.—If the injured peer were to bring his action in this court, might not the House of Lords with great appearance of reason interfere and say—No—You shall not bring your action in the courts below,—the injury of which you complain, is a breach of the privileges of this House.—The principle upon which the House of Lords is constituted is, that it is composed of persons raised to that high station for their talents and learning, like your lordship, or for their public services to the nation, like lord Nelson, or of others descended from a long train of ancestors originally created for the same reasons, and whose virtues and talents are supposed to have descended to their children. But this daring commoner attempts to send into this House a base-born handling of his own, boasting no services he has performed or talents which he has displayed, and claiming no merit from his ancestors. Thus has the defendant been guilty of the highest breach of privilege, by polluting in its very source the stream of noble blood.—On the other hand, suppose a peer to be connected with the wife of a commoner; this also it might be said, is a high breach of

VOL. XXVII.

privilege; it is lowering the quality of noble blood, and making it too common; it is engraving the apple of nobility on a plebeian crab stock. These arguments might perhaps appear ridiculous; but, they are more solid and ingenious than most of those which have been advanced in support of the right of the Lords to criminal jurisdiction.

But, my lords, there are other consequences serious indeed.—After this punishment inflicted by the House of Lords has been gone through, suppose the attorney-general to file an information against Mr. Flower for the same identical libel; and, what is to prevent his filing it? Suppose him brought here to trial for that libel. It would at first sight appear incongruous to every one, that he should be tried before your lordship, who had already sat in judgment upon him for the same offence, who had previously declared your opinion of his guilt, and had spoken and voted for his punishment. Could your lordship be said to be indifferent? The attorney-general moreover might, and probably would, quote this decision of the Lords, and the opinion expressed by your lordship, as an argument to prove the guilt of the defendant; yet, when your lordship came to sum up the evidence, with that impartiality which always characterizes your lordship, you would be obliged to tell the jury, that they were to attend only to the evidence given upon oath before them—that they were bound to discard from their consideration every thing that had passed elsewhere, and that the judgment of the House of Peers, and the opinion expressed by your lordship, were nothing to the purpose; that they ought to have no influence whatever on their minds, nor weigh a feather in the scale.—Should Mr. Flower be acquitted, he would have been punished for an offence of which he was not guilty. Should he be convicted, he might sue out a writ of error, and carry the record before the House of Lords; and then, after he had suffered six months imprisonment, and paid his fine, their lordships would have to decide, in their judicial capacity, as the last court of error, whether in point of law the paragraph complained of amounted to a libel, and was an offence for which any punishment whatever could be legally inflicted.—Can any thing more preposterous be conceived? In the case of *Bridgman v. Holt*, which I have cited, the judges resisted this jurisdiction of the Lords, as dangerous in its example to the rights and liberties of the people, and tending to the subversion of the trial by jury. On the present occasion, is the example less dangerous? or, is it become less necessary to guard against the excesses of power? No man can feel a higher respect than I do for the nobility of the country. No man who hears me will imagine that I mean to treat them with disrespect. I entertain no fears that the present House of Lords will attempt to exceed their jurisdiction, or use it as an engine of oppression to the subject; I have

too high an opinion of the virtue of the present House. But though no danger is at present to be feared from them, who knows what may be the case hereafter? We live in good times, it is true; nay, we are told, in the very best of times, when such an attempt would not be tolerated, if made. But, one advantage of good times is, the security it enables us to obtain for our descendants, and by making and enforcing good and wholesome laws, the preventing bad men in bad times from wresting them to the oppression of the subject. It is in good times only, that good precedents can be effectually established. This country has seen bad times, and every body knows what has been the consequence. As bad times have been, so bad times may return. In our days I hope this will not be the case. But viewing the present situation of Europe, nobody can say with precision, what may or may not happen. If such an event shall take place, it requires no very great exertion of ingenuity or fancy to imagine what evils may ensue. Suppose, in this country, a minister, who, forced into power by the voice of the people, on account of the professions he had made in support of their liberties; professions, which he intended to desert at the time he made them; should spurn at all the maxims and principles of our ancestors; should, year after year, break down all the barriers and fences of the constitution, and yet be always requiring more power; should see in the constitution nothing so sacred, as to allow it to escape the unhallowed grasp of his sacrilegious hand; should plunder the people, corrupt and buy the House of Commons, and degrade the House of Lords by inundating it by a crowd of low-born persons, devoid of talents or respectability, and with no pretensions but their venality to the peerage;—thus outnumbering and weighing down the ancient and hereditary nobles of the land, and rendering them mere ciphers in the state; and suppose the people should still continue blindly to support that minister!—With a people so infatuated, a House of Commons so corrupted, a House of Lords so degraded, and a minister so daring, what might he not order his chosen band to vote a breach of privilege, and what extent of punishment might he not direct them to inflict? In the case of the *King v. Wright*,* your lordship said, “you did not say there could be no case in which the House of Commons and House of Lords too, might carry their privileges beyond the law; and when that was the case, and the subject came judicially before a court of law, a court of law would not swerve from its duty, but would decide according to law.”—In the instance which I have put, your lordships would probably think it your duty to hold forth the aid and protection of this Court. But after you had established this unlimited power of the Lords, by a decision in favour of

this commitment, you would find it was too late; like the lion in the fable, you might, indeed, retain your strength, but like him you would find it of no avail after you had consented to the paring of your claws.—Such are a few of the mischiefs which may follow from allowing the privileges of parliament to be extended beyond their constitutional and legal limits.

There is one other topic on which I shall say a few words; I mean the delicacy with which questions of privilege have been accustomed to be treated; as if they were unfit for the investigation of the courts of law. In the cases of the *Queen v. Paty*, of *Ashby v. White*, the *King v. Knollys*, and several other cases, lord Holt did not conceive that they ought to be handled with that tenderness. He thought the authority of both Houses was circumscribed by the law, and that their wrongful acts could no more be justified than those of private men. And, indeed, I never could understand, if their power is from the law, what could be the danger of discussing its exercise in a court of law. It always seemed to me a curious way of showing respect to the Lords, to represent their privileges as unfit to meet the public eye, and such as must necessarily shrink from inquiry. I always thought it would be most respectful to enter fully into an investigation of their privileges when exercised, and to state and ascertain exactly their limits and their bounds. Were this done, the House of Lords could never exceed their jurisdiction by mistake; if they did, the mistake would easily be rectified. As the extent of their authority would be known, they would exercise it without obloquy and with more effect. At present, privilege is viewed with a jealous eye, on account of the mystery in which it is involved.

Fearful, lest your lordships should be actuated by a sense of this false delicacy for the privileges of the Lords, I have spared no pains to discover the origin of this strange doctrine, “That they are not to be investigated in a court of law;” and luckily I have traced it to its source. It originated in an opinion of the judges in the 32nd year of king Henry 6th, anno 1454, a period neither very favourable to liberty or law, nor famous for the independence of the judges. When I read this case, it reminded me of a well-known anecdote of lord Mansfield, which your lordships probably recollect. A person who had been appointed to a judgeship in some distant part of the empire, applied to his lordship for advice how to act; as he was totally ignorant of the law. Give your judgments, said lord Mansfield, but give no reasons. As you are a man of integrity, sound sense, and information, it is more than an even chance that your judgments will be right; but, as you are ignorant of the law, it is ten to one that your reasons will be wrong.—Sound advice, either for judges who are ignorant of the law, or for those who are determined to decide against it.

* 8 Term Rep. 493.

The case was this. Thomas Thorpe, the Speaker of the House of Commons, entered the palace of the bishop of Durham, and seized there, goods belonging to the duke of York. For this trespass the duke brought an action in the court of exchequer, where he recovered 1,000*l.* damages against Thorpe, who was thereupon committed to the Fleet. At the meeting of parliament, the duke applied to the House of Lords, praying that as the judgment was given in time of vacation, Thorpe might not be admitted to his privilege of parliament, but that he should be kept in custody till he satisfied the duke his damages and costs, as otherwise the duke would be without remedy in that behalf. The entry on the roll then continues in these words—"The said lords spiritual and temporal not intending to impeach or hurt the liberties and privileges of them, that were coming for the commons of this land to this present parliament; but, equally after the courts of law to administer justice, and to have knowledge what the law will weigh in that behalf, opened and declared to the justices the premises, and asked of them whether the said Thomas ought to be delivered from prison by force and virtue of this privilege of parliament or no:—To which question, the chief justices in the name of all the justices, after sad communication and mature deliberation had among them, answered and said; that they ought not to answer to that question, for it hath not been used afore time, that the justices should in any wise determine the privilege of this high court of parliament; for" mark the reason—"it is so high and mighty in its nature that it may make law; and that, that is law, it may make no law; and the determination of that knowledge and privilege belongeth to the lords of the parliament, and not to the justices."* So that the ground on which is built this pretended exemption of the privileges of the House of Lords from investigation in the courts of law is, that the House of Lords, forsooth, may make law, and that which is law, they may make no law! What would not such sycophantic judges have decided? This decision has been aptly compared by that constitutional statesman sir Francis Seymour, † to the answer of the judges of Cambyses, "who being asked by him concerning something unlawful, said, though there were no written law, the Persian kings might do what they list."—This he said, "was base flattery, fitter for reproof than imitation; and as flattery, so fear taketh away judgment‡." All the subsequent decisions

* Rot. Parl. vol. 5, p. 339 31 & 32; H. 6, No. 26.

† 7 Parl. Hist. 362; 2 New Parl. Hist. 231.

‡ This sentiment of sir Francis Seymour is elegantly versified by Addison in his Cato.

—Fear admitted into public councils
Betrays like treason.—

Act 2, Scene 1. *Orig. Ed.*

on this subject of privilege are grounded upon this. Your lordships probably will think it more fit for reproof than imitation. At least your lordships cannot now maintain that the privileges of parliament ought not to be investigated here, without adopting the preposterous idea, that the House of Lords are so high and mighty, that they may at their pleasure make or unmake the law.

I shall not trouble your lordships any farther. When I considered the importance of the subject, either as it interests my client, as it respects the jurisdiction of this court, or the power of the House of Lords, but more particularly as it affects the liberty of the subject, and every thing that is dear and valuable in society; I thought it my duty in the first instance to spare no pains but to probe the subject to the bottom. After the strong intimation which I received that your lordships' opinion was decidedly against me, I felt it necessary to go more at length into the subject, than I otherwise should have done, or than perhaps is usual, and to state every statute, argument, and case which bears upon the subject, determined that if I failed of convincing your lordships of what I now am and was convinced originally, when I had the honour of moving for this writ, that my failure of success should not be imputed to any want of diligence in me, or to any neglect on my part in not fully stating the law upon the subject, but merely to my not possessing powers of argument sufficient to impress it on your lordships' minds.

It only remains for me to move,—That Mr. Flower be discharged out of custody, or delivered upon bail. He has sufficient bail attending in court.

Lord Kenyon.—The learned counsel who has looked round on every side, during his address to the court, has drawn a picture of a minister, established in power by the voice of the people, and then doing a great many horrid things, and among others, filling the House of Lords with a banditti. The learned counsel it is true, did not use that word,—but persons who superseded the ancient nobility of the country. I happen to be one of that number. Of myself I will say nothing. But of the rest I will say a word or two. If we look back to the history of the country, and consider who were made peers in former times, and who now form part of what he calls the hereditary nobility of the country;—if we look back to the reign of Charles the 2nd, in the letters which form the word CABAL, will the memory of the learned counsel, who seems to think virtues and vices hereditary, furnish him with the name of no persons who were then made peers, who were not very likely to devolve virtues to the succeeding ages. But no more of that.

If this case was at all intricate:—If there was any doubt about it, it would very much misbecome those who sit here in judgment, to rush to a decision after all the detail of cases

we have heard; without first looking into them. But all this display of learning is most cheaply obtained, as the whole of it is contained in the *Treatise of my lord Hale*, lately published by Mr. Hargrave, to which that learned gentleman has affixed a most laborious preface, which I have read, and which has afforded me a great deal of information and amusement. The operations of lord Hale's vast mind always call for the greatest attention to any work that bears his name. But in the whole of that publication in the preliminary part, or in the text itself, the learned counsel has not found one single line applicable to the present question. As to the case of *Bridgman v. Holt*—nobody doubts about it.—There is not a case in the books more familiar to all the professors of the law. The circumstances under which it was tried, pin every body's attention to it: for, when we are told, that the chief justice of this court, lord Holt, left his place upon the bench, and sat uncovered at the bar, to assist the counsel we are all anxious to know what could have produced that phenomenon. There is not a lawyer who does not know it. It has not the least relation whatever to this case, and yet just as near a relation to it, as all the other cases that have been cited. This is of all questions upon earth, the plainest that ever came to be discussed.

It was first contended, that the House of Lords is not a court of record;—that point was receded from almost as soon as made. In their legislative capacity, perhaps they may not be a court of record any more than the House of Commons.

Another thing was also stated, that the person on the floor was not permitted to defend himself. I happened to be present. The papers and proceedings were all before us. What do they state?—"And the said Benjamin Flower having been heard as to what he had to say, in answer to the said complaint, and having acknowledged himself to be printer and publisher of the said paper so complained of, and also, that he was the sole proprietor of the same, was directed to withdraw." Had he not an opportunity of calling witnesses? Had he not the same means of defending himself as in a court of justice. From what has passed, I am called upon to vindicate the honour of the House of Lords. Their honour stands upon so stable a ground, that no flirting of any individual can hurt them. The public feels itself safe in its liberties, protected by the two Houses of Parliament. The public, I am sure, neither wishes for innovation, nor that those innovations should begin by calumniating either of the Houses of Parliament. Government rests upon public opinion; and, if ever the time shall come, that any malignant, any factious, or any bad man, shall wish to overturn the constitution of the country, the first step he will take, I dare say will be, to begin by attacking in this court, one or both of the Houses of parliament; but all such petty at-

tacks will have no effect upon the public mind. They will only recoil upon those who make them.

The ground upon which this commitment proceeds is, that there has been a contempt and a breach of privilege of the House of Lords. Is it peculiar to parliament or to the House of Lords to punish for contempts? Does not this court claim that power? Has not this court exercised it in cases without number? Have we not seen a thousand instances of attachment for contempts, not committed *in facie curiæ* merely? It was not in the presence of this court, that Mr. Beardmore did not do his duty as under sheriff, and yet this court attached him.* The principal ground and the great stress and basis of the argument is, that if there is any other way to punish for contempts, this is not to be resorted to. That very case is an answer to the whole of the argument. Mr. Beardmore was indictable for his offence. There can be no doubt of it; and yet he was attached. He was heard upon interrogatories, reported in contempt upon those interrogatories, and fined and imprisoned. Why are the arms of the House of Lords to be shortened. That they can fine in this summary way is also beyond doubt.

Look at the case of lord Shaftesbury, on which so much stress has been laid, and see whether there is any thing that bears upon this case. Let the learned counsel recollect that some of the persons who in lord Shaftesbury's case, wanted to abridge the power of the House of Lords, were afterwards found among the counsel against the seven bishops. One of the counsel against lord Shaftesbury was one of those three most eminent lawyers who at the time of the Revolution were invested by the House of Commons with the greatest power ever given to a subject, to confer with the House of Lords touching the establishment of the constitution. Mr. Sergeant Maynard is the man who in the case of lord Shaftesbury argues in support of this power in the House of Lords. Was he a man likely to prostitute his great abilities in support of a doctrine destructive to the liberties of the subject? He says:—"It ought to be observed that this attempt is *prima impressionis*, and though imprisonment for contempt is frequent by one and the other House, till now no one has sought their enlargement here."†

The Court were obliged to grant this Habeas Corpus. Having heard it argued, I am of opinion that the party must be remanded—beyond all doubt, unless we wish to overset all the law of parliament; unless we choose to lend our hand to do that most sacrilegious act, to endeavour to overthrow the constitution of the country, this person must be remanded.

* 2 Burr. 792.

† See Mr. Clifford's observations on this quotation *infra*.

Mr. Justice *Grose*.—I shall be very short, for this case which has been agitated at the bar is not new; it has been considered in former times, it has been considered in latter times, and has been considered in intermediate times. All the principles mentioned to-day have been formerly discussed. All the cases cited to day have been examined; and, what has been the result? I will read only a few lines of what was said in a court as ably filled as any court need be, or ever was filled. It is what was said by lord chief justice De Grey, in a case alluded to, but of which very little was cited at the bar. I mean the case of Brass Crosby who was then lord mayor of London; it is in 3rd Wilson, 198. The true principle, and the true ground upon which this case may be decided seem to me to lie in a very narrow compass. I shall read it from the mouth of lord chief justice De Grey: "When the House of Commons adjudge any thing to be a contempt or a breach of privilege, their adjudication is a conviction, and their commitment in consequence is execution. And no court can discharge or bail a person who is in execution by the judgment of any other court." In another passage he said "Every court must be the sole judge of its own contempts;" and again, "The counsel at the bar have not cited one case where any court in this hall, has ever determined a matter of privilege which did not come incidentally before them." Having read this, I have said the most material thing that occurs to me upon the subject. If a commitment by the House of Lords is a commitment in execution, that is decisive.—Therefore the prisoner must be remanded.

Mr. Flower was accordingly remanded to Newgate.

N. B. Mr. Justice Lawrence was absent on account of ill-health. Mr. Justice Le Blanc was sitting at Guildhall, trying causes for the lord chief justice, and not returning until the argument was closed, gave no opinion.

MR. CLIFFORD'S POSTSCRIPT.

I accede with pleasure to Mr. Flower's request to revise that part of his publication which relates to the proceedings in the court of King's-bench.—It affords me an opportunity not only of observing on the judgment of the court, but also, of vindicating the character of my ancestor.—The expression of gratitude is a virtue and a pleasure. "A liberal mind will delight to cherish and to celebrate the memory of its parents."*

After an eulogium upon new nobility, the lord chief justice asked—"if looking back to the reign of Charles 2nd, in the letters which form the word CABAL, my memory would furnish me with the names of no persons, who were then made peers, who were not very

likely to devolve virtues on the succeeding ages?"—Of the ministry denominated "the cabal," Clifford alone was raised to the peerage by king Charles 2nd. I know of nothing either in his character, or in the causes of his elevation, of which his descendants need to be ashamed.

Noble descent, conspicuous talents, fidelity unshaken, important services; each of these has been deemed claim sufficient to the dignity of the peerage.—They all united in sir Thomas Clifford. He was the eldest male lineal descendant of John, the second son of Lewis Clifford, from whose elder brother Thomas lord Clifford the earl of Cumberland descended. This Lewis Clifford was no inconsiderable person, he was chosen one of the knights companions of the noble order of the garter at the beginning of the reign of king Richard 2nd, when—

Knights of the garter were of noble birth,
Valiant and virtuous, full of haughty courage,
Such as were grown to credit by the wars.*

In the disputes between the houses of Lancaster and York, many of his ancestors had borne a considerable part. In the reign of queen Elizabeth, his grandfather was on various occasions employed in a diplomatic capacity, and afterwards at the age of fifty, he applied himself to the study of divinity, and became so great a proficient, that he obtained the degree of Doctor in the university of Oxford; and was so disinterested as to preach gratis during the rest of his life, not choosing to accept any preferment in the church. The father of sir Thomas was colonel of a regiment of foot in the Scotch rebellion, in 1639, and died of a disease contracted in that service.

The lord high treasurer was not inferior to any of his ancestors. His talents have never been denied. "Thomas lord Clifford raised himself by his great parts and industry to high preferments and to the dignity of a baron of this realm.—He was a person of great natural parts, much accomplished in his education, and a sedulous student of the law."† "The talents of parliamentary eloquence and intrigue, had raised sir Thomas Clifford; and his daring impetuous spirit gave him weight in the king's councils."‡ "Clifford had raised himself by his great influence in the House of Commons."§—In the language of Shakspeare,

Full well did Clifford play the orator,
Inferring arguments of mighty force.||

But his exertions in parliament were not his only services. After the defeat and ruin of the royal party and the execution of the king, he retired with Charles 2nd into Hol-

* 1. part Hen. 6, Act 4, scene 1.

† Collins's peerage, title Clifford.

‡ Hume, vol. 7, p. 460.

§ Dalrymple, p. 32.

|| 3 Hen. 6, act 2, scene 2.

* Gibbon's Memoirs. p. 34.

land; where, a voluntary exile, he shared the fate and fortunes of his master. Being afterwards returned for Totness to the parliament which restored the king, he was very instrumental in producing that event.—He was one of the few instances, in which the house of Stuart rewarded in prosperity, those who had served them in adversity.

After the Restoration he was actively employed. He was in all the naval engagements with the Dutch in 1665 and 1666. And in 1665, was sent to the kings of Sweden and Denmark, with full powers to treat and make alliances with them. "On his return from those great adventures in November 1666, he was made comptroller of the household, and in the December following, was sworn of the privy council, for (as the gazette expresses it) his singular zeal, wherein he had on all occasions merited in his majesty's service, and more eminently in the honourable dangers in the then late war against the Dutch and French, where he had been all along a constant actor; and, as it was observed, had made it his choice to take his share in the warmest part of those services."* Afterwards on the death of lord Southampton he was appointed one of the lords commissioners of the treasury; in 1668, he was constituted treasurer of the household: and in 1672, he executed the office of principal secretary of state. "In all which employments" says Collins, "he merited so well, that on the 30th of April, 24th of Charles 2nd, his majesty advanced him to the degree and dignity of a baron of this realm, and in the November following made him high treasurer of England, and treasurer of the exchequer.

Such was the lord high treasurer.—Such were his services—the gradations by which he rose—the grounds of his elevation. It is not just to measure his conduct by the standard of the Revolution. To judge fairly of other men, we must transport ourselves to the times in which they lived, and place ourselves in the same situation. Clifford had been educated in the school of prerogative; he was firmly attached to the family of Stuart, and had early imbibed their arbitrary principles of government; his conduct was such as might be expected from the minister of a king who, untaught by the severe lesson of recent misfortunes, claimed a divine right to absolute sway, and attributed to a factious spirit every desire of his people to be free. No doubt can be entertained but that the conscience of lord Clifford was unsullied, and his intentions pure. He never descended to the debaucheries of the court; he was superior to the dissoluteness of its manners. During his abode in Holland he had embraced the catholic religion from a conviction of its truth; and, though ambition was the ruling passion of his soul, yet, upon the passing of the Test act, he indignantly resigned all his

employments rather than retain them at the expense of a surrender of his religious principles. Far from the bustle of public life he passed the remainder of his days in the quiet of a country retirement. His crimes, as they have been sometimes called, were the splendid errors of a great statesman, arising from the prejudices of his education, and confirmed by the habits of his life. To be descended from him I consider no disgrace. Nor should I feel it a reproach that I had succeeded to his crimes, if the succession were attended with the inheritance of his talents and his virtues.

But, I am accused of an overweening fondness for hereditary nobility. The charge is curious in the present times, when "our calmer judgment would rather tend to moderate than suppress the pride of an ancient worthy race."† I plead, however, guilty to the accusation. I entertain as high a reverence for ancient, as I feel contempt for upstart nobility; and whatever be the blame, I shall not submit to the degradation of defending myself against the charge of maintaining principles sanctioned by the constitution of my country. "The satyrists may laugh, the philosopher may preach, but reason herself will respect the prejudices and habits which have been consecrated by the experience of mankind."‡

My ideas of nobility nearly coincide with those of Gregory Nazianzen. "There are," says he, "three sorts of nobility: the first is that which derives its origin from above; in respect of which, we are equally noble, being all created after God's own image.—A second sort springs from blood, which whether it deserve the name, I know not, unless there be any material difference between clay and clay. A third is, that which arises from super-eminent probity and personal merit, and this is the only nobility that philosophy recognizes. For, as to a fourth species of nobility conferred by the diplomas of princes, I shall then hold it in estimation, when I deem beauty to consist in colour only, or can bring myself to admire a monkey for mimicking a lion."‡ I do not entirely agree in the description of the second species of nobility.—*Ex quovis ligno non fit Mercurius*;—nor is the porcelain of China fashioned out of common mould. When I see that every created being partakes of the qualities of its parent stock, I confess that I am inclined to think that there is some difference in blood, and I cannot easily persuade myself that the Almighty, either in his kindness or his wrath has made the human species an exception to this seemingly universal rule:—

Fortes creantur fortibus, et bonis;
Est in juvenis, est in equis, patrum
Virtus: nec imbellem feroces
Progenerant aquilæ columbam. §

* Gibbon's Memoirs, p. 28,

† Gibbon's Memoirs, p. 2.

‡ Orat. 26, p. 479. Tom. 1, Benedictin.

§ Hor. Carm. ode 4, lib. 4.

* 7 Collins's Peerage by Brydges 135.

But however this may be, the hereditary boasts one advantage over new nobility;—from the very cradle, its children are formed to the stations which they are destined afterwards to fill. “Wherever the distinction of birth is allowed to form a superior order in the state, education and example should always, and will often produce among them a dignity of sentiment and propriety of conduct which is guarded from dishonour by their own and the public esteem.”*

Doctrina sed vim promovet insitam,
Rectique cultus pectora roborant.†

Accordingly we seldom observe in our hereditary peers, those pedantic notions of impracticable morality, or that boisterous impetuosity of manners which sometimes accompany and disgrace, even in the highest situations, those who have been raised to them from the desk, merely on account of their industry and professional success.‡

But the lord chief justice “found no intricacy in the case, nor entertained any doubt about it. He therefore rushed to a decision without examining the cases that had been cited: indeed none of them bore any relation to the subject; it was the plainest question that ever came to be discussed.” That the cases do in some measure apply, and that the conclusion which I have drawn from them is accurate, appears from the conduct of the Lords in the case of Fitzharris. The Commons had impeached him before the Lords; but the attorney-general having informed them that he had an order from the king to prosecute Fitzharris at law, and had accordingly prepared a bill of indictment, the Lords, by the advice of the lord chancellor Nottingham, after debate, refused to proceed on the impeachment because they were restrained from trying commoners by the 4th of Ed. 3rd.§ This was certainly a forced construction of the statute,

* Gibbon's Memoirs, p. 2.

† Hor. Carm. ode 4, lib. 4.

‡ “This seems to have been the case of sir John Kelyng, lord chief justice of the court of King's-bench. At the Somerset assizes, 1667, on an indictment for murder, the jury found a verdict of manslaughter because they thought there was no malice prepense proved. But the lord chief justice told them they must be ruled by him in matters of law, and he compelled them by browbeating and threats to find a verdict of murder, and the man was executed. 1. Grey's Debates, 63. In a debate on this subject in the House of Commons, sir Thomas Clifford, after reprobating in the severest terms the conduct of the lord chief justice, described his character in these few words, ‘the foolishness, the passion, the cholera of the man in doing it was his crime. Ibid. 407.’” Clifford.

§ Lords' Journals, Saturday, 26 March, 1681.

which was never meant to extend to impeachments by the Commons, but it clearly shows that in 1681 the received opinion even of the Lords themselves, was, that they had no power to judge a commoner for any offence indictable at common law.—I proceed to examine the reasons given by the lord chief justice.

“It is not peculiar to the House of Lords to punish for contempts. The court of King's-bench claims and exercises this power.”

I am far from admitting, that because the court of King's-bench or the other courts at Westminster exercise a particular power, it therefore follows that the same is vested in the House of Lords. The process by attachment is contrary both to the spirit and to the letter of the great charter. It is not agreeable to the genius of the common law in any other instance;* it cannot therefore be claimed by analogy, but must be derived from some statute or from uninterrupted continual usage, as ancient as the law itself.† “To make it the *lex terre*, there must be ancient and continual usage; no new practice can make a law.”‡ If there exist any statute which gives this power to the Lords, let the advocates for the doctrine produce it.—I have proved it to be neither the ancient, the continual, nor the uninterrupted usage.

But, “why are the arms of the House of Lords to be shortened?”

Because the subject is not to be wantonly deprived of his birth-right, a trial by a jury of his equals.—Because the first principle of the British constitution is, to be jealous of the new approaches, as well as of the excesses of power.—It is with power as with love. “Increase of appetite grows by what it feeds on.”§ This has been fully exemplified in the punishment of Mr. Flower, when contrasted with that of Mr. Perry.—The bishop of Durham, having mentioned in the House of Lords the indecent manner of dressing practised by the dancers at the opera, the following paragraph appeared in the Morning Chronicle of Monday, the 19th March, 1798: “The House of Lords must now be admitted to be highly important as a political assembly, notwithstanding it has of late appeared to be nothing more than a chamber where the minister's edicts are registered for form sake. Some of their lordships are determined to vindicate their importance.—It is there that the dresses of the opera dancers are regulated.—One of the Roman emperors recommended to the senate, when they were good for nothing else, to discuss what was the best sauce for a Turbot.—To regulate the length of a petticoat is a much more genteel employment.”

This paragraph was undoubtedly a reflection on the Lords, in their deliberate capacity as

* 4 Black Com. 287.

† Ibid. 286.

‡ Shower's Parl. Cases, 124.

§ Hamlet, act. 1, scene 4.

one of the branches of the legislature. Mr. Perry, the proprietor of the paper, was ordered to the bar. He admitted it to be a libel, and instead of attempting to palliate its grossness, threw himself on the mercy and submitted to the judgment of the Lords. He was sentenced to be imprisoned for three months, and to pay a fine of fifty pounds.—In May, 1799, Mr. Flower was sentenced to six months imprisonment, and to pay one hundred pounds fine for a supposed libel on an individual peer, which did not in the slightest manner glance at or reflect upon the House.

But the analogy attempted to be drawn from the practice of the courts of common law completely fails.—The courts of common law possess no such power.—“Where the party is in court, an usher may be put over him; but if he be out of the view of the justices, he cannot be arrested without process.”* “A man may be imprisoned for a contempt done in court, but not for a contempt out of court.”† A thousand instances to the contrary were indeed referred to by the lord chief justice, but I venture to assert that not one will be found in which the party committed was not an officer of the court, or in which the contempt was not a disobedience to some of its rules, or an interruption of its proceedings. I do not contend that the courts are not invested with a power of punishing these contempts in a summary manner; were it otherwise, there would often be a failure of justice. I am allowed *ex necessitate rei* to abate a nuisance which obstructs my way, but if I wish to recover the inheritance or freehold of the land, I must resort to the more tedious forms and process of the law.

Of the thousand instances in which the court of King's-bench have exercised this power, the case of Mr. Beardmore has alone been cited by the lord chief justice. He said “it was an answer to the whole of the argument.” I shall state the case. Dr. Shebbeare had been sentenced “to be set in and upon the pillory.”—Beardmore was the under sheriff, and therefore bound at his peril to see that the sentence was duly carried into effect. Instead of causing the sentence to be executed in the usual manner, he permitted the defendant to stand unconfined and at his ease on the platform of the pillory, attended by a servant in livery, holding an umbrella over his head all the time. His head, neck, arms, and hands, were not put through the holes of the pillory, nor was his head even inclined to it, and this was done under the inspection of Beardmore, who attended with his wand as under sheriff. For this contempt, a rule (*nisi*) was obtained for an attachment against Beardmore; and, it was afterwards made absolute on this express ground, that as the contempt was a disobedience of a rule of the court, and a remis-

sion of part of its sentence by their own officer of his own authority, it concerned the honour and dignity of the Court, as well as the effectual execution of justice, to punish him in this summary way for an offence of such pernicious tendency.*

To support this commitment by analogy to the practice of the courts of common law, some case ought to have been cited, in which some person had been punished in this summary way for a libel on one of the judges of the court. The oracle of the law, sir Edward Coke, seems to have been unacquainted with this course of proceeding. A libel was published against him as lord chief justice, and against the other judges of the court of King's-bench, for a judgment given in the case of Magdalen college.—The libel was fixed upon the great gate at the entrance of Westminster-hall, and in divers other public places. It asserted that the judgment was “treason:”—That the lord chief justice was a “traitor” and a “perjured judge;” it also scandalized all the professors of the law.—A grosser libel cannot well be devised. Yet instead of proceeding by attachment, lord Coke, who well knew the law and constitution of the country, preferred his bill of indictment.† And indeed it is difficult to conceive upon what grounds can be maintained the right of the courts of law, to punish in this summary way for a libel on one of their members, when it is acknowledged that disobedience to an order of *nisi prius* is no contempt until the order has been made a rule of the court from which the record issued.

But, although the lord chief justice cited no case in which the courts of common law have exercised this power, such a case exists; it probably was omitted by his lordship, through regard to the memory of lord Mansfield.—I shall supply the deficiency.—In the North Briton, Nos. 50 and 51, an attack had been made upon the character, and very serious accusations had been preferred against lord Mansfield for his conduct on several occasions as lord chief justice of the court of King's-bench. These papers had been sold at the shop of Mr. Bingley.—In Trinity term, 1768, Bingley was called upon to show cause, why an attachment should not issue against him, for his contempts in publishing these libels. When he appeared in obedience to these rules, he denied the authority of the Court to punish him in this summary way; he asserted his right to be tried by a jury of his equals, and refused to answer interrogatories.—He was committed to the custody of the marshal, until he should find sufficient bail to answer interrogatories, or should submit to be sworn to answer them.—The spirit of Bingley however did not desert him in his confinement; he kept attention alive to the hard-

* Year books, Hil. 10 H. 7. pl. 17, p. 17.

† Dean's case. Trin. 41, Eliz. Cro. Eliz. 689.

* 2 Burrow, 792.

† Jeffes's case, Mich. 5, Car. 1, Cro. Chas. 175.

ships of his situation, by his firmness, by frequent appeals to the country and to individuals, and by an affidavit not to answer interrogatories, unless put to the torture. His sufferings, which at first had only excited the compassion, by their continuance, roused the indignation of the public.—Petitions in his behalf poured in on all sides from the principal corporations and cities in the kingdom.* At length in Easter term, 1770, after nearly two years imprisonment, but without any application being made on his part, a rule for his discharge was unexpectedly moved for by the attorney-general, and as unexpectedly granted by the Court. The attorney-general stated, as the ground of his application, *that Mr. Bingley was an obstinate man, who, on that account, had suffered two years imprisonment, which, he believed, was longer than the Court would have confined him, even if he had answered interrogatories and been found guilty.*—In other words, he moved that he might be discharged from the punishment of his contempt, because he obstinately persisted in it.—Lord Mansfield and the Court immediately acquiesced in this curious reasoning, and Bingley was discharged.† The fact is, the Court felt, though they had not the courage to avow it, that they had been guilty of an excess of jurisdiction; and they thought it more prudent to yield to the firmness of Bingley, and the feelings of the country, than to encounter the terrors of a parliamentary inquiry, which they knew was on the point of being instituted, and would have been the inevitable consequence of their continuing him in custody.—After this, let no honest man despair.—The meanest individual may, by perseverance, prevent a precedent against the liberties of his country being established in his own person, and he is sure eventually to triumph over the oppression of even the most powerful.

The lord chief justice next asserts—“*That they*” (the House of Lords) “*can fine in this summary way is also beyond doubt.*”—Here unfortunately his lordship does not condescend to give the ground of his assertion. In a constitutional point of view, this doctrine is alarming, and dangerous indeed. I know of no right vested in the Lords of raising money on the subject, without the concurrence of the Commons. If the privileges of the House of Lords, are of too delicate a texture to be examined in the courts of law, and if they may

vote any offence to be a breach of their privileges, and then fine the offender to an indefinite amount, it is nonsense to talk of the control of the purse being vested in the House of Commons;* there is always a sufficient number of obnoxious individuals, by fining whom, a small temporary supply may be raised, and in the decline of this mighty empire, such may be the exigencies of the state and the immediate wants of an abandoned minister, that, a degraded House of Lords still disclaiming all right to originate or amend a money bill, may, to serve his purposes, discover that riches are a crime, and then fine the possessors of them as guilty of a breach of the privileges of their House.

But the lord chief justice has admitted, “*that in their legislative capacity, the House of Lords may not be a court of record.*”

In the case of Mr. Flower, it has not been even pretended that they acted in any other capacity; and I think I have sufficiently proved, that unless they are a court of record, they have not the power of imposing a fine.† But, this admission of his lordship, that they are not a court of record, furnishes me with an additional argument. By analogy to the practice of the courts of common law, his lordship contended that the House of Lords had a summary power of imprisonment.—By analogy to the practice of the courts of equity, I argue, that they have not the power of imposing a fine.—“*In the chancery,*” says my lord Coke, “*are two courts; one ordinary, according to the course of the common law; the other extraordinary, according to the rule of equity.*‡ The court of equity, proceeding by English bill, is no court of record, and therefore it can bind but the person only, and neither the estate of the defendant’s lands, nor the property of his goods or chattels.”§—Lord Coke then cites two cases in support of his doctrine: “*Trinity, 3 Jac. Reg. Egerton, lord chancellor, imposed a fine upon sir Thomas Themilthorp, knight, for not performing his decree in chancery, concerning lands of inheritance, and estreated the same into the exchequer; and upon process, the party appearing pleaded, that the fine was imposed by the lord chancellor, for non-performance of his decree, and that he had no power to assess the same.* The attorney-general confessed the plea to be true, and petit advisamentum curie, concerning the power of the chancellor in this case; and, upon debate of the question in court, and good advisement taken, it was adjudged, that the lord chancellor had no power to assess any such fine, for then, by a mean, he might hind the interest of the land where he had no power, but of the person only. And thereupon the said sir Thomas Themilthorp

* London, Bristol, Southwark, &c. &c.

† “The courtly sir James Burrow, has thought proper to omit in his reports any mention of this case of Bingley; but it ought never to be forgotten by those who reverence with filial affection our ancient laws, the best legacy of our fathers, and who set a value on the constitutional rights and liberties of the people.—The whole of the proceedings may be found in a small pamphlet, published in 1772, intitled ‘The case of William Bingley, bookseller.’” *Clifford.*

VOL. XXVII.

* See hereafter the case of sir Thomas Themilthorp.

† *Vide* pages 1029, 1030, 1031.

‡ 4 Inst. 79.

§ *Ibid.* 84.

3 Z

was discharged of the said fine.*—The second is Waller's case. "Afterwards the said lord chancellor decreed against Waller certain lands, and for non-performance of the decree, imposed a fine upon him, and, upon process out of the court of chancery, extended the lands that Waller had in Middlesex, &c. Whereupon Waller brought his assize in the court of Common Pleas, where the opinion of the whole court agreed, *in omnibus*, with the court of Exchequer."†

If the Lords can impose a fine, then, by a mean, they may bind the interest of the land; but, the Lords have no power to bind the interest of the land without an act of parliament. "In the 4th of Henry 7th, *in parliament*, the king willed, that I. S. should be attainted, and forfeit his lands; to which the Lords assented, but nothing was said of the Commons; and therefore, *by all the justices*, it is no act; and I. S. was restored."‡

The lord chief justice next proceeded to the case of my lord Shaftesbury; and I must confess, that after the extent to which I had argued that case, I was much surprised to find it brought in judgment against me. His lordship said, that in that case, Mr. Sergeant Maynard argued in support of this power in the House of Lords. "Was he a man," his lordship asked, "likely to prostitute his great abilities in support of a doctrine destructive to the liberties of the subject? He says, 'it ought to be observed that this attempt is 'PRI-MÆ IMPRESSIONIS;' and though imprisonment for contempt is frequent by one and the other House, till now no one has sought their enlargement here.'"

I bow with reverence to the high authority of Mr. Sergeant Maynard, in points of constitutional law. Fortunately, it does not bear me down, but supports me in the present instance.—Although the arguments urged by a counsel in behalf of his client, ought not to be too scrupulously weighed, and are not of equal authority with the sentiments he has solemnly delivered in his place, as a member of the legislature; yet, if after the case of Mr. Fitton, Mr. Sergeant Maynard had at any time seriously argued in support of this claim of the Lords, I should not hesitate in pronouncing him guilty of a prostitution of his great abilities in support of a doctrine destructive of the liberties of the subject. But the speech cited by the lord chief justice, was never spoken by Mr. Sergeant Maynard. It is the speech of the solicitor general, Mr. Winnington,§ and

* 4 Inst. 84.

† Ibid.

‡ Bro. Abridg. 42, tit. Parliament, and the Year-book of that date.

§ "It is the third paragraph in his speech in 1 Modern, 156. This case is also to be found 1 Freeman, 453; 3 Keble, 792; 2 State Trials, 615. In none of these Reports is this speech ascribed to Mr. Sergeant Maynard. The lord chief justice quoted from

by some unaccountable mistake, was, in the hurry of giving judgment, erroneously attributed, by lord Kenyon, to Mr. Sergeant Maynard. But how does it prove the validity of Mr. Flower's commitment? Every argument must be understood with relation to the subject matter to which it refers. Lord Shaftesbury was committed by the House of Lords for a contempt in parliament during the sitting of parliament. It may be perfectly true, that a peer thus circumstanced, cannot be enlarged by the courts of law; but it by no means follows, that a commoner is not entitled to his discharge from a commitment by the Lords for an offence done out of parliament, and triable at law. And this very distinction was taken in this case of lord Shaftesbury, by the solicitor general Mr. Winnington, by Mr. Sergeant Maynard, by all the counsel who argued on either side, and finally by the judges when they gave their judgment.

On the judgment given by Mr. Justice Grose, I shall make but few observations. He grounded his opinion entirely on what fell from the lord chief justice De Grey, in the case of Brass Crosby, "a case alluded to, but of which very little was cited at the bar."—Brass Crosby's was the case of a commitment by the House of Commons, of one of their own members, for disobeying an order of the House, and committing a messenger of the House for having executed the Speaker's warrant. I therefore cited little of this case, conceiving it not to apply to that of Mr. Flower, but to come under the description of cases which I had expressly excluded.*

But, "when they judge any thing to be a contempt, or a breach of privilege, their adjudication is a conviction, and their commitment in consequence is in execution; and no Court can discharge or bail a person, who is in execution by the judgment of another Court. If a commitment by the House of Lords is a commitment in execution, that is decisive." Granted.—But a commitment in execution, like every other commitment, must have some legal foundation, otherwise it will be void, and the party detained under it will be entitled to his discharge. The question, therefore, in all such cases is, whether the offence for which the party is committed is a breach of privilege, and within the jurisdiction of the House. And this the courts of law may, and when called upon are bound to decide.—In the case of Ashby v. White, the House of Commons resolved, That the plaintiff, by bringing his action, had been guilty of a contempt of the jurisdiction of the House, and that all solicitors and barristers employed in the prosecution of the suit, were guilty of a

* "1 Modern."—Clifford. The expression cited will be found in the speech of Winnington, solicitor general, *antè*, vol. 6, p. 1293, where he is erroneously called Turner.

* *Antè*, p. 1031.

breach of their privileges. They prohibited any farther proceeding in the action, and committed the offenders to Newgate. But according to my lord Kenyon, "if either House were to send their serjeant at arms to arrest a counsel, who was arguing a case between two individuals, or to grant an injunction to stay the proceedings in a common action, undoubtedly we (the Court of King's-bench) should pay no attention to it."*—Why? Because the offence not being a matter of privilege, and therefore not subject to the jurisdiction of the House, the commitment would be void for want of legal foundation, and the party of course entitled to his discharge from the execution. Is it then only when the liberty of the press is to be invaded, that the trial by jury may be superseded with impunity, and that the courts of law are incompetent to decide on the validity of commitments by the Houses of Parliament?—"If we are bigger than any people in the world, by being tried by juries, let us never exclude them." †

These are the principal observations which have occurred to me on the decision of the

* *Rex v. Wright*, 8 Term Rep. 396.

† Speech of sir Thomas Clifford, on fining juries, 1 Grey's Debates, 407.

Court. I have endeavoured to discuss the question with the manly freedom which becomes an Englishman; but without deviating from that respect which is due from me to the judgment of the Court, and to the learned judges who preside in it. I hope the inquiry has been dispassionate on my part. Want of temper will disgrace the best cause, and take from the weight of the most sterling arguments. I have been anxious to avoid this fault, mindful of Montesquieu's admirable answer to the reproach of having praised the genius of Bayle, without sufficiently reprobating the pernicious tendency of his doctrines.— "J'ai remarqué que les declamations des hommes furieux ne font guerre d'impression que sur ceux qui sont furieux eux-mêmes. La plupart des lecteurs sont des gens modérés: on ne prend guerre un livre que lorsqu'on est de sang-froid; les gens raisonnables aimant les raisons. Quand l'auteur auroit dit mille injures à Bayle, il n'en seroit résulté, ni que Bayle eût bien raisonné, ni que Bayle, eût mal raisonné: tout ce qu'on en auroit pu conclure, auroit été que l'auteur savoit dire des injures."* HENRY CLIFFORD.

Lincoln's-inn, Dec. 25, 1799.

* *Defense de l'Esprit des Loix*, 2^{me} partie.]

642. Proceedings on the Trial of WILLIAM BYRNE, of Ballymanus in the County of Wicklow, Esquire, on charges of Rebellion and Murder; tried by order of Major-General Eustace, before a Court Martial, on the 24th, 25th, 26th, 27th, and 28th days of June, and on the 1st day of July: 39 GEORGE III. A. D. 1799.

Members of the Court.—John King, Major, Fermanagh Militia, *President*; Capt. Leslie Fermanagh Militia; Capt. King, Rathdrum Cavalry; Lieut. Gabbott, Fermanagh Militia; Capt. Carrol, Wicklow Cavalry; Lieut. Winslow, Fermanagh Militia; Lieut. E. Armstrong, Fermanagh Militia.

WILLIAM Byrne is charged, that he being enrolled as a yeoman, in the Wicklow Yeoman Cavalry, and as such, having taken the oath of allegiance prescribed for yeomen, afterwards became a rebel, and joined the rebel army then in arms against the king and government of Ireland:—That he was instrumental in calling, and influencing into rebellion, divers of his majesty's subjects:—That he was a captain or principal leader in said rebel army.—The said William Byrne is also charged with being concerned and an accessory in the murder of Isaac Langrell, in Gorey, in the month of June, 1798; and also with being concerned in the murder of three other

persons, at the rebel camp at Mount Pleasant, whose names are unknown.

June 24, 1799.

Thomas Hugo, esq. sword.

Witness deposes, that he was lieutenant in the Yeoman Wicklow Cavalry, and the prisoner William Byrne, was admitted and enrolled a member of that corps: and as witness heard and believes, took the oath prescribed for yeomen. That prisoner continued upwards of six months in said corps, and was then expelled, in consequence of his refusing to take a test oath, purporting, that the deponent never was, and never would be an United Irishman, and that such oath was taken freely and voluntarily, which oath was taken by the whole corps except the prisoner and four others who were expelled.

Question by Prisoner.—Did I not, during the six months I continued in that corps,

obey all orders which had been given me?—You did.

Did I not, during that period, conduct myself as a soldier and a loyal man?—You did, for any thing I know.

Was any regulation in the troop to take place until a week after its being proposed?—With respect to the balloting for members it was so, but I do not know it was so upon any other occasion.

Were there any other members expelled at the same time?—There were four others expelled at the same time for not taking the test.

Had the rebellion commenced, or were there any rebels in arms at the time I was expelled?—I knew of none.

Did you not consider my expulsion as a punishment for not having taken the oath?—I did.

By the Court.—Was it merely as a punishment that he was expelled, or was it because he was considered an improper person to be continued in a loyal yeomanry corps?—It was on account of his suspected disloyalty, in having refused the test oath.

By the Prisoner.—Have you heard any of the corps, previous to my expulsion, declare or advise, that I should be expelled for disloyalty?—I did.

Was not my refusal to take the proposed oath the principal reason assigned for my expulsion?—It was.

Do you not therefore think, that my having ceased to be a yeoman, was involuntary on my part, and no desertion?—You were turned out.

By the Court.—Did you hear and believe, that when the test oath was first proposed to the prisoner, he requested of captain Carrol, the commander of the corps, a few days to consider, and that at the end of those days, prisoner being again called upon, absolutely refused to take the test, and was therefore instantly expelled?—I did hear, and do believe it.

By the Prisoner.—Do you conceive that a yeoman expelled from his corps, can be considered as a deserter from that corps?—I do not.

After I was expelled, was I considered as a deserter?—I never did.

By the Court.—Did you consider the prisoner as a deserter from the cause of loyalty?—I did.

By the Prisoner.—Do you not conceive that the meaning of the word "deserter" applied to a military man, means his flying from the corps or regiment to which he belongs?—I do.

Have you ever heard, or do you believe that I was at any time after my ceasing to be a member of your corps, a yeoman in any other yeomanry corps?—I never did hear it, nor do I believe it.

Were any of those who were expelled at the same time, and for the same cause, with

me, afterwards admitted into your corps?—One of the name of Freeman was proposed by me, and admitted.

By the Court.—Why did you propose Freeman, and not the others expelled?—Because it appeared that Freeman's conduct in refusing the test, had been influenced by some of those expelled, and he solicited to be re-admitted upon his taking the test, which accordingly he did take, and none of the others expelled ever made any application to be re-admitted.

By the Prisoner.—A certificate signed W. H. Hume, dated 13th May 1799, purporting that the prisoner, in the middle of May 1798, had applied to be admitted into his corps, but there being no vacancy, was not admitted, produced to Mr. Hugo; believes is the handwriting of Mr. Hume, and from that certificate, witness believes prisoner did make such application.

Do you believe that I was a yeoman at the time I applied to captain Hume to be admitted a member of his corps?—I do not.

By the Court.—Is it not more criminal in a man to become a rebel leader, after having, as a yeoman, taken the oath prescribed by law, than in one who had not been a yeoman, or taken such oath?

Objection by the Prisoner.—Because it is matter of opinion, and not applicable to the charge, asked on the part of the prosecution of the witness called on behalf of the crown.

Over-ruled by the Court, and witness called to answer.—I think it is.

June 25.

Prisoner admits that he was enrolled a yeoman in the Wicklow Cavalry, and took the oath prescribed for yeomen; continued in that corps six months, and was then expelled for refusing to take the test oath.

Bridget Dolan sworn.

Knows and identifies the prisoner.—Witness was at the rebel camp at Gorey-hill before the battle of Arklow, when the prisoner, at the head of about 300 men, marched into the camp; he rode with a drawn sword in his hand; the party he headed were called the Ballymanus corps, and were armed, some with guns and some with pikes. That the prisoner was called captain, and acted as such.—That the prisoner marched his men to the attack of Arklow, with the rebel army, where he also acted as captain. When the prisoner and his party approached Gorey-hill, he was met by the music of the camp, consisting of drums, fifes, fiddles, and bagpipes; and rejoicing was made upon the occasion. After the defeat of the rebels at Arklow, they marched back to Gorey-hill, and soon after news was brought into the camp, that one Langrell, an Orange-man, was taken and in Gorey.—A party was thereupon ordered to

the town, under the command of the prisoner. That witness was asked to go and see an Orange-man piked—and she went to Gorey church-yard for that purpose, where she saw Isaac Langrell lying on the ground with signs of life in him, he having been piked before she arrived; and before he expired, a man with a hay-knife, set in a stick, struck the said Langrell across the neck, which nearly severed the head from the body.—That the prisoner William Byrne was present, and appeared to have the command of the party who put Langrell to death; and upon the stroke of the hay-knife being given, the prisoner William Byrne said to his party, “march off, for the heretic will rise no more.” The prisoner, who had a sword in his hand, marched away with his party. That the rebel army marched from Gorey-hill to Limerick-hill, from whence one part marched to Mount-Pleasant, and the other party to Carnew; witness went to Carnew, prisoner went with the party to Mount-Pleasant, both parties afterwards met at Kilcaven, where she saw the prisoner calling out his men into ranks.—The rebel army afterwards marched to Carrigrua, and from thence to Vinegar-hill, where she again saw the prisoner acting as commander of the Ballymanus corps; that said corps was ordered into the town of Enniscorthy, whereupon some objections were made by the corps against going there, some saying they would not march without being led by Garret Byrne, and others that they would not go without their captain, William Byrne the prisoner. That upon this occasion, another commander of the rebels, charged the prisoner William Byrne with cowardice, and prisoner replied he was as stout as him, and would exchange a shot with him, the rebel army was very soon after dispersed by the king’s army; and witness never saw prisoner since until this day in court.

Cross-examined by Prisoner.

Where were you born, and what is your age?—I was born in Carnew, and am under 20 years of age.

In what manner, before joining the rebels, did you earn your livelihood?—I was a servant.

In whose service did you live, and how long immediately before you joined the rebels?—I lived with Mr. M’Cormick, in Carnew, but was not in service for half a year before I joined the rebels.

How did you support yourself the half year you were not in service?—I lived with my father in Carnew.

At what time did you join the rebels?—I joined the rebels immediately after colonel Walpole’s death, and before the battle of Arklow.

What was the reason you joined them?—Because we thought we would have had the day.

How long did you remain with the rebels,

and how did you support yourself?—From the battle of Gorey, until the rebels went to the Boyne. I supported myself by taking provision where I could get them, and sometimes the men gave me share of what they got.

Where do you now live, and how long have you continued in your present residence?—In Rathdrum, and I have continued in Rathdrum half a year.

Are you at liberty, or in confinement in your present residence?—I am in confinement.

In whose custody are you in Rathdrum, and by whose order?—In the custody of Phillips, a constable, by order of Mr. Wainright.

When and for what reason, were you taken into custody?—About nine months ago, I was first taken, because I had been out with the rebels.

Where were you when you were taken a prisoner?—At Coolkenno.

How are you at present supported and furnished with clothes?—By order of two magistrates.

Have you ever before been a witness on any and what trials by court-martial?—I have been a witness at Rathdrum on trials of rebels.

Did you not at a court-martial held in Rathdrum, swear against prisoners who were acquitted?—I did, and the prisoners were acquitted; and what I then swore there was truth.

Did you not with your own hands set fire to baggage cars, belonging to his majesty?—The rebels pulled the furze, and I set fire to them.

Have you ever declared that you were determined to swear away the life of William Byrne, and did you ever declare you could not get your liberty without swearing against him?—I never did say any such word:—why should I swear his life away more than any other man?

Did you ever speak of the prisoner in the shop of Mr. Manning in Rathdrum, and what did you say of him there?—I was asked was I to go on Billy Byrne’s trial, I answered I was, and that was all I said.

To whom did you mention, in William Manning’s shop, what you have now said?—I do not know to whom I mentioned those words; nor do I recollect that any of the family of Manning, except the clerk, were in the shop, at that time: and to my knowledge I never at any time had any conversation respecting prisoner at Manning’s but once.

Have you ever fought against his majesty’s army? and which do you think, rebellion or perjury, the greater crime? Do not you conceive it to be a lighter crime in a girl of 18, to swear falsely, than to choose to go to the murder of an Orange-man?

[It is the opinion of the Court that the two last questions should not be put, as they seem to refer to the oath of secrecy, &c.]

United Irishman's oath which it is probable the witness took.]

When you were with the rebels, were there any officers appointed, and how were they generally chosen?—I do not know of any officers being appointed, but I understood there were two officers and a captain to every corps.

Had the officers any mark or badge to distinguish them from the common men?—There were badges;—some wore green spencers,—some wore sashes; and some wore bear skins on their hats.

By the Court.—Had the different corps, different colours?—Most of them had: Ballymanus corps had colours, but I cannot particularly describe them; the prisoner had no distinguishing badge, but he wore a white sword.

By the Prisoner.—Do you not believe that every man, who was appointed a rebel officer, was a sworn United Irishman, and publicly known to be such?—As far as I know I believe they were sworn, and I was present when a captain was sworn.

When and where did you see any oath tendered to a captain of rebels, and what was the nature of such oath?—I saw a captain sworn at Tombreens about the beginning of this business, a year and a half ago, and that it was the United Irishman's oath which was brought forward by Johnny Tool, a head rebel.

Were there other persons present, and how many when the oath you now mention was tendered? was it usual to swear United Irishmen in the presence of women?—There were about 30 present, and women were sworn as well as men.

By the Court.—Do you consider your confinement in Rathdrum as a protection, or a restraint on your liberty?—Both.

Do you not know or believe, that for some time before the rebellion, the captains of rebels were busy in assembling and disciplining the men under their command?—They were busy at night, and I was present at some of those meetings.

Have you heard, or do you believe that there were more than one captain to each rebel corps, and was not such captain elected a considerable time before the rebellion?—To the corps I knew, there was but one captain, and they were elected a considerable time before the rebellion.

Was there more than one body of men in the rebel camp, known by the name of the Ballymanus corps?—Not that I know of.

How many days before the battle of Arklow, as you recollect, did the Ballymanus corps come to the camp at Gorey?—As well as I recollect, it was the day before.

About what time in the day?—As well as I recollect, it was between twelve and one.

Did you immediately on the Ballymanus corps coming into the camp, see the prisoner riding before that corps, and hear him called

captain?—I did see him ride before the corps and saw him saluted as captain.

Were the different corps of rebels, the day before the battle of Arklow, drawn up in military array, and commanded by their captains?—They were drawn up, commanded by their captains.

Was the Ballymanus corps drawn up with the rest, and at what hour?—Not long after the Ballymanus corps came, in about an hour every corps marched in regular order round a large field at Gorey-hill and the Ballymanus corps marched first.

Did you see the captains of the different rebel corps exercise their men on the evening previous to the battle of Arklow?—The different corps were drawn up, the gun-men in front, and the pike-men in the rear, and they were marched about, but did not see any other exercise at Gorey-hill.

Were you present at Vinegar-hill at the dispute among the Ballymanus corps, whether they should be commanded by William Byrne or Garret Byrne?—I was near enough to hear the words pass.

Was Garret Byrne on Vinegar-hill at that time?—He was.

Do you believe it was from malice to Protestants that William Byrne said "the heretic will rise no more;" and do you not believe, that while he was with the rebels, he would rather have murdered than saved the life of a Protestant?—I believe it was from malice, or else he would not have made such a speech; and I believe he would rather murder than save a Protestant.

By the Court.—Did it appear to you that William Byrne, the prisoner, if he had been so inclined, could have saved the life of Langrell?—I am sure he could, or any other man that had such a command.

At what places did you see Garret Byrne between the battle of Arklow and the battle of Vinegar-hill?—I saw him at Carrigrua, at Gorey, and Vinegar-hill.

Did you hear Leeson examined yesterday?—I did not.

On what day, and at what time of the day was Langrell killed?—I cannot recollect the day, but it was about dinner time.

Captain King, a member of the Court, says he was present when Bridget Dolan was examined before the court-martial at Rathdrum, and that the prisoners there tried were acquitted; as coming under the Amnesty act; and not upon any doubt of Bridget Doland's testimony.

John Conyers sworn.

Witness was taken prisoner the day after the battle of Clough, and carried to the rebel guard-house in Gorey, where he was confined until the morning of the battle of Arklow.—That one Mernagh, a rebel, made interest with the commanders to liberate witness.—Perry, Redmond, and prisoner, were the three principal commanders.—At the inter-

cession of Mernagh he received a protection drawn up by Redmond, and signed by him "P. Redmond;" it was also signed "W. Byrne," in witness's presence, by the prisoner, in which protection it was specified, that witness, under pain of death, should not quit Gorey, but as he had been handy in the surgical line, he should stay there to dress wounded men.—That before the march to Arklow, he saw Perry, prisoner, and Redmond, as the three principal commanders, making musters of the rebel army from which he understood they amounted to 31,000 men; and heard the prisoner called for to head his party.

Cross-examined by Prisoner.

Have you heard, or do you know in what manner the captains in the rebel army were appointed or chosen?—I do not.

Do you not believe that all the captains of rebels had been appointed long before the rebellion, and that they were all sworn United Irishmen, and that they had long been employed in disciplining their men?—I really believe they were; but know nothing except by hear say.

Did the signature to the protection, signed by the prisoner, express that it was given by him as a captain?—It did not.

Do you not think it probable, that the prisoner from his rank in life, might have influence among the rebels, even if he had no command?—I believe he had great influence over the rebels, as they frequently called to him; and believe he might have influence even if he had no command, as three men who had no command at Vinegar-hill, saved my life when I was ordered to be piked.

By the Court.—You said the rebels frequently called upon prisoner; how or upon what occasions was he so called?—The different corps were often called over, and when Ballymanus corps was called, the prisoner was called upon to head his corps.

By the Prisoner.—Do not you believe, that the prisoner's eldest brother was usually called; Mr. Byrne of Ballymanus?—I never knew nor to my knowledge saw prisoner's eldest brother; but I am positive as to the identity of prisoner being one of the persons who signed the protection.

Are you as certain that the three Arklow yeomen were in the guard-house, at the time of your getting the protection as that the prisoner signed it?—I am positive prisoner signed the protection, but am not so positive the three Arklow yeomen, were at that time in the guard-house, but believe they were.

June 26.

Mr. Thomas Dowse sworn.

Knows the prisoner. On the 15th of June 1798, witness was taken prisoner by the rebels, and taken to the rebel camp at Lime-

rick-hill, near Gorey. That he there saw the prisoner, with whom he had been intimate, and applied to him, supposing him to have influence, to restore a considerable quantity of witness's effects, which was then brought to the camp on cars.—Prisoner said, "Come, come, the effects must go down to Limerick," where they were taken, and which were never restored to witness. On the 17th of June the rebel army marched to Mount-Pleasant, whither witness was taken, and soon after, three men and two boys were brought in as prisoners, and heard three shots near the carriage in which witness was detained, by which he understood the three men were killed. That the rebels were attacked by a party of the king's army, which, after the firing of some cannon by the rebels, retreated.—The town of Tinnehaly, near Mount-Pleasant, was burned, and after the town was set on fire, and while it continued burning, one father Toole a Popish priest celebrated Mass to the rebel army, then in sight of the burning town. That the rebel army in the night of the 17th, marched to Kilcavan hill, where they arrived early on the morning of the 18th. That about the hour of three in the afternoon, the king's army appeared, and fired some shells at the rebel army, but did not come to a close attack; during the firing of the king's artillery, he saw the prisoner riding about, and prisoner got a fall from his horse, by which his arm was hurt, which he afterwards carried in a sling as he believes.—About night-fall of the 18th, after the king's army had withdrawn, a meeting was held apart from the common men, by Ryan, Perry, Fitzgerald, Mernagh, Redmond, and prisoner, and some others, which persons witness understood were leading men in the rebel army, and that the meeting was held for the purpose of consulting what course they should take, or what should be done.—Witness was at the distance of ten or twelve yards, and within view of the meeting, but he did not hear any thing which passed. That Perry wore a uniform, which witness believes he had when he was a yeoman. Ryan and prisoner had no distinguishing badge, and believes Ryan, Perry, and Fitzgerald, had more authority than the prisoner.—That in the night of the 18th the rebel army marched to Camolin, and on the morning of the 19th witness saw Ryan and prisoner in a post-chaise: Ryan soon after called to witness and told him, he could not preserve witness's life any longer, and believes he would have been killed at Camolin, had it not been for the prisoner's interference. That witness soon after effected his escape; there were at least ten priests at Limerick-hill. One Roger Pierce a loyalist, was brought by some rebels into Limerick, and there put to death, in a most barbarous and inhuman manner. That he did, and does still believe the prisoner had a command in the rebel army, and no common men could

have had influence to save witness's life, as he believes the prisoner did. That during his continuance with the rebels, it was the practice with the common men, every morning to chalk on their hats J. H. S. and those who had not hats had those letters chalked on some part of their clothing.

Cross-examined by *Prisoner*.

When you applied to the prisoner, to interfere on your behalf for your goods, did you not conceive, that his rank in life would give him influence among the common people, and do you not think that one of his family would have influence among the lower class of people, although such person had no command?—To my belief he had a command, as I said before, and that he would from his family have had influence among the lower class of people.

When you first applied to the prisoner; had you any other reason than his rank in life, for believing that he had a command in the rebel army?—I did believe at that time, that from his rank in life he had a command, and had then no other reason for believing so, but by what passed at Kilcavan-hill, as before stated: had afterwards other reasons for believing he had a command.

Do you not believe that the prisoner would, while you were with the rebels, have been willing to do you any act of kindness in his power?—I am sure he was willing.

Do you not believe that if the prisoner had no command, and had, without permission, restored you your goods, he would have suffered punishment if he had no command?—I believe he would, but I believe he would not, if he had a command.

Do you recollect the prisoner having said to you, "You need not fear as far as I can serve you, but you must apply to Ryan, or some other person having a command to get your goods." or words to that effect?—I do verily believe he did.

Did the prisoner give any orders to have the goods taken down to Limerick?—He did not that I heard; the cars were going on.

Can you take upon you to swear, that some of those who consulted at Kilcavan, might not have been men without a command in the rebel army?—Some of them might for any thing I know to the contrary, but I believe every one of them had more or less command.

Was Barney Murray, whom you have mentioned, a rebel captain, or commander?—I verily believe Murray was surgeon or doctor to the rebel army.

Do you not believe that all the rebel captains had an equal command in their army?—I do not believe they had; for some of them could do more than others.

Might not the prisoner, although without command, have been called on by the leaders of the rebels to advise the best line of march, or on any other subject, on account of his

knowledge of the country, or for some other reason?—I do not believe it; it might be possible, but not probable, for he must have had some command.

Were those whom you saw mounted in the rebel army, confined to a particular part of the army, or did they not ride at large along the ranks?—I saw, as I believe, 20 privates for one officer, riding along the ranks of infantry, as the men who had horses were not confined to any particular part of the army.

Do you not think it probable, that if each rebel corps had but one captain, the duty and situation of such officer would oblige him to remain with his men, and to have them under his immediate inspection?—I do not know but there might have been five captains to each corps; but if there was but one captain, he no doubt would have more to do, and I believe the captains did often leave their corps to the command of inferior officers, for I believe they were not under good jurisdiction.

Was the prisoner to the best of your knowledge a relation of Ryan, and do you not think it probable that if prisoner was in ill health, Ryan would (although prisoner had no command) have permitted prisoner to travel in his carriage?—The prisoner, to the best of my knowledge, is not a relation to Ryan; but supposing that he was a relation, I think it probable that Ryan would, in case of his, the prisoner's illness, and although he might not have had a command, have taken him into the carriage, which carriage was the property of Mr. White of Rockingham, and brought by a rebel party to Mount Pleasant; and I also believe that if prisoner was not a relation, and had no command, Ryan would not have taken him into the carriage.

You have said you do not know whether the prisoner was present at Pierce's murder: from what you know of prisoner, do you think him capable of countenancing so barbarous an act?—I do not believe him capable of so barbarous an act, but am certain prisoner was in the rebel camp that day.

Are you a Protestant, and do you think it credible that prisoner would massacre a Protestant as an Heretic; or do you think it more probable that he would exert himself to save the life of a Protestant than assist in his murder?—I cannot answer for the heart of man.

About what time of the day was Pierce murdered?—Between the hours of two and three.

Do you not believe that the three men, who were shot at Mount Pleasant, suffered under the orders of those who had the chief command of the rebel army at that time?—I cannot tell.

By the Court.—Do you think that when the prisoner met in consultation at Kilcavan, that if he had been consulted merely for information respecting his knowledge of the country, that he would, if he had no command, have been permitted to remain to hear the

result of the consultation?—Prisoner remained with the other leaders until the whole broke up; and I believe he would not have been permitted to remain to hear the result, had he not been a leader and in the plot.

About what time of the day were the three men killed in Mount Pleasant?—In the evening about four or five o'clock; it was after the army appeared and went into Tinnehaly.

William Poole sworn.

He was a prisoner in the rebel guard-house at Gorey, about the 14th of June 1798, he applied to captain Redmond, a rebel leader for his liberty and a protection; Redmond gave him a protection, signed by himself, of the import following, "Permit the bearer William Poole, to go home to his place unmolested; as we have two sons of his as hostages." The guard placed over witness refused to obey Redmond's protection, unless it was signed by the prisoner William Byrne; the prisoner soon after came into the guard-house, and witness having applied to him, he immediately signed the protection or pass, which witness had received from Redmond, without expressing that he was a captain, or any other officer; witness remained in the guard-house until next morning and was then permitted to go out of Gorey.

Benjamin Warren sworn.

Knows the prisoner; the day after the battle of Arklow, witness was a prisoner in the rebel guard-house of Gorey, with other loyalists. That the prisoner William Byrne came into the guard-house in a violent manner, and asked why the Orange men were suffered to remain there, and said he would take their lives, and drew his sword, with which he made a blow at witness's neck, which witness perceiving, stooped his head, and received a cut on it a little above his ear; witness was taken to the rebel infirmary where he was told by Mr. White, a regular-bred surgeon, whom the rebels obliged to act for them, that his skull was fractured, and witness was told the cut was five inches in length, witness remained about two months very ill, in consequence of said wound, and betimes it is yet sore and fiery. A captain Moncks came into the guard-house immediately upon witness being struck by the prisoner, and said to prisoner, he was a cowardly rascal for striking his prisoner, and that he would have him broke of his commission; and Moncks presented a pistol to prisoner's breast, and threatened to shoot him, if he did not drop his sword; prisoner did drop his sword, and begged witness's pardon at the desire of Moncks.

Cross-examined by Prisoner.

Was Moncks whom you have mentioned usually called captain?—He was, in my hearing.

Did you know or hear any other person called captain among the rebels?—No one but Perry.

VOL. XXVIII.

At what time of the day, did this transaction happen?—I believe about ten or eleven.

In what room in the guard-house did this happen, and who were present?—It was in the large room, and Patchell, Farmer, and some others were present.

Is Dr. White who dressed your head living or dead; and if living, where is he?—He was living at Donaghmore, in the county of Wexford when I left home.

James Patchell sworn.

Knows the prisoner;—witness was a prisoner in the rebel guard-house, the day after the battle of Arklow, was present when prisoner came in and said, "why are those bloody Orange fellows kept here. I have this day lost by them many of my friends;" and Patchell minutely corroborates the testimony of Benjamin Warren. While witness was a prisoner at Gorey, he saw the prisoner at the head of the Ballymanus corps, which appeared to consist of about two or three hundred men, march up and down the town several times, The men crying out "Ballymanus, Ballymanus." the prisoner when at the head of the corps had a drawn sword in his hand; Moncks was captain of the guard, by whose division witness was taken, and he claimed witness as his prisoner.

Cross-examined by Prisoner.

When the prisoner came to the guard-house at Gorey, could you distinctly hear the conversation between Moncks and him?—I did distinctly hear what I have related as having passed between Moncks, and prisoner.

If Moncks had at the same time said any thing more to prisoner, could you have heard that also?—I could have heard him, but he did not say any more.

Were not the prisoners in the guard-house of Gorey, closely watched by the rebels who were on guard?—They were.

John Walker sworn.

Witness was taken prisoner by the rebels, and taken to Gorey Hill, previous to the battle of Arklow, and witness to save his life consented to carry a pike. Saw the prisoner William Byrne, march from Gorey to the battle of Arklow, at the head of the Ballymanus corps; he rode and was armed with a large crooked sword. He saw the prisoner lead on his men at Arklow, and when they were beat back he returned and brought them up again, and did so several times; and in particular at one time priest Murphy, in order to induce the men to return to the battle, took out and shook his handkerchief, and declared he would shake off the Orange-men's balls; in consequence of this the prisoner did bring up some of his men, others ran away; the prisoner was called captain, and believed the Ballymanus corps consisted of between two and three hundred men, of which the prisoner appeared to have the chief command.

mand; witness saw no other commander of that corps; he saw the prisoner at the head of his corps on the Arklow road, at the turn to Polahony, where several rebels were killed and wounded by the king's artillery. The prisoner was shot through the hat.

After the battle of Arklow witness was taken prisoner to Gorey, and being a blacksmith and resident at Mr. Nebos, about 3 miles distant, he was sent there under a guard to shoe rebel horses, and continued there until the rebel army marched to Mount Pleasant. That while at home he heard two men, Langrell and Wheatly, who had been taken prisoners by the rebels, had been piked to death in the church yard of Gorey.

At Mount Pleasant he saw the prisoner have, and exercise a command over the Ballymanus corps, and had the same command at Kilcavan, where prisoner had his hand tied up in consequence of a fall from his horse; and heard the rebels lament that captain Byrne had been hurt. Witness had a brother taken prisoner by the rebels, and shot, and piked by them on Gorey Hill: from Kilcavan the rebel army march'd by Carrigrua to Vinegar Hill, but witness did not see prisoner after he left Kilcavan.

Cross-examined by Prisoner.

In what part of the rebel army was captain Murphy of Monseed's corps, which you have joined, posted during the battle of Arklow, and were you on horse-back?—I did not ride.—There was no regularity in the corps at Arklow; they were frequently called together by their captains, by the name of the corps.

How many rebels were engaged in the battle of Arklow, as you believe?—There were a great many, but cannot tell how many.

Was Murphy's corps engaged in the battle of Arklow, and how long?—It was engaged, and when any of the men dropped, the others ran away.

During the heat and confusion of battle, were you not alarmed much for your own safety?—I was, and kept along the dike of a ditch.

Could you undertake to prove every circumstance that happened to all the rebel leaders during the battle of Arklow?—I could not; but I saw my own captain Murphy engaged, and some other leaders, but do not know who they were.

June 27.

Maurice Darkie sworn.

Witness was taken prisoner by the rebels and brought to their camp at Mount Pleasant, where he saw the prisoner, who was called captain Byrne of the Ballymanus corps. One Joshua Chase a loyalist, an old man, was likewise a prisoner, and guarded by one Mergin or Bergin, who was called and acted as serjeant of the guard. Mergin had Chase

on the ground, whose arms were tied close, and said he would cut Chase's head off. The prisoner William Byrne happened to come to the place, and seeing what Mergin was going to do, drew his sword, and said he would cut Mergin's head off if he hurt the prisoner Chase; and ordered Mergin as being drunk, and unfit to have the care of the guard, to be removed, and another person to take his place; and accordingly Mergin was removed, and one Kevenagh took charge of the prisoners. The prisoner William Byrne released one William Lewis, who was also a prisoner, and upon Lewis's asking him for a protection, prisoner said, "let me see the man that dare say any thing to you." Lewis then departed without interruption. Witness, in order to save his life, consented to join the rebels, and a pike was given him. Witness saw the prisoner mounted both at Mount Pleasant and Kilcavan, armed with a sword, riding amongst the rebel forces. The reason why witness was afraid of being killed at that time was, that three men of the name of Free, Foster, and Berry, who were loyalists, were shot in the camp very near witness, and he expected to meet the same fate. Witness heard, that Free and Foster were shot in revenge for a rebel who had been killed by the king's army that morning near the camp, and Berry was killed for being an Orangeman. Chase and one Redmond being old men, and two small boys, were that day set at liberty by order of captain Perry, who asked was there any charge against them, but no charge was made.

Cross-examined by Prisoner.

You say Mergin was a serjeant: do you not believe that in the rebel army there were several ranks of officers between a private and a captain?—I never heard there were.

Had not the rebel officers some distinguishing badge, and were they not much better dressed than the common men?—They had.—I saw one man, Carroll, who was called captain, wear a green spencer, with an officer's hat with a brush over it and a black cockade and a green one over it; and those who were named officers were better dressed and had nicer arms than the common men. Some officers had not a distinguishing badge, except that they were better clothed.

Had the prisoner any thing in his dress at Mount Pleasant to distinguish him from the common men?—Prisoner wore an outside great coat, a caroline hat, boots and spurs, and well mounted, with a very nice sword, which he carried drawn in his hand, which was not usually done by common men.

From the interference of prisoner in behalf of Lewis, do you not believe he would, as far as in him lay, rather assist in saving a Protestant prisoner than join in his murder?—I do not think he would: I think he would rather go against him, than save him.

Did you not at Mount Pleasant see many

men who were not rebel captains, ride and wear boots and spurs; and did you not see some man or men with swords, who were not rebel captains?—I did not see any man or men at Mount Pleasant who had swords, except Mergin who was not considered a rebel captain. I did see several men ride but never saw one but an officer have boots and spurs, nor did I ever see any but an officer ride about the camp with a drawn sword.

From the carriages and marquees of Ryan and Perry being in the quarter where the three men were shot, do you not believe they had the principal command in that quarter?—I believe they had.

By the Court.—While you were with the rebels did you ever see the serjeant or officer of the guard changed, but by the command of a superior officer?—I did not. I saw the guard changed at Elmerick guard-house, by order of one Mernagh, who was deemed a captain, and at Mount Pleasant as before stated.

Joshua Chase sworn.

Witness is a feeble old man in the 80th year of his age; he was taken prisoner in Tinnchaly in the night of the 16th of June, and carried to the camp at Mount Pleasant, and guarded with several other loyalist prisoners, by a large party of pikemen, amongst whom was one Mergin, who witness understood was serjeant of the guard. On the 17th, Mergin charged witness with being an Orange-man, and a maker of Orange-men, and having three sons Orange-men; which witness denied. Mergin desired witness to bless himself; he could not, except by saying the Lord bless him: then have you any religion? Witness said he had, and that his religion was derived from the scriptures. "No," said Mergin, "your religion is derived from a rogue and a whore," and grossly abused witness, and said that Henry the 8th and queen Elizabeth, were the rogue and whore; upon which witness replied, he had read the scriptures from Genesis to Revelations, and had not seen the name of king Henry the 8th or queen Elizabeth. Mergin then tied witness's arms, which he drew backwards by a cord until they were near drawn out of the sockets; whereby witness suffered great pain; witness was tied by Mergin about the hour of eleven and continued in that situation until about four or five in the evening: some time after being so tied, he was ordered by Mergin to go on his knees, and then a party of gunmen were called for to shoot witness, and others called out to pike witness; some time after he heard a rumour that captain Byrne was coming; and Mr. William Byrne of Ballymanus, immediately came up; witness knew William Byrne of Ballymanus, and is positive he was the man that came up; but witness's sight having since failed him, he cannot now see sufficiently well to say whether the prisoner at the bar be William Byrne of Ballymanus.

Upon Byrne's coming up, Mergin said to him, "Captain what shall we do with them?" meaning, as witness believes, Berry, and witness who were lying on the ground tied, which Berry was afterwards in the evening shot. Mr. William Byrne, of Ballymanus, answered, "I dont care what the devil you do with them, if you dont choose to kill them put them in the guard-house." William Byrne then passed through the guard, and in some short time returned, did not speak to witness, but heard he said something to others which witness did not hear. Mergin took witness twice before a person who assumed the character of Justice of the Peace, and charged witness as being a maker of Orange-men, witness desired the justice to put Mergin to his oath, which the justice declined, saying it was sabbath-day, and he would not administer an oath. Mergin afterwards brought witness back to the guard, and said he would not trouble himself to look for witnesses to prove witness being an Orange-man, but would make the matter short; then made witness lie down, when he swore he would cut witness's head off, and laid the edge of a sword across witness's neck, which he repeated a second time. Two gentlemen in some short time after came riding by, who witness understood were principal commanders. One of them said to witness, "old man come here; what fault have you committed?"—Witness said, he could not tell, and requested he would call any honest man in the camp to tell what he had done;" said gentleman then called aloud, and desired to know what witness had done, and having again called to the same effect, and no one appearing, said person, who, witness believes, was general Perry, ordered witness to be set at liberty, and sent a man to guard him out of the camp. Some short time before the general came by, Mergin said he had had a great deal of trouble in bringing in prisoners, and if they were set at liberty he would resign his command, and struck his sword in the ground; he was pressed to keep the command, which he refused, and went away in a passion. One Kevanagh then took the command of the guard. This declaration was made by Mergin soon after William Byrne had passed a second time through the guard. When the rebel party, which consisted principally of horse, came into Tinnchaly, they ordered that such of the inhabitants as were Roman Catholics should put up lights in their houses, none of which were burned, but all others were.

Cross-examined by Prisoner.

Do you know the names of any of the nine prisoners that were in the rebel camp with you; mention them?—There was Thomas Paslow, Marks Redmond, William Myers, William Graham, one called one of Gowan's blood-hounds, and Berry, who was put to death, John Dagg, a boy of the name of Kinch, and Richard Williamis.

About what time of the day did you first

see William Byrne, of Ballymanus in the rebel camp?—The day was far spent.

Thomas Paslow sworn.

