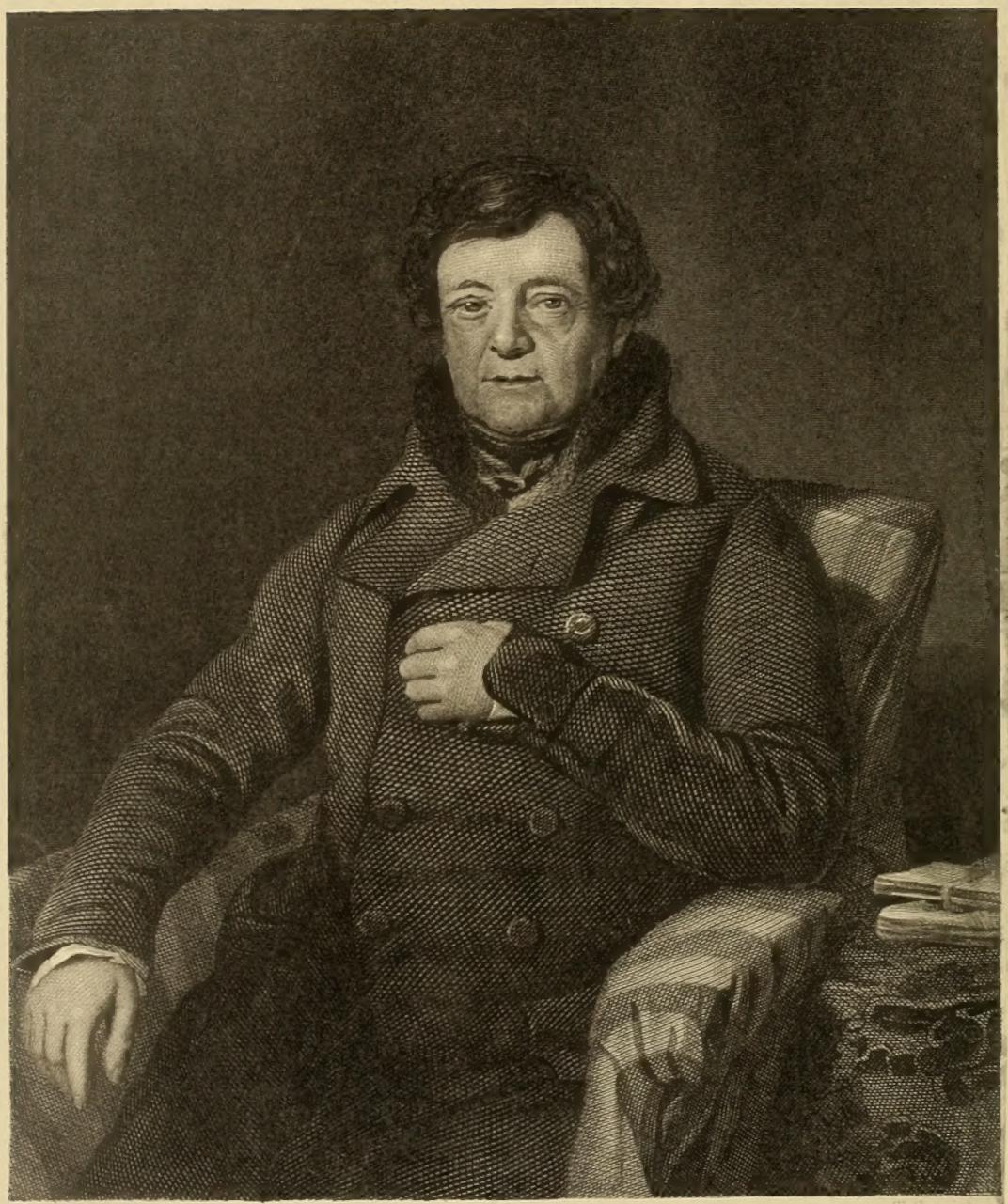

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Daniel O'Connell

Likeness from the latest portrait from life

A SPECIAL

REPORT OF THE PROCEEDINGS

IN THE CASE OF

THE QUEEN

AGAINST

DANIEL O'CONNELL, ESQ., M.P.

JOHN O'CONNELL, ESQ., M.P.

THOMAS STEELE, ESQ.
THOMAS MATTHEW RAY, ESQ.
CHARLES GAVAN DUFFY, ESQ.
REV. THOMAS TIERNEY,
REV. PETER JAMES TYRRELL,
JOHN GRAY, ESQ., M.D.
AND
RICHARD BARRETT, ESQ.

IN THE COURT OF QUEEN'S BENCH, IRELAND,

MICHAELMAS TERM, 1843, AND HILARY TERM, 1844;

ON AN

INDICTMENT FOR CONSPIRACY AND MISDEMEANOUR.

EDITED

BY JOHN FLANEDY, ESQ.

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JUDGES.

THE RIGHT HON. EDWARD PENNEFATHER, Chief Justice.
THE HON. CHARLES BURTON.
THE HON. PHILIP CECIL CRAMPTON.
THE RIGHT HON. LOUIS PERRIN.

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PREFACE.