Witness is in the 89th year of his age, identifies the prisoner. Witness was taken prisoner by the Rebels in Tinnehaly, on the 17th of June, and as he was led by the market-house, which was then in flames, some of the rebels proposed that he should be thrown into the burning house; others opposed that, saying, "we will soon send him to a hotter place." Witness was then taken to Mount Pleasant, and placed under the guard commanded by Mergin, who acted as serjeant. Chase and other prisoners were there: witness was several times threatened to be piked for being an Orange-man and hertic; after some time, William Byrne, the prisoner, came up, and entering the circle, asked Mergin, what occasioned the delay—"Why do you not despatch them?"—and after some conversation with Mergin, prisoner, William Byrne, went away, but soon came again, and finding the prisoners were still there, was very angry with the serjeant; and on the serjeant telling the prisoner William Byrne, that he (Byrne) had not the command, Byrne called him a rascal, and said, "I will let you know the command is in me." Witness was afterwards set at liberty by general Perry, as he heard him called, as being an old man, against whom no charge lay. Chase was discharged at the same time.

Cross-examined by Prisoner.

About what hour on the 17th of June, did you see William Byrne, at Mount Pleasant?—I was taken about nine in the morning, and I was so confused afterwards, I cannot recollect the hour I saw prisoner.

Did you hear William Byrne use any other expression respecting the prisoners, than that which you have mentioned?—I did not.

Had not Chase an equal opportunity with you to hear what William Byrne said respecting the prisoners?—Chase was confined a length of time before me, and he therefore had a better opportunity of hearing more than me.

William Graham sworn.

Witness is now about the age of 14; was taken by the rebels, and brought to Mount Pleasant: he and other prisoners were guarded by pikemen, and Mergin was the serjeant. The prisoner, William Byrne, came into the ring, with a drawn sword in his hand, and was asked by some of them, what should be done with the children? Byrne answered, "Damn them, kill them, or do what you like with them;" and then Byrne went away. Some time after six men came up to try the grown up men, and then witness and another boy were turned out.

Cross-examined by Prisoner.

Were Chase and Paslow present, when Wil-

liam Byrne made use of the expressions you have mentioned?—Chase was there, but I don't recollect Paslow.

Did you hear William Byrne use any other expressions respecting the prisoners, and could Paslow and Chase hear what he said?—I did not hear Byrne use any other words. Chase was lying tied on the ground, and was very near me.

Were you with the prisoners, when William Byrne first came up to them?—I was.

Was the time when you saw William Byrne come up to the prisoners, the first time of his coming to them, as you have heard and believe?—I believe it was: I left all the other prisoners in custody, except the boy who was liberated with me.

John Hopkins sworn.

Knows the prisoner. He was out with the rebels; and after some time was at the camp of Gorey Hill, where he saw the prisoner William Byrne march into the camp, at the head of between 2 and 300 men, with a drawn sword in his hand, who were called the Ballymanus corps, and Byrne was called by them their captain. The rebels in the camp as a mark of their joy, at seeing so large a number join them, put up their hats on the top of their pikes and huzzaed.—Witness saw the prisoner at the head of the Ballymanus corps, march to the battle of Arklow, and as far as the Charter-school; but as witness's division was on the other side of the town, he knows nothing more of the prisoner during the battle.—He did not see the prisoner afterwards, as witness went home for refreshments, until he saw him at Mount Pleasant, and there only for a short time; he saw prisoner at Kilcavan, at the head of the Ballymanus corps, when the king's army appeared: the rebel army then marched to Carrigrua, and to Vinegar-hill. Prisoner did not march on the road at the head of his corps, but all the gentlemen, Perry, Kyan, prisoner and others, rode in the front of the rebel army; but believes all that so rode in front, were captains or officers: saw prisoner at Vinegar-hill; but witness being posted down on one side of the hill did not see prisoner during the battle.

Cross-examined by Prisoner.

At what time of the day did William Byrne come to Gorey hill?—I cannot recollect, but believe about the turn of the day.

If the music of the rebel camp had been sent to meet the Ballymanus corps, and play them in, must you not have heard it?—The music of the camp were so constantly employed, that I cannot recollect whether they played or went to meet prisoner, upon his coming in.

About what hour did the rebel army march from Kilcavan to Carrigrua?—About night-fall.

Do you not mean that when you saw prisoner with major Fitzgerald at Blackwater,

listing, he was raising recruits for his majesty's service?—I did mean so.

June 28.

John Carthy sworn.

He identified the prisoner. He was called out of bed the night but one before the battle of Arklow, and told if he did not go to Gorey Hill and join the rebel army, he would be killed by the army: that he accordingly got up, and went to the rebel camp. He was in a company called the Arklow Northshire, commanded by one Matthew Doyle as captain, which company when the rebel army marched to attack Arklow, was included in the corps called the Ballymanus corps, commanded by the prisoner William Byrne, or by Perry.—That he did not hear of any body or corps of county of Wicklow men, except those which were included in the Ballymanus corps. He did suppose that the prisoner William Byrne, or Perry, commanded the Ballymanus corps, because they rode at the head, on the march to Arklow. Heard Perry called captain, and also heard the prisoner called captain Byrne; but did not hear either of them give any orders as he was far in the rear.

Father Murphy, before the rebel army left Gorey, assured the people, that they could not be hurt by the balls from the king's army; and when witness came to the battle of Arklow, he had a good opinion of what the priest said, until he saw some men killed near him.

When the rebel army went to Limerick-hill after the battle of Arklow, between 30 and 50 horsemen were assembled in a kind of ring, when one of them said with an oath that the prisoner William Byrne, ought to be piked to death on the hill, rather than any other man, for they had not luck or grace since he joined them; and then another replied, what could be expected from him but treachery, as the rest of his family were guilty of. Witness, in order to put prisoner on his guard, informed one of the Ballymanus's men of what he heard, and desired him to tell prisoner.—Witness does not know what act of treachery the foregoing declaration alluded to.

Cross-examined by *Prisoner*.

At what time to the best of your knowledge did the Ballymanus corps march into the camp at Gorey hill?—I don't know.

Who carried the colours of the Ballymanus corps?—I don't know.

Did you know or hear of Michael Reynolds of Naas in the rebel camp?—Not to my knowledge.

Did you know or hear of young Byrne, son of Peter Byrne of Ballykaskan near Rathdrum, in the rebel camp?—I don't recollect.

Were there not several horsemen riding with the rebel army on the march from Gorey

to Arklow, and were not many horsemen riding before the Ballymanus corps on that march?—There were a great many horsemen with the army, and I believe that several rode at the head of the Ballymanus corps.

Patrick Harold, brought in by military force, sworn.

Witness was out with the rebels in the Red-cross company, commanded by capt. Charles Byrne, of Ballyrogan. He was at Gorey-hill, when prisoner William Byrne marched in at the head of about 200 men called the Ballymanus corps, of which prisoner was called captain. That the next day the rebel army marched to the attack of Arklow, and the Ballymanus corps, in which Charles Byrne's company, which then consisted of 30 or 40 men, were included, was commanded by prisoner Wm. Byrne; and believes all the county of Wicklow men were included in the name of the Ballymanus corps, and commanded by the prisoner. That he saw the prisoner at battle of Arklow, rally his men and bring them up to renew the attack.—That he saw Mr. Bayley's house near Arklow on fire that day, and understood that it was burned by order of Perry and prisoner.—Did not see or hear of any person having the command of the county of Wicklow men but the prisoner.—The rebel army returned through Gorey to Gorey-hill; and heard that Langrell and Wheatley were piked in the church-yard of Gorey, but was not present.—The rebel army marched to Limerick-hill and to Mount Pleasant, where witness saw the prisoner, and understood he still continued in the command of the county of Wicklow men. Two men were brought into the camp, and shot at Mount Pleasant, because they were two Orange men; another man was taken, and afterwards let go; he saw W. Douse a prisoner and some old men.—The rebel army marched to Kilmacan, where prisoner kept the same command, and afterwards marched to Vinegar-hill, where all the county of Wicklow men were known and called by the appellation of the Ballymanus corps.—He did not see the prisoner at Vinegar-hill, but heard a dispute had arisen between Kyan and prisoner, about an order for the march of the Ballymanus corps towards Enniscorthy.

Cross-examined by *Prisoner*.

Were not the captains of rebels appointed to their command some time before the rebellion, and were they not employed for a considerable time in disciplining their men?—I do not know.

On what day, and at what time of the day, did you see the prisoner ride with the Ballymanus corps into the rebel camp?—It was about the middle of the day he marched in, and as I think about four or five days before the battle of Arklow.

Were you ever accused of robbing the widow Murray's house near Arklow?—I was.

Matthew Davis, likewise brought in by military guard, sworn.

Knows the prisoner.—Witness was in the rebel company of which James Doyle of Ballynecore was captain, and went to join the rebel army at Mount Pleasant.—The company then consisted of about 40 men, but was not complete: Patrick Grant, Dwyer, and one James Devitt were also captains, and at Mount Pleasant also.—All the county Wicklow men joined the Ballymanus corps, and were commanded by the prisoner Wm. Byrne.—That three men were brought into the camp at Mount Pleasant; these men were shot, as being Orange-men, by captain Dwyer; but none of the head commanders were present—by head commanders, I mean Perry, Kyan, the prisoner, and some others.—That there was a piece of brass cannon, which was called captain Byrne's cannon; it was short, with a wide bore; saw the prisoner fire this cannon at the king's forces, which approached towards the rebels.

That he afterwards saw the prisoner at Kilcavan, upon the appearance of the king's army, draw out into ranks the Ballymanus corps, in which captain James Doyle's and Grant's companies, and as he believes all the other county Wicklow companies were included. Witness heard prisoner give them the word of command. That the rebel army went to Vinegar-hill, where the county of Wicklow men were under the command of the prisoner. That the county Wicklow men, were ordered down into Enniscorthy; they marched part of the way, but finding their commander William Byrne the prisoner, did not head them, they refused to proceed without him. The county Wicklow men went to Enniscorthy with Kyan, but soon after returned towards the hill; and as they went there, they met the prisoner, who as their commander led them down again to Enniscorthy; the party were soon after ordered back to the hill, where they were dispersed by the king's army.

Cross-examined by *Prisoner*.

Who carried the colours of the Ballymanus corps?—I cannot tell.

Did you know or hear of a man called Michael Reynolds in the rebel camp—had he any command there, and what was his corps called?—I never did; but heard one Reynolds was at the battle of Hacket's town.—I was not there myself.

Did you know or hear of any person of the name of Keravan in the rebel army; had he any command, and of what corps?—I did not; there might have been private men of his name; but I never heard of a captain of that name.

Was Garret Byrne (prisoner's brother) at Gorey, Kilcavan or Vinegar-hill?—I was not at Gorey; I did not see Garret Byrne at Kilcavan or Vinegar-hill.

Joseph Gordon sworn.

Witness was prisoner in the rebel camp on Gorey-hill; saw the prisoner there, commanding a great number of men, about 3 or 400 men who were called the Ballymanus corps, and ordering to march, and wheel, and so on. Prisoner was called captain Byrne, and rode with a sword in his hand.

Cross-examined by *Prisoner*.

On what day, and about what time of the day, did you see the prisoner at Gorey-hill?—It was about 12 o'clock in the day, and thinks it was two days before the battle of Arklow.

In what place were you confined, and were any persons, and what were their names, confined in the same place with you?—Sometimes on the hill, and sometimes in Gorey. Arthur Spencer, Edward Webster, and others were prisoners also.

Did you leave Gorey-hill on Friday before the battle of Arklow, when you got your protection from Perry?—I did.

About what hour on Friday did you leave Gorey-hill, and did you see the prisoner commanding his men on any day before that Friday?—I was not at Gorey-hill that day at the time of parade, and as I before said, it was the day before I saw prisoner exercise his men.

By the Court.—Are you now positive that you saw the prisoner at any time exercise his men on Gorey-hill?—I am positive.

Thomas Hugo, esq. again called by prisoner.

How many Roman Catholics were there in your corps at the time the prisoner was expelled, and what is his religion as you have heard and believe?—Prisoner is a Catholic; there were three, including the prisoner as I believe.

Do not you believe that a man of the prisoner's rank and religion in the country, who was not at the commencement of the rebellion a member of any military body, would therefore be suspected of disloyalty?—Yes, I would.

By the Court.—Did you hear the prisoner, at any time before prisoner was expelled from the Wicklow cavalry, say at your table that the king's forces consisted of no more than 75,000 men, regulars, militia, and yeomen; and of them some of the militia would desert.

I did, and prisoner farther said, "what signified that handful to the other force, which consisted of 300,000?" at that time I had a good opinion of prisoner, and therefore his assertion did not make much impression on me.

Had not prisoner early information respecting any event, or pretended to have such information?—I remember returning from Dublin home, in company with Mr. Critchly, when I found prisoner at dinner at his house. Prisoner asked Mr. Critchly what news? Critchly said none, and asked Byrne had he any

news? Prisoner said he had very bad; for the canal boat going to Athy had been plundered of a considerable number of arms belonging to his majesty. I was but a few hours returning from Dublin, and I had not heard of the transaction there; and therefore believe prisoner received his information across the mountains.

Did you hear, and do you believe, the prisoner influenced any, and what number of persons to join the rebel army?—I did hear, and do believe he did influence many.

PRISONER PUT ON HIS DEFENCE.

Prisoner to Captain Carrol, a Member of the Court.—Did you give the prisoner leave to take a copy of the oath which the members of your corps proposed to take, with permission to consider of it, until the Sunday following?—I did give such permission, and some days to consider of the oath.

Was not the prisoner expelled on the Sunday following, and before he gave his answer?—I do not recollect that the prisoner was expelled on the Sunday following; but it was not before he gave his answer, which was, that he would swear that he was not a United Irishman; but that he would not swear what he might thereafter be.

Do you not think that if the prisoner had then been an United Irishman, he would have the same objection to the former, as to the latter part of the oath?—I should suppose so.

By the Court.—Do you think the prisoner's principles as to loyalty or sedition were changed by being expelled, and if he had any traitorous intentions, whether he would not have wished to continue a yeoman the better to conceal them?—I think the prisoner was a seditious man at the time he was expelled;—and I think he would have wished to continue a yeoman to conceal his intentions.

Whether if he had been a yeoman at the time of the battle of Clough, he would not, in consequence of the success of the rebels, have deserted his corps to join?—I believe every disloyal man would take the first favourable opportunity to join his party, and I believe the prisoner was a disloyal man.

Captain King, a Member of the Court, sworn.
—Examined by *Prisoner.*

Are you a captain of any, and what corps of yeomen? Did the prisoner at any time and when, after the rebellion commenced in Mr. Bates's parlour in Rathdrum, apply to you to bear arms, under your command? Did you give the prisoner any certificate, and of what nature?—I am captain of the Rathdrum cavalry. I recollect that some days after the breaking out of the rebellion, the prisoner came to Rathdrum, and met captain Mills and me, who were both magistrates of this county; and prisoner having stated that several reports had been propagated to his prejudice, as a loyal man, requested to know, if any charge had

been made before us against him of a seditious nature; and he being answered there had not, the prisoner said he hoped we would have no objection to give him a certificate to that effect, which was complied with. I do not recollect the prisoner asking to be admitted into my corps, but if he did make such application, I am confident he knew he would not be admitted.

Mrs. Bridget Meagher sworn.

Knows the prisoner, saw him at the camp of Mount Pleasant, where she went in order to make interest to get off Mr. Thomas Dowse, Marks Redmond, and one Myers, who were prisoners there; that she applied to the prisoner William Byrne, for that purpose, supposing that from his rank and influence in the country, he could set them at liberty; prisoner told witness that he had done his utmost, but could not succeed; and then, one Reynolds who witness heard was a staff officer, and was then in the tent with Mr. Dowse, said that prisoner had no power there, and witness could not succeed in liberating Dowse. Witness believes that from the character of the prisoner, and what she there observed, that he would have been more inclined to liberate the prisoners than detain them, and that his not releasing them, proceeded not from want of willingness, but want of power. Prisoner was more meanly dressed at Mount Pleasant, than she had ever seen him. She did not see any badge or distinctive mark to induce her to believe he was a leader in the rebel army. She heard he had been sick the night before, but appeared at that time well. She went to Mount Pleasant about one o'clock, and remained there until about five or six; she saw captain Perry there, also Esmond Kyan, and five or six other officers. Those officers were well dressed, and most of them wore scarlet and green; and some had green sashes and cockades. She heard Perry called captain; three or four more seemed to have equal power with him; she did not hear prisoner called by any other appellation on that place than that of Mr. Byrne. She was at Mount Pleasant when the King's army attacked the rebels; she observed among the rebels a body of men called the Ballymanus corps, and did not see the prisoner take any command over that corps, or in the rebel army upon that occasion; and had an opportunity of seeing the prisoner, if he had taken any command, and saw him every quarter of an hour during the action. She heard a cannon fired from the rebel army against the king's troops. The prisoner was in her sight, either a little before or a little after the cannon was fired, he came to witness after the cannon was fired; and advised witness to get home as fast as she could, and he came part of the way with her. There was only one report, but believes two cannon were fired. She heard prisoner was a relation of Esmond Kyan.

Bridget Meagher cross-examined.

You said you went to the rebel camp, to get off Mr. Dowse and other loyal prisoners. Who acquainted you, and how did you know there were any loyal prisoners in the rebel camp? did they or any of them apply to you, to get them liberated?—The wife of Marks Redmond, and the daughter of Myers applied to me for that purpose; but Mr. Dowse did not.

You have said the prisoner was the first you applied to on your arrival there; and did he not go with you to captain Perry, and the other rebel leaders, and what conversation passed?—Prisoner did go with me to captain Perry, to whom I applied to release Mr. Dowse, whom I represented as a very good man in the country; captain Perry answered that he would speak for him, and then rode up to other rebel leaders, two of whom were called Fitzgerald and Redmond; Mr. Perry then rode off among the other rebel leaders, and prisoner went with me to the marquee where Dowse was confined, and where Reynolds was.

If prisoner had not a mind to liberate prisoner Dowse, and the other prisoners would it not be more likely he would wish to throw the refusal upon Reynolds, or some of the other leaders, than be himself under the disagreeable necessity of refusing an old friend?—I believe he would have put the refusal off himself rather than have given me a denial, but I believe prisoner did endeavour to get off Dowse.

Were you not on a friendly footing with captain Perry, and when he said he would go to the other gentlemen to speak for Dowse, did you not think he wished to put the refusal off himself?—Captain Perry was on a friendly footing with me; he was a complaisant gentleman, who did not choose to say I won't; and I believe if Captain Perry had a mind, he could have released Dowse.

Had you any other inducement to visit the rebel camp, a place, at the time you went there, full of riot, confusion and danger?—I had not any other motive.

Had you or your husband had any, and how many relations at that time in the rebel camp, and who by name?—My son-in-law Daniel Keravan, was in the rebel army, but not in the camp that day; he was at my house at Coolebeg, distant about two miles from the camp.

How was the prisoner dressed?—He had a grey great coat, and boots; but I did not see a sword.

Who went with you to the camp?—Three children, and a servant.

How many of prisoner's men came to your house, the night before you went to the camp?—One Neal from Ballymanus came in about break of day in the morning to inquire for prisoner; there were five or six others remained without. Neal was tenant to prisoner, or his brother.

Did you hear that your son-in-law Daniel Keravan was killed in the rebel army at Vinegar-hill, and whether you did not hear something of the prisoner upon that occasion, and what was it?—I did hear from some of the poor people who had returned from Vinegar-hill, and who called prisoner captain, that Keravan was killed there, and that the prisoner there left his men, and that Keravan was thereupon appointed to the command in the place of the prisoner. I heard that the prisoner was charged with cowardice, and that he ran away.

By the Prisoner.—How far from Ballymanus did Keravan live?—About five miles.

Bridget Loftus sworn.

Lives at Annacurragh, about two miles distant from, and in the same parish with Ballymanus. Knows the prisoner, recollects seeing him the Thursday before the battle of Arklow, at prayers, at the chapel at Annacurragh. A man with green boughs in his hat came there, and afterwards heard some of the mass-people tell the prisoner, that said man came to warn them to join the rebel camp at Kilcavan gap, and asked prisoner would he join them; he answered he would not; that prisoner went then into her father's house. Some of the mass-people again asked prisoner to go with them; he said they were very foolish people, they did not look to what they were going to do; it was not to a fair or place of diversion. They turned out of the door, and said he was a cowardly rascal; and if he would not join them, they would make an example of him in the county of Wicklow. Witness went and told prisoner what she had heard. The evening following, which was that of Friday, witness saw prisoner at her father's near sun-set. Witness asked him what news? he said he had made his escape from the cavalry. He had stopped at Mr. Coate's at Clone the night before. He the prisoner had sent a note by his servant to Clone, and said servant not having returned, prisoner said, if he had any person to go with him, he would go in search of his mare, as he feared his servant had gone off with her. Prisoner and witness's father then rode away. Witness heard that prisoner spent Friday, until he came to her father's, in a gravel hole at Ballymanus.

It did not appear from what she saw on Thursday at the chapel, that prisoner had any command over them, or had any authority, nor was he considered an officer; and never heard him called captain. She has reason to know or believe, that a corps, called the Ballymanus corps, left her neighbourhood. She saw some of Ballymanus corps march to the rebel camp; never saw prisoner assume any command over that corps.

Cross-examined.

Are you related to prisoner, and in what degree?—My father and prisoner's father were cousin Germans.

Did you know one William Michael Byrne,* and was he a relation, and related to prisoner?—He was our relation.

Did you know Richard Reilly, and was he a relation, and related to prisoner?—He was our relation.

Did you know one William Young?—I did know him.

Do you remember the last named three persons meeting at your father's house, with some other persons?—I do, they met there before the rebellion.

Did you hear for what purpose the meeting was held?—I heard, after they went away, that it was a meeting of United Irishmen, for the purpose of carrying on treasonable designs.

Did you or your father give before a magistrate any information respecting that meeting?—I did not, nor did my father as I believe.

Was there any meeting of the same kind at any time since held at your father's house?—One evening another party met, which I suspected was a meeting of the same kind; some of the persons who were at the first meeting, were at the second.

At what time did prisoner and your father leave your father's house, and where did they go?—About sun-set; but cannot tell where they went.

How soon after did you see your father and prisoner?—My father returned home the day the rebel army marched to Mount Pleasant, distant about five miles, and went back in about an hour. I did not see the prisoner since until I saw him in Wicklow. My father had a sword when he returned home. I heard prisoner was sick that day, but did not hear where he was.

Did you hear the prisoner was at the battle of Arklow, and had a ball shot through his hat?—I did hear it.

Did you hear that prisoner was at Vinegar-hill, and was your father reported to have been killed there?—I did hear so, and that my father was killed there.

Did you hear that the prisoner was charged with cowardice at Vinegar-hill?—I did hear it.

Did you ever see your father since the battle of Vinegar-hill?—I did not see him since.

Michael Brennon sworn.

Knows the prisoner from his infancy.—Witness lives at Ballymanus, saw the prisoner on the Friday next before the battle of Arklow, on the lands of Ballymanus, both in the forenoon and afternoon; he was walking up the road from the big house, before the rebellion broke out; prisoner desired witness to have a watchful look out about Ballymanus, and that if he saw any people gathering, to let the prisoner know, and that he,

* See his trial, p. 455, of this Volume, VOL. XXVII.

prisoner, would bring them before captain King a magistrate; this happened a few days before the battle of Arklow. At different times before the battle of Arklow, particularly the day before, prisoner desired witness to advise the tenants of Ballymanus to stay at home and behave themselves, and that would do best for them, and heard prisoner give the same advice to some of the tenants. Witness never heard before the rebellion commenced, that prisoner had any military command. Never at any time heard the prisoner called by the people of Ballymanus, or of the neighbourhood, captain, or any other military title.

Cross-examined.

Whom are you tenant to?—Mr. Garret Byrne.

Did the prisoner behave kindly to his brother's tenantry, and was he considered by them as their friend, and in consequence had he not a great influence over them?—Prisoner did behave kindly to his brother's tenantry, and was considered as their friend; and I think had influence over them.

How many tenants old and young men were there on Ballymanus?—About thirty-two.

How many of those did not, as you heard and believe, join in the rebellion?—I believe about half the number of tenants went out as rebels.

How many of the real inhabitants of Ballymanus, did you hear were at the battle of Arklow?—About sixteen.

Did you hear that at the battle of Arklow, there was a numerous corps called the Ballymanus corps?—I did.

Who commanded that corps at the battle of Arklow?—Daniel Keravan.

Were you ever sworn an United Irishman?—I was; but do not recollect what the oath was.

Did you mean to keep that oath?—I did not mean to keep it.

Did you inform any magistrates of your being forced to take that oath?—I did not.

You have said that the prisoner had an influence over his brother's tenantry; now do you believe if prisoner had exerted that influence fully, he could not have prevented that tenantry from joining in the rebellion?—I do not believe he could have prevented those who went out.

[Question desired by Prisoner to be put to Witness.]

Do you believe that those of the tenantry of Ballymanus who were rebels, were made such by the influence of the prisoner?—I believe they were not.

July 1.

Martin Roche sworn.

Knows the prisoner since he was a child—

witness lives in Ballymanus—He remembers, that before the rebellion, prisoner advised him and the other tenants to stay at home and mind their houses.—Never heard the prisoner advise the tenants to rise in rebellion—nor ever saw or heard, that the prisoner took any command among the tenants of Ballymanus as a rebel leader.—On the Friday before, which was the day next before the battle of Arklow, he saw the prisoner about two o'clock in the day, and saw him about seven o'clock that evening. Prisoner lay in a water-cut on witness's land a good part of the forenoon of said day, where witness saw him, and heard prisoner advise the people to stay at home, and that for his part he did not know where to go, or what to do.

Cross-examined.

Witness admits he was an United Irishman.—Never heard that more than six of Ballymanus men went out at first and two afterwards, and that three or four went out occasionally—eight are still absent from the town. Heard and believes that prisoner was at the battle of Arklow, and shot through the hat.—Prisoner the night before the battle rode off towards Killiduff, which was the road to Arklow, about half after seven in the evening; he rode a bay mare, which was the only one he had at that time.—While he remained at Ballymanus that day, his mare was at Neal's house, who was considered the greatest rebel in Ballymanus.—About two o'clock, prisoner told witness, that he was hunted by the cavalry from Killacloran through Upper Aghrim, Craffied, and to Ballymanus, and thought it necessary to hide in the water-cut; if the prisoner gave witness a true account of the time he took when he was hunted by the cavalry, prisoner must have left Annacurragh bridge behind him—Miss Loftus lives at Annacurragh. Witness understood it was very early when prisoner was hunted by the cavalry; never heard who the cavalry were.—He cannot tell whether, if prisoner exerted his influence over Ballymanus tenants, all of them that did go out, would have gone or not. He heard that Daniel Keravan commanded the Ballymanus corps at the battle of Arklow; that is, that he was captain of a company of the Ballymanus district; but whether he commanded any other county Wicklow company he never heard. Never heard that the prisoner was called captain, and heard Daniel Keravan commanded the Ballymanus company at Vinegar hill. Heard that the prisoner had been charged with cowardice, but did not hear upon what occasion.

Lieutenant *Edward Hogg*, of the Antrim Militia, sworn.

Witness was taken prisoner at Clogh on the 4th of June; was in Gorey on the 8th; saw prisoner on Gorey-hill on the 10th. Prisoner came forward, and saved witness and others of the king's troops from being put to death.

It did not appear to witness whether prisoner had or had not any command in the rebel army; if he had not a command, he had considerable influence. Prisoner was in coloured clothes—never heard the prisoner in his (the prisoner's) presence, called captain, or by any other military appellation. Never heard any of the other rebel leaders call him captain.—Witness was in Wexford-gaol on the day of the battle of Vinegar-hill.—Saw Esmond Kyan about five o'clock in the morning of that day in the gaol of Wexford. He does not know whether Esmond Kyan could or could not have been at the battle of Vinegar-hill, which is about 11 miles from Wexford. Witness, from what he observed of the prisoner while with the rebels, and saving his, witness's life, rather thinks that he would save the life of a Protestant prisoner, than assist in his murder.

Cross-examined.

Witness having been observed speaking to some of the Antrim soldiers, who were prisoners, some of the rebel guard who were placed over witness, said he ought to be piked, and came forward (as he believes) for that purpose. Esmond Kyan was at a little distance, but did not interfere; did not see any other rebel officer there that he knew. Prisoner then interfered in behalf of witness, and took him down to Gorey, and after some time put him under a guard—believes that it was the custom of the rebel leaders to endeavour to prevail upon the militia officers and privates to join their party, rather than put them to death; and that they hoped, if they could get over an officer, that privates would follow.—Witness himself was pressed to go over.—The vengeance of the rebels was more directed against the yeomanry and loyal Protestant inhabitants, particularly those called or suspected of being Orange men, than the military.—Prisoner saw several of the rebel leaders in coloured clothes, and some of them without any badge of distinction. The rebel chiefs prevailed more upon the common men by persuasion, than by peremptory orders.—Did never hear that the prisoner was at the battle of Arklow.

Question by Prisoner.—Supposing prisoner not to have a command, do you not think his rank in life would have given him sufficient influence among the lower class of rebels to procure your liberation?—It appeared so that day.

Question by the Court.—Then why did not prisoner liberate you entirely?—I do not know, but suppose Esmond Kyan, who was called general, had a greater power than prisoner, and I believe I was detained by his order, and continued in custody till after the battle of Vinegar-hill.—Prisoner did not to my knowledge apply to Kyan to liberate me.—Two of the Antrim sergeants who were prisoners with the rebels, and were compelled to work the rebel guns, and who afterwards re-

joined the regiment, often told me, that prisoner was a rebel leader, and I believe what they told me.

DEFENCE OF WILLIAM BYRNE, ESQ.

Mr. President, and Gentlemen of the Court Martial;—Among the many embarrassments of my present situation, I lament as one of the greatest, not merely the magnitude, but the number of the crimes of which I am accused.

It has been deemed proper to lay to my charge every offence, to which the clemency of the Crown, and the wisdom of parliament have thought it expedient, not to extend amnesty or pardon. The highest degree of political as well as moral guilt are imputed to me, and I am now called on to defend myself against the complicated crime of disloyalty, aggravated by desertion, and blackened by murder. One great disadvantage attending a charge which contains such a variety of offences, must occur to every mind:—It is obvious that the difficulty of defence is increased, in proportion to the generality and indefiniteness of the accusation; and that it might not be easy for even innocence to protect itself against the charge of a multitude of crimes, where it is impossible to foresee to which the evidence will be principally directed, or by what witness it is intended to be sustained.

Give me leave also to say, that this observation is peculiarly applicable to the situation in which I stand; since it is well known that a long time has been consumed, and much exertion used in preparing for this prosecution, and that the day when I was called to my trial, was the first on which I had notice of the precise offence of which I was to be accused.—I may farther observe, that the enormity, added to the number of my imputed offences, must have a necessary tendency to excite prejudice, and rouse indignation against one whom the law of reason, and the law of the land supposed, before conviction, to be innocent. But it is only among those who are not my judges that I have any apprehension of unfounded prejudice and improper feeling; and I willingly seek refuge and protection from the calumny of mine enemies, in the honour and integrity of this Court—in that candour and uprightness which has marked this trial through every step of its progress, and which (if I may be permitted to particularize) has conspicuously appeared, sir, in the patience, impartiality, and politeness of your conduct.

Before I proceed to my defence, it will, I hope, be permitted me to make another preliminary observation, which indeed arises out of the testimony of one of the last witnesses called in support of the prosecution. He said, that he lately saw me in the town of Blackwater, raising recruits for his majesty's service. It is very true; for the crimes into which I was rather forced than betrayed, I

have long felt the most sincere contrition. I have most faithfully returned to my allegiance; and so far from persevering in rebellion, my time has been actively employed in his majesty's service. Surely I have some reason to say, that the zeal of my prosecutors, though honourable, was perhaps mistaken; because, if they had permitted me to remain unmolested, it was my fixed determination that my life should be devoted to some useful occupation, and that my former errors should be amply atoned for by the merits of my future conduct. I lament that my criminality has been such as no repentance can wipe away; and that I am now brought to trial for offences, which I had fondly hoped were either overlooked or forgotten. But it is in vain for me to deplore what I cannot prevent; and I have now no choice left, or duty to perform, but that of proceeding to defend myself against the heavy charge preferred against me. In doing so, I shall pursue the order observed in the charge. I begin with the imputed crime of desertion.

On this topic I might content myself with referring to the words of the Amnesty act, and the evidence of Mr. Hugo. Had there been any witness to prove an act of desertion, I should have appealed to the evidence of Mr. Hugo, and relied on it as decisive in my favour. The exception in the Amnesty act, on which this charge is founded, is of such yeomen who have "deserted from their troops or companies, and joined in the said horrid and unnatural rebellion." By the evidence it appears, that so far from deserting from my troop or company, for the purpose of joining in rebellion, in the month of February, 1798, long before rebellion broke out, I did not desert, but was expelled from the corps, of which I had been a member. The opinion of Mr. Hugo was indeed taken, whether I did not desert from the cause of loyalty; but surely it will be obvious, that the desertion meant by the legislature, as applied to a yeoman, signified THE WILFUL FLYING FROM THE KING'S RANKS TO THE STANDARD OF REBELLION.—I cannot, however, close this part of my defence, without adverting to that oath which was the cause of my expulsion. I am convinced that oath was proposed in the zeal and ardor of loyalty; but I may be allowed to say, that there was some hardship in being branded as a traitor, for not taking a voluntary oath, which should have been a matter of choice, and which never was prescribed by the legislature. Besides, although it is a certain truth, that no oath, forcibly imposed, has a binding obligation, yet there is a wide difference between the taking, without observation of such oath, and the taking a voluntary oath which professes to bind against the future taking any traitorous oath, whether freely or by force, or (which is nearly the same) makes no distinction between them. This is promising more, perhaps, than a scrupulous man could promise. In these observations on that oath, I

may be mistaken; and it may be, and (from the character of most of those who took it) most likely is unexceptionable; yet it is enough for me to say, that in refusing to take it, a scrupulous man might be mistaken without being disloyal. This, indeed, I know in my own person. When that oath was proposed, his majesty had not a more faithful subject than I was; but in consequence of my declining to take it, I was abandoned by my friends, and stigmatised as a traitor. From this period I date the origin of all my errors and misfortunes.

I proceed to the second charge, namely, that during the rebellion I was a captain in an army of rebels. To this point the evidence has been chiefly directed; and in considering that evidence, I shall not take each witness in the order in which he was called, but I shall endeavour to class and arrange such as spoke to the same facts, and compare their testimony. There are some of those witnesses, however, who have sworn to facts in which they are not only not corroborated, but in almost every particular contradicted by the others. These cannot be classed; and the first of this kind whom I shall notice is Bridget Dolan.

The Court will recollect, not only the character which this witness gave of herself, but also her conduct on the table. A girl of 18, flying from her friends and family, and joining a rabble of men, for no other purpose, and with no other hope, than that of plunder; on a sudden embarking in all their wickedness, and chosen as the most bold and forward to do every act of mischief; bearing their fire-brands, and choosing to be present at a barbarous murder as at any amusing spectacle.—This Court saw that monster of immorality, whose heart is not only divested of all the softness of her sex, but of every sentiment of humanity, bear testimony against my life, with as indecent and idle a levity, as when she confessed to have burned the king's baggage, or to have been at the murder of an Orangeman. The Court saw the laugh with which her testimony was accompanied—that laugh which made one shudder to see human nature so depraved. I pass to her evidence, which was consistent with her character, and inconsistent with every thing else. She, and she alone, swears, that when I came to the camp at Gorey-hill, all the music, drums, fifes, fiddles, and pipers, went out to meet me; and this circumstance, which must have made an impression on every other person, was unobserved by the other witnesses, who have sworn that they saw me ride into the camp of Gorey-hill; and it is to be observed, that although this witness affects to be extremely minute in her evidence, yet she forgets what is now the principal subject of inquiry, and what must have made the greatest impression on the rebels in arms—namely, the time when succours, which they deemed so important, arrived in their camp. It is also to be ob-

served, that through the whole of this witness's testimony, there was a manifest and eager desire to declare every thing *against* me, which betrayed her into many flagrant inconsistencies. Thus, she swore, that she never saw me exercise my men, but that I drew out my corps, that however she never saw me draw out my corps, but positively that I acted as captain, although she was unable to mention any one fact from which this positive inference could be drawn. The same anxiety to be minute, and the same manifest deviation from the truth, distinguishes her account of the battle of Arklow, in which (according to herself) she was not only an active warrior, but a calm and undisturbed observer. There she saw me, as busy as possible, at the head of my own corps, which, if any conclusion can be formed from her evidence, continued a compact and unbroken body, where the commander had no occasion to give any other order than that to march; and her positive evidence is, that although she had a full opportunity of seeing me during the whole battle, I did not rally any men, or act as captain in any other manner than by ordering them to march. Thus the testimony of this woman differs most essentially from that of other witnesses who have been called on the prosecution. But the evidence of this witness does not end here.—For some days she reposes after the fatigues of Arklow, and she next meets with me at Kilcavan, where she sees what no other witness saw:—it is her fortune to observe me riding about the ranks, giving military orders; and on this point it is only necessary to say, that Bridget Dolan is not only unconfirmed by the other witnesses, but so far as these having an equal opportunity of observing the same circumstance, and not having observed it, amounts to a contradiction, which it certainly does:—their testimony directly militates against her's. But this witness accompanies the rebel army to Vinegar-hill; and here also her mind continues undismayed by the horror of battle, and her attention remains fixed solely on my conduct. She sees me in the engagement, and she hears—what no other person ever heard—a dispute, whether the command of a body of men should be given to me or to Garret Byrne, who she swears was also there. Indeed, she has sworn as decidedly that Garret Byrne was not only at Vinegar-hill, but at Gorey, Kilcavan, and Mount-Pleasant, as to any other circumstance of which she has given evidence. It is necessary to say, that this, as well as almost every other part of her evidence, is belied, not only by what has appeared on this trial, but by recent and notorious facts. I will not follow any farther the polluted stream of this woman's evidence. In every turn through all its progress, I appeal to the good sense and honourable feelings of this Court, if it has not been defiled with the basest malice, and blackened by the most apparent perjury!

I willingly dismiss the evidence of Bridget Dolan, and I proceed to make a very few remarks, for the present, on that of John Conyers, Wm. Poole, and Joseph Gordon; whom I place in the same class, because they were, or declared themselves to have been, prisoners with the rebels on Gorey-hill, before the battle of Arklow. I shall, however, first take the liberty of observing, that where two or more witnesses on the same side depose to transactions which have happened at the same time, and their accounts are essentially different, the mind not knowing on which to rest, must, to avoid being deceived, reject the evidence. I apply this observation most particularly to the evidence of Joseph Gordon, who swears to facts to which no other witness has sworn. Thus he said, that he was a prisoner at large on Gorey-hill, and that he saw me ordering men to march, wheel, and so on. I oppose this witness to all the others who have appeared in the prosecution; he swears positively, and the Court repeatedly pressed him on the point, that he saw me act in the manner he described two days before the battle of Arklow, and that it could not have been on Friday, because on that morning early he left Gorey-hill, to which place he did not return until after the battle of Arklow. Thus the evidence of Gordon may be dismissed from the attention of the Court, or that of those who swore that on Friday they saw me come to Gorey-hill must be discredited. On the testimony of Poole I shall make two observations for the present. The first is, that Redmond, who was really a captain in the rebel army, assumed upon himself that authority, and as such wrote the protection which he handed to the witness; but when he says that I signed my name, he cannot say that I assumed any authority, or was called by any military title; on the contrary, it was not my seeking, but that of some rebels who refused permission to the prisoners to pass without my leave. Suppose me to have no command, and such an application made to me, it would be an act of inhumanity, of which I am incapable, to deny my signature on such an occasion. The next remark I shall make, on the evidence of Poole, is, its strange and unaccountable inconsistency: he procures his pass on the evening, and this in consequence of the rebels who were near him refusing to permit him to go without it; he makes no use of the pass that evening, while those surround him, over whom my name was supposed to have an influence; but the witness waits until the next day, when another set of men, over whom I might have no influence, surround him. He then leaves the rebel camp without showing his pass, and he is met by a pikeman, who threatens his life; yet he never thinks of using his protection, which the day before was so important, but he falls on his knees and is saved, not by the authority of those whose names are signed to it, but by the clemency of the rebel. There is some-

thing so marvellous in this story, that the mind would deny its belief, even if a subsequent part of this witness's testimony did not entirely destroy his credit. I allude to his having sworn, that this transaction happened on the 4th of June; that is, three days before the men whom I am supposed to have commanded came into the rebel camp, according to many of the witnesses for the prosecution, and four days before I joined the rebels, according to all the witnesses who have appeared on my behalf. Thus, of these three witnesses, two appear to be plainly unworthy of belief, and the testimony of the third (whom I do not know) rests on his own credit entirely, as the protection of which he has spoken has not been produced in court in evidence, or my hand-writing to it proved. However, supposing, but not admitting, the truth of what Conyers has said, I hope to show hereafter, that it may admit of explanation, without attaching to me the guilt of being a captain of rebels.

The next class of witnesses on whom I shall observe, are Benjamin Warren, James Patchell, and Farmer. My reason for placing these together is, that they have sworn to the same facts, and so far as their evidence has gone to criminate me, I have only to observe, that what they have sworn is not directed to the subject of the charge, nor does it prove any offence from which I am now called on to exculpate myself. If guided by rashness or resentment—If my feelings torn and distracted by the novelty and the horror of my situation—If the conflict of despair and remorse threw my mind off its centre, and hurried me into acts, which at any other time, my conscience would disapprove—if at such a period of agitation, I struck that blow of which these witnesses have spoken, I can now only express my sincere contrition for such an offence, and I solemnly declare it has escaped from my recollection.

But I may also be permitted to lament that as the assault on Benjamin Warren forms no part of the charge against me, evidence should not have been admitted, so peculiarly calculated to inflame against me those whose reason should remain cool—I am sorry that there should have been mixed with the immediate subject of investigation, matters which can serve no other end, than to rouse against me the indignation of my judges. Let me not be understood to say that such an effect has been produced. No! I should do injustice to this court, not to acknowledge that I sincerely believe they will impartially discriminate the applicable from the irrelevant evidence, and that they will suffer no improper bias to turn their understandings from the real points of inquiry. It will not however be imputed to me as presumptuous, that I have ventured to mention what appears to me to be the natural and almost necessary tendency of this evidence—while, however, I deprecate the effects which this evidence might produce so far as it

is irrelevant, I beg leave to resort to it when applying to the accusation as most strongly, I might indeed say conclusively, in my favour. It is unnecessary to repeat the evidence, and it will be sufficient to remind the Court of the conduct of Monks and of myself, when this is supposed to have happened. What is the conversation which takes place between us? Does Monks, who was an acknowledged captain, address me to treat me as an equal? Does he recognize me as a leader or call me by the title? No: he assumes a power and authority over me to which I am obliged to submit; he makes me suffer the most abject humiliation; he compels me to fall on my knees, and beg pardon; he behaves to me in every respect not as if we were equal, but as if (what really was the case) I were his inferior, and he a haughty and unbending superior, who had ample power which he had the means of enforcing. Do I, to rescue myself from so degrading a condition, assert my authority, or assume any rank? Is it not incredible, that if at that time I had either authority or rank, I should not at that moment claim the one, and assert the other? But I do neither; I do not say you are but a captain, and I have an equal rank: no. When he arrogantly demands of me who and what are you? my answer is such as it is impossible an equal could give; I tell him, "One Byrne of Ballymanus." Allow me to say that this fact speaks more emphatically that I had not the rank of captain in the rebel army, than the opinion of all those who were prisoners there; opinion founded on facts which admits of explanation, may be mistaken, but a fact such as this to which these witnesses have sworn, cannot err. It is also very necessary to be observed here, that from all the evidence which has been given on this trial, the inference to be drawn concerning Monks is, that he was considered in the rebel army as one of the common captains (as distinguished from the principal leaders), and it cannot therefore be said that I might have been a captain and Monks in a higher rank; let me also here make another use of the testimony of Benjamin Warren, who swore that he heard Monks and Perry called captain, but heard that title applied to no other person: is it to be believed that had I been a captain, the same title would not have been applied to me in the presence of those prisoners and of those who were rebel leaders? No; but if I were not a captain it is certain that those who were such, would not permit me to be called by that appellation in their presence. It has indeed been said by Benjamin Warren that Monks threatened to strip me of my commission; on this I shall only observe, that if our rank were equal, it is absurd to suppose he could have such a power, but that neither of the other witnesses, Patchel or Farmer mentioned these words, although they both positively swore that they heard and repeated on this trial every word that Monks said, and it

is more probable that they could correctly hear and remember the conversation than one in Warren's situation. Thus I trust it will appear to the Court, that so far as the testimony of these witnesses applies to the charge before the Court, it goes a considerable way in removing from me the imputation of having been a captain of the rebels.

The next witnesses on whose testimony I shall observe, are Maurice Dark, Joshua Chase, Thomas Paslow and William Grimes. These persons profess to swear to the same transaction, and to their testimony the observation which I made before is peculiarly applicable: on examining what they have said, it is impossible to discover consistency in almost any one point; and not only are they inconsistent with each other, but some of them are inconsistent with themselves: the two points to which these witnesses have sworn are, first, the liberation of the prisoners; secondly, the expression which I am supposed to have used; as to both of which, although each of these witnesses admits that the others had as good an opportunity of seeing and hearing what passed, as he had himself, yet the account which each has given, is as dissimilar from that given by the others, as if the transaction was not the same; thus, Dark swears that though he had an opportunity, he did not hear me give any direction what should be done with the old men and children. Chase swears, that upon my being asked by Mergin, what should be done with the prisoners, I answered, if you don't put them to death, put them in the guard-house: the affair is very differently represented by Paslow, who swears, that without any application being made to me, I peremptorily say, "Why don't you dispatch the prisoners?" Grimes hears what none of the others heard, but what he swears they could have heard; he says, I confined my thirst of blood to the children, and ordered them to be murdered, saying, "damn them, kill them, or do what you like with them;" and he positively swears, that I used no other expressions respecting the prisoners. Dark swears that a mad fellow, called Bergin or Mergin, was going to kill Chase—Chase swears it was Mergin; and neither Paslow nor Grimes mentions any thing of the transaction: Dark says, I put a centry in the place of Mergin over the prisoners, and not a word of this is sworn to by the rest: when Mergin was removed, it is sworn by Dark, that Kevanagh was chosen by the rest as serjeant, and this because he who was in that situation was disposed to treat the prisoners with cruelty; this is in some measure confirmed by Chase, who swears to the disappointment of Mergin at not being permitted to murder his prisoners; and all this happens by my interference after having used the sanguinary expressions imputed to me by some of these witnesses! I rely, not so much on the various accounts which these witnesses have given of expressions shocking to huma-

nity, as on their utter inconsistency with every other part of the transaction. According to Chase, the mob and particularly Mergin, was eager for blood, and as Chase has said, they waited till I should come up; yet, after having come up, and incited them to butchery, the prisoners are spared. Mergin is enraged, and declares that he will resign his command: according to Dark's story, I save Lewis and reprove Mergin: according to Chase, I make a bloody speech to sanguinary men, and they desert the project which they had formed: according to Paslow and Grimes, I give a cruel order to ruffians who were panting for innocent blood, and I am disobeyed: these are a few of the inconsistencies which appear on the evidence of these men; indeed I may, with some confidence affirm, that this evidence is disproved by every act during the rebellion, which has or can be proved against me: if I at any time assumed authority where none was ever conferred on me, it was to spare and not to shed the blood of captives.

There is, however, in the testimony of Paslow, one circumstance most important, as it confirms this general observation, that I never was called captain by any person who had reason to know whether I was such or not, and that the title was never applied to me in my presence—the circumstance I allude to is, that so far was Mergin (who was but a serjeant) from acknowledging me as a captain, he told me in the presence of the prisoners, and many rebels, that I had no command. It is also to be observed, although (as Dark swears) I was extremely enraged against Mergin, I yet assumed no power to change him as a guard, but Kevanagh was chosen by the rest to be serjeant. Thus in examining the testimony of these witnesses, the mind knows not where to rest, but involved in contradiction and inconsistency, it has no means of avoiding the perplexity, than by entirely rejecting the evidence.

The next witnesses whom I shall class are John Hopkins and Patrick Harold; and I class them for this obvious reason, that they both were rebels, one in a Wexford, and the other in the Redcross corps; and the evidence of both is merely to circumstances which have been mentioned by other witnesses. The evidence of Hopkins, who swears merely to having heard me called captain by some rebels signifies little, when it is considered that he was a perfect stranger to me; swears to no act of command, and was unacquainted with that party of the rebels among whom I remained. The evidence of Harold deserves farther consideration, because he belonged to a corps of Wicklow rebels; but in order entirely to discredit him, who admitted that he had been accused of robbery (you know, Sir, that I could not have asked him was he guilty) I need only observe, that he positively swore it was a week, or at least five days, before the battle of Arklow, when the Ballymanus corps, led by me, came into the rebel camp at

Gorey-hill. Is it necessary to observe on this flagrant falsehood?

The next witnesses I shall observe upon, are John Carty and Matthew Davis, who swore that they were rebels in the Ballymanus corps; and in these men there is to be observed the same inconsistency with the other witnesses, and with each other, which has been noticed in the former classes of witnesses who have been called to the same facts. Carty professes to have belonged to the Ballymanus corps, which, he says, was composed of many inferior corps; and if I had any command, it must follow, from this man's evidence, that it was not over an inferior corps, but of a body composed of many others. Yet he sees me do no one act of military authority; he sees me issue no orders, assume no command; but he concludes that I must have been a captain, because I was riding, and looked more like a gentleman than the rest; allow me to say, that this is the way in which any title applied to me by the rebels came to be conferred; they imagined that one in my rank and of my appearance could have been nothing less than captain; but they little knew that my connexion with them had been but recent and was compelled.

To the evidence of John Carty I oppose that of Matthew Davis, who had no better opportunity of knowing my rank or the circumstances to which he has sworn than John Carty had, yet he swears to my having fired at Mount Pleasant a cannon which was called mine—in this particular Davis is uncorroborated by any one of the many witnesses who have been called, and who had an equal opportunity of knowing whether such a thing were there; let me also observe, that not one of those who say they saw the Ballymanus corps, has mentioned one syllable of cannon; many of the witnesses have declared they never heard of any such thing as cannon called captain Byrne's cannon. Besides, this witness is for another reason not to be believed,—he has sworn that Kyan was active at Vinegar-hill, at a time when a much more respectable witness has proved him to be in Wexford. I may venture to say, that this witness whose testimony is not only uncorroborated by others, but who has sworn what is not true, will receive but little credit from this court; and had not these witnesses whom I summoned been prevented by their false fears from attending, I would have had abundant proof of every part of his perjury—I shall, however, make this one observation, it seems to have been admitted by all the witnesses for the prosecution, that Perry had a command in the rebel army composed of many subordinate corps, it has not been in proof who was the leader of that aggregate body which was composed of the different corps from Wicklow, but from the evidence of Carty it may fairly be inferred that Perry had that command—the reason for drawing this inference is, that it has not appeared what other principal com-

mand Perry could have had, and Carty has said that he could not be positive that Perry had the sole command of this body; and although the names of many inferior captains are mentioned by these witnesses, yet mine has not been attached by them to any subordinate body in that great division of the rebel army. On the evidence of John Walker who swears that at Arklow he saw me rally my men, I shall beg leave to call the attention of the Court, not merely to his inconsistency, which discredits what he said on his direct examination, but on the important fact which he disclosed on his cross-examination. He saw me rally my men; yet in that immense multitude which his ignorance multiplied to the number of three or four hundred thousand—the fact is (and he admits it) the rabble scattered and each man fought for himself; there was no regularity; no discipline; and no man thought of remaining with the corps to which he belonged; yet, according to this witness, when 200 of this body, who were mixed and confounded in the mass, were flying with the multitude, I rally my men. In this story there is a wild and extravagant improbability—but it is not improbable that a man on horseback, without a command, should at such a time and in such a situation, endeavour to turn the flight of those with whom he was acting; and thus even by giving credit to this incredible witness, the fact which he has sworn by no means amounts to any proof of the charge.

It remains for me only to notice the evidence of Mr. Dowse—and I cannot here avoid remarking the prejudice against me, amounting almost to a vindictive and resentful feeling, which has appeared in the evidence of several of these witnesses, who certainly were rather under some obligations of gratitude to me.—Mr. Dowse saw in my conduct while he was with the rebels, nothing but kindness to him and humanity to others; and yet he would not admit that his belief was, I would rather assist a Protestant prisoner in his escape than join in his murder—I who in vain solicited his liberation, I who at that very time was employed in his service with the benefactress of Dowse (who hazarded her own life to save his) I who to vindicate my own character need scarcely do more than point to it, living in the person of this witness, as the example of my humanity—as to the evidence of this man concerning my being a captain, I rely on it as infinitely more strong in my favour than against me;—he thought I had more command than a common man, but he saw me do no act of military authority, and the two facts on which his belief rests are, his having (the evening before Mrs. Meagher came to Mount Pleasant) seen me in the carriage with E. Kyan, and having observed me in a consultation. As to the former of these facts, it is fully explained by the admission of this witness and the circumstances proved by

Mrs. Meagher. Dowse believes if I were a relation of Kyan, and in ill health, he would permit me to travel in his carriage, and Mrs. Meagher proves that I was a relation, and in truth a near relation of Kyan's, and on that evening I was so sick that some of my friends were afraid my life was in danger. As to the consultation, from what Mr. Dowse has said, it is plain that this fact is too slight to furnish a ground of inference. He saw many persons there, who, he said, perhaps might not be captains. He mentions the names of very few of them, and among these few there is one Barney Murray who was no captain.—On such flimsy and inconclusive circumstances is it sought to convict me of a capital offence!—But let me appeal to Mr. Dowse in my favour;—he verily believes I wished to serve, and that my not having done so proceeded from want of power, not from want of willingness; and in this he is confirmed by Mrs. Meagher, who says, that my whole heart and soul was bent on serving him, yet I do not serve him by restoring his goods; and why?—because if I had ventured to do so, I should myself have been punished, but he believes if I were a captain I would not be punished; and instead of giving him a refusal I tell him to apply to some man having command. How is it possible to reconcile this with the idea of my having at that time any thing like power or command in the rebel army?—Man is equally ostentatious of his power, and never such a hypocrite or so humble as entirely to hide it. But Mrs. Meagher confirms Dowse; she thought I might have had some authority; but Reynolds, who well knew, undecieved her, and said I had none; I beg to observe farther on Dowse, that he had a full opportunity, as also had Mrs. Meagher of seeing all I did at Mount Pleasant while they were there, yet neither of them saw me assume any command, but Dowse saw me riding as the other horsemen did, irregularly along the ranks, and of these horsemen there were, as he says, twenty privates to one officer.

I have thus finished what I am afraid may be thought a tedious examination of the evidence that has been given; and I believe it will not be saying too much to observe, that the testimony of many of these witnesses is inconsistent with probability, and with what the others have sworn, I may also be allowed to say, that what is least improbable may admit of explanation—there are two methods in which it occurs to me this may be done—one on a supposition of my *not* having been a rebel leader, the other supposing I was one. Reasoning in this manner you will see which supposition is attended with the greater difficulty. If a young and active man, of a rank much superior to the peasantry, and of a family whose influence was very great among the lower class, had for the first time, just on the eve of a battle, joined such a rabble as the rebel army was, it is natural to imagine

that his influence would be increased by such conduct: that the mob, who were ever fond of conferring titles, would speak of him (as Mrs. Meagher has said) as captain, or honour, or by that title which was at the time most in favour with them—that this title would be more frequently applied to him by strangers and never in his presence. It is also reasonable to suppose that he would be looked up to by the lower class, and that they would willingly comply with any request he might make; and if he were a man of humanity, he would certainly use this influence in rescuing prisoners from danger and confinement—for this purpose he would not only make personal applications to the mob, but if his name bore any weight among them, he would not refuse a signature which might protect an innocent man's person—he would be treated with more respect than others by those officers who had the principal command; and in a place where there was no order, discipline, or regularity, it is most likely his advice would be asked, or his assistance taken either in making musters or advising about a march particularly if he were well acquainted with the country; in all this there is no inconsistency or improbability. But reverse the picture; is it within the bounds of human probability that such a man should be a captain in the rebel army, and no credible witness see him assume any military command—that no title should be applied to him in his presence or by any person having a command—that he should have the will without the power to oblige a friend, and refer that friend to some one having authority—that before the rebellion, and indeed after it commenced, he should remain at home; persuading the people, at the hazard of his own life, not to rise in rebellion; that he should fly to the rebels attended only by one man; that in the only instance where he seemed to assume power, a man in the rank of serjeant (I allude to Mergin) should in direct terms say, “you have no command”—that one who had no higher rank than captain, should treat him with the most insulting indignity, and that he should not assert his title; and that those in his neighbourhood should not have heard of his having command over the people of the neighbourhood—All these are absurd inconsistencies which attend the supposition of my having been a captain of rebels—while every act of mine that has been proved by any credible witness can easily and probably be reconciled with the supposition of my having had no command.

I pass to the last charge. I am accused of having murdered Langrell and three men on Mount-Pleasant; this certainly, as it is the crime most repugnant to my nature, I did think would never have been laid to my charge. I feel that the Court do not consider me guilty of it, and I shall therefore be very short in my observations. As to the murder of Langrell, is it not enough to say that the

VOL. XXVII.

only witness who has spoken one syllable on the subject is that same Bridget Dolan, whose barefaced and disgusting perjury shocked every man who heard her evidence. Give me leave to say also, that her evidence is belied by every other part of my conduct. I must also most solemnly assure the Court, that until the charge was read in this court, I had no idea of any such crime being imputed to me; that being perfectly innocent of this offence, it is impossible for me to know what persons were present at it; that even if I did know them, they would be incompetent witnesses, and that therefore I can have no other way of disproving this evidence, than by relying on the infamous character of the witness. As to the murder of the three men, this is not only not proved to have been done by me, but it is proved even in the case of prosecution that it was committed by a man called captain Dwyer, over whom I could have no influence or control, and I may be allowed to lament that a charge so entirely unfounded and unsupported was preferred against me.

I have now noticed the greatest part of the evidence, on the part of the prosecution—with a few observations on that which has been given on my behalf, I shall conclude; allow me, however, to premise, that the characters both of Mrs. Meagher and of Miss Loftus have remained, after the most minute scrutiny, unimpeached and above blame. In Mrs. Meagher you see a woman of wealth and respectability, exposing herself to danger for the safety of her friends—and although it may have been true that two meetings of persons, whom Miss Loftus afterwards heard were delegates took place at her father's house, yet surely this was no offence that could destroy her credit; allow me also to say, that Brennan and Roach are as worthy of credit as any of those witnesses in the same rank of life who were called by the prosecution, and that none of the witnesses in the defence told either an inconsistent or improbable story.

I beg leave, in the first place to advert to the evidence which was given by captain Carroll—he has given his belief, founded on a very sufficient reason, that in the month of February 1798 when the conspiracy of United Irishmen was completely organized, I was not one. It is very true; and if such a negative were capable of proof, I should be able to prove that I never was an United Irishman, but after my expulsion from the Wicklow corps, my place of residence was in a part of the country which was peculiarly disturbed—so far, however from my countenancing those who were inflaming the minds of the lower orders, my most sincere exertions were used in dissuading the people from engaging in the conspiracy; even after the rebellion broke out, my endeavours to keep the people at home and in peace were unceasing. But I was myself suspected of disloyalty, and to remove that imputation from my character and to ensure safety to my own person, I offered myself to

a magistrate, to answer any charges that might be made against me; and he gave me a certificate of innocence. This happened long after the rebellion commenced; but at that time and that place to be suspected was to be guilty, and without having ever done one disloyal act the king's troops pursued me for my life.

Even at this time, when I was forced to seek shelter in ditches and gravel pits, the influence which I had among the people in my neighbourhood was exerted in advising them against rebellion; and only two days before the battle of Arklow, after having escaped from a party of cavalry, I raised against myself the resentment of those very persons whom I might easily have engaged in rebellion, by advising them not to join the rebels. On the night before the battle of Arklow, I fled from the pursuit of the king's troops to the rebels at Gorey—among them I had no command—I never acted with them as a military leader, but I felt I had influence among them, which I never exerted but for the purpose of doing acts of kindness and humanity. If my being instrumental in saving the lives of seventeen of his majesty's army, and many private individuals, be considered as a conclusive proof of my being a captain of rebels, I can only say that it is not, and that whatever my fate may be, I can never regret the having had it in my power to serve so many fellow creatures. This is the short and faithful history of my life during the rebellion; and it is confirmed by the testimony of the witnesses who have appeared on my behalf; had those whom I summoned appeared also, they not only would have given to what I have said full confirmation, but they would have disproved many of the particulars which have been sworn against me. I have now done;—and with perfect reliance on this honourable Court, I commit my case to their justice, candour, and impartiality, confident that if they see even room for doubt, their judgment will be an acquittal.

By the Lord Lieutenant General and General Governor of Ireland,

CORNWALLIS.

Whereas, at a General Court-Martial held at Wicklow, the 28th day of March, and continued by adjournment to the 2nd day of July, 1799, whereof major John King, of the Fermanagh regiment of militia, is president. The Court being met and duly sworn, proceeded to the trial of

William Byrne, charged that "He, by his being a yeoman in the Wicklow Yeoman cavalry, and as such having taken the oath of allegiance prescribed for yeomen, afterwards became a rebel, and joined the rebel army then in arms against the king and government of Ireland.

"That he was instrumental in calling and influencing into rebellion divers of his majesty's subjects.

"That he was a captain or principal leader in said rebel army.

"The said William Byrne is also charged with being concerned, and an accessory in the murder of Isaac Langrell, in Gorey, in the month of June 1798—and also with being concerned in the murder of three other persons at the rebel camp at Mount-Pleasant, whose names are unknown.

"The Court having taken into their consideration the whole of the evidence in support of the several charges preferred against the prisoner, William Byrne, and also the prisoner's defence, are of opinion as follows, viz. That the prisoner William Byrne, having been a member of the yeomanry corps of Wicklow cavalry, from which as it appears to the Court, he was expelled, before he was guilty of any overt act of rebellion, is not thereby precluded from the benefit of the general amnesty, and he is therefore acquitted as a yeoman deserting to the rebels; yet his entering into a yeomanry corps, taking the oath of allegiance, and receiving the king's pay for upwards of six months, is a great aggravation of his subsequent rebellious conduct. The Court are of opinion, that the prisoner was present, and commanded the rebels who murdered Isaac Langrell, yet as it appeared in evidence that that party was sent from Gorey-hill, by order of some chief rebel commander, it might possibly have happened that the prisoner acted under such order; he is therefore acquitted of the murder, although the prisoner's conduct upon that occasion is deemed highly blameable.

"With respect to the murder of the three persons at Mount-Pleasant, the prisoner is acquitted, inasmuch as it does not appear that the prisoner had the chief command in the rebel army at that place.

"Upon the whole, the prisoner by his conduct at the murder of Langrell, in the guard-house at Gorey, and at Mount-Pleasant, exhibited a vengeful and malignant mind, and the Court being decidedly of opinion that he acted as a captain or principal rebel leader at the battles of Arklow and Vinegar-hill, and other places, the Court do adjudge that the said William Byrne shall suffer DEATH. The Court think it necessary to observe, that the prisoner, William Byrne, had all the time allowed to call in his witnesses which he desired, and that he was offered warrants to bring in those who being summoned did not appear."

We having taken the proceedings and sentence of the said General Court-martial into consideration, are pleased hereby to approve of and confirm the same, and do direct and require that you will cause the sentence of DEATH, pronounced by the Court against the prisoner, William Byrne, to be carried into due

execution—for doing whereof this shall be your warrant.

Given at his Majesty's Castle of Dublin,
this 21st day of September, 1799,

By his Excellency's command,
GASPER ERCK.

Lieut.-Gen. Charles Eustace, &c. &c. &c.;

(COPY.)

MEMORIAL, presented to his Excellency the Lord Lieutenant, by ELEANOR BYRNE and FRANCES BYRNE, on behalf of their brother, WILLIAM BYRNE, of Ballymanus Esq.

MAY IT PLEASE YOUR EXCELLENCY ;

We throw ourselves at your Excellency's feet in favour of an ill-fated brother, William Byrne, now, we hear, a convict in your gaol of Wicklow, whom the general prejudice of the times (but particularly of that quarter) we fear will overwhelm, if not prevented by the interposition of your excellency's wonted clemency. We entertain little doubt but your humanity will induce you to spare a life on which depends we may say, the existence, assuredly the protection, of two solitary females.

Should your excellency be moved by our tears and prayers, to treat him with mercy, we implore you not to liberate him in Wicklow, or its vicinity, as the inveteracy of a party there is such as must be fatal to him. Your excellency will not deem our apprehensions ill-founded, when we are informed and believe with truth, that an attempt, accompanied with much unseasonable insult (his circumstances considered) was made on his life in the gaol during the assizes by two yeomen. We, with the utmost regret, deplore our distance from the marchioness of Buckingham, our only relative of consequence, sufficient to give any weight to our application, independent of your excellency's well known clemency. We with most fervent prayers for your excellency's happiness, wait with anxious hearts for your excellency's commands at the Petition-office.

ELEANOR BYRNE
FRANCES BYRNE.

Wicklow August 21st, 1799.

Sir;—Agreeable to the orders I received, I herewith have the honour to enclose an Investigation and a Report on the petition of Eleanor and Frances Byrne, and have stated such facts, and submitted such observations, as came within my knowledge; and which I hope will meet his excellency's approbation. I also trust and hope that the Fermanagh regiment is honoured with such a share of his excellency's confidence, as that he supposes we will on every occasion implicitly obey his orders, and that either here or wherever quartered,

they would not suffer his excellency's commands or determination, be it what it would, in Byrne's case or any other, to be insulted or opposed by either party or prejudice.—I have the honour to be, sir, your most obedient humble servant,

JOHN CALDWELL, Lt. Col. F. M.

To Lieut.-Col. Littlehales, &c. &c.

Investigation and Report on the Petition of Eleanor and Frances Byrne, presented to his Excellency the Lord Lieutenant.

1st. The complaint made in said petition, of an attempt made on the life of William Byrne, is false and groundless. Byrne gratefully acknowledges to have received since his confinement, every indulgence and kindness his situation would admit, and never the smallest insult excepting some abusive language from a yeoman, who, during the assizes, was permitted to see an acquaintance in the gaol, and whom Byrne perceiving to be in liquor, retired to his room. He informed his sisters by letter of this circumstance, and contradicted a report they had heard in Dublin of an attempt said to have been made on his life.

2nd, The inveterate private or public prejudice complained of, I have not observed, save that universal odium and indignation naturally arising in the public mind, and in the breasts of the loyal inhabitants of this district, who have to weep over the rapine, murder and bloodshed, with which this county was overwhelmed and desolated by the exertions of this rebel chief. And this hostile opinion against him has certainly not been diminished by the result of his trial, which clearly and incontrovertibly confirmed his guilt, and proved in the strongest manner that William Byrne, at the head of the county Wicklow rebels committed enormities, compared to which the crimes of those who have already suffered were trifling.

3rd, With respect to the claims of relationship made by Eleanor and Frances Byrne to the marchioness of Buckingham, none can exist, they being no kindred whatever to the Byrnes of Cabinteely, and even their connexion arose only from the late Mr. Byrne's father being married to the marchioness's aunt. But even admitting the relationship to exist, and that however grateful to the excellent and humane heart of lady Buckingham to relieve the distresses of others, I will take the liberty to say that her ladyship upon being informed of the true state of the case, would not be induced to intercede for so black and criminal a character as Byrne, who being not only covered himself and convicted of rebellion and murder, has by this example and influence, seduced a multitude of ignorant wretches into the same crimes, many of whom have in consequence suffered.

4th, Whatever protection or support these young women might have received from their brother some years since, I know not; it must

from his situation, have always been very slender at that period, and long prior to it. William Byrne lived with his brother Garret, who, about four years ago, turned him out of his house, and threatened to prosecute him. The said William took refuge at the house of Thomas Hugo, esq. who received and entertained him, his horses and servant, in the most kind and hospitable manner, and where he resided until the breaking out of the rebellion; at which period he left Mr. Hugo's, and became all at once very intimate with his brother Garret. In return for Mr. Hugo's most kind, friendly, and generous treatment, he seduced his servants, labourers, and tenants, who made an attempt to murder their kind master and landlord, and family, and who,

after burning and destroying his house and property, joined the Ballymanus corps of rebels, where many of them were killed fighting against the king's-troops. I am also informed, from undoubted authority, that William Byrne gave particular orders to his party to burn the house of the reverend Edward Bayley, the day of the battle of Arklow—the probable cause was, that Mr. Bayley had some years ago purchased part of the estate of Byrne's father, under a decree of the Court of Chancery, and because of the zeal and activity of Mr. Bayley, as a magistrate to suppress the rebellion, although his exertions were tempered with the greatest humanity and benevolence.

JORN CALDWELL, Lt. Col. F. M.
Wicklow, August 21st, 1799.

643. Proceedings on the Trial of JOHN TUITE, otherwise CAPTAIN FEARNOUGHT, for the Murder of the Rev. George Knipe; tried before the Hon. Mr. Justice Chamberlaine, at Trim Summer Assizes: 39 GEORGE III. A. D. 1799.

THE prisoner, John Tuite, having been arraigned at the Spring Assizes, 1799, for the county of Meath, was then put upon his trial; but the jury not agreeing in their verdict, were carried to the bounds of the county, and there discharged: the prisoner was remanded to gaol. At the ensuing summer assizes, he was brought into court, and the panel being called over, he challenged twenty peremptorily, and a great number for want of freehold. Four were set by on the part of the crown, and the panel being in this manner exhausted, the four set by on the part of the crown were sworn upon the jury; but the number being still deficient, the counsel for the prosecution prayed a tales, which being awarded by the Court, a full jury was sworn.

The prisoner was then given in charge upon the following indictment:

That he, the said John Tuite, with divers other persons unknown, on the 30th of April, in the 37th year of the reign, &c., at Castle Rickard, in the county of Meath, feloniously, wilfully, and of their malice prepense, did kill and murder the Rev. George Knipe; he the said John Tuite, with a pistol, giving him a mortal wound in the head, of which he died, and the other persons unknown being present, aiding and abetting.

Counsel for the Prosecution.—Mr. Smith, Mr. Moore, Mr. Johnson, Mr. Ridgeway, Mr. Kemmis.

Counsel for the Prisoner.—Mr. Mac Nally, Mr. Colles.

John Cogilau sworn and examined, deposed as follows: I know John Tuite, the

prisoner [points him out to the jury]. I knew the late Mr. George Knipe—he was killed upon the 30th of April, 1797—it was on a Saturday night; he lived at Castle Rickard—I was there—saw the prisoner there—he entered the house about twelve o'clock at night, about twelve or thirteen men entered along with him. There were near 300 altogether—I was summoned to go there by Tuite, on the 23rd of April; he handed me a paper—I told him I could not read it—he said he would read it for me—the purport of it was: “That no man who was sworn to the United Cause could say against attending ten miles from his own place, to raise arms or kill heretics,”—he told us we were to go to Castle Rickard, to murder Mr. Knipe on the Saturday following—I was sworn three or four years ago—the prisoner knew I was sworn; he was appointed captain; he acted as captain *Fearnought*; the party were armed with swords, blunderbusses, and pistols—I met them Saturday evening, on the hill of Ballynadrimna, in the county of Kildare—I met the prisoner there; he was accompanied by 100 men—he had a large holster pistol—we met others in the way—when we went to Mr. Knipe's house, Tuite gave orders to plant 20 men as a guard or picquet about a quarter of a mile from the house, with directions to fire six shots at a time as a signal, if any force should come—Tuite, after breaking in the door with a smith's sledge, and a crow-bar, entered with 12 or 13 men; I heard several shots—I was in the rear where I was sent by the orders of the prisoner, and do not know whether the shots were fired from the house or against it—I was put in the rear by the

prisoner, to guard against the escape of Mr. Knipe—the prisoner commanded the whole party—there were near 20 men placed in the rear. About one o'clock, we, who were in the rear, were called to the front by the captain, who formed us in a circle round the body of Mr. Knipe, seemingly then dead; it lay upon a small bowling green, opposite the hall door. Captain Tuite fired his pistol into Mr. Knipe's head, saying "There lies the body of a heretic, which I hope to have the nation quelled of in short." Two men came up after with blunderbusses, and fired into the body; and the body seemed to rise with the force of the charge. The prisoner then ordered us to disperse in small parties, every one to go home as quick as possible—we obeyed that command, and all dispersed as quick as we could:—we left the body there.

Cross-examined.

The reason assigned for the death of Mr. Knipe, was, that he was a heretic, and along with that, there was a man shot at his house some time before and they had that against him as well as his being a heretic. I saw the brother of that man there that night, seeking for revenge. Mr. Knipe was a protestant clergyman. I do not know whether that was the reason he was considered a heretic or not. It was published in the Committee, that he was head of an Orange lodge, and that his brother Thomas Frederick Knipe was also an Orange man, and was to be commander-in-chief, in the place of lord Carhampton; that he was to bring 100,000 men from the north, and that the two Knipes would destroy Ireland.—There was 100*l.* reward offered to any single man, who would kill either of them. Mr. Thomas F. Knipe is a clergyman of the church of Ireland: he was to be commander-in-chief, as they published in their lodge. I understood by what they said, that they meant by heretic a Protestant—a person not of the Catholic religion. I was sworn two years before this transaction; I was sworn to both acts—to the Defenders, and to the United Irishmen. I have heard their articles read—all different persuasions were welcome to the United Oath.—But the oath which Tuite took first, was "to quell the nation of heresy, dethrone all kings, and plant the Tree of Liberty in Ireland, and become a republic like America." The United Oath was taken afterwards; it was their intention to imitate France, for they were sworn to the United States of France and Ireland. I heard it was a principle of the French to destroy all who would not go with them, no matter what religion they were of. We counted a Roman Catholic as big a heretic as any other, if he did not join. I gave evidence against Tuite upon a former trial; I took the same oath then as now—I stand on the truth. The oath was, "That I was to tell the truth, and nothing but the truth." The substance

of the oath I took was, "To God and the world to certify the truth." I have no learning to remember the very words of the oath; upon the last trial, I told the truth, and nothing but the truth, as to such questions as were started to me—I intend to tell the whole truth—I told nothing but the truth the last day—I could tell more of the prisoner upon other occasions; but what I said was true—I did not tell all I knew; but what I told was true—I might tell more if I chose—I told the whole truth respecting Mr. Knipe's murder—I did not upon the former trial say any thing respecting Mr. T. F. Knipe's appointment to the command, because it was not started to me. I was placed in the rear of the house to murder Mr. Knipe, if he attempted to escape. Five or six days elapsed between my receiving the order, and the meeting upon the night of the murder—I did not give any information of the murder intended, and perhaps I would not have given any information, but that they formed a scheme to destroy a camp that came to Clonard, and I told an artillery-man of it; and afterwards I told it to Mr. T. F. Knipe. I remained several days after the murder was committed without giving any information of it. I was not one of the 13 villains who entered the house—I was undoubtedly one of the villains in the rear, who were to murder him, if he came out—I did not give any information till about the 10th of June. I returned the summons to Tuite, having no occasion for it, when he read it to me—I recollect the contents as far as I have told them. The prisoner and I had no dispute; but there was a man of the name of Moran, who brought me some tent wattles, for which I paid him 2*s.* 8*d.* He brought me a spade and shovel afterwards to pledge, but I would not take them—Tuite claimed the wattles as his—I do not know whether they were or not, but I gave them to him—He asked me, whether there was any thing else brought; I told him there was a spade and shovel, but they were not left with me. He told me he heard they were stolen—He charged me with receiving them, but I cleared the matter before a magistrate. I never made any declaration, that I would be revenged of him—I never made any such declaration. This was some time before the murder;—half a year or so. It was after this accusation, he told me confidentially of the intended murder.—I was in the rear of the house; could not see what was going on in the front: we were not there ten minutes, when we were all stationed—I was not present when the first shots were actually fired at him; the street-door was shut when we came up; but Tuite broke in the door, as we were going off to the rear.

I follow labouring work now in his majesty's ordnance, Dublin—I was not a labourer there before the murder—I went there for the protection of my life; I was

a labourer for my bread before—I receive more wages now, than I did before, otherwise I could not support my wife and children in Dublin, as I could in the country—I have eleven shillings a week in the Ordnance—and I have half a guinea a week for attending major Sirr, when called upon, which is very seldom—that is 22s. 4½d. a week, when I work the whole week—I have 20l. a year allowed me by government for my life—There are no casual profits—I was offered 50 guineas not to come forward against a man, which I refused—he was prosecuted, and was hanged—his name was John Bryan, a barony committee man. The day of the murder was the 30th of April—I met Tuite about nine at night upon Ballynadrinna, which was one mile and a half from my house, and it was four or five miles from Mr. Knipe's house—I left my wife and children and brother-in-law in the house when I went from home that night—my brother-in-law did not go—he gave me no advice that night—I did not tell him of it—he did not at that time tell me of the horrid deed—It was at the time when Bryan summoned us to murder another man, that my brother-in-law advised me not to go with the people.

Examined by the Jury.

I was intimate with Tuite after the charge of receiving the spade and shovel.—We met very often at committees, and were sworn not to have any grudge against each other.

Examined by the Court.

The artillery-man to whom I first gave information was Lawrence Hand. I told him of the persons who murdered Mr. Knipe, and of the design upon the camp; it was some time after the murder.

Rev. Thomas F. Knipe sworn, and examined.

I recollect the 30th of April, 1797. I was in the neighbourhood of where my brother lived. The country had been much disturbed, and in the evening I received information, as a magistrate, that there would be a general rising and some house attacked; I was much indisposed, having been out three nights successively. Lieut. Tyrrell had taken the command that night, and unfortunately took the forces towards Kildare. I could get no soldiers, but I took two police men, and went towards my brother's. I heard a general buzzing all round, and dogs barking in every direction; I desired the police men to stick close to me, lest we should be cut off. Towards Ballynadrinna, and from that toward my brother's house, I observed the greatest noise. It was rather dark, but as we advanced, I could see several people running back and forwards. We met two men; I called to them to stop; they would not—they ran—the police men fired, and wounded one. I seized the other; and found him loaded with powder and ball; his pockets were full of ammunition. I then

became alarmed from the force I saw collecting; and having taken another prisoner, and having but two men and myself to guard them, I retreated with these two prisoners, not being able to be of any use—I was in hopes, if my brother were attacked, that he could have defended himself, till the army, hearing the attack might come to his relief—I knew he was the most marked man in the county, having shot two of these insurgents, when they attacked his house before—I never saw my brother again; when I went to his house in the morning, I could not bear to see the body; it was removed into the house—The door appeared to be smashed by a sledge, and the windows were all broken.—There was much blood upon the grass plot in the front of the house—I was in court when Coghlan was examined—I heard him state the rumour of my brother, being a member of an Orange Lodge—I recollect very well, that I observed a change in the conduct of the people towards me and my brother; I inquired of a farmer what the reason of it was, and he told me, that the people who wished to murder my brother and me had spread a report, that I was to bring 100,000 men into the country under my command to put all the people to death.

Cross-examined.

I was present at the last trial; Coghlan did not say any thing upon the last trial about my brother being an Orange man, or of my having a command. He was not interrogated as to it at that time, nor would he have mentioned it at this day, as I believe, but from the examination being looser than formerly; upon the former day, the examination was close to the subject.

Rev. Mark Wainwright sworn and examined.

I knew the late Mr. Knipe—I saw his body on the morning of the 2nd of May; it had several gun-shot wounds. The house at Castle Rickard was entirely smashed—the doors were all broke in—the hall door was broken into pieces, and all the furniture. I knew of a man having been killed by Mr. Knipe, some time before, when an attack was made upon his house. He sent for me the morning after. He said there were two men killed: the body of one was found at the rear of the house—He told me the body of the other was carried off, being a better sort of man.