In the year 1840 was first laid the foundation of what is now the Loyal National Repeal Association of Ireland. We had passed through six weary years of expectancy. First the cry was for assimilation. They who were loudest in the call, forgot that perfect assimilation of laws and institutions could only produce similarity of advantages where there was an identity of habits, manners, and circumstances. It is only justice to the people to say, that they placed no faith in this mode of political redemption. They did, it is true, in considerable numbers, memorial and petition the Legislature to carry out the demand made by those to whom they were accustomed to look up to as leaders; but it was always evident that the heart of the country was unmoved by those weak efforts to accomplish the changes necessarily antecedent to the attainment of national happiness. There was no living, animating, all-pervading spirit in the agitation. A task was set the people, and they assumed it; but they laboured without vigour, and without hope, in the weary endeavour to persuade themselves that as Englishmen they could alone be free and happy.

A "greater than Cæsar" has said that there is in the Irish heart an intuitive love of the right, which corrects even the errors of their judgment. The Irish heart is always right; and heart as well as reason in that instance—the promptings of their natural right-mindedness, as well as the accumulated teaching of seven centuries—had convinced them that they could find no happiness in being English.

But there was a large section of the community, respectable in every sense, to whom assimilation was a purpose to be accomplished by all feasible means. That section included some of the most intelligent of the Irish Liberals, and their doctrine of regeneration was urged with great earnestness, and with more than proportionate ability.

Time, however, passed on, and no assimilation came. Some grew weary—others distrustful; some disheartened, and not a few convinced that their paths were not those which inevitably led to the goal they contemplated.

The next change then came. The popular demand—the only demand at least which was popularly made, was, not for assimilation, the benefit of which now ceased to be insisted on, because English apathy, and English jealousy, and English hate refused to concede the principle—but the call was for a large and liberal concession to popular liberty, and of guarantees for its perpetuation. Thus we passed through another phase of our political existence: urging, soliciting, and humbly entreating that we might be remembered, if not in justice, at least in mercy—whining out our unflagging patience, as at least preferring some claim to the consideration of those to whom we were practically as well as publicly acknowledging our inferiority.

But the efforts of the Irish Liberals in this direction were not more successful than in the more ambitious paths they had already trodden. No large concession was granted—no secure guarantee was given.

The Whig opposition to the motion of Mr. O'Connell for an augmentation of the elective franchise, and an increase of the number of representatives of this country in the "Imperial Parliament," gave the *coup de grace* to the delusion of concession; the enactment of the Municipal Reform Bill demolished the question of guarantees.

The great leader of the Whig party—Lord John Russell—now tells us that, when his "noble colleague," Lord Morpeth, met the proposition of Mr. O'Connell upon the franchise, with a direct negative, both were convinced that justice required the concession demanded by the trusted leader of the Irish people. Then they flatly denied that which they now acknowledge to be just. Why? Because they dare not risk their position with the governing classes of England, by doing what was just towards Ireland, or even by avowing what they thought, though they should halt in their realization of it.

The inadequacy of the Municipal Reform grudgingly yielded to us the ungracious and graceless acknowledgment, that we ought to have some power of control over some portion of our affairs—the spirit in which that truth was confessed—the ill-conditioned disposition which reduced the control to the least possible limits, proved how baseless was the hope which still relied upon the completion of the demands then made for Ireland.

The party which still stood forward to demand what was advised to be necessary for the country, became, after these events, still more limited in numbers; but the enthusiasm of the people had utterly disappeared. If there were still a few who kept the foreground with him who never ceased to labour, they had abandoned all trust in their course of action—they had almost ceased to ask. And it was gravely and deliberately asserted in the Commons House of Parliament, that the absence of any agitation in Ireland, and the apparent acquiescence of the people in the then existing condition of things, was proof that there was no grievance of which they in reality could complain!

It is the last drop that causes the cup to overflow; and though little weight attached to the authority of the individual who made that strange assertion, yet the parliament continued to act as if the same impression was general amongst its members. From the valley of despair is plucked the flower hope; success comes from without the depths; and the answer to the taunt of acquiescence is wrong, and its practical adoption by the legislature was the unfurling of the standard of Repeal.

But apathy had sunk into the popular mind to such an extreme, that the standard of Repeal could not at once be hoisted unconditionally; the people had been so long unused to the light of nationality, that they could not at once look upon its unveiled refulgence. They were like men who had long abstained, and to whom abundance would be death. It is certain, also, that many good men of all classes condemned the experiment which had trusted to the generosity of England, after so many fearful lessons, pointing out the contrary course as that which led to safety. The people thought with those, and they questioned the sincerity of the act which gave the standard of nationality to the breeze. The first efforts, consequently, of the chief of the national party were necessarily directed to assure the people that Repeal meant perseverance as well as nationality. He required to convince them that it was intended to persist in what was right; and that neither threat, or cajolery, neither solicitation or inducement, would ever cause the lowering of that flag.

Meantime the period rapidly approached when the measure of Whig short comings had been filled, and their own "finality" wrought "the *finale*" of their power. They had many sins towards us to answer for, unconfessed and "unanealed." But this was not enough to blind Irishmen to the more hideous crimes of their successors. The Irish people, therefore, threw themselves with great force into this final struggle, and to them is due the honour, by sacrifices of no small amount, and by struggles of the severest nature, of having preserved the Whigs from total route.