Rev. T. F. Knipe called again, and examined by the Court.

In the month of June 1797, Coghlan, the witness, sent an artillery-man of the name of Hand to me, to let me know of a design to attack the camp at Clonard. In consequence of this message I saw Coghlan, and he told me of it; accordingly we were upon our guard.

Cross-examined.

The gentlemen in a great measure fled from the country at this time. But the army had come in.

[Here the case closed on the part of the Prosecution.]

PRISONER'S DEFENCE.

James Gore sworn and examined.

I remember the night Mr. Knipe was murdered, but do not know where he lived—I know Tuite, the prisoner; he lived at Broadford, four miles from my house—I saw him late in the evening of the day when Mr. Knipe was murdered. My wife and Tuite's wife are two sisters, and my wife sent me to Tuite's that evening to inquire for his wife, she being ill. I went to his house; it was near sun-set when I got there—I saw him and his wife there, and a woman attending her. I remained there all night, as they told me it was too late to go home—Tuite slept in his own house, and I along with him. I think it would be very hard for him to quit me—I saw him very early in the morning, and I awakened in the night, and felt him—I was wakened by the noise of horse going by, and the woman said it was the Clonard cavalry.

Cross-examined.

I never heard what distance Tuite's house was from Castle-Rickard; I do not know the place; I have been living in the country since my birth, and never heard the distance. I never heard there was any rising in the country that night, nor any number of people collected in arms; I only remember that Mr. Knipe was killed—I have heard there were such people as Defenders and United Irishmen in the country, but did not know any of them—I cannot say whether Tuite was a Defender or United Irishman, or not.

Elizabeth Gheghan sworn and examined.

I remember hearing talk of the night when Mr. Knipe was murdered—I remember Mayeve two years—I was in Broadford that night. I was in Tuite's house—himself and his wife were there; his wife was unwell—James Gore came there to see her—the prisoner, Tuite, was there that night—Gore slept in the house along with Jack Tuite—he could not be out of the house that night without my knowledge—I saw him go to bed, and get up in the morning.

Cross-examined.

I do not know where Mr. Knipe lived—the country was not quiet—the yeomen used to go about frightening poor people in their houses—I do not know the name of Mr. Knipe's place now, but I heard it often—I heard of the murder the next morning when the people were going to chapel.

Examined by the Jury.

I was to and from the room where the prisoner slept; he was in a room off that where his wife lay.

By the Court.

I do not know who the people were that passed by in the night, whether they were cavalry or not.

John Keenahan sworn and examined.

I know John Coghlan three or four years—I never lost a shovel, or a spade—I know a man of the name of Moran—I do not know any man accusing Coghlan of having stolen goods in his possession—I heard Coghlan make use of expressions against Tuite, the day Coghlan was leaving Clonard with the Dunbarton Fencibles; he was walking along, and stopped to speak to me; he shook hands and kissed me—he wanted me to walk with him—I could not; but as he held my hand, he said, "Them that made my grave to put me in, I will weigh them all as nice and trim." I asked him who was the man—he told me Tuite—I asked him what did he do to him? He said, "He disoblged me once, and I will be up with him for it." Weighing a man is all as one as hanging him. I cannot tell how long after the murder of Mr. Knipe this was—it was in winter; the days were short.

Examined by the Court.

I cannot say that Coghlan was a prisoner; he did not appear like a prisoner—he staid behind the soldiers.

Cross-examined.

I knew Coghlan by working with him four years ago—I had no other acquaintance with him—I cannot say whether he knew that I knew Tuite, or not—I never heard of a dispute between him and Tuite—I did not know they were even acquainted—I never heard anything wrong against Tuite till now—he was accused of this murder two years ago—I never told what passed between Coghlan and me to Tuite—I told it among the neighbours, and they told it to Tuite—I never told Tuite of it, though I knew him—I told it to a woman—I go sometimes by the name of *Colehoe* which is a nickname people have given me—I never heard of a man of the name of Friuders—I was interrogated about him at the last trial—I was not near fainting at that time, but I had a lump upon my thigh, and being squeezed by the crowd, I grew sick.

[Here the Defence closed.]

Rev. T. F. Knipe again examined by the Court.

Had the Artillery man, told me that Coghlan wished to have some conversation with me about an attack intended upon the

camp, and about the murder of my brother—I saw Coghlan in consequence of this; it was in June 1797—he told me if I secured Tuite, the whole would come out—Tuite fled the country; I searched for him at Broadford, but I could not find him—I was told he was gone to England—His wife said he would be at home in a few days, but he did not return—Coghlan's informations were sworn before Mr. John Tyrrell; he is now in England—they were not sworn for some months after my interview with Coghlan—Mr. Tyrrell thought it prudent that no information should be sworn till Tuite was arrested, for if the information should be sent to the assizes, and bills of indictment found, Tuite might hear of it; and therefore the informations were not sworn till December 1798. Coghlan was not a prisoner when he swore the informations; neither was he a prisoner when he sent Hand to me—I went to him, and as he said, his family and himself would be murdered, if he appeared a voluntary agent; I brought a guard for him—Tuite was taken in Dublin after his return from England—he was identified in Dublin by Coghlan—I do not know what became of Tuite's wife and children—she said she would get him back when I inquired for him—but he did not return to the county of Meath.

[Evidence closed.]

Mr. Justice *Chamberlaine* proceeded to charge the Jury;—he told them, that the witness Coghlan admits himself to be an accomplice in this most horrible act, and therefore there was a great objection to his evidence. It appeared also that he had embarked in a design for another murder; and therefore it was necessary for the jury to use all their attention to see, whether this man ought to be credited or not; for the verdict must depend upon the credit to be given him, and it was their duty to see whether his evidence was confirmed in any material circumstances. Having given the jury this caution, the learned judge said, he would detail the evidence, which he did in the most minute and impartial manner, making occasional observations, and leaving it to the jury to determine whether the witness was consistent, was confirmed, or was credible. If the jury believed the witnesses examined for the prisoner, it was impossible that what Coghlan swore could be true, and therefore they would weigh that evidence attentively; and if it were true, the prisoner ought to be acquitted. If the evidence adduced on his part were not true, and the jury believed Coghlan, they ought to find the prisoner guilty;—if they had any rational doubt upon the case, they ought to acquit him.

VERDICT.

The jury retired for five minutes, and returned with a verdict—GUILTY.

The prisoner was then called upon to know

what he had to say, why sentence of death should not be passed upon him; and not making any answer, the judge proceeded to pass sentence.

Mr. Justice *Chamberlaine*.—John Tuite! you have been found guilty by a jury of your country, of a most foul, cowardly, treacherous, and barbarous murder. You went at the head of 300 men in arms, at midnight, to attack a gentleman, whose only offence was, his activity as a magistrate. You must have been actuated by some strange delusion. For what else but delusion could have led you to the commission of this act? and to instigate your followers to assist you, you spread a report among them, that they were to be destroyed by the Mr. Knipes, who were to march 100,000 men against them! Strange and infatuated delusion!

Prisoner.—My lord, the prosecutor did not swear true.

Mr. Justice *Chamberlaine*.—It is impossible to suppose that—the jury have shown their belief of his testimony, by their want of hesitation in finding the verdict. His evidence is confirmed in many particulars: it is strongly confirmed by your own flight. Let me entreat you to make a good use of the short time you have to live; endeavour to make the best atonement you can—the law which inflicts the punishment upon your crime, has wisely ordained, that as soon as a verdict of guilty is pronounced in a case of murder, all other business shall cease; and the judge is instantly to pronounce the sentence, in order that all those who have heard the evidence of the crime, may see the punishment which inevitably follows:

You, John Tuite, are to be taken from the bar of the court, where you now stand, to the place from whence you came, the gaol—there your irons are to be struck off; and from thence you are to be conveyed, on Saturday next, to the common place of execution, and there you are to be banged by the neck, until you are dead, and your body is to be hung in chains pursuant to the statute; and the Lord have mercy on your soul!

The Clerk of the Crown, by the direction of the Court, read in open court, the following extract from the act of parliament, for the information of the gaoler respecting the treatment of the prisoner in the interval between the sentence and execution.

31 Geo. 3, c. 17, sect. 7. "And be it further enacted by the authority aforesaid, that from and after such conviction and judgment given thereupon, the gaoler or keeper to whom such criminal shall be delivered for safe custody, shall confine such prisoner to some cell, or other proper and safe place within the prison, separate and apart from the other prisoners; and that no person or persons, except the gaoler or keeper, or his servants, shall have access to any such pri-

“soner, without licence being first obtained for that purpose, under the hand of such judge or justice before whom such offender shall have been tried, or under the hand of the sheriff, his deputy, or under sheriff.”

Sect. 9. “And be it further enacted, that after sentence passed as aforesaid, and until the execution thereof, such offender shall be fed with bread and water only, and with no other food or liquor whatsoever, except in case of receiving the sacrament of the Lord’s supper, and except in case of any violent sickness or wound, &c.”

Note.—The morning after sentence was pronounced, the prisoner sent for a magistrate,

to whom he acknowledged his guilt, notwithstanding his allegation in court, that the prosecutor had sworn falsely. He also said, that farther evidence was prepared for his defence; that in addition to the *alibi* sworn to, there were witnesses ready to be examined to swear that Coghlan was not at the place of Mr. Knipe’s murder on the night of the 30th of April, but was in another place. He said, he was advised upon his trial not to bring forward this evidence, which he admitted was fabricated.

He was executed late on Saturday the 27th of July, and his body was afterwards hung in chains as directed by the sentence.

644. Proceedings on the Trial of JOHN DEVEREUX, Junior, of Shilbeggan in the County of Wexford, for Rebellion; tried before a Court Martial, holden at Cork, on the 27th, 29th, and 30th days of November, on the 2nd, 3rd, 5th, 6th, 7th, 9th, 10th, and 11th days of December, and on the 6th and 9th days of January: 40 GEORGE III. A. D. 1799-1800.

November 27, 1799.

Members of the Court.—Colonel Latouche, C. M. President. Lt. Col. Hamilton, R. T.; Lt. Col. Bouchier, R. I. A.; Lt. Col. O’Haru, A. M.; major Newton, C. M.; captain Thornhill, R. I. A.; Captain Power, R. I. A.

JOHN DEVEREUX, Junior, stood charged with high treason, and with being deeply implicated and concerned in the late rebellion which existed in this kingdom.

First witness for the prosecution *Thomas Templeton* private in county Wexford militia, sworn.

Knows the prisoner, and identified him.

Mention to the Court how long you knew him?—I knew him before the disturbance; I lived within seven or eight miles of him, near Ross, and I cannot say how long; I have seen him several times—I know him four or five years.

What reason have you to know he is guilty of the crimes he is charged with?—I was a yeoman, and at the battle of Ross—knew the prisoner at the barn of Scullabogue.*

In what situation did you see him at the

* Concerning the massacre at Scullabogue barn, see Gordon’s Irish Rebellion, 121. Musgrave’s Irish Reb. 425, and Appendix 131 *et seq.* Hay’s Insurrection of the county of Wexford, 156 *et seq.* 3 Plowden, 732.

barn?—He wore a pair of blue pantaloons, and an officer’s sash round his middle; he was in a parlour at the left hand side of the door with Bagnal Harvey, Jack Heron, and Jack Brennan—I did not know any other person.

What passed there?—I was first brought to Watt Devereux who was executed here, and sworn an United Irishman, and christened by the priest.

What happened after?—The prisoner was in the parlour, and ordered me to the barn to be burned.

Were you taken to the barn?—I was; and there was another boy from my place, who brought me out again.

What happened after you were brought out?—After I was brought out of the barn I was taken to the house, where I remained until they were marching off for Lacking-hill; I saw the prisoner riding a grey horse, with a sash and gorget, and exercising the men; and the horse threw the prisoner; I saw nothing more, as I was sent from thence to Taghmon, and from that to Wexford, a prisoner, and never saw the prisoner after.

Did you know any persons amongst the rebels of the name of Devereux?—I did; I knew three brothers of the name of Devereux Pat, James, and Nick, and others of that name at Taghmon.

Have you sufficient knowledge of the prisoner to declare positively that he was the person you saw with the sash and gorget on?—I have, sir.

The people you say he was exercising in arms, did they appear to be rebels?—They were; and he (the prisoner) appeared to be the captain; and they were assembled for the purpose of attacking Ross that night again; and I heard them say so.

Where did you first see the prisoner after you saw him at Scullabogue?—At Cove, sir; he was inquiring for letters at the post office, by the name of Doctor Devereux, and when I heard the name I went up and knew him.

During your knowledge of the prisoner, did he act as a physician in the country?—No; never, sir.

Did the prisoner, when you saw him at Cove, assume any character or profession?—No, sir, as I could hear.

Was prisoner apprehended on your informations?—Yes; he was.

By Colonel O'Hara.—Did you frequently see the prisoner in the neighbourhood of Wexford before the rebellion?—I saw him up and down the country in that neighbourhood.

Had you any conversation with the prisoner while you were confined at Scullabogue?—No; only his ordering me into the parlour.

[Direct examination closed.]

By the Prisoner.—What yeomanry corps did you belong to, before the battle of Ross?—To captain Tottenham's corps of Ross horse guards.

Were you a dragoon in that troop?—No; I was in the infantry, a private; captain Tottenham commanded both horse and foot, and they are both attached.

On what day of the month was the battle of New Ross fought?—The 5th of June, 1798.

Was the corps you belonged to engaged at the battle of New Ross?—It was; and my own comrade, Frank Robinson, was killed by my side.

What time of the day were you taken prisoner?—About five o'clock in the evening, at Ross.

Where did you pass that night?—I passed it in Mr. King's house, at Scullabogue.

Was Scullabogue the first place you were carried to after you were taken?—Yes, it was.

How many days did you remain at Scullabogue before the barn was burned?—I did not remain there; the barn was a fire when I reached Scullabogue.

How long were you in the barn when your friend brought you out of it?—I was only just carried inside the door, when I was brought out again.

What time of the night were you put into the barn?—It was not in the night I was put in it, it was in the day, about seven o'clock in the evening of the same day I was made prisoner.

How long were you in the custody of the rebels when you were taken at Ross, before

you were marched off to Scullabogue?—I was marched off immediately, I made no delay.

Was it a party of cavalry or infantry that escorted you to Scullabogue, and was there any other person?—It was infantry, and my father was taken with me.

By the Prisoner.—What is the distance from New Ross to Scullabogue?—It is about seven miles.

Was the barn on fire when you were put into it?—Yes, it was.

What part of the barn was on fire?—One end of it; and they were after taking out the windows to let in the air to prevent the prisoners being suffocated with smoke, and to let the fire come to them, and they said so.

Had the roof fallen in at that time?—No, sir, it had not.

How long after did it continue to burn?—Until the 7th of the month.

Was the barn slated or thatched?—Thatched.

When did the roof first fall in?—I cannot rightly tell. I was in the house, and I cannot say.

Was it on the day as you say, that you were brought a prisoner from New Ross to Scullabogue, that you saw the prisoner with the blue pantaloons and sash?—Yes, it was.

Did those who escorted you from New Ross to Scullabogue, take the direct road with you?—Yes; they did.

You say you were taken about five o'clock from New Ross to Scullabogue; now by virtue of your oath, was it not to Ballyanna you were taken?—It was through Ballyanna I was taken.

Upon your oath is that the direct road from New Ross to Scullabogue?—That was the road they took; because Maurice Kevanagh, who was in the Borris yeomen, and who deserted from that corps, was a captain in the rebels, and they wanted to meet him, as he lived hard-by to it.

Is that the direct road?—No; it is not the nearest road, but they made the direct road of it, in order to meet Kevanagh.

Did you not a while ago swear that they took you the direct road, and do you now persevere in saying so?—No, I do not, for they did not wish to keep the high road for fear of meeting with the army, and if I was going there I would go the other road.

Did you stop any time at Ballyanna, and how long?—Did not halt at all.

Did the party who went with you, meet, or speak, or inquire for any body at Ballyanna?—No, they did not delay at all, they went on, until they met with a party of rebels about four miles from Ballyanna.

Who commanded the party you met about four miles from Ballyanna?—I do not know who commanded them, and they did not halt but turned back to Scullabogue, but Maurice Kevanagh commanded the party that escorted me.

Did Kevanagh command the party who

went along with you from New Ross to Scullabogue?—No, he did not; they met Kevanagh at Ballyanna, and he commanded the party from that.

Have you not said, that they went the road to Ballyanna to meet Maurice Kevanagh, and have you not also said, that they went that road to avoid the king's army?—They went that way for both reasons.

Who commanded your party, that escorted you from New Ross to Ballyanna, and how many did they consist of?—There were only three, and no one particularly commanded.

Did any other person besides Kevanagh join you at Ballyanna?—No.

Were you examined as a witness on the trial of W. Devereux who was lately executed here?—I was examined as a witness.

Did you on the trial of W. Devereux swear, that on being taken at New Ross, you were carried to Ballyanna before a rebel captain, of the name of Devereux, and there detained two days and a night?—I do not know whether I did or not.

If you had so sworn would you have sworn the truth?—I cannot recollect it now: I do not recollect I was, and I do not think it would be true.

On being taken at New Ross, were you carried before any person of the name of Devereux, at Ballyanna?—I do not recollect I was.

November 29th.

Cross-examination of *Thomas Templeton* continued.

Where did you pass the time since the adjournment of the Court, and who were the persons, if any, that you saw or conversed with?—I passed it alone in the Antrim barracks, and I did not converse with any person on the subject of this trial.

Do you now swear positively, on your being taken at New Ross on your way to Scullabogue, whether you were detained two days and a night at Ballyanna?—I think I was detained a day and a night—I was very ill yesterday.

Whom did you see while you were detained?—I saw three Devereux's more, that were captains of the rebels; the three brothers I mentioned yesterday.

Did you not swear on this trial that you did not meet, enquire, or speak to any person at Ballyanna on your way to Scullabogue, or tarry there one moment?—I did; but it is so long since I forget it.

Did you not also swear that you arrived at Scullabogue about seven in the evening of the day of the battle of Ross?—I think I did.

Benjamin Tuttle, serjeant in the Wexford Regiment.

[Direct Examination.]

Do you know the prisoner?—I do; [and identified him.]

How long do you know the prisoner, and how do you know he is guilty of the charges against him?—I know him about six years, and saw him at Kellymount, in the circle, where our men were put to death, the 24th of June, 1798. There were twenty-five of us taken, and the Protestants were singled out and put to death. When the rebels were going to put one of the soldiers of the 4th dragoons to death, and the Catholics were drove away, and there was one of the Meath regiment in the circle, of the name of Kearns, called out and said, the 4th dragoon man ought to be killed, and the prisoner said that was right, and there was no trusting a soldier, for they were all Protestants and Orange-men now; and the 4th dragoon was put to death with pikes; and they put the other man of the 4th dragoons to death in the same manner: their names were Fowkes and Hawkins. There were seven then killed, and five of our men first killed; three of them were piked, and they shot the other two, and I was present when they were put to death; and the prisoner and Walter Devereux were present at the time. There were six of them there, and I was on my knees to be killed; there were four Devereux's more along with them—six Devereux's in all were there, and I did not know any of the other four. A man of the name of Monaghan, who was called Captain Monk, among the rebels, whom I knew in Wexford, came into the circle, and told me he would take me out, but was prevented by these Devereux's; Monk was shoved out of the circle by these Devereux's, and remained away about three minutes, and then brought me to the edge of the circle a second time, and they asked me whether I had not too short a time to live—it was the prisoner that asked me that; and then Walter Devereux and the prisoner went out of the circle, where I saw them talking to Monk; then they all returned, with Monk, in about five minutes, and Monk told me my life was saved; and I was taken out of the circle, and brought to the side of a ditch, and there he took out a bottle of white wine, and desired me to take some of that, and not to drink too much, as the day was very warm. After this Monk quitted me, and another person came up to me, and asked me was I not killed yet, and brought me back to the circle, and as I got to the edge of the circle, I met Monk, who told the rascal my life was saved; and I saw the two men, whom I left alive in the circle, then dead, of the name of Mac Daniel and Young, of my regiment; they were on their knees when I quitted the circle, and nothing else passed there: and I saw the prisoner the evening of the same day, about three miles from Kellymount, at a place called The Ridge, at a tutoress's house, and they had got a cat-o-nine-tails; there were about 18,000 of them surrounding the house, and they burned it; the prisoner went into the house first, and brought a young boy and

the cat-o-nine-tails out of the house, and told them he had got at the head of the Orange business, and that them were the cats the Orange-men had for slashing the Croppies; and he, the prisoner, carried the boy to the top of the hill, where the prisoner ordered him to be piked, about a quarter of a mile from the house, and they carried me with him; the prisoner ordered him in my hearing, to be piked; and it was accordingly done; and I never saw the prisoner after, until I saw him at the battle of Castlecomber, about five o'clock next morning, when the rebels engaged a company of the Waterford militia, who were quartered there; and father Murphy had the command of the rebels there; I saw him there; I likewise saw the prisoner come out of the town with a drawn cavalry sword, a sash, gorget, and blue pantaloons, and riding a grey horse, and beat the Croppies into the town, saying the town of Castlecomber was their own; and I never saw the prisoner after that, until I saw him here in Cove beyond.

Did you identify him in Cove?—Yes, I did. Did the Croppies return into the town?—Yes, they did, and brought out nine of the Waterford militia and a serjeant. I saw Walter Devereux at Castlecomber, and I am positive the prisoner was there—the prisoner was often called captain John Devereux.

How long have you known the prisoner?—I have known him since I was born.

Do you recollect any houses to have been set on fire, and by whose orders?—Yes, I do; there was one burnt on the Ridge, the school-house, by the orders of the prisoner; and there was an old man and woman in the house, who were burned in it; the prisoner said it was an Orangeman's house: and I saw the prisoner shut the door, holding the boy in one hand, and the cats under his arm; the boy was about 15 years of age who was piked.

Had you any conversation with the prisoner?—No, I had not; I was dressed as I am at present, but the rebels disarmed me; I am a Protestant, and so were my seven generations,—I never was acquainted with him; and never had any conversation with him, he told colonel Ram that he did not know me, but he knew all my family.

[Direct examination closed.]

Cross-examination.

When you were mentioning the circumstance of the boy being piked, why did you omit so material a fact as the people being burned in the house?—The question was not asked me; it was in my first information, and if it was asked me, I would have told it.

Do you know the prisoner's family?—No; I do not know his family; the places I knew him at were at races and fairs,—there was a race course near the fort of Duncannon.

Do you know his father and brother?—No
I do not.

You say Monk was the man who took you out of the circle and saved your life; did you ever say it was any body else?—Never in my life.

Did you not, on the trial of Walter Devereux, swear it was a man of the name of Keating saved your life?—No, Sir, I did not; I swore that Keating stood up and spoke for me: he was one of the Catholics that belonged to our regiment, and that was put aside.

You said that Murphy acted as commander at Castlecomber; did you ever say that any other person acted as such there that day?—No, I never did; but I said that other people acted as captains there, but he was a general there that day.

If you swore that Walter Devereux acted as commander there, would it have been the truth?—No, it would not.

Had you any communication with Thomas Templeton, a soldier of your regiment, on the subject of this prosecution?—No; I never had; I did not know he knew him, until prisoner was taken up in Cove, and there I asked him questions.

Had you and Templeton any conversation lately, with respect to the evidence you were to give here?—No, I never had any conversation with him since I spoke to him in Cove.

Did you not come from Jersey in the same ship with him, and had you not any conversation with him about the prisoner?—No, Sir, I never had any since I left Cove, but the colonel of the Romney horse, who was coming in the same ship, asked me what we were going about, and I told him I was going to Cork to prosecute Devereux; and Templeton said he would go to the West Indies to prosecute him, or to the farthest part of the world.

You said just now that you asked Templeton questions, what were they?—To know whether he knew him.

Did Templeton ever tell you he saw the prisoner at Scullabogue mounted on a black horse, with a sash and gorget on?—No; he never did.

Previous to the regiment embarking for Jersey, and knowing that you were to give evidence against the prisoner, why did you not state that fact to the colonel, in order to obtain leave to stay behind?—The colonel did not know, or any of the officers, that I was ordered to stay to prosecute; but I thought the regiment was going on service, and I rather go with them than remain behind; the colonel, when he found me with the regiment, was very much displeased, and said I should go back again; in a few days an order came to send me back.

Were you not, at one time, under an impression that you owed your life to a man of the name of Byrne, at Kellymount?—No; I never was; Byrne, the son of a dairyman, near Duncannon, at the time the prisoner

was speaking against my life at Kellymount, came up and said, he knew me and all my family; that they were Protestants, and in the revenue; that if the prisoner took my life, he would take it wrongfully, and then the prisoner shoved Byrne away.

Did you and Byrne live near each other? -- No; not so near as the prisoner's father did.

Did you ever commission or desire any person, and when, to return your thanks to said Byrne, for having saved your life at Kellymount? -- I did, my brother; and desired him, if he ever came across him to use him well.

How far did you live in the county of Wexford from Byrne? -- About six miles.

November 30th.

Cross-examination of Benjamin Tuttle--
continued.

Whom did you see or converse with since the adjournment of yesterday? -- No one; but the serjeant of the Carlow.

How came you to be so particular as to recollect that the business you have been mentioning happened on the 24th day of June 1798? -- Because I was taken prisoner on that day, and there were so many murders committed.

If any other man swore that the murders on Kellymount were committed on the 23rd day of June, would you believe him? -- No, I would not; it was of a Sunday morning. I was taken, about five or six o'clock, and about twelve or one o'clock I saw the executions.

Am I to understand that the battle of Castlecumber happened on Monday? -- Yes; much about the same hour I was taken on Sunday.

Since the time you say you saw the prisoner at the Castle of Castlecumber, have you not heard, and do you not believe, he frequently associated with captain Pigott, and several of the officers of your regiment? -- No, I do not believe he did.

As you knew where the prisoner resided, why did you not take pains to have him apprehended, before you saw him at Cove, for those crimes you now charge him with? -- I reported it to my colonel, when Walter Devereux was taken at Cove.

Why did you not report it before? -- I cannot say; -- I did not know what part of the country he was in; my father was the only friend I had in the county of Wexford.

(By Colonel Bouchier.) -- Did you not say yesterday, that you had a brother? -- Yes; but he lives at Passage, near Waterford, and is a tide waiter.

(On the Cross-examination.) Have you not another brother, now living, besides the tide waiter, at the light-house, in the county of Wexford? -- Yes, I have; but he is only

eleven years of age; and he was at that time with my Uncle Ben, at the Passage of Waterford.

Have you not heard, and do you not believe, that the prisoner has, since June, 1798 belonged to the Borris Yeomanry, and appeared publicly in the county of Wicklow with that corps? -- No; -- never.

In giving evidence against Walter Devereux, did you relate all the circumstances that happened at Kellymount, as you have now done before this Court? -- Yes; I did.

Was the prisoner, during the business of Kellymount, commander of the rebels? -- No, Sir, he was not; -- he was called captain John Devereux.

Were you ever present at an interview between the prisoner and colonel Ram? -- No, Sir, but once in the guard-house, the day he was taken; -- the colonel and captain Pigott went into him, and I do not know what their conversation was.

How then could you undertake to swear, that the prisoner said to colonel Ram that he knew all your relations? -- Colonel Ram brought me up to him in the guard-house, and it was then he told him so.

You said you related all the transactions that happened at Kellymount, on the trial of Walter Devereux; -- now, by virtue of your oath, did you mention the name of the prisoner on the trial? -- No, I did not mention the name of John Devereux; -- but on that trial I mentioned there were six Devereux's, but I did not mention the name of any of them, but the one on trial.

Was Walter Devereux with the party of 15,000 when the house was burned, with the man and woman, and the boy piked? -- Yes, I saw him when the house, with the man and woman, were burned.

Did you introduce the circumstance of the house being burned, when you were examined on the trial of Walter Devereux? -- I did.

You have told this Court that the prisoner was particularly forward in showing a desire to take away your life; you have also said, that he was the author of many and great crimes; now, as you know him, as you say, to be a person of such a stamp, and as you were acquainted with his place of residence, what was the reason that you did not, from the 24th of June, 1798, till the summer, 1799, give any information against him, or any report of him to your commanding officer? -- I cannot say.

Did you, in the information you lodged against the prisoner, mention the circumstance of piking the boy? -- I did, sir, to the best of my knowledge.

Did any other person, besides Templeton, come over in the ship with you from Jersey, to give evidence on this trial? -- None but the woman.

Had you any conversation with the woman since you left Jersey, or on the way, upon

the subject of the evidence you were to give against the prisoner?—No, sir.

Were the party of rebels drawn up in a circle round the boy, when he was piked, or how otherwise?—They were all about, not regularly drawn up in a circle.

As you say that you only occasionally saw the prisoner at races and fairs, and that there was an interval of six years till you saw him at Kellymount, do you not think it possible that, with the terror of death on you, and among six persons of the same name, you might, at so awful a moment, mistake the person of the prisoner?—I could not, sir.

Do you know the name of the place where the prisoner lives, in the county of Wexford?—Yes, I do; at Shilbeggan.

How far do you believe it to be from Castlecomber?—I cannot rightly say; I never travelled an inch of that ground.

How far do you believe Castlecomber is from your own house?—I do not know; I know, from my father's up to Ross, is a distance of about 17 miles.

Do you not believe, that the prisoner's age is about 23?—I cannot tell his age; I was not present when he was either born or christened.

Did you not state, in the beginning of your examination, that you knew him since you yourself was born, till the six years preceding the time you met him at Kellymount?—I did not, to my knowledge.

When you were asked how long you knew the prisoner, what answer did you give?—I said, I knew him as long as I knew any one, at races and fairs.

Now, having stated that you knew him as long as you know any body, cannot you form an opinion as to his age?—No, I cannot; he must be something older than myself; and I have always known him to be as tall as he is at present, and I am something over 23 years.

[Cross-examination closed.]

Eliza Jacob sworn—for the Prisoner.

Do you know the prisoner?—Yes, I do' [and identified him.]

Did you know him before the rebellion?—Yes, I did.

What was the place of your residence before your marriage?—I always lived at Ennis-corthy; I knew him at a relation of his, John Devereux, a widow woman's son.

Did you ever see the prisoner amongst the rebels?—I did; at the Three Rocks, near Wexford, and at Taghmon, and at Scullabogue, and at Lackin-hill, and in Ross, and at Vinegar-hill.

Will you mention to the Court how far you know him guilty?—I saw him do nothing at Wexford, but I saw him give orders to have an Orange-man shot at Taghmon; the man wore a blue coat, white waistcoat, black breeches, and round hat; the rebels took his hat and watch. To the best of my opinion, it

was the month of July it happened; I believe it was last July; it was not this year, it was last year. I noticed him at Mr. King's house at Carrickbyrne. I saw him order a barn to be burned, wherein was a number of people, and the prisoner as captain there; and he ordered a young woman, whose name was Neseey Lett, to be burned; she came out, and offered to him to turn to mass, and marry him, and he took her aside, and spoke to her for some time, and then turned her into the barn, and she was burned; and the prisoner took a pike in his hand as well as any other Croppy, for fear they would come out through the door. I did not mind the prisoner doing any thing else there. Walter Devereux was in company with the prisoner there. I recollect, the day the Wexford militia was taken, to see him at the Ridge, and I saw him go into a little house that was there, a school-house, and he found a cat-o-nine-tails there for whipping the boys, and the prisoner said, that was for whipping the Croppies; and there was in the house an old man, an old woman, a young woman, and a young boy; and the father was reading a Protestant book, and prisoner said he would settle him; and he took out the boy, and gave orders to have the house set on fire, and the old man, woman, and girl, were burned in it; and he gave orders to have the boy taken to the Ridge and piked; and the rebels stayed in the house until it was set on fire, and then they went to the Ridge to pike the boy; the old man could not get out, for the prisoner shut the door. There were six or seven Devereux's there, but the prisoner did not keep any of them company but Walter Devereux; and the rebels had every sort of arms and pikes.

Do you know any other act of the prisoner's?

--Yes, I do; he gave orders to have the Wexford militia, and two of the 4th dragoons, piked at Kellymount-hill; I saw nothing else, but them men killed; the two of the 4th dragoons (Hawkins and Hughes), and two of the Wexford, of the name of Dixsey M'Daniel and corporal Orange; they were killed by the orders of prisoner, and I remarked him very well, for he turned me off a car belonging to the rebels, and I saw him riding a grey horse at Lackin-hill; he wore a grey surtout, blue pantaloons edged with red, a round hat, a sash, gorget, and carried a sword in his hand.

Did you see serjeant Tuttle, of the Wexford militia, amongst the men of the regiment whom the rebels had prisoners on Kellymount-hill?—I did; but I did not know his name until I saw him at Cove.

Were you taken prisoner at Ross?—Yes, I was.

Are you married to a soldier of the Wexford militia?—Yes, I am; but I was not then.

Where were you taken prisoner?—At a place called Campine-bridge.

Did you see any body interfere to save serjeant Tuttle from being killed, and who?—Yes, I did; but I do not know his name.

December 2nd.

[Direct examination—continued.]

Was Nesey Lett, that you saw remonstrating with the prisoner, any relation of your's?—Yes, she was a second cousin of mine.

Did you hear that she escaped being burned, and is now alive?—I am sure she was burned, and that no one that was in the barn ever came out of it.

Do you recollect when the battle of Ross was fought?—I do; but do not recollect the day.

How soon, after the battle of Ross was fought, was it that you saw the prisoner put Nesey Lett into the barn?—I think it was the night before; for they marched off to the battle of Ross after the barn was burned.

Was it in the day or the night that they went to attack Ross?—The barn was burned before they went, and they went that night to the battle; but the rebels were encamped that night on Corbett-hill, and they attacked Ross next morning.

Was your knowledge of the prisoner so perfect, that you could not mistake him from any other of the Devereux's?—I could not mistake him; for if the rest of the Devereux's were here, I would know them as well as him, and could tell you their names.

Have you ever been promised, or do you expect to receive, any reward or gratuity for appearing to give evidence on this trial?—No, sir; or scarcely as much as would support me.

Colonel *Bouchier*.—Were you at the barn when it was first set on fire, and how long was it burning?—I was there when it was first set on fire; the roof had fallen in, and some of the walls down; I remained there for two hours, and it was then smoking. I heard them say there were 170 in it.

Do you think it could have burned for two days after, from the state you saw it in?—It could not; for the rebels returned next day to Scullabogue, from the battle of Ross, and the barn was not burning; I was with them.

President.—Could any of the people escape from the barn while it was burning?—No, sir; for they had but one door to come out of.

Did you know any other person that was burned besides Nesey Lett?—No, sir, I did not; I saw them before and after they were burned.

How long were they confined in the barn before it was set on fire?—They used to be bringing them in every day; we were about a week in camp, and some of them were not long in it, and they were from that time in the barn until it was set on fire.

Were there any windows to the barn?—I cannot tell that; I am not sure whether there was or not.

Colonel *O'Hara*.—What part of the barn was first on fire?—The thatch of it first.

President.—Was this girl, Nesey Lett, taken when you were?—I do not know, sir; I did not see her until I saw her within, in the barn.

Colonel *O'Hara*.—At any time did any of the prisoners attempt to force their way out of the barn?—No, sir, they did not; for the door of it was barred up before it was set on fire.

President.—At that time do you swear that you saw the prisoner, John Devereux, at the door, with a pike in his hand?—Yes, I do.

Colonel *Bouchier*.—Did you see the doors or windows at that time broken in, in order to give air to the prisoners, to prevent their being suffocated with the smoke?—No, sir, I did not; for I do not know whether there were windows in it or not.

How soon after you saw the prisoner put Nesey Lett into the barn was the door barred, and it set on fire?—Not above a quarter of an hour.

[Direct examination closed and cross-examination commenced.]

How long are you married, and to whom?—I was married the day after the battle of New Bridge, to one O'Connor.

Why do you call yourself Eliza Jacob?—Because that was my maiden name.

Do you at all times give in your name as Jacob?—I told my name was Jacob, and that I am married to one O'Connor.

Did you call yourself Jacob at the trial of Walter Devereux?—Yes, I did, and I suppose I called myself both names.

On what day did the battle of the Three Rocks take place, where you say you saw the prisoner?—I do not know the day of the week, but I know the month—I think it was July.

Where did the rebels encamp the night after the battle of the Three Rocks, and did you see the prisoners with them?—They encamped at the Three Rocks, and waited until others joined them; they went to Taghmon afterwards, and I saw the prisoner with them.

What time of the day did the battle begin?—It was very early in the morning and they were marching all night.

How long did the battle of the Three Rocks continue?—It lasted all day, and that night they got possession of Wexford.

Do you say that the prisoner was fighting the whole of the day with the rebels, at the battle of the Three Rocks?—Yes, he was, and his uncles were there.

At what time on the next day did you see the prisoner, and where did you see him and what time of the day did you see him?—I saw him every part of the next day, I could not miss of seeing him, I saw him at Taghmon and on the road to it.

On the day after the battle of the Three Rocks, how long did you see the prisoner at Taghmon?—They staid that day and night, and marched next day to Scullabogue; and I saw the prisoner all the time.

How long before the battle of the Three Rocks were you taken by the rebels?—One day and a night.

Where were you going to, the day you were taken, and was any person with you, and who?—I was going to the Ford of Duncannon, and my brother was with me.

What way of life was your brother in?—He belonged to the Irish artillery.

Who was his commanding officer when he was taken?—I do not know who he was; my brother was in Ross, and he had some call at Duncannon Fort.

Were there any other part of the prisoner's family present at the battle of the Three Rocks, besides his uncles?—Yes, there were his two first cousins, the sons of Billy Devereux of Taghmon; John and Edward, their father, and Devereux's sons of the Leap, and one of them was killed at the battle of Ross.

Did you, at any time, see his father or brother there?—No, not to my knowledge.

Did you see the prisoner that day at Taghmon do any thing and what?—I did, sir; I saw him give orders to have a man shot that declared himself an Orange man.

Were you at the battle of Ross, and what day of the week, and what month did it happen?—I was there; I cannot recollect the day of the week, but I think it was in the month of July.

What hour did it begin, and when did it end?—It began very early in the morning and it lasted until about three o'clock, when the army beat them to Corbett-hill.

How was the prisoner dressed, and what coloured horse was he riding at the battle?—He wore a white coat, with a sash and gorget on, and a sword in his hand, and rode a grey horse.

Was the prisoner present at the battle at the very early hour in the morning you mention, until three o'clock in the afternoon?—Yes; he was riding about encouraging the rebels to fight.

Where were you while the battle lasted?—I was in the thick of it, with my brother.

On what day was the house burned on the Ridge, with the man and woman, and their daughter in it?—I cannot tell: I think it was on a Saturday; I am not sure of it.

Can you read and write?—No, sir.

Did you ever speak to that man and woman or were you in the house before it was burned?—I did not speak to them; but I was in the house before it was burned.

What brought you into the house?—Because all of them went in; I only just went in and came out again; the man and woman were very old.

How were the man and woman and their daughter occupied when you went in?—They were sitting down; the old man reading a book near the window.

How long were you in the house before the prisoner went into it?—The prisoner was the first that went in.

How soon did you go in after the prisoner?—I did not go in until after he came out, and brought the cat-o-nine-tails, and did not stop one moment within.

Did you hear the man, or the woman, or the boy, or the girl say any thing, and what, while you were in the house?—No, I did not, but the prisoner looked over the book, and said it was a Protestant book, and that he would soon settle him.

Was the old man in the house?—He was, sir.

You said just now, that the prisoner came out of the house before you went in; if that was the case, how could you know what was said to the old man?—Because he went in a second time.

How long did the prisoner remain out of the house?—He did not remain long at all; he made no delay.

How near were you to the house when it was burned?—I was just outside the door, when the fire was put to it.

You said awhile ago they all (I suppose a great many) went into the house—did Tuttle the serjeant, go in?—I suppose he did, sir, I am not sure.

If he had been in the house, must you not have seen him?—He might be in it unknown to me.

You said it was a small house; were there more rooms in it than one?—It was a small house, but I do not suppose there were more than one.

December 3rd.

Cross-examination of *Eliza Jacob*, continued.

Whom did you see or speak to since the adjournment of this court?—No one sir; the serjeant major would not allow any person to speak to me.

Was Tuttle present at the burning of the house on the Ridge?—Yes, I believe he was.

Did you ever hear Tuttle say he was there?—No, sir, I did not.

Why then do you believe he was there?—Because I saw a Wexford soldier there, and I did not know him before, but I recollected him after I was married.

When you saw him after your marriage, where did you recollect to have seen him before?—I saw him at the Ridge where the house was.

Now, as you say you recollect having seen him at the Ridge, and consequently are certain he was there, how near the prisoner was he when he spoke of the cat-o-nine-tails for flogging Croppies?—He was standing near the door when the prisoner came out with the cat and was very near him.

As Tuttle was so near the door, must he not have seen the old man and woman, the girl and the boy?—I dare say he did see them.

As you say Nesey Lett, that was burned, was your first cousin, what was her father's name, and where did he live?—I do not recollect his christian name, and I do not know the name of his place, it was about three miles from Enniscorthy, and lived within a mile of captain Wallis; I do not know of any name of the place, I never heard any name for it; James Lett was piked at Enniscorthy; he was an uncle's son of Nesey Lett: he was not killed when they tied him to a car, and drew him after it.

What's the name of captain Wallis's place?—Marley; he does not live there now.

Do you know where the Mile-house is, and who lives in it?—I do know it, it is near Enniscorthy, but I do not know who lives in it.

Do you know where Boulamong is, and who lives in it?—I heard talk of it, it is near where the Fitz-Chinneries lived.

What was the name of Nesey Lett's mother?—Goff, sir.

Do you know Miss Goff, the maiden sister of Nesey Lett's mother that lived at Enniscorthy?—I did know her, but I do not now; Goff was the name of Mrs. Lett before she was married.

Now, by virtue of your oath, do you not believe that the name of Mr. Lett, who married Miss Goff, and who is Nesey Lett's father, is Stephen; and that he lives at Mile-house?—It is not Stephen; I knew Stephen—he lived at Enniscorthy; and I knew his daughters; and he did not live at the Mile-house, but perhaps they live in it now.

Now, by virtue of your oath, if his name is not Stephen—that his name is Joseph, and that he lives at the Mile-house?—I cannot tell his name—it is not Stephen.

How can you not account for not knowing the name of Nesey Lett's father, or the name of his place where he lived; as you say he lived near Enniscorthy; and that you always lived at that place; and that he was a relation of yours?—Sure I know his name was Lett, and is not that enough? it was Jos. Lett's son that was piked at Enniscorthy; and I do not recollect the name of the place; it was out in the country they lived; I was in company with Nesey Lett's mother, but not with her father.

In the many conversations you had with Tuttle, when he was in the same regiment, and in the same ship with you to prosecute, did you not often hear him condemn the prisoner, for giving the barbarous orders for putting the men to death at Kellymount; and for the burning of the poor old man, his wife, and daughter?—I had not any conversation with Tuttle, on my passage from Jersey, about the subject.

Were you ever married more than once?—No, sir.

Where did you live, when you and your brother were taken at Campine-bridge?—I was on a visit with my aunt, at Ross; and I lived at Enniscorthy.

VOL. XXVII.

You said that your brother was in the West Indies, and many other parts of the world, did he receive any wounds whilst he was on service?—Not as I know, sir.

Where is your brother now?—I believe he is in Chapelizod, near Dublin.

When did you leave Enniscorthy—and how long were you on a visit with your aunt at Ross?—I was about three weeks with my aunt.

From the time you left Enniscorthy, until you were taken, were you at any other place besides Ross?—No, sir.

Then is the court to understand, from the time you left Enniscorthy, on a visit to your aunt's until you were taken by the rebels at Campine-bridge, you were at no other place or town but Ross?—I was not, sir, at any other town or place.

Do you know a priest of the name of Barren?—I do not recollect the name at all.

By virtue of your oath, did you not go to a priest to be married to a soldier in the artillery of the name of Roberts; and were you not married to him?—I did not, sir; I never was married but once.

Did you ever tell any body that you were going to be married to a soldier of the artillery, and did you ever leave any place for that purpose?—I never did; nor did I ever leave any place to be married; but my brother used to say I was his wife, to save me.

Do you know a man of the name of Roberts, a soldier in the artillery, and by virtue of your oath, did you not a day or two before, leave some place to be married to him?—I do not, sir; and I did not leave any place to be married to any such man.

While you were a prisoner with the rebels, did you not see a soldier of the artillery, of the name of Sheppard, a prisoner with them; where and how long?—I do not know; I saw several of the artillery prisoners with them, but I do not know their names.

Were you at Duncannon Fort a few days before you were taken at Campine Bridge?—No, I never was there, but I saw it from Geneva.

On what day was the battle of Vinegar-hill?—I believe it was on an Easter-Monday; but I am not sure; it was on some remarkable day.

Was it between the time you were on a visit at your aunt's at Enniscorthy, and the time you were taken, that you were at Geneva?—No, it was not; it was after I was married to a Wexford soldier, that I was there; I landed there from Jersey.

In what time in the morning did the battle of Vinegar-hill begin; and did you see the prisoner there; and how long did it continue?—It was very early in the morning; and I saw the prisoner there; it continued the whole of the day.

To whom was it that the prisoner gave orders to have the barn set on fire; and what words did he make use of?—He gave orders

4 E

to no one particularly; and it was he gave the orders. I do not recollect the words particularly; and the rebels suspected that there was an Orange-man hid in the nook of furze; and they searched, but could not find him; the prisoner gave orders to have it set on fire, which was accordingly done; and the smoke was so great, you could not see a wink.

Court.—Are you convinced that it was the prisoner gave the orders to have the barn burned?—I am, sir; and I will think of it in seven years time.

Prisoner.—Did you ever live at any other place besides Enniscorthy?—I lived in Dublin when I was a child.

Upon your oath, did you not live in a place called Ballymurphy, in the county of Carlow?—They are bringing things to my recollection, that I did not think of before. I recollect now that the prisoner went to colonel Cavanagh's, to Borris, to take his house; there were three captains, Tommy Cloney, Downs, and John Devereux; and Downs was wounded in the arm, but I never lived at Ballymurphy.

Have you not heard, and do you not believe, that the prisoner some time since, fought a duel with a man of the name of Bourke, for using seditious expressions against his majesty's government?—I did not hear it.

Court.—Did you know any other girl of the name of Nesey Lett, besides the girl that was burned?—I did, one more, and she lived near Enniscorthy; I do not know her mother's name at all.

Where did Nesey Lett, that was burned, live before the rebellion?—She lived about three miles from Enniscorthy.

You told the Court that there was a man of the name of James Lett piked at Enniscorthy; was the prisoner present when he was piked?—He was.

DEFENCE.

Andrew Keegan examined.

With whom, and where did you live in the latter end of May last, 1798, when the rebellion broke out in the county of Wexford, and in what capacity were you?—With general Fawcett, as own man and groom. I saw him the day of the battle of the Three Rocks, at his father's house; the coachman and I, after we had retreated to Duncannon, returned from thence to Shilbeggan, to catch two valuable horses of the general's, and the prisoner assisted us in catching them. I was within a mile of the battle; I know not exactly how long it lasted; it commenced in the morning, and I do not believe it lasted above two hours; I believe it was between seven and eight that the retreat commenced: it was in the month of May. They would not tell truth who said that the battle lasted the whole day; I should not believe him.

Did you see the prisoner the day after the battle at Duncannon Fort?—I did, from the morning to the night, in the general's house, in company with him and the officers.

How near to Duncannon Fort does the prisoner live?—To the best of my knowledge about three miles.

If any person swore, that the day after the battle of the Three Rocks, the prisoner was on a march with the rebels from Wexford to Taghmon, and ordered the murder of an Orange-man there, and that they saw him every part of the day with the rebels, and did not miss the prisoner at all during that day, would that person swear the truth?—He would not.

Did the king's troops retreat from the battle of the Three Rocks, and how soon after you arrived at Duncannon Fort did you go to the prisoner to catch the general's horses?—Immediately; I only waited to have the fresh horses saddled.

Did you see the prisoner the second day after the battle of the Three Rocks?—I did, about eight or nine o'clock in the morning, and I do not know where he went after.

What length of time did you take to go from Duncannon Fort to the prisoner's house?—Not half an hour.

How came general Fawcett's horses to be at Shilbeggan?—I took grass for them there for the season.

If any person swore that the prisoner was the whole of the second day with the rebels, after the battle of the Three Rocks, would that person have sworn true?—He would not, sir, until either before or after eight or nine o'clock; and then I cannot answer for that.

Do you know of any letter from the prisoner to general Fawcett, and what was the purport?—I know that a servant maid belonging to the prisoner's father, brought a letter for the general, and I opened it, thinking it was for me; and when I found it was not, I desired her to carry it back; but another which was, and which I gave the general; but I do not know whether it was from the prisoner, or what was the purport of it; but the general gave for answer, that old Mr. Devereux need not fear; that his house should not be burned.

Is the prisoner's father able to write?—He is not; he is blind.

What was the name signed to the letter that you opened, and what was the purport of it?—I do not know: I opened it through hurry.

At the time the letter was given to you, and that you opened it, were not the army burning houses in the neighbourhood of Shilbeggan?—I cannot swear they were; I heard there were houses burned, but I cannot swear it, as I did not see them: I was at the burning of some of them myself.

What time was there between the letter you opened, and the one that was delivered to general Fawcett?—As well as I can recollect, it was about three days; and it was in the month of June.

Do you recollect when the village of Rainsgrange was burned by the king's army?—I

was at the burning of it myself; but I cannot recollect the day.

How far is Rainsgrange from Shilbeggan; and was it not then apprehended that all the houses in the country would be burned?—It is about two miles; and I heard it said that all the houses in the country would be burned: I still live with general Fawcett.

[Direct-examination closed.]

Cross-examination commenced.

At the battle of the Three Rocks, were you near enough to distinguish the persons of any of those engaged in it?—I was not, sir.

At what time was this second letter sent to general Fawcett; was it before or after the battle of the Three Rocks?—Long after.

As you swear that you were not within a mile of the place where the battle was fought—do you swear the prisoner was not engaged in it?—I do not, sir.

Might not the prisoner have returned to his father's house, from the battle, while you were going to catch the general's horses?—To the best of my knowledge, he could not, Sir; for the army retreated ten miles of the road to his father's house, and he had no other way to get home.

What distance is the prisoner's father's house from the Three Rocks, the place where the battle was fought?—About fifteen miles.

At what time of the day was it that you say the prisoner assisted you to catch the horses?—At or about eleven o'clock.

How was the prisoner dressed on that day?—He had a dark frock, shoes with fongs in them, grey stockings and breeches on, and he had no pantaloons on.

Did he appear to have been after any fatigue?—No, he did not, Sir, to my knowledge.

Now, by virtue of your oath, what conversation had you with the prisoner at the time you were catching the horses?—I do not recollect any, Sir, only about the horses.

Will you take upon you to swear that you did not tell the prisoner of the action that had taken place that day?—I cannot recollect whether I did or not.

By virtue of your oath, could not the prisoner, if mounted on horseback, have arrived at his father's house before the retreating could get to Duncannon Fort?—He could, Sir, by passing through the fields, but not on the road; as he must have come ten miles of the same road which the army retreated.

After you saw the prisoner at his father's house, might he not have returned to the rebels, and remained with them that night?—He might.

Had not the prisoner time to have arrived at his father's house from the time that you took to go to Duncannon Fort, and from

thence to his father's house?—The general and I galloped on as fast as we could, before we got eight miles to the fort, and I was back with the horses from Shilbeggan, before the troops were dismissed off parade; and the general was very anxious to get forward before any alarm should be spread in the Fort.

What distance were you from the place where the action was fought, before you went off so fast with the general?—In or about eight miles.

As you said that you rode off with the general when you were about eight miles of the road from the Three Rocks, and that the prisoner could not get to his father's house without passing through the fields, how can you swear but he might have passed the last two miles before the army came to the Ternern road?—Because I am perfectly sensible he would not be let pass the army.

Might he not, after you brought the horses, have been with the rebels all night, and have been at general Fawcett's next morning?—He might: I cannot answer where he was after I left him.

Can you swear what brought the prisoner to Duncannon Fort next morning after the battle?—I cannot.

What officers were in the room with the general when the prisoner was there?—I cannot say, but to the best of my knowledge colonel Colville, major Scott, and several of the officers of the 13th regiment were there. Captain Pigott was in the garrison, and he must have seen the prisoner some time in the day.

Was he received by the officers in a friendly manner, or as a disaffected person?—He was received as a gentleman, and he was not looked on as a rebel.

Did you at any time see the prisoner with the general, or in the Fort?—Indeed, I cannot say.

Prisoner.—Were not the officers of the 13th regiment, or some of them, that were up with the general, at the battle the preceding day?—There were none of them at the battle; they were within a mile of it; but they were with us.

Do you know the prisoner, since the rebellion, to have been openly and publicly in the Fort of Duncannon, and at New Geneva barracks, with recruits for his majesty's service?—I do, Sir.

Colonel *Bouchier.*—How was the prisoner dressed the day you saw him at Duncannon Fort?—I think it was a blue frock coat he had on, with boots.

At the time you first got the letter for general Fawcett, did you hear he was amongst the rebels?—I did not at that time, but I often did since.

Did you pass near the prisoner's house on your way to Duncannon Fort, from the battle?—I did, in or about five miles of it.

December 5th.

Andrew Sheppard, Corporal of the Royal Irish Artillery, sworn.

Do you remember the breaking out of the rebellion in the county of Wexford, and where were you then, and in what capacity?—An express came to Duncannon Fort of the disturbances in Enniscorthy, and we marched for Wexford about five or six o'clock in the evening of the 29th of May, 1798, and I was then as I am now, a corporal in the Royal Irish Artillery.

Do you remember the battle of the Three Rocks, and where were you a few days before it?—I do, Sir; and I was at Duncannon Fort a few days before it: I was taken prisoner at that battle.

Do you know a woman of the name of Elizabeth Jacob, and where and when did you see her?—I did know her about the commencement of the rebellion, and saw her a few days before the beginning of the rebellion at Duncannon Fort; she came with one Henry Roberts, a soldier in the artillery, who was in the West Indies, and was returning from pass, and some of the women in the barrack were grumbling, considering that they were not married; I went and asked her if she was married, and she rather seemed to decline giving an answer; then I went down stairs; she followed me out and began to cry; and she told me they were not married, and requested of me to speak to Henry, to marry her, which he consented, but said he had no money; I proposed to lend him money, and did; and in the course of that evening, some of our men and women went with them to the clergyman; when they returned to Duncannon Fort, I am certain I asked her whether she was married, and if she had got a certificate from the clergyman; but I do not recollect what answer she made.—They lay that, and Sunday night, at the widow Stephens's, who lives outside of the Fort; on Monday morning he came to me, and said his wife's clothes were all in pawn at Ross, and would be obliged to me if I would speak to captain Blacquiere for a pass to go there; I got the pass for them, and they went; I heard they were at Wexford: I did not see either of them again until the 20th of June, when the rebels were bringing us, prisoners, through the town of Enniscorthy—the prisoners consisted of five or six of our regiment, some of the Antrim, and some of the Royal Meath regiments—this woman, Eliza Jacob, cried out of a window, "Halloo, artillery!" and seemed very much rejoiced to see us, and asked us whether we would go in to get something to eat, which we very readily did—there were three more. She had cups and saucers on the table, and gave us bread, butter, and tea. She went out for her husband, who came in dressed in coloured clothes, with an epaulet on his shoulder; when we were done, he, with some more of the rebels, took us up to Vinegar-hill, where

†

he apparently had the command. I think that Elizabeth Jacob came up that evening to the hill, and I never saw her since, until I saw her here, on Tuesday morning, at the foot of the stairs, on her way to this court.

Do you know what became of that Henry Roberts?—I do, he was hanged at Newgate, in Dublin, by sentence of a general court-martial.

Did you prosecute him?—Yes, I did; I was one of the evidence against him.

If any person had sworn that Elizabeth Jacob had never been in her life at Duncannon Fort, would they have sworn false, or not?—They would have perjured themselves.

If any person had sworn that Elizabeth Jacob had never gone out of the Fort to be married to one Henry Roberts, or any other person, would they have sworn false?—I did not see them go out of the Fort, and therefore cannot swear it, but she and others that were with them told me so.

If she had sworn that she never went for the purpose of being married to Henry Roberts, and for which you gave them money, would you believe her?—No, I would not.

If Elizabeth Jacob had sworn that Henry Roberts was not an artilleryman, would she have sworn true?—No, Sir, she would not.

What time of the day were you taken prisoner at the battle of the Three Rocks?—I think about three or four o'clock in the morning.

Where did the rebels encamp the night of the day of the battle of the Three Rocks?—I was told they encamped that night on the Windmill-hill: I was put into the gaol of Wexford; and other prisoners told it was there.

How long were you in the possession of the rebels?—I was taken the 30th of May, and I got off the 21st of June.

Now, by virtue of your oath, did you see the prisoner, John Devereux, at the battle of the Three Rocks, or at any time after, with the rebels?—No, I never did.

[*Elizabeth Jacob* produced by the Court, and identified by the witness.]

[Cross-examination of Sheppard continued].

After you were taken at the battle of the Three Rocks, where did the rebels take you to?—To Wexford, on the evening of that day.

When was it you first saw Elizabeth Jacob, after you saw her at Enniscorthy?—The 20th of June, the day before the battle of Vinegar-hill.

You swore that you did not see the prisoner at the battle of the Three Rocks; might he not have been there unknown to you?—He might, sir.

Could he have been there as captain, commanding the rebels without your noticing him?—Indeed he might, Sir.

Where were you from the time you were taken until the 20th of June?—I was in Wex-

ford until about the 10th of June, when I was taken to Gorey; then to the battle of Arklow; then back to Gorey; then to Mount-Pleasant, near Tinnyhaly; then, I think to Kilcavanhill; then to a large hill, between Gorey and Wexford, and then to Vinegar-hill.

Now, by virtue of your oath, did you ever see the prisoner at any of those places?—Indeed, I never did.

When you were taken, what officer commanded the party?—We were taken to a general Fitzgerald—there were about forty as commanders came forward, and some of them were for putting us to death.

Could the prisoner have been one of them, without your knowing him?—Indeed, he might, for I did not take any particular notice for I thought every moment I would be put to death.

Where did you first see the prisoner?—At Duncannon Fort several times before the rebellion.

How was general Fitzgerald dressed?—With a helmet, a black coat and waistcoat, and corduroy breeches; but cannot say whether the prisoner was, before the rebellion, considered as a loyal man; never heard before the rebellion, that he was suspected, but have heard it since: do not recollect having had any conversation with any person about him; often saw him come into the fort to the general, and at that time nobody could get into the fort without being passed in; and if he was a suspected man, he, the general, would not have permitted him to go in; have heard people say since the rebellion, that the prisoner was a rebel, and have heard it both before and since he was in the habit of bringing in the recruits to the fort.

Hugh Mac Clanahan, serjeant of the Antrim Regiment, sworn.

Where and when were you taken by the rebels?—I was taken the 4th of June, and remained with them until the battle of Arklow.

Mention where you were taken, and the different places they took you to while you were with them?—I was taken from Gorey to Carnew, and then brought back to Gorey again, and from that to Arklow, from whence I made my escape to my own regiment.

During the time you remained with the rebels, did you ever see the prisoner among them?—I never did to my knowledge.

Was Sheppard, the last witness, a prisoner with you, and where?—He was; and I saw him at Gorey and at Arklow.

From your knowledge of Sheppard, and his character, do you consider him a loyal soldier?—As any in his majesty's service.

Court.—During the time you were prisoner, did you hear the name of John Devereux mentioned as leader amongst the rebels?—I never did.

At that time did you hear the names of any rebel leaders that were not present?—I did not; except Mr. Hayes, who was with us occasionally.

Might not the prisoner have been a leader among the rebels without your hearing it?—He might.

Andrew Shepherd sworn.

Court.—Has Elizabeth Jacob a brother in the artillery?—No, not to my knowledge; and I never knew one of the name in the regiment.

Could he have been at Duncannon Fort without your knowledge?—He could not; for there were only about thirty of our regiment there.

You say there were several of your men went with Roberts and Elizabeth Jacob to be married, what were their names?—Gunner Pat Collins, Margery Paine, wife to Gunner; Edward Paine, and Gunner Pat Duncannon, went into the house of Mr. Furlong at Ennis-corthy, who partook of refreshment with witness, offered by Elizabeth Jacob.

December 6th.

Andrew Keegan again sworn at the request of the President.

Court.—You told us you saw the prisoner the morning of the battle of the Three Rocks, and the next morning, and the morning after, about eight o'clock, and when did you see him next?—In about a month or six weeks, and it was at Duncannon Fort, and before he was raising recruits.

Prisoner.—As well as you recollect, had the prisoner a yeomanry uniform on, after the lapse of six weeks?—Yes, he had a horse uniform.

Do you know now, where Ross, the staff-serjeant is at present?—Yes, as well as I can judge, he is in England.

Miss Bridget Riely sworn.

Do you remember the battle of the Three Rocks; where were you, and did you see the prisoner on that day?—I do, it was on a Wednesday morning early: I was at Shilbeggan, and I saw the prisoner there.

As well as you recollect, what day of the month was it on?—On the 29th or 30th of May.

Be so good as to state to the Court why you recollect that day?—Because we sat up the night before with the prisoner, in the room, as we were afraid to go to bed, as the army was marching backward and forward, and we heard shots firing all night.

Do you recollect the 5th of June, the day of the battle of Ross: did you see the prisoner on that morning; where and on what occasion?—I saw him that morning about seven o'clock at Mr. John Chapman's, and I went behind him to see his sisters, from that to Mr. Thomas Chapman's, of Houseland.

Mention, as nearly as you can, the distance from Mr. Thomas Chapman's house?—Indeed I believe it is 15 or 16 miles.

If any person had sworn that the prisoner was fighting that morning at the battle of Ross would that person have sworn true?—I do not know where he was that morning, but I saw him about seven or eight o'clock.

If any person had sworn that the battle lasted from a very early hour in the morning until three o'clock in the afternoon, and that the prisoner was there riding about, encouraging the rebels to fight; must not that person have perjured themselves?—I am sure they must.

After the 5th of June, did you see the prisoner;—where and how often did you see him?—I came home from Mr. Chapman's house on the 9th of June, to the prisoner's father's house, and I saw the prisoner from that day, a part of every day, until the rebellion was over.

As you say you saw him a part of every day from that time till the rebellion was over, are you positive you saw him on the 23rd and 24th of June?—I am positive I did.

As you say you saw him on that day, what reason have you to recollect that day?—Because it was St John's day, and I breakfasted and dined with him; and it was the first Sunday after the king's troops landed.

Was it not usual to have a fair on that day; and was the fair held on that day?—It was usual, but the fair was not held, because the people were not settled.

What day of the week was it?—On a Sunday.

Was the fair held on Monday?—There was no fair held that year at all, but it was held this year.

If any person had sworn that the prisoner was at Kellymount on the 24th of June, and leading a party of rebels on that day and committing acts of treason and murder, would that person have committed perjury or not?—They would, most certainly.

How far is Shilbeggan from Kellymount?—About twenty-five or twenty-six miles.

Do you recollect the 25th of June; did you see the prisoner on that day?—I do; and saw him the entire day at home at his father's house.

Did you see him particularly employed on that day?—No I did not; but I saw him a part of the day writing a letter.

Do you know the prisoner to have exerted himself amongst the neighbours, to induce them to give up their arms, which he sent into Wexford?—I do, indeed; that was on the 25th.

What description of man is the prisoner's father as to his person and his health, and has the prisoner a brother?—He is blind, and about 70 years of age, and the prisoner has no brother.

Has the prisoner an uncle, or uncles, of the name of Devereux, or any relation of that name?—No, Sir, he has not, but one distant relation, who is these three or four years in England.

Has the prisoner of late years lived at home, and managed his father's business?—He has.

Do you recollect when the prisoner left his father's house, and where he went, and for what purpose?—He left his father's house (as well as I recollect) the 28th of June, and went to Borris to join a yeomanry corps, commanded by Mr. Cavanagh.

[Direct-examination closed.]

Cross-examination commenced.

Do you know how long the prisoner belonged to captain Cavanagh's corps before the 28th of June?—I do not know that he belonged to it before, but I often heard him say, before the rebellion, he would join it.

Did you ever see the prisoner in uniform?—Yes, I did, since the 28th of June, but never in my life before.

Do you constantly live in his father's house?—I do.

What relation are you to the prisoner?—First cousin, sir.

After eight o'clock the day of the battle of Ross, did you see the prisoner?—I did, sir, until about twelve, at Mr. Chapman's house.

Who sat up with you the night before the battle of the Three Rocks?—His sisters.

From whom did you first hear of the battle of the Three Rocks?—From general Fawcett's man; he came to Shilbeggan for a horse.

What time of that day did you see the prisoner?—I saw him early in the morning, and at breakfast.

Do you recollect how he was dressed that day?—To the best of my recollection, he wore a blue coat, leather small clothes, and boots.

Did you hear general Fawcett's man telling about the battle of the Three Rocks?—I did, he was telling it to my uncle, and to every one in the parlour; and the prisoner was there.

Did you see the prisoner, from the 5th to the 9th of June?—I do not recollect; I might.

Was the prisoner in the habit of wearing shoes, or brogues with fongs?—Not as I can recollect.

How long did Keegan, general Fawcett's man, remain at the prisoner's father's house?—I do not recollect how long, we were all so frightened; but I know the prisoner went out with him to catch the horses.

Has the prisoner a light brown frize coat?—No indeed, sir, I never saw it with him.

Has he a light great coat?—No, he has not, that I know of.

What coloured coat did he usually wear about his father's ground?—A blue coat.

Can you positively swear, that the day general Fawcett's man went to catch the horses, it was a blue coat the prisoner had on?—No, I cannot say.

Did you hear of a barn, and a number of people being burned at Scullabogue; and when did you hear it was burned?—I did, sir; I

heard it was burned the morning of the battle of Ross, the 5th of June.

Might not the prisoner have been there the day before you saw him at Mr. Chapman's house?—I do not know where he might have been before seven or eight o'clock, but I saw him from that until twelve.

Did you see him after twelve o'clock that day?—No, I did not, sir.

What is the distance from the prisoner's father's house to Scullabogue?—I believe it is about nine miles.

Was the prisoner in the habit of wearing blue pantaloons until he joined captain Cavanagh's corps?—I never saw any with him until he joined that corps, and came from Borris.

Did you see the prisoner after the battle of the Three Rocks, and at what hour?—I saw him the morning after, and it was an early hour.

Did the prisoner remain at home all that day?—No, he was at Duncannon; I saw him early in the morning, and in the evening, and I am not certain whether he breakfasted or dined at home, but am sure he supped and slept at home; but I recollect the next morning very well, because he brought in some poor distressed creatures, soldiers' wives and children, and gave them something to eat.

Did the prisoner remain at home all the day of the battle of the Three Rocks?—I am not positive, but I believe he did; if he did not go to Duncannon, I am sure he went no where else.

Was the country about Shilbeggan, during the rebellion, in possession of the rebels?—Yes, it was.

How then did he keep from them?—He staid away as long as he could, until they took him prisoner in the morning of the 4th of June, and carried him to Scullabogue, and several came to wish his father joy, for his not being murdered, for not joining them.

How long was he in the possession of the rebels?—I was told he returned that night to his father's house.

Did you ever hear it was reported in the country, that the prisoner had joined the rebels?—I did, sir.

Was the prisoner obliged to remain quietly at home, after his escape from Scullabogue?—No, sir, he was not; he was obliged to go out, and no one could remain in the country if they did not join them; and, if they refused, their families and property would be destroyed.

When he used to go out with the rebels, how long used he to stay with them?—He used not to stay long; he used not to stay out a night; but one night, the 26th, and that he spent at Mr. King's house, after the troops arrived.

Did you ever hear him tell his father when he would come home from being out with the rebels, what they used to do when he was with them?—I do not recollect I did.

Do you think that if he was not a friend to them, that they would permit him to return home every night?—He might have told them so, but I do not believe he was, for I always heard him say it was an infamous horrid business.

Do you think if he was so disposed, could he not have better evinced his loyalty by joining the king's troops at Duncannon Fort?—He could not get to Duncannon Fort, for men, women, and children were at that time of the same disposition.

Did he ever give the general information of his being with the rebels, or of their practices?—I really cannot tell that.

You say he was obliged to join the rebels; was he obliged to bear arms, and what were they?—I never saw any with him.

If he was a loyal subject, ought he not to have endeavoured to have given the general information of what the rebels were doing?—He ought; and I think he would if he could, but it was impossible.

What time was the country in the possession of the rebels, so as to prevent the prisoner's going to Duncannon Fort?—In about two days after the battle of the Three Rocks they had possession of the country, and from that until three weeks after he could not get there.

Did you, or any of the family, go to any place of worship during that time?—Yes, we did, to one Father Barnis, about a mile from our house; he used to say prayers for us in his house, and during that time no one came out of Duncannon Fort.

Did you go more than once?—Yes, I did twice, to another house belonging to one Houlett, where Father Barnis said prayers.

Do you know all the horses he or his father has, and did you ever see him ride a grey horse?—I do know them, and he has not a grey horse, nor did I ever see him ride one.

Used the rebels to go in great numbers to the prisoner's father's house, and used they to threaten him if he would not go along with them?—They used, and used to say to him he was no friend to their cause.

Did the prisoner go to Duncannon Fort the second day after the battle of the Three Rocks?—Yes, he did.

December 7th.

At what place was the prisoner taken, the morning before the battle of Ross?—I heard he was taken at the Rev. Mr. Glascott's house at Vicar's park.

Where were you the morning he was taken?—I was at Mr. John Chapman's house, about six miles from the prisoner's father's house.

When did you first see the prisoner after he was taken?—The next morning between the hours of seven and eight o'clock, on the 5th of June, the day of the battle of Ross.

How far is Mr. John Chapman's from Ross?

If any person had sworn that the prisoner was fighting that morning at the battle of Ross would that person have sworn true?—I do not know where he was that morning, but I saw him about seven or eight o'clock.

If any person had sworn that the battle lasted from a very early hour in the morning until three o'clock in the afternoon, and that the prisoner was there riding about, encouraging the rebels to fight; must not that person have perjured themselves?—I am sure they must.

After the 5th of June, did you see the prisoner;—where and how often did you see him?—I came home from Mr. Chapman's house on the 9th of June, to the prisoner's father's house, and I saw the prisoner from that day, a part of every day, until the rebellion was over.

As you say you saw him a part of every day from that time till the rebellion was over, are you positive you saw him on the 23rd and 24th of June?—I am positive I did.

As you say you saw him on that day, what reason have you to recollect that day?—Because it was St John's day, and I breakfasted and dined with him; and it was the first Sunday after the king's troops landed.

Was it not usual to have a fair on that day; and was the fair held on that day?—It was usual, but the fair was not held, because the people were not settled.

What day of the week was it?—On a Sunday.

Was the fair held on Monday?—There was no fair held that year at all, but it was held this year.

If any person had sworn that the prisoner was at Kellymount on the 24th of June, and heading a party of rebels on that day and committing acts of treason and murder, would that person have committed perjury or not?—They would, most certainly.

How far is Shilbeggan from Kellymount?—About twenty-five or twenty-six miles.

Do you recollect the 25th of June; did you see the prisoner on that day?—I do; and saw him the entire day at home at his father's house.

Did you see him particularly employed on that day?—No I did not; but I saw him a part of the day writing a letter.

Do you know the prisoner to have exerted himself amongst the neighbours, to induce them to give up their arms, which he sent into Wexford?—I do, indeed; that was on the 25th.

What description of man is the prisoner's father as to his person and his health, and has the prisoner a brother?—He is blind, and about 70 years of age, and the prisoner has no brother.

Has the prisoner an uncle, or uncles, of the name of Devereux, or any relation of that name?—No, Sir, he has not, but one distant relation, who is these three or four years in England.

Has the prisoner of late years lived at home, and managed his father's business?—He has.

Do you recollect when the prisoner left his father's house, and where he went, and for what purpose?—He left his father's house (as well as I recollect) the 28th of June, and went to Borris to join a yeomanry corps, commanded by Mr. Cavanagh.

[Direct-examination closed.]

Cross-examination commenced.

Do you know how long the prisoner belonged to captain Cavanagh's corps before the 28th of June?—I do not know that he belonged to it before, but I often heard him say, before the rebellion, he would join it.

Did you ever see the prisoner in uniform?—Yes, I did, since the 28th of June, but never in my life before.

Do you constantly live in his father's house?—I do.

What relation are you to the prisoner?—First cousin, sir.

After eight o'clock the day of the battle of Ross, did you see the prisoner?—I did, sir, until about twelve, at Mr. Chapman's house.

Who sat up with you the night before the battle of the Three Rocks?—His sisters.

From whom did you first hear of the battle of the Three Rocks?—From general Fawcett's man; he came to Shilbeggan for a horse.

What time of that day did you see the prisoner?—I saw him early in the morning, and at breakfast.

Do you recollect how he was dressed that day?—To the best of my recollection, he wore a blue coat, leather small clothes, and boots.

Did you hear general Fawcett's man telling about the battle of the Three Rocks?—I did, he was telling it to my uncle, and to every one in the parlour; and the prisoner was there.

Did you see the prisoner, from the 5th to the 9th of June?—I do not recollect; I might.

Was the prisoner in the habit of wearing shoes, or brogues with songs?—Not as I can recollect.

How long did Keegan, general Fawcett's man, remain at the prisoner's father's house?—I do not recollect how long, we were all so frightened; but I know the prisoner went out with him to catch the horses.

Has the prisoner a light brown frize coat?—No indeed, sir, I never saw it with him.

Has he a light great coat?—No, he has not, that I know of.

What coloured coat did he usually wear about his father's ground?—A blue coat.

Can you positively swear, that the day general Fawcett's man went to catch the horses, it was a blue coat the prisoner had on?—No, I cannot say.

Did you hear of a barn, and a number of people being burned at Scullabogue; and when did you hear it was burned?—I did, sir; I

heard it was burned the morning of the battle of Ross, the 5th of June.

Might not the prisoner have been there the day before you saw him at Mr. Chapman's house?—I do not know where he might have been before seven or eight o'clock, but I saw him from that until twelve.

Did you see him after twelve o'clock that day?—No, I did not, sir.

What is the distance from the prisoner's father's house to Scullabogue?—I believe it is about nine miles.

Was the prisoner in the habit of wearing blue pantaloons until he joined captain Cavanagh's corps?—I never saw any with him until he joined that corps, and came from Borris.

Did you see the prisoner after the battle of the Three Rocks, and at what hour?—I saw him the morning after, and it was an early hour.

Did the prisoner remain at home all that day?—No, he was at Duncannon; I saw him early in the morning, and in the evening, and I am not certain whether he breakfasted or dined at home, but am sure he supped and slept at home; but I recollect the next morning very well, because he brought in some poor distressed creatures, soldiers' wives and children, and gave them something to eat.

Did the prisoner remain at home all the day of the battle of the Three Rocks?—I am not positive, but I believe he did; if he did not go to Duncannon, I am sure he went no where else.

Was the country about Shilbeggan, during the rebellion, in possession of the rebels?—Yes, it was.

How then did he keep from them?—He staid away as long as he could, until they took him prisoner in the morning of the 4th of June, and carried him to Scullabogue, and several came to wish his father joy, for his not being murdered, for not joining them.

How long was he in the possession of the rebels?—I was told he returned that night to his father's house.

Did you ever hear it was reported in the country, that the prisoner had joined the rebels?—I did, sir.

Was the prisoner obliged to remain quietly at home, after his escape from Scullabogue?—No, sir, he was not; he was obliged to go out, and no one could remain in the country if they did not join them; and, if they refused, their families and property would be destroyed.

When he used to go out with the rebels, how long used he to stay with them?—He used not to stay long; he used not to stay out a night; but one night, the 26th, and that he spent at Mr. King's house, after the troops arrived.

Did you ever hear him tell his father when he would come home from being out with the rebels, what they used to do when he was with them?—I do not recollect I did.

Do you think that if he was not a friend to them, that they would permit him to return home every night?—He might have told them so, but I do not believe he was, for I always heard him say it was an infamous horrid business.

Do you think if he was so disposed, could he not have better evinced his loyalty by joining the king's troops at Duncannon Fort?—He could not get to Duncannon Fort, for men, women, and children were at that time of the same disposition.

Did he ever give the general information of his being with the rebels, or of their practices?—I really cannot tell that.

You say he was obliged to join the rebels; was he obliged to bear arms, and what were they?—I never saw any with him.

If he was a loyal subject, ought he not to have endeavoured to have given the general information of what the rebels were doing?—He ought; and I think he would if he could, but it was impossible.

What time was the country in the possession of the rebels, so as to prevent the prisoner's going to Duncannon Fort?—In about two days after the battle of the Three Rocks they had possession of the country, and from that until three weeks after he could not get there.

Did you, or any of the family, go to any place of worship during that time?—Yes, we did, to one Father Barnis, about a mile from our house; he used to say prayers for us in his house, and during that time no one came out of Duncannon Fort.

Did you go more than once?—Yes, I did twice, to another house belonging to one Héulett, where Father Barnis said prayers.

Do you know all the horses he or his father has, and did you ever see him ride a grey horse?—I do know them, and he has not a grey horse, nor did I ever see him ride one.

Used the rebels to go in great numbers to the prisoner's father's house, and used they to threaten him if he would not go along with them?—They used, and used to say to him he was no friend to their cause.

Did the prisoner go to Duncannon Fort the second day after the battle of the Three Rocks?—Yes, he did.

December 7th.

At what place was the prisoner taken, the morning before the battle of Ross?—I heard he was taken at the Rev. Mr. Glascott's house at Vicar's park.

Where were you the morning he was taken?—I was at Mr. John Chapman's house, about six miles from the prisoner's father's house.

When did you first see the prisoner after he was taken?—The next morning between the hours of seven and eight o'clock, on the 5th of June, the day of the battle of Ross.

How far is Mr. John Chapman's from Ross?

—To the best of my recollection, it is fourteen or fifteen miles.

Where did the prisoner come from, the morning of the battle of Ross?—From his father's house, he told me.

How often was the prisoner carried away by the rebels?—Indeed I cannot say how often; but I know he was obliged to go to save his life.

Did he not go to Duncannon Fort, during the days he was taken by the rebels?—No, he did not, sir, for he could not get there.

Where were you, when you heard that the barn was burned, and when did you hear it was burned?—I was on my way from Mr. Thomas Chapman's house to Shilbeggan, the Saturday after it happened, when I heard it.

You said yesterday, that the prisoner intended joining a ycomany corps before the rebellion; now can you account for his not having done so?—I do not know.

Was captain Cavanagh's corps, the nearest corps to the prisoner's house?—No, it was not; there was a corps of foot, but he did not wish to go into it.

Who commands that corps?—Captain Boyd, at Feathard.

Did the prisoner ever communicate with captain Boyd, on his being so frequently obliged to join the rebels?—Captain Boyd was then in Duncannon Fort.

You said that you rode behind the prisoner from Mr. John Chapman's to Mr. Thomas Chapman's; had you any conversation with the prisoner about the rebels?—I do not recollect we had; if we had, I do not now recollect it, we were all so frightened that day.

Was the prisoner ever obliged to go with the rebels before that day?—No, I am sure he never was; for if he had, I would have heard it.

Did you ever ride behind the prisoner, at any other time during the rebellion?—No, indeed, sir, I did not.

Did you consider that Mr. Thomas Chapman's house was a better place of safety than Mr. John Chapman's house, and were they both considered as loyal men in the country, and not concerned in the rebellion?—No, sir, I did not; but I went to see my mother and sisters who were at Mr. John Chapman's, and I went behind the prisoner to see his sisters, who were at Mr. Thomas Chapman's—Mr. John Chapman was very ill then, and died since—they were both considered as loyal men, and I never heard they were suspected; they had a brother, Mr. Lawrence Chapman, who was in the Feathard corps, and then in Duncannon Fort.