Advantage of this circumstance was taken by our ever vigilant opponents, and it was rung through all the changes, that the cry of Repeal meant nothing more than "bring back the Whigs," and the shout of nationality "put out the Tories." There is little doubt that this accusation had a depressing effect upon the progress of the party identified with the vitality of Ireland. Long and urgent protestations, strenuous assertions of untiring devotedness to the principle of self-rule, and proofs of earnestness impossible to misconceive, were requisite before the people ceased to be incredulous. The Loyal National Association gradually gathered within its circle the ardent, whether old or young, the zealous, the enthusiastic, the earnest and devoted, as well as the brilliant and the educated. But it did not equally succeed with the prudent and the wary; and the people, from the causes we have enumerated, as well as others, were not manifesting any great zeal to add to it the only permanent elements of power—numbers and an "exchequer."

On the second day of January, 1843, there was held in the Corn Exchange Rooms an ordinary meeting of the Association, at which Mr. O'Connell, with a prescience the most extraordinary which politician ever exhibited, proclaimed that to be "The Repeal Year."

What explosions of laughter that caused all the wise—what ridicule was heaped upon all and each of the people who hardily avowed themselves Repealers—how they were scorned as the least unreasoning of men—the least intelligent of citizens—the most imbecile of thinkers! What folly to use such language! Nay, there was not in it audacity sufficient to redeem it from puerility! It was a sheer attempt to gull the people, and really it would very much surprise the gentlemen who sagaciously applied this gentle language to the announcement of the Liberator of his countrymen, if all those who valued public opinion and their own character for common sense, did not very speedily recede from the Association.

But they did not recede. And the instinctive good sense of the Irish people—that quality by which the heart corrects the head—made light of the wisdom of the wise.

Meantime O'Connell was preparing for the fulfilment of his own prophecy.

When the honourable and learned gentleman pronounced, during the progress of the Municipal Reform Bill in parliament, that the new corporate bodies would become "Normal schools of agitation," the whole rookery of Toryism was in an uproar. Lord Roden raved—London-

derry stormed—the Duke became more desperately rigid—and Lord Lyndhurst more insidiously vindictive against Irish rights.

But for any other end than that contemplated by Mr. O'Connell they would be valueless. In Ireland almost a second generation had sprung into manhood since the union. The young men know not self-rule save in theory. They had not had personal experience of its advantages. They knew not practically its operation for good, or the necessary corrections to be applied, that from its working evil should not spring. Here were institutions, the value of which might be felt by all—the working of which would be known to all. Local institutions for the direction of local affairs, and the management of local funds for local purposes. The value of municipal institutions to Ireland was, that in them they had miniature legislatures; men whom they had selected to speak their sentiments, and that in them they saw the reflex of their own opinions.

It was necessary to prove that there was nothing impracticable in the working of the principle of representation, and that the Irish people, as had been sedulously inculcated, were not incapable of estimating its advantages, and of using them as men whom they became. It was desirable to establish, in fact, that which was so captivating in theory, that representative institutions are calculated to augment the amount of human happiness and secure its permanence. The value of convincing a people by experience, that the privilege of legislating for themselves, and controlling those who manage their affairs, was worth a struggle, it was inappreciable. Thus the practical usefulness of agitation would be taught, and the necessity of persevering in it, until legislative as well as municipal institutions were secured to the people, would be indefeasibly established.

Those were the natural and proper ends contemplated by the advocates of Municipal Reform for Ireland. The corporations were the proper schools for teaching the ways by which those ends might be accomplished. And, therefore, Mr. O'Connell was right in his anticipation that the corporations would become the best Normal schools of agitation.

The demonstration of the will of the Irish people for Repeal commenced in the corporation of the metropolis of Ireland. The Assembly-house may be called the scene of the first "monster meeting." In March, 1843, the movement was begun which Mr. O'Connell would appear to have projected in the preceding January.

The ablest man of the Anglo-Irish party led the opposition upon that occasion. He was sustained by others of great practical experience, and great abilities. It is not too much to say he failed. At this moment who can doubt he would himself admit the fact. But the triumph of Repeal from that hour was unequalled. The first blow was struck—a sturdy blow and a winning blow. Its progress for months succeeding was one long and uninterrupted course of victory.

The people became instantly assured that Repeal did not mean less than it pretended. They felt at once that those who led it had no view but to its final accomplishment—no contemplation but the realization of their plans.

In this conjuncture it will be readily admitted that the Repeal press did good service. The projecting of the *Nation* a few months before this period was in itself "a great fact" in the agitation of the time. New men had just appeared at the Irish press. Young, enthusiastic, and able, they infused new vigour into those great conduits, from which the people imbibe intelligence and public spirit. They were men whose love of country was extreme, and whose power of communicating their ardour to their countrymen was unequalled. What they felt strongly they wrote vigorously. They were able to meet and to overcome opponents in elaborate argument or *trenchant* assault. They knew the capabilities as well as the history of their country, and knew the strength as well as the weakness of their countrymen. They possessed in an eminent degree perhaps a better knowledge—a knowledge of the strength and the weakness of their opponents. Possessing energy as well as ability, and sustaining power as well as strong enthusiasm, they were prepared at all times, and in all modes, to promote or to defend their cause.

New times demand new men, and it cannot detract from or diminish popular gratitude towards those who fought at the press the battle of religious freedom, to say the public exigencies demanded that they should be reinforced. A press more faithful, more zealous, less intolerant of opponents, or with more singleness of purpose, never was engaged in the service of any country.

It is not too much to say that the Repeal press of Ireland did something for the sustainment of the national impulses.