[Cross-examination closed.]

Direct-examination resumed.

Are there not several people in the neighbourhood of Shilbeggan, who were obliged to join the rebels in order to save their lives and properties?—Indeed there are.

Was Mr. Thomas Chapman obliged to join them?—He was not; because where he lived was more retired, and the rebellion did not rage there so much as it did in our part, and there were great rocks and cliffs where he used to hide sometimes by night and day, and it was a safer place than Shilbeggan.

Court.—As you thought Mr. Thomas Chapman's house a place more secure than Shilbeggan, why did you leave it?—Because my aunt and uncle were two old persons, and we did not wish to leave them alone, one of the prisoner's sisters and I went to keep them company; his other two sisters remained, and one of them from the frights she got, has not been well since.

Prisoner.—You say that it was impossible for the prisoner to get to Duncannon fort;—now if he had by any chance escaped them, do you think they would have destroyed his family and property?—Indeed I am sure they would; as it was, they often threatened him.

Was not the prisoner publicly employed immediately after, and long subsequent to the rebellion in his own country, while rebels were trying by courts martial—if any person had any thing to say against him, do you not think he would then have been brought to trial, where his guilt might be so easily proved, and his punishment so easily inflicted?—Indeed he was very publicly employed, and it would have been very easy to bring him to trial, and he might be punished.

Do you know Standish Logie, a magistrate of the county of Wexford, who has been particularly active in taking and prosecuting rebels, and whose father was dismissed the agency of lord Donegal, on the representation of the prisoner's father?—I do, sir.

Did any person take pains to inquire into the conduct of the prisoner during the rebellion, and if he could have discovered any thing against him, would he not gladly have brought him to trial?—Indeed he did, sir, and I am sure he would.

Court.—What time did the rebels get possession of the country about Shilbeggan?—About three or four days after the battle of the Three Rocks, and I went the 2nd of June to Mr. Chapman's, and when I returned on the 9th of June, they were then about the roads, and they asked us whether we were going from them, and we were afraid to tell them we were, and the rebels were always about the house.

December 9th.

Mary Devereux sworn.

Do you recollect the night before the battle of the Three Rocks, where you were on that night, and did you see the prisoner?—I do; I sat up the whole night in the prisoner's room.

Did you, shortly after the battle of the

Three Rocks, leave your father's house where did you go to, and for what purpose?—The second day after the battle, my sister and I were sent by my father to Duncannon Fort after my brother, the prisoner, had gone there, as we had some oats drying on a kiln, in order to inform general Fawcett, that all our men were leaving our work, and going to the rebel camp; but in our way we met with the prisoner, who told us he was with the general, and that the general desired him to tell the people if they would remain at home, that they should not be molested, and that he had written to Mr. Logie not to act within five miles of the general's district; and the prisoner told the people what the general said, but they did not take any notice of it, but went to the camp; and when we came home, we found that all the people had gone to the camp, at a place called Nash, and the prisoner sent a man and horse after them, to inform them if they would return, that they would not be molested.

Have you any reason to know, that the general did prohibit this Mr. Logie from interfering with his district, then under his command?—Yes, I heard captain Pigott say, that by directions of the general, he did write to Mr. Logie not to interfere with his district.

Did you see the prisoner the 5th of June, where, and at what time?—I did, as well as I recollect, about nine or ten o'clock, at Mr. Thomas Chapman's house, and he remained there until about twelve o'clock.

Did any person come with the prisoner, and who, to Mr. Thomas Chapman's?—Yes, Miss Bridget Reily rode behind him.

About what time, as you best recollect, did you return to your father's house, from Mr. Thomas Chapman's?—As well as I recollect, it was the 9th of June.

Did you see the prisoner, occasionally, some part of every day, from the time of your return until after the 24th?—Indeed I did, sir.

Do you swear positively that you saw the prisoner on the 24th of June; if so, have you any particular reason?—I do, indeed, sir; I breakfasted and dined with him, and he scolded me for not taking a glass of punch after my dinner, and it was the Sunday after the troops landed.

What is the distance from your father's house to Kellymount, and Castlecomber?—It is about 30 miles, but I do not know where Castlecomber is, but I am told it is beyond Kilkenny, and Kilkenny is 35 miles from my father's.

If any person had sworn that the prisoner was on that Sunday about 12 o'clock, engaged in acts of treason and murder, at Kellymount, would the person so swearing, swear the truth, or not?—He would not swear the truth.

Was the prisoner so long absent from the house on the 23rd and 24th of June, that he could have travelled a distance of 88 miles,

44 going, and 44 coming?—He could not, sir, as I suppose he did not go more than a mile from the house, to Mr. Glasscott's on the 22nd, 23rd, 24th, and 25th of June.

Is there not a view of a part of the harbour of Waterford from your father's ground, and did you not see the ships bringing in the troops?—Yes, there is; and on Sunday the 17th, I saw the ships coming in with the troops.

If any person had sworn that the prisoner was on the 24th or 25th of June, at an early hour in the morning, at Castlecomber, fighting at the side of the rebels, would such person, so swearing, have sworn the truth?—No, he would not.

Was it not the idea in the country, that the arrival in this kingdom of the king's troops, would relieve it from the tyranny and oppression, under which it was held by the rebels?—Indeed it was.

Was it not joy of the arrival of the king's troops that made him press you to take a glass of punch?—Indeed it was, and I was not well, and would not take it.

Did not general Fawcett spare your house, and the houses on your father's ground at the time the king's troops were burning houses in your neighbourhood?—He did.

[Direct-examination closed.]

Cross-examination commenced.

Do you know Bridget Reily, what is her father's name, and where does he live?—I do; her father's name is Charles Reily, and he now lives at Ballyhack; he formerly lived at Ramsgrange.

Where were you from the 9th, until the 24th of June?—At my father's at Shilbeggan.

Could you swear that the prisoner was not from home, between breakfast and dinner, on the 24th of June?—Indeed I could, without he walked about the garden or grounds.

Was the prisoner, during the rebellion, obliged to go with the rebels:—how long used he to stay with them, and how often?—I do know that he was obliged to go with the rebels, but our house was often threatened to be burned by them—the longest time he would stay with them was an hour—he was always at breakfast, dinner, and supped with us, except one day that he went down to Mr. Chapman's to see my two sisters that were there.

Did you sit down regularly to your meals, during the rebellion?—Indeed we did not; we did not know whether it would be left with us when it was ready.

Have you and your brother any relations of the name of Devereux?—No, we have no male relation of the name of Devereux, but one, who is in England these three years back.

Do you know when the prisoner was taken by the rebels, where they carried him, and

how long he remained with them?—I heard he was taken out of Mr. Glasscott's house the morning before the 5th of June, and that he met a rebel captain, of the name of Croke, who desired him to go home, and the common people threatened to hang him for not joining them, and also threatened to nail up the house with us in it, and burn it for having given some provisions to the soldiers the day after the retreat.

Did you hear that a barn at Scullabogue, with a number of people in it, was burned, and when did you hear it?—Yes, I did; the Saturday after it happened, I was going home from Mr. Thomas Chapman's in company with Miss Bridget and Margaret Reily, when we stopped at a house on the way, and a man came in; I asked was that infamous business true, and he said it was too true.

Can you swear that the prisoner was the whole of the day of the 5th of June, at Mr. Thomas Chapman's house?—I can swear that I saw him about nine or ten o'clock that day, at Mr. Thomas Chapman's; he came with Miss Bridget Reily from Mr. John Chapman's, and remained there until about twelve o'clock that day.

Do you remember the day the general's man came to catch the horses, the day after the battle of the Three Rocks, and was he telling any person about the battle?—I do very well; Keegan was telling my father about it, and my brother went out to get the servant to assist him in catching the horses.

Did the prisoner go out with Keegan, and the other servant, to assist in catching the horses?—I do not know, indeed, as I left the room; it is probable he did.

How long did Keegan remain at the prisoner's father's house?—I do not know how long, I believe not very long.

Was Bridget Reily in the parlour, when the general's servant came there?—I cannot tell; I do not know.

As the prisoner was obliged to join the rebels, did he tell you every evening what he was obliged to do with them?—No, he did not: I never asked him.

Was the prisoner ever taken on suspicion of being with the rebels, and how long was he confined?—He never was taken, until he was here at Cove.

Did you ever hear that Charles Reily had been concerned in the rebellion?—I did, sir.

What distance is Ramsgrange from Shelbeggan?—Two miles.

December 10th.

Continuation of *Mary Devereux's* cross-examination.

Was it not on account of Charles Reily being amongst the rebels, that his house at Ramsgrange was burned?—Not as I know of.

Was Charles Reily at home during the re-

bellion?—He was not; he was at his brother in law's John Chapman who is since dead.

By virtue of your oath, did you ever hear that Charles Reily was ever at Carrickbyrne with the rebels?—I did hear he was, but I do not know it.

During your stay at Thomas Chapman's, did you see Charles Reily there?—I did see him one day.

Did you see Charles Reily at Mr. John Chapman's during your stay at Mr. Thomas Chapman's?—Yes, I did.

Have you not heard, and do you not believe, that Charles Reily was appointed to a valuable situation under government, namely, as victualler to the garrisons of Geneva and Duncannon?—He was, but he is not now; he has a commission for buying corn in the harbour of Waterford, from merchants in Waterford.

Did you ever hear that Charles Reily gave informations against the rebels?—I did hear it.

At what time did you go from Shelbeggan to Mr. Thomas Chapman's, who was with you, and how long did you remain there?—I went the Saturday after the battle of the three Rocks, my two sisters and Miss Reily went with me; and I thought it a place of greater security, as it was down near the sea-side.

Did you see any rebels on the way, and what did they say to you?—I did, and they asked us whether it was for fear of them or the army we were going.

Did your father or any of the family write to general Fawcett, and what was the purport of the letter?—Yes, the Friday after the king's troops landed, to know whether he would have our place burned, as the troops were burning the houses about, and he returned for answer that we need not be frightened, that we should not be injured; it was a verbal answer he sent by the servant maid.

What distance does Standish Logie live from your father's, and when did captain Pigott tell you that he had wrote to him, by order of general Fawcett, not to act within five miles of his district?—Standish Logie lives at Ross, which is a distance of nine miles from my father's; and captain Pigott told me of it shortly after the king's troops landed, which was the 17th of June.

Was there any thing to prevent the prisoner going to Duncannon Fort, to give the general information after the 19th of June?—No, there was not, if he had any information to give; Ramsgrange was burned, as well as I recollect on that day.

Did the prisoner to your knowledge, go to Duncannon Fort, from the 4th to the 19th of June?—No, he could not, for the roads were guarded by the rebels.

How soon after the 9th of June was the prisoner taken by the rebels?—The day after; they came in, and insisted on his going out with them.

Did a party of rebels come every day for

the prisoner; and used he to return with arms or go out with them; and did he ever attempt to conceal himself?—Two or three used to come for him, and I never saw arms with him during the rebellion; we often denied him to them; but the servants used to tell them he was within.

Did the prisoner go to see his sisters from the 9th to the 24th of June, to Mr. Thomas Chapman's?—He did once.

Were there many houses burned in your neighbourhood, at what time, and how many?—Yes, there were—Ramsgrange was the nearest, and by the sea side.

What reason did general Fawcett assign for not burning your father's house?—Because he considered him a loyal subject.

Prisoner.—Did the rebels ever do any injury to your father's property?—Yes, they did, they took cattle, a cask, and a piece of a cask of wine.

Were the rebels ever at Mr. Thomas Chapman's while you were there, and did they make any prisoners?—They did; they took Mr. Loftus Frizael.

Michael Hearn sworn for defence.

What corps of yeomanry do you belong to, and were you engaged against the rebels—and where?—The Thomastown Cavalry; I was engaged under sir Charles Asgill, on Saturday at Kellymount, Sunday at Castlecomber, and Tuesday at Kilcomney.

Do you swear positively that the day the rebels were at Kellymount, was Saturday; and the battle of Castlecomber was the next day, Sunday?—I do.

Be so good as to state to the court what day the rebels were at Kellymount, and that they were attacked by the king's troops at Castlecomber?—On Saturday the 23rd of June, at Kellymount, and on Sunday the 24th of June, at Castlecomber.

If any person had sworn positively that the day the rebels were at Kellymount, was Sunday, and the day they attacked the king's troops at Castlecomber, was Monday, would not such persons so swearing perjure themselves?—I should imagine so.

Are you well acquainted with the Ridge?—I cannot say I am well acquainted with it; it is a mountainous wild country, I have been hunting on it.

Did such a story as the burning a house on the Ridge, with a man, woman, and their daughter in it, ever reach your ears?—I was told since I came to this town, that it was given in evidence on this trial but I never heard it before.

Were not the barbarities practised by the rebels frequently the conversation whilst you were in that country?—They were, sir.

Did you interfere at any time in any contest in which the prisoner was concerned, if you did, mention the circumstances?—I did; about four or five years ago I happened to travel up to Dublin with the prisoner; when

we got there, we went into a coffee-house at the corner of Palace-street, and a dispute took place between the prisoner and a man who went by the name of citizen Burke, about politics. On an explanation taking place, Burke allowed he called the prisoner a castle spy, and refused to retract it; a meeting took place between them in the Phoenix park, and the prisoner wounded Burke.

Was there at that time in any public print in Dublin, any animadversions on your and prisoner's conduct?—I cannot take upon me to say.

Have you not been in habits of intimacy for a number of years, and had you not an opportunity of knowing his sentiments, and do you not know him to be a loyal man?—Yes; I always considered him so.

[Direct-examination closed.]

Cross-examination commenced.

Are you any relation to the prisoner?—No, sir; I am not.

How soon after the battle of Castlecomber were you at Mr. Lacy's?—About Christmas last.

Since the duel, have you been in habits of intimacy with the prisoner, and have you often seen him?—I have, sir; I cannot say I have seen him very often, he has been at my house, some of his relations live in my neighbourhood, I live about twenty four miles from him.

Might not a house on the Ridge, with a man and woman in it, have been burned without your hearing it at Mr. Lacy's?—Indeed there might; but I do think it very improbable.

Do you not know many persons of whose loyalty you had as high an opinion as of that of the prisoner to have been concerned in the rebellion?—Indeed I do not know any of my intimates to have been concerned in the rebellion.

If the prisoner had been engaged as a rebel captain at the battle of Castlecomber, must you not have seen him?—I did not see a rebel that day; there might have been fifty captains there. I was not in the town at all; the division I belonged to were commanding a bridge.

How far do you live from the Ridge?—About twelve or thirteen miles.

Do you remember a school house to be on the Ridge?—I do not; and I never knew there was a school house there, there might be for aught I know.

Did you ever hear of any person being piked on the Ridge?—I did; I heard there were a good many Orange-men piked there.

Did you hear of any people being burned? I never did.

Did you see the prisoner during the rebellion?—During the rebellion I had no opportunity of seeing him; after the battle of Kilcomney, I saw him pass by in the Borris uniform.

From the breaking out of the rebellion, until after the battle of Kilcomney, did you see the prisoner?—I did not.

Have you any reason to know that the rebels were in great force in the wood of Killnockarin, and that the prisoner was sent in to ascertain their force, and were afterwards dispersed from that wood?—Yes, I do; I know that the prisoner was sent in by col. Mac Clean and captain Cavanagh, and that the rebels were beat out of it.

Did you consider the rebellion over after the battle of Kilcomney?—Yes, I did.

Do you know the prisoner to have done any duty with the Borris corps?—I heard he did; I heard captain Cavanagh say so.

What distance is Castlecomber from Shelbeggan?—I believe it is forty five miles. I think a man fighting for a loyal sentiment is the strongest proof he can give of his loyalty.

Did you not consider many loyal, at the time the prisoner fought the duel, who since joined the rebels?—I did.

December 11th.

Eleanor Furlong, sworn for Defence.

Where do you live, and do you recollect having gone to Shelbeggan the 23rd of June, 1798, the day before Midsummer day?—I live within a mile of Shelbeggan; I went there on that day, as it was reported the country would be burned, and as I had heard that Mr. Devereux had got a protection from general Fawcett, to know whether I could put my things there to save them.

Did you see the prisoner there that morning, and what hour?—I did, but I cannot particularly recollect what hour; I believe it was eight o'clock.

Did you breakfast there that morning?—I did, sir.

When you proposed to the prisoner's mother to take in some of your things, what answer did she make?—She said she had not yet got a protection, but she hoped she soon would.

Did they get a protection for the house of Shelbeggan?—I believe so, sir.

[Direct-examination closed.]

Cross-examination commenced.

Are you related to the prisoner?—No, sir. Where were you during the rebellion?—I was at home.

Did you see the prisoner during the rebellion?—I did not but that one morning.

By virtue of your oath, do you swear positively that it was on the 23rd of June, 1798, you saw the prisoner?—Indeed I do.

Why do you recollect that day so particularly?—Because it was St. John's Eve, and we used to have bonfires on that day, but on that we had not.

On what day of the week was it?—It was on a Saturday; St. John's day was on a Sunday that year.

Was your house burned?—No, it was not, my husband got a protection.

Did you ever hear that the prisoner joined the rebels?—I did not hear that he joined them, but I heard he was taken prisoner.

Thomas Chapman, of Houseland, sworn for Defence.

Are you related or connected with the prisoner, and how?—My wife is first cousin to him.

Were the sisters of the prisoner at your house during the rebellion; and did he go to your house the day after the battle of Ross?—Two of them were constantly there, and the prisoner did come to my house that day.

About what hour that day did you see the prisoner?—About eleven o'clock.

Did you, during the rebellion, receive a threatening letter or message from the rebels, and of what nature: on consulting the prisoner, what you had better do, what advice did he give you?—I did receive messages from them, wondering I did not send them provisions, and on consulting the prisoner, he desired me to pitch them to the devil; I believe them are the very words he made use of.

At the time he so counselled you, did he not, in addition, say, that they would not be able to hold together more than another week, and that the rascals would be soon routed or destroyed?—I do not recollect his saying that.

Was there not one of the prisoner's sisters at your house indisposed during this time of confusion and dismay?—There was, sir.

After the time you had consulted the prisoner, how soon after did you see him?—I believe it was about a week.

Were you during the rebellion, in the habit of secreting your person, and for what purpose?—I used, sir, to prevent being taken by the rebels; I live near the sea, and I used to get amongst the cliffs and rocks.

Did the rebels at any time surprise you by night in your house; and what means did you take to elude them?—They did; they came to my house to take Mr. Loftus Frizzel, as well as myself; and when I found they were in the house, I went into the room where the prisoner's sister lay; she was ill, and I forced myself under the bed, and they did not come to search for me.

[Direct-examination closed.]

Cross-examination.

Was the prisoner for any time, the day you mention, at your house before you saw him?—He was; but I cannot tell how long, for I was not in the house when he came.

How long did he remain at your house, and where did he tell you he was going?—About an hour; I did not ask him any questions, or where he was going.

Did he tell you that he was taken prisoner the day before?—I heard he was; but he did not tell me.

Did any one come to your house with the prisoner?—Yes, sir; Miss O'Reily came.

Were there any other of the prisoner's sisters at your house during the rebellion, but the two you mention?—There was, sir, another for a few days; I do not know how long.

When did she leave you?—Indeed I cannot tell the day.

How long did Miss Reily remain at your house?—I believe but a few days.

Did Miss Devereux and Miss Reily leave you the same day?—I think they did, sir.

How soon after you received the message from the rebels did you consult the prisoner?—I think it was the day of the battle of Ross.

Did you not hear that the prisoner was suspected of being amongst the rebels?—I did, sir.

Did you hear he was in confinement before he was taken up in Cove, on the information of the Wexford soldiers?—No, I did not.

[Adjourned to the 30th of December.]

January 8th, 1800.

[Court met according to adjournment.]

Major Newton sworn.

After the first adjournment of this Court passing through Kilkenny, I met Mr. Thomas Cavanagh, brother to captain Cavanagh, and I told him I was on the trial of the prisoner, and asked him whether prisoner was not in his brother's corps, and what was his character; he said he was in the corps, and that while he was with them several persons said he, the prisoner, was guilty of several outrages in the country, and that the prisoner said he defied them, and was ready to meet their charges, which prisoner did for months, and behaved himself remarkably well. I afterwards met Mr. Thomas Vigors, a clergyman of the church of England, of Loughlin (the whole of the grounds of the Ridge, belongs to his family), and I asked him whether there was a Protestant school-house burned on the Ridge, with an old man, woman, and girl in it. He said he knew the grounds of Old Loughlin, and that there was no such house on the grounds of Old Loughlin; and that he knew them so well, that there was but one house burned by the rebels, within two miles and a half of Old Loughlin; which house belonged to serjeant Tinden, of Mr. Rochfort's yeomanry, and if there was, he certainly must have known it.

Have you any reason to know of an enquiry being instituted into the prisoner's conduct previous to his being admitted into the Borris yeomanry?—No, I have not; Mr. Cavanagh also told me Mr. Devereux had often given him information as to the rebels; there is no other place called the Ridge, but the Ridge of Old Loughlin.

Richard Grandy produced and sworn on the part of the Prisoner.

Do you know the prisoner, and did you see him on the 4th of June, 1798?—I saw a prisoner in the parlour at Scullabogue; I saw the prisoner come in, on the evening of the 4th of June; I asked the prisoner how he was, and he said, "So, Grandy, are you there?" and nothing else passed.

Was the prisoner with the rebels, or did he act as a commander?—He walked into the parlour, and walked out again; but they would not let me do so; I know nothing more about him; prisoners were not allowed to walk in and out as they pleased.

How was the prisoner dressed?—He was dressed in his common dress; with a brown coat on, as well as I recollect, he had no weapon of defence, but a switch or whip, he had no sash, gorget, or sword.

When was the barn of Scullabogue burned?—It was burned about nine o'clock in the morning of the 5th of June, 1789; I was then brought out to be shot, at which time the roof had fallen in, and the cries of the people ceased.

John Cody sworn.

Do you know the prisoner, and when did you see him?—I saw him the day of the battle of Ross, about twelve o'clock, coming up to my house, by the way of Tintern, about a mile and a half from the prisoner's house; he was on horse-back, and wanted us with him to the battle of Ross, he did not threaten us; it was not a grey horse he rode; he wore a brown coat, and had neither sash, sword, or gorget, as I saw; it was between twelve and one o'clock.

If any person swore that the prisoner was all that day fighting, on the part of the rebels, at Ross, would it have been true?—It would not.

Who sent you here?—I was taken to Waterford by Mr. Kennedy, and general Johnson sent me here.

Were you examined at Waterford, as to the testimony you were to give, and by whom?—I was—and by Mr. Kennedy.

Lawrence Chapman sworn on the part of the Prisoner.

Did you see Miss Nesey Lett, who lives near Enniscorthy, and upon what occasion?—I did, in order to serve her with a summons, to attend this trial.

State the conversation that passed between you and her?—I asked her to come, and she said she would; but her father seemed inclined not to let her.—I believe she will come if she can; she seemed apprehensive that she could not get a carriage, for as the weather was bad, she could not ride; and if she could get her brother to come with her, she would ride part of the way, and if she got tired, would then get a carriage,

Where does her father live, and what is her mother's maiden name?—Her father lives at Mile-house, near Enniscorthy, and she told me her mother's name was Goff.

If a woman of the name of Elizabeth Jacob had sworn that Miss Nesey Lett, whose mother's name was Goff, was burned in the barn of Scullabogue in the month of June, 1798, would that woman have perjured herself?—I certainly believe she would;—I am sure she would.

Does the Nesey Lett you saw at Mile-house, and that you served with the summons, live with her father?—I believe she does—I saw her there.

[Court adjourned.]

January 9th.

THE PRISONER'S DEFENCE.

Mr. President, and Gentlemen of this Honourable Court;—The evidence on both sides being now closed, and the issue of my guilt or innocence being submitted to your final judgment, it only remains for me to offer a few observations on the facts which have been given in evidence before you. The distinguished justice which has marked the proceedings of the Court, while it calls from me the most earnest and lasting avowals of gratitude, at the same time admonishes me not to extend my comments into prolixity, because that spirit of rectitude, assisted by the good sense and intelligence of every member to whom I address myself, will preclude the necessity of my pointing out minutely those circumstances of contradiction and perjury in the witnesses against me, which cannot fail to have made already powerful impressions on the mind of the Court.

As I purpose to simplify this statement, I shall beg leave to take up the evidence you have heard in the order in which it has been given; and this intention would necessarily lead me to Thomas Templeton, the first witness, who has been produced on the part of the prosecution—if his testimony were such as to be entitled to any observation whatsoever. But standing as he does before you, a gross, palpable, self-convicted perjurer, swearing facts on one day, and contradicting himself on the next, I should not hold myself excusable were I, by any animadversion on his testimony, to disgust the Court with a renewed recital of his baseness. I should feel that I might incur the suspicion of insulting your understandings, by seeming to admit the necessity of making his perjuries more palpable than he has made them himself; him, therefore, I dismiss without further notice, and now proceed to the next witness Tuttle, whose testimony I purpose to exhibit in similar colours, and to convince the Court is just as unworthy of that serious regard, in a case which the issue of life or death must turn, as that Templeton.—Tuttle has

undertaken to swear, and has on oath told this Court, that on the 24th of June I ordered some of his majesty's loyal subjects to be put to death at Kellymount, and that on the same day I was guilty of the barbarity of ordering an house, with two of its inhabitants, to be burned,—an helpless old man and woman, and also a boy to be piked; and that on the day following, and on which he states with equal positiveness the battle of Castlecomber to have taken place, he saw me actively engaged and fighting against the king's troops, on the side of the rebels. This, gentlemen, is the sum of his testimony, and which I undertake to refute. In the first place, I beg to refer you to your notes, in which you will find the positive, confident, and precise accuracy to which Tuttle pretended, as to the days and dates of these transactions. He says, the day of the piking at Kellymount was positively on a Sunday (the 24th of June), and the day of the battle of Castlecomber was the following. Now, gentlemen, it is a fact as notorious as it is undisputed, ascertained in the despatches of the king's general officer, who commanded in the engagement of Castlecomber; and further fortified, if necessary, by the testimony of a loyal and respectable gentleman, Mr. Hearn, who was that day under his command, and which you have heard from his lips, that the barbarities at Kellymount were perpetrated on a Saturday, and that the battle of Castlecomber took place on a Sunday, the following day.—It is a standing principle, bottomed on the eternal principles of justice, and the invariable practice of every human tribunal pretending to administer those principles of justice, that if a witness be proved to have perjured himself in one instance, that shall go to rob every thing else which he may say, of every degree of possible credit: from those solemn precedents this Court will not indeed depart—and under this assurance, having shown that Tuttle, where he was most positive, had sworn falsely, I might proceed to dismiss him, as I have Templeton—but I shall not—for I hold it a duty which I owe to my character to show to demonstration that I am not the monster which a miraculous mixture of crime and perjury has endeavoured to make me.

Be pleased, gentlemen, to refer to the evidence which has been given by Mr. Hearn, a resident within a few miles of the Ridge, and also by one of your own members, whose inquiry into the transactions, said to have taken place on the Ridge, must be ascribed to the honourable and virtuous motives of bringing me to justice, if I were the monster I am stated to be, or of protecting an innocent man when once his innocence was ascertained by irrefragable proofs. The former of those gentlemen is a member of the Thomas-town Yeomanry, within a few miles of the Ridge.—He is well acquainted with the country—has been often hunting upon it—was with the king's troops the day after the

cruelties of Kellymount--has often since been on a visit close to the neighbourhood of the Ridge--has frequently listened when the cruelty of the rebels was the subject of conversation ;--and yet, under all these circumstances of service, the very day after the alleged transactions, of acquaintance with the country, of residence afterwards, of narratives of rebel cruelties while near the very spot, such a matter as the burning of a school-house, which is always a place of notoriety, and burning of its inhabitants, never came to his knowledge. Such an atrocity was well entitled to recital, and the abhorrence natural to so flagitious an act; and yet Mr. Hearn does not believe that such a house was in being, or that such a circumstance as the burning of it, and its inhabitants, ever took place.

If this strong presumptive evidence,—it is to be observed, that presumptive is the only evidence which can be given,—if I say it needed corroboration, it acquires the most irresistible support from the lips of one of the members of this honourable Court, who has stated to you the result of his inquiries. He knows the country well—he has resided near the Ridge for two years—has frequently hunted on it, and never heard of the school-house. During the interval of your adjournment, he was on the very spot; made frequent inquiries from the most competent sources of information—spoke to the nearest resident magistrate, Mr. Vigors, whose brother is the very owner of the very spot; and yet Mr. Vigors, nor no other person competent to give accurate information, ever heard of the school-house, or of its being burned, or of any other house being burned, except one belonging to a serjeant of Mr. Rochfort's corps of yeomanry.

Thus far have I shown that no such fact as that sworn by Tuttle, respecting the burning of a school-house, on the Ridge, with its inhabitants, ever took place. I need not advert to the internal evidence of falsehood which the story in itself contains. Those who can credit (if any such there be), the tale of a man quietly perusing a book while his house was surrounded by 15,000 rebels threatening his destruction, he still continuing serene, unmoved, consigned to his study, without regarding the death which was presented to himself, and the destruction of all that was dear in life to him:—those, I say, who can credit so monstrous an improbability are certainly not in a state to be reasoned with.

As little shall I notice the direct and palpable contradiction between Tuttle, and his accomplice, Elizabeth Jacob, stating themselves to be witnesses to the transaction, the one looking in the house, the other actually in it—he relating that a man and a woman only were burned,—she, that a man, a woman, and *their daughter* were all consumed in the flames.

But even if I were to admit, that as to his fact Tuttle has not perjured himself, and that the house was really burned, surely no inference of my guilt could rest in the minds of those who have heard the testimony which has been given on my behalf. Among other circumstances, which I shall notice in their place,—Miss Reily has sworn, that on the 23rd and 24th of June 1798, I was at home at my father's house at Shelbeggan; that from the 9th of that month, when she returned from Mr. Thomas Chapman's, to the 28th she saw me frequently at different intervals every day, and that I never slept out during that time, till the 26th, when I went on a visit to Mr. King, who was a very near neighbour. She recollects particularly the 24th, being St. John's-day, and at that time her mind had resumed its tranquillity, it being as she states, the Sunday after the landing of the king's troops. Her testimony to the whole of this period, and the fact of my being at my father's house at Shelbeggan, is in every instance corroborated by my sister Miss Devereux. The testimony of these ladies places the perjury of Tuttle and his accomplices beyond the reach of doubt, it stands undisguised, evident, and barefaced; nor can that testimony receive invalidation in any reflecting mind, from the circumstances of those ladies being connected with me in a near degree—the one my sister, and the other my cousin german. I beg leave to put it to the good sense of this Court, that if a man be accused of certain acts, at a time when he was actually in the very bosom of his family, that it is alone from among the very members of that family that the fact of his innocence can be maintained. If it were otherwise, and that proximity of blood were injurious to testimony, a villain had nothing else to do than to watch when a man is interchanging the endearments of his fire side, and accuse him of any crimes which innate vice, or the hope of reward might suggest to him.

This prejudice against the testimony of relations, if it overruled the judgment, would go the length of saying, that miss Reily and my sister had perjured themselves; but, gentlemen, a circumstantial inspection into the detail of their testimony, will be the best shield against such an imputation. Have they sworn in the bold, peremptory, and unqualified way of those who have sworn against me? Does not the evidence of miss Reily contain those natural lights and shades which ever accompany unpremeditated truth?—And has she not told all she knew without qualification and disguise, leaving it to your judgments whether or not it should weigh against me. If miss Reily, were indisposed to tell truth and wished to tell a bold tale on my behalf, she would not have told the plain tale of my being actually with the rebels, of the frequent compliances which I was obliged to assume. I did not produce a witness to state what was

not fact; but to relate all the facts, and let them go to the decision of men of sense and virtue, who will weigh and balance well the items of seeming guilt, with the strong and irresistible circumstances of indubitable innocence.

Elizabeth Furlong, against whose testimony the slight and illiberal suspicion on the score of relationship cannot be alleged, has also sworn in direct opposition to Tuttle and his accomplice. She well remembers the 23rd of June, 1798, (which by the way, was the day before the battle of Castlecomber) it was, she says, on Saturday, and the eve of St. John's day; it was customary to light bonfires on that evening; but the disturbed state of the country prevented a compliance with the old custom on that day. Look into the natural occasions of her visit to the prisoner's house, hearing that the entire country had been sentenced to almost universal devastation, she repaired to Shelbeggan, as a place of refuge, and to be exempted from the general destruction, and where she hoped the owners would receive and protect her little property; there she said she saw me, though, if you believe Tuttle and his accomplices, I am said to be at Kellymount, above 26 miles distant.

Surely, gentlemen, it cannot now appear to you to be necessary for me to expatiate at greater length on the testimony of Tuttle. You cannot forget the acrimony of his prosecution; by the terms of reproach and obloquy with which he vented himself against me, before this honourable Court: But, whatever credit you may give to the bitterness of his zeal against me, you cannot, I presume, give any to his evidence, contradicted as it stands by the whiter testimony of miss Reily, miss Devereux, Elizabeth Furlong, Mr. Hearne, and major Newton, and the dates of the official communications made by sir Charles Asgill to government, on the battle of Castlecomber, which is a matter of universal notoriety, and on record.

The next witness who has appeared before you, is a woman who now calls herself Elizabeth Jacob. In her direct examination, she swore first, that I was at the battle of the Three Rocks, and with the rebels the entire of the day. Opposed to her on this fact stands Andrew Keegan, the confidential steward of general Fawcett, who saw me at my father's house at eleven o'clock on the same day. Miss Reily also has stated to the Court, that the night preceding the battle of the Three Rocks, she sat in dread and terror in my room at Shelbeggan, the whole of the night, and that she saw me early the following day in the morning, and at breakfast.

Elizabeth Jacob swore that she saw me on every part of the next day after the battle: that she could not miss of seeing me, and that at Taglunon, I had ordered an Orange-man to be shot.

Andrew Keegan has on the contrary sworn, that he saw me from an early hour in the

morning, to a late hour in the evening of the day next after the battle of the Three Rocks with the general, at Duncannon Fort.

Elizabeth Jacob swears, that she saw me at Scullabogue, giving directions to have the barn burned, and that Miss Nesey Lett was burned in it by my order personally given, and that she thinks this took place the night before the battle of Ross. It is gentlemen a fact about which there is no controversy, that the battle of Ross took place at five o'clock in the morning, on the fifth of June, 1798, and you have the testimony of Richard Grandy, a witness for the prosecution, of whom one would suppose, that he was brought forward for the purpose of discrediting Elizabeth Jacob, that the barn was burned between eight and nine o'clock on the morning of the 5th of June, and on the very day of the battle of Ross, and during the battle itself: so that, gentlemen, if you believe Elizabeth Jacob at all, you must credit this monstrous circumstance, that I was employed on two barbarous but dissimilar acts, burning the king's subjects at Scullabogue, and fighting against his troops at New Ross, and that she, as well as myself, were at two separate and distinct places at the very same time.

Elizabeth Jacob has sworn that she was at the battle of Ross; that it began at five o'clock in the morning, and ended at 3 o'clock in the afternoon, when the rebels were beaten to Corbett-hill; that she saw me there all that time dressed in a white coat, with a sash and gorget on, a sword in my hand, riding about and encouraging the rebels to fight.

Miss Reily has proved, that at seven o'clock on the morning of the battle of Ross, I came to the house of Mr. John Chapman, that we both proceeded (she riding behind me) to Houseland, the place of Mr. Thomas Chapman, and distant from New Ross about sixteen miles.

Miss Devereux has proved, that I arrived with miss Reily, at Mr. Thomas Chapman's, about nine o'clock in the morning of the same day, namely the day of the battle of Ross, and that I remained at Mr. Chapman's till about twelve o'clock of the same day; Mr. Chapman himself has proved, that he saw me at his house on that day about the hour of eleven, after he came in, for he had not been in the house on my arrival. I cannot pass over the testimony of Mr. Chapman, without requesting the Court to recollect that part of it, which relates to his asking my opinion on the very day of the battle of Ross, as to the answer which he should give to the requisition the rebels made to him of sending them provisions. On that very day, critical as it was, I did not disguise my sentiments, when I could pronounce them with security;—I expressed myself coarsely, but that very coarse and homely cast of expression sprang from the sincerity which I felt; I did then dissuade him from giving them the smallest assistance, and it is needless to observe, that if I had

been secretly well-disposed to the rebel cause, I need not have taken pains to dissuade a man from giving them assistance, and the more so, when there were so many plausible reasons to urge, touching the risk of refusal, and others too, which I might have used with perfect security to myself.

But, as if my witness were incompetent to establish the fact of my absence from the battle of Ross, and as if it were a matter of Divine interference, that all the witnesses for the prosecution should be at variance with, and in contradiction to each other, John Cody has been produced, to show the multiplied perjury of this Elizabeth Jacob, and to prove, in opposition to her swearing, that between the hours of twelve and one that day, I was several miles distant from the battle, on the Tintern road, between Mr. Chapman's, and Shelbeggan, and mounted on a bay horse.

This peasant, ignorant as he obviously is in the English language, whatever difficulty he may find in understanding the import of the words, in which, as he says, I addressed him, yet it is not so probable that he could be mistaken in seeing my person. Cody had, he swears, a second person with him, David Neville—why was he not produced to corroborate what Cody had sworn, if he could have substantiated my words to him? There is no doubt but the judge advocate, whose zeal, as I am told, led him into the county of Wexford to search for witnesses against me, after the prosecution terminated, would have willingly brought him forward. How far it is probable that I, at one o'clock of the day of the battle of Ross, which battle began at 5 in the morning, at a considerable distance from the place of action; at a time too, when the fortune of the day prevailed against the rebels, should have set about raising *one recruit only* for the rebel army, the most ordinary judgment may without difficulty decide; but when the words which I made use of but a few moments before to Mr. Chapman, on the rebel requisition to him for provisions, shall be considered; and when the credibility of his testimony comes in the balance against the misinterpretation of an ignorant peasant; those circumstances will receive their proper consideration from the enlightened and just mind of this Court.

Elizabeth Jacob has sworn, that miss Nesey Lett, her cousin, whose identity she has ascertained by the maiden name of her mother (Goff) was by me pushed into the barn of Scullabogue, before it was set on fire, and that there she perished in the flames. If I were not satisfied in the most positive degree of certainty, that that young lady is at this very moment in existence, and that she never was at that barn, I should not have exposed myself to the circumstance of calling on the interference of the general officer of this garrison to compel her attendance before this Court: nor if it were my intention to have suborned any body to personate her, should I have resorted to him to be the instrument

VOL. XXVII.

of producing an impostor. I have done my utmost exertions to produce her in evidence; the general has done so likewise, but she yet withstands the authority of this Court, and both his efforts and mine have been ineffectual to produce her. Mr. Lawrence Chapman, who has served her with the summons to attend here, has given evidence of that fact, and at the very time that he has ascertained the falsehood of her being destroyed, as Elizabeth Jacob has sworn; he has too proved her identity, by swearing, from the best possible information, that of miss Nesey Lett herself, that her mother's maiden name was Goff.

As to what she has sworn, in conjunction with her accomplice Tuttle, respecting the transactions of Kellymount and Castlecomber, I shall offer no new observations, having already refuted every circumstance contained in their testimonies beyond the power of contradiction.

If any new instances of this woman's perjury were necessary to stamp her with everlasting infamy, they lie so profusely before the Court, that there is almost a difficulty in selecting them. This Elizabeth Jacob swore she knew my uncles, and my two first cousins. Miss Reily and Miss Devereux have proved to the Court the rank impossibility of such a circumstance, for that I have neither uncles nor cousins. Elizabeth Jacob has sworn that she never was at Duncannon Fort; that she never was married to a man of the name of Henry Roberts, of the artillery; and yet, gentlemen, observe what a brave and loyal soldier (Sheppard) has sworn in the most direct and manifest contradiction. Sheppard knew this Elizabeth Jacob; he saw her a few days before the beginning of the rebellion at Duncannon Fort, where she said she never was; and he saw her come with this identical Roberts, of the artillery, whom she swears she never knew, into the fort, where she swears she never was; and he gave her money, and sent proper persons with her to see her married to that very same Henry Roberts, to whom she swears she never was married. I cannot but refer you, gentlemen, to your notes on this part of the gross perjury of Elizabeth Jacob, the simple order of Sheppard's testimony, will speak more forcibly to your conviction, than volumes of comment.

It is a disgusting labour to pass through such scenes of vice and perjury; and I doubt not but it must already have shocked the honourable mind of this Court to have contemplated so long, so very loathsome a detail. Innocent and virtuous minds are at a loss to account for those acts of wickedness, the motives to which do not immediately present themselves on the surface; but I conceive that the intention of this conspiracy against my life, does not lie very deeply concealed. I must beg pardon of the honourable name of soldier; when I take the liberty of stating, that the two male witnesses who have appeared for the prosecution, belong to the Wex-

ford regiment of militia, and that Elizabeth Jacob is the wife of a soldier in the same regiment. This circumstance must naturally have given them a facility in digesting their conspiracy. They knew that if they could affix to me the horrid and abominable facts of the murders they have recited, that their service in convicting me of them, would be considered (as indeed it ought if I were guilty) with public gratitude; that their own regiment afforded an easy convenient mode of reward in promotion, if no other means occurred—two of them speculating for themselves, and Elizabeth Jacob for her husband. For one year they were in possession of this secret of my crimes, as they have alleged:—for that year I was in the country publicly;—often at Duncannon Fort, employed in a business not likely to conciliate one's neighbours, while I was raising recruits for the king's army. I was on the very spot which is alleged to have been the theatre of my barbarities;—scrutinous investigation into my conduct was made by my most avowed and personal enemy—yet no one came forward against me. (One of your members has told you, that I stood open breasted against the calumnies levelled at me, and that I defied them; I did defy them, and I do defy every thing but perjury; that I cannot guard altogether against. During this time that I stood open and un-concealed, that I lived in the very scene where my crimes were said to have been acted, where were my perjured prosecutors, Templeton, Tuttle, and Jacob? They never showed themselves, although every one of them say they knew my person and place of residence. They never mentioned my name until the accident of my leading recruits for the king's service to Chatham, brought me to the Cove of Cork, and then hearing that a person of the obnoxious name of Devereux, was on board the vessel with recruits, the detail of crimes you have heard was laid hold of, and the guilt of them fastened upon me. But even then, gentlemen, there was an indecision in their guilt, and after swearing informations against me, they unanimously and with common consent went off with the transports to Jersey; and an eagerness for active service is the alleged cause of their departure; but could this have been the motive of Elizabeth Jacob? and even with regard to the men, this honourable Court shall determine whether this apology be sufficient for their shrinking from a prosecution at the instant it was about to commence, and for their stealing away from their country in disobedience to the most positive orders to remain behind. Gentlemen, I have been for several tedious months the inhabitant of a prison; my prosecutors having quitted the kingdom, were brought back in order to give evidence against me; they were all in the same regiment, and came over in the same ship for the avowed purpose of my prosecution; and yet they have concurred in swearing to one fact, which I con-

tend, it is morally impossible should be true, namely, that they never had a syllable of conversation together upon the subject of my imputed crimes, or of the evidence which they had it in their power to give towards my conviction. To your good sense, gentlemen, I put it, whether you can believe that fact, and whether persons so swearing, can in your minds be entitled to even the smallest degree of credit.

There is, gentlemen, one circumstance that has occurred upon the trial, which I deem it peculiarly necessary to notice, and which cannot fail to make due impression upon the minds of honourable and intelligent men:—After Elizabeth Jacob had told this court of my having been at almost every battle that was fought, and at which she represented me, as much distinguished by my activity, as by my attire; after she had thus sworn to my ubiquity in the rebellion, it was suggested to my counsel, by an honourable member of this court, that a serjeant of his regiment had been taken prisoner, and remained some time with the rebels, whom I might examine if I thought fit, and if the fact would bear me out, might show by his negative evidence, that the positive swearing of Elizabeth Jacob was false.—To this suggestion, humanely intended I am sure, my acquiescence was instantaneous and undisguised, and I answered with that confidence which innocence alone can inspire, if the man be an honest man, let him be produced and examined, for I am in dread of nothing but perjury; he was, gentlemen, examined, and has sworn during the time he remained with the rebels, and in the number of places he was taken to, he never saw me (although, if you believe Elizabeth Jacob, I was pretty conspicuous), nor even ever heard the mention of my name; my feeling, gentlemen, upon this incident was, that I could run no risk from integrity and truth, and that it was only from falsehood and perjury my danger was to be apprehended; but, gentlemen, perjury, however confident, ceases to be obnoxious; whereas in my case, it is detected and exposed. (Of the atrocities ascribed to me, I have said by my plea—I am not guilty; and that plea I have supported by the clearest and most satisfactory proof: at the time they are said to be perpetrated, I have shown that I was at home, endeavouring to give comfort and succour to a father worn down by age and infirmity, and labouring under a deprivation of sight, and at the same time to afford protection to a family of weak and defenceless females, liable to insult and outrage from a set of ruthless desperadoes, who in a state of savage nature, had let themselves loose upon the country, regardless of the restraints of all law, and loosening every bond of society. Under these circumstances, gentlemen, and when savages of this description had gotten possession of the country, when his majesty's forces were unable to afford protection to its

inhabitants, I submit it with deference to the consideration of this Court, whether it was not a matter of necessity to temporize, and where it was only by dissimulation of this nature, that one's person, family, and property, could be secured from pillage and destruction; whether this honourable Court, in its justice and humanity, will not, in the perilous situation in which I and my family were placed, find out abundant matter for my justification; from these motives, gentlemen, was I compelled to put on the appearance of associating with rebels.

Nor was even that address, which the stern necessity of the times dictated, entirely competent to insure myself, and a large helpless and aged family, from the hostility of the barbarians who were then in complete possession of the country. The testimony of Miss Devereux ascertains the injury which my father suffered, in having his cattle driven away, and his wine destroyed by the rebels; and also my frequent attempts to conceal myself, although the informations of the servants of the house almost always defeated my plans of concealment; and the evidence of Miss Reily has shown, in a strong light, the perils which I had undergone from the rebels, when my father received the gratulations of his neighbours on my having escaped being a victim of their rage, and being led to execution.

Upon the whole, gentlemen, the grave, liberal, and unprejudiced consideration which you will give to the minutes of the proceedings on my trial, will lead you to that determination which good men can bear to contemplate with unruffled consciences. The dreadful tissue of wickedness and perjury, which has been unfolded to you in the support of this prosecution, which was in some degree, framed by the licentious and disorderly characters of our times, and from which no man can promise himself safety, an instance of which has been but too frequent throughout every part of this kingdom, I shall leave with you without further comment. There are unfortunately mixed in the human condition, the terrible compounds of vice and villany—if it were otherwise, the rigour of the law would be seldom directed against the offender's head. All ages and countries of the world abound with melancholy proofs of their effects; but the incidents on this trial, of their astonishing predominance in the breast of those unhappy people, Templeton, Tuttle, and Jacob, are in extent of wickedness commensurate with any which has perhaps ever taken place. If I am to be judged by the events of my life precedent to the rebellion, you, gentlemen, will not, in your justice, disregard the fact of my meeting, in single combat, a rebel, and the loyalty and ardour of my sentiment, as the whole matter was related to you by Mr.

Hearne. If I am to be judged by my conduct during the rebellion you will not fail to consider me as the only protector of a feeble and helpless family, and endeavouring to avert from them by remaining at home, the sanguinary tempest which threatened them. You cannot but consider me during that critical situation as the reluctant spectator of the progress of rebellion; utterly disengaged from any, even the slightest concurrence with the rebels, and venting myself in bitterness against them, when I thought my life could not be endangered by my declarations. Mr. Chapman's testimony has assured and convinced you of this; and the general and natural view of my state during the rebellion, must open to you a similarity of circumstances with every man in the county of Wexford, who was unable to withdraw himself and family, after the country had lost the protection of his majesty's forces. Every man so circumstanced, stands in a situation as liable to investigation as mine is. Subsequent to the rebellion, my conduct continues as unimpeached as it was before it; and the testimony of Mr. Hearne, respecting my services, particularly in the affair of the wood of Killnockarim, is no weak proof, that when I was released from the terror of the rebel tyranny, I was well disposed to act against them like a loyal man. Those who know the character of the Borris yeomanry, and their zeal and caution in the admission of members, will be satisfied that I was not admitted a member of that corps, until my conduct was placed beyond doubt, and that if any doubt of loyalty had attached to me, I should not have received admission among that loyal and spirited body. It would have been a material advantage to me if this trial had been held in the county of Wexford, and that general Fawcett had not been in England;—in that case I should have been able to have procured several witnesses without delay or expense, and my length of confinement would have been shortened by an earlier manifestation of my innocence. But I must not now repine—my fate is in the hands of intelligent, just, and conscientious men, and I ought to be thankful for my good fortune.—I am indeed, gentlemen, grateful to you for your patient, upright, and humane conduct on this trial; and my gratitude to you shall be among my latest words.—I am largely indebted to your good qualities, and relying on their farther exercise, I do not fault, when I demand from you the sentence of acquittal.—Justice will tell you, in her awful language, that it is my right; and innocence bids me look up with firmness, and ask it with becoming confidence.

When the decision of the Court was made public, it appeared that John Devereux, jun. was sentenced to TRANSPORTATION FOR LIFE.

645. Proceedings before the Court of King's-Bench at Dublin, in the Case of JAMES NAPPER TANDY and HARVEY MORRIS, Esquires, attainted of High Treason, by an Act of the Parliament of the Kingdom of Ireland, on Monday the 10th and Wednesday the 12th days of February, and on Friday the 16th and Monday the 19th days of May: 40 GEORGE III. A. D. 1800.

["Mr. Tandy had been a conspicuous member of the early societies of United Irishmen.* In 1795 he was indicted for High Treason, and fled to the continent, where he became an officer in the French service. He was one of the persons excluded from the benefit of the bill of general amnesty, which was passed after the suppression of the rebellion of 1798." 2 *Life of Curran*, 170.]

Court of King's Bench, Monday, 10th of February, 1800.

THIS day, James Napper Tandy, and Harvey Morris, esqrs. were brought to the bar of the court, from the gaol of Kilmainham, in the county of Dublin.

Mr. Attorney General informed the Court, that a *Certiorari* having issued from the court of Chancery to the clerk of Parliament, to remove the tenor of a certain act of parliament, intituled an act to attain several persons therein named, among whom were James N. Tandy and Harvey Morris, esqrs; and the same having been returned into Chancery, a writ of *Mittimus* had issued, by which the record of the said act of parliament was now before their lordships.

According to the direction of that act, the prisoner, *James Napper Tandy*, had been arrested and committed to the gaol of Kilmainham, in the county of Dublin, by a warrant charging him to be one of the persons who by the act were attainted for having been concerned in the late rebellion, and not having surrendered, and thereby made himself amenable to justice, as before the 1st day of December, 1798, as the act required.

Mr. *Harvey Morris*, the other prisoner, had been committed to the same gaol, under similar circumstances. The prisoners were now brought up to court, by Habeas Corpus. Two months had elapsed since the warrant of committal had been executed; and notice of it having been given to him as Attorney-general, there now remained but one duty for

him to perform, which was; that when the record and other proceedings certified to the Court should be read, to tender the usual suggestion in such cases: the prisoners would then have an opportunity to avail themselves of that right which the law gave them, to offer such reason as they might have to show cause why execution should not be awarded against them; in doing which, he hoped they would be well advised by their counsel and by the Court, who in such cases was bound to be their counsel, before he should be put to the distressing necessity of making the last application to the Court.

Mr. Attorney General then moved, that the *Certiorari*, and the return thereon; and the Habeas Corpus, and the return thereon, might be read.

Lord Kilwarden, C. J.—Are the prisoners in court, gaoler?

Gaoler.—They are, my lord.

[Here the prisoners got up, and bowed respectfully to the Court.]

Mr. Attorney General then said, that the regular mode of proceeding would be; first to have the tenor of the act of attainder read in court; which being done, he would pray that execution should be awarded against the prisoners.

Lord Kilwarden said, the regular mode of proceeding was, that the clerk of the crown should first call on the prisoners to hold up their hands, in order to identify them; and then to read the record distinctly to them.

Clerk of the Crown.—James Napper Tandy and Harvey Morris, hold up your hands.

The Prisoners held up their hands.

Clerk of the Crown then read the record, which contained the writ of *Mittimus* directed to the chief justice and his associates; the tenor of the writ of *Certiorari*, directed to the clerk of the parliament; the return thereto, and the title of the act of attainder, in which were the names of the two prisoners.

Lord Kilwarden.—Prisoners, is it your desire to have counsel assigned?

Mr. Tandy.—I thank your lordship for reminding me of that; it is my wish to have counsel assigned.

Lord Kilwarden.—You may name any num-

* See the proceedings subjoined to the present case.

ber of counsel you have a mind: in cases of this kind there is no restriction; it so appears in Johnson's case in Foster's Reports.*

Mr. Tandy.—Then, my lord, I pray that Mr. George Ponsonby, Mr. Curran, Mr. M'Nally, and Mr. Ridgeway, may be assigned to me.

Clerk of the Crown.—Harvey Morris, do you desire counsel to be assigned?

Mr. Morris.—I pray that Mr. Ponsonby, Mr. Curran, Mr. Mac Nally, and Mr. Bushe, may be assigned.

Lord Kilwarden.—Do the prisoners wish to have agents assigned to them?

Mr. Mac Nally.—My lord, Mr. Tandy desires that Mr. Alexander Cooke, attorney, may be assigned as his agent. Mr. Morris prays that Mr. Alsop, attorney, may be assigned for him.

Clerk of the Crown.—James Napper Tandy, hold up your right hand: what have you to say why execution should not be awarded and done upon you?

Mr. Curran prayed for the allowance of a reasonable time in order that the agents might receive instructions from the prisoners relative to their case. He urged the novelty of proceedings by bill of attainder in this country: it might be necessary for the counsel for the prisoners to look into precedents, and to consider of the prisoner's defence.

Mr. Attorney General admitted the usage in such cases to allow the prisoner's counsel a reasonable time to be prepared for their defence. Of the reasonableness of that time, in Ratcliffe's case,† the prisoner, he observed, was brought to the bar on Friday, the 21st of November, 1746, and the Court gave until the Monday following. The charge in the present case was of a long date, and all the particulars were specified in the warrant of committal: he therefore moved that the prisoners be brought up on Wednesday next.

Lord Kilwarden.—You agree, Mr. Attorney, that the prisoners should have time necessary to prepare for their defence; and you mention Wednesday as the day for trial. Do you recollect Wednesday will be the last day of term? Consider in what situation you will be, if the arguments on the case, and they may be very long, should be protracted until Thursday morning.

Mr. Attorney General said, that if, on Wednesday, the prisoners should lay any substantial reasons before the Court, to postpone their trial, the Court would then decide as their discretion should direct: for himself, he could see no good reason why they should not be brought up to-morrow.

Lord Kilwarden.—You have already agreed, Mr. Attorney, to give them till Wednesday; and surely you would not shorten that time?

Mr. Ponsonby urged, that under such circumstances, four days was a usual and reasonable time to grant.

Mr. Mac Nally suggested, that the prisoners might probably be advised to sever in their pleas; or under the different circumstances of their cases, to put in pleas varying from each other: if so, there must be separate trials on the separate issues, which could not be decided by the Court within the term. In Ratcliffe's case, which had been cited by Mr. Attorney-general, the learned gentleman would observe, upon looking into it, that the time granted to the prisoner was the same with that now prayed for on the part of Mr. Tandy and Mr. Morris; and in that case too, the plea which the prisoner put in, and could only put in, was, the most simple possible; it was merely, that he was not the person mentioned in the record before the Court:

Mr. Curran said, a variety of facts were involved in the cases of the prisoners, and probably the law on those cases might create some difficulty; he observed there were but two evenings for the counsel for the prisoners to consult on the nature of the defences.

Mr. Attorney General.—If on Wednesday next, when the prisoners would be brought up, any facts specified by affidavit should be laid before the Court, that would justify a farther postponement of their trials; the prisoners would have the full benefit of such an application: but it would be a dereliction of the duty he owed to the country, standing in the situation he did, if he did not on that day pray execution against them, which the Court were bound to grant. If farther postponement should be prayed, he hoped, at least, that the nature of the prisoners' defence should be communicated on oath, in order that the counsel for the crown also should have time for considering it.

Lord Kilwarden.—Let the prisoners be remanded until Wednesday morning, at the sitting of the Court; and let their counsel and agents have seasonable and free access to them.

The prisoners were accordingly remanded.

Wednesday, February 12.

The prisoners were this day brought to the bar of the court.

Mr. Attorney General prayed that execution should be awarded against the prisoners.

Clerk of the Crown.—Gaoler, make a bar: put James Napper Tandy and Harvey Morris forward. Prisoners, what have you to say why execution should not be awarded and done upon you?

Mr. Curran stated, that the time allowed the prisoners to prepare for their defence had been so short, that counsel had not been able to make up their minds as to the most proper mode they ought to pursue on this occasion: and he therefore prayed that the prisoners might be allowed until the first day of the next term.

Lord Kilwarden.—Is this suggestion of counsel the only ground to be laid before the

* See it also in vol. 18, p. 431.

† Vol. 18, p. 429.

Court for the postponing of this trial until the first of next term?

Mr. *Curran* said, it was the only reason he could offer to the Court.

Mr. *Attorney General* said, that the Court could not take notice of such a motion, so grounded. This was a parliamentary attainder, which took place so long since as the year 1798: the parties had been three months in custody: the warrant of committal specified the offence. In order to ground such an application, facts ought to be laid before the Court, verified by affidavit.

Mr. *Pensonby*.—This application was to the discretion of the Court. He knew not what document or affidavit of the reasons urged, could be laid before the Court, much less how these reasons could be made appear on record. The application was grounded on this—that from the shortness of the time allowed to the prisoners, their counsel had not been able to satisfy themselves as to the propriety of a mode of defence. Whatever time might have elapsed since the prisoners were committed, was immaterial: they had never been furnished with a copy of their committal, until Saturday night last: this fact could be proved, and would be, if it were necessary. Another ground of the application was, that only one day had intervened since the prisoners were first brought to the bar of the court: this fact was in the knowledge of the Bench and of the counsel for the crown, whose humanity, he trusted, would not press the prisoners, unprepared as they were to stand their trial; when the delay required, and material for their defence, could not by possibility give them an opportunity of eluding justice.

Mr. *Prime Sergeant* said, he had never before heard the doubts of a counsel for a prisoner, whether they would be able to make any defence, or agree on the nature of it, urged as reasons to delay public justice. On the first day the prisoners were brought up to court, their counsel applied for time, and the Court gave them until Wednesday; which they determined to be sufficient time.

Lord *Kilwarden*.—We gave no opinion about it.

Mr. *Prime Sergeant*.—The counsel for the prisoners cannot but have determined, at least, on the nature of the defence they intend to make.

Mr. *Curran*.—The prisoners counsel have determined as to the nature of the defence, but not as to the exact shape in which to urge it.

Mr. *Mac Nally* said, that the time to be allowed the prisoners was not to be dictated from the counsel on either side; it was matter of discretion in the Court, and that discretion would be exercised with liberality. The Court would determine on what time the plea in bar should be put in; and from analogy he would show upon principle, that they were entitled to four days. Suppose the pri-

soners now stood convicted, at the bar of the court, for treason or felony, they would be entitled, by the rules of the court, ~~to~~ four days, to move an arrest of judgment; and if the four days, so allowed, could not be included within the term, they would have the benefit of the whole of the ensuing vacation. Now here they stood convicted, unless they could show cause by their plea: therefore, as in case of arrest of judgment, they have a right to four days to consider the record, and produce such plea as would bar the attainder.

Mr. *Attorney General*.—The present case was not analogous to cases where there was judgment against the prisoners; for here the judgment is of a kind that could not be arrested. It was said by the counsel who spoke last, that there was to be a plea in bar; and if so, the facts on which that plea was to be grounded should now be disclosed.

Mr. *Mac Nally*.—This is the first time, and probably it will be the last, that counsel for the Crown ever called on the counsel for the prisoner, to disclose the secrets of his case.

Mr. *Attorney General*.—You come for favour, and it is not fair, either in respect to the Court or the counsel for the Crown, to keep them hoodwinked. He observed, that *Ratcliffe's* case was much more deserving indulgence, from the length of time that *Ratcliffe* had been out of the country. In that case, and in *Johnson's* case, there was a simple outlawry, or a commission under a statute; here this is an attainder by act of parliament; he insisted, therefore, on the prisoners stating the nature of their defence, though he did not mean to bind them down by form.

Lord *Kilwarden*.—We see no ground to warrant the Court in a farther postponement; we have no affidavit laid before us to direct our discretion; all that has been urged, though urged with ability, is still the mere statement of counsel.

Mr. *Curran* then said, that agreeably to the request of the attorney-general, he would state to the Court the nature of the defence, on which the prisoners counsel would rely. Their defence would be this: the statute on which the proceeding was founded enacts, that the persons therein named, having fled from justice, should stand attainted, unless, by surrendering before the first of December, 1798, they became amenable to the laws of their country. Till that day, the statute gave them time to surrender; and until the expiration of that day, they could not be attainted for default. Now the fact on which the prisoners counsel rely is, that before the first of December, 1798, and for many days before it, the prisoners were arrested at *Hamburg*, by command of his majesty; so that, by the command of the king himself, they were physically prevented from surrendering. Such was the substance of their defence. As to the manner in which it should be urged, whether the naked fact should be stated, or the result of that fact; or that this arrest by the king

was virtually a surrender, was as yet a doubt with the prisoners counsel; to settle which, they prayed the Court for an indulgence of time. Having thus complied with all the attorney-general had suggested, he hoped for his concurrence in applying to the Court for time, until the next term, in order to prepare the plea.

Mr. *Attorney-General* suggested, that the conversation of counsel could not appear of record, and would not account to posterity for the postponement of justice. Many casualties might occur; the judges might die before next term, or their books might be lost; and, therefore, he could not consent to have the matter left in this way. As to the plea, it was the simplest thing in the world, and one which the youngest man at the bar could prepare in a moment. Counsel, therefore, he was persuaded, must have come prepared with their plea in parchment; and nothing but a substantial plea could be a bar to his prayer for execution.

Mr. *Ponsonby*.—If the Court insist upon it, we are ready to tender a plea in bar *instantanter*.

Lord *Kilwarden*.—If you plead *ore tenus*, we shall observe great strictness.

Mr. *Ponsonby*.—It has been desired, by the attorney-general, that the plea should be put in on parchment; but I will undertake, if Mr. *Attorney-General* dispenses with a formal plea at present, that the counsel for the prisoners will not depart from the substance of whatever plea they may now mention.

Mr. *Attorney-General*.—The practice is both ways; that of pleading *ore tenus*; and that of putting in a written plea. The prisoners may plead *ore tenus*, but they must now plead one way or other.

Lord *Kilwarden*.—If you insist on their pleading, they must plead now.

Clerk of the Crown again asked Mr. Tandy, what he had to say why execution should not be awarded?

Mr. *Mac Nally* read the prisoners' plea. "I say, that before the time of surrender, namely, the first day of December, 1798, to wit, on the 24th day of November, in the year 1798, I was in parts beyond the seas, to wit, at Hamburg, where I was arrested and confined by command of his majesty our lord the king; and ever since continually have been detained in prison by the same command; by reason of which arrest and continual detainer, I have been prevented from surrendering myself; and this I am ready to verify."

Mr. *Curran* hoped, in supporting this plea, the prisoners' counsel would not be held to proof of the specific place and day of the arrest, provided they proved the arrest to have been before the day which the statute appointed for the surrender.

To this the *Court* assented.

Mr. *Ponsonby* said, he hoped it would not be necessary to prove the personal command of the king.

Lord *Kilwarden*.—On this point we will give no opinion.

The plea was then amended by the prisoners' counsel (the words "desire and authority" being inserted after the word "command.")

Mr. *Attorney-General* then put a replication *instantanter* and *ore tenus*, as follows:—"I say, that the prisoner, James Napper Tandy, in the plea mentioned, was not prevented, in manner and form as he has stated, from surrendering himself within the time prescribed by act of parliament; to wit, before the first day of December, 1798, in manner and form as is by said plea alleged: and this I pray may be inquired of by the country."

Here the prisoners' counsel urged, that the replication tendered an issue, not of fact, but an inference of law; and the counsel for the Crown refusing to alter the replication, the prisoners' counsel prayed an hour to consider of joining issue; which being granted by the Court, they retired, and on returning preferred an amended plea.—[*As the plea is grounded on the statute, we here insert the penal clause.*]

"Whereas the following persons have been notoriously engaged in the said rebellion, either by taking up arms or levying war against his majesty, or by having corresponded with, or adhered to, his enemies; or by otherwise fomenting or promoting the same, or acting therein, and being conscious of their guilt have fled from justice; that is to say" [here follow several names], "James Napper Tandy and Harvey Morris. Be it therefore enacted, that the said several persons, and each of them, shall stand attainted of high treason, and shall be liable to all the pains and penalties of law annexed to the crime of high treason, unless they, and each of them, shall severally and respectively surrender themselves to one of the judges of his majesty's court of King's-bench, or to some justice of the peace within this kingdom, before the first day of December, 1798, and shall respectively abide such charges as shall be made against them respectively, for, and on account of, the several treasons aforesaid, with which they have been charged."

Copy of the Plea.

"And the said James Napper Tandy says, that before the first day of December, 1798, to wit, on the 24th day of November, 1798, in parts beyond the sea, to wit, at Hamburg, he was arrested and imprisoned, by the command, desire, and authority, of his majesty, our said lord the king; and has been ever since continually detained in prison, by the same command, desire, or authority; by reason of which arrest and con-

"timal detention, it became impossible
 "for him, the said James Napper Tandy,
 "from the time of said arrest, to surren-
 "der himself on or before the first day of
 "December, 1798; and continued so im-
 "possible until after the said first day of
 "December, 1798; and this he is ready
 "to verify, and so forth."

Copy Replication.

"And the said right hon. John Toler, at-
 "orney-general of our said sovereign
 "lord the king, who for our present said
 "sovereign lord the king in this behalf
 "prosecuteth, as to the said plea of him
 "the said James Napper Tandy, by him
 "above pleaded as aforesaid, for our said
 "present sovereign lord the king, saith,
 "that the said James Napper Tandy did
 "not surrender himself within the time
 "in the said act of parliament men-
 "tioned, to wit, on or before the first
 "day of December, 1798, without such
 "cause as in the plea of the said James
 "Napper Tandy is by him alleged; and
 "this he prays may be inquired by the
 "country; and the said James Napper
 "Tandy likewise, and so forth."

*The following Affidavit was then made by the
 Prisoners :*

The King v. James } James Napper Tandy
 Napper Tandy } and Harvey Morris,
 and Harvey Morris. } severally make oath,
 and say, that on or about the 24th day of
 November, 1798, these deponents were
 respectively arrested at the town of Ham-
 burgh, by — Myers and — Wall-
 boum (whose Christian names these de-
 ponents know not), bailiffs or constables
 of the said city of Hamburg; acting, as
 these deponents verily believe, under the
 orders of his majesty king George the
 3rd, king of Great Britain, France, and
 Ireland. And these deponents severally
 say, that the said — Myers and —
 Wallboun, are now, as they believe, in
 the city of Hamburg, and are material
 witnesses to be examined on behalf of
 these deponents; without the benefit of
 whose testimony, these deponents are ad-
 vised and believe, they cannot abide the
 trial of the issue in this case. And these
 deponents say, that sir James Crawford,
 bart. who was his majesty's resident mi-
 nister at Hamburg at the time of the
 said arrest, and under whose authority,
 and by whose orders, the said arrest was
 made, as these deponents verily believe,
 inasmuch as they were arrested by the
 said Myers and Wallboun, in the name
 of his Britannic majesty, is also a mate-
 rial witness; without whose testimony
 these deponents cannot safely abide the
 trial of the issue in this cause. And these
 deponents say, that they will use their
 best endeavours to procure the attendance

of the said witnesses at the next Easter
 term; and expect that they will procure
 the attendance of the said persons at the
 time aforesaid. And these deponents
 farther say, that they do not mean or
 intend to give any unnecessary delay on
 the trying the issues in this case.

Sworn in court, this 12th
 day of February, 1800.

*James Napper Tandy,
 Harvey Morris.*

Upon this affidavit being filed—

Mr. *Mac Nally* moved, that it might be
 read; which being done, he then moved, that
 the trial of the prisoners might be postponed
 until the following term.

This application met with no opposition
 from the counsel for the prosecution.

The prisoners were accordingly remanded
 until Monday, the 3rd of May.

In the interim, the following affidavit was
 made; in consequence of which the trial was,
 by consent of Mr. Attorney-General, post-
 poned; when the prisoners were brought up
 on the 3rd of May, from time to time, until
 Friday the 16th of the same month.

The King v. J. N. } James Tandy, of the
 Tandy and H. Morris. } city of Dublin, mer-
 chant, maketh oath, that on the 10th
 day of March last, he wrote a letter
 to sir James Crawford, a copy of which
 is hereunto annexed, marked [No. 1.]
 requesting his attendance to give evi-
 dence in this honourable Court, upon the
 trial of the issue in this cause; and saith,
 that in order to insure a speedy and safe
 conveyance of said letter, deponent
 showed the contents thereof to a gentle-
 man, who holds a confidential situation
 in the Secretary's office at Dublin-castle;
 and deponent at same time gave him said
 letter, to be forwarded to said sir James
 Crawford, as directed; which deponent
 believes was accordingly done. But said
 sir James Crawford having left Ham-
 burgh for London, the said letter did not
 reach his hands until the 11th of April
 last, as appears by his answer, dated
 London, the 11th of April, 1800, in which
 he expresses his readiness to attend in
 this cause; but apprehends he cannot be
 in this kingdom until the latter end of the
 present Easter term, as by said letter
 hereunto annexed, marked [No. 2.],
 may more fully appear. And deponent
 saith, that he wrote another letter to said
 sir James Crawford, acquainting him that
 his attendance in this court was indis-
 pensable, and requesting him to come
 over as soon as he possibly could; which
 letter deponent forwarded by the post for
 London. And deponent farther saith,
 that in a short time after last term, de-
 ponent employed a gentleman of the
 name of George Smith, to go to Ham-
 burgh, for the purpose of procuring the

attendance of said sir James Crawford, and — Myers, and — Wallbourn, named in the affidavit of J. N. Tandy, sworn last term; and for that purpose to serve them with crown summonses, signed by the proper officer of this honourable Court; and that said George Smith accordingly proceeded from hence for Hamburgh; and saith, that before said George Smith had left this kingdom, deponent wrote to said — Myers and — Wallbourn, to apprise them of the necessity of their coming to this kingdom, for the purpose of giving evidence in this cause; and saith, he received a letter signed — Myers, which is in the German language. And deponent believes, that neither sir James Crawford, nor — Myers, or — Wallbourn, nor said George Smith, are yet arrived in this kingdom; so that they cannot be produced at present to give evidence in this cause; but deponent is in hourly expectation of the arrival of said George Smith, and expects the other witnesses, and particularly said sir James Crawford, will arrive here in the middle or latter end of the term; and saith he has used every diligence in his power to procure their attendance: and saith he does not make this affidavit for the mere purpose of unnecessary delay, but in hopes of an opportunity being given for the attendance of the witnesses before named.

No. 1.

COPY OF A LETTER TO SIR JAMES CRAWFORD.

Dublin, March 10, 1800.

Sir;—The subject of this letter must be my apology for the trouble it gives you. I beg permission to acquaint you, that in consequence of the proceedings taken in this kingdom, against my father, James Napper Tandy, and also against Mr. Harvey Morris, whom you caused to be arrested in Hamburgh, in the month of November, 1798, the Court of King's-Bench in this kingdom, has appointed a trial to be had in the beginning of next Easter term.—Upon this trial, my father has been advised, and has so sworn, that you will be a material witness. I am therefore to request and intreat your attendance in Dublin, on the 28th day of April next; and that you will immediately apprise me of your arrival, in order that such an arrangement may be made, that as little delay as possible may occur. If your travelling expenses be an object to a person of your rank and situation, they shall be paid to you. Permit me also to request your immediate answer, whether it will be in your power to attend in Dublin at the time appointed. I have the honour to be, Sir, your obedient humble servant,

JAMES TANDY.

VOL. XXVII.

No. 2.

COPY OF SIR JAMES CRAWFORD'S LETTER TO JAMES TANDY.

London 11th April, 1800.

Sir;—I yesterday received your letter of the 10th of March. This delay must have arisen, as I conceive, from its having been by mistake sent to Hamburgh: but as it came to me along with many others, I did not observe by what post it was brought. Nothing else should have prevented my answering it by the return of the post.

If I can, by any act of mine, consistently with my duty to his majesty, be of any use to a man in your father's situation; or if he, or his family fancy that I can, their request shall be attended to; and in such a case, neither the expense, were it much heavier, nor the trouble, would be any consideration with me. I have, however, some business on my hands here, which may, perhaps, prevent my arrival in Dublin so early as the 28th instant. It indeed may so happen that I cannot, without prejudice to my own affairs, reach that city till the middle, or perhaps a little past the middle, of the Easter Term: pray therefore inform me, whether in this case, the trial cannot be deferred. At all events, be assured of my readiness to comply with your wishes; and that any act by which I can administer any consolation to yourself, your father, or his family, will give me a degree of pleasure, equalled only by the pain which the discharge of those duties has sometimes occasioned to me.

I am, Sir, your most obedient humble, servant,

JAMES CRAWFORD.

Friday, May 16.

This day Messrs. James Napper Tandy, and Harvey Morris, were brought up to the Court of King's Bench, pursuant to a rule for that purpose made last Monday.

Mr. *Attorney General* said, that this trial had been postponed from time to time, in order to give the prisoners an opportunity of procuring the attendance of material witnesses from England: he understood that these persons had arrived.

Lord *Kilwarden*.—Are the prisoners in Court?

Mr. *Ponsonby*, for the prisoners.—The principal witness, on whose account this trial was postponed, has arrived late last night, and it is but within these few minutes that the prisoners have been informed of the fact. We do not know if there has yet been any communication with the witnesses: we do hope it would be the same thing to Mr. *Attorney-general*; we would wish to let the trial stand over until to-morrow.

4 H

Mr. *Attorney General*.—It would be contrary to the rule to let the trial be postponed in this manner. I trust the gentlemen will lay something before the Court. It has been the disposition, on the part of the crown, to accommodate the prisoners: they stated the evidence they were anxious to procure, and I understand that evidence has arrived.

Lord *Kilwarden*.—Is sir James Crawford in court? The counsel for the prisoners wish to postpone the trial: on what ground is that wish formed?

Mr. *Ponsonby*.—Not, my lord, upon an affidavit, but on a fact that is in the knowledge of the crown; that sir James Crawford did not arrive until late last night, and we would wish to have until to-morrow to confer with the other gentlemen concerned for the prisoners. Certainly the prisoners have received every accommodation.

Attorney General.—It is not within the usual mode of proceeding to make such an application as the present without an affidavit; but, my lords, these are facts that are of notoriety; I know that sir James Crawford did arrive late last night.

Lord *Kilwarden*.—Do you, Mr. *Attorney*, consent to the motion, or do you leave it to the Court?

Attorney General.—Not, my lord, for to-morrow, but for Monday.

Lord *Kilwarden*.—Then you consent to the motion, Mr. *Attorney*?

Attorney General.—I cannot retract; I think I am bound from what has occurred: to be sure, I think, there ought to be an affidavit laid before the Court, to justify the proceeding.

Lord *Kilwarden*.—Do you consent.

Attorney General.—I do, my lord, for Monday.

Lord *Kilwarden*.—Mr. *Ponsonby* do you move for Monday?

Mr. *Ponsonby*.—I do, my lord.

Lord *Kilwarden*.—Do you, Mr. *Ponsonby*, make the motion on the part of both the prisoners?

Mr. *Ponsonby*.—I do, my lord, move on behalf of both the prisoners.

Lord *Kilwarden*.—Let the prisoners be remanded until Monday, and then brought up by Habeas Corpus. The Court, Mr. *Attorney General*, and Mr. *Ponsonby*, will sit at ten o'clock on Monday morning.

The Prisoners were remanded.

Monday, May 19.

The prisoners were brought to the bar of the Court by Habeas Corpus, in pursuance of the rule for that purpose made on Saturday.

Clerk of the Crown.—Gaoler, set James Napper Tandy, and Harvey Morris, forward.

The prisoners stood up.

Lord *Kilwarden*.—The prisoners, Mr. At-

torney-general, are at the bar; what do you do?

Mr. *Attorney General*.—It is for me to call on the counsel for the prisoners, who have put in the pleas, to proceed first; and, in order to have it laid before a jury, it is my duty to pray that a *venire* do issue, returnable *instantiter*, that a jury may be impanelled to try the issues in these pleadings.

Lord *Kilwarden*.—Let the sheriff return a jury.

Clerk of the Crown.—Do you pray a *venire* in both cases?

Mr. *Attorney General*.—Yes; they have joined in their pleas. It was in order to save the time of the Court, that I prayed for a *venire* against both; but it will be more regular to proceed with respect to James Napper Tandy first: the pleas are separate; unless they consent to have them tried together.

Mr. *Ridgeway*.—It is not our duty to say any thing, but that we do not consent.

Lord *Kilwarden*.—Are there two pleas, or one plea?

Clerk of the Crown.—There are two pleas, my lord, on the roll.

[The pleas, as they were on the roll, were read to the Court.]

Clerk of the Crown.—Cryer, make proclamation for the jury. Gaoler, set James Napper Tandy and Harvey Morris forward.

Cryer.—You, good men, that are returned to try the issue depending between the right honourable his majesty's Attorney-general, on behalf of his majesty, and James Napper Tandy, answer to your names, as you shall be called?

[The panel called over.]

Clerk of the Crown.—There are three and twenty, Mr. *Attorney-general*; they all appear, except two.

Mr. *Attorney General*.—Then swear the jury.

Clerk of the Crown.—James Napper Tandy, look to your challenges.

The following Jury of the County of the City of Dublin, was then sworn.

Richard Harman	John Woodriffe
Francis Hamilton	Charles Mulvaney
John Halpin	John Rainsford
Fred. George Byrne	James Murray
John Dickinson	Thomas Corbet
Edward Bell	Charles Lorant

Counsel for the Crown.—Mr. *Attorney General* [John Toler, afterwards lord Norbury, and Chief Justice of the Common pleas.]

Mr. *Prime Sergeant* [St. George Daly, afterwards a judge of the king's-bench].

Mr. *Solicitor General* [John Stuart].

Mr. *Saurin*.

Mr. *O'Grady* [afterwards Chief Baron of the Exchequer].

Mr. *Mayne* [afterwards a judge of the King's Bench].

Agent.—*Thomas Kemmis*, esq. Crown Solicitor.

Counsel for the Prisoners.—Mr. *Curran* [afterwards Master of the Rolls.]

Mr. *Mac Nally*.

Mr. *Ponsonby* [afterwards Lord Chancellor].

Mr. *Ridgeway*.

Mr. *Bushe*.

Agents.—*Alex. Cooke*, and *H. Alsop*, esquires.

Mr. *Attorney General*.—We conceive it is the duty of the prisoner's counsel to proceed.

Mr. *Ridgeway*.—My Lords and Gentlemen of the Jury; In this case of the King against James Napper Tandy, by an act of parliament passed in this kingdom in the thirty-eighth year of the king, it is enacted, that James Napper Tandy, among several others, shall stand attainted of high treason, and shall be liable to all the pains and penalties of law annexed to the crime of high treason, unless they, and each of them, shall severally and respectively, surrender themselves to some one of the judges of his majesty's court of King's-bench or to some justice of the peace within this kingdom, on or before the first day of December, 1798; and shall respectively abide such charges as shall be made against them respectively, for, and on account of the several treasons aforesaid, with which they have been charged.

To this Mr. Tandy has put in a plea in bar, in which he states, that before the first day of December 1798, the day limited by the act of attainder for time to surrender himself, to wit, on the 24th of November 1798, in parts beyond the seas, to wit, at Hamburgh, he was arrested and imprisoned, by the command, desire, and authority of the king; and has ever since been detained in prison. By reason of which arrest and continual detention, it became impossible for him, from the time of the said arrest, to surrender himself on or before the said first day of December, 1798, and continued so impossible until after the said first day of December.

To this plea of Mr. Tandy, the Attorney-general has replied, that he did not surrender himself within the time in the act of parliament mentioned; to wit, on or before the first of December, 1798; without such cause as in his plea alleged. And, my lords, and gentlemen of the jury, on this plea and replication issue has been joined.

Mr. *Curran*.—My Lords, and you Gentlemen of the Jury; I am in this case of counsel for Mr. Tandy, the prisoner at the bar. I could have wished it had been the pleasure of the gentlemen who conduct this business on the part of the crown, to have gone on first: the subject itself is of a very novel nature in this country; but certainly it is the right of the crown, and which the gentlemen have thought proper to follow, to call on the coun-

sel for the prisoner to begin; and therefore it is my duty, my lords, to submit to you, and to explain, under the direction of the Court, to you, gentlemen of the jury, what is the nature of the question that you are sworn to try.

An act of parliament was passed in this country, which began to be a law on the 6th of October, 1798; on that day it received the royal assent. By that law it is stated, that the prisoner at the bar had been guilty of acts of treason of many different kinds; and it enacted, that he should stand attainted of high treason, except he should, on or before the first day of December following, surrender himself to one of the judges of this court, or to one of his majesty's justices of the peace, for the purpose of becoming amenable to that law, from which he was supposed to have fled, in order to abide his trial for any crime that might be alleged against him.

It was a law not passed for the purpose of absolutely pronouncing any judgment whatsoever against him, but for the purpose of compelling him to come in and take his trial; and nothing can show more strongly that that act of parliament has not established any thing touching the fact of the prisoner's guilt; because it would be absurd, in one and the same breath, to pronounce that he was guilty of high treason, and then call upon him to come in and abide his trial: and the title of the act speaks that it is an act not pronouncing sentence against the prisoner, but that it is an act in order to compel him to come forward.

This act creates a parliamentary attainder, not founded on the establishment of the prisoner's guilt of treason, but on his contumacious avoidance of trial, by standing out against a trial by law. I make this observation to you, gentlemen of the jury, in order that you may, in the first instance, discharge from your minds any actual belief of any criminality in the prisoner at the bar, and that for two reasons; first, because a well founded conviction of his guilt, on the authority of this statute might have some impression on the minds of men sitting in judgment on the prisoner; but for a more material reason I wish to put it from your minds, because his guilt or innocence has nothing to do with the issue you are sworn to try.

Gentlemen, the issue you are called to try is not the guilt or the innocence of the prisoner; it is therefore necessary you should understand exactly what it is. The prisoner was called on to show cause why he should not suffer death, pursuant to the enacting clause of the statute; and he has put in a plea, in which he states, that before the time for surrender had expired, namely, on the 24th of November, 1798, seven days before the day that he had for surrendering had expired, he was, by the order of his majesty, arrested, and made a prisoner in the town of Hamburgh; and that in consequence of such arrest, it became impossible for him to surrender himself

and become amenable to justice within the time prescribed: and the counsel for the crown have rested the case on the denial, in point of fact, of this allegation; and, therefore, the question that you are to try is simplified to this—"I was arrested," says the prisoner, "whereby it became impossible for me to surrender"—to which the counsel for the crown reply, "You have not been arrested at the time alleged by you, whereby it became impossible for you to surrender." This I conceive to be the issue in point of fact, joined between the parties, and on which it is my duty to explain the evidence that will be offered.

Mr. Tandy is a subject of this country, and had never been in it from the time this act of parliament passed, until he was brought into it, after his arrest on the 24th of November, 1798: on that day he was in the town of Hamburg. He had seven days, in which time it was practicable for him to arrive in this country, and surrender himself, according to the requisitions of the act of attainder. Every thing that could be of value to man was at stake, and called on him to make that surrender. If he did not surrender, his life was forfeited—if he did not surrender, his fortune was confiscated—if he did not surrender, the blood of his family was corrupted; and he could leave them no inheritance, but the disgrace of having suffered as a traitor.

Your common sense, gentlemen, will show you, that where a man is to forfeit his life, unless he complies with the conditions of an act of parliament—your common sense, your common humanity must show you, that a man ought to be suffered to perform the conditions on which his life depends. It can require no argument to impress upon your mind, that to call on a man to surrender himself on pain of death, and by force to prevent him from surrendering, goes to an atrocity of oppression that no human mind can contemplate without horror.

But it seems that the prisoner at the bar was a man of too much consequence to the repose of all civilized nations; to the great moral system, I might almost say, to the great physical system of the universe, to be permitted to act in compliance with the statute that called upon him to surrender himself upon pain of death. The wisdom of the entire continent was called upon to exercise its mediation on this most momentous circumstance; the diplomatic wisdom of Germany was all put into action on the subject; the enlightened humanity of the North was called on to lend its aid. Gentlemen, you know as well as I, the princely virtues, and the imperial qualifications, the consummate wisdom and sagacity, of our stedfast friend and ally, the emperor of all the Russias; you must feel the awe with which he ought to be mentioned: his sacred person has become embodied in the criminal law of England, and it has become almost a misprision to deem of

him or speak of him but with reverence.* I feel that reverence for him; and I deem of him and conceive him to be a constellation of all virtue—compared with whose radiance the Ursa-major twinkles only as the glow-worm. And, gentlemen, what was the result of the exercise of this combination of wisdom? That James Napper Tandy ought not to be got rid of in the ordinary way. They felt an honest and a proper indignation, that a little community like Hamburg should embezzle that carcass which was the property of a mild and merciful government: they felt a proper indignation that the senate of Hamburg, under the present sublime system, should defraud the mercy of the government of the blood of the prisoner, or cheat the gibbet of his bones, or deprive the good and loyal ravens of this country of his flesh; and accordingly by an order issued to these miserable inhabitants of the town of Hamburg, who were made to feel that common honesty and common humanity can only be sustained by a strength not to be resisted; they were obliged to break the ties of justice and hospitality; to trample on the privileges that every stranger claims; they were obliged to suffer the prisoner to be trampled on, and meanly, and cruelly, and pitifully to give up this unfortunate man to the disposal of those who could demand him at such a price.

If a surrender, in fact, had been necessary on the part of the prisoner, certainly a very material object was achieved by arresting him: because they thereby made it impossible for him to avail himself of the opportunity. They made it impossible for him to avail himself of the surrender, if the reflection of his mind led him to it. If a sense of the duty he owed his family led him to a wish, or to an intention, of availing himself of the remaining time he had to surrender, they were determined he should not take advantage of it. He had been guilty of what the law deems a crime, that is, of flying from justice, though it does not go to the extent of working a corruption of blood; but by this act of power, by this act of tyrannic force, he was prevented from doing that which every court of justice must intend he was willing to do: which the law intends he would have done—which the law gave him time to do—which the law supposes he might have done, the last hour as well as the first. He was on his passage to this country: that would not have taken up a third part of the time that had now elapsed; but by seizing on him in the manner he was arrested, it became impossible for him to surrender himself, or become amenable to justice. But, gentlemen, the prisoner, when he was arrested, was treated in a manner that made it impossible for him to do any act that might have been considered as tantamount

* This alludes to the prosecution of the printer, publisher, and proprietor of the Courier; see the case in p. 687 of this volume.

to a surrender. He was confined in a dungeon, little larger than a grave—he was loaded with irons—he was chained by an iron that communicated from his arm to his leg; and that so short, as to grind into his flesh. In such a state of restriction did he remain for fifteen days; in such a situation did he lye in a common vault; food was cut into shapeless lumps, and flung to him by his filthy attendants as he lay on the ground, as if he had been a beast: he had no bed to lie on; not even straw to coil himself up in, if he could have slept. In that situation he remained in a foreign country for fifteen days of his long imprisonment; and he is now called to show good cause why he should not suffer death, because he did not surrender himself and become amenable to the law. He was debarred all communication whatsoever: if he attempted to speak to the sentinels that guarded him, they could not understand him: he did make such kind of indications of his misery and his sufferings as could be conveyed by signs, but he made them in vain; and he is now called on to show good cause wherefore he did contumaciously and traitorously refuse to surrender himself, and become amenable to the law.

Gentlemen of the jury, I am stating facts that happened in a foreign country; will you expect that I should produce witnesses to lay those abominable offences before you in evidence? It was not in the power of the prisoner at the bar to procure witnesses; he was not of importance enough to call on the armed civilization of Europe, or on the armed barbarity of Europe, to compel the inhabitants of the town where he was imprisoned to attend at the bar of this court to give evidence for the preservation of his life; but though such interposal could not be obtained to preserve his life, it could be procured for the purposes of blood. And it is one reason why the rights of neutral states should be respected; because, if an individual, claiming those privileges, be torn from that sanctuary, he comes without the benefit of the testimony of those that could save his life. It is a maxim of law, that no man shall lose any thing, much less his life, by the non-performance of a condition, if that non-performance had arisen by the act of God, or of the party who is to avail himself of the condition; that the impossibility so imposed, shall be an excuse for the non-performance of the condition: that is the defence the prisoner relies upon here, “Why did you not surrender and become amenable to justice?” “Because I was in chains.” “Why did you not come over to Ireland?” “Because I was a prisoner in a grave in the town of Hamburgh.” “Why did you not do something tantamount to a surrender?” “Because I was unpractised in the language of the strangers, who could not be my protectors, because they were also my fellow sufferers.” But he may push this reasoning much farther; the statute was made for the express purpose

of making him amenable. When the crown seized him at Hamburgh, it thereby made him amenable, and so satisfied the law. It could not seize him for execution, as an attainted person, for the time had not arrived at which the attainder could attach. The king, therefore, seized him as a man liable to be tried, and yet he calls upon him to suffer death, because he did not make himself amenable by voluntary surrender; that is, because he did not do that which the king was pleased to do for him, by a seizure which made it at once unnecessary and impossible for him to do by any voluntary act. Such is the barbarity and folly that must ever arise, when force and power assume the functions of reason and justice. As to his intention after the arrest, it is clearly out of the question. The idea of intention is not applicable to an impossible act. To give existence to intention, the act must be possible, and the agent must be free. Gentlemen, this, and this only, is the subject on which you are to give a verdict. I do think it is highly honourable to the gentlemen who has come over to this country, to give the prisoner at the bar the benefit of his evidence; no process could have compelled him: the inhabitants of foreign countries are beyond the reach of process to bring witnesses to give evidence. But we have a witness, and that of the highest respectability, who was himself at Hamburgh at the time Mr. Tandy was arrested, in an official situation. We will call sir James Crawford, who was then the king's representative in the town of Hamburgh. We will show you, by his evidence, the facts that I have stated; that before the time allowed to the prisoner to surrender had elapsed, sir James Crawford did, in his official situation, and by orders from his own government, cause the person of Mr. Tandy to be arrested in Hamburgh. Far am I from suspecting, or insinuating against sir James Crawford, that any of the cruelties that were practised on that abused and helpless community, or on my abused client, were committed at his instance or personal sanction; certain am I that no such fact could be possible.

I told you before, gentlemen, that the principal question you had to try was, the fact on which the parties had joined issue; the force and arrest alleged by the prisoner; and the denial of that force by the counsel for the crown. There is one consideration, to which I think it necessary to give some attention. What you may think of the probable guilt or innocence of the prisoner, is not within the question that you are to decide; but if you should have any opinion of that sort the verdict given in favour of the prisoner can be no preclusion to public justice, if after your verdict they still call for his life; the utmost that can follow from a verdict in his favour will be, that he will be considered as a person who has surrendered to justice, and must abide his trial for any crime that may be

charged against him. There are various ways of getting rid of him, if it is necessary to the repose of the world that he should die. I have said, if he has committed any crime, he is amenable to justice, and in the hands of the law: he may be proceeded against before a jury, or he may be proceeded against in another and more summary manner: it may so happen that you may not be called upon to dispose finally of his life or of his character. Whatever verdict a jury can pronounce upon him can be of no final avail. There was, indeed, a time when a jury was the shield of liberty and life: there was a time, when I never rose to address it without a certain sentiment of confidence and pride; but that time is past. I have no heart now to make any appeal to your indignation, your justice, or your humanity. I sink under the consciousness that you are nothing. With us, the trial by jury has given place to shorter, and, no doubt, better modes of disposing of life. Even in the sister nation, a verdict can merely prevent the duty of the hangman, but it never can purge the stain which the first malignity of accusation, however falsified by proof, stamps indelibly on the character of an acquitted felon. To speak proudly of it to you would be a cruel mockery of your condition; but let me be at least a supplicant with you for its memory. Do not, I beseech you, by a vile instrumentality, cast any disgrace upon its memory. I know you are called out to-day to fill up the ceremonial of a gaudy pageant, and that to-morrow you will be flung back again among the unused and useless lumber of the constitution: but, trust me, the good old trial by jury will come round again; trust me, gentlemen, in the revolution of the great wheel of human affairs, though it is now at the bottom, it will re-ascend to the station it has lost, and once more assume its former dignity and respect; trust me, that mankind will become tired of resisting the spirit of innovation, by subverting every ancient and established principle, and by trampling upon every right of individuals and of nations. Man, destined to the grave, nothing that appertains to him is exempt from the stroke of death; his life fleeth as a dream, his liberty passeth as a shadow. So, too, of his slavery, it is not immortal; the chain that grinds him is gnawed by rust, or it is rent by fury or by accident, and the wretch is astonished at the intrusions of freedom, unannounced even by the harbinger of hope.*

* "There is a passage in Dante descriptive of the same state of amazement, produced by an unexpected escape from danger:

'E come quei che con lena affanata,
'Uscito del pelago alla riva,
'Si volge all'acqua perigliosa, e guata.'
'And, as a man with difficult short breath,
'Forespent with toiling, 'scaped from sea to shore,
'Turns to the perilous wide waste, and stands
'At gaze.'
Cary's Translation.

Let me therefore conjure you, by the memory of the past, and the hope of the future, to respect the fallen condition of the good old trial by jury, and cast no infamy upon it. If it is necessary to the repose of the world that the prisoner should die, there are many ways of killing him—we know there are; it is not necessary that you should be stained with his blood. The strange and still more unheard-of proceedings against the prisoner at the bar, have made the business of this day a subject of more attention to all Europe than is generally excited by the fate or the suffering of any individual. Let me, therefore, advise you seriously to reflect upon your situation, before you give a verdict of meanness and of blood that must stamp the character of folly and barbarity upon this already disgraced and degraded country.

Sir James Crawford, bart. sworn.—Examined by Mr. Ponsonby.

Were you, sir James, in any public capacity in the town of Hamburg, in the month of November, 1798?—Yes, Sir, I was; I was at that time his majesty's minister plenipotentiary.

Pray, sir James Crawford, did you ever before see the prisoner at the bar, James Napper Tandy?—I saw him on the morning he left Hamburg.

A Juror.—When did Mr. Tandy leave Hamburg?—In the month of November, 1798.

Mr. Ponsonby.—Pray, sir James Crawford, did you know by whose order the prisoner was arrested in the town of Hamburg?—It was in consequence of my requisition to the Senate of Hamburg.

Is the Senate of Hamburg the sovereign power of that state?—It is the power which administers the executive authority of the state.

Was that requisition to the Senate of Hamburg made by you in your private capacity as an individual, or as a minister?—It was made by me as his majesty's minister.

Did you receive orders from the king's minister in Great Britain, to make that requisition?—Perhaps the question is not very material in its object: I must decline to reveal the instructions I received: if it is not to tend to any farther revelation than what relates to Mr. Tandy, I have no hesitation in answering the question; if it does, I must throw myself on the Court.

"A distinguished Italian writer, now in England, commenting upon this passage in a late number of a periodical work, observes, nearly in the words of Mr. Curran: 'The concluding verse places the man in that state of stupor which is felt upon passing at once to safety from despair, without the intervention of hope: he looks back upon perdition with a stare, unconscious how he had escaped it.'"

—*Life of Curran by his Son*, vol. 2, p. 188.

Lord Kitwarden.—If any question should be asked you which you do not wish to answer, you may state your objection to the Court.

Mr. Ponsonby.—It is only relative to the prisoner.

Sir J. Crawford.—It was in consequence of orders that were transmitted to me by his majesty's secretary of state in Great Britain.

You mean lord Grenville?—Lord Grenville.

Pray, sir James Crawford, was Mr. Tandy detained in custody from the time of his arrest until after the first of December 1798?—Certainly.

Was that detention also in consequence of your requisition to the Senate of Hamburg?—Certainly.

Pray, sir James, are you acquainted with the distance from Hamburg to Cuxhaven?—I do not recollect the exact number of miles; but I can tell the exact number of hours in going there.

In what time may it be effected?—It may be done in seven or eight hours.

And from Cuxhaven to England?—In about thirty hours; it is possible; it is rare, but it is possible.

Then in thirty-seven hours a person may get from Hamburg to England?—Supposing he is favoured by the wind; it is rare, but it is certainly possible.

I believe Yarmouth is the port generally made, if a person wishes to reach England quickly?—Yes, it is.

Then I am to understand, a man may arrive in England from Hamburg in thirty-seven hours?—Yes, it is possible.

Pray, sir James, was the prisoner committed to close custody after he was arrested?—Yes he was, immediately.

And continued in close custody until after the first of December 1798?—Yes.

Pray, sir James, I presume that the persons who actually executed this arrest, and who actually watched the person of the prisoner at the bar during his detention, were subjects of the state of Hamburg?—They were.

Mr. Ponsonby.—My lord, it does not occur to me that I have any other question at present to trouble sir James Crawford with.

Sir James Crawford, Baronet, cross-examined by Mr. Attorney General.

Sir James, you will allow me to ask you a few questions. Had you any conversation with the prisoner at the bar after the period of his being arrested?—I never had any conversation with him.

Have you been made acquainted with the occasion of his arrival at Hamburg?—Not by himself.

What was the general opinion? Have you heard what was the occasion of his coming to Hamburg?

Mr. Ponsonby.—You mean, in the prisoner's presence, Mr. Attorney; for, unless he was

present, it cannot be evidence; general hearsay cannot be given in evidence on a trial of this sort.

Mr. Attorney General insisted upon his right of cross-examination.

Mr. Ponsonby objected to the question, as being irrelevant to the issue joined between the parties.

Lord Kitwarden.—We think the question ought to be asked; as to what the tendency may be, we do not know. **Mr. Attorney** asks, what the witness heard brought Mr. Tandy to Hamburg? It is impossible for us to know how far the question may extend.

Mr. Ponsonby objected to the question, as it did not go to establish some fact to justify the admissibility of hearsay evidence: it went to establish a fact, on hearsay evidence, that might be hereafter alleged criminally against the prisoner.

Mr. Attorney General.—I believe I had better go on.

Lord Kitwarden.—We give no opinion: the question is if he heard, merely.

Mr. Justice Chamberlain.—We admit it, because we do not see the tendency of the question.

Mr. Attorney General.—I ask you, have you heard, what was the occasion of the prisoner at the bar coming to Hamburg?—I understood that Mr. Tandy was at Hamburg, on his way to Paris.

Mr. Ponsonby.—That is not evidence against the prisoner, on this issue.

Mr. Attorney General.—Was any application made to you on behalf of the prisoner at the bar, on the subject of his arrest?

Sir J. Crawford.—No application was made to me on the subject of his arrest.

Mr. Attorney General.—Was any application made to you from any quarter, in order to liberate him from this arrest?

Mr. Ponsonby.—By the prisoner's direction?—The magistrates of Hamburg made application to me, requesting that I would consent to liberate him.

Lord Kitwarden.—That answer only confirms the direct examination.

Mr. Attorney General.—Do you believe that any application whatsoever was made for him to be liberated, for any, and what purpose?—I cannot say whether the application that was made by the magistrates of Hamburg, was in consequence of any request or petition from the gentleman at the bar.

Mr. Ponsonby.—I do conceive, that all questions of this sort ought to be explained; for any thing done before or after his arrest, has no more to do with the trial of this issue, than the antediluvian history.

Lord Kitwarden.—When did the magistrates of Hamburg make that application to you?—The very next day, my lord. There was a great deal of discussion immediately; and they signified their extreme desire, that I would consent to the liberation of the prisoner.

Mr. Attorney General.—Do you believe, that between the day of his arrest, and the first of December following, the prisoner at the bar made application to any body, for the purpose of coming over to Ireland?—I never understood that he did.

Do you believe he did?—If I might answer the question, I might say, I do not believe he did.

Did you ever hear, that he complained to any person that he was prevented from coming over to Ireland, by the arrest that took place at Hamburgh?—No, I never did.

Can you form any belief of the object or intention with which he sought at any time to be set at liberty?

Mr. Ponsonby.—Sir James has not said, that the prisoner did apply at any time between the two periods.

Mr. Attorney General.—He said, he believed he was arrested on his way to Paris.

Lord Kilwarden.—He said, he understood he was arrested on his way to Paris.

Mr. Attorney General.—Can you form any belief about it?—From what I have heard, I do believe that he came to Hamburgh on his way to Paris.

Do you believe he was at liberty to come to Ireland, after the 6th of October, 1798, if he pleased?

Mr. Ponsonby.—Let the question be limited.

Mr. Attorney General.—That was the day on which the act became in force?—He was not deprived of his liberty until long after.

Lord Kilwarden.—Be pleased, Mr. Attorney, to remember what the issue is: we do not know the tendency of your questions; but the issue is, whether the prisoner was arrested on the 24th of November, 1798; and continually kept in custody; so that he could not surrender himself on, or before, the first day of December following. We cannot see how your examination can bear upon the question before the jury; we only say this to apprise you of the issue.

Mr. Attorney General.—It would be unbecoming in me to ask any thing irrelevant to the case. It will by-and-by be necessary for me to state to the jury what the issue is, and what the law upon it is.

Lord Kilwarden.—What answer did sir James Crawford give?

Mr. Attorney General.—That he was at liberty.

Mr. Ponsonby.—That he believes he was at liberty.

Mr. Attorney General.—Pray, sir James, do you believe that the prisoner knew you were his majesty's minister, through whose means he was arrested?—I believe it was signified to him at the time he was arrested.

Have you heard, and do you believe, that the prisoner claimed to be liberated on any account whatsoever?—I have heard so.

What do you believe of that?—I will state on what grounds he required to be liberated:

†

I understood that he required to be liberated, as an officer in the service of the French republic.

Do you believe it?—I must believe it; because it was stated to me by the magistrates, who said that the Senate were desirous to liberate him on that ground.

Do you believe he was an officer in the service of the French republic?—I do.

Lord Kilwarden.—That might prove the fact of treason; but the answer has nothing to do with the issue.

Mr. Ponsonby.—I know that question is not evidence on this issue; but I do know that the question and answer may make an impression on the minds of the jurymen, though it has nothing to do with the issue. I do therefore object to its going up to the jury.

Mr. Justice Day.—I do not think it ought to go to the jury on this issue.

Mr. Attorney General.—If application had been made to you, to transmit Mr. Tandy to Ireland with all possible speed, would you have assisted him?—If application had been made to me, I would have transmitted him to England with all possible speed.

Lord Kilwarden.—Do you confine that question to the first of December, 1798?

Mr. Attorney General.—I will give the prisoner the latitude of the question in every period.

I ask you, would you have transmitted him from the moment of his arrest, with all possible speed?—Yes.

What was the purpose for which he was arrested?—For the purpose of transmitting him to England.

If Mr. Tandy had been desirous to have come to Ireland, would his arrest have prevented him?—Certainly the arrest would not; if such a desire had been signified on his part to me, he would have been immediately transmitted to England; and therefore the arrest could not have impeded his coming to England, a single day; as I conceive at least. At that time he was stated to me to be an officer in the service of the French; but I do suppose, that if he had signified such a wish, that the French minister would not have interposed to prevent it.

Was there any interposition to prevent his coming to Ireland?—No; but I do imagine and suppose that the French minister would have left him his liberty to do as he pleased.

Do you believe that he signified his intention to go any where else?—I never heard of his signifying any intention; all I heard was what was generally supposed.

What do you mean that you believe of his intention?—I have stated it already; I believe his intention was, to go to Paris.

Lord Kilwarden.—The question you asked, Mr. Attorney, was, if he believed the prisoner signified any intention to go any where else.

Sir James Crawford.—I never heard he signified such an intention.

Mr. Attorney General.—What do you believe.

Lord Kilwarden.—If he never heard it how can he believe it.

Mr. Attorney General.—Why was he detained in Hamburgh?—Because the senate refused to deliver him up.

On what ground did they refuse to deliver him up?—On the ground of his being an officer in the service of the French Republic.

Lord Kilwarden.—Who refused to deliver him up?—The senate refused to deliver him to me, as the king's minister; as they said they were afraid of embroiling themselves with the French.

Mr. Attorney General.—Can you state if he claimed any privilege on that account?—I do believe, at least I was told by the magistrates, that he bore a French commission; and I understand that the magistrates had received that information from himself, or from some person on his behalf.

Do you believe the claim was made by him?—Yes.

Lord Kilwarden.—What claim?

Mr. Attorney General.—That of being a French officer.

Sir James Crawford.—I said I believed so: that I understood so: that it was stated so to me by the magistrates.

Mr. Attorney General.—Do you believe that the arrest of him was the cause why he did not surrender himself in Ireland; or that it prevented him?—I do not believe it prevented him.

I now ask you, do you believe but for that arrest, that Mr. Tandy would now be in the city of Dublin?—I believe if that arrest had not taken place, he would not have been here.

Not been in Ireland since?—Not been in Ireland; probably he would not.

Lord Kilwarden.—It is "probably" you said?—Yes, my lord, probably he would not.

Mr. Attorney General.—Do you believe, that if the arrest had not taken place he would have been voluntarily in Ireland, to have surrendered himself, before the 1st day of December 1798?—That he would have been voluntarily: No.

I think you said before, that no application was ever made to you, to enable him to do so, previous to the first of December 1798?—No application to that effect was ever made to me.

And you said you would have transmitted him, if such an application had been made?—I should have transmitted him to England.

Would you not have transmitted him to Ireland?—No, I do not think I would: I should certainly to England.

Lord Kilwarden.—To what port?—It is impossible, my lord, for me to say to what port he might have gone.

Mr. Attorney General.—Pray, sir James what do you consider to be the shortest course

VOL. XXVII.

you would take for expedition from Hamburgh to London?—I should go, I believe, as far as my knowledge dictates, first to Cuxhaven, then to Yarmouth, and so through England.

You say you arrested the prisoner in Hamburgh, by an order communicated by the secretary of state in England?—Yes.

Did you know for what he was arrested?

Mr. Ponsonby.—I do not think any answer that can be given to that question, can be considered as evidence.

Lord Kilwarden.—I cannot see its tendency: the question asked is, why he was arrested.

Mr. Attorney General.—For the present we will request sir James Crawford to go down.

Lord Kilwarden.—Did you ever communicate to the prisoner, that you were willing to send him to Ireland?—No, my lord.

Could you have transmitted him to Ireland, or must you have sent him to England?—I think I should have sent him to England, if he had stated to me the circumstances of this act of parliament, which limited him to so short a period; probably I should have done every thing in my power to expedite him.

Could you have sent him immediately if he had applied to you without the leave of the senate of Hamburgh?—That was impossible; for he was arrested by the officers of Hamburgh.

Then you had not the power?—I had not without the senate's consent.

Pray sir James, if you had the power, could you have sent him the next day, if the prisoner had signified his consent or wish?—I cannot exactly say if I could have sent him on the next day, that depended on procuring proper persons to convey him to Cuxhaven, where his majesty's ships of war lie that would have conveyed him to England. I cannot say if I could have sent him on the 24th or not.

Mr. Ponsonby.—I would wish to suggest a question to the Court; it may be unnecessary: it is, if he knows what is the distance from Yarmouth to London?

Lord Kilwarden.—How far is it from Yarmouth to London?—I believe 120 or 140 miles.

Mr. George Smith sworn. Examined by *Mr. Ponsonby.*

Pray Mr. Smith, were you sent on behalf of the prisoner to the town of Hamburgh in Germany?—I was.

Will you look at that? (A parchment produced.)—It is a subpoena.

Out of this Court?—Yes, sir.

What persons did you serve with that subpoena?—I first served sir James Crawford, and Mathias Myer, first officer of justice at Hamburgh, who arrested Mr. Tandy. I have marked the services on the back of the writ.

† †

Did you serve any other person?—I served Ferdinand William Wallbourn.

I presume you mean the other officer in the executive government of Hamburg by authority of the senate?—He assisted in the arrest of Mr. Tandy.

You state that Mr. Myer was concerned in the arrest of Mr. Tandy?—So he informed me.

Pray sir, did those persons obey the summons?—They did not.

Pray, sir, were you empowered to offer to defray their expenses?—I was.

Did you make such an offer?—I did, to any amount, if they would come and give their evidence in this court.

To whatever amount they chose to fix their expenses, you offered them?—I certainly did.

Mr. Ponsonby.—You may go down.

Lord Kitwarden.—Mr. Attorney-general, will you cross-examine this witness.

Mr. Attorney.—No my lord.

Mr. Ponsonby.—Then my lords, we rest our case, on the part of the prisoner, here.

Mr. Attorney General addressed the Court, and said it would be necessary for him to say a few words, before he called the witnesses intended to be produced; and he would call the attention of the court to the nature of the issue to be tried between the king and the prisoner at the bar. Mr. Attorney-general then stated the penal clause of the statute, for which see page 1198.

On this clause of the act, a suggestion had been put on the roll of the court, which was now part of the record, that in consequence of the prisoner not having surrendered himself within the time prescribed by the act, to wit on or before the first day of December, 1798, he had become attaint; and to that suggestion a plea had been put in by the prisoner, which formed a part also of the record, and led to the issue that was to be tried: which stated, that he the said James Napper Tandy, before the first day of December, 1798, the time limited by the act of parliament for him to surrender, to wit, on the twenty-fourth day of November in the same year, at Hamburg, was a close prisoner, by order of the king; and to this plea had been put in a replication, on the part of the crown, that he did not surrender himself before the first day of December; and that he was not prevented for such cause as in his plea mentioned.

He begged pardon of the Court, and of the jury, for calling their attention to what the issue really was, that was to be tried; and he hoped the gentlemen of the jury would excuse him, if he did not follow the learned counsel who opened the case on behalf of the prisoner, through all the vast varieties of irrelevant and strange matter suggested by him. He trusted he did feel that he was doing a serious duty, and fulfilling the situation in which he was placed as he ought, by confining himself to the law and the facts of the

case, which a tribunal of justice in the kingdom of Ireland was then solemnly called upon to determine. It was not any part of his duty on this occasion, to exculpate the conduct of the emperor of all the Russias; or to explain to the jury what the *Ural Major*, or the constellation of the north, had, or had not to say to this question; but he would call the attention of the court to the matter of law: and the attention of the jury to the matter of fact. It was not necessary for him to follow the learned counsel through his lamentable description of what men may suffer who become fugitives from their native country, and are detained in foreign prisons; but he would, in this stage of his duty, endeavour to maintain and support the humane law of this realm, which knew of no such barbarous treatment to malefactors, as the learned counsel had stated. He had no doubt that ingenious address was calculated for some other purpose, than merely to impress on the minds of the court and the jury, the treatment this man met with in a foreign country. He was not afraid the trial by jury would ever suffer or diminish; no such thing could ever happen; he was appealing to a jury of the country, and vindicating that constitution that made the trial by jury the medium of justice.

He would address himself to the court; and with great deference to their judgment, submit on principle and decided authorities that could not be denied, what the issue to be tried in the present case was.

The learned gentleman who stated the prisoner's case, had said, the present was an unusual case; it was not an unusual case; for every man who was acquainted with the history of this country knew, that in consequence of the rebellion, both in Great Britain and Ireland, similar acts had been found necessary to attach to many men, who became fugitives from the law, the punishment of high treason. He begged to disclaim any intention of founding any argument by inference against the prisoner at the bar on any thing that was not relevant to the issue. It was not a substantive treason for which he was to be tried; but with deference to the court, he would tell them what was of consequence for the jury to know and to believe: it was, whether after the period at which the prisoner was arrested, there was any intention or disposition in the party so arrested, to become amenable to the law by which he was bound to surrender himself, or to lie under the penalties attached to his disobedience; and whether any act on the part of the crown by means of the arrest, was the cause of those intentions not having been fulfilled. This, he submitted, was the question to be decided by the event of this issue.

The Court well knew, that, in a case like the present, the jury ought to be informed—as he was sure they would be, by the Court—that many cases have happened under the laws of Great Britain, on similar sub-

jects. There was one class of cases that was similar to the present in point of principle, which are the subject of fugitive bills: he meant, the case of outlawries: when outlawries have been had at common-law and indictments found against the parties, against whom outlawries by the law may be set aside, if the party outlawed comes in within a certain time, provided he be within the realm at the time of the law passing; and which, should the party be out of the realm at the time, shall be enlarged to a farther period, that the party may have an opportunity to come within the realm. He did admit it to be settled law, that if a man should be arrested within the period given by the law for him to surrender himself, and that he should signify a desire, and that it shall be his manifest intention (he having been arrested by a competent power, at the desire of the king) to be amenable to the law, and pray to be brought before a competent jurisdiction to have his surrender received; that very intention and desire so to surrender, manifested by the person arrested, was evidence to go to the Court and the jury, in order to entitle him to the benefit of his surrender, as if it had been made in time; and all the cases that had ever happened on this subject (and he was giving the prisoner the greatest latitude that was ever contended for by a prisoner) make directly in favour of the crown, on the issue before the Court. He would recite two cases that do not go so far as the present; the first was the case of Roger Johnson, reported by Foster; but better reported in 2 Strange, 394. The defendant was outlawed upon an indictment for high treason, and had been arrested on the 27th of April 1746, and escaped from prison; and after the period of his escape, the outlawry was completed against him on the 8th of February in the ensuing year: he, after the period of being retaken, was brought to the bar of the court of King's-bench by Habeas Corpus, and there offered to surrender himself, pursuant to 5 & 6 Ed. 6, c. 11, it being within the year: and in that case he pleaded that he was beyond sea at the time of the outlawry being completed; and issue was joined on that fact; and it was insisted in that case, that he, being a prisoner, offered to surrender himself to law within the year: and it was settled in that case, that though the prisoner was a captive, it did not take away his right of surrender, and being amenable to justice.

Mr. Justice Day.—It was in court Johnson offered to surrender himself when he was brought up by Habeas Corpus.

Mr. Attorney General said, that was the fact: and he recollected, that on arguing Johnson's case on behalf of the crown, another case was resorted to, of a former period, where sir Thomas Armstrong* was denied that right which the prisoner at the bar at present enjoyed.

In the case of Murray, which was reported in Foster, page 50; he was brought before the lord justice Clerk, on the 28th day of June, fourteen days before the time limited by the act for surrender had expired; and was by him the same day committed to the castle of Edinburgh, where he was kept a close prisoner till he was removed to the town. This great man (judge Foster) went on and said, "Who-soever considereth this, must admit, that with whatever view he might be brought up at this time, he had merely that justice done him now by his majesty's order, which at one time or other, whenever he should have been brought up on the foot of the act of attainder, could not be denied him."—He would now go to that part of Murray's case on which he had no doubt the argument would turn. In the former case, the intention of the act was answered by his being made amenable to justice before the time limited for his surrender had expired; and his being kept a close prisoner till the day of the surrender was passed, it was out of his power to comply with the terms of the act; and therefore his non-compliance ought not to be fatal to him?

Lord Kilwarden.—Did not Mr. Murray offer to surrender him?

Mr. Attorney General said, it was matter of history in the case: Murray offered to surrender himself and become amenable to justice: he pleaded that he did offer to surrender. And much of the present case would turn upon the meaning of the word *amenable*. Murray did plead that he did surrender himself: and the truth of that plea was confessed in point of fact; and it was deemed being amenable within the meaning of the law.

Before he came to argue upon the case of lord Duffus, which he would read, and let go up to the Court and the jury, with all its imperfections on its head; he was willing to take that case upon the arguments of the counsel for the petitioning lord Duffus, the heir of the attainted lord Duffus—as to what would be the law as contended for by them. The case lay within a narrow compass, and he would read it; as the Court and the jury, who were highly concerned in the duty they had to fulfil, ought to be made acquainted with it.

Lord Kilwarden.—From what book do you read it?

Mr. Attorney General.—From Comyn's Reports, p. 440. By an act passed 1 Geo. 42, it was enacted, "that whereas George, Earl of Marischall, Kennet, Lord Duffus and several others, did, on or before the 13th of November, 1715, in a traitorous manner, levy war, &c. and are fled to avoid prosecution, &c. if they render not themselves to one of his majesty's justices of the peace, on or before the last day of June, 1716, every of them not rendering himself as aforesaid shall, from said 13th day of November stand, and be adjudged of high-treason," &c. &c.

* See the case vol. 10, p. 105.

sorted to this case; as mentioned in justice Foster's note on Murray's case; where it was stated that "lord Duffus was not amenable to justice before the expiration of the time given by the act; nor, *merely through his own fault, could he.*" In order to carry the attention of the Court and the jury to what import the word *amenable* had: and whether, under the construction of law, the prisoner could be deemed by the evidence produced, that he did intend to be amenable to justice. He would read the other passage, and then state the facts as they appeared in evidence.

"On the 15th of May, 1716, lord Duffus wrote to sir Cyril Wyche, desiring to throw himself at his majesty's feet, and to make a visit to him for that purpose, and did so at Hamburg, where sir Cyril was then resident, as a public minister for the king."—The case in every circumstance was nearly similar to the present case: the place, where he was arrested, was the same, and a minister there in the same situation with sir James Crawford.

"On the 2nd of June he set out for England, by a ship from —, and came to Hamburg, where, on the 29th day of June, he was seized and taken into custody, and was afterwards sent to England and committed to the Tower; but pardoned by king George." Upon this case, lord Duffus petitioned the king, which petition was referred to the Lords, and it was insisted by his counsel, that "lord Duffus was not attainted by this act of parliament, since he was minded to surrender himself, and coming into England for that purpose, but was prevented by the king's minister abroad, who seized and detained him in Hamburg, from whence he was ready to sail for England to render himself there to justice."

Mr. Attorney General continued. He said that when he was asking sir James Crawford, about the wish or intention of the prisoner to surrender, it was to demonstrate to the jury, that he was not minded, nor had any intention, to make himself amenable to justice: facts, which though proved in the case of lord Duffus, were so far from being proved in the case before the jury, that they were absolutely negatived. He wished that every word coming from lord Duffus's counsel, should go to the jury; because the issue knit between the present parties in the manner it was, let in the question of intention on the whole of the case. He, therefore, thought it his duty, again to remind the jury what the issue was: the suggestion was, that the prisoner did not surrender himself and become amenable to justice—and the plea was, that he was arrested; by which it became impossible for him to do so.

Mr. Justice Downes.—And that he was rendered incapable from the time of the arrest.

Mr. Attorney General.—The replication to the plea was, that he did not surrender himself pursuant to the statute, "*with such cause.*"

Before he came to the words of the plea, he would contend that it tendered an immaterial issue; because for any thing alleged in that plea, it did not appear that by any act of the king, or any other power, from the sixth day of October he was prevented from becoming amenable; or that from that period to the first day of December following, he was prevented in consequence of any desire expressed by him for that purpose, to become amenable; but confining the period from the twenty-fourth day of November, on which he was arrested, until the first day of December, on which he became attaint, it did not appear that he was minded, or had any intention, or desired to have an opportunity of surrendering: and was, in consequence of such desire, prevented from so doing. The reason for his urging this was, that in the cases recognised to be law, as they relate to the present on principle, it was on the party to show, by pleading and evidence, that he was minded, and had an intention, to surrender; and if the jury were to take the plea as tantamount to that purpose, in letting in that proof, the construction they ought to put upon it was, that the prisoner had made the request, and was refused; otherwise it was an immaterial issue: because, in legal pleading they were bound to give legal interpretations to words, and if they would bear out the case, otherwise they were immaterial. The material issue ought to have been tendered to this effect—"I was minded to surrender; but in consequence of that arrest I was rendered incapable of doing that which it was in my mind to do." Unless the jury gave such a construction to the word "*impossible,*" the issue was immaterial. On the whole of the matter, the material issue to be tried was nothing else than this—namely, whether it was his intention to surrender—and that his intention was frustrated by the act of the king operating on him by the arrest. How did lord Duffus's case bear against the present? Lord Duffus went to Hamburg, from whence he was ready to sail to England (this was the argument of the counsel to reverse the attainder), to surrender himself to a justice of peace, according to the act of parliament—that he had an intention to surrender, appeared by his application to the king's minister for that purpose—and accordingly he set out for Hamburg, and there he was arrested. It was for that reason, Mr. Attorney General said, he had been particular in asking sir James Crawford, what was Mr. Tandy's intention in coming to Hamburg, and if he believed it was in order to render himself amenable to justice. If it was in the mind of the prisoner at the bar, as in lord Duffus, an intention of coming to England; or if there was a shadow of proof that he wished to be amenable to justice, he ought not to be deprived of the benefit of the law. Lord Duffus case was argued at the bar of the House of Lords, and it was urged, "that it is a sufficient performance of a condition,

be performed in substance, although every circumstance is not pursued; and although he could not surrender himself to a justice of peace, yet he had surrendered himself to one of the king's ministers; and was afterwards sent over, and might have been tried, which was all the design and end of the act of parliament:" and secondly, it was urged, that the intention was the issue; and that the proof of the intention was to be taken from "the letter to the king's minister, and his having set out and got as far as Hamburgh, on his way to England, where he was seized." In that case the intention was not controverted; but in the present case, it was absolutely negatived. The jury would be regulated, in matters of law, as they arose in the case, by the opinion of the Court; and the judges would be regulated by adjudged cases.

He would conclude reading the case of lord Duffus; but he was not driven to the necessity of contending for the rigour of it: it might have deserved that animadversion made by judge Foster.

"The matter of law (says the reporter, who was a witness to the transaction) was referred to the opinion of the judges present; who were the chief justice Eyre, and myself: and we were of opinion, that this was not a compliance with the act of parliament; nor could any inferior Court, if the lord Duffus had been arraigned before them, construe it so to be; for all he could say for himself had been, that he had surrendered himself according to the act; which fact, if it had come to be tried, must have been determined by a jury; who, upon evidence could not justly say, that he did render himself to a justice of the peace as the act directs; or if they had found the matter specially, the Court could not adjudge it to be a render according to the intent of the act; for the legislature may put upon an offender what terms it pleases; nor can an inferior court hold any other terms to be equivalent to them: that must be an act of the legislature itself.

"And I mentioned the case* M. 8 H. 4. 12. which was this: Sir Thomas Brooke coming to the parliament, (5 H. 4.) one John Savage fell upon Richard Cheddar his servant, who was attending him, and having grievously wounded him, he fled; upon which, 'de advisamento procerem ad requisitionem communitat' ordinatum fuit—i8 Mart' in dicto 'parlamento;' that proclamation should be made at the place where the fact was done; and if John Savage did not render himself to the court of King's Bench within a quarter of a year after; he should be convicted of the offence, and pay double damages to the party.

"Proclamation was made in Easter Term, 5 H. 4, and he not rendering himself within the time, a *capias* was awarded against Savage, returnable M. 5 H. 4, and he not ap-

* As to which, see Hatzell's Precedents, vol. i. p. 15, ed. of 1818.

pearing, Cheddar sued for the double damages: and Savage in bar said that he had rendered himself to the king at Pomfret, within the time, in the presence of the bishop of Ely, then lord Chancellor; and the king committed him to the custody of the duke of Lancaster lord steward, where he could not render himself to the justice of the King's Bench; but the Court said, the order of parliament could not be varied by any inferior court; therefore his surrender of himself to the king, since he did not render himself to the justice as the proclamation required, was of no avail.

"Talbot, lord chancellor, and lord Hardwicke, approved the opinion, and the lords rejected the petition."

On this case, Mr. Attorney General said, he would not argue against the opinion of judge Foster, who said it favoured too much of the *summum jus*; but he would maintain, that it was incumbent on the party to show a manifest intention that he was minded to become amenable; and that the act of the king prevented him. Having said thus much, he would state the nature of the evidence he intended to produce.

The arrest of the prisoner had been proved by sir James Crawford; who also stated, that the intention of the prisoner was, not to come to England; and that he understood the prisoner was an officer in the service of the French republic, at present at war with the king. The question of intention being let in; and it being impossible for the Court to preclude it, he thought himself warranted to show acts of the prisoner, demonstrative of his having no intention to surrender himself: because, if intention was the defence of the prisoner, the counsel for the Crown had a right to show, that he was not minded to become amenable to the law to which he was subject.

It had been stated by the counsel, very differently from what had appeared in evidence, that the prisoner was a subject of this realm; no man felt so much as Mr. Attorney General, that he had not been always so. But he was arrested in Hamburgh, where he did not come for the purpose of surrendering himself, and where he could not have been, if he was not a fugitive, arrested in a foreign country on his way to Paris.

Mr. Curran.—It was only from hearsay that evidence was given.

Mr. Attorney General said, he allowed that; but it was not from hearsay that he was arrested in Hamburgh; and that he made no offer to surrender. What was the nature of the issue? No proof had been given to show it was the prisoner's intention to surrender himself; or that any thing was done, if he had such an intention, to carry it into effect. He was ready to prove that the prisoner did flee from the coast of Ireland: that he had come to Ireland from the French Directory, and acted under their authority. He did not wish to anticipate the evidence he would produce; he wished it might be understood

in every part of the world where the report of this case might go, that every man in this country was treated with a tenderness almost unknown to any other nation. He had waited month after month, to give the prisoner an opportunity of investigating his case: he had postponed it from term to term, and from day to day: every aid that could be given, was granted to the prisoner, to assist him in procuring his proofs; the accredited foreign minister of the king was brought forward to give his aid; and he begged it might not be hinted by any person, in argument or otherwise, that there were loyal ravens desirous for the flesh of the prisoner: No—the wish and intent of the crown was, to give him the protection of that law, which he and others had meditated to overthrow. The country possessed a trial by jury, and would keep it; and she had her court of King's-bench: and after all that had convulsed the world there was a jury in the box of that very place which this gentleman had endeavoured to destroy. If he knew any mode to bring proof to manifest the prisoner's intentions to have become amenable to justice, he would assist him: he had conceded to every motion made for their advantage, consistently with his duty to the responsible situation he stood in.

Mr. *Prime Sergeant* said, that, on the part of the Crown, they would call the postmaster of Rutland; by which they would show, that, on the 16th day of September, 1798, the prisoner was at Rutland, in the county of Donegall, after the act of attainder had passed both Houses of Parliament, but before it received the royal assent; in order to show, that he was in Ireland, exercising a foreign commission under the French republic, and that he afterwards departed the coast. He conceived this evidence to apply thus—that the essential part of the issue was, the intention of the prisoner to surrender, which he was prevented from doing by an act of power; so his being in Ireland, under circumstances he mentioned, would go to show he had no such intention. The witness would not be produced to prove any act of treason; but to show that the prisoner was in Ireland at a late period, and that, by his declarations made there, he had no intention of surrendering himself.

Mr. *Ponsonby* objected to the admissibility of any such evidence on the issue; because it was an issue simple in its nature, namely, whether the prisoner was arrested on a certain day, in a certain foreign country, and the continuing of that arrest from that day to the present; and that was the excuse put in the pleading, for the prisoner not being involved within the intention and provision of the act of parliament, which act was not in existence until the 6th day of October; and now evidence of an act, supposed to be committed on the 16th of September, was offered to show what was the intention of the prisoner, from the sixth day of October to the

first day of December following. If evidence of acts committed on the 16th day of September, could be given in evidence, then the acts of every day of the prisoner's life preceding might be given; for there was no particular virtue attached in law to the 16th of September; it was not a day fitter for testament than any other in the year, nor more pregnant with opportunities of affording evidence. The very act alluded to have taken place on that day, if founded in truth, of which there was no evidence, could not be comprehended in the intent of the bill; if it did, what was the consequence? The counsel for the Crown were to be allowed to go into evidence, to show that the prisoner had no intention, on the 16th day of September, to do an act that was not declared a crime until the sixth day of October following. Besides, the fact now attempted to be given in evidence, might have been the foundation of the statute.

Mr. *Curran*.—I beg to make a remark—

Lord *Kilwarden*.—At present you need not trouble yourself, unless the gentlemen on the other side wish a second gentleman to speak.

Mr. *Attorney General* offered to give, in evidence, papers, which he said were in the hand-writing of Mr. Tandy. He offered this evidence to show, that the prisoner's intentions of not surrendering himself, as had been proved by sir James Crawford, was an existing principle in his mind, antecedent to the period of the passing the act of parliament. As to the fact of the prisoner holding a French commission, there was evidence to go to the jury.

Mr. Justice *Downes*.—Do you persevere in offering the evidence of the prisoner being in Ireland in September?

Mr. *Attorney General* said, the point of view in which he felt the evidence relative to the written papers, and the prisoner having been in Ireland, was demonstrative of his fixed principle, not to be amenable to justice. The second fact, material to the issue, was, his holding the foreign commission; which was the cause, sir James Crawford believed, that made the prisoner claim to be exempt from any authority that should send him to Great Britain; of that there was evidence to go to the jury. He contended, substantive acts might be given in evidence, to support a charge on the same subject. In the crime of murder, charged to be committed at a particular time, if the crime be once proved, there can be no better proof than the declaration of the party on the subject of the criminal intention: to instance in the charge of trespass, which is confined to a particular period, there was nothing so settled in point of law, as that the intention of the party might be proved by retrospective evidence, after the fact of the trespass had been established. In the present case, it lay upon the counsel for the prisoner to prove the affirmative of the issue, and they proved a simple arrest; in consequence

of which, it was alleged, that the prisoner could not surrender himself. The counsel for the Crown wished to controvert by proof of acts of the party himself, and by his declarations bearing on the same subject, that he never had such an intention; they were not, therefore, tied down to the strict rule of law, as they would be in establishing the crime of treason. They did not offer the evidence to establish any particular fact, but to contradict that evidence given by the prisoner; and therefore they offered first, the declarations of the party on the subject, to show what his intentions were, and as affirmative of the fact of holding a French commission, in right of which he sought to be liberated, in order to go to Paris.

Mr. Curran.—I hope, my lords, it is not necessary for me to say any thing farther on the objection for the prisoner, to the inadmissibility of this evidence.

Lord Kilwarden.—We do not think it necessary. The first thing insisted upon, as evidence for the Crown, is, that on the 15th of September, 1798, the prisoner being in the kingdom of Ireland, did declare, that he was under a commission from the republic of France; and this evidence is offered, to show, that the prisoner had no intention, on that day, to surrender himself pursuant to the act of parliament; and counsel for the prisoner object to this evidence being received.

Mr. Attorney General.—That was not exactly the point of view in which I took it; but as affirmative of the fact of holding a French commission.

Lord Kilwarden.—The evidence given by sir James Crawford, on the cross-examination, was with a view to show, that the prisoner had no intention to surrender himself, pursuant to the requisition of the act of parliament. And the objection made by Mr. Ponsoby is formed on this—that it is not the issue knit between the parties. In my apprehension, it is not the issue knit between the parties; and supposing it went to support that position, that the intention of the party was a subject matter of inquiry now, I should think it did not support it; but it is not now necessary to deliver any opinion on what the fact of intention or want of intention was. The question is the issue joined: the prisoner was brought up to the bar of the court, and was asked if he could show any good cause why judgment should not be awarded against him, pursuant to the record in the court? To this the prisoner put in a plea, that he was arrested, by order of the king, on the 24th of November, in a foreign country, and that it thereby became impossible for him to surrender on or before the first day of December, 1798; the day appointed for that purpose. To this plea Mr. Attorney-General put in a replication; and by that replication he did aver, that Mr. Tandy did not surrender himself, without such cause as in his plea alleged. The question, therefore, to be tried is, whe-

ther there was such a cause to prevent his surrendering as is averred by him on the record; whether he was arrested on the 24th day of November, 1798, by command of the king, and under that arrest kept in prison; and by reason of that arrest and continual imprisonment it was impossible for him, to the last hour of the first day of December following, to surrender himself. What his intention was, or might have been, under the authority of the case stated to the Court, does not at all come before the Court; and I do think, let his intention be what it might, it does not affect the issue. This evidence is produced to show, that his intention was not to surrender himself: I conceive it not to be admissible in this issue: it is not attempted to show that he was not arrested, and that there was a possibility of his surrendering; but it is to show that which does not bear on the present question, and is not admissible evidence.

Mr. Justice Downes.—The evidence offered is that of the prisoner acting under a foreign commission, antecedent to the time of passing the act of parliament; and for any thing that may appear, this act may be the very act of treason that occasioned the passing of that statute; and then offering this kind of evidence, is calling upon the prisoner, whose guilt or innocence is not in issue, to try a fact which may have been the cause of the statute, and without any notice to the prisoner, to bring an original act of treason before the Court. This evidence is brought forward with a view of proving the intention of the prisoner. What intention? Not his intention to surrender. Suppose the intention was material to the issue, it is antecedent to the act that calls upon him to surrender himself had passed. I do agree with my lord Kilwarden, that the prisoner's intention is not material to the issue knit between the parties; but the question is the naked fact—whether he was arrested and confined, and in consequence of such arrest and continual imprisonment, he was thereby prevented from surrendering himself, until the period limited by the statute had expired. And, in my apprehension, whether he held a commission in the French service or not, on the 16th day of September; or that on that day he did, or did not, intend to surrender, pursuant to the act of parliament, do not bear on the fact of the issue knit between the parties.

Mr. Justice Chamberlaine.—I agree with the Court, that the intention of the prisoner has nothing to do with the present issue. I will suppose that on the day he was arrested he did not intend to surrender himself; yet under the act of parliament, he had a right to the last moment of the day limited to surrender himself: he was arrested and confined, and the question is, whether it thereby became impossible for him to comply with the requisitions of the act of parliament.

Mr. Justice Day.—The only question for the jury to try is, if it was possible for the

prisoner to surrender himself in pursuance of the act of parliament after he was arrested.

Mr. *Attorney General*.—The only ground on which I offered this evidence, was, that the acts of the party before his arrest, were evidence to show, that he had no intention at any time to become amenable to justice.

Lord *Kilwarden*.—The Court does conceive that they have given no opinion that can on principle disturb the cases cited from the bar. I conceive the case of lord Duffus to be law, but not applicable to the present case.

Mr. Justice *Downes*.—What we mean to say is, that the evidence now offered is antecedent to the act of parliament. There is evidence that it was possible for him to surrender before the arrest; but he was arrested and kept from that time to this in custody; and he alleges that thereby it became impossible for him to surrender.

Mr. *Ponsonby*.—Are you going, Mr. Attorney, to tender any evidence?

Mr. *Solicitor General*.—I cannot tell, until the Court has decided that we ought.

Lord *Kilwarden*.—Until you offer evidence, we will give you no opinion.

Mr. *Solicitor General*.—It may become a question for the jury to consider, if he was prevented from surrendering by the arrest; or whether it was not by having himself claimed as a French citizen, and his having been in Ireland under a French commission.

Mr. *Ponsonby*.—At what time?

Mr. *Solicitor General*.—Certainly before the passing the act.

Lord *Kilwarden*.—What evidence do you offer?

Mr. *Solicitor General*.—His acting as a French officer, certainly before the passing of the act, is evidence to go to the jury, coupled with what they have heard of his being claimed by the French minister, to rebut the allegation that the arrest was the sole cause of his not surrendering: I think there is evidence to ground that fact.

Mr. *Prime Sergeant*.—I hope it is not out of rule to offer a few observations to the jury?

Mr. *Ponsonby*.—I hope it is not understood that the prisoner's counsel is not to reply.

Mr. *Prime Sergeant*.—The counsel for the prisoners have the reply; it was so ruled in Roger Johnson's case.—Gentlemen of the jury, I take the issue in this case to be, whether the prisoner was prevented by the arrest from surrendering himself: the issue being thus, in my apprehension, the evidence to substantiate the fact is defective. As to the point, the impossibility being in issue, now I take it to be decided by authorities that will not be questioned. It appears from the determination of the case of Roger Johnson, that there must be a surrender: the same also appears from the decision in Murray's case: I therefore take the evidence in the present case to be defective: you will hold in your mind, that the impossibility of surrendering is the point in issue. There is given no

†

evidence of a surrender, or offer to surrender, to sir James Crawford, or any other person whatsoever; and therefore the prisoner has not maintained by evidence the issue he has joined in; but on the contrary, there is positive negative proof; for it appears, that so far from offering to surrender himself, sir James Crawford swore that he believed the prisoner had claimed to be in the service of a nation at war with this country, and therefore the evidence is defective as to the point. These are all the observations I intend to make.

Mr. *Ponsonby* said, he agreed with Mr. Attorney General, when he said, that the prisoner at the bar was a fortunate man to have his case submitted to the decision of the judges who sat on the bench, and to the jury, who stood in the box: he admitted the eulogium pronounced by the Attorney-general on the criminal law of Ireland, in its fullest extent: he looked upon the criminal law of the country to be the most wise and humane of any code of criminal law that had ever come within his very limited knowledge; and he did extremely regret, that the wise and salutary provisions of that law should have ever been superseded, or that the life of any of his majesty's subjects should be subject to any tribunal but that which the criminal law of this country had established.

The jury had heard many cases cited on the part of the crown: it could not be supposed that the jury were in a situation, from the nature and habits of their education, and their way of life, exactly to understand the point, upon which those cases had turned; but they were fortunate in this, that in matter of law they would under the direction and explanation of a Court fully competent to inform them on such matters, perfectly understand where those cited cases differed from that on which it was their province to decide.

He would, in the first instance, address a few observations to the Court. As to the case of lord Duffus, so much relied upon by the counsel for the crown, it was shortly this: it was a case on which no point was determined—no trial had for life or death. It was a case on which no point was determined during the lifetime of the attainted person: it was a case in which no point was examined into during the life of the attainted person: it was a case in which, whether the plea which was put in by the heir of the attainted person, was true or false; whether it would be good or bad if pleaded by the attainted person, were matters of which he was ignorant; because the attainted person had suffered the day marked out by the statute to elapse without having surrendered, the provisions of the act attainting necessarily attached to him; and whether he had any defence which would have been good if it had been made by him, to prevent such the attaching of the provision of the act of attainder, was not examinable by any tribunal on earth, after his death: it was not for counsel or for the Court to say at this day,

if lord Duffus had a good or a bad plea: it was not for them to say whether it was unwise in lord Duffus not to make use of it; or, if he had made use of it, to say whether he would have been found guilty or acquitted; but lord Duffus did not put in a plea, and therefore the Court were bound to carry the penalties into effect against the heir: and therefore the case of lord Duffus had no more to do with the case of Mr. Tandy than any other case, and it would have been just as pertinent to the point to have quoted the case of the six carpenters, or that other case reported by Doctor Swift, the case of Stradling *v.* Styles, as to have quoted the case of lord Duffus.

Unless the cases quoted had actually come to trial before a court and a jury, and agreed with the present in principle, and in every other circumstance that could govern that principle, no other kind of cause was of any authority over the case depending before the jury, both the principle should be the same, and the rule for application should be the same, or else one adjudged case could never be authority in the decision of another. As to the case of Roger Johnson, that was the case of a man outlawed for high treason: he came in and desired liberty to plead that he was out of the kingdom. The first point in controversy was, whether his surrender should be accepted; and the second point was, whether his plea was good: the Court determined that his plea must be received; and the jury found that he was out of the kingdom, and if there be any thing of analogy, not to say of identity, between that case and the present, it was favourable to Mr. Tandy: because if, in the first case, the Court determined that the surrender should be received, so, surely, the Court seemed bound in the present case, if the prisoner was prevented by any act of power or oppression from surrendering, under the provision of the act of parliament, to say that it amounted to an acquittal of the charge.

The statute upon which the present debate was, after reciting the names of the different persons on whom were to attach the penalties of high treason, went on to say, "That unless they and each of them respectively shall surrender to some one of the judges of his majesty's court of King's bench, or to some justice of the peace within this kingdom, before the first day of December, 1798, and shall respectively abide such charges as shall be made against them respectively, for and on account of the several treasons aforesaid, with which they have been charged, &c."

This act received the royal assent, and became binding on the subject on the sixth day of October, 1798; and from that time to the first day of December, in the same year, was the short period allowed for the prisoners therein named, to surrender themselves to justice; a period very short indeed, because, let the jury suppose that any one of the per-

sons named had a charge made on him, and thinking it imprudent for him to stand a trial, and feeling that the prejudice of the public ran against him, had gone to the continent of America, surely there would not be time for him to receive notice of the statute, and time enough for him to surrender himself in Ireland, to be amenable to justice within the time limited. And, therefore, the minds of those persons who framed the act, seemed to have been too much tainted by the events that had recently passed, and too much impassioned for the purposes of sober legislation: a law of this sort should be made with so much deliberation, with so much consideration, that it should not be subject to any reasonable objection; and when a legislature shows more a desire of avenging public justice than giving time to the accused person to defend himself, it shows there is more of human passion than wisdom in such legislation.

Such were the provisions of the act; and such the length of time allowed to the prosecuted persons; fifty-six days were allowed to the persons so comprehended; and on the 24th day of November, 1798, it appeared from the evidence, that the prisoner was arrested by desire of the minister plenipotentiary of the king of Great Britain, expressed to the government of Hamburgh, a neutral state, and within whose territories he was found. It had appeared to the Court and to the jury, from the evidence of sir James Crawford, that from the moment of that arrest, until the present day, that arrest had been continued; but it was contended by the counsel for the crown, that, because there were many days previous to the first day of December, if the prisoner had expressed a desire to sir James Crawford, he might have sent him to Ireland—that the jury should consider the arrest and continual confinement as no bar to the actual surrender of the prisoner in the kingdom of Ireland. As to the first part of the argument, that the jury should not consider the arrest as a bar to the surrender, that could have nothing to do with the issue; for the Court had been pleased to say, that supposing the prisoner to have been guilty of the intention not to surrender before the day on which he was arrested, yet it was his right, if he chose to change that intention, to surrender himself. And if it was his right to surrender himself at any period, to the last moment of the day on which the non-compliance was to carry the act into effect, such a surrender the Court would also tell the jury, would have been as effectual as if it had been made on the 6th of October. But the counsel for the crown contended, that though he was arrested, that did not make it impossible for him to surrender himself; because sir James Crawford said, that if application had been made to him he believed he would send him—where? To ENGLAND first. The attention of the jury had also been called, to what was considered as

a most material point; namely, that the prisoner had been claimed as a French officer; but they would please to observe, that sir James Crawford said nothing on that head of his own knowledge—he had never seen the prisoner—had never conversed with the prisoner—he knew nothing of his intentions, or of his situation except so far as he had been informed by common fame. This kind of evidence could not be received against the prisoner: the Court would tell the jury, that no such evidence of hearsay and belief, on the part of the crown, could be admitted on a direct examination to criminate the prisoner; but because sir James Crawford was produced by the prisoner, the crown was at liberty to cross-examine; that kind of examination was legal; but how strong or weak was matter of inference for the jury. What did sir James Crawford say?—He said, he did not know if he could send him; if he did, it would be to England; but he did not know if he had been applied to, if he could have sent him to England the next day: he did not know either that he would or that he could. He did not know if the senate of Hamburgh would have consented to it; for they were afraid of embroiling themselves with the French minister—and yet the jury were called upon to find a verdict bringing the prisoner within the penalty of an act of parliament, by which he was to forfeit his life without any examination of his guilt or innocence, because the counsel for the crown say he was not amenable to justice, and did not intend to be so—and because sir James Crawford said, that he did not know if he would or could have sent him over to Ireland, or if the senate of Hamburgh would have consented.

The jury, Mr. Ponsonby requested, would be particular to observe, that if the prisoner had been sent to London, it would have been of little avail; for the act of parliament did not require him to surrender himself to any justice of Great Britain; but the act required him to surrender to some one of the judges of his majesty's Court of King's-bench, or to some justice of the peace within this realm of Ireland: and, therefore the jury were to presume, that if sir James Crawford had sent him at all, if he had authority to send him, he would have sent him round through England, and the king's minister in England was the person into whose hands he would have been delivered, who probably would not have wanted for an excuse to detain him; and all this the jury were called upon by the counsel for the crown to take as proved—for what purpose? In order to bring the prisoner within the penalty of a law, by which he forfeited his life, without either his guilt or innocence being examined into, for or against him.

The wisdom of the counsel for the crown directs their conduct: and, therefore, they thought it wise to talk about a French commission—and claiming protection—and land-

ing in Ireland, and leaving the coast: and for what purpose was this done? Was it to show it was possible for him to surrender himself? Was it to show, that by being arrested he was prevented from surrendering himself? Was it to show whether he did intend to surrender or not? No; but it was for the purpose of impressing on the minds of the jury, that the prisoner had been guilty of treason, and extracting from them a conviction without proof; a sentence of condemnation on this summary act of parliament.

The jury were sworn to decide the nature of the issue, and they were sworn to decide nothing else: and whether the prisoner had or had not a French commission, or did not intend to surrender, or whether he had committed any act of treason, was as foreign from their consideration as the case of lord Duffus, so much relied upon by the counsel for the crown; or of the case of any other man that was born one hundred years ago; or shall be born one hundred years hence.

In one respect the prisoner had a great advantage—the evidence of sir James Crawford, who could not by any process have been compelled to come to Ireland; but the honourable sentiments which always governed his feelings had induced him to do that which no power on behalf of the prisoner could have compelled him to do; and, therefore, it was fortunate, that as the prisoner had been arrested, it was under the authority of a gentleman who had acted the honourable part sir James Crawford had acted. A person had been sent (Mr. Smith) to Hamburgh, with unlimited offers in point of expense, to those persons whose testimony could have been of advantage to the prisoner, to induce them to come to Ireland to give evidence, but their attendance could not be procured. But that which might have been withheld by the absence of those witnesses, had almost entirely appeared from the evidence of sir James Crawford. If they had appeared, it would have been proved beyond doubt, that from the moment of the prisoner's arrest to his transmission to England, it was impossible for him to make any application to any person but the savage brutes that were his keepers. What Mr. Curran stated would have been proved; that a dog was better treated—fed more cleanly—used more kindly; as if it was imagined he had more human reason and nature about him than an unfortunate and persecuted man; if it had not been for the conduct of sir James Crawford it would have been impossible for the prisoner to have avoided incurring the penalty of the act of parliament.

What was the situation of the prisoner? He was arrested on the 24th day of November, 1798, and detained seven months in custody there—confined in a gaol, and under force—sir James Crawford never saw him until the day he was removed—yet it is attempted to be given in evidence, that some person calling

himself a French ambassador, or calling himself the friend of the prisoner, did say certain things to sir James Crawford, which ought to be attached to the prisoner; yet was there any proof laid before the jury that any one of those declarations or desires were *by the authority of the prisoner, or came from him?* And yet the jury was called upon to bring a man within the penalties of an act of parliament, that took away his life without a trial, and without any evidence that any of those declarations sprung from him. But, in truth, the prisoner ought to be considered as having surrendered himself the day he was arrested; he was amenable to the law, if the English government could or would have sent him to Ireland: he was amenable to law if he had been sent; but, situated as he was, it was impossible for him to send himself. If it was not in the power of sir James Crawford, who had him arrested, to send him to Ireland, how was it possible for the prisoner, who was in close confinement, to come himself?—It would require a process more than human, to do that; and, therefore, the jury could not say that he was at liberty to surrender himself—they could not say that his arrest and continual imprisonment did not make such a surrender impossible.

Mr. Ponsonby concluded by observing the case appeared self-evident; but where the life of a fellow creature is at stake, and where a man is entrusted with the defence of that life, no exertion ought to be forborne. And, therefore, though I felt the case to be plainly in favour of my client, yet, I thought it my duty to say thus much to you. It is fortunate for him, that he is tried by the judges now on the bench, and by the jury now in the box, and having done my duty in submitting such observations as occurred to me, I commit him, gentlemen, to your care. The Court must feel the evidence imperative on them, both by weight and force, before they will direct a jury to bring the man within the law; and the jury will feel the evidence coercive indeed, before by such a verdict they will affect the prisoner's life.

Mr. *Mac Nally* said, that though counsel for the prisoner were entitled to the indulgence of the Court, yet his feelings, and the inclination of his mind, if he suffered them to predominate, would induce him to remain silent on the present occasion; but what had fallen from Mr. Ponsonby roused him to an exercise of his professional duty, which he now considered as imperative; calling upon him to give to his client the aid of those weak exertions which he possessed. Almost every thing that wisdom could suggest, on the subject before the Court, had been forcibly and clearly delivered, by those friends with whom he acted; but there was still an object or two, which he considered untouched, and which he trusted would have some degree of weight and force, not only with the jury, but with the Court.

He would first observe, that the words of the act of parliament, upon which the counsel for the crown had attempted to attain the prisoner at the bar of high treason, were plain and clear. The words of the act were, that "unless the persons therein named, among whom were the prisoner, James Napper Tandy, surrendered to some one of the judges of his majesty's court of King's Bench, or to some justice of the peace within the kingdom of Ireland, on or before the first day of December, 1798; and should respectively abide such charges as should be made against them, for, and on account of, the treasons charged upon them—they should stand attainted of high treason."—These were, substantially, the words of the penal clause in the act; and these words perspicuously pointed out the intention and meaning of the legislature when enacting it. What was that intention? It was, to call back to this country certain persons, in the act named, and amongst others, the prisoner at the bar, Mr. Tandy, whom the legislature presumed had fled from justice, to render themselves amenable to law. The prisoner was charged with having fled; and if flight was not an offence in itself, it was certainly, in contemplation of law, evidence of an offence, it was evidence of an offence, before the enacting of the statute—it was a contempt of the statute afterwards: but whether it was an offence, or a contempt, the intent of the legislature was satisfied; for it required neither argument nor fact to prove, that the prisoner was, at the present moment, amenable to justice—and there he stands (pointing to Mr. Tandy), ready to abide such charges as the law officers of the crown shall make against him—Then how were the jury to act? The circumstance of Mr. Tandy's being now a prisoner at the bar, must go with this effect to their minds, that unless the clearest proof the nature of the case would admit, be laid before them, to convince them, beyond all doubt, that it was possible for him to surrender, as directed by the act; and that he was not prevented from so doing, by any extraordinary interposition of power, force, or authority, they would bring in their verdict in favour of the prisoner—grounded on the physical impossibility of his being able to surrender himself, agreeably to the intent and meaning of the act of parliament.

Mr. *Mac Nally* then urged to the consideration of the jury, that there was no proof before them that the prisoner had any knowledge of the bill of attainder having passed; or that he was ever called upon to surrender: and he argued that wherever a statute laid a penal injunction upon a man, to perform a condition, the common law gave him three excuses for the non-performance. First, the act of God was an excuse, because no human wisdom could prevent its effect; secondly, the act of the law was an excuse, because the law can in no case be supposed to work an injury; and thirdly, because it is a legal

maxim, that the king can do no wrong. If the king can do no wrong himself, neither can he do so through the medium of his representative; and the jury had heard in evidence, from sir James Crawford, his majesty's representative at Hamburgh, that the gentleman at the bar had been arrested by his orders, founded on the royal authority: they had also heard described, and uncontradicted, his miserable situation in the gaol of Hamburgh, after that arrest, and must be convinced from those circumstances of cruelty and coercion, that it was not in his power to surrender, and become amenable to the injunction of the statute of attainder.

The question to be decided upon by the jury, had been plainly laid down by Mr. Curran; it was this, whether the defendant was so arrested, that it became impossible for him to surrender? This question contained the very issue to be tried and determined on by the jury; and the affirmative of it was substantiated, by the only witness examined to the fact, that was sir James Crawford, his majesty's representative.

It would be unnecessary for him to observe on the whole of sir James Crawford's testimony; but he would make a few observations on those points which he considered material. Sir James had sworn to facts *within his knowledge*, and on those facts there could be no doubt; sir James had sworn to *his belief*, founded on hearsay, and from that part of his evidence no conclusion could be drawn against the defendant. He would repeat this observation, for it was material that the jury should remember, that every point of the evidence sworn to, as within sir James Crawford's own positive knowledge, was in favour of the prisoner at the bar; whereas every point that might be presumed to make against him, was only founded on belief resulting from hearsay, and could not make against the prisoner. The first species of sir James Crawford's evidence, went to prove the impossibility of the prisoner's surrendering, as required by the act of attainder; the second species only went to show, that the witness did not believe that the prisoner had an intent to surrender, and become amenable to justice—a point irrelevant to the issue; for the intent made no part of the issue; nor was it, as the Court had already declared, a point for the consideration of the jury; they were concluded to try a simple fact, not an intention.

He asked the jury, would they take the witness's positive knowledge of material facts, as the criterion upon which they would decide, or would they ground their verdict upon the belief of the same witness, resulting merely from what he had casually heard from some person, but not from the prisoner; and which amounted at least to no more than conjecture? He entreated them to recollect, and to take into their most serious consideration this circumstance, that whichever way they gave credence to the evidence, it would be their

duty, on the issue they were to try, to find for the prisoner.—“It is material,” said he, “gentlemen, that you should remember this most serious circumstance in favour of my client—that the direct evidence of sir James Crawford, goes immediately, and directly, and positively to the issue and to acquittal; but, that the hearsay evidence goes to no part of the issue knit between the parties—it goes merely to show a probable intent; and the Court will tell you, that Mr. Tandy's intent, at the time of his arrest in Hamburgh is no object for your consideration.”

Another object, he said, occurred to his mind, and struck him with peculiar force; and he trusted, when attended to by the jury, would equally affect them. It was this; the only material witness produced on the trial, was sir James Crawford, and he was brought forward by the prisoner. Mr. Attorney-general had not called one witness from the town of Hamburgh; so that every circumstance in the testimony of sir James, being uncontradicted, must be taken as conclusive. Not a single witness from Hamburgh, to impeach the prisoner's plea; not a single witness from Hamburgh, to support the attorney-general's replication. How was this to be accounted for? Would the jury believe, that the omnipotent minister of the crown of England, he who had ordered the imprisonment of the defendant in Hamburgh, had not power, nor influence, nor other means, to produce witnesses from Hamburgh against the prisoner, if such witnesses were to be had? But the thing was impossible—no man could be found, even there, daring or base enough to come forward and contradict that honourable and fair testimony, which sir James Crawford had given, in favour of Mr. Tandy. Then what was the fair inference to be drawn from this total deficiency of evidence on the part of Mr. Attorney-general? It was a legal inference, and he would tell the jury the rule of law upon the point. It was a rule of law, he said, that where a party, as in the present case, had time and means to produce a witness, and did not produce him, for the Court and jury to presume, that such witness was purposely withheld; and that if he had been produced, his testimony would have made against whatever point of evidence the parties withholding him desired to establish. If there were means of producing witnesses from Hamburgh, why are they withheld? The answer is, because if in court they would not contradict, but would corroborate and establish the evidence of sir James Crawford, in favour of the defendant. The persons who had the custody of Mr. Tandy, his humane gaolers, might have been in court; but they were not present. Some of the members of the independent senate of Hamburgh might have been imported, to give evidence for the crown; but not one of those respectable characters was here. The officers of justice might have come forward, but they were kept back. If

it be asked, why did not Mr. Tandy bring them forward? Mr. Smith's evidence gives an explicit and satisfactory answer. That gentleman has told the jury, on his oath, that he offered those Hamburg senators, and gaolers, and officers of justice, money, and they refused it. The senators of Hamburg refused money! Will any man who ever heard of their character believe, that they refused money, unless there was some strong secret reason, operating on their minds, which may be easily guessed at, but cannot be positively stated or proved? An unlimited demand for their expenses to Ireland, was offered by Mr. Smith, on the part of Mr. Tandy; but they could not leave Hamburg; it was impossible for them to come. Yes, it was as impossible for those worthies to come from Hamburg into Ireland, to give evidence, as it was for Mr. Tandy to come from thence to surrender. Both parties were held in Hamburg by force—neither party had a power of coming into this country.

Mr. Attorney-general had attempted to sap the plea of the defendant, by cases of law—but here law was out of the question; for the replication to the plea had brought on a simple issue of fact before the jury. The first case quoted by Mr. Attorney, was from the reign of Henry 4th: the law in that case, of Henry 4th, was as dead as Harry the eighth; peace be to its manes! Mr. Attorney had given it a kind of resurrection; but he trusted it would now return to its grave, to rest in peace, and never again haunt a court of justice.

As to lord Duffus's case, on which the attorney-general relied as an implicit authority, it called for observation. On a superficial reading of that case, it certainly bore analogy to that of the prisoner's; but on a minute examination, no two cases were ever more dissimilar: they both were on bills of attainder, and that was the only feature of resemblance between them, for they differed not only in the mode of proceeding, but completely in principle.

The distinctions between the cases were these: lord Duffus was taken and committed to the Tower, but pardoned by the king. Mr. Tandy was taken by order of the king, and kept a close prisoner in Hamburg till the time for his surrender had expired.

Lord Duffus considering the pardon of the king a bar to the attainder, petitioned his majesty that he might be restored to his peerage. The king referred the petition to the House of Lords—the Lords rejected the petition—Why? Because the verdict of a jury only could say, that he was amenable to justice within the intent of the act of attainder.

The verdict of a jury in favour of the defendant, is the only bar to an attainder created by act of parliament; the king's pardon is no bar. Then what is the question here? Not whether Mr. Tandy is guilty or innocent of the charge of treason exhibited

against him by the act of attainder; but whether he ought to be executed as a traitor, without being put upon trial, on a charge of treason. When the jury have acquitted Mr. Tandy, and on the present issue I anticipate that their verdict must be an acquittal, then there would be another question to try—there would be another question to try after the jury had acquitted him on the present charge: the present charge was, that the prisoner had incurred the penalty of death by default; but their verdict of acquittal would restore to the prisoner the great privilege and blessing of the common law, trial by jury, on an indictment for whatever charge was against him.

Lord Duffus obtained the king's pardon—Mr. Tandy had not; but if lord Duffus had been brought to trial before a jury on the question of surrender, it was more than probable his lordship would have been acquitted, as he trusted his client would this day be. Lord Duffus was pardoned by the king; but the king's pardon on a bill of attainder by parliament, could not restore lord Duffus to his privilege, to his honour, or remove the corruption of blood created by statute, nothing but the verdict of a jury could purge those disabilities. The proceedings against lord Duffus also varied in other respects from those against Mr. Tandy: lord Duffus was a peer of parliament, and the proceedings in his case were before the House of Lords, not before the court of King's-Bench;—the question there was not, as it is here, whether the act of the king had rendered it impossible for lord Duffus to surrender; but it was this, whether lord Duffus having been pardoned by the king (the acceptance of which pardon, was an admission of guilt), was thereby restored to his blood and to his privileges of peer?—and the lords held, that the king's pardon did not restore him.

Here he apologized for detaining the jury, and said; he would make but one observation more; an observation in which, probably, the jury had themselves anticipated him, and which, if they thought with him, must acquit the prisoner on the present issue—it was this, that the question now to be decided by the jury, was not (as had been put by the attorney general), whether, if the prisoner had been at liberty from the 24th day of November, 1798 (when he was arrested), until the first day of December following (when the time for surrendering expired), he *would* have come into this country in order to become amenable to justice? No, the question was not, whether he *would*, but whether he *could*, within that time, have surrendered?—The evidence answers the question thus—that he could not have surrendered. What are the facts? The prisoner was arrested at Hamburg; he was there thrown into a dungeon—he was guarded—he was chained: could he so circumstanced, have surrendered himself in Ireland, within the time limited by the statute? No,

It was physically impossible; and this was the question on which the jury had to decide. Can a man be in two places at once? A very sapient and learned member of the Irish parliament, and who, very likely, may shortly be translated to the British senate, decided this question—he declared, “a man could not be in two places at once, unless he was a bird.”