From the debate in the Corporation may be traced the unchecked triumph of the Repeal cause. Adhesions to the national ranks came pouring in from every side. Money flowed into the national exchequer. The people began distinctly to embody what they long had felt, that as Irishmen they had hopes and aspirations, as well as interests, not identified with those of England.

Foreign nations also began to look with eagerness towards this western isle. Many sympathised openly with its people—many gave their good wishes who committed no such overt act. They had countenance and encouragement from France, counsel and support from America, good wishes for their success from every land where Irish wrongs and the selfishness of those who inflicted them were known.

But this was not the only indication given by foreigners of the extent to which they regarded the affairs of this country as operating upon the power of England, and regulating their policy towards her. The Repealers of Ireland, and the sympathisers of America produced the treaties of Washington and the abandonment of the North-Western territory. The "monster meetings" produced the revolution, which drove the Duke of Victory ignominiously from Spain.

That must needs be a large stake which England plays for in this country when she can afford to abandon her influence, and acquiesce in the establishment of French domination in the Peninsula, and to surrender in America a territory of great value in every point of view, that she may pursue her Irish game on the same terms that the gamester throws the loaded dice.

But even gamesters lose at times though they play unfairly, and as Ireland never can lose all she must win at last.

While the Repealers held their monster demonstrations, and foreigners proclaimed the anxiety with which they looked towards this country, the ministry pursued the course of wearying by delay. Procrastination seemed their principle. They dreamed that Repeal would weary itself out; that the people would tire of their excitation in a pursuit, which, however great in itself, was both remote in point of time and difficult of attainment. This cannot always last, they argued; the people by-and-by will abandon in loathing that which they now urge with ardour unexampled. Peel likened it to Chartism, and the same prescription it was concluded would serve for the one which had succeeded with the other.

Nothing is more dangerous either in medicine or politics, than endeavouring to adapt symptoms to a favourite theory without allowing for the difference of constitution, or of other causes. And certainly no two patients can be possibly more unlike than an Irishman and a veritable John Bull. Even the symptoms are not the same. Chartism is the antagonism of the system coincident with which England has become great. Repeal is a demand for the restoration of that order of public affairs under which Ireland became prosperous and respected. England is an oligarchy, and that Chartism would destroy, to erect in its room their modification of the democratic principle. To this, the middle classes in England are opposed; and though it would be rather bold to say that Chartism will never establish itself there, it never can do it without a revolution. That event may be justifiable; we doubt it ever can be bloodless. But the Irish are a patriarchal people; they care little for a pure aristocracy, but they revere considerate and generous chiefs. In England, Chartism would destroy the whole fabric of aristocracy—in Ireland, Repeal would only make that institution more firm. It would remodel and mitigate, but confirm it for ever. Now, the Chartists, while they deny that physical force is a principle of their constitution, or a means which they approve, have never condemned the idea of arming, and never have repudiated the notion that they would not think the use of those arms, in certain cases, advisable for the accomplishment of their purpose. With the Repealers it is not so. They do not advocate the propriety of arming, or the use of arms. On the contrary, they repudiate all idea of resorting to such means, under any possible circumstances, save that of direct and unprovoked attack. Sir Robert Peel, therefore, was wrong in applying to the one case that which had succeeded in the other. By this time he must feel himself convinced that he has been in error.

Yet the Right Hon. Bart. must have contemplated that the Irish Repealers would have been so ineffably foolish as to resort to an appeal to force; otherwise there is no meaning in the pouring of troops into the country, in fortifying barracks, loop-holing old walls, and provisioning tumble-down-houses promoted into fortresses.

Perhaps there was a time when these preparations would not have been inutile. But that has happily passed for ever. Ardent in nature, prompt in the endeavour to realise what they project, there was a time—and not a remote one either—when Irishmen would in all human likelihood have afforded an excuse for the application of that force with which the country abounded. They know better now. They are more instructed—they are more contemplative—they are more sober. Intoxication would urge them to many bold deeds, but it would leave them incapable of self-protection. The Irish people now appear to be perfectly instructed in the truth that the long game is their game. It is the pace that kills, and those must go it who would ultimately reach the goal. At present the odds are certainly not in their favour; but it is their indomitable sobriety which sustains them. It is that which enables them clearly to anticipate the force of events, and to rely while they are prepared for them. A sober man has more wants than he who is not. He has

more capability of comprehending the means of supplying them. A sober man is an ambitious man. He will crave distinction among his fellows. He is the best patriot, because he is the most reasoning and reasonable. In short, the Apostle of Temperance, though not of the society, is amongst the first rank of the Repealers.

Hence it is that the movement is so essentially a peaceful one. Ireland is a line of posts. The Duke of Wellington proclaimed long since in parliament that he had done his part. We must conclude, therefore, that in a precautionary point of view no military tactician can do more. And what are all his preparations worth? Do they make one Repealer less? Do they prevent any man from avowing his nationality? Do they abstract one penny from the funds of the national exchequer? The people do not hate the military, neither do they fear them. What is still more to the purpose, the military do not hate the people. The Repealers and the soldiery live everywhere upon the best possible terms—Repealers have deprecated hostility by praise, and they have succeeded, for soft words turn away wrath. But they have not tampered with the military, and they have no need to do it, for they contemplated nothing in which military co-operation would be useful.