Mr. Mac Nally concluded, by congratulating the public on the attorney general's eulogium upon the constitutional office and sacred functions of juries. Government, however, had not, as yet, restored them universally; for though he had now the gratification of addressing a respectable jury in Dublin, he should, as soon as the trial concluded, set off for Carlow, to attend as counsel, before a military tribunal, for persons charged with offences that were not within the cognizance of martial law.

Mr. *Ridgeway*.—My lords, and gentlemen of the jury, I am of counsel on the same side with the gentleman who spoke last; and I will submit a few observations applicable to law, on this case, without disturbing those impressions which my learned colleagues have made—

Lord *Kilwarden*.—The Court all think the case clearly with your client.

Mr. *Ridgeway*.—Then, my lord, I will not trouble the court or the jury.

[Here the case closed on both sides.]

Lord *Kilwarden*.—Gentlemen of the jury; You have a plain and simple issue, on a question of fact, to decide; and on as simple and plain evidence, as ever was laid before a Court and jury.—The question you have to try is, whether James Napper Tandy, the prisoner at the bar, was arrested on the 24th day of November, 1798, by authority derived from the king; and that by reason of that arrest and continual detainer under that arrest, from the day of the arrest to the first day of December in the same year, 1798, it became impossible for the said James Napper Tandy to surrender himself, on or before the first day of December, 1798.

Before I state the evidence, I will trouble you by stating the occasion of the present inquiry. An act of parliament passed in this country on the fifth day of October, 1798, intitled, “An act to compel certain persons who have been engaged in the late rebellion, which hath broken out in this kingdom, to surrender themselves and abide their trials, respectively, within a limited time, on pain of being attainted of high treason.” And then the act goes on, and recites the names of certain persons charged with being concerned in acts of treason, and among the rest, the prisoner; and that he had fled: and then the act proceeds to adopt such measures as may bring them in and render them to justice; then it goes on and says, that each of them “shall stand attainted of high treason, and shall be liable to all the pains and penalties by law

annexed to the crime of high treason, unless they and each of them shall severally and respectively surrender themselves to some one of the judges of his majesty's court of King's-bench, or to some justice of the peace within this kingdom, on or before the first day of December, 1798, and shall respectively abide such charges as shall be made against them respectively, for and on account of the several treasons aforesaid, with which they have been charged.”

The parties mentioned in this act, had until the last moment of the day of the first of December, 1798, to surrender themselves: and, gentlemen, you will observe, that the object of this act was, not to attain or punish any man; but it was to compel every man, mentioned in it, to do that which every subject of the realm was bound to do; namely, to surrender himself to justice: and the act does expressly say, that he must surrender himself and take his trial for any charges that shall be brought against him. The end and purport of the act was, not to inflict punishment on the party, or to condemn him to death unheard; but it was to compel him to do that which he ought to do, namely, to surrender himself; and in case he did not surrender himself, the act then went farther, and enacted, that the fact with which he was charged, should be taken as confessed, and that he had acknowledged the crime. I have stated so much to you, to remove from your mind what cannot indeed enter into it—that you have no more to do with the criminality of Mr. Tandy than you have with the criminality of any other person alive; and it is your duty to suffer no such idea to enter into your minds. It is necessary for me to go farther: I will state this to you—that by finding a verdict in favour of the prisoner at the bar, it will produce no other effect, than giving the crown an opportunity of indicting him for such charges as they may have against him: and in my apprehension, the intention or criminality of the prisoner is out of the question. I wish you to bear in your mind what the issue to be tried is; it is what I have stated—whether Mr. Tandy was arrested on the twenty-fourth day of November, 1798, and kept in close custody: and *quoad* whether it was thereby rendered impossible for him to surrender himself. As to his will or intention, it is not given to you in evidence, nor are you bound to inquire into it; and if you suffer that to enter into your consideration, you will find a verdict (if you find against the prisoner) on a fact that had no right to go to you in evidence. It is not what his intention was, or might have been, on the twenty-third of November, 1798 to go to Paris, and on the twenty-fourth to come to Ireland: that is beyond your inquiry; and if you enter into a consideration on that subject, you do that which you were not sworn to try. But you are sworn to try if he was, from that day until the time limited had elapsed, continually confined; and if it was

thereby rendered impossible for him to surrender himself "to one of the judges of the court of King's-bench, or to some justice of the peace within this kingdom."

It remains now but to consider the evidence. There was but one witness produced, and that was the British minister resident at Ham-
burgh at the time of Mr. Tandy's arrest. And what does sir James Crawford say? From his evidence you will inquire, if it was possible for Mr. Tandy to come over to Ireland to surrender himself. Sir James Crawford informed you, that he received instruction from lord Grenville, his majesty's secretary of state, to have Mr. Tandy arrested: that he accordingly was arrested, and confined in the gaol of Ham-
burgh.—You will be particularly attentive to sir James Crawford's expressions. He said the prisoner was under close confinement, and had been continually watched by foreign officers, from the time of his arrest, until he was transmitted to England.—That is the direct and positive evidence of sir James Crawford. Mr. Tandy was arrested by his order—detained by his order—under the authority of a foreign state—by officers of a foreign state. The possibility of sir James having discharged him from the arrest does not appear, nor is there any evidence to show that possibility. Some questions were asked sir James, as to what he heard and believed: his answers to those questions, in the opinion of the court, are not evidence to bear on the present case. Sir James Crawford said, that he did hear a requisition had been made, and he believed the prisoner had been claimed as a French officer.; but he heard it from some person not from the prisoner—he never had any conversation with him—he never saw him until the day he was transmitted.—That is not evidence to affect Mr. Tandy. You are told that this gentleman might have come over into Ire-
land, because he might have made application to sir James Crawford. In my mind that is a very gross supposition: but if he had an opportunity of making that application, sir James Crawford did not know if the senate of Ham-
burgh would have consented—sir James went farther—he never had any conversation with the prisoner—he did not know if the prisoner was acquainted with the circumstance of hav-
ing been arrested by his orders as the British minister. The fact does not appear, that the prisoner knew by what authority he was ar-
rested; and without that knowledge how could he know where to make an application? How is it possible to conceive from the evi-
dence given, that he had an opportunity to make any application? For my part, I cannot conceive it. I have the direction of my brethren on the bench, to say for them what I have already said for myself; that it is a case particularly clear, and on which there can be no doubt; that there was an impossibility from the time of the prisoner's arrest, on the *twenty-fourth* day of November, 1798, until the last moment of the first day of December

following, to surrender himself according to the requisitions of the statute.

The jury retired for a few minutes, and then returned their verdict—"WE FIND FOR THE PRISONER."

Mr. *Attorney General* then stated, that as the same evidence was applicable to the prisoner, Harvey Morris, he would withdraw the replication, and confess the plea; which being none, he prayed that the prisoners might be remanded for the present.

The prisoners were accordingly remanded.

The prisoners, notwithstanding their long confinement, looked remarkably well, appeared in good health and high spirits.—Mr. Tandy was attended in court by his son, James Tandy, esq; also John Tandy, Thomas Tandy, and John Tandy, jun. esqrs. of the Co. Meath, and several other near relations.

Mr. Tandy was afterwards permitted to re-
tire to the continent where he ended his days.

The following proceedings, to which Mr. Tandy was a party, came to my hands too late for insertion in the Volume which comprises the cases of the period in which they occurred; I have thought it better to insert them here than to postpone them until the completion of my Work. The publication from which they are taken is, I believe, now extremely scarce, but it was obligingly communicated to me by my friend Mr. Jonas Greene of the Irish bar, to whom I have been also indebted on other occasions in the progress of this compilation for much valuable information and assistance.

PROCEEDINGS in certain Actions, wherein JAMES NAPPER TANDY, esq. was Plaintiff, and JOHN Earl of WESTMORELAND, the Right Hon. ARTHUR WOLFE, esq. TIMOTHY DYTON, and St. GEORGE O'KELLY, esqrs. the Right Hon. JOHN FOSTER, esq. and JOHN Lord Baron FITZGIBBON, were respectively Defendants.—Reported to the Society of United Irishmen, of the city of Dublin, on the 7th December, 1792. by its Committee of Constitution. —Published by Order of the Society.

Exchequer.—Pleas side.

JAMES N. TANDY, esq. Plaintiff,
against

The Right Hon. JOHN FANE Earl of WEST-
MORELAND of the kingdom of Great Britain,
Defendant.

On Thursday the 21st of June 1792, a sub-
pœna from the Pleas side of the court of Ex-
chequer was served on the defendant at the

suit of the plaintiff, and the four days for appearance expired on Tuesday; on that day Mr. Attorney General obtained the following order:

Tuesday, 26th June, 1792.

JAMES N. TANDY, Esq.
against

JOHN Earl of WESTMORELAND.

Mr. Attorney General, of counsel for his excellency the lord lieutenant of Ireland, the defendant in this cause, moves to prohibit the issuing any attachment against him, and to quash the subpoena which issued in this cause; whereupon it is ordered by the Court, that Mr. Matthew Dowling, the plaintiff's attorney, do attend this court at the sitting thereof to-morrow, and that no process do issue against the said defendant in the mean time. CLONMELL. KEMMIS.

On Wednesday the 27th of June, Mr. Dowling attended the Court in obedience to the above order, was ordered on the table, and being asked by the Court if he had issued the subpoena against the defendant, he admitted he had, and that the defendant was served with it.—He was then asked by the Court to declare what the cause of action was—[Here the hon. Simon Butler,* one of Mr. Tandy's counsel, interfered, and protested against the question, and insisted that the attorney was not to disclose the secrets of his client,† and that an attempt to sift him for that purpose was contrary to law and justice]. The Court then asked Mr. Dowling whether he had any objection to answer the question.—Mr. Butler again interfered and said, that as counsel for Mr. Tandy, he was indifferent whether Mr. Dowling had or had not any objection to answer the question, that it was sufficient that the client had an objection, and that the privilege of the attorney was the privilege of the client, and he again protested against the question. The Court however thought proper to put the question, and Mr. Dowling peremptorily refused to disclose the cause of action. The Court not thinking proper to press the question farther, Mr. Dowling was dismissed without any other interrogatory.

Mr. Butler thereupon submitted to the Court, that the motion of the attorney-general ought to be refused. He argued (in which particular he was strongly seconded by Mr. Mac Nally) that the defendant not having entered an appearance, no motion on his behalf could be made; that there was in fact no cause in court but merely the institution of a cause by process.—Mr. Butler farther contended, that the proceedings in this case

were instituted against the earl of Westmoreland of the kingdom of Great Britain, and that no document whatever had been adduced which could give the court judicial knowledge that the defendant was lord lieutenant of Ireland—the attorney-general had yesterday come into court with a piece of written paper in his hand, which he alleged was the copy of a subpoena directed to the right hon. John Fane earl of Westmoreland of the kingdom of Great Britain, and, upon an allegation that the lord lieutenant is not liable to any action, grounds a motion, that the subpoena in this case be quashed, or the proceedings stopt—but how did it come officially before the court, to know that the lord lieutenant was the person mentioned in the subpoena? certainly not by any document or proof competent to warrant a compliance with the motion of the attorney-general. It was necessary that the earl of Westmoreland should appear, and, on being declared against, plead that he is the lord lieutenant, and show his letters patent in proof of the fact, before it can be considered as judicially before the Court.—Suppose the earl of Westmoreland should come forward to show his official qualification by his letters patent, and that these letters patent were without a seal, or otherwise defective in the forms which constituted their legality.—Suppose the chief justice of the King's-bench sued merely as lord Clonmel, the Court were not to know him as chief justice of the King's-bench, until he first came into court and pleaded, and proved that he was so. The Court had not in this case a competent judicial knowledge that the defendant was lord lieutenant—a judicial knowledge to be competent, must be founded on regular proof of the fact.

Hereupon the Court declared that they had judicial knowledge that the defendant was lord lieutenant; it would be ridiculous for any man to pretend ignorance of it; they attended his summons to parliament in a judicial capacity; they saw him acting there in the capacity of lord lieutenant—they saw him attended with the usual state, and received in all the official dignities of lord lieutenant; therefore it was sufficient to announce to their official knowledge that he was lord lieutenant *de facto*, and they had nothing to do with the speculations *de jure*: that they had too full a knowledge of the British constitution, to suppose there were two earls of Westmoreland of the kingdom of Great Britain, or two peers titled of the same place—that they had besides the evidence of every sense that conveyed information to their mind, and would not, in complaisance to systems of special pleading, be prevailed on to affect a blindness to the evidence of their own senses, to that notoriety which must be impressed on the mind of every man in the kingdom who ever considered the subject for a moment.

Mr. Butler contended, that the Court, in

* Concerning him, see p. 523 of this Volume, *note*.

† As to which see Phillipps's Law of Evidence, Part. 1, chap. vi.

deciding the point in the present stage, disposed of a matter by way of order (from which no writ of error lies), which ought not to be disposed of otherwise than by judgment. If the defendant appeared and pleaded, the plaintiff might demur, and from the judgment of the Court on the point the party is entitled to his writ of error, and thereby may obtain the decision of the *dernier resort*; though the lord lieutenant signs the writ of error, he does so ministerially merely, and not judicially, as the writ of error in civil cases is *ex debito justitiæ*, and not *ex gratiâ*; and therefore Mr. Butler firmly relied on his opinion as to the necessity of lord Westmoreland's pleading in court, and exhibiting documental proof of his being lord lieutenant, and begged permission to say, that the Court could not see, hear, nor understand judicially, that the lord lieutenant was the person meant, until the defendant appeared and pleaded that he was.

The Court said no man could be heard on this point, as they had delivered their opinions.

Mr. Butler observed, that their lordships had now given their decision upon a point of the very utmost importance, and upon grounds for which he knew no precedent.—But he had in his possession an attested copy of the letters patent appointing the earl of Westmoreland lord lieutenant of Ireland.—By this document it appeared that his official rank as lord lieutenant of Ireland was conferred by letters patent under the *Great Seal of Great Britain*, and Mr. Butler did not hesitate to declare, that an official rank, *merely so constituted*, could not be recognized, or have any weight in judicial decisions of any law court, in this independent kingdom. The Great Seal of Great Britain, in itself, has no more authority in this country than a mere cake of wax, or the Great Seal of the Mogul. The enrolment of it is an enrolment of a nullity, the Great Seal of Ireland was the only public instrument of authority that this country could acknowledge,—in this country the constitution of Ireland only could be acknowledged, and he knew of no constitution that should have weight or consideration in this court, but the constitution of imperial and independent Ireland; whether its principles were similar to, or taken from the British constitution was not for him to consider.

Court.—Would you, Mr. Butler, be understood to insinuate, that there is no legal chief governor in this kingdom?

Mr. Butler.—My lords, the regard I have for the peace of this kingdom obliges me to decline an answer to your lordships' question; but the conclusion can be readily drawn from the premises.

Mr. Butler then argued, that, supposing the defendant was considered as lord lieutenant, it does not necessarily follow, that he is in this case sued for an act done as lord lieutenant; the action may, for what the Court know to

the contrary, be brought against him in his private capacity.

The *Chief Baron* [Yelverton] said, that he in particular had judicial knowledge that the action was brought against the defendant as lord lieutenant, because he was in the vacation applied to, by the attorney for the plaintiff, to sign a letter missive addressed to the earl of Westmoreland, lord lieutenant of Ireland.

Hereupon Mr. Dowling assured his lordship, that such address must have arisen from the mistake of the officer of the court, and was contrary to his directions.

Mr. Butler argued, that the address of the letter missive would, in case it had been signed and proceedings had upon it, have been evidence merely to show, that the earl of Westmoreland, mentioned in that letter missive, was lord lieutenant, but certainly would not have been evidence that the defendant was sued as for an act done by him as lord lieutenant; but that letter missive, not having been signed or proceeded upon, is out of the question, and cannot be adduced as judicial knowledge of any fact in this case.

Mr. Butler then said, that the question for the opinion of the Court was, "whether any action, civil or criminal, can lie against a lord lieutenant of Ireland pending his vicereignty?" A doctrine is attempted to be set up, that "no civil or criminal action will locally lie against a lord lieutenant *during his government*." If this doctrine be true, the current of justice will be impeded, and the rights of the subject will be in danger; for it can be made appear most evidently, that no satisfaction can be obtained, either in this kingdom or in any other, against a lord lieutenant *after* the end of his government, for trespasses committed by him during his government. In every case to repel the jurisdiction of the king's courts, you must show a more proper and a more sufficient jurisdiction; for if there is no other mode of trial, that alone will give the king's courts a jurisdiction. Now, in this case, it is not shown that an action could be sustained at any other time in this court or elsewhere; and Mr. Butler said, that he would show the negative, and demonstrate to the Court, that after the dissolution of the government of a lieutenant, an action could not, with effect, be maintained against him either in Ireland or elsewhere. Ireland is an independent kingdom, and not within the dominion of the crown of Great Britain; an action of trespass, *vi et armis*, for a trespass committed in Ireland, is not maintainable in Great Britain. The trespass was not committed *contra pacem* of the king of Great Britain.—So much for any chance of succeeding in an action in Great Britain.—The case of *Fabrigas and Mostyn*,* was the case of a trespass committed in a place within the dominions of the crown of Great Britain, and therefore an action for such

* Vol. 20, p. 81.

trespass was well maintainable in Westminster-hall. As to an action in this kingdom at the end of the viceroyalty, it is to be observed, that the viceroy is a fugacious character, the subject of another realm, to which he might return even before the dissolution of his authority; in his return to which he was guaranteed and protected even after the cessation of his authority here; where then was the chance of remedy or redress against him after he secedes or is dismissed from office, and returned into his country with his property? His authority is under the great seal of Great Britain; if not valid, he has no authority; if valid, the courts here are not competent to decide upon it; and the courts in Great Britain are not competent to take cognizance of a trespass *vi et armis, et contra pacem*, committed in Ireland.—The statute of limitations may also possibly have operation; in short, if the doctrine contended for was to hold, a lord lieutenant might commit any trespass, might seize the property of the subject, imprison him, torture him, even murder him, with impunity.—Is the Court prepared to let such doctrine go abroad to the Irish nation?

Mr. Butler was proceeding in his argument, and pressing the subject upon the Court—the court declared, that they would give the most ample time for deliberation on all sides; and ordered the case to stand over till next term, then to be fully argued.

Mr. Emmet, for the plaintiff, moved, that the defendant do enter into security for his appearance in court on the first day of next term.

The Court refused the motion.

The Attorney-General declared, that the lord lieutenant would not give security.

Mr. Butler trusted that he would, if the Court was pleased to order him so to do.

Monday, Nov. 26th, 1792.

The motion being called on, Mr. Butler was directed by the Court to argue his objections to the motion. Mr. Butler then submitted to the Court his reasons wherefore the motion of the attorney-general should be refused. He said, that the subpoena was issued at the suit of J. Napper Tandy, esq. against the right hon. John Fane, earl of Westmoreland of the kingdom of Great Britain, and that, although until an appearance was entered, there was no cause in court, and that, by the rule of the Court no motion could be made on behalf of any person who was not before the Court, yet Mr. Attorney-general, alleging, that the defendant was the lord lieutenant, and that as such he was not liable to any action, moves that the subpoena be quashed, or that no proceedings should issue upon it; and demands, that the Court will dispose of it by way of order (from which no writ of error lies), which ought not to be disposed of otherwise than by way of judgment.

The Court having declared their judicial

knowledge that the defendant was lord lieutenant, and that the motion was not contrary to rule, and that the matter might well be disposed of by way of order,

Mr. Butler thereupon said, that he would not trouble them farther upon those points, but enter immediately upon the general question, "whether any civil or criminal action will locally lie against a lord lieutenant during his government;" for he contended that the Court, not having before them any document whereon they could ground a judicial knowledge of the cause of action, could not know whether the writ was instituted against the defendant for an act done by him in his *politic* or in his *natural* capacity, and were therefore compelled to decide the general question.—He said that the general inviolability of a lord lieutenant from action (if any such he has), must be grounded on his being, in quality of representative of the king, the executive power of this country; and if the inviolability extends to the lord lieutenant, it must also extend, by parity of reason, to a lord deputy, and to lords justices.—It will be proper to consider in what respect the king stands as to actions.—The original power of jurisdiction, by the fundamental principles of society, is lodged in the society at large; but every nation has committed that power to certain select magistrates; and in England, this authority has been immemorably exercised by the king or his substitutes. However, in the times of our Saxon ancestors, and even until the time of Edward 1st, the king, though the reservoir of justice, might have been sued in all actions as a common person; and for that purpose could issue a command to himself, the form of which was, "*Præcipe Henrico regi Angliæ*," &c.—1st Comyns's Digest, 104.—22nd Edw. 3rd, 3.—24th Edw. 3rd, 23-55.—43 Edw. 3rd, 22.—Staunford's Prærogativa Regis, 42.—Thelol's Dig. of original Writs, lib. 4, ch. 1, s. 3.—[Here the Court having questioned the quotation, 1st vol. Comyns's Digest was produced, and they were then satisfied of its reality, observing only, that there was in Comyns a *dubitatur*.] It is true, that at this day the mode of proceeding is otherwise, and that at this day the king cannot be sued as a common person may; for in some time after the Conquest, when the feudal system introduced by the Norman despots was established, the country ceased to be a nation, and sunk into a kingdom; allodial and independent tenures were abolished, the king became every thing, and the people nothing; the common law mode of suing the king became a matter of indecency, and it was thought improper that he should be subject to like process as a common person was; command, even by himself, became offensive to his organs of hearing, and, in the reign of the 1st Edward, who, though an able, was a despotic prince, *petition* was established in its stead, and has ever since been continued as the mode; therefore, at this day, if any person has, in point

of property, a just demand upon the king, he must petition him in his chancery, where his chancellor will administer right as a matter of grace, though not upon compulsion; for the end of such petition is, not to compel the prince to observe the contract, but to persuade him; but as to personal wrongs, as they are not to be presumed, if unfortunately they should happen to be committed, the subject is without remedy; for the inviolability of the chief magistrate is of more consequence than particular mischiefs.—This inviolability from action is, however, a direct, and substantive, and incommunicable prerogative, which the king has, in right of his royal dignity, over and above all other persons, and out of the ordinary course of the common law, and it is in its nature singular and eccentric. The emphatical words of Magna Charta, spoken in the person of the king, who in judgment of law is ever present, and repeating them in all his courts, are these:—"Nulli vendemus, nulli negabimus aut differemus justitiam vel rectum;" and therefore "every subject" (says lord Coke, 2nd Inst. 55) "for injury done to him by any other subject, be he ecclesiastical or temporal, without any exception, may take his remedy by the course of the law, and have justice and right for the injury done to him, freely without sale, fully without denial, and speedily without delay." The law being the supreme arbiter of every man's life, liberty, and property, courts of justice must at all times lie open to the subject, and the king cannot grant any exemption from suits, or communicate his prerogative in that respect to others. This prerogative, which gives the king inviolability from action, is besides, in a great measure, founded on his being the reservoir from whence justice is conducted, by a thousand channels, to every individual; all jurisdictions of courts are either mediately or immediately derived from him, their proceedings are generally in his name, they pass under his seal, and are executed by his officers; he has a legal ubiquity, he is always legally present in all his courts, and the judges are the mirror by which his image is reflected.—But how can this reasoning be applied to a lord lieutenant? He is not the fountain of justice, jurisdictions are not derived from him, their proceedings are not in his name, they pass not under his seal, and are not executed by his officers; he has no legal ubiquity, he is not legally present in all the courts, and the judges certainly are not the mirror by which his image is reflected. The act of the 21st and 22nd Geo. 3rd, chap. 49, enacted in the year 1782, when we vainly flattered ourselves with the establishment of our rights on a firm basis, does indeed make it lawful for a lord lieutenant to grant warrants for sealing writs of error returnable into parliament; but surely this act, passed at such a period, never was intended to operate for the lord lieutenant an inviolability from action; though the suitor

must petition for the warrant, it will not be argued, that the lord lieutenant can refuse to grant it, or that the granting or refusing it is a matter *ex gratia*, and not *ex debito justitiæ*, or that the lord lieutenant, in granting it, acts otherwise than ministerial.

Mr. Butler then argued, that if this inviolability contended for on behalf of the lord lieutenant was allowed, it would not only be a delay, but a denial of justice.—In the case of the king, when the law says that he shall not be sued as a common person, it points out the petition as the mode of obtaining justice.—In order to repel one jurisdiction, another should be shown: but in the case of the lord lieutenant, no antidote is offered to the poison.—If he be privileged from action during the time of his government, he never can be made responsible in this kingdom for any act done during his government, or in Great Britain for any trespass *vi et armis* he may commit here.—If he is privileged during his government, he is privileged in his return home—the home of the earl of Westmoreland is Great Britain, where he is a peer and privy counsellor, and where consequently the Court will presume that he will, in execution of his duty, reside after the expiration of his government; no process therefore in this country can affect him personally, and any process in this country against his property would be nugatory, he not having any property in this country upon which such process could attach. Suppose that after the expiration of his government and departure from this kingdom he should return to it in a private capacity, and an action be instituted against him, for an act done during his government, and that he should justify the act as having been done by virtue of his office of lord-lieutenant, and make a profert of the letters patent appointing him lord-lieutenant; if, upon oyer of those letters patent, they should appear to be under the great seal of Great Britain, does not the following dilemma present itself? He was either lord-lieutenant, or he was not; the patent was either legal or illegal. If he was not lord-lieutenant, if the patent was illegal, he was not entitled to any privilege during his government; if he was lord-lieutenant, if the patent was legal, no action can be maintained against him in this kingdom at any time for any act done during his government, for he may justify any such act under authority of such letters patent, and the courts here are not competent to determine whether the act was warranted by such authority or not, for the effect or extent of the letters patent of the king of Great Britain which gave the authority, can only be tried in the courts of the king of Great Britain. In a word, the earl of Westmoreland is either lord-lieutenant by virtue of this patent, in which case no action can ever be maintained against him in this country for any act done during his govern-

ment, or he is not lord-lieutenant by virtue of this patent, in which case no person will contend that he has any privilege whatsoever.

Having endeavoured to show, that, supposing the earl of Westmoreland to be lord-lieutenant, and as such privileged from action locally during his government, he never can be made responsible in this kingdom for any act done during his government. Mr. Butler proceeded in his argument to show, that he never can be made responsible in Great Britain for any trespass *vi et armis* committed in this kingdom.—There is a substantial distinction as to the *locality* of trials with regard to matters that arise *out* of the realm; there are some cases that arise out of the realm which ought not to be tried any where but in the country where they arise; an action of trespass *vi et armis* for a trespass *vi et armis* committed in Ireland is not maintainable in Great Britain, for the breach of the peace being merely local, though the trespass against the person is transitory, it must be laid to be against the peace of the king, and the trespass was not committed *contra pacem* of the king of Great Britain.—As to the case of general Mostyn, and other cases of colonial governors who were sued after the expiration of their governments in Westminster-hall in actions of trespass *vi et armis* for trespasses committed in and during their governments, they are not applicable to the case of a lord-lieutenant of Ireland; they were the cases of trespasses committed in places within the dominions of the crown of Great Britain, and the relief actions for such trespasses were well maintainable in Westminster-hall; but Ireland is an independent kingdom and not within the dominion of the crown of England, and therefore trespasses *vi et armis et contra pacem* committed in Ireland are not cognizable by the courts in Westminster-hall. There is another difference very observable between a lord-lieutenant of Ireland and colonial governors. The lord-lieutenant presides neither in a court of equity nor of law; but the governor has the custody of the great seal, and is chancellor within his province, with the same powers of judicature that the lord high chancellor has in England; and the governor presides in the court of errors, of which he and the council are judges, to hear and determine all appeals, in the nature of writs of error, from the superior courts of common law in the province—from whence it necessarily follows, that as a man shall not be judge in his own cause, no action is maintainable against a colonial governor locally during his government.—Stokes on the Constitution of the British Colonies 185—[Here the Court having denied the authority and declared that they never heard of the book or the author, Mr. Butler informed them, that the author, was a Mr. Anthony Stokes, a gentleman of the Inner-temple, a barrister at law, and

formerly chief justice of Georgia, and that his book was published in London in 1783.*] Mr. Butler, farther to show that no action was maintainable in England, quoted the trial of lord Strafford, 1st State Trials, 745,† (the illegality of which is universally admitted) where that unfortunate nobleman warmly and powerfully contended, that for any offence committed by him in Ireland, he was to be judged by the peers of Ireland.

Mr. Butler having endeavoured to show, that no action would lie against lord Westmoreland in Great Britain, and that if he was lord-lieutenant and privileged while he was such, no action could be afterwards maintained against him in this kingdom, proceeded in his argument, and expressed his apprehensions, that even were an action maintainable against him in this kingdom after the expiration of his government, he might plead the statute of limitations in bar, and that the plaintiff could not reply that the defendant had during that period been lord-lieutenant of Ireland; the statutes give no such replication; the case of a chief governor is not provided for by any saving proviso; the limitation clause has negative words, it enacts, that the actions therein specified shall be sued within the times therein mentioned, *and not after*, and the saving provisos make no mention of the case of a chief governor, and extend only to the particular circumstances and situation therein mentioned of a *plaintiff*, viz. minority, coverture, insanity, imprisonment, and absence beyond seas, and not to the circumstance or situation of a *defendant*, save only in one instance, viz. absence beyond seas.

Mr. Butler said that he would conclude with one case of the very first authority, communicated to him by Mr. G. J. Browne, by which it would appear that in former times, and those not the most affected towards rights of the subject, very different ideas from the present were entertained of a chief governor's liability to be sued. In lord Strafford's State Letters, vol. 1, p. 68, there is a letter from the lord justice to the lord deputy, dated the 26th February, 1631, "There was a parish church commonly called St. Andrew's church, situate in Damnies-street in this city, which in former times of disturbance here, by reason of the convenient situation thereof near the castle was used for a stable for the deputy's horses; that church is now legally evicted from us in the chancery of his majesty's court of exchequer by the chapter of the cathedral church of St. Patrick's, Dublin, to whom it belongs, and an injunction out of that court is directed to me, the chancellor, for the delivering the possession thereof accordingly." There is a decree in the exche-

* I have been informed that Mr. Stokes's book is received as authority in the courts of our American colonies.

† 3 Howell's State Trials, 14 36.

quer for restoring the church to the parish from whence it was taken. Mr. Butler concluded with this observation, that the case of St. Andrew's church was clear and decisive evidence, that, however high lord Strafford's notions of prerogative were, however adverse he ever was to the rights of the people, he never dreamed of an inviolability from action, and the barons of that day gave an example in the following of which the barons of the present day would display that independence and firmness which ought ever to attend the decisions of courts of justice.

Mr. Emmet, on the same side with Mr. Butler, began by commenting on the nature of this application. It was made by the attorney general, avowing himself not to be counsel for lord Westmoreland; no cause being in court on which to ground this application, before appearance, and unsupported by any affidavit. It was not, he said, a motion, and it would not be called a motion, if the counsel on the other side could call it by any other name. He would, however, tell the Court what it was, it was a *message* from a great man desiring the Court to stop the process of the law against him; and he would say, on the authority of 2 Inst. 56, that it is exactly that against which the "*nulli negabimus justitiam*" of Magna Charta was enacted. The ground of the application, as stated by the attorney general on a former occasion, was, that lord Westmoreland would not appear, and that it would be inconvenient and even dangerous to arrest him in the midst of his guards. If by law he cannot be compelled to appear, said Mr. Emmet, the menace was unnecessary—if by law he may be compelled to appear, the menace was indecent. If he can be compelled to appear, he must appear, and notwithstanding the character given of him by his own immediate advocates, I cannot believe, that while he claims to be the viceroy of this kingdom, he will set the example of resisting the laws to the subjects of his sovereign. But by law he may be compelled to appear, no privilege exempts him from appearing; for no privilege exempts him from *being sued*. It is a principle of the law, laid down in 1st. Com. Dig. 104. Title Action (C. 3), that *every subject* of the king, ecclesiastical or temporal, man or woman, villein or free, *may be sued*; so great was the protection to the subjects right of suing, that the common law mode was preserved even against the king until another was pointed out. For this, Mr. Emmet cited 1. Com. Dig. 104 (C. 1.) until "the time of Edward 1st, the king might have been sued in all actions as a common person." The Court observing that there was a doubt expressed in that very passage as to the fact, Mr. Emmet said he would cite them authorities in which no doubt was expressed and which would leave no doubt of the fact. He then cited 43 Ed. 3, 22. Thel. Dig. L. 4 C. 1. 3.—24 Ed. 3rd, 55, and having established that position, proceeded to argue,

that even supposing lord Westmoreland to be what he claimed to be, lord-lieutenant, his privilege is only an emanation from and cannot be greater than the king's prerogative.—But even the king can be sued by petition, and would still continue suable by the common law mode, if another, more adapted to the subtlety of the times, had not been found out; therefore the lord-lieutenant must still continue suable by the common law mode, since he cannot be sued in any other way. The Court have no right to quash its process for any thing but irregularity, and none is alleged here. But the only foundation of the application is, that an action will not lie against the lord-lieutenant. That may be true, and yet he may be sued. There are many men in many cases against whom actions will not lie, and yet they may be sued and must appear. If the viceroy has such a privilege, he comes too soon—he must plead it. In *Mostyn versus Fabrigas*, Cowp. 172, lord Mansfield says, if it were true that the law makes him that sacred character, he must plead it, and set forth his commission as special matter of justification; because *prima facie* the Court has jurisdiction. Mr. Emmet then cited several authorities to show that this was the rule of all privileges, and observed that this attempt to avoid pleading and setting forth the lord lieutenant's commission resulted from fear; for his counsel knew that if it was spread on the record, it might be demurred to, and could be proved to be a nullity. This endeavour to determine the question in a summary way has also another object, to prevent the plaintiff from being able to appeal, or from taking advantage of a writ of error; but that very reason ought to induce the Court to refuse the application. A question of novelty and importance ought to be put in the most solemn and conclusive mode of determination, and the Court ought to decline deciding in a manner summary and final on a matter in which the subject ought to have the power of appeal. He next questioned the *dictum*, that no action will lie against a governor locally during his government. It is my lord Mansfield's, said he, unsupported, as far as I know, by any other authority in the books, and fortunately my lord Mansfield has given the reason of his opinion; "because upon process he would be subject to imprisonment." The guarded manner of expressing the *dictum* shows its weakness. He says *locally* no action lies; but he does not and could not say that no action would lie against him out of the place where he is governor, and yet his imprisonment in England would as much impede and embarrass his government, as if it were at Barbadoes. But it is not necessary that he should be subject to imprisonment in order that an action should lie. They are every day brought against peers and persons whose bodies are privileged from arrest. If the right of the subject to have remedy for injury must be restricted by circum-

stances of policy, it ought only to be restricted as far as that policy renders it indispensable. The principles of the common law and the right of the subject ought not to be sacrificed even to the attainment of that great object, the security of a viceroy's person, if it can be attained in any other way. The consequence therefore, is, that the Court must so mould its process as to attain the redress of the subject without violating that privilege. This can be done by making the next process after this subpoena, distress and not attachment, and be by letting the plaintiff proceed at his peril to a parliamentary appearance. Mr. Emmet then cited by way of analogy to his last position a case from Raymond 152, in which it was determined that an officer of the king's household, whose person was consequently free from arrests, might be sued, so as that the king might not be deprived of his service, and so might be outlawed. He then observed that the inconveniences of the opposite doctrine would be most monstrous and show it cannot be law. Mr. Butler had very forcibly asked, would it be a good replication to the plea of the statute of limitations, that the defendant was chief governor? He would also ask, would it be good evidence on a question of twenty years possession in ejectment, that the defendant was lord-lieutenant, and that therefore no action could be brought against him? Were the court prepared to say that a viceroy might contract any debts, might break any contracts, might do any wrongs, might commit any crimes with impunity? Were they prepared to say, that the king by continuing any man to be a governor during life, might give him, not only a pardon for all crimes, but an indemnity from all civil engagements. The king himself has no such indemnity. Were the Court prepared to say, that no action will lie against him as executor or trustee? If they are, they must also say, that he cannot be an executor or trustee. The law says almost as much of the king, it says he shall not be a trustee, and that if he be appointed executor, he shall delegate others against whom actions shall be brought; thus preserving the subjects right to remedy. The lord-lieutenant certainly can be a trustee, and be sued as such; for he is one in many instances, and actions are brought against him as such every day. [Here Mr. Baron Power intimated that the Court knew the cause of action, for the attorney-general had told it to them; upon which Mr. Emmet replied, that neither the Court nor the attorney general could possibly know, nor had a right to know the cause of action; that no one but Mr. Tandy, his counsel, and his attorney, could know the cause of action, and that the Court, if they decide against the plaintiff, must say, that no action whatsoever will lie against the lord lieutenant.] But, continued Mr. Emmet, if the governor be entitled to such a privilege as is contended for, he must be a *legal* governor,

and *legally* appointed, inasmuch as the privilege is a *legal* one. The Court may know that he is *de facto* governor, and that may be sufficient to warrant and induce them to pay him every obeisance and attention, or perhaps to sanction any ministerial act which he must do, but he can never have a *legal* right to a *legal* privilege in a court of law, unless he had a *legal* right to his office; but he has not a *legal* right to his office; for he is appointed under the great seal of England. It was but lately that some of the ablest lawyers on the bench and at the bar, were of opinion, that the great seal of England could not appoint a *regent* for this kingdom. Is the Court prepared to controvert this doctrine, by asserting the equivalent of its opposite to be true? Is it prepared to say, that the great seal of England can appoint a *regent*, for it can appoint a viceroy, whose name and whose functions differ but little from those of a *regent*. The attorney general deprecated on a former day the supposition that this country has been for six hundred years, without a *legal* viceroy. To that, said Mr. Emmet, I answer with the sincerest wish, that this country may not continue to be, as it has been for the last six hundred years; its independence was ascertained in 1782, and if there was any abuse crept in before, it ought to have ceased then. For the last ten years, I boldly say, there has been no *legal* viceroy in Ireland; and the counsel for lord Westmoreland will not only not venture to contradict me, but they will not even dare to let his patent get into a train of legal investigation. Mr. Emmet concluded, that this was an application which lord Westmoreland had no right to make, and which the Court had no right to grant.

Mr. *Mac Nally*, on the part of the plaintiff, wished that the counsel on the part of lord Westmoreland should then be heard, and that he would reply. But the Court having declared that they did not require to hear counsel on behalf of lord Westmoreland,—Mr. *Mac Nally* declined to speak, alleging that he could add nothing new to what had already been advanced by Mr. Butler and Mr. Emmet, though he was ready to reply to the counsel on the other side.

Mr. *George Joseph Brown* followed Mr. *Mac Nally* in saying that every thing that could have been said, having been already laid before the Court by Mr. Butler and Mr. Emmet, he would not trouble them with any observation of his—his industry had supplied him with only one case, the case of St. Andrew's church, and he had communicated it to Mr. Butler who had already submitted it to the Court.

Lord Chief Baron.—I wish that the counsel on behalf of lord Westmoreland would apply themselves to one point, viz. "in what capacity is lord Westmoreland sued?" I am clearly of opinion that he is not liable to be sued for any act of state, but how does it appear that he is here sued for such act?—he has two

capacities, a natural and a politic capacity—the action may be against him in his natural capacity, and then the question would admit of more difficulty, though even then I incline strongly to think that he is not liable to be sued, however, could it be made appear, that he is sued in his politic capacity, the cause would be eased of every doubt.—I have two capacities—I am Barry Yelverton, and I am Chief Baron: as Barry Yelverton, I am satisfied that he is sued for an act of state; but my satisfaction as Chief Baron is not equally certain.

Mr. *Prime Sergeant* [Fitzgerald] and Mr. *Solicitor-General* [Toler] thereupon strongly insisted, that, from the argument of the plaintiff's counsel, it clearly appeared that the action was brought against the earl of Westmoreland in his public capacity, and that such was the evident tendency of the most part of what they advanced. They farther insisted, that the cause of action would appear from the letter of attorney from the plaintiff to Mr. Dowling. They also contended, that the counsel for the plaintiff not having denied the allegation of the attorney-general, that the action was brought against lord Westmoreland for an act of state, joined to the refusal of Mr. Dowling, the plaintiff's attorney, to disclose the cause of action, was sufficient to ground a judicial knowledge or presumption that the action was brought against lord Westmoreland for an act of state.

Mr. *Attorney General* [Wolfe]—If the plaintiff's counsel will declare that the action is brought against lord Westmoreland in his natural capacity, and not for an act of state, I will immediately enter appearance for his lordship.

Lord Chief Baron.—Mr. Butler, I address you as a man of candour, and desire that you will inform me of the cause of action.

Mr. *Butler*.—I cannot comply with your lordship's desire, but must be excused from disclosing the cause of action.

Lord Chief Baron.—Then I am now satisfied that the action is brought for an act of state.

Mr. *Emmet*.—I trust that your lordship will not ground an admission of a fact on the refusal of counsel to disclose it when the counsel is privileged in such his refusal. I trust also that nothing will be presumed from the hypothetical arguments of counsel. I cannot inform the Court of the cause of action, not having been instructed in respect to it.

Lord Chief Baron.—I will deliver my opinion on Wednesday next.

Mr. *Baron Power* said, that he was prepared to give his opinion then, and that he would be sorry that the audience should go away without hearing an answer to the very extraordinary arguments they had just heard; he said that those arguments were unfounded, and not warranted by law or constitution. He then entered into a long and elaborate argument in favour of the constitution, principally

extracted from the first volume of Blackstone's Commentaries. He said that he would not give any opinion whether a lord lieutenant is stable in his natural capacity or not, it was unnecessary, as the question does not arise; if such question ever should arise, he would feel little difficulty in forming an opinion.—He said that he had judicial knowledge that the present action was brought against the lord lieutenant for an act of state, for every matter is taken for granted when it is asserted on one side, and not denied on the other, that the attorney-general had asserted that the action was brought for an act of state, and the other side not having denied the assertion, it shall be considered as true; the action is therefore brought against the lord lieutenant for an act of state, and he declared himself to be clearly of opinion that for an act of state, no action could be brought against the lord lieutenant.

Court.—Let the motion stand over until Wednesday next.

Wednesday, Nov. 28th.

[The following Letter of Attorney was read.]

COPY of a Warrant of Attorney, from James Napper Tandy, Esq. to Matthew Dowling, Attorney, to commence and prosecute Suits. Dated, April 26th, 1792.

Whereas James Napper Tandy, of Bride-street, in the city of Dublin, esq. was arrested on the 22nd day of February last, by one of the messengers attending the House of Commons, and was also arrested on the 18th day of April, instant, by one other of the said messengers, which arrests were alleged to have been made under, and by virtue of a warrant, signed by the right honourable John Foster, Speaker of said House. And whereas, a Proclamation has several times of late been published in the Dublin Gazette, reciting the said arrest of the 22nd of February, and that said James Napper Tandy having made his escape therefrom, had been guilty of a gross violation of the privileges of the said House. Also reciting an address from the House of Commons, to issue a Proclamation for apprehending said James Napper Tandy, and which Proclamation required and commanded all persons, whatsoever, to apprehend the said James Napper Tandy, and carry him before some of the justices of the peace, or chief magistrates of the county, town or place where he should be apprehended, who are thereby respectively required to secure the said James Napper Tandy so apprehended, and thereof to give speedy notice to the right hon. the Speaker of the House of Commons, the Sergeant at Arms attending the said House, and to the Clerk of the Council, to the end he may be forthcoming to be dealt withal, and proceeded against according to law. And that for the prevention of the escape of the said

James Napper Tandy, into parts beyond the seas, said proclamation did require and command all officers of the customs, and other officers and subjects of, and in the respective ports, and maritime towns and places within the kingdom of Ireland, that they and every of them in their respective places and stations within the said kingdom, should be careful and diligent in the examination of all persons that should pass or endeavour to pass beyond the seas, and that if they should discover the said James Napper Tandy, then to cause him to be apprehended and secured, and to give notice thereof as aforesaid. And the said proclamation did also strictly charge and command all persons as they would answer the contrary at their perils, that they should not any ways conceal, but should discover the said James Napper Tandy, to the end he might be secured. And for the encouragement of all persons to be diligent and careful in endeavouring to discover and apprehend the said James Napper Tandy, said proclamation did further declare, that whosoever should discover and apprehend him, the said James Napper Tandy, and should bring him before some justice of peace or chief magistrate, as aforesaid, should have and receive as a reward for the discovering, apprehending, and bringing him the said James Napper Tandy before such justice of the peace, or chief magistrate as aforesaid, the sum of fifty pounds. And whereas, the said James Napper Tandy was arrested by a man of the name of John Knight, and kept in custody for half an hour, and it was alleged by said Knight that such arrest was made by him in obedience to and by virtue or under colour of said Proclamation.—Now know all men by these presents, that I the said James Napper Tandy, do hereby constitute, and appoint, direct, authorize and empower Matthew Dowling, of Great Longford street, in the city of Dublin, gent., one of the Attorneys of his majesty's courts of Exchequer, King's-bench, and Common-pleas, in Ireland, to commence, institute, carry on and prosecute one or more action or actions at my suit and in my name against such members of the privy council as signed the said Proclamation, also against the printers or publishers of the newspaper called the Dublin Gazette, and against the said John Knight, or to prosecute the said Knight, and also against the right hon. John Foster, Speaker of the House of Commons, the Sergeant at Arms, and Messengers attending the said House, the Sheriffs of the county of the city of Dublin, the Gaoler of the New Prison, and all and every person and persons who acted in any manner under the said Warrant or Proclamation. And for these purposes to take all such steps and proceedings in any of the law or other courts as he may be advised, or deem necessary or expedient. Hereby ratifying, allowing, and confirming all, and whatsoever my said attorney shall do, or cause or direct to be done in the premises. In witness whereof, I have hereunto set my hand

and seal, this 26th day of April, in the year of our Lord, 1792.

Signed, sealed and delivered in the presence of us, } J. N. TANDY. (Seal.)
 THOMAS DOWLING
 JAMES NEWENHAM CURTIS.

Lord Chief Baron.—I am now ready to own that I am glad that I postponed giving my opinion to this time, because a document has been read which throws new light upon the subject, and which shows the action to be commenced against lord Westmoreland for an act done in his politic capacity. The question therefore is not a general one, "whether a lord lieutenant in his government may be sued for an act of power,"—but, "whether he may be sued for an act of state." I did very early declare, that no man could maintain an action against a lord lieutenant for an act of state during his government. The acts of state done by a lord lieutenant, like those of the king, are all countersigned by responsible ministers, and if he be advised to do any thing unconstitutional by them, they are responsible for it—but I do not found this opinion upon any distinction between the natural and politic capacity in the person of the lord lieutenant. There is not any distinction of that kind that does not apply equally to the king—he performs in his natural capacity all the functions of nature: he eats, drinks, and sleeps:—and any other act done by him, whether public or private, is done by him as a corporation sole, and therefore it is, he cannot depart from any matter of state, but by matter of record, and this does not extend less in the case of a lord lieutenant, I found my opinion upon the broadest grounds, not upon the law of any particular state, but upon the law of nature and nations. It is a question in which not Ireland or Great Britain only are concerned, but every orderly government. I found it upon this, that so long as he is governor, so long as he is the executive power, he cannot be called upon. Anciently he enjoyed many more privileges than he does now, almost every prerogative which the crown enjoys at this day, he once had; it appears from history he declared peace and war, and gave the royal assent *regē inconsulto*. Now, it is not given but in the name of the king. There is an entry in the Journals, *Le Seigneur Depute le veut*. But now by a wholesome law these powers are restrained. But still he cannot be sued. In every country there is some authority lodged somewhere: this power is divided into the legislative, the executive and the judicial, and it is from the different combinations of those three different powers that arises all the difference of the governments existing in the world. But where there is an executive power particularly, it is necessary to the end of government it should be sacred and inviolable: for the moment the liberty of the person of the executive power is tes-

trained, the moment the free agency is taken away, that instant the government falls, there is an end of all government the moment the executive power is violated. I have said, this is not a question merely of the municipal law of Ireland or England, but of the law of nations, and to show that it is, look into *Puffendorf de officio hominis et civis* treating not of the law of this state or that, but of the law of nations. He says, "If the subject be aggrieved by a sovereign, he cannot maintain an action, or oblige him to redress, he may persuade him if he can." But look at higher authority, that of the celebrated Locke in his *Essay on Government*: he lays down the same position, and he finds it, not upon any distinction between the natural and politic capacity, but upon this broad bottom, that it is better a private mischief should ensue to an individual, than the peace and security of government should be violated by any attack upon the magistrate executing the power of state. He puts the case of a heady prince coming to the throne and doing private acts of mischief, "but although these mischiefs may exist, they happen so rarely, and travel through so small an extent, it is better to put up with them"—This, it is observed, is carried so far in the case of a king, that even for a matter of private concern, he cannot be sued otherwise than by petition, bringing it to the case in *Puffendorf*, he may persuade if he can, but he cannot compel him; and therefore it is upon that ground, that the king is suable by petition or *monstrans de droit*, and this whether the matter be of a public or private nature, and if I were called upon for an opinion whether the lord lieutenant can be sued for an act of a private nature; I would say he cannot, perhaps he may be sued in *auter droit*, but with respect to himself he cannot. If process could issue against him, his person might be imprisoned; he might be seized under colour of a suit, even when going to exercise one of the royal functions committed to his charge—when going to meet the parliament of the country. If this doctrine could be maintained, he might have been arrested when going to give the royal assent to that act which established our right of being an ancient independent kingdom.—But it is said great mischiefs will follow; limitations will run; a lord lieutenant may be continued for life; he may do wrong, and the subject be without redress. To that I answer, it is indecent to put any such case, and it might as well be put in the case of a king; he may do wrong, commit murder, assassination, injury of every kind, and the subject is equally without redress. But the law will not admit any such notion, and it is highly indecent for us to suppose it. But I am happily relieved from the necessity of giving any opinion upon the point "whether he may be sued for any act done by him in a private capacity," when it appears now, by unquestionable evidence under the hand and

seal of the plaintiff that he avows he sues him for an act done by him as lord lieutenant. I am satisfied he cannot be sued in that capacity, and therefore the motion must be granted, namely, the process ought to be quashed as having issued improvidently.

With regard to what has been said about the letter missive, it is true, I was applied to for it, but the reason which weighed with me for refusing it, was, that if I signed it I should give my sanction to the process; whereas I wished it should stand upon its own strength or weakness. A passage was cited from *Stafford's letters*. I looked into the book and I find it was truly cited; but it cannot be received as law now. One of the deputies had been served with an injunction commanding him to give possession of Patrick's church which had been used as a stable. Put the case that the chancellor forming a part of the executive government had refused to obey—his person might be taken, and what would become of the executive power? The government would be suspended; it is better, I say, that a private injury should be sustained by an individual, than that there should be no government in the country; and how ready people are to contend that there is no government in the country is evident, as it was argued by the gentlemen, who, to do them justice, spoke ably, that we were at this instant actually without any legal government; for they did assert and argue we had no legal lord lieutenant in the country. It is unnecessary to argue that we have *de stricto jure*—while in the executive power of government he is governor *pro hac vice*.

[N. B. In the case of lord Donegal against Hamilton, in giving his opinion the same day, the lord chief baron said, "I am unwilling to give my opinion whether the king has a right to grant any thing in this kingdom under any seal but the great seal of this his kingdom of Ireland: but I confess I am inclined to think at present that he cannot."]

Mr. Baron *Hamilton*.—I do not wish to resort to any doctrine of our court, or law of this country to support my opinion; I found myself upon principles that must belong to every government in the world. The question is, shall we suffer a process to issue, where the executive power of this government may be put into restraint, I may say into prison. I beg to know, can such a proceeding as that be found in the history of mankind? In any government, however free, the most democratical that ever existed even in France, notwithstanding all their confusion, they hold the executive power inviolable. Can any government exist, if there be not an executive authority to carry the laws into execution? What will avail all your laws if it be in the power of an individual to issue out process and confine the executive authority? It is very well known that the acts of a governor relate

to every one; what a monstrous doctrine it would be, that every one of the individuals who feel themselves aggrieved or affected by the proceedings of a governor, should have a power each to bring an action; the law of the country would become useless; no government could subsist if that procedure prevailed. The counsel for the plaintiff could not avow that the governor could be sued in his public capacity, because they refused to declare in what right he was sued.

Mr. *Butler* humbly conceived, that the lord chief baron was mistaken in a matter of fact, in conceiving that the warrant of attorney, which had been read, had any relation to this cause; it gives no authority to Mr. Dowling to sue the earl of Westmoreland either in his politic or natural capacity, and is not therefore any evidence, under hand and seal of the plaintiff, of this action being brought against lord Westmoreland, as lord lieutenant, for an act of state or otherwise.

Lord *Chief Baron*.—If you had done me the honour to attend to me, you would perceive my reason for noticing the letter of attorney, which though it does not authorize an action against lord Westmoreland, yet in a great measure explains and gives a complexion to the whole transaction: upon the whole I am satisfied that this action is instituted against the lord lieutenant in his politic capacity.

Court.—Let the subpoena be quashed.

JAMES N. TANDY, esq.

against

The Right Hon. ARTHUR WOLFE.

The declaration in this case was filed on the 15th day of November 1792. It is for causing to be printed and published an unlawful and libellous publication, and consists of four counts—first, an unlawful publication in the words and figures; second an unlawful publication to the tenor; third, a libellous publication in the words and figures, and fourth a libellous publication to the tenor.—The publication complained of by the declaration was a proclamation purporting to be issued by the lord lieutenant and council of Ireland commanding the arrest of the plaintiff and offering a reward for the same. In the declaration the proclamation is set forth in manner following—“By the lord lieutenant” (meaning the right hon. John Fane earl of Westmoreland of the kingdom of Great Britain commonly called, but not of right, the lieutenant-general and general governor) “and council” (meaning the assembly of persons commonly called, but not of right, the right hon. the privy council) of Ireland “A proclamation. Westmoreland” (meaning the aforesaid right hon. John Fane earl of Westmoreland of the kingdom of Great Britain) “Whereas” &c. &c.

The ground for using these expressions was, that the earl of Westmoreland received his

appointment as lord lieutenant of Ireland under the great seal of Great Britain, and that consequently he was not legally lord lieutenant of Ireland, or such a person as could receive the oath of a privy councillor.

On Wednesday the 28th of November 1792 Mr. Frankland, on behalf of the defendant, moved, that the declaration filed in this cause might be taken off the file, or that such parts thereof as allege “that the present chief governor of this kingdom is not so of right, and that the present privy council of this kingdom is not of right, the privy council thereof” might be expunged; and in case the court should refuse to take the declaration off the file, that the defendant might have time to plead until the next term.

Mr. Baron *Power*.—This is a motion of course—refer it to a baron.

Lord *Chief Baron*.—No.—I will not refer it—I will expunge the scandalous parts *instantly*. Let the declaration be read.

[The declaration was hereupon read.]

Mr. Baron *Power*.—I concur with the chief baron—I will expunge the scandal *instantly*—those passages are prolix, impertinent, and scandalous—I do not stop here, those who signed the declaration should be punished.

Lord *Chief Baron*.—Who signed the declaration?

Mr. *Kemmis*, the agent for the defendant, read the names “Simon Butler and Thomas Addis Emmet,” as those signed to the declaration.

Lord *Chief Baron*.—Who is attorney for the plaintiff?

He was answered that the attorney was Matthew Dowling.

Mr. *Butler*.—It was not my intention to trouble the Court this day.—After what I heard from the court on Monday—after what I have heard this day from the bench—after what has passed this day in the court of Common-pleas, where, though I could not offer my sentiments on behalf of my client, on account of the motion having been made on the part of his majesty, yet where I had the satisfaction of hearing every thing said and urged on behalf of the plaintiff that could be said or urged—-I say, my lord, that after the very decided opinion of the courts, I should merely have entered my protest to the order sought for by the defendant—but as a threat has been thrown out from the bench against those who have signed the declaration, it becomes my duty to enter at large into the motion, and shew to the satisfaction of every honest and unprejudiced mind, that the parts sought to be expunged from the declaration are not prolix, scandalous, or impertinent, but relevant and necessary to the plaintiff's case.

Lord *Chief Baron*.—What threat has been thrown out? I know of none.

Mr. Baron *Power*.—You entirely misunderstand the Court—I did not allude to the gentlemen of the bar who signed the declaration—

I alluded to [the attorney whose name appeared to the declaration.

Mr. Butler.—I am happy to hear that the court did not allude to or mean to censure the gentlemen of the bar who signed the declaration; but as the Court is pleased to say that they alluded to the attorney, Mr. Dowling, who signed the declaration as attorney for the plaintiff, I request to be heard a few words. Mr. Dowling is merely agent—he acts by the direction and is under the control of counsel—the warrant of attorney which the Court has before them, directs that he should act under the direction and be subject to the control of counsel—having informed your lordships what the duty of Mr. Dowling is, I will now inform you, that he has performed it—and in no respect exceeded it—every act done by him in this cause has been by the direction and from the advice and under the control of counsel—he has not in any respect acted from himself or independent of the advice and even direction of counsel—he is not responsible, he has only performed his duty; if there has been any impropriety, the counsel are to be blamed—if any censure is to fall, let it fall upon the counsel; and if any punishment is to be inflicted, let it be received by the counsel—I make this declaration publicly as one of the counsel, and if I had not, I should be ashamed ever to raise my voice again in this or any other court.

Mr. Butler was followed by Mr. Emmet, who, as one of the counsel declared his responsibility, and that Mr. Dowling throughout the business, acted merely as attorney and under the express direction of counsel.

Lord Chief Baron.—I am not decided in my mind as to the course which ought to be taken by the Court on this occasion—we will consider of it, and do what shall appear to be proper.

Mr. Butler.—It is then my duty to enter at large into the cause and show to the Court, that the words in question are not prolix, scandalous, or impertinent, but that, on the contrary, they are relevant to and very material for the plaintiff's case.

Lord Chief Baron.—You are certainly at liberty to satisfy the Court, if you can, as to the relevancy of the words; but in so doing, I must inform you, that the court will not suffer you to question the legality of the lord lieutenant's patent—that point shall not again be argued in this court.

Mr. Butler.—They seek to expunge the words "commonly called but not of right"—Before I show the relevancy, I will show the truth of the words; I will shew that the earl of Westmoreland is not of right the lord lieutenant of Ireland, and that the privy council are not of right the privy council of Ireland.

Lord Chief Baron.—I will not suffer that matter to be argued; I have already told you not to repeat it.—From the ferment of the publication, I do not know whether I shall sit another year upon this bench; but were

this the last time of my sitting here, I would resist every attempt to shew that there is no legal executive power in the country.

Mr. Baron Hamilton.—This may possibly be the last year of my life, but were it the last moment of my life, I would not suffer any man to argue that there is no legal executive power in the country.

Mr. Butler.—I did hope that I should have been permitted to argue the case of my client, in such manner as to me seemed most advisable. I recollect the conduct of the first advocate of England, when directed by the majority of the House of Commons to confine his argument on behalf of his clients to certain points; Mr. Erskine declared, that in the argument of his clients' case, he would not be dictated to by any power, and that unless he was permitted to argue the case of his clients in such manner as he thought most for the benefit of his clients, he would not make any argument.—I will follow so great an example, and declare to this Court and to the nation, that, as I am not permitted to argue the cause of my client in such manner as I think most for his benefit, I will sit down.

Lord Chief Baron.—I am far from dictating to any gentleman the manner of laying his client's case before the court: it is not my nature, and it never was my practice; but I must again declare, that I will not suffer any person to argue that there is no legal chief governor in this country.

Court.—Let the words be expunged and let the defendant have time to plead until the first day of next term.

JAMES N. TANDY, esq.

against

TIMOTHY DYTON and St. GEO. O'KEELY, esqrs.

This is an action for printing and publishing and causing to be printed and published an unlawful and libellous publication, and contains four counts similar to those in the last-mentioned action.

Mr. Frankland on behalf of the defendants moved the Court for liberty to withdraw the plea filed by the defendants, and that the declaration might be taken off the file, or that those parts thereof wherein it is alleged that the present chief governor of this kingdom is not so of right, and that the present privy council of this kingdom is not of right the privy council thereof might be expunged.

[Counsel on behalf of M. Tandy were silent.]

Court.—Let the defendants have liberty to withdraw the plea, and let the words be expunged, and let the defendants have time to plead to the first day of next term.

JAMES N. TANDY, esq.

against

The Right Hon. JOHN FOSTER.

This is an action for false imprisonment on the 22nd of February and 5th of May 1792.

Mr. Frankland, on behalf of the defendant, moved the Court for time to plead until the next term.

Mr. Frankland said, that no trial would be thereby lost, as the defendant would justify under an order of the House of Commons.

[Counsel for the Plaintiff were silent.]

Court.—Let defendant have time to plead until first day of next term.

COMMON PLEAS.

Wednesday, November 28th, 1792.

JAMES N. TANDY, esq. Plaintiff,

The Right Hon. JOHN Lord Baron FITZ-GIBBON, Defendant.

This is an action for causing to be printed and published an unlawful and libellous publication, and contains four counts similar to those contained in the declaration against Mr. Wolfe.

Mr. Attorney General, on behalf of his majesty, moved that the writ of summons might be superseded, and that the declaration might be taken off the file, or that such parts thereof as allege that the present chief governor of this kingdom is not so of right, and that the present privy council of this kingdom is not of right the privy council thereof, might be expunged.

Mr. Attorney General said, it was not only competent to him, as attorney-general, to inform the court of any matter, but, in particular cases, it was competent to any man to give such information to the judges, as *amicus curie*. He had a right to do so, as *amicus curie*, when any indecency, immorality or matter injurious to the state, appeared upon the record of the court, in order that such matter should be expunged. The declaration or bill which had been put upon the file of the court by the plaintiff against the defendant, and the writ of summons which issued thereupon, he considered seditious in tendency, scandalous to the state, and insulting to the Court. It is said that the lord lieutenant of Ireland was not lord lieutenant of right, that the privy council of Ireland is not privy council of right. This is not less than alleging that there was no government in the country. He trusted that the Court would immediately, peremptorily and unequivocally decide upon the motion he had made, that the dangerous and absurd idea, of the country being without a government, might not for a moment go abroad to deceive and to mislead the people. If the suggestion was true, the Court had no jurisdiction, the judges had no authority to act under. The counsel who drew the bill and advised the measure, were not, he presumed, apprized how lords lieutenants were appointed. They were, and had been for six hundred years past, appointed by the king's will, made known under the

great seal of England annexed to letters patent; when he arrives in this country, the sword of state is delivered into his hands, in the presence of the council, by those who preceded him in office, and he takes the usual oaths. This is the only legal mode of appointing a lord lieutenant—

Mr. Justice Hellen coincided with the attorney-general that the Court should immediately decide upon the question. The suggestion that the earl of Westmoreland was not lord lieutenant of Ireland of right, and the privy council privy council of right, he considered a position fraught with the most dangerous consequences.

The Chief Justice [Carleton] inquired if any counsel attended on the part of the plaintiff.

Mr. Mac Nally answered, that he and Mr. Emmet were of counsel for the plaintiff Mr. Tandy; that he was not unprepared as to the question hereafter to come before the Court, if the defendant thought proper to justify by plea or by evidence, for he had considered the question, and prepared himself with sedulous industry; but he thought it would be imprudent in him at this early stage of the proceedings against the defendant to communicate the principles and grounds upon which he proposed hereafter to contend, that the appointment of the earl of Westmoreland to the office of lord lieutenant was not legal, but was on the contrary inconsistent with the constitution of this country.

He observed that the attorney-general had come forward as an *amicus curie*—this was the first time he had ever seen an *amicus curie* come forward to make a motion with a brief in his hand, and that brief marked with a fee—an *amicus curie* was authorized, to inform the Court of matter of law if the Court was in error, but until this day he had never heard an *amicus curie* attempt to argue as counsel for a party upon motion—Here—

Mr. Justice Hellen interrupted Mr. Mac Nally who, his lordship said, must have misunderstood the attorney-general; for the attorney-general had not stated that he had appeared as an *amicus curie* but that an *amicus curie* might with propriety give the same information to the Court as he was going to give in his character of attorney-general.

Mr. Mac Nally assured the Court that he had not the slightest intention to misstate what had fallen from his majesty's leading counsel—a gentleman for whose learning and abilities he had the highest respect; but he was led into the mistake by a very extraordinary signature which appeared at the bottom of the notice served upon his client. The whole case before the Court was extraordinary and novel, but perhaps the signature to the notice was the most extraordinary and novel that ever appeared in court. The notice was signed "Thomas Kemmis, attorney to his majesty." Now, if Thomas Kemmis was attorney to his majesty, in what situation was the right hon. Arthur Wolfe? were there two

attorney-generals—attorney-general Wolfe and attorney-general Kemmis? or did Mr. Attorney-general Wolfe slide out of his place *pro tempore*, for the purpose of letting Mr. Thomas Kemmis slip in *pro tempore*, and act as attorney-general in the actions pending against the privy-councillors who caused the advertisement in question to be published? If that was the case, he was warranted in supposing that the right hon. Arthur Wolfe was acting solely in the situation of an *amicus curie*.

Mr. Mac Nally then argued, that the notice was bad; it was bad as being too general. It called upon the Court to expunge certain words, but it did not state any cause for expunging those words—it did not state that those words were superfluous, impertinent, or scandalous; whereas, it should have specifically stated at least one of those causes; whether the words complained of deserved the epithets applied to them, he trusted the Court would not now determine, but grant a conditional order that the plaintiff's counsel might show cause why they should not be expunged.

Mr. *Solicitor-General* and Mr. *Primo Sergeant* said a few words each to the question, in which they followed Mr. Attorney General, in stigmatizing the words excepted to, as being in their tendency seditious and scandalous. They applied to the Court that the sheriff should instantly return the writ of summons; which being, together with the declaration or bill, brought into court, and the words complained of read by the officer, the attorney-general, having made a few farther observations on the pernicious effects of the words "but not of right," called on the Court instantly to supersede the writ and expunge the words from the declaration, and not merely grant a conditional order.

The Court, thereupon, called on Mr. Tandy's counsel to show cause *instantly* why the writ of summons should not be superseded, and the words "but not of right" expunged from the declaration or bill.

Mr. *Emmet* hoped the Court would only grant a conditional order, when he assured them, that he himself was then exceedingly indisposed, and utterly unable to do his client justice, and when he farther informed them, that, in consequence of the motion being made on behalf of his majesty, Mr. Tandy was deprived of the benefit of Mr. Butler's assistance, who, as king's counsel, conceived himself precluded from opening his mouth, until he could obtain a licence.

The Court expressing their resolution to determine the question without further delay,

Mr. *Emmet* proceeded, he acknowledged that he had signed the declaration or bill on which the writ of summons was grounded. This he thought it necessary to say in consequence of the many charges of scandal and sedition that had been thrown out against that declaration or bill. If the allegation which denied the authority of the

lord lieutenant was seditious, who was answerable for that sedition, but they who dragged it from out of the peaceful obscurity of a record of the court, and forced it into public attention? If any of the evil consequences mentioned by the attorney-general were likely to ensue from such a discussion, they must be imputed, not to the plaintiff's counsel, who had inserted the allegation in law pleadings, which few or none would ever see, and where it was material to their client's action—but to the officious officers of the crown, who had given publicity to the assertion, they were unable to refute; who had selected it for argument in a crowded court; and by premature motions, rendered the discussion necessary. It would have been wiser in them silently to correct the error in the viceroys's appointment; than to show a pertinacious attachment to an abuse, after the principle of English supremacy, from which the abuse has grown, had been abandoned. Or if there be no such error, why do they not justify and bring the question forward on a solemn argument on the pleadings, rather than endeavour to crush it by the summary mode of motion? Having pursued these observations to some length, he insisted on it as a rule of law, that the Court would never expunge any matter from a declaration or bill, however scandalous or seditious it might be, if it was necessary to the plaintiff's cause of action, or if it went in aggravation of damages,—apply that rule here.—Suppose the proclamation complained of to be in its nature and tendency such as a legal chief governor and privy council would have been well warranted in issuing, yet surely it would in itself be sufficient to give the plaintiff a right of action, if it were issued by persons having no authority so to do, and who had *accroached* to themselves nothing less than a sovereignty which did not belong to them, and assumed the place of the executive power. If the proclamation was in itself illegal and insufficient to resist an action, yet even there it would exceedingly increase the injury, and would go in aggravation of damages that such an illegal proclamation was issued by such persons as he had already described.

There was another reason why the Court ought not to expunge the words excepted to; they would never make any alteration in any part of a suitor's pleadings that might lay them open to a demurrer. He did not absolutely say that was the case here; but it certainly was a matter of some doubt whether if those words were expunged, the defendant might not demur to the declaration or bill; and he trusted the Court would not comply with the motion until they were ascertained that that could not be the case.

In arguing on this motion he had hitherto taken it for granted, that lord Westmoreland was *not of right* the lord lieutenant of Ireland. It was no more than the truth.—The counsel for the crown, in order to excite the pride

and prejudices of the Court, had said that the plaintiff's counsel denied its jurisdiction in certain cases, inasmuch as certain of its processes were signed by the lord lieutenant. He should be exceedingly sorry that the jurisdiction of that court was necessarily connected with the mode of the viceroy's appointment—his acts with regard to that court were merely ministerial; but even if he said that the power of the Court ceased for the present, in consequence of the illegal appointment of the viceroy, he did not argue against its jurisdiction in the abstract, and he only urged an additional motive for correcting the illegality. It ought not to offend the Court, even if he did assert an occasional suspension of its jurisdiction in certain cases. All the courts of Westminster-hall asserted the same thing of themselves in every case at the Revolution; for when it was declared that king James had abdicated, they all shut, and continued so until the vacant throne was filled by the appointment of William.

The attorney-general had almost confessed, that the objection against lord Westmoreland's appointment was irresistible from his mode of answering it. He had said that the patent under the great seal of England was only a declaration of the king's will—that is, tacitly confessing that it was not competent to do more than barely declare the king's will—but if such a declaration only was sufficient, that was done by the order to be sworn in that every lord lieutenant brings over under the sign manual; or why was he not appointed merely by delivering to him the sword of state?—The reason is, because, to the appointment of a governor, not only a declaration of the king's will is necessary, but also a delegation of power by a sufficient and legal instrument giving him a right to exercise authority. But no power belonging to the independent king of Ireland can be delegated by an instrument that derives all its validity from the authority of the king of England. The great seal of England cannot constitute an officer to act under the authority of the king of Ireland.

The attorney-general had argued a good deal on all lord-lieutenants having been so appointed for upwards of six hundred years. The argument is not fair; many abuses crept into this country for the last six hundred years because its constitutional connexion with England was but little known or attended to. If that had not been the case, there would have been no necessity for the Revolution in 1782. Since that time it might be fairly asserted that there has not been a legally appointed chief governor in Ireland.—But wherefore was this abuse suffered to remain after the other abuses abolished by that Revolution, or wherefore was it so obstinately contended for at present, if it was not retained for some evil purpose? Mr. Emmet concluded by hoping the Court would not do so great an injustice to the plaintiff as to expunge from his declaration or

bill that which was true and which was also material to his action.

The *Chief Justice* asked Mr. M'Nally, whether he intended to offer any thing farther against the motion.

Mr. *Mac Nally* said, he was certainly fully prepared to prove before his country, that the great seal of England was incompetent to appoint any legal jurisdiction or office of state in Ireland; which, since the Revolution of 1782, could not be considered as bound by any delegated power from the crown of Great Britain. Whenever the authority of Ireland came to be questioned, whether in the Common-pleas, the King's-bench, or before parliament, he had no doubt of being able to show, from constitutional principles, illustrated by sacred authorities, that letters patent under the great seal of Great Britain were inefficient and inoperative in Ireland.—He had determined not to speak to this question till it came in a more solemn manner before the Court by the pleading of the defendant, but as the point had been broken by the motion before the Court, he would make one observation which he considered of weight—it was this. In 1782 it became a question in what manner the royal assent should be given to bills, the king of Ireland being resident in Great Britain, and a bill was brought into the Irish Commons, he believed by Mr. Yelverton, now lord chief/baron, to adjust that very serious point. By this bill it was enacted, that all bills, in order to receive the royal assent, should be transmitted to England under the great seal of Ireland, and having received the royal assent there, be returned under the great seal of England into Ireland. Now, said Mr. M'Nally, if, in the opinion of the legislature of Ireland, the great seal of England had recognition in Ireland, why enact a statute to give it recognition in any particular instance? This act he said might be considered as an exception, strengthening the general and great constitutional position then before the Court, that the great seal of England was not recognized in this independent country.

Mr. *Attorney General* assured the Court that it was not the intention of the chancellor to delay the trial, but that his lordship would take diligence with all possible expedition.

Lord *Carlton*.—The writ of summons having been returned, and an attested copy of the declaration or bill having been produced, the proceedings are before the Court, and they have judicial knowledge of the exceptionable parts.

The question is narrowed by what has fallen from the plaintiff's counsel; they deny that the lord lieutenant has legal authority, and the Court ought not to entertain a doubt for a moment of its duty to satisfy the public that there is a legal government in the country. The manner in which the question has been discussed forces the Court to this declaration: for if the arguments of counsel be just, there

neither is, nor has been for ages past, a legal government in Ireland.

It is true, as has been stated by one of the plaintiff's counsel, that, if scandalous matter inserted in the declaration or bill be relevant, and has a tendency to increase damages, the Court will not expunge it merely because it is scandalous matter; but that is not the case here. It is not relevant to, or material for the plaintiff's case, and therefore the insertion of it was not necessary.

The Court will take notice, that lord Westmoreland is legally lord lieutenant of Ireland.

The court of Exchequer has decided so, and the public good requires that we should decide so.

We are bound to know the privy council and its powers; we are bound to know it as a privy council by right.

An objection was once made in the court of Common-pleas, in a case wherein baron Power was the plaintiff, that it did not appear upon the record that he was one of the king's judges; but we were bound to take notice judicially, that he was one of the king's judges; and so we are bound to take notice judicially, that the earl of Westmoreland is lord lieutenant of Ireland; and that the privy council are the privy council of Ireland.

The insertion, as I have before said, was not necessary. If the publication complained of by the plaintiff be a libel, that will be matter for farther investigation. The authority from whence it issued must either be shown in a plea of justification, or in evidence upon a trial; and, if the question can possibly be agitated, then will be the plaintiff's time to controvert it.

The writ of summons has been returned, and is now in court; though it bears the signature of the chief justice, it never undergoes, but issues without, his inspection.

If any evil consequences ensue from this discussion, they must be imputed to the plaintiff, and those concerned for him, who inserted the exceptionable words in the pleadings, and not to the officers of the Crown, who brought forward the motion.

The other three justices coincided with the chief, and it was

Ordered, That the writ of summons be quashed, and the words which allege or question that John earl of Westmoreland is not of right lord lieutenant of Ireland, or that the privy council of Ireland is not the privy council thereof, wherever they occur in the declaration or bill, be forthwith expunged by the proper officer, the same being scandalous and impertinent.

By the Lord Lieutenant and Council of Ireland,

A PROCLAMATION.

Westmoreland,

WHEREAS the sergeant at arms of the honourable House of Commons, being called before the said House on Wednesday the twenty-second day of February instant, he in-

formed the said House, that he had dispatched three of the messengers attending said House, to execute the order for taking into his custody James Napper Tandy, one of whom being brought to the bar, informed the House, that he went to the dwelling-house of James Tandy in Chancery-lane, where he arrested the said James Napper Tandy, and showed him the warrant, and his authority; that the said James Napper Tandy went into a parlour, as if for his hat, but shut the door, and made his escape, as he supposed through a window.

And whereas, on the same day, it was resolved by the House of Commons, that the said James Napper Tandy having been arrested by a warrant of Mr. Speaker, issued by the order of the said House, and having made his escape from the officer of said House who arrested him, has been guilty of a gross violation of the privileges of the said House.

And whereas an humble address hath been presented unto us by the knights, citizens, and burgesses, in parliament assembled, that we would be graciously pleased to issue our proclamation for apprehending the said James Napper Tandy, with a promise of reward for the same,

Now we, the lord lieutenant and council, have thought fit to issue this our proclamation, hereby requiring and commanding all persons whatsoever to discover and apprehend, or cause the said James Napper Tandy to be discovered and apprehended, and carry him before some of our justices of the peace, or chief magistrates of the county, town, or place, where he shall be apprehended, who are respectively required to secure the said James Napper Tandy so apprehended, and thereof to give speedy notice to the right hon. the speaker of the House of Commons, the sergeant at arms attending the said House, and to the clerk of the council, to the end he may be forthcoming to be dealt withal, and proceeded against according to law.

And for the prevention of the escape of the said James Napper Tandy into parts beyond the seas, we do require and command all officers of the customs, and other officers and subjects of and in the respective ports and maritime towns and places within the kingdom of Ireland, that they and every of them, in their respective places and stations within the said kingdom, be careful and diligent in the examination of all persons that shall pass, or endeavour to pass, beyond the seas; and if they shall discover the said James Napper Tandy, then to cause him to be apprehended and secured, and to give notice thereof as aforesaid.

And we do hereby strictly charge and command all persons, as they will answer the contrary at their perils, that they do not any ways conceal, but discover him, the said James Napper Tandy to the end he may be secured; and for the encouragement of all persons to be diligent and careful in apprehending

vouring to discover and apprehend the said James Napper Tandy, we do hereby farther declare, that whosoever shall discover and apprehend him, the said James Napper Tandy, and shall bring him before some justice of the peace or chief magistrate, as aforesaid, shall have and receive, as a reward for the discovering, apprehending, and bringing him, the said James Napper Tandy, before such justice of the peace or chief magistrate as aforesaid, the sum of Fifty Pounds.

Given at the Council Chamber in Dublin, the 23rd day of February, 1792.

Fitzgibbon, C. John Foster, J. Parnell, Henry King, William Conyugham, James Cuff, J. Monck Mason, R. Hobart, Arthur Wolfe, James Fitzgerald, Geo. Warde.

God save the King.

SOCIETY OF UNITED IRISHMEN.

Friday, March 30th, 1792.

The Hon. SIMON BUTLER in the chair.

The following Letter was read from the Chair.

My dear Sir;—I have to request that you will be so good as to lay the following circumstances before the Society of United Irishmen, as the cause of my absence from that most respectable body.

On the 22nd day of Feb. last, a complaint having been made to the House of Commons by one of its members, of a breach of privilege committed by me, the House, without summoning me to answer the complaint, ordered that I should be immediately taken into custody of the Sergeant at Arms, and brought forthwith to the bar of the House. The Sergeant at Arms informed the House, that he had dispatched three of the messengers attending the House to execute the order for taking me into his custody; one of whom being brought to the bar, informed the House, that he went to the house of Mr. James Tandy, in Chancery-lane, where he arrested me, and showed me the warrant and his authority; that I went into a parlour, as if for my hat, but shut the door, and made my escape, as he supposed, through a window. The House then resolved, that I having been arrested by a warrant from Mr. Speaker, issued by the order of the House, and having made my escape from the officer of the House who arrested me, was guilty of a gross violation of the privileges of the House, and resolved, that an humble address be presented to the lord lieutenant, that he would be graciously pleased to direct, that a proclamation might issue for apprehending me, with a promise of reward for the same, and that said address be forthwith presented to the lord lieutenant by such members of the House as were of his majesty's most honourable privy council. The address having been accordingly presented by the House to the lord lieutenant, a proclamation

was instantly issued by the lord lieutenant and council for apprehending me, with a promise of reward for the same. The proclamation recites the information given to the House by the Sergeant at Arms and messenger, and the resolution of the House subsequent to the same, but does not set forth the original complaint, or the immediate order in consequence thereof; but directs the person who should apprehend me, to carry me before some of the justices of the peace, or chief magistrates of the county, town, or place where I should be apprehended, who are respectively required to secure me, and thereof give speedy notice to the Speaker of the House, the Sergeant at Arms attending said House, and to the clerk of the council, to the end that I might be forthcoming to be dealt with or proceeded against according to law; and for prevention of my escape into parts beyond seas, it commands all officers of the customs, and other officers and subjects, of and in the respective ports and maritime towns and places within the kingdom, to be careful and diligent in the examination of all persons that should pass or endeavour to pass beyond the seas; and it also strictly commands all persons, as they will answer the contrary at their perils, not any ways to conceal, but to discover me to the end that I may be secured.

I have the honour to be, dear sir, very truly and sincerely your's,

March 26, 1792. JAMES NAPPER TANDY.

P. S. I enclose you the Proclamation and Votes.

To the Hon. Simon Butler, President of the Society of United Irishmen.

[The foregoing letter was ordered to be entered on the Journals of the Society.]

Resolved, unanimously, that the power assumed by the House of Commons to order the Sergeant at Arms to take into custody a subject of this realm, not a member of that House, upon a complaint made by one of its members of a breach of privilege, without summoning the party complained of, to answer the complaint, is unwarranted by the laws of the land.

Resolved, unanimously, That the proclamation issued in this case, is not warranted by law.

Resolved, unanimously, That the liberty of the subject is violated in the person of Mr. Tandy, that his cause must now be considered as that of the public, and brought forward to receive a judicial decision.

Resolved, unanimously, That a committee of secrecy be appointed to carry the last-mentioned resolution into effect, and empowered to draw upon the treasurer for such sums as it may require for that purpose.

Signed by Order,
THEO. WOLFE TONE, Pro. Sec.

646. Proceedings on the Trial of JAMES HADFIELD, at the Bar of the Court of King's Bench, for High Treason, June 26 : 40 GEORGE III. A. D. 1800.*

COURT OF KING'S BENCH June 26th 1800.

Present.—Lord Kenyon Chief Justice; Mr. Justice Grose; Mr. Justice Lawrence; Mr. Justice Le Blanc.

Counsel for the Crown.—Mr. Attorney General [sir John Mitford, afterwards lord Redesdale; successively Speaker of the House of Commons and lord chancellor of Ireland].

Mr. Solicitor General [sir William Grant, afterwards Master of the Rolls].

Mr. Law [afterwards lord Ellenborough and Chief Justice of the King's-bench].

Mr. Garrow [afterwards a Baron of the Exchequer].

Mr. Wood [afterwards a Baron of the Exchequer].

Mr. Abbott [afterwards Chief Justice of the King's-bench].

Solicitor.—Joseph White, esq. solicitor for the affairs of his Majesty's Treasury.

Counsel assigned for the Prisoner.—The Hon. Thomas Erskine [afterwards Lord Chancellor Erskine].

Mr. Serjeant Best [afterwards a Judge of the King's-bench].

Assistant Counsel.—Mr. Knapp.

Solicitor.—Mr. Charles Humphries.

The Court being opened, and James Hadfield set to the bar, the jurors returned by the sheriff were called over :

Rice Davis, esq. challenged by the prisoner.

Samuel David Liptrap, esq. challenged by the crown.

Major Rhode, esq. challenged by the prisoner.

Cæstin Rhode, esq. challenged by the prisoner.

Jesse Russel, esq. challenged by the prisoner.

Luke Flood esq. sworn.

Thomas Baldock, gent. sworn.

Peter Adams, cooper, sworn.

William Windsor, pawnbroker, challenged by the prisoner.

Daniel Williams, esq., challenged by the prisoner.

James Green, esq., excused on account of deafness.

John Grant, esq., sworn.

John Hanson, tea dealer, challenged by the prisoner.

Edward Pryce, gent., challenged by the prisoner.

Joseph Wigg, builder, challenged by the prisoner.

Thomas Druce, stationer not a freeholder.

Thomas Bingham, cutler, sworn.

Richard Meux, esq., challenged by the prisoner.

John Blue, baker, challenged by the prisoner.

Benjamin Banks, shoemaker, not a freeholder.

Webb Marryat, esq., sworn.

John Scott, coal merchant, challenged by the prisoner.

Alexander Brodie, esq., challenged by the prisoner.

Matthew Oliver, linen draper, sworn.

Stephen Maberly, esq., challenged by the prisoner.

Thomas Windle, esq., sworn.

John Perry, esq. challenged by the prisoner.

Charles Rich, esq., sworn.

John Warren, esq., sworn.

Joseph Bird, esq., challenged by the prisoner.

Arthur Shakespear, esq. challenged by the crown.

Peter Mellish, esq., challenged by the prisoner.

Thomas Gutterson, brewer, not a freeholder.

Joseph Ainslie, esq., challenged by the prisoner.

William Blackmoor, esq. sworn.

Andrew Burt, esq., challenged by the crown.

William Clapperson, esq. challenged by the prisoner.

Samuel Jackson, esq., challenged by the prisoner.

Thomas Turner Weatherhead, esq., not a freeholder.

William Watson esq. sworn.

THE JURY.

Luke Flood
Thomas Baldock
Peter Adams
John Grant
Thomas Bingham
Webb Marryat

Matthew Oliver
Thomas Windle
Charles Rich
John Warren
William Blackmoor
William Watson.

The Jury were charged with the prisoner in the usual form.

4 N

* New first published from the MS. notes of Mr. Gurney.

Mr. *Abbott* opened the Indictment which was as follows:

Middlesex } THE jurors for our lord the
to wit } king upon their oath present
that James Hadfield late of Westminster in the county of Middlesex labourer being a subject of our said lord the king not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil as a false traitor against our said lord the king his supreme true lawful and undoubted lord and wholly withdrawing the cordial love and true and due obedience fidelity and allegiance which every true and faithful subject of our said lord the king should and of right ought to bear towards our said lord the king on the fifteenth day of May in the fortieth year of the reign of our said sovereign lord George the Third by the grace of God king of Great Britain France and Ireland defender of the faith and so forth at the parish of Saint Martin in the Fields in the county of Middlesex maliciously and traitorously with force and arms &c did compass imagine and intend to bring and put our said lord the king to death.

1st Overt Act.—And to fulfil perfect and bring to effect his most evil and wicked treason and treasonable compassing and imagination aforesaid he the said James Hadfield as such false traitor as aforesaid on the fifteenth day of May in the fortieth year of the reign aforesaid at the parish of Saint Martin in the Fields in the county of Middlesex with force and arms maliciously and traitorously did buy obtain and procure and in his custody and possession did have and keep a certain pistol and a large quantity of gunpowder and divers leaden shot slugs and bullets with intent thereby and therewith maliciously and traitorously to shoot at assassinate kill and put to death our said lord the king.

2nd Overt Act.—And farther to fulfil perfect and bring to effect his most evil and wicked treason and treasonable compassing and imagination aforesaid he the said James Hadfield as such false traitor as aforesaid on the fifteenth day of May in the fortieth year of the reign aforesaid at the parish of Saint Martin in the Fields in the county of Middlesex with force and arms maliciously and traitorously did secretly and clandestinely arm himself with a certain pistol charged and loaded with gunpowder and certain leaden shot bullets and slugs and did go and repair so armed as aforesaid to a certain theatre called Drury-lane theatre with intent at and in the same theatre by and with the said pistol so loaded as aforesaid and with which he the said James Hadfield had so armed himself as aforesaid maliciously and traitorously to shoot at assassinate kill and put to death our said lord the king.

3rd Overt Act.—And farther to fulfil perfect and bring to effect his most evil and wicked treason and treasonable compassing and imagination aforesaid he the said James Hadfield

as such false traitor as aforesaid on the fifteenth day of May in the fortieth year of the reign aforesaid at the parish of Saint Martin in the Fields in the county of Middlesex with force and arms maliciously and traitorously did shoot off and discharge a certain pistol then and there being loaded with gunpowder and divers leaden shots slugs and bullets which he the said James Hadfield then and there had and held in his right hand at the person of our said lord the king with intent thereby and therewith maliciously and traitorously to shoot assassinate kill and put to death our said lord the king against the duty of the allegiance of him the said James Hadfield against the form of the statute in that case made and provided and against the peace of our said lord the king his crown and dignity.

Mr. *Attorney General.*—Gentlemen of the Jury;—The prisoner at the bar, James Hadfield, stands indicted for high treason; and that high treason is the compassing and imagining the death of the king—a crime which you must all feel to be one of the highest and of the most heinous nature, involving in its probable consequences every thing which can affect the peace and happiness of the country.

Gentlemen, the overt acts of this treason, which, according to the law, are to be alleged in the indictment, are all directly aimed at the person of the king; the prisoner is charged with procuring and keeping in his custody a pistol for that purpose; he is charged with going to the Theatre Royal in Drury Lane armed with that pistol loaded for the purpose; and, finally he is charged with having fired that pistol at the person of the king.

Gentlemen, upon this subject, which has much engrossed conversation, you probably have heard many things:—it will be your duty to discharge from your minds every thing which you have heard upon the subject, to attend solely to the evidence which will now be given to you upon oath, and upon that evidence to decide. If, in stating to you that evidence, I should err, you will be able to correct me by the observations which you will make upon that evidence. I shall endeavour to state it to you shortly, but truly, for no purpose but to lead you to the right understanding of the evidence as it shall be delivered to you, and to enable you to embrace within your view the tendency of the different parts of it as they shall be given to you.

Gentlemen, the facts, I think, will be proved distinctly and plainly;—namely, that on the 15th of May last, when his majesty went to the Theatre Royal in Drury Lane, at the moment of his entering into the theatre and advancing to the front of that box in which his majesty sits, the prisoner at the bar, who was then in the pit, a little removed from the centre of the pit, farther from the box where his majesty stood (in a position, therefore, which enabled him to take a very direct view of that box which you will recollect is a little

elevated), got upon the bench upon which he had been sitting, drew a pistol which he had before concealed, and discharged it at the person of the king: Providence warded off the blow, and it so happened that the slugs with which it will appear the pistol was loaded struck different parts of the box very near the person of his majesty, but happily hurt no one.

Gentlemen, the crime with which the prisoner stands charged is the compassing and imagining the death of the king; for the law has made that imagination of the mind a crime in the case of the king when it is demonstrated by any overt act; but even in the case of maliciously firing a pistol at any person the law has thought fit to make that demonstration of a wicked intent a capital offence, whoever shall be the object of it.

The evidence that will be given to you, will prove to you clearly and distinctly the facts which I have stated. I shall also, gentlemen, produce evidence to show to you the conduct of the prisoner, from the time when it can be clearly shown that he was possessed of that pistol which it is alleged as the first overt act that he procured, and the purchase that he made (as far as evidence can be given of that fact) of the gunpowder. With respect to the slugs I can give you no evidence, because from the appearance of the slugs, which will be produced, you will perceive that it is most probable they were procured by himself (which they easily might be) in his business, which was that of a silver spoon maker, and in which, as I understand, lead is occasionally used.

Gentlemen, I shall trace the prisoner from, I think, about two o'clock of that day, when you will find he had two pistols; one of them he left at a house which will be mentioned to you, the other he took with him. I shall trace him before he went to the theatre: I shall show the conversations which he then had with respect to his intentions of going to the theatre;—I do not mean declaring any intent of the purpose with which he was going there, but declaring his intent of going there; so that it will appear to you that his going there was a *deliberate act*. I shall show to you, that when he was there, he concealed the pistol he had about him, and that the persons who were immediately near him, were not in the least aware that he was so armed, until the moment when he raised himself upon the bench and discharged the pistol at the person of the king; at that moment, as you may readily imagine, every person around him was eager to seize him: the pistol was dropped, and the prisoner was seized; he was conveyed over the division between the pit and the orchestra; he was conveyed to a room under the stage, and I shall show to you what passed upon that occasion, and the view with which I shall do this I will state to you.

Gentlemen, the fact of his firing the pistol at the king will be so clearly so distinctly and

so manifestly proved, that there can be no doubt of his guilt, if some excuse cannot be offered: from circumstances, I must presume, that the excuse which will be offered is, that the prisoner at the bar labours under the misfortune of insanity. Gentlemen, it will be my duty to explain to you, under the correction of the Court, what I conceive to be the law of this country upon this subject.* I apprehend, that according to the law of this country, if a man is completely deranged, so that he knows not what he does, if a man is so lost to all sense, in consequence of the infirmity of disease, that he is incapable of distinguishing between good and evil—that he is incapable of forming a judgment upon the consequences of the act which he is about to do, that *then* the mercy of our law says, he cannot be guilty of a crime. It says he cannot be guilty of a crime, for this reason; because the *WILL*, to a certain degree, is of the essence of the crime. If a man does an act ignorantly—that is, if in the doing of that which is perfectly lawful, without knowing it, he does that which is unlawful; for instance, if discharging a pistol for a lawful purpose, by mere accident, that pistol should have destroyed a man, he could not be deemed guilty of murder, because he had no intent whatever of doing that which was the result of his act;—but it would be a grievous thing for the safety of all persons in this country, if men who occasionally labour under insanity should therefore be held excused, whatever crimes they may commit.

Gentlemen, in the case of idiots—of those who are afflicted by the absolute privation of reason, so that the person knows not what he does and never has known—a man of that description stands excused, because heaven has not blessed him with that use of the faculty of reason which enables him to distinguish between right and wrong. An infant, a child who has not attained the maturity of reason which enables him to exert the faculty as it ought to be exerted, is also excused, because he is not able to distinguish between right and wrong;—a madman, labouring under the extreme of the disorder when in a phrenzy, or a person who is suffering the severity, for instance, of a violent fever, may do an act of which he is perfectly unconscious, and for which, therefore, he cannot be deemed to be responsible. But when it is to be considered in a court of criminal justice what is the result of the act that has been done, the jury who are to try the person accused for that act, are to weigh *the degree of discretion* which the person accused possessed.

If it were alleged that a person was an idiot, you would try what is the ordinary degree of faculty of his mind; you would see whether, in the ordinary intercourse of life, he had the

* See the case of John Frith for High Treason, vol. 22 p. 307, and the case of sir A. Gordon Kinloch for murder, vol. 25, p. 691.

capacity to distinguish so far as would enable him to see whether that which he had done was right or wrong; persons of extremely weak understanding have committed crimes, and have suffered for those crimes, though their understanding was below the ordinary level of the understandings of mankind; but the juries have found that they possessed that competent understanding which enabled them to discern good from evil; and if they had that degree of understanding, the peace of the world requires that they should be criminally responsible for the acts that they do.

In the case of a child, you measure his capacity in the same manner; it is not the *age* of the child, but the *capacity* of the child, and you judge of it principally from that which he did at the moment of the fact with which he stands charged; for instance, if a child having done a criminal act, shows a consciousness that he has done wrong; if he endeavours to conceal it; if he does that which demonstrates that although he had not a complete view of the subject—he did not understand the enormity of his guilt—he did not see it in all its consequences as a person possessed of a complete mature understanding would do—yet if he possessed that degree of sense which enabled him to judge whether the act which he was committing was right or wrong, that has constantly been held sufficient to induce a jury to find infants of very tender years guilty of offences.—Gentlemen, I conceive that the law of this country states it to be so in the case of persons labouring under that disorder which is commonly called lunacy, that is, a person who is occasionally insane but has lucid intervals. The law I take to be clearly and distinctly laid down by those authorities for whom we have professionally the greatest respect—by those for whom in the succession of ages all that have stood in the place in which we stand have had respect.

My lord chief justice Coke, in laying down the law upon this subject, is very clear and very precise; he states, in his Pleas of the Crown, that “he that is *non compos mentis*, and totally deprived of all compassings and imaginations, cannot commit high treason by compassing or imagining the death of the king; for *furiosus solo furore punitur*; but it must be an absolute madness, and a total deprivation of memory.”—My lord chief justice Hale, in commenting upon the passage, observes, that the true rule is, to judge in the same way in which you would judge with respect to an infant, whether there was that competent degree of reason which enabled the person accused to judge whether he was doing right or wrong; he says that the passage in my lord Coke is general; the qualification he conceives to be that which I have stated; and in cases which have come before the Court at different times such have been the decisions.

There are two very memorable cases in that collection of criminal law, which is commonly called the State Trials; one of these is the case

of a person of the name of Edward Arnold,* who was indicted at Kingston assizes, in the year 1723, before Mr. Justice Tracy, for maliciously shooting at my lord Onslow. That Arnold's mind was deranged there could be no doubt: that it was deranged even with respect to my lord Onslow himself; that he had misconceived some acts of my lord Onslow's in a very extravagant manner, there can be no doubt; but, gentlemen, what was it that was opened to the Court upon that prosecution? THAT HE HAD A STEADY AND RESOLUTE DESIGN, AND USED ALL PROPER MEANS TO EFFECT IT; that was considered by the counsel [Serjeant Cheshire] who opened the case to the jury, as that which it was necessary to show, in order to demonstrate, that this man (whatever might be at times the state of his mind) at the time when he did this act had so far possession of his mind, as to form a steady and resolute design, and to use all proper means to effect it. The Court, in summing up to the jury in that case, stated that “the shooting my lord Onslow (which was the fact for which the prisoner was indicted) was proved beyond all manner of contradiction; but whether that shooting was *malicious* was the question, and that depends upon the sanity of the man.” The question which Mr. Justice Tracy upon that trial stated was, “whether the man had the use of his reason and sense?—if he was under the visitation of God, and could not distinguish between good and evil, and did not know what he did, though he committed the greatest offence, yet he could not be guilty of any offence against any law whatsoever. If a man be deprived of his reason, and consequently of his intention, he cannot be guilty.”

But, gentlemen, you observe, that on the other side we must be very cautious;—it is not every frantic and idle humour of a man that will exempt him from justice, and the punishment of the law; a man must be *totally* deprived of his understanding and memory, and who doth not know what he is doing any more than an infant, than a brute, or a wild beast; such an one is never the object of punishment. Therefore, says he, in his address to the jury, I must leave it to your consideration, whether the condition this man was in, as it is represented to you on one side or the other, doth show a man who knew what he was doing, and was able to distinguish whether he was doing good or evil. That, gentlemen, was the manner in which, upon this trial, Mr. Justice Tracy thought it his duty to state the law to the jury; the law as stated by him has never been contradicted, but has always been adopted: the jury pronounced a verdict of guilty:—unquestionably the man, at the instance and intercession of the noble lord who had been the object of the attack, was respited; and he remained in prison thirty years, until his death, under that respite.

* Vol. 16, p. 693.

Gentlemen, another case to which I shall call your attention, is one which probably has already occurred to your minds, I mean the case of my lord Ferrers.* That my lord Ferrers occasionally laboured under the misfortune of insanity, there can be no doubt: he had murdered a person of the name of Johnson, his steward—he had done it deliberately, shooting him in a room in his own house; the situation of the man after he was shot, and till the time of his death—the fact of his being alone in the room with my lord Ferrers, and other facts which were sufficient demonstration of the guilt of murder, supposing my lord Ferrers to be an object of punishment, were clearly and distinctly proved. It was alleged, that the consequence of that fact, namely, that it was murder, did not follow; because my lord Ferrers was incapable of knowing what he did, that he laboured under the misfortune of insanity, and therefore was not capable of forming a proper judgment upon the act which he did.

Gentlemen, upon that occasion, all the authorities were gone through by the person who then filled the office of solicitor general to his majesty, in a most solemn trial before the peers of parliament—every assistance was had upon that trial, and, therefore, what passed upon that trial must be considered as the most complete establishment of the law upon the subject. The law as laid down by my lord Coke—as laid down by my lord Hale, and as I have taken the liberty of stating it to you, was stated, was urged, was commented upon with infinite ability by the learned gentleman who then stood as counsel for the crown upon that prosecution; and it was insisted, that it was not necessary that a person committing a crime should have the full and complete use of his reason, but, as my lord Hale emphatically expresses himself, A COMPETENT USE OF IT;—whether he had that use of it which was sufficient to have restrained those passions which produced the crime; and that if there be thought, design, and faculty to distinguish the nature of actions, to discover the difference between moral good and evil, then, upon the fact of the offence proved, the judgment of the law must take place.

Gentlemen, to the law thus laid down upon that trial, all the judicial authorities in the kingdom must be deemed to have given their assent; the judges, sitting there as the assistants of the House, heard the law so laid down; and if such was not the law, it was their duty to have declared the contrary. The Lords, with one voice, found my lord Ferrers guilty of the offence wherewith he was charged, judging of his capacity *at the moment*, not whether at any former times he had been deranged in his mind; not whether he was one of those unfortunate persons who labour under the affliction of insanity, that is, of occasional insa-

nity with lucid intervals—if there is a total and absolute insanity and deprivation of the mind, there can be no doubt the sufferer cannot be guilty of the offence—but whether at the time he had that capacity of mind which was capable of forming intention, whether he weighed the motives, proceeded deliberately, and knew the consequences of what he did.

Gentlemen, I think you will find, that the prisoner at the bar, whatever may have been at times the situation of his mind, was, at the time he committed this act, at least so far possessed of it as to have that competent degree of reason which my lord Hale says is necessary to make a man guilty of the offence. He had been in the army, he had been discharged from it, and I believe he was so discharged partly on account of the state of his mind. Gentlemen, that degree of sound mind which is necessary for a person in such a situation, is very different from that which I have been observing upon to you. For the purpose of discharging any *constant duty*, a *constant sanity* of mind is necessary. There are also degrees of sanity necessary for different acts: if a man is called upon to make a contract, he must have that capacity of mind which will enable him to embrace all the particulars of that contract, to weigh that which he is to give against that which he is to receive, and perhaps he may not be sufficient even in point of information to form a judgment upon that subject; if he is to make a disposition of his effects by testament, it requires at least a certain degree of continued sanity of mind to enable him to make that disposition; but upon that head, it has been held, over and over again, that persons who a moment before have been in such a state of fury that it has been necessary to restrain them by putting that force upon them which is ordinarily used in those cases, yet recovering in the shortest space of time the use of their reason, so as to enable them to understand the act that they were doing, that act has been held to be valid, and to be a sufficient disposition of their property. But with respect to the commission of a crime, I do conceive that the degree of sanity which may be necessary even to give validity to a testamentary act, much less to a matter of contract for disposing of a man's property in his life time, is necessary for the purpose of enabling a jury of the country to pronounce a man guilty of a crime. A child cannot dispose of his property in any manner whatever, and no man would think he had a capacity for that purpose; but he has a sufficient capacity to be guilty of a crime. Why? Because there is a natural impression upon the mind of man, of the distinction between good and evil, which never entirely loses hold of the mind whilst the mind has any capacity whatever to exert itself—nothing but total and absolute debility deprives the mind of any man of that.

Gentlemen, when the evidence will detail to you the conduct of the prisoner, you will

* Vol. 19, p. 835.

find him acting as other men would do upon similar occasions; you will find that he cautiously left one of his pistols behind him, for a reason which he himself assigned; he was capable, therefore, of assigning a reason for the act which he was then doing,—you will find him going to the place where he purchased the gunpowder which he made use of—you will find that he conducted himself there like any other man—that he was capable of a contract to that extent, which indeed no man would have an idea that he was not capable of; that is capable of discerning what was the article he wanted, and what was the price that he was to pay for it.

Gentlemen, you will find him, in conversation with different people, stating his intention to go to the play; stating afterwards that he was going to the play; so that he had clearly conceived in his mind the deliberate purpose of going to the play. You will find him conversing with those persons upon the subject, representing himself as unable to stay with them, being obliged to go upon the business which he then had in hand. When he came to the theatre, he had that use of his understanding which enabled him to procure the admission; he had that use of his understanding, which enabled him to place himself in that part of the theatre most fit for his purpose, namely, the pit, at a small distance from the orchestra, a little removed from the centre; where he had the most complete view of, and the most complete aim at that box in which his majesty was to be. The faculties of the mind were used for all these purposes, and must have been used. He had a competent degree of reason to distinguish upon all these particulars, and he did distinguish.—After persons came about him in the theatre, he had that degree of reason which prompted him to conceal the pistol—which prompted him to conduct himself quietly, orderly, and with all that sobriety which a person patiently waiting for the representation of a piece upon the stage ordinarily uses.

Gentlemen, when his majesty entered the box, and the prisoner's dreadful purpose was to be put in execution, you will find him taking the utmost advantage for that purpose, by raising himself upon the seat, which, elevating him above every other person, enabled him to accomplish his purpose undisturbed. If he had stayed below, his arm might have been struck down the moment he raised it; when he stood upon the seat, he was above every body near him, and therefore could the more readily effect his purpose. There is thought, design, and contrivance in this; and he had a mind equal to that thought, equal to that design, equal to that contrivance; he knew whether or not it was advantageous to place himself in that situation; can you believe that he did not know the consequence of the act which he was about to do? He fired in that direction; the slugs struck against parts of the box; but such was the interposi-

tion of Providence, that they did no mischief; they were directly aimed at the spot in which his majesty was, but one struck upon the side, and the other, I believe, over that box. After he had done the act, he dropped the pistol; that might have been involuntary; at the same time, it has somewhat the appearance of design. He was hurried over the partition between the pit and the orchestra, and he was then in the kind of heat and agitation which naturally prevails on such occasions. He was asked what could prompt him to do what he did. Gentlemen, those who saw him at that moment will describe, how far he appeared to them to be in the possession of his understanding, and conscious of the act that he had done, and of the consequence of that act—that he knew that, by the law, his life was forfeited.

Gentlemen, you will have no doubt, when the evidence is detailed to you as it is represented to me, that before the act, at the time of the act, and after the act, he had that degree of understanding which enabled him to form a judgment of that which he proposed to do, of that which he did, and of that which he had designed. When a man has that degree of understanding, however deranged his state of mind may have been at other times, the law says, and the safety of the world requires, that he should be responsible to justice for the act which he has so done—as responsible as an infant, as responsible as a person of weak understanding, but who yet has that degree of understanding sufficient for these purposes.

Gentlemen, this is the evidence which I have to offer to you, and this is what I conceive to be the law upon the subject. We must all feel happy, that the act which forms the charge of guilt against the prisoner, had not that dreadful effect which it might have had; but, gentlemen, though providentially his majesty's life was saved, yet it is important to the purposes of justice, to the purposes of general safety, as well as to the particular safety of whoever in this country may wear the crown, that it should be known and understood, that a man who perhaps may be at some times deranged, and who may never perhaps perfectly recover the sanity of his mind, so as to make him such as a man who had never laboured in any degree under that infirmity, may yet be guilty of crimes, and may be punished for those crimes. So the jury thought, so the Court thought, when Arnold was tried for shooting at my lord Onslow; so the highest judicature in the kingdom thought, when they condemned to death my lord Ferrers; and so the highest authority in the kingdom thought, when he suffered execution to pass according to that judgment. Gentlemen, with this observation I will lay the case before you. I trust I have neither over-stated the facts nor the law; if I have over-stated the facts, in any particular, you will be able to correct me as the evidence is

produced; if I have over-stated the law, I shall receive the correction which I ought to receive from the place from which I ought to receive it.

EVIDENCE FOR THE CROWN.

Mr. Joseph Calkin sworn.—Examined by Mr. Solicitor General.

You belong, I believe, to the musical band, at Drury-lane theatre?—I do.

Were you in the theatre on Thursday the 15th of May?—I was.

In what part?—The lower end of the orchestra, the opposite end to where his majesty sits, with my back towards the stage, and my face to the audience.

Did you see the prisoner there?—At the moment when the pistol was fired I did.

Relate what you saw the prisoner do?—The moment his majesty comes into his box, it is the usual custom for the audience to rise up; and at the moment his majesty came in, I looked up towards the box, and turned my eyes towards the audience; when the audience were rising, I saw this man above all the rest, with a pistol in his hand; the pistol was pointed to his majesty's box, and as it appeared to me towards his majesty's person.

Had you a distinct opportunity of seeing the pistol while it was in that position?—I had.

Then it remained pointed for some space of time?—He pointed it; it instantly was discharged, and the pistol dropped almost instantly.

Was it held steadily?—Very steadily.

Was it dropped on the ground?—It fell on the ground, I imagine.

What happened afterwards?—Every body in the pit wished to secure him; I put my instrument down, I do not know where; I got upon my desk, and assisted in pulling him over the orchestra, and I never quitted sight of him till he was brought into our room under the stage, where he was examined. Mr. Sheridan came down, and his royal highness the duke of York.

Did you hear the prisoner say anything, immediately after his being brought into the room?—When his royal highness came in, he said—“*God bless your royal highness; I like you very well; you are a good fellow; but this is not the worst that is brewing: you need not be surprised at this, for this is not the worst that is brewing*”—or words to that effect.

Mr. John Holroyd sworn.—Examined by Mr. Law.

Were you in the pit of Drury-lane theatre, on Thursday evening the 15th of May?—I was.

Did you sit near the prisoner at the bar?—I accompanied some friends there; I was separated from those friends in getting in; the prisoner made way for me, and I sat next to him.

How long did you sit by him, before his majesty entered the theatre?—I conceive, about three quarters of an hour.

Did you observe any thing particular in his behaviour, during those three quarters of an hour you sat by him?—I did not: I did not exchange a word with him.

Did you observe any thing particular in his countenance or gestures during that time?—I remarked to a friend that sat next to me that he was a pitiable object, from the severe wound he had upon his cheek, and the appearance of a ball extracted from his temple.

Did he make room for you or in any manner accommodate you in taking your place in the theatre?—I was separated from my friends in getting in; when I got into the theatre I looked round to see where my friends were; there was no room there for me; I asked him if he would be so good as make room for me, he obligingly did.

Did he merely make way for you, or say any thing?—I think he said “*willingly, sir,*” and he made room to accommodate me.

Did his countenance exhibit any marks of agitation at the time his majesty entered, immediately prior to the discharge of his pistol?—I cannot say that I observed him.

Did you observe the time when his majesty did come into his box?—Particularly.

What did you see the prisoner then do?—My attention was directed towards the king's box: I saw a pistol presented before my face; at that instant the contents went from it.

Had you the means of observing, and did you observe in what direction that pistol was fired?—Unquestionably the direction of the pistol was towards the king's person, or the king's box.

You have no doubt the pistol was so pointed?—I was asked that question before the bullets were found, I think by Mr. Sheridan; I spoke positively then, that if there was any thing in the pistol, the bullets would be found there, or thereabouts.

Was it your persuasion, before they were found, from the direction of the pistol, that it was towards the king's box?—It was.

You, I believe, seized his person immediately?—I struck him, and I rather suspect I struck the pistol; for I had a sort of wound in my hand; as to knocking him down, he was very soon down; I do not know whether I knocked him down or not, but I was one who assisted in securing him after the pistol was discharged.

Were you on his right hand or his left?—On his left hand.

Were you nearer to his majesty?—Yes, one nearer to his majesty.

Mr. Erskine.—Were you on the side farthest from where his majesty sat, or on the opposite side?—I was on the farthest side of the pit.

How many might be on that side of you?—There might be the distance of about six feet from the prisoner to the end of that side of the pit.

Lord Kenyon.—Nearer to or farther from the king?—Farther from the king.

Mr. Law.—Did not that situation give him a greater convenience of taking an aim than if he had been placed more immediately under his majesty's box?—I am not able to answer that.

Did it give him a perfect view of his majesty's box?—It was where a good view of the king might be taken, but I am not a judge of what is the best place to take to do such an act.

Mr. Jeremiah Parkinson sworn—Examined by Mr. Garrow.

Were you in the orchestra of Drury-lane theatre on the fifteenth of May?—Yes, I was.

How were you situated with respect to the stage and the audience?—I sat in the middle of the orchestra, with the audience at my left hand, almost at the bottom of the orchestra, facing the king.

How long had you been in your station before his majesty came to his box?—Perhaps ten minutes; I cannot pretend to say; a short time.

Did you observe the prisoner at the bar?—I did.

In what situation was he, when you first observed him?—It is customary when his majesty comes into his box, for the audience to rise from their seats; the audience rose upon his majesty's coming in; the prisoner was considerably higher than the people about him; he was standing upon the second seat from the orchestra in the pit; I saw him present a large pistol, which appeared to me in a direction at the king's box.

When was that with respect to his majesty's coming into his box?—At the moment his majesty came forward to make his usual bow to the audience; I never quitted him with my eye till the pistol went off: he stood with his arm extended thus (*describing it*), and he appeared to me deliberately to take aim at the box; what I mean by *deliberately* is, it appeared that he took sufficient time to take aim, for I saw him look up the barrel of the pistol.

Look along the barrel, as a man does when he takes the sight?—Yes, I saw the pistol discharged in that position; as soon as it was fired, some gentleman in the pit pulled him from the bench: he fell towards the orchestra; I got upon the bench in the orchestra and laid hold of him: with the assistance of several of the gentlemen in the pit, as well as in the orchestra, we got him over the spikes into the orchestra, into the room that we sit in under the stage; Mr. Townsend came in, and we gave him in charge to him.

Did you continue in the room, till his royal highness the duke of York came in?—I did.

Did you hear any thing addressed to his royal highness by the prisoner at the bar?—Yes, I did; I am not able to state all he said to his royal highness, the room is so small and was in such confusion. I heard him say to his royal highness "*this is not all*" or "*this is not the worst*;" I am not certain which

of those expressions, it was to that purport; "*You do not know what is going forward*," or words to that effect.

From the situation in which you saw the prisoner your eye never quitting him, had he a commanding station, if he had been so minded, to have taken an aim at his majesty?—In my opinion, he could not have fixed himself in a better one.

Major Wright sworn.—Examined by Mr. Wood.

Were you at Drury-lane Theatre on the 15th of May last?—I was.

What part of the theatre were you in?—The first row of the pit from the orchestra.

Did you see the prisoner at the bar there?—I did.

Where did he sit?—He was in the second row, immediately behind me.

How long had you observed him there?—I had not taken any particular notice of him; some time, I had been in the house I presume near three quarters of an hour.

Had he been there all that time?—The greatest part of that time, I should suppose.

What did you see him do?—Upon it being announced that the king was coming into his box, I was leaning against the orchestra looking stedfastly towards the king's-box; and immediately on his majesty's entering the box, I heard the report of a pistol just at my left shoulder almost, I was rather startled at it, almost momentarily I turned round, and I saw the prisoner standing on the bench, seemingly very much agitated and confused, and I then immediately jumped upon the bench upon which I had sat, and took hold of him by the collar; there was a cry out in the house, "*secure the villain*;" and I believe I made use of the expression, as loud as I could speak, "*I have got him safe enough*." I pulled him towards the orchestra; a number of other persons got hold of him then; upon my leaving him, I turned round, and looked at the place where he had been, and a young lady, of the name of Ormiston, who sat in the seat behind the seat on which he had sat, pointed down to the ground, to which place I looked, and picked up this pistol [*producing a horse pistol*].

Lord Kenyon.—Had it been discharged?—I apprehend it to have been just fired; it had the smell of the gunpowder upon it.

Miss Elizabeth Ormiston sworn.—Examined by Mr. Abbott.

Were you at Drury-lane play-house on the 15th of May last?—Yes.

Were you in the pit?—Yes.

How many benches from the Orchestra was the bench on which you sat?—The third.

Did you see the prisoner at the bar there?—Yes.

How near was he to you?—On the seat immediately before me, but he sat a little on one side.

How long were you in the play-house before his majesty came?—About half an hour, I believe.

Had you observed the prisoner there during that time?—He was there.

Did you observe any thing particular in his conduct or behaviour during that time?—Nothing at all.

When his majesty came into the box, did you observe any thing particular in the conduct of the prisoner at that moment?—Not at the moment.

How soon did you observe the prisoner in any particular situation?—As soon as his majesty had made a first or second bow, I cannot say which, he fired his pistol.

Where was he, at the moment he fired the pistol?—I cannot say exactly whether he was upon the ground or the bench, it flurried me so much.

Did you see a pistol in his hand?—Yes, as he fired it off.

What became of the pistol the moment he had fired?—Almost immediately after, he threw it down before me.

He was then secured, as we have understood, and taken from that place?—Yes.

After that had happened, did you point out the pistol which you had seen fall from his hand to any person?—Yes, to Mr. Wright.

Did you see Mr. Wright pick up that pistol which the prisoner had thrown down?—Yes.

David Moses Dyte sworn.—Examined by Mr. Attorney General.

Were you in the pit of Drury-lane theatre on the 15th of May?—Yes, I was.

In what part of the pit were you sitting?—It was either the third or the fourth row, I cannot say which; but it was directly above where the pistol was discharged.

Did you see the pistol discharged?—I did not see it discharged, but I saw it in the prisoner's hand directly after it was discharged.

Did you see the prisoner before?—I seized him; I had not seen him before.

Lord Kenyon.—Was that after Mr. Wright had seized him?—When I seized him, I do not know positively whether anybody else had seized him; I was on his left hand; at the discharge of the pistol, I laid hold of him directly.

Mr. Attorney General.—Had you observed the prisoner before?—I cannot say I had, to my knowledge.

Mr. John Francis Wood sworn.—Examined by Mr. Solicitor General.

Were you at Drury-lane theatre on the 15th of May last?—I played a tenor in the orchestra.

Where did you sit in the orchestra?—With my back to the stage, my face of course towards the audience, the last but one on that side which is called the Prince's side, which is opposite to his majesty's box.

VOL. XXVII.

Did you see the prisoner there?—I had noticed the prisoner for several minutes previous to the transaction.

Where was he when you first noticed him?—Between the second and the third row; I suppose he was seated on the third row.

What did you see him do?—I saw the prisoner, previous to firing the pistol, jump or step up upon the seat of the second row; the barrel of the pistol first caught my eye, which I at first thought was a spy glass, which people sometimes use in lieu of an opera glass; he held it forward nearly in this posture [*describing it*], with his arm stretched out.

In what direction?—Towards the royal box. I saw the pistol fired, and then assisted in securing the prisoner.

Where was his majesty at that time?—In front of the box.

Mr. Law.—We have other witnesses, of whom we have given the account; their testimony is merely to the same effect. I will now call his royal highness the duke of York.

[As soon as his royal highness entered, the prisoner said, "God Almighty bless his good soul, I love him dearly."]

His Royal Highness the Duke of York sworn.—Examined by Mr. Law.

Your royal highness was at Drury-lane theatre, on the evening of Thursday the 15th of May last?—Yes, I was.

Where did your royal highness first, on that evening, see the prisoner at the bar?—I cannot say, that I can speak positively to having seen him in the house, because it was dark at that side of the house; it was the moment the curtain was drawn up, and I could not have immediately sworn to his person; but I went out immediately after, and saw him in the room called the music room, under the stage.

Had your royal highness any conversation with him in that room?—The moment I came in, he said, "God bless you; I know your royal highness; you are the duke of York; I served under you."

Did your royal highness ask him any question upon that?—I made a remark to the gentleman who was with me, "I am sure I know that man's face."

Did your royal highness recollect him?—I recollected his face; I could not recollect exactly where I had seen him, but I remembered his face perfectly.

Does your royal highness recollect any conversation with him, whether he had been one of your orderlies?—After part of the examination, I said, "I think I know you;" he said, "Yes." I said "I think you have been one of my orderlies," he said "Yes, I have."

Will your royal highness have the goodness to explain what is meant by orderlies?—One of the dragoons who attended upon me. General officers have a number of orderlies

attached to them; this was one of the men attached to me. I then asked him, particularly, when; he mentioned, particularly, the day after the battle of Freymar, that he had been one of my orderlies.

In the conversation you had with him, did his answers appear to be the answers of a person who knew the subject upon which your royal highness was conversing?—Perfectly.

Does your royal highness recollect any thing he said respecting the act he had been supposed to be recently doing?—He said once or twice, at different times, he knew perfectly well that his life was forfeited.

Will your royal highness have the goodness to recollect, whether there was any thing more said by him?—He said that he was tired of life, and that he regretted nothing but the fate of a woman who was his wife, who would be but a few days longer he supposed his wife: in talking upon the enormity of the crime he had been committing, he said, I think, exactly in those words “the worst has not happened yet” or “has not come yet.”

In the whole course of the conversation which your royal highness had with this man, from the first to the last, upon that occasion, did he betray in his answers any irregularity, from which you could collect a then existing derangement of his understanding?—Not the least; on the contrary, he appeared to speak as connectedly as could possibly be. The first conversation at which I was present, continued nearly three quarters of an hour; he was as much collected as possible.

Did your royal highness direct any search after the slugs?—After his majesty was gone, I remained to see the house searched. In searching his majesty's box, there was a hole found at the corner of the box, that had the impression of a shot, which was on the right hand, I should think about fourteen inches higher than where his majesty's head might be; it was a hollow pilaster, and in searching below, a slug was found, I cannot call it a ball, for it was not round. I was in the king's box at the time the slug was found in the orchestra.

From the smell of that slug, or from any other circumstance could your royal highness collect that it had been recently fired?—It appeared by the smell to have been recently fired; there was the smell of powder upon it.

Was it found in the orchestra in such a situation as that it might have rebounded from the pilaster?

Lord Kenyon.—I understood that the pilaster which it struck was hollow, that it had perforated the pillar, and fallen down.

His R. H. the Duke of York.—The side of the box is angular, the pilaster is semicircular; so that of course there is a space between the pilaster and the wall, and it must have fallen through, for the pilaster was pierced.

Mr. Law.—I believe your royal highness did not see any other slug found?—I did not see any other slug found,

His Royal Highness the duke of York, cross-examined by Mr. Erskine.

Are the orderly men who are in attendance upon a person of your royal highness's rank and distinction both in the army and otherwise, taken promiscuously, or how?—They are taken as the most tried and trusty men.

Your royal highness has stated, that the prisoner was examined for a considerable length of time upon this most disastrous and extraordinary occasion; no doubt, upon the man's expression of the affection which he appeared to feel for your royal highness, it would occur to somebody to ask how he reconciled that with the act which had been the immediate subject of inquiry?—When he was asked why he committed the act, he only said he was tired of life.

Did he enter into any explanation of that phrase?—He said he was tired of life, that he thought he should be certainly killed if he were to make an attempt upon his majesty's life.

Mr. Law.—Did he give the answer collectedly, or as a man under any disturbance of mind?

His R. H. the Duke of York.—No; he was perfectly collected, in my opinion, at the time he answered.

Joseph Richardson sworn—examined by Mr. Garrow.

Were you at Drury lane theatre on the 15th of May last?—I was.

Did you there see the prisoner at the bar?—I did.

Where did you first see him?—I saw him after he had been lifted over the spikes of the orchestra and carried into the anti-room, to which the musicians retire in the intervals of their business.

What has been called to day the “music room”?—It is a little room into which the musicians retire in the intervals of their business.

How long had you been in that room with the prisoner, before his royal highness the duke of York came there?—I think our presence there was as nearly at the same time as possible.

Do you recollect any thing that was addressed by the prisoner to his royal highness?—Towards the conclusion of his examination, after his commitment had been made out and he was retiring, he, in passing the duke of York, addressed him with great enthusiasm, and said, “God bless him; for he was the soldiers friend, and the soldiers loved him.”

Do you remember any other expression which he used during the time you were in the music room, before or after?—He said that he knew the duke of York; that he had served with him.

Do you remember any expression he made use of, resulting from the charge which was then made against him of having attempted

the king's life?—The question appears to me a little ambiguous.

Do you recollect any expression used by the prisoner, on any charge being made to him of having attempted the king's life?—He constantly denied that he had any intention to take away the king's life.

You are quite sure of that expression?—As to his intention, a general denial of such intention.

Was that denial made in the manner of a man at that time under the impression of lunacy, or of a collected man knowing what he was speaking of?—During his examination at Drury Lane theatre, at which I was present the whole time, I saw no one indication of lunacy about him whatever. Perhaps it would be only rendering justice in this case, to premise something that happened before this declaration of his. When his royal highness the duke of York, Mr. Sheridan, and a gentleman, I think of the name of Wickstead, a magistrate, and myself had sat down to examine the prisoner, with pens ink and paper and all the formalities of such business, he said to us, "gentlemen, do not give yourselves all this trouble; use me well, and I will tell you the whole truth. I am a man tired of life; my plan is not to take away my own life, I sought therefore to get rid of it by other means; I did not mean to take away the life of the king but I thought this attempt would answer my purpose as well."

How long might that occupy, from the first moment you saw him?—I should fancy not much less than an hour and a half.

I take for granted that such an occurrence excited a good deal of agitation in the minds of most persons there?—The guards were there, and kept the room clear; the agitation in the audience was universal and tumultuous certainly.

Do you happen to recollect whether the prisoner in your presence made use of any expression, with respect to any thing that might happen at any future period?—I was told so in the room, but I did not hear it myself.

If you were told so in his presence, and he made any observation about it in your presence, you will state it; if not, I shall not press that question farther?—I am not at all conscious that he heard it.

Mr. John Weale sworn—examined by Mr. Wood.

Did you make any search for any slugs at Drury Lane theatre?—As a carpenter employed in the theatre; we were all ordered by Mr. Sheridan to examine into the drapery and all the other decorations of the box, as soon as the king retired from the theatre; we searched between two and three hours in the course of the evening.

Did you find any thing, and what?—In the course of the evening one was found, but not by me. In the morning, between eight and nine, I came again in order to re-instate the box in the position it now is; there was a man

of the name of Carter along with me; we searched round the flooring of the king's and prince's box, but found nothing; we found it in a box called and known by the name of lady Milner's box.

What did you find?—A piece of lead: lady Milner's box is adjoining to a box where the prince of Wales sits.

How far is that from the king's-box?—About three feet from the pilasters that support the king's box.

Did you find any mark any where?—There was a groove cut in the cope-moulding over Lady Milner's box.

What sort of a mark was it?—The moulding was cut through I suppose about an eighth or a sixteenth of an inch deep; from that it went and razed the paper off the lower member of the same moulding.

Could you judge what that was occasioned by?—I judge that was done by that piece of lead which I picked up in lady Milner's box.

What did you do with that slug which you found?—I kept it in my own possession, till I delivered it up to the prince of Wales, at the secretary of state's office, next day between twelve and one.

Was it delivered in the presence of Mr. Ford?—Yes, and delivered to Mr. Ford afterwards; it was never out of my sight till it was delivered to Mr. Ford.

Richard Ford, esq. sworn.—Examined by Mr. Garrow.

You have some slugs, I believe, in your possession?—I have [*producing them*].

Where were they delivered into your custody?—There are two; one was delivered by a person of the name of Weale; the other by Fosbrook and Johnson; they have remained in my possession ever since.

John Weale called again.

Mr. Garrow.—Was that ball which you delivered to Mr. Ford, the same you found at the theatre?—Yes, I will swear it is the same; there are two marks of my own upon it.

Did you smell to the slug that you found?—I did; I made an observation both of the smell and the dew upon it. It appeared to me to be recently discharged from some sort of fire-arms.

John Beten sworn.—Examined by Mr. Abbott.

Did you search in Drury-lane theatre on the night of the 15th of May?—Yes.

Did you find any thing?—Yes; I found the first slug that was found; I found it in the orchestra, just off the seat of the pit.

That was on the night of the 15th of May?—Yes.

Did you make any observation upon the state and appearance of that slug?—By the look of it I did; as soon as I picked it up, I delivered it to the duke of York; and I made a mark upon the boards where I found it.

What judgment did you form from the look and appearance of it?—It was shaped al-

most like a half-moon, hollowed out in the middle.

Could you form any judgment whether that piece of lead had been recently discharged?—That I could not tell. I delivered it immediately to Mr. Johnson, and he delivered it to the duke of York.

Did you observe any thing of the smell?—No; I delivered it immediately to Johnson, and saw him deliver it to the duke of York.—*[The witness looks at the slug.]*—That is the slug I found.

Mr. Justice Lawrence.—Is that the part of the king's box which is near the orchestra?

Witness.—The pilasters come close to the orchestra; it stands upon the front of the box.

How near was the bottom of the pilasters to the orchestra?—The orchestra comes directly up close to it.

Thomas Fosbrook sworn.—Examined by Mr. Attorney General.

Were you present at Drury-lane theatre on the 15th of May, when a slug was found?—I was; I saw the slug found.

Had you that slug in your hand?—I had it in my hand; I saw it examined by the prince of Wales, the duke of York, and all the people in the box; it was afterwards wrapped up in a piece of paper by Mr. Sheridan, and sealed with the duke of York's seal; and the duke of York gave it into my possession.

What did you do with it?—I gave it to Mr. Ford the next day, at the duke of Portland's office.

Mr. Alexander Johnson sworn.—Examined by Mr. Solicitor General.

Did you deliver any slug to the duke of York?—I did.

Should you know it again if you saw it?—Certainly; this is the slug. It smelt of powder at the time I delivered it.

Did you examine any of the boxes adjoining that in which his majesty sat?—I did; I examined the princesses box, and the box over it, where the attendants sit.

Did you discover any mark upon any part of the adjoining boxes?—I discovered a mark in the front of the attendants' box, directly over where the princess Elizabeth sits.

What part of the box?—About three feet from the pilasters of the king's box, and about four or five inches over the cove.

Could you form any judgment by what that mark had been made?—It appeared to have been made by a slug or bullet, that had struck and rebounded; it did not go through; for there was, upon the ledge, some loose whitening, or cement, that is generally put to fill up the bead-work, which had fallen from the mark upon the little moulding directly under.

William Harman sworn.—Examined by Mr. Law.

What are you?—A silver-spoon maker.

†

Are you journeyman to Mr. Dicks?—Yes.

How long have you known the prisoner at the bar?—I have known him seven years.

Did the prisoner at the bar call upon you at any time on Thursday the 15th of May?—Yes, about two o'clock.

At what place did he call upon you?—At Mr. Dicks's shop, in Greenhill's-rents, near Smithfield.

Did he at that time show you any thing?—He showed me a pistol; he said he had been buying a pair.

Did you ask him any question, upon his telling you he had bought those pistols?—I asked him what he bought them for? he said he bought them for his young master, and gave eight shillings for them; that he meant to charge his young master twelve shillings, after he had cleaned them up, and then he should get four shillings by them.

Did he leave either of his pistols with you or at the place where he was?—Yes, he left one.

Did he give any reason for leaving that one pistol with you?—He said, if he took it home, his wife would be frightened.

At the time when he called upon you, produced this pistol, and had this conversation with you about leaving the pistol for fear his wife should be frightened, did he appear to you to be collected, and to understand what he was about?—Yes.

Was his appearance the appearance he usually bore, or was there any thing different from his usual manner on that occasion?—No, he seemed as well as ever he did in his life.

Thomas Dicks sworn.—Examined by Mr. Garrow.

I believe you carry on the business of a silver spoon-maker?—Yes.

Was the young man who has just left the Court, William Harman, a journeyman of your's?—Yes.

Do you know the prisoner at the bar, James Hadfield?—Yes.

Did he, at any time, work for you as a journeyman in your business?—About a year and a half ago.

How long did he work for you?—About three weeks.

At one time?—Yes.

Did he execute his business like other journeymen in the same trade?—Yes.

Have you, since he ceased to work for you, occasionally seen him upon visits to his shop-mates, and upon other occasions?—I have met him in the streets several times.

Do you remember seeing him at your house on Thursday the 15th of May last?—Yes.

About what time of the day?—Somewhere about two, or after two o'clock, in the afternoon.

Whom did you see him in company with, and what was his business there?—He called to see Harman.

Did you see any thing in the possession of the prisoner at that time?—Yes; when I shoved the shop door open, I saw him sitting on a stool in the shop; he said to me, "How do you do, master?" and he said he had bought a bargain; that he had given eight shillings for a pair of pistols. He asked me what I thought they were worth? I said, I did not think they were worth four. I went out of the shop then, and went down stairs, and he went out to get some beer, to treat the young men with some beer; he laid the pistol down, and then went away.

Lord Kenyon.—One of the pistols?—He had only one.

Mr. Garrow.—He had been some time with Harman before you went in?—Yes; the pistol lay there; I told him to take the pistol with him; he said, "No, I shall not go to work this afternoon; I shall go home and clean myself." I told him to take the pistol with him; he said he should frighten his wife with the pistol if he took it, and he would leave it till he came back again; he called again for it, put it into his pocket, and took it away, and I saw no more of him.

How long was he absent?—About twenty minutes; time enough to clean himself.

Had he cleaned himself before he returned last?—Yes; he was clean when he came and fetched his pistol away.

He was in his working dress when you saw him first?—Yes.

He went away, and returned in twenty minutes clean, and then took away the pistol?—Yes.

During the whole of the time that you saw him upon that Thursday the 15th of May, from his manner, from any thing that he said, from any thing you gathered in his conversation, did you observe any thing extraordinary in his manner, or was it the manner of a sane man, knowing perfectly what he was doing?—He seemed more solid than ever I saw him before; I thought he seemed duller, not so cheerful in spirits; that was all the notice I took of him.

Was there any thing disjointed in his conversation, any thing out of its place?—No.

Any thing that gave you an idea that there was any thing the matter with his head?—No, not that gave me any idea of that, he seemed lower in spirits I thought than I had usually seen him before.

Cast your eye upon that pistol; was it a pistol of that sort?—I think this was the pistol.

A Juryman.—Did you see only one pistol, or a pair?—Only one.

Mr. Garrow.—He produced only one to Harman, but mentioned two.

William Harrison sworn.—Examined by Mr. Wood.

Do you know the prisoner at the bar?—Yes.

How long have you known him?—Between seven and eight years.

What business do you follow?—A hair-dresser.

Do you shave likewise?—Yes.

Have you been used to shave the prisoner, during those seven years?—Yes.

Do you remember his coming to your shop on the 15th of May last?—Yes.

What time of day did he come to your shop?—It was between two and three o'clock, to the best of my recollection.

For what purpose did he come to your shop?—I was coming out of the door, I met the prisoner coming across the way; I stopped at the door, he said "Ah! William, do you live there," I said "yes;" he told me he wanted shaving, he said he was going farther, and he would call as he came back.

At what time did he return to you?—In about ten minutes or a quarter of an hour; then I shaved him.

Did he tell you where he was going?—He told me he was going to the play, that was all he said to me.

How long did he stay with you?—He might be in the shop about eight minutes; I was shaving a man when he came in.

Did you observe any thing particular about him at that time?—Nothing but as usual.

You say you have shaved him occasionally?—Yes; it was full seven years ago since I shaved him first; that was before he went to the Continent.

George Webb sworn.—Examined by Mr. Abbott.

Whom do you live with?—Mr. Clarke.

Where does he live?—No. 74, Saint John-street, West-Smithfield.

What business does he follow?—An oil and colourman.

Does he sell gunpowder?—Yes.

Do you remember any person coming to the shop on Thursday afternoon, the 16th of May last?—Yes.

Did you observe any thing particular in the face of that person?—Yes, he had a scar in his face, and his eye seemingly drawn.

Did that person whom you so describe, ask for any thing, and what?—He asked for one ounce of superfine gunpowder.

What answer was given to him?—That it was at the warehouse, and when the porter came home, he being then out, that it should be got for him.

Upon receiving that answer did he go away?—Yes.

Do you see the man?—Yes, the prisoner at the bar is that man.

Did he say he should call again, when he went away?—Yes.

Did it happen that you were sent out on a message soon after that?—Yes.

Did he call again while you were at home?—No.

Thomas Punter sworn.—Examined by Mr. Attorney General.

Do you know the prisoner at the bar?—Yes.

Did you see him on the 15th of May last?—Yes,

Where was it you saw him?—At the Bull's-head, the corner of Aylesbury-street, Jerusalem-passage.

Is that near Smithfield?—It is in Clerkenwell.

Is it near Saint John-street?—Yes, it is.

Was there any body at the Bull's-head, besides yourself, that you knew?—Five of my shopmates.

When you saw the prisoner what happened?—We were going away from the Bull's-head; one of my shopmates said, there goes Hadfield, and directly said go and call him in, I being outside towards the door, I ran out and called Mr. Hadfield.

What time was this?—At about four o'clock in the afternoon; he was in Saint John's-square; he turned round and said, "how do you do Mr. Punter;" to the best of my knowledge he said, "I cannot stop for I am going upon particular business," or to that purpose; I said, "they won't detain you five minutes;" he returned back to the Bull's-head.

Did he go into the house?—Yes.

Did he stay any time?—Only five minutes; he had a glass of brandy; we were all going.

Was there any conversation?—Nothing particular.

Did you observe any thing particular about him?—No.

Did he appear as usual?—Yes.

James Bagnald sworn.—Examined by Mr. Solicitor General.

Do you remember being at the Bull's-head, in company with Punter, on the 15th of May?—I do.

Do you remember seeing the prisoner?—Yes.

About what time?—Between four and five o'clock as near as I can recollect, I saw him going by through the window; I said, "there goes Jem. Hadfield;" some of them, I do not know which, said, call him in; he was called in.

How long did he stay with you?—Not above two or three minutes, I suppose.

Did he say any thing, why he could not stay longer?—Not in my hearing.

How did he appear?—He appeared as well as ever I saw him.

Mr. Law.—We have the three other journeymen who were present at the same time, but we do not trouble the Court with them.

Mr. Erskine.—It cannot be necessary in the view I have of the case.

Mr. Law.—Here we close our case.

DEFENCE.

The Honourable *Thomas Erskine*.—Gentle-

men of the Jury;—The scene in which we are engaged, and the duty which I am not merely *privileged*, but *appointed* by the authority of the Court to perform, exhibits to the whole civilized world a perpetual monument of our national justice.

The transaction, indeed, in every part of it, as it stands recorded in the evidence already before us, places our country, and its government, and its inhabitants, upon the highest pinnacle of human elevation. It appears, that upon the 15th day of May last, his majesty, after a reign of forty years, not merely in sovereign power, but spontaneously in the very hearts of his people, was openly shot at (or to all appearance shot at) in a public theatre in the centre of his capital, and amidst the loyal plaudits of his subjects, YET NOT A HAIR OF THE HEAD OF THE SUPPOSED ASSASSIN WAS TOUCHED. In this unparalleled scene of calm forbearance, the king himself, though he stood first in personal interest and feeling as well as in command, was a singular and fortunate example. The least appearance of emotion on the part of that august personage, must unavoidably have produced a scene quite different, and far less honourable than the Court is now witnessing; but his majesty remained unmoved, and the person *apparently* offending was only secured, without injury or reproach, for the business of this day.

Gentlemen, I agree with the attorney-general (indeed, there can be no possible doubt), that if the same pistol had been maliciously fired by the prisoner in the same theatre, at the meanest man within its walls, he would have been brought to *immediate* trial, and, if guilty, to immediate execution.—He would have heard the charge against him for the first time when the indictment was read upon his arraignment. He would have been a stranger to the names and even to the existence of those who were to sit in judgment upon him, and of those who were to be the witnesses against him; but upon the charge of even this *murderous* attack upon the king himself, he is covered all over with the armour of the law. He has been provided with counsel by the king's own judges, and not of *their* choice, but of *his own*. He has had a copy of the indictment ten days before this trial. He has had the names, descriptions, and abodes of all the jurors returned to the court; and the highest privilege of peremptory challenges derived from, and safely directed by that indulgence. He has had the same description of every witness who could be received to accuse him; and there must at this hour be *twice* the testimony against him as would be legally competent to establish his guilt on a similar prosecution by the meanest and most helpless of mankind.

Gentlemen, when this melancholy catastrophe happened, and the prisoner was arraigned for trial, I remember to have said to some now present, that it was, at first view, difficult to bring those indulgent exceptions

to the general rules of trial within the principle which dictated them to our humane ancestors in cases of treason against the political government, or of rebellious conspiracy against the person of the king. In these cases, the passions and interests of great bodies of powerful men being engaged and agitated, a counterpoise became necessary to give composure and impartiality to criminal tribunals; but a mere murderous attack upon the king's person, not at all connected with his political character, seemed a case to be ranged and dealt with like a similar attack upon any private man.

But the wisdom of the law is greater than any man's wisdom; how much more, therefore, than mine! An attack upon the king is considered to be parricide against the state, and the jury and the witnesses, and even the judges, are the children. It is fit, on that account, that there should be a solemn pause before we rush to judgment; and what can be a more sublime spectacle of justice than to see a statutable disqualification of a whole nation for a limited period, a fifteen days quarantine before trial, lest the mind should be subject to the contagion of partial affections!*

From a prisoner so protected by the benevolence of our institutions, the utmost good faith would, on his part, be due to the public if he had consciousness and reason to reflect upon the obligation. The duty, therefore, devolves on me, and, upon my honour, it shall be fulfilled. I will employ no artifices of speech. I claim only the strictest protection of the law for the unhappy man before you. I should, indeed, be ashamed if I were to say any thing of the rule in the abstract by which he is to be judged, which I did not honestly feel; and I am sorry, therefore, that the subject is so difficult to handle with brevity and precision. Indeed, if it could be brought to a clear and simple criterion, which could admit of a dry admission or contradiction, there might be very little difference, perhaps none at all, between the attorney-general and myself, upon the principles which ought to govern your verdict; but this is not possible, and I am, therefore, under the necessity of submitting to you, and to the judges for their direction (and at greater length than I wish), how I understand this difficult and momentous subject.

The law, as it regards this most unfortunate infirmity of the human mind, like the law in all its branches, aims at the utmost degree of precision; but there are some subjects, as I have just observed to you, and the present is one of them, upon which it is extremely difficult to be precise. The general principle is clear, but the application is most difficult.

It is agreed by all jurists, and is established by the law of this and every other country,

* There must be fifteen days between arraignment and trial.

that it is the REASON OF MAN which makes him accountable for his actions; and that the deprivation of reason acquits him of crime. This principle is indisputable; yet so fearfully and wonderfully are we made, so infinitely subtle is the spiritual part of our being, so difficult is it to trace with accuracy the effect of diseased intellect upon human action, that I may appeal to all who hear me, whether there are any causes more difficult, or which, indeed, so often confound the learning of the judges themselves, as when insanity, or the effects and consequences of insanity, become the subjects of legal consideration and judgment. I shall pursue the subject as the attorney-general has properly discussed it. I shall consider insanity, as it annuls a man's dominion over property; as it dissolves his contracts, and other acts, which otherwise would be binding; and as it takes away his responsibility for crimes. If I could draw the line in a moment between these two views of the subject, I am sure the judges will do me the justice to believe, that I would fairly and candidly do so; but great difficulties press upon my mind, which oblige me to take a different course.

I agree with the attorney-general, that the law, in neither civil nor criminal cases, will measure the degrees of men's understandings; and that a weak man, however much below the ordinary standard of human intellect, is not only responsible for crimes, but is bound by his contracts, and may exercise dominion over his property. Sir Joseph Jekyll, in the duchess of Cleveland's case, took the clear legal distinction, when he said, "*The law will not measure the sizes of men's capacities, so as they be COMPOS MENTIS.*"

Lord Coke, in speaking of the expression NON COMPOS MENTIS, says, "*Many times, as here, the Latin word expresses the true sense, and calleth him not amens, demens, furiosus, lunaticus, fatuus, stultus, or the like, for non compos mentis is the most sure and legal.*" He then says, "*Non compos mentis is of four sorts: first, idiota, which, from his nativity, by a perpetual infirmity, is NON COMPOS MENTIS; secondly, he that by sickness, grief, or other accident, wholly loses his memory and understanding; third, a lunatic that hath sometimes his understanding, and sometimes not; aliquando gaudet lucidis intervallis; and therefore he is called non compos mentis so long as he hath not understanding.*"

But notwithstanding the precision with which this great author points out the different kinds of this unhappy malady, the nature of his work, in this part of it, did not open to any illustration which it can now be useful to consider. In his Fourth Institute he is more particular; but the admirable work of lord chief justice Hale, in which he refers to lord Coke's Pleas of the Crown, renders all other authorities unnecessary.

Lord Hale says, "There is a partial insanity of mind, and a total insanity. The former is

either in respect to things, *quod hæc vel illud insanire*; some persons, that have a competent use of reason in respect of some subjects, are yet under a particular dementia in respect of some particular discourses, subjects, or applications; or else it is partial in respect of degrees; and this is the condition of very many, especially melancholy persons, who for the most part discover their defect in excessive fears and griefs, and yet are not wholly destitute of the use of reason; and this partial insanity seems not to excuse them in the committing of any offence for its matter capital; for doubtless most persons, that are felons of themselves, and others, are under a degree of partial insanity, when they commit these offences: it is very difficult to define the invisible line that divides perfect and partial insanity; but it must rest upon circumstances duly to be weighed and considered both by judge and jury, lest on the one side there be a kind of inhumanity towards the defects of human nature; or, on the other side, too great an indulgence given to great crimes.*

Nothing, gentlemen, can be more accurately or more humanely expressed; but the application of the rule is often most difficult. I am bound, besides, to admit that there is a wide distinction between civil and criminal cases. If, in the former, a man appears, upon the evidence, to be *non compos mentis*, the law avoids his act, though it cannot be traced or connected with the morbid imagination which constitutes his disease, and which may be extremely partial in its influence upon conduct; but to deliver a man from responsibility for crimes, above all, for crimes of great atrocity and wickedness, I am by no means prepared to apply this rule, however well established, when property only is concerned.

In the very recent instance of Mr. Greenwood* (which must be fresh in his lordship's recollection), the rule in civil cases was considered to be settled. That gentleman, whilst insane, took up an idea that a most affectionate brother had administered poison to him. Indeed, it was the prominent feature of his insanity. In a few months he recovered his senses. He returned to his profession as an advocate; was sound and eminent in his practice, and in all respects a most intelligent and useful member of society; but he could never dislodge from his mind the morbid delusion which disturbed it; and under the pressure, no doubt, of that diseased prepossession, he disinherited his brother. The cause to avoid this will was tried here. We are not now upon the evidence, but upon the principle adopted as the law. The noble and learned judge, who presides upon this trial, and who presided upon that, told the jury, that if they believed Mr. Greenwood, when he made the will, to have been *insane*, the will could not be supported, whether it

had disinherited his brother, or not; that the act, no doubt, strongly confirmed the existence of the false idea which, if believed by the jury to amount to *madness*, would equally have affected his testament, if the brother, instead of being disinherited, had been in his grave; and that, on the other hand, if the unfounded notion did not amount to madness, its influence could not vacate the devise.* This principle of law appears to be sound and reasonable, as it applies to civil cases, from the extreme difficulty of tracing with precision the secret motions of a mind, deprived by disease of its soundness and strength.

Whenever, therefore, a person may be considered *non compos mentis*, all his *civil* acts are void, whether they can be referred, or not, to the morbid impulse of his malady, or even though, to all *visible appearances*, totally separated from it; but I agree with Mr. Justice Tracy, that it is not every man of an idle, frantic appearance and behaviour, who is to be considered as a lunatic, either as it regards obligations or crimes; but that he must appear to the jury to be *non compos mentis*, in the legal acceptance of the term; and that, not at any *anterior period*, which can have no bearing upon any case whatsoever, but *at the moment* when the contract was entered into, or the crime committed.

The attorney-general, standing undoubtedly upon the most revered authorities of the law, has laid it down, that to protect a man from *criminal responsibility*, there must be a *total deprivation of memory and understanding*. I admit, that this is the very expression used both by lord Coke and by lord Hale; but the true interpretation of it deserves the utmost attention and consideration of the Court. If a *total deprivation of memory* was intended by these great lawyers to be taken in the *literal* sense of the words:—if it was meant, that, to protect a man from punishment, he must be in such a state of prostrated intellect, as not to know his name, nor his condition, nor his relation towards others—that if a husband, he should not know he was married; or, if a father, could not remember that he had children; nor know the road to his house, nor his property in it—then no such madness ever existed in the world. It is *in hoc* alone which places a man in this helpless condition; where, from an *original* mal-organization, there is the human frame alone, without the human capacity; and which, indeed, meets the very definition of lord Hale himself, when, referring to Fitzherbert, he says—"Idiocy or *fatuity à nativitate, vel dementia naturalis*, is such a one as described by Fitzherbert, who knows not to tell twenty shillings, nor knows his own age, or who was his father." But in all the cases which have filled Westminster-

* 3 Bro. C. C. 444. 13 Ves. jun. 39. Collinson on Lunacy, 49, 621.

* N. B. The jury found for the will; but after a contrary verdict in the Common Pleas, a compromise took place.

hall with the most complicated considerations—the lunatics and other insane persons who have been the subjects of them, have not only had memory, in my sense of the expression—they have not only had the most perfect knowledge and recollection of all the relations they stood in towards others, and of the acts and circumstances of their lives, but have, in general, been remarkable for subtlety and acuteness. Defects in their reasonings have seldom been traceable—the disease consisting in the delusive sources of thought; all their deductions within the scope of the malady, being founded upon the immovable assumption of matters as realities, either without any foundation whatsoever, or so distorted and disfigured by fancy, as to be almost nearly the same thing as their creation. It is true, indeed, that in some, perhaps in many cases, the human mind is stormed in its citadel, and laid prostrate under the stroke of frenzy; these unhappy sufferers, however, are not so much considered by physicians as maniacs as to be in a state of delirium from fever. There, indeed, all the ideas are overwhelmed—for reason is not merely disturbed, but driven wholly from her seat. Such unhappy patients are unconscious, therefore, except at short intervals, even of external objects; or, at least, are wholly incapable of considering their relations. Such persons, and such persons alone (except idiots) are wholly deprived of their understandings, in the attorney-general's seeming sense of that expression. But these cases are not only extremely rare, but never can become the subjects of judicial difficulty. There can be but one judgment concerning them. In other cases, reason is not driven from her seat, but distraction sits down upon it along with her, holds her, trembling, upon it, and frightens her from her propriety.—Such patients are victims to delusions of the most alarming description, which so overpower the faculties, and usurp so firmly the place of realities, as not to be dislodged and shaken by the organs of perception and sense: in such cases the images frequently vary, but in the same subject are generally of the same terrific character. Here, too, no judicial difficulties can present themselves; for who could balance upon the judgment to be pronounced in cases of such extreme disease? Another class, branching out into almost infinite subdivisions, under which, indeed, the former, and every case of insanity, may be classed, is, where the delusions are not of that frightful character, but infinitely various, and often extremely circumscribed; yet where imagination (within the bounds of the malady) still holds the most uncontrollable dominion over reality and fact; and these are the cases which frequently mock the wisdom of the wisest in judicial trials; because such persons often reason with a subtlety which puts in the shade the ordinary conceptions of mankind: their conclusions are just, and frequently profound;

VOL. XXVII.

but the premises from which they reason, WHEN WITHIN THE RANGE OF THE MALADY, ARE uniformly false:—not false from any defect of knowledge or judgment; but, because a delusive image, the inseparable companion of real insanity, is thrust upon the subjugated understanding, incapable of resistance, because unconscious of attack.

Delusion, therefore, where there is no frenzy or raving madness, is the true character of insanity; and where it cannot be predicated of a man standing for life or death for a crime, he ought not, in my opinion, to be acquitted; and if courts of law were to be governed by any other principle, every departure from sober, rational conduct, would be an emancipation from criminal justice. I shall place my claim to your verdict upon no such dangerous foundation. I must convince you, not only that the unhappy prisoner was a lunatic, within my own definition of lunacy, but that the act in question was the IMMEDIATE, UNQUALIFIED OFFSPRING OF THE DISEASE. In civil cases, as I have already said, the law avoids every act of the lunatic during the period of the lunacy; although the delusion may be extremely circumscribed; although the mind may be quite sound in all that is not within the shades of the very partial eclipse; and although the act to be avoided can in no way be connected with the influence of the insanity:—but to deliver a lunatic from responsibility to criminal justice, above all, in a case of such atrocity as the present, the relation between the disease and the act should be apparent. Where the connexion is doubtful, the judgment should certainly be most indulgent, from the great difficulty of diving into the secret sources of a disordered mind; but still, I think, that, as a doctrine of law, the delusion and the act should be connected.

You perceive, therefore, gentlemen, that the prisoner, in naming me for his counsel, has not obtained the assistance of a person who is disposed to carry the doctrine of insanity in his defence, so far as even the books would warrant me in carrying it. Some of the cases, that of lord Ferrers, for instance, which I shall consider hereafter, distinguished from the present, would not, in my mind, bear the shadow of an argument, as a defence against an indictment for murder; I cannot allow the protection of insanity to a man who only exhibits violent passions and malignant resentments, acting upon real circumstances; who is impelled to evil from no morbid delusions; but who proceeds upon the ordinary perceptions of the mind. I cannot consider such a man as falling within the protection which the law gives, and is bound to give, to those whom it has pleased God, for mysterious causes, to visit with this most afflicting calamity.

He alone can be so emancipated, whose disease (call it what you will) consists, not merely in seeing with a prejudiced eye, or with odd and absurd particularities, differing, in many

respects, from the contemplations of sober sense, upon the actual existences of things; but, *he only* whose whole reasoning and corresponding conduct, though governed by the ordinary dictates of reason, proceed upon something which has no foundation or existence.

Gentlemen, it has pleased God so to visit the unhappy man before you; to shake his reason in its citadel; to cause him to build up as realities, the most impossible phantoms of the mind, and to be impelled by them as motives *irresistible*; the whole fabric being nothing but the unhappy vision of his disease—existing no where else—having no foundation whatsoever in the very nature of things.

Gentlemen, it has been stated by the attorney general, and established by evidence, which I am in no condition to contradict, nor have, indeed, any interest in contradicting, that when the prisoner bought the pistol which he discharged at, or *towards* his majesty, he was well acquainted with the nature and use of it;—that, as a soldier, he could not but know that in his hands it was a sure instrument of death;—that, when he bought the gunpowder, he knew it would prepare the pistol for its use;—that, when he went to the playhouse, he knew he was going there, and every thing connected with the scene, as perfectly as any other person.—I freely admit all this: I admit, also, that every person who listened to his conversation and observed his deportment upon his apprehension, must have given precisely the evidence delivered by his royal highness the duke of York; and that nothing like insanity appeared to those who examined him. But what then? I conceive, gentlemen, that I am more in the habit of examination, than either that illustrious person, or the witnesses from whom you have heard this account; yet I well remember (indeed I never can forget it), that since the noble and learned judge has presided in this court, I examined, for the greater part of a day, in this very place, an unfortunate gentleman who had indicted a most affectionate brother, together with the keeper of a mad-house at Hoxton, for having imprisoned him as a lunatic; whilst, according to his evidence, he was in his perfect senses. I was, unfortunately, not instructed in what his lunacy consisted, although my instructions left me no doubt of the fact; but, not having the clue, he completely foiled me in every attempt to expose his infirmity. You may believe that I left no means unemploy'd which long experience dictated; but without the smallest effect. The day was wasted, and the prosecutor, by the most affecting history of unmerited suffering, appeared to the judge and jury, and to a humane English audience, as the victim of the most wanton and barbarous oppression: at last Dr. Sims came into court, who had been prevented, by business, from an earlier attendance;—and whose name, by *the-by*, I observe to-day in the list of the witnesses for the crown. From Dr. Sims I soon learned that the very

man whom I had been above an hour examining, and with every possible effort which counsel are so much in the habit of exerting, believed himself to be *the Lord and Saviour of Mankind*; not merely at the time of his confinement, which was alone necessary for my defence; but during the whole time that he had been triumphing over every attempt to surprise him in the concealment of his disease. I then affected to lament the indecency of my ignorant examination, when he expressed his forgiveness, and said, with the utmost gravity and emphasis, in the face of the whole court, "I AM THE CHRIST;" and so the cause ended. Gentlemen, this is not the only instance of the power of concealing this malady; I could consume the day if I were to enumerate them; but there is one so extremely remarkable, that I cannot help stating it.

Being engaged to attend the assizes at Chester upon a question of lunacy, and having been told that there had been a memorable case tried before lord Mansfield in this place, I was anxious to procure a report of it: and from that great man himself (who within these walls will ever be revered), being then retired in his extreme old age, to his seat near London, in my own neighbourhood, I obtained the following account of it; "A man of the name of Wood," said lord Mansfield, "had indicted Dr. Monro for keeping him as a prisoner (I believe in the same mad house at Hoxton) when he was sane. He underwent the most severe examination by the defendant's counsel without exposing his complaint; but Dr. Battye, having come upon the bench by me, and having desired me to ask him what was become of the princess whom he had corresponded with in cherry-juice, he showed in a moment what he was. He answered, that there was nothing at all in that, because having been (as every body knew) imprisoned in a high tower, and being debarred the use of ink, he had no other means of correspondence but by writing his letters in cherry-juice, and throwing them into the river which surrounded the tower, where the princess received them in a boat. There existed, of course, no tower, no imprisonment, no writing in cherry-juice, no river, no boat; but the whole the inveterate phantom of a morbid imagination. I immediately," continued lord Mansfield, "directed Dr. Monro to be acquitted; but this man, Wood, being a merchant in Philpot-lane, and having been carried through the city in his way to the mad-house, he indicted Dr. Monro over again, for the trespass and imprisonment in London, knowing that he had lost his cause by speaking of the princess at Westminster; and such," said lord Mansfield, "is the extraordinary subtlety and cunning of madmen, that when he was cross-examined on the trial in London, as he had successfully been before, in order to expose his madness, all the ingenuity of the bar, and all the authority of the Court, could not make him say a single syllable upon that topic, which had

put an end to the indictment before, although he still had the same indelible impression upon his mind, as he signified to those who were near him; but conscious that the delusion had occasioned his defeat at Westminster, he obstinately persisted in holding it back.*

Now, gentlemen, let us look to the application of these cases. I am not examining, *for the present*, whether either of these persons ought to have been acquitted, *if they had stood in the place of the prisoner now before you*; that is quite a distinct consideration, which we shall come to hereafter. The direct application of them is *only this*; that if I bring before you such evidence of the prisoner's insanity as, *if believed to have really existed*, shall, in the opinion of the Court, as the rule for your verdict in point of law, be sufficient for his deliverance, then that you ought not to be shaken in giving full credit to such evidence, notwithstanding the report of those who were present at his apprehension, *who describe him as discovering no symptom whatever of mental incapacity or disorder*; because I have shown you that insane persons frequently appear in the utmost state of ability and composure, even in the highest paroxysms of insanity, except when frenzy is the characteristic of the disease. In this respect, the cases I have cited to you, have the most *decided application*; because they apply to the overthrow of the whole of the evidence (admitting at the same time the truth of it), by which the prisoner's case can alone be encountered.

But it is said, that whatever delusions may overshadow the mind, every person ought to be responsible for crimes, *who has the knowledge of good and evil*. I think I can presently convince you, that there is something too general in this mode of considering the subject; and you do not, therefore, find any such proposition in the language of the celebrated writer alluded to by the attorney general in his speech. Let me suppose that the character of an insane delusion consisted in the belief that some given person was any brute animal, or an inanimate being (and such cases have existed), and that upon the trial of such a lunatic for murder, you firmly, upon your oaths, were convinced, upon the uncontradicted evidence of an hundred persons, that he believed the man he had destroyed, to have been a potter's vessel; that it was quite impossible to doubt that fact, *although to all other intents and purposes he was sane*; conversing, reasoning, and acting, as men not in any manner tainted with insanity, converse, and reason, and conduct themselves: suppose farther, that he believed the man whom he destroyed, but whom he destroyed as a potter's vessel, to be the property of another; and that he had malice against such supposed person, and that he meant to injure him, knowing the

act he was doing to be malicious and injurious, and that, in short, he had full knowledge of all the principles of good and evil; yet would it be possible to convict such a person of murder, if, from the influence of his disease, he was ignorant of the relation he stood in to the man he had destroyed, and was utterly *unconscious* that he had struck at the life of a human being? I only put this case, and many others might be brought as examples to illustrate, that the knowledge of good and evil is too general a description.