As a measure of policy the military occupation of the country is utterly futile. Indeed it does not tend to produce any effect save such as are calculated to damage and embarrass the interests of those who maintain the system. The energy with which the people keep the peace, and the vigour with which notwithstanding they pursue their objects, cannot possibly excuse the use of the military arm of the Government.

But this operation is perfectly consistent with the policy of the life of Sir Robert Peel; always against the people, always with the oligarchy—prepared, and apparently determined to uphold his principles, if need be, through blood, yet ever yielding what he found that circumstances had made it dangerous to withhold. He now proclaims, in accordance with the sentiments of the Whig statesmen of England, that he is ready to maintain the union at all hazards, even at the risk of civil slaughter. He has made demonstrations of his intentions—he has prepared to perform his threat; yet who is there now, upon a consideration of the whole policy of his life, will dare to say that Sir Robert Peel will not be the minister to recommend her Majesty to acquiesce in the Repeal. He says he will be no party to the dismemberment of the empire. How often has he declared that the maintenance of the Constitution depended upon the perpetuation of Catholic disabilities? How often has he protested that its integrity was inconsistent with the passing of the Reform Bill? Yet he advised and proposed the first, and proclaimed his readiness to govern in the spirit of the other. He will not consent—he tells us—to the dismemberment of the empire. There are myriads of Repealers as conservative of that empire as the Premier. The Repealers do not desire its dismemberment. Far otherwise. They are solicitous to consolidate it. Who will venture to assert that Sir Robert Peel will not one day become convinced how much he has wronged the Repealers, and maintain the empire by doing justice to the Irish people?

It has been urged that the Irish people owe the Premier much for his forbearance. We do not think so. He is too prudent to be violent. He would undermine opinion, not assault it. So far from this claim on his part having any weight, his policy has been marked by great insidiousness, and the occasion was only wanted, that it might prove sanguinary. The evidences which sustain this opinion are as numerous as the leaves. If the law has been broken—of this few people are yet convinced—then have the Government entrapped her Majesty's subjects into illegality. If the Repealers have acted in violation of the Constitution, then are the Government open to the charge of having allured to it. It is they who are the real conspirators—it is they who are the avowed conspirators; for, be the fact not forgotten, that, through the whole case made by the Solicitor-General, there runs this distinct avowal, that the Government permitted the Repealers to go on until they had time to develop what the learned gentleman contended was conspiracy, and until the Government had what they conceived sufficient evidence thereof.

And what is this doctrine of conspiracy, which is now endeavoured to be established? It has been admitted by all the counsel at the trial, with the exception of Mr. Fitzgibbon, whose views are more in accordance with ordinary conception, that it means the agreement to do an illegal act by legal means, or to do a legal act by illegal means.

The traversers' alleged crime comes under the second category. It is legal to repeal the act of union, but the means by which it was intended to be accomplished are charged as illegal. Now, what was the mode adopted to establish this charge? First, a number of overt acts were offered to the jury, perfectly legal, perfectly harmless of themselves; and, in order to make these evidence, the jury were called upon to imagine a conspiracy. And having kindly complied with the request, then they were called upon to make a further application of those same acts, thus become illegal, and to receive them as proofs of the

imagined conspiracy. What was the proof offered that the overt acts, taken together, were illegal? That the parties committing them were engaged in an illegal conspiracy. What were the evidences offered of the conspiracy? That those acts had been committed!

A more monstrous proceeding—a more absurd proof never vexed common sense, or was offered to a jury. If the verdict had in support of this doctrine—by means which have astonished the world—of civilization shall be finally established, there is an end to all public discussion; it can exist no more save by the sufferance of the authorities. The existence of such a state of things would be tyranny. There is no one end proposed in which this monstrous prosecution has been successful. It has not put down Repeal. It has not re-established the feeling upon which alone the union could be permanently maintained. It has not made any man less open in the utterance of his sentiments, or less eager to join himself to his fellow-countrymen for the realization of his objects. It has not made England more strong, but it has rendered her infinitely less respected. It has not subdued one particle of the spirit which animated the traversers, from the first and greatest, as well as the oldest of them, to the youngest of the eight. No man is now a firmer anti-repealer than before the prosecutions—thousands are much less so. Many, with Mr. Henn, would hesitate much more than before those trials to maintain the opinions which he holds; many men have been made by the proceedings converts to the truth of nationality.

The conduct pursued towards this country has laid the basis of future embarrassments for England, and it has given Ireland reason to anticipate them joyously as the period of her liberation. As sure as England's empire has existence, so sure will she speedily feel the consequences of her treatment of this country. As sure as that hour arrives, so sure will this country obtain her legislative independence.

There are many things which indicate great progress in the national mind. It is true that monster meetings are no longer held; the obedience to authority, which is an essential characteristic of the Repealers, at once submitted to the proclamation. But the people are more firm than before, because every day brings them new proofs that Repeal is the commencement of redress, and new intelligence of the meaning and import, as well as of the consequences of nationality. Energy more sustained has never been manifested by a nation. Determination more strong has never been exhibited by a people. Peacefulness and perseverance more complete have never added moral dignity to any movement. Sobriety and order are the parent of many virtues. They are now national characteristics of the Irish people. It is not to be contemplated that such a people shall not succeed. With leaders so prudent and so watchful, to fail were impossible.

Mr. O'Connell was therefore a prophet, when in 1843 he said that was the "Repeal year." It is that year which has placed us on the high ground. At whatever time Repeal shall come, that year deserves that name.

Success would have justified the unprecedented proceedings by which the Irish government sought to beat down the Irish people; but they have not succeeded; they will not succeed. The convictions in which the shortsighted now triumph will but serve to precipitate future dangers. When those dangers can be no more postponed—when they stare England in the face—then will the state trials be viewed in their true light as a piece of tyrannous folly—then will Ireland have her own.

There are many reasons why this edition of those trials is offered to the public. One or two it is only necessary to suggest. It was supposed, and the event has shown not without reason, that in "authorised" publications some tampering with the case might be anticipated. In the most elaborate of the works offered to the public and the profession, comprising the proceedings, the whole of that strange exhibition, in which the Attorney-General was the prominent actor, is omitted. "Authorised" publications of speeches are not more exempt from charges of that nature. This edition will, it is hoped, supply a corrective for these deficiencies, and, therefore, it will not be without its use even to those who may already have other versions. From the general body of the people its cheapness, and, it is hoped, its accuracy, will secure it favour. Three portions of the case for the Crown have been published by the Crown—the speeches of the law officers and the charge of the Chief Justice. The version here given of them will be found to differ from these only in such portions as had been made matters of comment during the proceedings, and where those versions had been so smoothed or emasculated as to vary from the spoken originals. It is hoped that the speeches of the Counsel for the Traversers will be found accurate. Every gentleman who spoke on that side has had an opportunity of correcting his address; and many of them have, with great kindness, and it must be at considerable inconvenience, made the necessary revisions.

THE IRISH STATE TRIALS.

1843-44.

PRELIMINARY OCCURRENCES.

An enumeration of these would be a history of the Repeal agitation from the moment of its unparalleled progress, after the discussion in the Corporation in March, 1843, until the evening in which the Government issued the proclamation to suppress the Clontarf meeting. Those occurrences would here be out of place. They belong to the historian, and to his care we must commit them. It is necessary, however, for the purposes of this compilation, which pretends to nothing beyond the character of a faithful record of events, to advert only to such circumstances as, preceding immediately the proclamation, and the prosecutions which necessarily resulted, are indispensable to the proper understanding of those proceedings.

Upon the first day of October, 1843, was held the monster meeting at Mullaghmast, and upon the previous day appeared in the Dublin journals, morning and weekly, an advertisement respecting the then intended meeting at Clontarf, which afterwards obtained no small degree of notoriety. It purported to proceed from authority. It was drawn with considerable pretension, and, technically applying the phrases of military discipline, it was calculated to give to that meeting, which had been fixed for the 8th October, much of a military character. The fact, however, was, that though the gentleman who drew up that advertisement was one of the secretaries to the Clontarf meeting, he did not consult on that paper either the committee of arrangement or his brother-secretary. The document caused much excitement, and was canvassed with great intensity. Those who knew the author looked upon it as a capital joke; and in what conjuncture is it that an Irishman will not joke? Those who were more prudent condemned the act, while they acknowledged the harmlessness of its intent. Those who were malicious protested that it was what *they* always thought, and that the designs of the repealers were beginning to be manifested in the full blow of revolutionary violence.

The advertisement itself was immediately withdrawn. It was condemned by the Liberator. It was repudiated by the association in a deliberate vote. It was jeered in the press. Throughout the metropolis of Ireland a day or two saw the termination of the interest it excited. In the English press, however, it was quoted and commented on, and the English people, with their accustomed credulity, at once appear to have felt quite persuaded that it was but the first of a series of manifestoes, which were to have preceded a general rising. In the mean time, the author, in a letter under his hand, generously and manfully avowed it, and proclaimed his readiness to assume all the responsibility which might in any way attach to his production.

The period fixed for the meeting was fast approaching. Rumours became rife—weak and faint at first, then confident and strong, and then assured. It was asserted that repeal would be put down, and repealers also—that the military would occupy the Corn-Exchange, and that those who again attended monster meetings must do so at the peril of their lives. It seemed to be the persuasion of every man that the meeting at Clontarf would not be suffered to assemble, unless at the expense of blood and slaughter. In the *Evening Mail* of the 6th October, (Friday,) came the announcement that the Lord Lieutenant and the Chancellor had arrived, and that the Privy Council was sitting, and would inevitably agree to a proclamation before rising. Such, however, was not the fact. The incubations of the Privy Council brought forth nothing conclusive, and Friday night passed over, not without intense anxiety on the part of the people, and the most absorbing interest on the part of their leaders.

The news in every man's mouth was full of horror, and among those most common was the gratuitous fact, that the operations of the association were to be transferred to the Birmingham, if not to the London Tower, and that the first man in Ireland would there be granted leisure to deliberate on his future plans for the guidance of the nation. Five regiments arrived that day.

Saturday morning came, and still no proclamation! Men were not assured there would be none, for the Privy Council was again sitting, but they who felt with the people laughed loudly at the confusion of which this non-activity was proof.