I really think, however, that the attorney general and myself do not, in substance, very materially differ; because, from the whole of his most able speech, taken together, his meaning may, I think, be thus collected: that where the act which is criminal, is done under the dominion of malicious mischief and wicked intention, although such insanity might exist in a corner of the mind, as might avoid the acts of the delinquent as a lunatic in a civil case, yet that he ought not to be protected, if malicious mischief, and not insanity, had impelled him to the act for which he was criminally to answer; because, in such a case, the act might be justly ascribed to malignant motives, and not to the dominion of disease.—I am not disposed to dispute such a proposition, in a case which would apply to it, and I can well conceive such cases may exist. The question, therefore, which you will have to try, is this: whether, when this unhappy man discharged the pistol in a direction which convinced, and ought to convince, every person that it was pointed at the person of the king, he meditated mischief and violence to his majesty, or whether he came to the theatre (*which it is my purpose to establish*) under the dominion of the most melancholy insanity that ever degraded and overpowered the faculties of man. I admit that when he bought the pistol, and the gunpowder to load it, and when he loaded it, and came with it to the theatre, and lastly, when he discharged it; every one of these acts would be overt acts of compassing the king's death, if at all or *any* of these periods he was actuated by that *mind and intention*, which would have constituted murder in the case of an individual, if the individual had been actually killed.—I admit also, that the mischievous, and, in this case, the traitorous intention must be inferred from all these acts, unless I can *rebut the inferences by proof*. If I were to fire a pistol towards you, gentlemen, where you are now sitting, the act would undoubtedly infer the malice. *The whole proof, therefore, is undoubtedly cast upon me.*

In every case of treason, or murder, which are precisely the same, except that the unconsummated intention in the case of the king, is the same as the actual murder of a private man, the jury must impute to the person whom they condemn by their verdict, *the motive which constitutes the crime*; and your province to-day will, therefore, be, to de-

* This evidence at Westminster was then proved against him by the short-hand writer.

able, whether the prisoner, when he did the act, was under the uncontrollable dominion of insanity, and was impelled to it by a *morbid delusion*; or whether it was the act of a man, who, though occasionally mad, or even at the time not perfectly collected, was yet not actuated by the disease, but by the suggestion of a wicked and malignant disposition.

I admit therefore, freely, that if, after you have heard the evidence which I hasten to lay before you, of the state of the prisoner's mind, and close up to the very time of this catastrophe, you shall still not feel yourselves clearly justified in negating the wicked motives imputed by this indictment, I shall leave you in the hands of the learned judges to declare to you the law of the land, and shall not seek to place society in a state of uncertainty by any appeal addressed only to your compassion: I am appointed by the Court to claim for the prisoner the full protection of the law, but not to misrepresent it in his protection.

Gentlemen, the facts of this melancholy case lie within a narrow compass.

The unfortunate person before you was a soldier. He became so, I believe in the year 1793—and is now about twenty-nine years of age. He served in Flanders under the duke of York, as appears by his Royal Highness's evidence; and being a most approved soldier, he was one of those singled out as an orderly man to attend upon the person of the commander in chief. You have been witnesses, gentlemen, to the calmness with which the prisoner has sitted in his place during the trial.—There was but one exception to it.—You saw the emotion which overpowered him when the illustrious person now in court, took his seat upon the bench. Can you then believe, from the evidence, for I do not ask you to judge as physiognomists, or to give the rein to compassionate fancy; but can there be any doubt that it was the generous emotion of the mind, on seeing the prince, under whom he had served with so much bravery and honour? Every man certainly must judge for himself:—I am counsel, not a witness, in the cause; but it is a most striking circumstance, when you find from the crown's evidence, that when he was dragged through the orchestra under the stage, and charged with an act for which he considered his life as forfeited, he addressed the duke of York with the same enthusiasm which has marked the demeanor I am adverting to:—Mr. Richardson, who showed no disposition in his evidence to help the prisoner, but who spoke with the calmness and circumspection of truth, and who had no idea that the person he was examining was a lunatic, has given you the account of the burst of affection on his first seeing the duke of York, against whose father and sovereign he was supposed to have had the consciousness of treason. The king himself whom he was supposed to have so magnanimously attacked, never had a more gallant,

loyal, or suffering soldier. His gallantry and loyalty will be proved; his sufferings speak for themselves.

About five miles from Lisle, upon the attack made on the British army, this unfortunate soldier was in the fifteenth light dragoons, in the thickest of the ranks, exposing his life for his prince, whom he is supposed to-day to have sought to murder:—the first wound he received is most materially connected with the subject we are considering; you may see the effect of it now.* The point of a sword was impelled against him with all the force of a man urging his horse in battle. When the Court put the prisoner under my protection, I thought it my duty to bring Mr. Cline to inspect him in Newgate; and it will appear by the evidence of that excellent and conscientious person, who is known to be one of the first anatomists in the world, that from this wound one of two things must have happened: either, that by the immediate operation of surgery the displaced part of the skull must have been taken away, or been forced inward on the brain. The second stroke, also speaks for itself: you may now see its effects.—[Here Mr. Erskine touched the head of the prisoner.] He was cut across all the nerves which give sensibility and animation to the body, and his head hung down almost dissevered, until by the act of surgery it was placed in the position in which you now see it; but thus, almost destroyed, he still recollected his duty, and continued to maintain the glory of his country, when a sword divided the membrane of his neck where it terminates in the head; yet he still kept his place though his helmet had been thrown off by the blow which I secondly described, when by another sword he was cut into the very brain—you may now see its membrane uncovered. Mr. Cline will tell you that he examined these wounds, and he can better describe them; I have myself seen them, but am no surgeon: from his evidence you will have to consider their consequences. It may be said that many soldiers receive grievous wounds without their producing insanity. So they may undoubtedly; but we are here upon *the fact*. There was a discussion the other day, on whether a man, who had been seemingly hurt by a fall beyond remedy, could get up and walk: the people around said it was impossible; but he did get up and walk, and so there was an end to the impossibility. The effects of the prisoner's wounds were known by the *immediate* event of insanity, and Mr. Cline will tell you, that it would have been strange indeed if any other event had followed. We are not here upon a case of insanity arising from the spiritual part of man, as it may be affected by hereditary taint—by intern-

* Mr. Erskine put his hand to the prisoner's head, who stood by him at the bar of the Court.

perare, or by violent passions, the operations of which are various and uncertain; but we have to deal with a species of insanity more resembling what has been described as idiocy, proceeding from original mal-organization. *There* the disease is, from its very nature, incurable; and so where a man (*like the prisoner*) has become insane from violence to the brain, which permanently affects its structure, however such a man may appear occasionally to others, his disease is *immovable*; and if the prisoner, therefore, were to live a thousand years, he *never* could recover from the consequence of that day.

But this is not all. Another blow was still aimed at him, which he held up his arm to avoid, when his hand was cut into the bone. It is an afflicting subject, gentlemen, and better to be spoken of by those who understand it; and, to end all farther description, he was then thrust almost through and through the body with a bayonet, and left in a ditch amongst the slain.

He was afterwards carried to an hospital, where he was known by his tongue to one of his countrymen, who will be examined as a witness, who found him, not merely as a wounded soldier deprived of the powers of his body, but bereft of his senses for ever.

He was affected, from the very beginning, with that species of madness, which from violent agitation, fills the mind with the most inconceivable imaginations, wholly unfitting it for all dealing with human affairs according to the sober estimate and standard of reason. He imagined that he had constant intercourse with the Almighty Author of all things; that the world was coming to a conclusion; and that, like our blessed Saviour, he was to sacrifice himself for its salvation; and so obstinately did this morbid image continue, that you will be convinced he went to the theatre to perform, as he imagined, that blessed sacrifice; and, because he would not be guilty of suicide, though called upon by the imperious voice of Heaven, he wished that by the appearance of crime his life might be taken away from him by others. This bewildered, extravagant species of madness appeared immediately after his wounds on his first entering the hospital, and on the very same account he was discharged from the army on his return to England, which the attorney-general very honourably and candidly seemed to intimate.

To proceed with the proofs of his insanity down to the very period of his supposed guilt. This unfortunate man before you, is the father of an infant of eight months; and I have no doubt, that if the boy had been brought into court (*but this is a grave place for the consideration of justice, and not a theatre for stage effect*)—I say, I have no doubt whatever, that if this poor infant had been brought into court, you would have seen the unhappy father wrung with all the emotions of parental affection; yet, upon the

Tuesday preceding the Thursday when he went to the playhouse, you will find his disease still urging him forward with the impression that *the time was come*, when he must be destroyed for the benefit of mankind; and in the confusion, or rather *delirium* of this wild conception, he came to the bed of the mother, who had this infant in her arms, and endeavoured to dash out its brains against the wall. The family was alarmed; and the neighbours being called in, the child was, with difficulty, rescued from the unhappy parent, who, in his madness, would have destroyed it.

Now let me, for a moment, suppose that he had succeeded in the accomplishment of his insane purpose; and the question had been, whether he was guilty of murder. Surely the affection for this infant, up to the very moment of his distracted violence, would have been conclusive in his favour; but not more so than his loyalty to the king, and his attachment to the duke of York, as applicable to the case before us; yet at that very period, even of extreme distraction, he conversed as rationally on all other subjects, as he did to the duke of York at the theatre. The prisoner knew perfectly that he was the husband of the woman, and the father of the child;—the tears of affection ran down his face at the very moment that he was about to accomplish its destruction; but during the whole of this scene of horror, he was not at all deprived of memory, in the attorney-general's sense of the expression: he could have communicated, at that moment, every circumstance of his past life, and every thing connected with his present condition, *except only the quality of the act he was meditating*. In that, he was under the over-ruling dominion of a morbid imagination, and conceived that he was acting against the dictates of nature, in obedience to the superior commands of Heaven, which had told him, that the moment he was dead, and the infant with him, all nature was to be changed, and all mankind were to be redeemed by his dissolution. There was not an idea in his mind, from the beginning to the end, of the destruction of the king; on the contrary, he always maintained his loyalty: lamented that he could not go again to fight his battles in the field; and it will be proved, that only a few days before the period in question, being present when a song was sung, indecent, as it regarded the person and condition of his majesty, he left the room with loud expressions of indignation, and immediately sung, God save the King, with all the enthusiasm of an old soldier who had bled in the service of his country.

I confess to you, gentlemen, that this last circumstance, which may, to some, appear insignificant, is, in my mind, most momentous testimony; because, if this man had been in the habit of associating with persons inimical to the government of our country, so that mischief might have been fairly argued

to have mixed itself with madness (which, by-the-by, it frequently does); if it could in any way have been collected, that from his disorder, more easily inflamed and worked upon, he had been led away by disaffected persons, to become the instrument of wickedness; if it could have been established that such had been his companions and his habits, I should have been ashamed to lift up my voice in his defence. I should have felt, that, however his mind might have been weak and disordered, yet if his understanding sufficiently existed, to be methodically acted upon as an instrument of malice, I could not have asked for an acquittal; but you find, on the contrary, in the case before you, that notwithstanding the opportunity which the crown has had, and which, upon all such occasions, it justly employs to detect treason, either against the person of the king, or against his government; *not one witness* has been able to fix upon the prisoner before you, any one companion, of even a doubtful description, or any one expression from which disloyalty could be inferred; whilst the whole history of his life repels the imputation. His courage in defence of the king and his dominions, and his affection for his son, in such unanswerable evidence, all speak aloud against the presumption that he went to the theatre with a mischievous intention.

To recur again to the evidence of Mr. Richardson, who delivered most honourable and impartial testimony: I certainly am obliged to admit, that what a prisoner says for himself, when coupled at the very time with an overt act of wickedness, is no evidence whatever to alter the obvious quality of the act he has committed.—If, for instance, I who am now addressing you, had fired the same pistol towards the box of the king, and having been dragged under the orchestra, and secured for criminal justice, I had said, that I had no intention to kill the king, but was weary of my life, and meant to be condemned as guilty; would any man who was not himself insane, consider that as a defence? Certainly not; because it would be without the whole foundation of the prisoner's previous condition; part of which it is even difficult to apply closely and directly by strict evidence, without taking his undoubted insanity into consideration; because it is his unquestionable insanity which alone stamps the effusions of his mind with sincerity and truth.

The idea which had impressed itself, but in most confused images, upon this unfortunate man, was, *that he must be destroyed, but ought not to destroy himself.* He once had the idea of firing over the king's carriage in the street; but then he imagined he should be immediately killed, which was not the mode of propitiation for the world; and as our saviour, before his passion, had gone into the garden to pray, this fallen and afflicted being, after he had taken the infant out of bed to destroy it, returned also to the garden, saying, as he

afterwards said to the duke of York, "that all was not over; that a great work was to be finished:" and there he remained in prayer, the victim of the same melancholy visitation.

Gentlemen, these are the facts, freed from even the possibility of artifice or disguise: because the testimony to support them will be beyond all doubt; and in contemplating the law of the country, and the precedents of its justice, to which they must be applied, I find nothing to challenge or question. I approve of them throughout; I subscribe to all that is written by lord Hale; I agree with all the authorities, cited by the attorney-general, from lord Coke; but above all, I do most cordially agree in the instance of convictions by which he illustrated them in his able address. I have now lying before me the case of earl Ferrers: unquestionably there could not be a shadow of doubt, and none appears to have been entertained, of his guilt. I wish, indeed, nothing more than to contrast the two cases; and so far am I from disputing either the principle of that condemnation, or the evidence that was the foundation of it, that I invite you to examine whether any two instances in the whole body of the criminal law, are more diametrically opposite to each other, than the case of earl Ferrers and that now before you. Lord Ferrers was divorced from his wife by act of parliament; and a person of the name of Johnson, who had been his steward, had taken part with the lady in that proceeding, and had conducted the business in carrying the act through the two Houses. Lord Ferrers consequently wished to turn him out of a farm, which he occupied under him; but his estate being in trust, Johnson was supported by the trustees in his possession: there were, also, some differences respecting coal-mines; and in consequence of both transactions, lord Ferrers took up the most violent resentment against him. Let me here observe, gentlemen that this was not a resentment founded upon any *illusion*; not a resentment forced upon a distempered mind by fallacious images, but depending upon *actual circumstances and real facts*; and acting like any other man under the influence of malignant passions, he repeatedly declared that he would be revenged on Mr. Johnson, particularly for the part he had taken in depriving him of a contract respecting the mines.

Now suppose lord Ferrers could have showed that no difference with Mr. Johnson had ever existed regarding his wife at all—that Mr. Johnson had never been his steward—and that he had only, from delusion, believed so when his situation in life was quite different. Suppose, farther, that an *illusive imagination* had alone suggested to him that he had been thwarted by Johnson in his contract for these coal-mines, there never having been any contract at all for coal mines; in short, that the whole basis of his enmity was without any

foundation in nature, and had been shown to have been a *morbid image* imperiously fastened upon his mind. Such a case as that would have exhibited a character of insanity in lord Ferrers, extremely different from that in which it was presented by the evidence to HIS PEERS. Before THEM, he only appeared as a man of turbulent passions; whose mind was disturbed by no fallacious images of things without existence; whose quarrel with Johnson was founded upon no illusions, but upon existing facts; and whose resentment proceeded to the fatal consummation with all the ordinary indications of mischief and malice; and who conducted his own defence with the greatest dexterity and skill. WHO THEN COULD DOUBT THAT LORD FERRERS WAS A MURDERER? When the act was done, he said, "I am glad I have done it. He was a villain, and I am revenged;" but when he afterwards saw that the wound was probably mortal, and that it involved consequences fatal to himself, he desired the surgeon to take all possible care of his patient—and, conscious of his crime, kept at bay the men who came with arms to arrest him; showing, from the beginning to the end, nothing that does not generally accompany the crime for which he was condemned. He was proved, to be sure, to be a man subject to unreasonable prejudices, addicted to absurd practices, and agitated by violent passions; but the act was not done under the dominion of uncontrollable disease; and whether the mischief and malice were substantive, or marked in the mind of a man whose passions bordered upon, or even amounted to insanity, it did not convince the lords, that, under all the circumstances of the case, he was not a fit object of criminal justice.

In the same manner, Arnold, who shot at lord Onslow, and who was tried at Kingston soon after the Black Act passed on the accession of George 1st, lord Onslow having been very vigilant as a magistrate in suppressing clubs, which were supposed to have been set on foot to disturb the new government, Arnold had frequently been heard to declare, that lord Onslow would ruin his country; and although he appeared, from the evidence, to be a man of most wild and turbulent manners yet the people round Guilford, who knew him, did not, in general, consider him to be insane.—His counsel could not show, that any morbid delusion had ever overshadowed his understanding.—They could not show, *as I shall*, that just before he shot at lord Onslow, he had endeavoured to destroy his own beloved child. It was a case of *human resentment*.

I might instance, also, the case of Oliver, who was indicted for the murder of Mr. Wood, a potter in Staffordshire. Mr. Wood had refused his daughter to this man in marriage. My friend Mr. Milles was counsel for him at the assizes. He had been employed as a surgeon and apothecary by the father, who forbid him his house, and desired him to bring in his bill for payment; when, in the agony of disappoint-

ment, and brooding over the injury he had suffered, on his being admitted to Mr. Wood to receive payment, he shot him upon the spot. The trial occupied great part of the day; yet, for my own part, I cannot conceive that there was any thing in the case for a jury to deliberate on.—He was a man acting upon *existing facts*, and upon *human resentments* connected with them. He was at the very time carrying on his business, which required learning and reflection, and indeed, a reach of mind beyond the ordinary standard, being trusted by all who knew him, as a practitioner in medicine. Neither did he go to Mr. Wood's under the influence of illusion; but he went to destroy the life of a man who was placed exactly in the circumstances which the mind of the criminal represented him. He went to execute vengeance on him for refusing his daughter. In such a case there might, no doubt, be passion approaching to frenzy; but there wanted that characteristic of madness to emancipate him from criminal justice.

There was another instance of this description in the case of a most unhappy woman, who was tried in Essex for the murder of Mr. Errington, who had seduced and abandoned her and the children she had borne to him. It must be a consolation to those who prosecuted her, that she was acquitted, as she is at this time in a most undoubted and deplorable state of insanity; but I confess, if I had been upon the jury who tried her, I should have entertained great doubts and difficulties: for although the unhappy woman had before exhibited strong marks of insanity, arising from grief and disappointment; yet she acted upon *facts and circumstances*, which had an *existence*, and which were calculated, upon the ordinary principles of human action, to produce the most violent resentment. Mr. Errington having just cast her off, and married another woman, or taken her under his protection, her jealousy was excited to such a pitch as occasionally to overpower her understanding; but when she went to Mr. Errington's house, where she shot him, she went with the express and deliberate purpose of shooting him. That fact was unquestionable; she went there with a resentment long rankling in her bosom, bottomed on an existing foundation: she did not act under a *delusion*, that he had deserted her when he had not, but took revenge upon him for an actual desertion; but still the jury, in the humane consideration of her sufferings, pronounced the insanity to be predominant over resentment, and they acquitted her.

But let me suppose (which would liken it to the case before us), that she had never cohabited with Mr. Errington: that she never had had children by him; and, consequently, that he neither had, nor could possibly have deserted or injured her.—Let me suppose, in short, that she had never seen him in her life, but that her *resentment* had been founded on

the morbid delusion that Mr. Errington, who had never seen her, had been the author of all her wrongs and sorrows; and that, under that diseased impression, she had shot him. If that had been the case, gentlemen, she would have been acquitted upon the opening, and no judge would have sat to try such a cause: the *act itself* would have been decisively characteristic of madness, because, being founded upon nothing existing, it could not have proceeded from malice, which the law requires to be charged and proved, in every case of murder, as the foundation of a conviction.

Let us now recur to the cause we are engaged in, and examine it upon those principles by which I am ready to stand or fall, in the judgment of the court.

You have a man before you, who will appear, upon the evidence, to have received those almost deadly wounds which I described to you, producing the immediate and immovable effects which the eminent surgeon, whose name I have mentioned, will prove that they could not but have produced; it will appear, that from that period he was visited with the severest paroxysms of madness, and was repeatedly confined with all the coercion which it is necessary to practise upon lunatics; yet what is quite decisive against the imputation of treason against the person of the king, his loyalty never forsook him.—Sane or insane, it was his very characteristic to love his sovereign and his country, although the delusions which distracted him were some times in other respects, as contradictory as they were violent.

Of this inconsistency there was a most striking instance on only the Tuesday before the Thursday in question, when it will be proved, that he went to see one Truelock, who had been committed by the duke of Portland as a lunatic. This man had taken up an idea that our Saviour's second advent, and the dissolution of all human things, were at hand; and conversed in this strain of madness: this mixing itself with the insane delusion of the prisoner, he immediately broke out upon the subject of his own propitiation and sacrifice for mankind, although, only the day before he had exclaimed, that the Virgin Mary was a whore; that Christ was a bastard; that God was a thief; and that he and this Truelock were to live with him at White Conduit-house, and there to be enthroned together. His mind, in short, was overpowered and overwhelmed with distraction. The charge against the prisoner is the overt act of compassing the death of the king, in firing a pistol at his majesty—an act which only differs from murder inasmuch as the bare compassing is equal to the accomplishment of the malignant purpose; and it will be your office, under the advice of the judge, to decide by your verdict to which of the two impulses of the mind you refer the act in question: you will have to decide, whether you attribute it wholly to mischief and malice, or wholly to insanity, or to the one mixing itself with the

other. If you find it attributable to mischief and malice *only*, LET THE MAN DIE. The law demands his death for the public safety.—If you consider it as conscious malice and mischief mixing itself with insanity, I leave him in the hands of the court, to say how he is to be dealt with: it is a question too difficult for me.—I do not stand here to disturb the order of society; or to bring confusion upon my country; but, if you find that the act was committed wholly under the dominion of insanity; if you are satisfied that he went to the theatre, contemplating his own destruction only; and that, when he fired the pistol, he did not *maliciously* aim at the person of the king—you will then be bound, even upon the principle which the attorney-general himself humanely and honourably stated to you, to acquit this most unhappy prisoner.

If, in bringing these considerations hereafter to the standard of the evidence, any doubts should occur to you on the subject, the question for your decision will then be, which of the two alternatives is the most probable—a duty which you will perform by the exercise of that reason of which, for wise purposes it has pleased God to deprive the unfortunate man whom you are trying; your sound understandings will easily enable you to distinguish *infirmities* which are *misfortunes* from *motives* which are *crimes*. Before the day ends, the evidence will be decisive upon this subject.

There is, however, another consideration which I ought distinctly to present to you; because I think that more turns upon it than any other view of the subject; namely, whether the prisoner's defence can be impeached for artifice or fraud; because I admit, that if at the moment when he was apprehended, there can be fairly imputed to him any pretence or counterfeit of insanity, it would tantamount to the whole case, and leave him without protection; but for such a suspicion there is not even a shadow of foundation. It is repelled by the whole history and character of his disease, as well as of his life, independent of it. If you were trying a man under the Black Act, for shooting at another, and there was a doubt upon the question of malice; would it not be important, or rather decisive evidence, that the prisoner had no resentment against the prosecutor—but that, on the contrary, he was a man whom he had always loved and served? Now the prisoner was maimed, cut down, and destroyed, in the service of the king.

Gentlemen, another reflection presses very strongly on my mind, which I find it difficult to suppress. In every state there are political differences and parties, and individuals affected to the system of government under which they live as subjects. There are not many such, I trust, in this country; but whether there are many or any of such persons, there is one circumstance which has peculiarly distinguished his majesty's life and reign, and which is in itself as an host in the prisoner's defence: since, amidst all the tra-

sions and all the seditions which have been charged on reformers of government as conspiracies to disturb it, no hand or voice has been lifted up against the person of the king: there have, indeed been unhappy lunatics who, from ideas too often mixing themselves with insanity, have intruded themselves into the palace—but no malicious attack has ever been made upon the king, to be settled by a trial: his majesty's character and conduct have been a safer shield than guards or than laws. Gentlemen, I wish to continue to that sacred life that best of all securities; I seek to continue it under that protection where it has been so long protected. We are not to do evil that good may come of it; we are not to stretch the laws to hedge round the life of the king with a greater security than that which the Divine Providence has so happily realized.

Perhaps there is no principle of religion more strongly inculcated by the sacred scriptures than by that beautiful and encouraging lesson of our Saviour himself upon confidence in the divine protection: "Take no heed for your life, what ye shall eat, or what ye shall drink, or wherewithal ye shall be clothed; but seek ye first the kingdom of God, and all these things shall be added unto you." By which it is undoubtedly not intended that we are to disregard the conservation of life, or to neglect the means necessary for its sustentation; nor that we are to be careless of whatever may contribute to our comfort and happiness; but that we should be contented to receive them as they are given to us, and not seek them in the violation of the rule and order appointed for the government of the world. On this principle nothing can more tend to the security of his majesty and his government, than the scene which this day exhibits in the calm, humane and impartial administration of justice; and if, in my part of this solemn duty, I have in any manner trespassed upon the just security provided for the public happiness, I wish to be corrected. I declare to you, solemnly, that my only aim has been to secure for the prisoner at the bar, whose life and death are in the balance, that he should be judged rigidly by the evidence and the law. I have made no appeal to your passions—you have no right to exercise them. This is not even a case in which, if the prisoner be found guilty, the royal mercy should be counselled to interfere: he is either an accountable being, or not accountable; if he was unconscious of the mischief he was engaged in, the law is a corollary, and he is not guilty; but if when the evidence closes, you think he was conscious, and maliciously meditated the treason he is charged with, it is impossible to conceive a crime more vile and detestable; and I should consider the king's life to be ill-attended to indeed, if not protected by the full vigour of the laws, which are watchful over the security of the meanest of his subjects. It is a most important consid-

VOL. XXVII.

eration both as it regards the prisoner, and the community of which he is a member.—Gentlemen, I leave it with you.

EVIDENCE FOR THE PRISONER.

Major *Edward Michael Ryan* sworn—Examined by *Mr. Sergeant Best*.

Were you an officer in the 15th light dragoons?—I was.

What rank did you hold in that regiment?—I was a captain.

Were you abroad with the regiment in the year 1793?—I was.

Do you recollect a person of the name of Hadfield being in that regiment?—Perfectly well.

Do you know his person now?—Perfectly well.

Do you see him?—That is he [pointing to the prisoner].

Was he abroad with the regiment in the year 1793?—He was.

Was he engaged in any action, with the regiment?—I believe in every action the regiment was in until he was wounded.

Do you recollect in what action it was that he was wounded?—On the 18th of May 1794, near Roubais.

How had he conducted himself previous to this time?—As a very good soldier and a very good dragoon.

Did he appear to be a loyal man?—Always particularly so.

Do you know what wounds he received on that day?—I cannot take upon me to say, as that man was left in a punt which we were both thrown into.

Were you with him?—I was; we were left in a punt.

Had you an opportunity of observing him afterwards?—No; for we were surrounded by a vast deal of the French cavalry and infantry, and we were under a very heavy fire at this time.

Where did you see him again after this?—I saw him about September 1795; he came to my lodgings in St. James's-street.

Had you not seen him from the time of this transaction till September 1795?—I had not.

Did any thing particular occur, when you saw him in September 1795?—He appeared to me extremely incoherent then, and showed manifest symptoms of derangement.

Hercules Macgill sworn—Examined by *Mr. Erskine*.

Do you know the prisoner?—Yes.

Were you in the battle with him where he was wounded?—I was.

Did you know him before that time?—I knew him in the year 1793.

Was he a good soldier?—A very good soldier; he was my right-hand man, after the death of another.

Did you consider him not only as a good

soldier, but as a man loyal to the king?—I did.

Was he perfectly so in his manners and in his language?—Perfectly so.

Were you near him when he was wounded in battle?—I was, and received two slight scars in endeavouring to rescue him; I saw him receive two or three cuts.

At the time he was receiving these wounds was he fighting gallantly, and with spirit and confidence, in the cause of his country?—He was fighting gallantly.

Did you ever see any thing in him, that hung back from the service of his country and his king?—Never in my life.

What became of him after he received those wounds?—He was left for dead, as I supposed, in the field.

When did you see him next afterwards?—At Croydon barracks in the year 1796.

After his return from France?—Yes.

You had known him before those wounds, and you have described him, and I need not repeat it; did you find him in the same condition when you saw him in Croydon barracks?—I heard that he was in the hospital, and that he was rather deranged in his mind; I went to see him, astonished that he was alive; I went to speak to him; some words originated by my asking him trifling questions how he was: In a sort of riotous frenzy, he snatched a small bayonet from one of the guard, and made a lunge at my side; I rescued the bayonet from his hand.

From your own observation at the time, (and recollect you must speak the truth, and only the truth) have you any doubt in the world that he was mad?—It is impossible to declare positively that he was; but from his deranged state, and from the attempt upon one or two more people's lives, as I understood, I thought he was.

Was he totally different from the condition you had observed him in, before he received those wounds?—Perfectly different in every part whatever; quite deranged.

Did he remember you, and know that you were the man?—I cannot believe he did, from the deranged state he was in, and his offering to take my life.

You did not enter into that with him?—I did not.

John Lane sworn.—Examined by Mr. Sergeant *Best*.

I believe you are a soldier in the Coldstream regiment of guards?—I am.

Were you a prisoner in France in the year 1795?—I was.

Where were you confined?—I was in the hospital of Saucel, three miles from Brussels.

Do you remember Hadfield being brought to that hospital?—Yes.

On what account was he brought there?—He was brought there in a fit.

What sort of fit was it?—He was brought there, and laid on a bed; he never spoke all that evening.

That was the first evening that he came?—Yes.

Did you converse with him the next day?—Yes.

What account did he then give of himself?

—When the doctor came round in the morning, he got up on end in the bed on his back-side, and looked round very wild; they asked him what countryman he was; he did not make any reply, till at last he spoke and said, "I have been asleep a great while, I am awake now;" by that I knew he was an Englishman.

What did he say then?—I said, from what part of England did you come? he said, I came from London; I am king George.

In what manner did he say this, as a person jokingly?—He looked very serious, and like a man that was out of his mind; he then turned his head towards me, and said, lend me that, the looking glass, pointing to it, which hung at my bed's head; it was delivered to him; he held it in this manner, and stroked his face and head; I asked him what he was feeling for; he said, I am feeling for my crown of gold; I am king George, and I live in Red Lion street, Clerkenwell.

From the observation you made upon him at this time, did he appear to you to be a person insane?—Yes; he was taken away, and confined in a cell by himself. I never saw him any more for three weeks.

By whom was he taken away?—By the doctor and nurses of the hospital as a madman; they deemed him as such.

Did you see him again?—Yes; I saw him again, about three weeks after, walking in the garden.

What state was he in?—He was walking very serious by himself; there were some more Englishmen in the garden; he came up towards us; one said to the other, here comes Hadfield; when he approached, they said "How are you this morning, king George?" he gave a laugh, and said, "that is all done away with now."

Did he appear to be in a better state than he had been?—Yes, quite sensible.

Henry Cline, esq. sworn.—Examined by Mr. *Erskine*.

I need not ask you what you are; you are very well known to the Court and jury. Have you had an opportunity of examining the wounds of the prisoner at the bar?—I examined them yesterday, which was the first time that I saw the prisoner.

Did you examine this wound upon his temple?—I did.

What remarks did you make upon that wound in his temple?—The wound on his temple is very considerable, but it is not probable that that should have at all injured the brain; it is a considerable wound, but the direction which it appears to have taken was not of a nature to injure the brain.

Did you observe whether there was any

thing displaced in that part of the skull?—There is a wound immediately above the eyebrow, which appears to have penetrated the skull; and in all probability the brain was injured in consequence of that wound.

Did you examine a wound the prisoner has in the back of his head?—I did; there are likewise two other wounds situated near the upper part of his head, which appear also to have penetrated the skull, and probably injured the brain likewise in those parts.

Taking that person to have been subject to no insanity before those wounds that you observed, and immediately afterwards to have been affected with insanity, should you consider, from your knowledge of the human body and the anatomy of it, that the injury to the brain was likely to be the cause of those symptoms?—It frequently happens, that after injury of the brain, there is some derangement of the understanding; the mental faculties are variously affected; sometimes by loss of memory, at other times of some particular sense, and very frequently that derangement taking place which is commonly called insanity.

If insanity does arise from an injury to the brain by violent wounds, is it an insanity likely to go off or likely to continue from time to time?—That depends very much on the duration; if it has existed for some length of time after the accident has happened, there is great probability of its permanency.

If it has lasted four, five, or six years, with paroxysms of strong insanity commencing at the time of the wounds, is it likely to continue?—I should conceive it would be permanent.

Lord Kenyon.—Without any intermission?—No; there are certain existing causes; that are occasionally taking place, that will even increase those effects, and sometimes under favourable circumstances there may be no apparent derangement at the time.

Mr. Erskine.—Have you frequently observed persons that were lunatics, whether from hereditary taint, wounds on the brain, or other circumstances that are invisible, have you frequently seen such persons, though under paroxysms of lunacy, capable of conversing and appearing rational?—In every respect rational.

From your experience, have you not known persons who were lunatic, whether from an original hereditary taint or wounds in the brain, or from any other invisible cause, and in the paroxysms of madness as high as it can operate, capable of conversing, reasoning, and speaking, as if they were sane?—Yes; it very frequently occurs that they will appear rational in every answer that they will give to the questions commonly put to them, and rational in their conduct.

Though at that time in a paroxysm of their peculiar madness?—I do not mean just during the time of paroxysms.

I am supposing a person to have a morbid

imagination which constitutes the lunacy, and subject to that morbid imagination, may that person within your own experience converse upon common subjects, as if he were not visited by or subject to the dominion of that disease?—I mean they would talk perfectly rationally for one instant of time, and then immediately after, perhaps, they will show symptoms of insanity; and as we can only judge of the paroxysm by the effect, therefore I conceive it cannot be said a paroxysm is upon the patient, till he shows it by some irregularity in his conduct or his conversation.

Doctor Creighton, sworn.—Examined by Mr. Sergeant Best.

You are a physician I believe?—Yes.

Have you applied particular attention to the disease of madness?—Yes, I have.

I believe you have seen the prisoner at the bar?—I have.

From the examination you have had of him, is it your opinion that he is now a person of sane mind or otherwise?—I have not the smallest doubt that he is insane. I believe him to be insane. He is not a maniac, but he labours under mental derangement of a very common but a particular kind.

I believe you have examined his wounds?—I have.

Are the wounds which he appears to have received, likely to have been the occasion of that madness?—I think that they are very probable causes of the disposition to that madness: there are many instances of this kind of madness having been occasioned by such injuries done to the brain.

Supposing this to be the cause of his madness, is it likely that that madness should continue?—I believe him to have laboured under this kind of madness constantly from its first attack. When any question concerning a common matter is made to him, he answers very correctly; but when any question is put to him which relates to the subject of his lunacy, he answers irrationally.

Is that a common thing with all madmen?—With all madmen of this description.

Then, although you said you believe that this madness has continued from the first cause of it, is it probable that he might at times have conducted himself rationally?—Most undoubtedly; for it requires that the thoughts which have relation to his madness should be awakened in his mind, in order to make him act unreasonably.

Are there any particular seasons of the year when a person labouring under these infirmities would be more likely to be affected than another?—Yes; there are instances where it has occurred periodically, but it depends much more upon certain variations in the state of his health.

Would the approach of hot weather affect his health?—It is a very common cause of the augmentation of the disorder.

Dr. Creighton cross-examined by Mr. Law.

When did you see and converse with this person first?—Last night.

What did you converse with him upon as the subject of his madness, in order to excite that madness?—Upon religious subjects, and also upon the subject of his claim.

Had the conversation upon the latter subject the effect of exciting him to any considerable degree of violence?—Not at all.

Had the mention of the other subjects, the religious matters you adverted to, the effect of exciting him to violence?—Not to violence at all.

In what way did the mention of the subject of his claim disturb him?—I do not know that I ought to say it disturbed him; it did not disturb him; he mentioned that he thought he was ordained to die, and to die as Jesus Christ did.

I ask you, in what particular, the mention of his claim produced the exhibition of madness?—I can only answer this question by narrating his conversation; there was no external violence in the man, but his conversation produced conviction in my mind that he was mad, that he was insane upon particular subjects. I must narrate the conversation, in order to produce the same conviction upon the Court.

Prior to that time, had he appeared to you in all particulars as a sane person, in the conversation you had with him?—He answered very correctly the questions I put to him.

Lord Kenyon.—Did you tell him you were to be a witness to-day?—No; I asked him if he had been well treated during his confinement in prison, and how he had received his wounds; to those things he answered very correctly.

Mr. Law.—Who went with you?—Mr. Cline the surgeon.

Mr. Erskine.—The gaoler was present.

Mr. Law.—We do not impute any thing;—how long were you with him?—About half an hour.

Until you talked with him about religion, he appeared perfectly like a sane person?—Yes.

Mr. Erskine.—I do not know whether Mr. Law's examination lets me in to ask to the conversation: I believe it is more regular not.

Mr. Lidderdale sworn.—Examined by Mr. Erskine.

You are, I believe, a surgeon?—Yes.

To what regiment?—The 15th light dragoons.

From what length of time have you been surgeon to that regiment?—From the 22nd, July 1795.

Do you know the prisoner at the bar, Hadfield?—Yes.

Do you remember him, after he had been prisoner in France, joining the regiment in

this country or coming to Croydon?—I do not recollect his joining the regiment.

Where did you see him in England?—At Croydon barracks.

You were at that time surgeon to the regiment?—Yes.

Had you known him before?—I had not.

Had you occasion to attend him as a surgeon, and to examine him?—Yes.

Upon what occasion did you attend him as a surgeon and examine him?—In the spring of 1796, being brought in, in a state of insanity.

What did you do with him?—I had recourse to bleeding, blistering, and cathartics.

Was it necessary to confine him?—Yes.

In the way that madmen are generally confined?—Yes; to tie him down to the bed in the manner that is common.

How long did he continue in that state?—To the best of my recollection, about a fortnight.

Was he discharged from the regiment?—Yes, at the expiration of that time.

Was he discharged from the regiment on that account?—Yes, and the wounds that he had received in the service.

Did it appear to you, as a medical man and as a surgeon, that those wounds might be the probable cause of that derangement that he had?—Yes; I conceived so at the time.

Do you think still that it was owing to that?—Yes, I should conceive that it would operate still.

You have not seen him since, have you?—No.

Mr. Lidderdale cross-examined by Mr. Garraw.

You have not seen him since he was discharged?—No.

He was confined till you thought him in a fit state to be discharged?—He was confined for a fortnight, and then delivered up to the charge of his brother, who took him to town.

Captain Wilson sworn.—Examined by Mr. Sergeant Best.

I believe you are an officer in the 15th regiment of light dragoons?—I am.

Did you serve abroad with that regiment?—I did.

Do you remember the prisoner Hadfield serving in that regiment?—Yes.

Do you recollect his being in an engagement?—I remember his being in several.

Do you remember his being wounded?—I recollect the circumstance of its being related afterwards that he was wounded, and it was supposed killed.

You knew him before he was wounded?—I did.

What character had he?—No man had a better character for courage, and in every respect as a soldier; if a man had been to be selected from the regiment for bravery loyalty and zeal, Hadfield would have been one of the first candidates; he was remarkable for them.

When did you see him again?—Not till after we came home from the continent; he joined the regiment at Croydon; I was in the barrack yard; a cart came in; Hadfield was brought in in it, escorted by some of the party, a detachment with which he had been at Bromley, and they reported him to be mad.

Did you take any notice of him at that time?—I did not take any notice of him.

Do you know what he was discharged for?—I understood for the wounds which caused the insanity; the surgeon informed me so.

Christopher Lawson sworn.—Examined by Mr. Erskine.

Were you in the battle near Lisle on the 18th of May 1794?—I was.

The battle in which Hadfield was wounded?—Yes, at the same battle.

Were you present when he was brought into the hospital?—I was.

Was it thought at that time that he would survive the wound?—It was thought he would not survive.

At that time do you know whether he was esteemed a good soldier?—Not knowing the man before that time, I cannot answer that.

Have you seen him since you returned to London?—I have.

Where did you see him?—I saw him somewhere in Clerkenwell.

Was he desirous at that time of continuing in his trade, or of being a soldier?—He mentioned to me he wished to be a soldier, and he said in short that he was one.

David Hadfield sworn.—Examined by Mr. Sergeant Best.

You are brother to the prisoner at the bar?—Yes.

Do you remember going to see him at Croydon?—Yes.

Were you sent for there?—Yes.

When was that?—In March 1796.

What state did you find him in?—In a state of derangement, very much so, raving mad.

At that time I believe he was discharged from his regiment?—Yes, in April.

Was he delivered into your custody?—Yes.

Did you take care of him after this?—I did.

In what state was it necessary for you to keep him?—I kept him as comfortable and as quiet as I could.

Was it necessary to keep him in a state of confinement?—Not at the time I brought him from thence; he was something reconciled, better recovered.

How long was it before it was necessary to put him into a state of confinement?—About two months after that; about June it was necessary to put him in a state of confinement.

How long was he continued in confinement?—He was confined to his room about nine days.

Was that absolutely necessary from the then state of his mind?—Yes, decidedly so.

Have you known him since that time?—Since that time he has been in various fits.

What kind of fits?—Bellowing and hallooing out.

How frequently have those fits occurred?—About the hot season; at about the changes of the moon it will come upon him, and about the hot season being set in.

Have you observed a difference in him when the hot season has set in?—A great deal.

What has been his condition at that time generally?—He has begun to talk at random, that he was a prince, that he was Jesus Christ, and that he was God.

When did you first hear him talking in this manner?—He talked in this manner when he first came home from abroad, and he always talked in that way when he was about going off.

What do you mean by about going off?—When he was going out of his mind.

Have those random conversations been followed by any other appearances of madness?—By madness, and nothing else.

Have you been obliged from time to time to confine him?—Yes, from time to time.

How have you confined him?—Confined him to his bed, and to keep the door of that fast to the best of our power.

Has that occurred every year?—Yes, to the best of my knowledge.

Were you with him frequently in this present spring?—No.

What was the reason of that?—There was a little variance between us.

Then you cannot state to the Court in what state he was in the present year?—No, I cannot, farther than by hearsay.

David Hadfield cross-examined by Mr. Garrow.

You used an expression I understood perfectly, a proper one, "it was very plain to any body used to him when he was going off," when the fit was coming on?—Very plain to them that knew him.

At that time he was quite an altered man?—So far an altered man that he would roll his eyes about.

So that you could have told pretty nearly what the state of the moon was by his manner?—Yes.

His going off would have indicated the state of the moon as well as looking at the almanac; nobody looking at him could have doubted but the madness was coming on?—Just so.

It was impossible he could conceal or disguise it?—At times he was very cunning.

But then it would break out again?—Yes. He was not able to conceal it for any length of time together?—No, by no means.

And I should suppose a great concourse of people would disturb him and set him off?—Any thing that disturbed his mind.

He would be less able to conceal his infirmity among a great concourse of people, for instance, such a place as we are in now, than in his private family?—Just so.

When the fit was on him, and he was mad,

he could hardly have passed with the most careless observer for a sane man?—He could not.

They must have taken him for a madman?—They must so.

He could not, at such times, converse for any length of time together without every body's seeing he was a poor unfortunate soldier that ought to be kept at home?—Yes.

And at such times his family made a point to keep him at home?—Yes, and they would have done so in a little time at this time.

One of the circumstances his head ran upon was that he was a prince?—Yes.

If you had taken him to a party where the king had been, or any thing of that kind, that would have made him stark mad, when any body had talked of the king or a prince?—Yes, he was always king himself.

Any idea of a king or prince coming would have made him furious?—Yes.

If you had given him any thing you could not have restrained him from that?—No, not in the least.

A crowded church would have disturbed him much?—It oftentimes did; I have gone to church with him, and have been forced to withdraw from the church to revive him.

Owing to the crowd exciting those ideas in his mind?—Exactly so; we dare not relate any thing to him for fear of deranging him again.

You would have hardly thought it possible to keep him quiet in any crowded place, for a quarter of an hour together?—Not at all.

His wife is a careful sort of woman?—Yes.

And very observant of his motions?—Yes.

Upon the first symptom of rolling his eyes, and any of the symptoms coming on, she always took care of him that he should not stir out?—She always did.

She unfortunately had so much experience of him, that she could not be deceived in the symptoms that it was coming on furiously?—She could not indeed.

He was never able to work I should think at those times?—No, not at all.

Not even to make broken days?—No, not at all; it was more necessary to confine him.

He had no inclination to work upon those days?—No, he was so at random.

And sulky withal?—Yes.

Rude, rough, and uncivil to master, shop-mates and all?—Yes, quite so.

If you had asked him to take a drink, it would have been a grievous affront?—Oh yes, greatly so.

And this even when it was first coming on?—Yes.

How long did it generally continue, after the change of the moon?—Sometimes longer than others, particularly at the full of the moon; I cannot say how long, that was the time he was at the worst, in hot weather.

I was sorry to hear you say you had not seen him much of late, because you had a little variance with him; that was a little un-

lucky as he was such a madman. I wonder you should not have borne with his infirmity?

—I did: it was nothing of animosity between us; no more than I happened to move farther away, he did not know where I was, and I did not inquire after him; circumstances occurred I did not wish to be seen.

I was afraid you had some misunderstanding; I was wrong in that?—Yes.

What did you mean by having had a variance?—A variance I cannot call it.

A few words?—Yes, a few words when he was in this hasty way.

When he was in this hasty way, he gave you a few words which made you not visit him?—Yes, just so.

If he had gone home and asked for his best clothes to go holiday-making when he was in those fits, his wife would not suffer him for the world?—Not to let him have them?

Yes?—Oh! no, he would have them by all means; nothing could stop him.

And every body about him the least used to him, must have seen this was a poor madman?—Just so.

Mary Gore sworn.—Examined by
Mr. Erskine.

You are sister of Hadfield's wife?—Yes.

Did you live in the house with him?—Yes, I did.

How long have you known him?—A good while.

Were you in the house with him, in the month of May last?—Yes, I was.

Did the warm weather affect him at all?—Very much.

How did it affect him?—In his head.

In what manner did it affect him in his head?—He talked so very bad.

Let us hear how he would talk?—On the Tuesday the 13th of May, he came home between one and two o'clock——

Had he been bad any time before that?—Yes, ever since the Sunday before.

Tell my lord and the jury, in what manner between the Sunday and Tuesday he was mad; what were the symptoms of his illness?—In his head.

How did he use to talk from the Sunday to the Tuesday?—About seeing Jesus Christ.

What did he say about Jesus Christ?—That he was a damnation blackguard, and many more very odd expressions; I cannot rightly recollect.

Try if you can recollect any other expressions used by him between the Sunday and the Tuesday, besides those you have mentioned?—He said he was going a long way, that he was a very clever fellow, that he had a great deal to do.

Did he say any thing about the Virgin Mary?—Yes: that was on the Tuesday, he came home between one and two o'clock to dinner, and my sister asked him if he had had his dinner; he said no, he had not had it, but he would have it; upon which she reached it

him out; my sister asked him where he had been? he said, he had been to see God; he said the Virgin Mary was a damnation bloody whore, and our Saviour was a damnation thief, and God Almighty was a damnation blackguard. My sister told him to hold his tongue; she told him if he did not she would have him confined; she asked him if he would go to work, he said, yes he would go to work he must go to work to keep the frame; I do not know what he meant. He went out, and I followed him. I followed him as far as Charterhouse-lane; when he got there he ran up to the rails to the gate; I ran after him; when he got to the gate he stopped; he said he had got a great deal to do, and a long way to go, I followed him as far as the bottom of Half-Moon-passage, which is almost by where he works; I stopped there at a chandler's shop, Mr. Hadfield stopped there to drink a share of a pot of beer with two men, I stopped at the chandler's shop about half an hour, while he stood out of doors with these two men.

Did he converse with those two men he was drinking with?—Yes.

What did he converse with them about?—That I did not hear; I went into the chandler's shop, and told the gentlewoman that he was out of his mind, and I wanted to follow him to see where he went to, she let me come in and stand there.

And was Hadfield there at that time?—He stood at the public-house about half an hour: I did not want him to see me, because he might have begun upon me when he came home; he did not see me all the way.

Did you overhear what was passing between him and the other people?—I did not; I kept at a distance. After he drank the beer, I heard him say good by to the men; and he went up Half-Moon-passage into his master's shop, and then I came home and told my sister he was gone to work. When he came home in the evening, between seven and eight o'clock along with Mr. Crick, he said he had been to see God; he talked about various expressions about God Almighty, and what I told you before; after he had had his supper, he wanted to go into the garden to pray.

Did he say why he wanted to go into the garden to pray?—He said he should see God, that he was to pray there three hours.

Was that upon the same day on which he had used those shocking expressions towards God and towards Christ, that he wanted to go into the garden to pray?—It was; my brother, Harrison, and Mr. Crick went together into the garden to fetch him in, and they brought him in.

How long had he been in the garden, when they went to fetch him in?—They missed him out of the room, and went to fetch him in out of the garden; not five minutes after the time when they brought him in, he said he must go again and see God; and he said he was God Almighty's servant, and he was

going to build a house up in White Conduit-fields, and was to be God Almighty's servant.

And who was to live in that house in White Conduit-fields?—Mr. Truelock the cobbler and him, and he was to take his goods there.

What was he to do when he was there?—To live along with Mr. Truelock. Hadfield was to be God and Mr. Truelock was to be Satan; and that he had been and marked out the ground. With great persuasions between Mr. Crick and Mr. Harrison my brothers they got him into bed; when he was got into bed, my brothers kept behind the door; he jumped out again in five minutes after, and said he must go into the garden, because he was ordered; my brother would not let him go, he must go, he said, God had ordered him to go; my brother would not let him go into the garden, and he put him into bed again; between one and two in the morning he jumped out of bed—

Were you in the room the whole of that time?—I never went to bed all night; he jumped out of bed; he jumped as far as from that place to that; he shook his shirt, and took up my sister's petticoat, and said—"God damn it's little eyes, I will kill him;" that was, to my sister's little child.

Was the child asleep at that time?—Yes, the child was asleep in bed; I had just closed my eyes.

Did he go at that time towards the bed?—He jumped from the bed towards the window.

Was the child in the bed?—Yes; it screamed out, and my sister screamed out; I ran and opened the door, and my brother came in.

What is your brother's name?—Harrison. Before that, he jumped out of bed, got into the cupboard, threw down a kettle of water, and he said that was to be his bed; God had told him so. That was before he said he would kill the child. When my brother Harrison came in, he saw all the water about; he asked me and Mr. Hadfield what it was? he said he was getting into his bed, that was his bed (that was the cupboard); Mrs. Roberts, the landlady of the house, opened her door, and asked if Mr. Hadfield was mad? and when my brother came in, Mr. Hadfield said he had lost a great deal of blood; Mr. Harrison told him not to talk so foolish, but go to bed again; accordingly he got into bed again, and in the morning my sister Hadfield got up; my brother waked, and asked for the child; I told him he should not have it; he asked me what was the reason he was not to have the child?

Was he generally fond of the child?—Very fond indeed. I told him I was afraid he would dash its brains out; he asked me what for? I told him he got up in the night, and said he would: he said I was a damned liar, for he never got up all the night: my sister, Mrs. Harrison, came in in the morning, and told him he ought to be ashamed of himself to disturb all the whole house; he said she was a

a liar, he had never waked all the whole night.

When he jumped out of bed in the night, and said, Damn its little eyes, he would dash its brains out, did he state any reason why he was to deal thus with the child?—He said, God had told him to kill the child.

Did he say why God had told him to kill the child?—He did not.

Did you see him on the Thursday morning?—Yes.

What became of him afterwards, on that Wednesday?—He had his breakfast, and said he would go to work to keep the frame.

Did he go out?—Yes; my sister told him, if he did not go to work, he must starve.

At what time did he go to work?—Between nine and ten; accordingly he went out; I followed him; he went to the shop.

Did you go to the shop?—I went to the corner that he might not see me, he went in, then I came home again.

When did you see him next?—I saw him again between three and four in the evening of the Wednesday.

Did he say where he had been?—He said, he had been to see God; my sister and me asked him where? he said, up in White-conduit; she asked him, if she might go and see him? he said, yes; he said, God was a shoe-maker, accordingly my sister, Mr. Hadfield, and me, went up to the corner of White-lion-street, to Mr. Truelock, the shoe-maker; he said, he was God.

Mr. Erskine.—We have Truelock's commitment here as a person deranged.

Witness.—My sister and I went up to Truelock; we asked Truelock if he had seen a man cut in the face?

Lord Kenyon.—We cannot go into that; did you see Hadfield at home when you came home?—No, he was not at home; he came home a little afterwards, and asked us if we had been to see God; we told him yes, we had been to see the shoe-maker.

What answer did he make to that?—Hadfield asked us what the shoe-maker said to us? we told him, he told us Mr. Hadfield had been to him, and he ought to go to work; Hadfield had been at home to sleep that evening, while we were gone.

What did Hadfield say, when you told him that?—He said it was very true that Truelock had said that to him; Mr. Hadfield was to mind what Truelock said to him.

Did any thing farther pass with him then?—Only about the Virgin Mary and Jesus Christ, and all that pack of nonsense.

All that passed again on the Wednesday evening?—Yes.

How soon did he go to bed that Wednesday?—When we came home again on the Wednesday afternoon, he had his tea.

And still talking in that manner about the Virgin Mary?—Yes; he went into the garden for a little fresh air, my sister ordered him in;

a gentlewoman came after a room up stairs to let; she looked out at the window; Mrs. Roberts, the landlady of the house, was with her; that woman asked her what was the matter with that man? she said he was out of his mind, but not so bad as that people should mind him, and the woman would not take the room for it.

What was Hadfield doing in the garden at this time?—Walking round it, looking at the flowers and things, appearing in a strange manner, with all his hair about his head, his coat open, and his waistcoat and his stockings hanging about him.

What time did he go to bed?—As near as I can guess, between nine and ten, after he had had his supper; he rose up in the night, and said he had lost a great deal of blood, had a great way to go, and a great deal to do, and said, "Come all in; by God you are all welcome."

What time was this in the night?—Between eleven and twelve at night; my sister awoke with the noise.

You were in the room at the time?—Yes; I never went to bed all that night.

Did he continue in the bed the remainder of that night?—He jumped up, but my sister got him into bed again.

Did he continue there the remainder of the night?—Yes; then he slept till the morning; in the morning he got up, and looked a great deal worse, very bad indeed.

That is, the Thursday morning?—Yes, the Thursday morning.

What did he say on the Thursday morning?—All the same nonsense over again about the Virgin Mary, and such as the cobbler told him; he said he had seen God in the night, and the coach had been ready, and he had been to dinner with the king.

During all the time that you have been acquainted with him, did he speak evil of the king, or affectionately of him?—He always spoke very good of him; he said if they would take him, he would go again to have another cut at the French; he said he had been, but they would not take him.

Did you ever hear him make use of any expression disloyal to the king, or disrespectful to his family?—No; I heard him praise them to the highest; he always said, "God bless the king; if it were not for the king, I should not have my pension." After he said he had been to dinner with the king, he had his breakfast and went to work, as we supposed; he came home between one and two in the afternoon to dinner; he told my sister to get the tea ready between three and four o'clock, he was going to be made an Odd Fellow (a club called Odd Fellows); my sister made answer, what reason had he to go into another club, when he was in one?

What is that club?—I do not know; it is somewhere in Aldersgate-street; he said, because it was better than his other; accordingly he went out, and came home between three

and four in the afternoon to tea, as he said he would; he came home and cleaned himself; he talked about God and the Virgin Mary, and all that, over again; Mrs. Hadfield made him his tea; he drank about half a cup; she asked him why he would not drink the rest? he said he could not, he did not want any more; he said to me, "Mary, drink the other;" I made answer, "I won't, Jem;" he said, "God damn you, if you do not, I will throw it over you." I immediately got up, and went to the corner of the room, and my sister told him, he ought to be ashamed of himself; he said, "I did not want it," and then he put it down again, and went out, and I saw no more of him; my sister said, after he was gone,—

Mr. Erskine.—We cannot hear that.

Mary Gore cross-examined by Mr. Law.

He dressed himself before he went out on the Thursday?—He did; when he came home between three and four while the tea was being made.

By his conversation on Tuesday, Wednesday and Thursday, he must have been so mad that nobody could be ten minutes in his company, without finding out that he was mad?—Yes, he was; but not so mad but my two sisters could manage him very well together.

They could manage him at home, but when he was abroad he must of course appear more mad?—He used to come home in fits.

On Tuesday, Wednesday and Thursday, you say he had been holding this mad blasphemous conversation?—Yes.

Could he be ten minutes in any body's company, on either of those days, without showing that he was mad?—No; every body in the house knew it.

But on the Tuesday, the Wednesday, and the Thursday he went to his usual place of work?—Yes.

Did he return at the usual time from his usual place of work?—On Tuesday he came home between 7 and 8, with Mr. Crick.

I think you said you heard him talking on Tuesday?—That was after dinner.

And it was after that he came back and behaved so ill and violently?—Yes.

Did any of the people where he had been at work come home with him, and bring him back as a disorderly man?—It was either the Tuesday or Wednesday, Mr. Lee, and two or three more of his shopmen, brought him back; he had been in a fit: that was the day when the woman came to inquire after the room.

They brought him home in a fit?—He had been in a fit.

Was he a man who liked to frighten you in the way in which you state, or would he be very shy of giving his wife any alarm?—I cannot say as to that; she always knew when he was going off; it would come on in the middle of the day when eating his dinner.

Was he particular, when in his right mind, not to give his wife any alarm?—When he

VOL. XXVII.

was in his right mind, there could not be a man more attentive to his wife.

Then any time when he was particularly attentive not to give his wife alarm or frighten her, he was in his right mind?—No; she knew how to manage him.

From your judgment of him, as paying particular attention not to give his wife alarm, did not that show he was in his senses, was not he attentive to her when in his right mind?—Yes.

Did he work as usual on the Saturday before and the Monday?—On the Monday, I believe, he did.

On the Saturday before, did he go to his work?—I do not know; he was beginning to be bad on the Saturday, but not so much as that we minded any thing about it.

But on Monday, Tuesday, Wednesday and Thursday, he went to work all those days?—For what I know; I saw him in, but do not know how long he might stay in his shop; I followed him on Tuesday and Wednesday, but not on Monday, nor Thursday.

If he was so bad, why did not you apply to somebody to keep him at home?—He would not be kept at home; and sister did not like to go any where because when he got in his senses he ill used her for it.

But when he attempted the life of the child, and threatened to destroy it, did not your sister next morning apply to somebody to take care he did not destroy her or the child?—Only the people in the House; and we kept the door a-jar, that they might come in when he used to go off; he snored like a jark-ass.

Did you go to the shop, and tell them that he was out of his mind?—I went and told Mr. Lee on Tuesday that he was going out of his head.

But still he staid and did his work there?—He did.

But when in his senses, you say he was very attentive to his wife?—He was.

Mr. Justice *Grose*.—How long had your sister been married to him?—Between four and five years, I think.

How long after he was married, was it before he appeared in this deranged state?—I cannot tell.

You did not know him before he was married?—Yes.

Did he appear in this state before he was married?—Not that I know.

Catherine Harrison sworn.—Examined by Mr. Sergeant *Best*.

You are sister, I believe to Hadfield's wife?—Yes.

How long have you known Hadfield?—I have known him about fifteen years.

Do you recollect when he returned from the continent?—Very well.

When he came home from the continent, did you observe any difference in him from what there had been when you had seen him before?—A great deal.

What was that?—When he had his discharge from the regiment, they lived in Denmark court; he was out of his mind for about a fortnight.

When did he live in Denmark court?—Directly as he had his discharge.

Was he confined there?—No, it was without confinement.

Was he disordered in his senses at that time?—A great deal.

Have you known him from that time downwards?—Yes, till now.

How has he been since?—Very well in the state of his health.

How has his mind been?—He has been deranged in his mind every year from that time.

At what season of the year has the disorder generally attacked him?—From the beginning of the Spring till the dog-days are over.

I understand you to say you have been in the habit of attending him at those times?—I have.

Has he appeared at those times to be insane?—He has.

Did you see him on the 13th of May last?—Yes.

That was a Tuesday?—I saw him Monday, Tuesday, Wednesday and Thursday.

Did you observe any thing particular in him on the Monday?—I did; a very great deal of difference; he came home about one o'clock to dinner on the Monday; I asked him what he would have for dinner; he made me an out-of-the-way answer; he said he was a prophet, and that he was the Lord Jesus Christ; he came home about twelve o'clock on Monday night.

Where did he go after dinner on Monday?—I cannot say; he came home about twelve o'clock on Monday night; I was waked out of my sleep at two in the morning.

Where did you sleep?—In the room opposite him; I heard him say, "blast his little eyes I will kill him."

When the fit was not upon him, but he was in his senses, was he fond of his child?—Very fond. When I heard him say, "blast his little eyes," I wakened my husband, and asked him to go to him; I said he was going to dash the child's brains out; my husband went into the room.

Did any thing more happen that night?—My husband settled it; I did not hear any more.

Did you see him next morning?—Yes, I did; I asked him how he could go to hurt the child? the answer he made me was, he knew nothing about it.

Did you observe any thing particular respecting him on this Tuesday morning?—Yes, he looked very deranged in his mind.

Did he exhibit the same appearance that he had at Denmark court?—Yes, his complaint got worse every year.

What became of him on Tuesday?—He went away from us at breakfast time, and re-

turned at one o'clock to dinner; my sister asked him where he had been? the answer he made was, "you won't believe me if I tell you;" my sister said, yes she would; he said he had been up to White Conduit fields, and had seen the cobbler.

Did he say any thing about eating that day?—Yes he said he could not eat, for the Lord Jesus Christ told him he must not eat, but he must go to work to keep the frame.

Did you observe any thing more at that time?—He went on to say a great many out-of-the-way things at the same time.

Can you recollect any of the things he said?—He said that he was the Lord Jesus Christ, and he was going to build a house in White-Conduit-fields for him and the cobbler to dwell; I told him I would go up to the cobbler; I went up and told him not to give the man any encouragement, for he was a madman, and not to put things in his head.

Did any thing else pass that day?—No; he went to work directly, to keep the frame, as I said before.

When did you next observe any thing particular? do you remember his going to the garden?—Yes; on Tuesday night he came home between seven and eight o'clock, with one of his shopmates with him; he brought paper from this Truelock, and read it to us; and he said we must believe all that, for he was going to believe it, and he was going into the garden to pray for three or four hours, and he would see the Lord appear to him from nine to twelve o'clock.

What was the paper?—A paper Truelock had given him.

Did he go into the garden?—Yes, he went into the garden, and Mrs. Crick and my husband fetched him out, and put him into bed.

Did you observe what he did, whilst he was in the garden?—No, I did not see him.

Did you see him on the next day?—I saw him the next morning; I asked him how he was; he said it was no matter how he was; for he was the Lord Jesus Christ; he said he had lost a great deal of blood; he came home on Wednesday at dinner-time, I perceived him get worse.

In what respect did he appear worse?—Very out-of-the-way questions, and he complained all day of pain in the back of his head; I persuaded him to lie down and go to sleep.

Did he talk in the same style then as he had talked before?—Yes, as to what he was and where he was going, and that he was going to build a house in White Conduit-fields, and he went on worse.

What became of him that night?—He went to bed on Wednesday night, and was very restless all night. I went into his bed-room two or three times to look at him; I found he started, jumped up, and was very much agitated in his mind.

How did he appear on Thursday morning?—He appeared very bad; I said "Jem, I am

afraid we shall be obliged to confine you, I find you get worse;" he doubled his fist in my face and told me, if I said so again, he would murder me; he said he was very well, and he was the Lord.

Did any thing farther pass on the Thursday morning?—No, nothing farther passed on Thursday morning; he went out.

Was any body sent to watch him?—One night my youngest sister went to watch him.

At what time did he come back again?—At one o'clock to dinner, he wanted his cloaths; he said he was going to be made an Odd Fellow, and he would eat but very little dinner; he said he could do without victuals, that Truelock had told him he was to live without victuals.

What became of him after dinner?—He went out, and returned in less than an hour; he came home and changed his cloaths; he was very wild then.

What time are you now speaking of?—About four o'clock on Thursday afternoon; he went out to be made an Odd Fellow; I made him his tea before he went; he was going to chuck it over me, because he said it was too hot: he was going to drink it; he said that he was in a hurry; he was ordered to go and he must go: I asked him what time he would return; he made me no answer; when he was gone out, I said to my sister, "You will be obliged to have this man confined."

Do you recollect his being in those fits when any stranger came in?—No; there was no stranger came in when he was in those fits; I knew I could manage him, and they would make him outrageous.

When he is not in those fits, is he a loyal man?—Yes; he was always for a coach to go to see the king, and dine with the king; and he said the duke of York was a real good man. I never heard to the contrary but he was a loyal man, always for his king and country, and he said if it was not for his wounds and his having a discharge, he would go and have another cut at the French.

Has he continued in that mind till lately?—Yes, always until lately.

Catherine Harrison cross-examined by Mr. Garrick.

You say you did not permit strangers to be present, because you thought that it would make him outrageous?—Yes.

Then strangers must have observed the fit was on him, if they had been admitted?—Yes, and I knew I could govern him when others could not.

Very sensible. Now, upon this Thursday, you would have thought it very improper to let strangers in, because they would have observed it, and been alarmed at it?—Yes.

He was so wild nobody could have seen him ten minutes together, without seeing he was a madman?—No; half an hour or an hour perhaps they would not see any thing the matter with him, and then it would come on violently.

When you asked him about his tea, he answered you in this blasphemous manner?—Yes; before, he was a very good man, when the fit was not on him.

But even at this time you could not get a kind answer from him though an affectionate and kind sister?—No, he was always ruled by me.

When you observed him so bad, and you thought it fit he should be confined, after this how came you to let him go out to be made an Odd Fellow this evening?—Because we thought it would do him good, and turn his brain another way from what the cobbler had said.

You thought he might be trusted to do that?—We thought it would cheer him up, and put other thoughts out of his head.

Going among company, and getting some drink, and that would cheer him and mend his health?—As for drink, I never saw him fond of drink.

That was your reason for not keeping him at home?—That was my reason for not persuading him.

George Harrison sworn,—Examined by Mr. Erskine.

You are the husband of the person who has been just examined?—I am.

Do you lodge in a house with Hadfield and his wife?—Yes.

Have you known Hadfield long?—Near three years.

What has been his condition in the Spring of the year, upon the weather becoming hot?

—The first time that ever I saw him in his deranged state was at Mr. Jones's, where he lodged before he came to this house; I was sent for on a Sunday, and I went.

When was this?—Last Summer; that was the first time I saw any thing deranged.

Had you been acquainted with him much before?—I had; when I went up into the room, he was in bed and in fits; I held him down in the bed; when he came to, he talked in a deranged state, and said he must go; I asked him where, he said he must not tell he was ordered not to tell, and seemed much confused; I asked him several times over what he meant; then he got better, I was with him about an hour, then I came away; that was the first time I ever saw him deranged.

In the Spring of this year, a few days before this happened at the play-house, do you recollect what condition he fell into?—The first I saw of his deranged state that week was on the Monday night, when he was going to kill his child.

Relate what you know of that transaction about the child: was he at other times fond of this child?—Very fond of it.

A child about eight months old?—Yes.

His only child?—Yes. My wife awoke me and said "for God's sake get up; for Jem is going to kill the child."

Was this on Tuesday night?—No, Tuesday morning, about two o'clock. I ran into the room, his wife was sitting up in her shift with the child in her arms; the other sister was in her shift; I sat down at the foot of the bed, and Hadfield beside of me; I saw some water on the floor; I asked what it was; they said he had got into the cupboard for his bed.

He was there at the time?—He was, and that he was sitting upon a box and knocked down a kettle of water.

Did you say any thing to Hadfield?—I desired him to be quiet, and to get into bed.

Did you ask him what he had been doing with the child?—I did not; I desired him to get into bed.

Did he get into bed?—Yes, he got into bed.

Did you remain in the room any time afterwards?—No great time; Mrs. Roberts, the landlady of the house, was disturbed with the noise of his jumping out of bed upon the floor; she came out and said "for God's sake what is the matter?" I did not see Mrs. Roberts, but I heard her voice.

When did you see Hadfield after that?—I did not see him after that, till the Tuesday night; then he came home with a young man of the name of Crick; I was at home; Hadfield sat down to supper, and Crick and myself, my wife and his wife and sister; he began to talk in a deranged state.

Relate what he said?—He began to talk about the cobbler Truelock; I enquired who the cobbler was? he said his name was Truelock; he said the Virgin Mary was a bloody whore, Jesus Christ was a bastard, and God Almighty was a damnation thief.

At other times when he discoursed of the Divine Being, in what manner did he discourse?—He is a man that seldom or never discourses upon religion at other times; he said that he was ordered to go into the garden to pray from nine to twelve, and he should see God appear to him; then he went into the garden; I was at the street door along with Crick; I said to Crick, we will follow him; we went into the garden; I called out to him, he was at the farther end of the garden, I desired him to walk in doors; he said he would not, and begged of me to leave him alone. I told him I would assist upon his going in doors; me and Crick made him go in; when he was in doors we wanted him to go to bed, he walked about and stamped about the room; at last he sat down in one of the chairs, and we undressed him, and put him into bed.

Did you see any thing more of him that night?—When I put him into bed, I begged him to lie down; with that, he did. I went from the bed side; the bed is in a large closet with folding doors. I went behind the door. I suppose he thought I was gone; he jumped up in bed again, and got up; when I found that, I came to him again, and made him lie down, and begged

of him to go to sleep and not disturb me, for I wanted to get up in the morning to go to work; with that he laid down; he served me so two or three times; at last I believe he dropped asleep, and I saw no more of him that night.

Did you see him on the Wednesday?—Yes, I saw him at dinner: I had had my dinner, and was going to work at two o'clock; I opened the street door; he came up to the door at the time; I walked in with him, and stopped some time; his wife wanted him to have some dinner; he would not eat any; he said he could do without victuals, he did not want any; I told him he had better eat, he said as he did not want any, he was ordered not to eat; with that he pulled out a letter he received from Mr. Truelock; we still wanted to press him to eat, he would not; he said he could do without eating, his wife said, "if you do not eat you will suffer by it" he said he did not want to eat, I told him to eat his dinner, and go to work; "if you do not go to work" I said "you will find the ill-effects when Saturday night comes;" he said it did not matter to him.

This was at dinner-time on Wednesday?—Yes.

What became of him afterwards?—I do not know; I went to work.

Did you see him on the Thursday?—On Thursday I met him as I was going to work; that was about two o'clock.

In what condition was he at that time?—I met him, I said "hallo, where have you been to: your dinner is getting cold at home;" he said, oh! it did not matter, it did not matter to him, and he went away from me. I happened to turn my head round and he was gone, I saw nothing more of him.

Was he in this sort of humour whether he was ill or whether he was well?—No.

Did he appear to be a man attached to the king and to the government?—A man that I believe loved his king and country to his heart; I never heard him speak against the king.

Did you ever hear him, when out of humour in consequence of his insanity or disease say any thing bitter or malignant of the king?—Never in my life; and I always heard him speak in praise of the duke of York; he would serve him at any time and wished to go abroad again.

What to do?—He said any thing above a common man, he would go again.

And you mean to swear he always spoke affectionately of the king and the government?—Yes; I never heard him speak against the king nor yet the royal family, but he always spoke in praise of the duke of York for the time that he was abroad with him.

Elizabeth Roberts sworn — Examined by Mr. Sergeant Best.

I believe the prisoner lodged at your house?—Yes.

How long did he lodge with you?—Three months.

Have you observed, during the time he has been there, any thing particular in him?—I think for the whole time I always perceived a kind of wildness about him.

Has that wildness increased or diminished?—Increased.

Have you attended particularly to him latterly; in May last?—I had an apartment to let, and a person refused to take it on account of Mr. Hadfield's wild look.

When was that?—About a week before this unfortunate affair happened; he had had a fainting fit, and I had sent a bottle of hartshorn into his room; he looked extremely wild.

Did you take any notice of him on the Monday before the Thursday when this happened?—I did, particularly.

What did you observe?—A very great dejectedness of spirits.

Had you any conversation with him?—I had with his wife.

We must not hear what passed between you and her, if you had no conversation with him?—Not on Monday; on Tuesday morning I was waked at two o'clock by a violent noise, he appeared to me to be jumping, I went down into the passage.

Did you see him in his room, or speak to him?—I did not go in; I spoke to him, I asked him if he was mad; he did not answer; his wife said he was going to dash the child's brains out against the head board.

After that, did you go into his room?—I did not.

When did you next observe any thing particular?—I had a conversation with him on Wednesday evening at seven o'clock.

What passed between you at that time?—He said he was very low spirited, that he had been to see two soldiers flogged, and was much affected at the sight.

Lord Kenyon.—Mr. Erskine, have you nearly finished your evidence?

Mr. Erskine.—No my lord; I have twenty more witnesses to examine.

Lord Kenyon.—Mr. Attorney-general, can you call any witnesses to contradict these facts? With regard to the law, as it has been laid down, there can be no doubt upon earth; to be sure, if a man is in a deranged state of mind at the time, he is not criminally answerable for his acts; but the material part of this case is, *whether at the very time when the act was committed this man's mind was sane.* I confess, the facts proved by the witnesses (though some of them stand in near relationship to the prisoner, yet others do not) bring home conviction to one's mind, that at the time he committed this offence, and a most horrid one it is, he was in a very deranged state. I do not know that one can run the case very nicely; if you do run it very nicely, to be sure it is an acquittal. His sanity must be made out to the satisfaction of a

moral man, meeting the case with fortitude of mind, knowing he has an arduous duty to discharge, yet if the scales hang any thing like even, throwing in a certain proportion of mercy to the party.

Mr. Attorney-general, you have heard the facts given in evidence; to be sure such a man is a most dangerous member of society, and there are some doctrines and points laid down in a speech which has been alluded to, that are very well worthy the attention of every body,—I believe in the speech of a very illustrious member of our profession, Mr. Yorke, in the prosecution of Lord Ferrers. It is impossible that this man with safety to society can be suffered, supposing his misfortune is such, to be let loose upon the public. But in a criminal prosecution, I will, in this part of the business, throw it out for your discretion and that of the other gentlemen who give you their assistance upon this occasion, whether it is necessary to proceed farther. If this shall appear to be an assumed case,—if you can shew it to have been a case by management, in order to give a false colour and complexion to the real transaction, then assuredly this case vanishes.

Mr. Attorney General.—I must confess, that I have certainly no reason to imagine that this is a coloured case; on the contrary, I stated that I apprehended the prisoner had been originally discharged from the army upon the ground of his insanity. With respect to his sanity immediately preceding and subsequent to the act, I have offered the evidence I had; unquestionably, the circumstances which have now been stated, were perfectly unknown to me.

Lord Kenyon.—Your conduct, Mr. Attorney-general, has been extremely meritorious; no man living has an idea of reproaching any that took any part in the prosecution; it was most fit and absolutely necessary to make the enquiry; the result of the inquiry being such as it is, in the present posture of the cause, I will put it to you whether you ought to proceed.

Mr. Attorney General.—I am certainly much obliged to your lordship, for having done what you have been so good as to do; your lordship will feel how much it was necessary for me to wait until I should have some intimation upon the subject.

Lord Kenyon.—It was necessary for us all to wait till the cause was arrived at a certain point of maturity. The prisoner, for his own sake, and for the sake of society at large, must not be discharged; for this is a case which concerns every man of every station, from the king upon the throne to the beggar at the gate; people of both sexes and of all ages may, in an unfortunate frantic hour, fall a sacrifice to this man, who is not under the guidance of sound reason; and therefore it is absolutely necessary for the safety of society, that he should be properly disposed of, all mercy and humanity being shown to this

most unfortunate creature. But for the sake of the community, undoubtedly, he must somehow or other be taken care of, with all the attention and all the relief that can be afforded him.

Mr. Attorney General.—I most perfectly acquiesce in what your lordship has said.

Lord Kenyon.—Gentlemen of the Jury; The attorney-general's opinion coinciding with mine, and with that great assistance I have on my right and left, I believe it is necessary for me to submit to you, whether you will not find that the prisoner, at the time he committed the act, was not so under the guidance of reason, as to be answerable for this act, enormous and atrocious as it appeared to be.

A case is put into my hand of a person tried for felony, who, appearing to the Court to be mad and dangerous to society, was ordered to be removed to a proper place of confinement. I do not think that is the thing to be done here; I apprehend he should be at present confined, till properly disposed of.

Mr. Erskine.—My lord, we, who represent the prisoner, are highly sensible of the humanity, justice, and benevolence of every part of the Court; and I subscribe most heartily to the law as it has been laid down by my learned friend the attorney-general; most undoubtedly the safety of the community requires that this unfortunate man should be taken care of.

Lord Kenyon.—Something must be done that he may be prevented from committing farther mischief.

Mr. Justice Gross.—At present he must not be discharged.

Mr. Attorney General.—It is laid down in

some of the books, that by the common-law the judges of every court are competent to direct the confinement of a person under such circumstances.

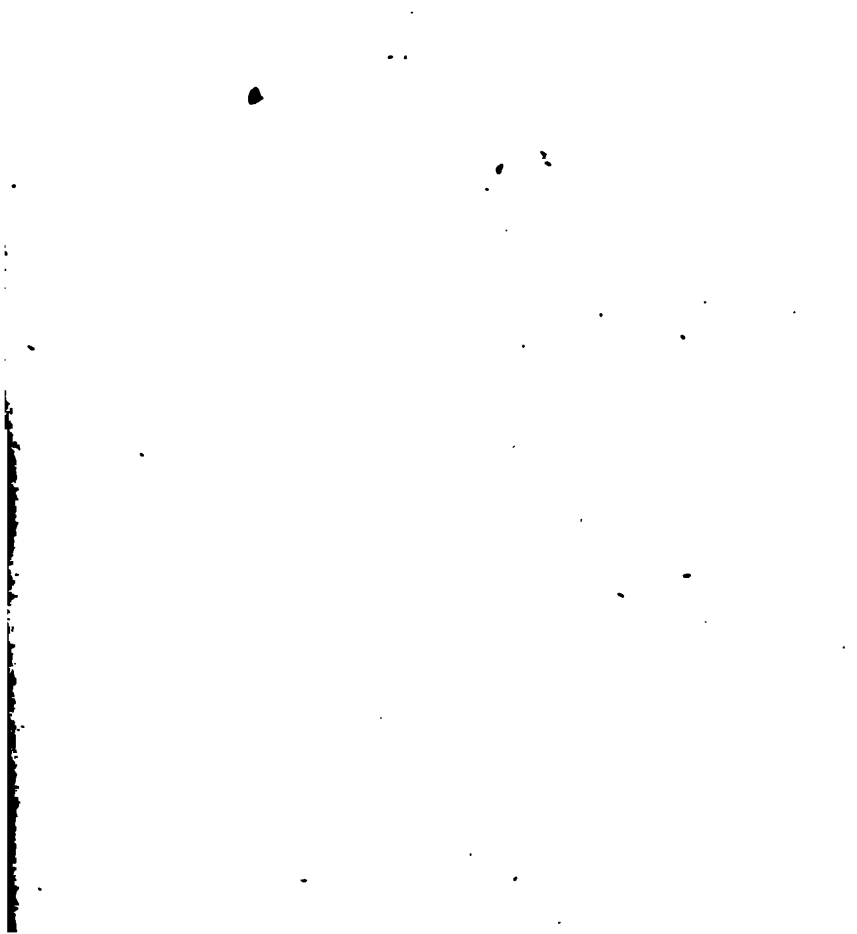
Lord Kenyon.—That may be, Mr. Attorney-general; but at present we can only remand him to the confinement he came from; but means will be used to confine him otherwise, in a manner much better adapted to his situation.

Mr. Garrow.—Would it not be for the benefit of posterity, if the jury would state in their verdict the grounds upon which they give it, namely, that they acquit the prisoner of this charge, he appearing to them to have been under the influence of insanity at the time the act was committed? there would then be a legal and sufficient reason for his future confinement.

VERDICT.

Foreman of the Jury.—We find the prisoner is Not Guilty; he being under the influence of Insanity at the time the act was committed.

This case gave rise to the two statutes of 40 Geo. 3rd, chapters 93 and 94, by virtue of the latter of which (for the safe custody of insane persons charged with offences) Hadfield was continued in custody. See the debate on the introduction of these acts by the Attorney-general, in New Parl. Hist. Vol. 35, p. 389.





EDUCATION