From an early hour the committee of the Corn-Exchange were assembled at their rooms, in order that they might be prepared to act. Eleven o'clock came—no proclamation! Twelve o'clock—none was issued! One o'clock—still no indication of action from the Privy Council. Meantime, regiments and corps, ammunition and artillery, were landing, and every preparation seemed adopted which ought to precede the employment of great military force! Two o'clock came, and no proclamation! Three o'clock, and the Castle, like a dumb dog, spoke not. But the intention was avowed. It was known that a proclamation had been agreed to. Yet men said they would never issue a manifesto of such awful importance without due precaution, and that could only be secured by due publicity. For already, even of those not inhabitants of Dublin or the country, there had arrived as many as would compose a reasonable "monster meeting." Several steamers had come from Liverpool, bringing repealers thence. Wexford, Newry, and Belfast had forwarded their quotas. It was supposed to be against the principles of the government of Sir Robert Peel, as it was assuredly opposed to prudence, that such a hazard should be run as to publish a proclamation in the face of such a multitude.

But the policy of the war party prevailed. About half-past three o'clock in the afternoon, the first copy of the proclamation issued from the press.

In one half hour afterwards the counter proclamation of the Repeal Association, signed by Daniel O'Connell, as chairman of the committee, was in circulation throughout the city. There never was any public document prepared with such despatch, and never was there any prepared under such an awful sense of responsibility.

This is not the place in which to give expression to the feelings which the circumstances of that awful hour were calculated to excite We desire to state facts only, and leave commentary to those who shall come after us. Ours is the simple, but not

unimportant task, of laying before the Irish people, in brief terms, the preliminary occurrences to those prosecutions, which have attracted the attention of the world.

In brief, then, the proclamation was issued, prohibiting the meeting at Clontarf. The Repeal Association issued their counter proclamation, signed by the Irish Liberator, which prevented the assemblage there. The utmost carelessness was shown in the circulation of the former document—exertion almost incredible was used in the distribution of the latter. If it was desired that the troops of her Majesty should be brought into collision with her Majesty's Irish subjects, then there could not possibly have been taken steps more positively calculated to produce that collision.* The duty of preserving the peace and protecting the lives of thousands, while it also prevented a fearful revolution, was left to the Repeal Association. That association did its duty; the peace was kept; the lieges were protected, and the liberties of Ireland were secured

But the proclamation having been issued, it was impossible the Government could stop there. Prosecutions were, therefore, anticipated, and the preparation made by those who expected to be the objects at which they must be aimed, was to be still more firm in conduct, bold in action, and decided in declaration. The Corn-Exchange could not possibly contain one-fiftieth of those who, it was known, would attend at the ordinary meeting of the Repeal Association on the day subsequent to the proclamation. Abbey-street theatre was therefore engaged, but the 4,000 which it held did not sensibly diminish the multitudes who sought to enter there, and could not.

The Rev. Peter James Tyrrell, P.P. of Lusk, was at the theatre, and proposed for its adoption a series of resolutions intended to have been offered to the consideration of the people at Clontarf, had that meeting been permitted to assemble. It was for that act he was marked out for the prosecution to which he fell a martyr; for in that prosecution he met martyrdom. From the moment in which he received the proclamation, until the last of his existence, he never spent a quiet hour. Anxiety placed him upon tenter hooks, because he, a man of peace, and of great nervousness, dreaded the extremities to which the country might be driven, and to which he, with many others, believed it was intended to be forced. He fell beneath the indictment. His death-bed was disturbed by it. Fortunately, its influence ceased there—the eternal peace of a man so excellent and so beloved, we may believe, in one moment repaid him for the torments of this transitory existence.

The week succeeding that which saw the proclamation issued, was one of extreme interest in Dublin. Regiments were arriving every day. Artillery were landed upon our quays. Ammunition was poured into every barrack. We were threatened with the force of one corps into which "no Catholic" was admitted, and with the vigour of another amongst whom "no Irish" were enrolled. The accusations, too, against the leaders were made to vary with every hour. Now it was constructive treason. Now it was confidently asserted that the Government had proof of overt acts. Again, it was sedition, and, at the very least, conspiracy, to levy war against her Majesty. But the trials could not take place in Ireland! No, no. The "well-informed" knew that at least. The whole of the parties against whom the Government was about to proceed, were, we were assured "by those who ought to know," to be despatched, per steamer and railway, to the Tower, there to be made answerable for their treasons.

The event, however, proved, as is indeed very generally the case, that the "well-informed" were ignorant, and that "those who ought to know" did not. The informations were at last perfected, and Mr. O'Connell had notice that he would be held to bail for "conspiracy and other misdemeanours." Eight other gentlemen, whose names it is not necessary to insert in this place, had similar notifications given them. All, save the Liberator and his son, gave in bail on the succeeding Tuesday at the house of Mr. Justice Burton in Stephen's-green, and the harmony of the metropolis remained perfectly undisturbed.

Much excitement, it is but just to state, was prevented by the prudence with which "the warrants were executed," or rather not executed; for though they may have issued, and we must suppose they did, yet certainly not one of them was ever attempted to be put in force; and indeed there was no need to do so, for no man was anxious to shirk his responsibility. There was no shrinking.

When the people knew the facts, they, too, were at rest, and they, too, were ready in their obedience.

For quite another termination was anticipated, and during the night of the 13th October, 1843, the whole community was contemplating what fortunately did not afterwards occur—the peremptory arrest of the Liberator. Much of this was owing to a very characteristic announcement in the *Evening Mail* of that date, a portion of which we here insert:

"THE ARRESTS WILL TAKE PLACE TO-MORROW.

"It is intended to *put down*, with the strong arm of the law, *all Repeal Meetings, Associations*, and *Committees*, and to stop the *further collection of Repeal rent.*

"GOD SAVE THE QUEEN.

"LONG LIVE LORD DE GREY."

On Saturday, the 14th October, at nine o'clock in the morning, the Liberator received notice, through Mr. Kemmis, jun., of the fact that information had been lodged against him, and that he would be required to put in bail. At two o'clock that day the bonds were perfected at Mr. Justice Burton's house. Mr. Cornelius M'Loughlin, a veteran patriot, whose firmness had been often tried, and whose spirit of genuine nationality has ever been acknowledged, was one surety for Mr. O'Connell; Mr. Jeremiah Dunne, a town councillor and bank director, was the other. Nothing could exceed the delight with which this intelligence was received. The public mind was at once relieved from the horror suggested by the supposed authorised vaticinations of the journal we have just quoted. Meetings and associations went on as usual—committees were not put down, and repeal rent was collected still more plentifully than ever.

It is certain, however, that much of the peacefulness of the public was owing to the exhortations of Mr. O'Connell, and the extreme earnestness and rapidity with which he made the people acquainted with the real occurrences passing around them, and his intense anxiety for the preservation of the peace.

We have already stated, that a counter proclamation—a proclamation, indeed, without which

* The difficulty of effecting this may be estimated by the following incident: Among the gentlemen who were appointed to stop the approach of the myriads who were moving on Clontarf on the morning of the meeting, was a gentleman who very ably fills the office of town councillor. He proceeded to Clondalkin at an early hour, and conjured the boys of Kildare, who had arrived there on their way, to return. They begged to be allowed to proceed, but he was firm. They averred that they had no intention to provoke or justify a collision. He remained inexorable; he urged that a breach of the peace might be committed, and that in such case 5,000 men, with artillery in abundance, would be let loose upon the people. The reply of an out-spoken Kildare man was characteristic: "Arrah, sir, sure they wouldn't make a bit a piece for us." But the Kildare men were peaceful men, and they returned.

that headed "De Grey" would have had but very little effect, was issued from the association on the publication of that prohibiting the meeting at Clontarf. As soon as Mr. O'Connell was made acquainted with the charge against him, on the 14th October, he issued a notification to the Irish people, which was published the same day in the repeal journals, and by that means transmitted throughout the kingdom. It contained the most earnest solicitations to the people to "violate no law," not "to be guilty of any tumult or disturbance," not "to be tempted to break the peace, but to act peaceably, quietly, and legally," and then that the "attempt upon their liberties must fail."

Upon the same day was also *pre*-published an address, which was on the following Monday agreed to by the association, calling upon the people, by every obligation which they could acknowledge, to preserve the peace, and to obey the law, and thus at once to furnish irrefutable evidence that they were fitted for self-government by the perfection with which they should practice self-control.

THE INFORMATIONS.

THE PARTIES LAYING THEM.

The informations were, of course, soon made public, and it then appeared that they had been sworn by Mr. Bond Hughes, who had attended at the meeting at Mullaghmast, at the theatre, Abbey-street, and at a meeting of the association. Mr. Hughes verified the facts; Mr. Kemmis, the crown solicitor, swore to the inuendoes, some of which he must have found, we should think, rather hard to swallow.

Immediately upon the publication of the informations it was discovered that they were erroneous as to known facts, and it was, therefore, determined to have their accuracy challenged, and the informant punished.

The misstated facts were these: It was charged by Mr. Hughes that Mr. Barrett, proprietor of the *Pilot*, had been present, and had spoken at the meeting in Abbey-street theatre, on the 8th October, and that he had also been present and had spoken at the dinner in the Rotunda, on the evening of the same day. Both assertions were untrue. Mr. Barrett was not in the neighbourhood of the theatre at all on that day, and long before the hour of dinner in the evening, he had returned from Dublin to his country residence.

Informations were, therefore, advised to be preferred against Mr. Hughes, for "wilful and corrupt perjury" in having sworn to those facts.

This may seem at first view a harsh proceeding, but it should be remembered that at that time there was no knowledge in the possession of the gentleman named in his informations, of the lengths to which he might be inclined to go in sustaining the charges to be subsequently made, and it was therefore considered, as a providential circumstance, that he should have thus tripped at the very outset. As a stranger, it was quite possible he might have been mistaken, but he had had given him an opportunity of correcting the error he had committed, and therefore not having done that, it was not uncharitably concluded that the mistakes were deliberate and did really amount to perjury. For Mr. Hughes was present in the judge's parlour when the accused gentlemen were entering into bail, and he then had a full opportunity of recognizing Mr. Barrett. His subsequent evidence proved that he had perceived his mistake, and had noticed it in the quarter most proper for its rectification. But the gentleman whom he informed of the error, Mr. Kemmis, who had sworn to the inuendoes, and who was to conduct the prosecution, took no steps to notify a material error, and to relieve Mr. Hughes of what subsequently became a very serious charge.

Mr. Kemmis knew that Mr. Hughes had been summoned on a charge of perjury! He knew the accusing parties had good grounds for the accusation. He defended, before the magistrates, that which he knew to be false. He succeeded in forcing Mr. Barrett to defend himself against that of which he knew he was not guilty. He suffered courts to be pressed and public time to be wasted, upon a matter of which he knew the merits, but which he defended for its want of them. We cannot understand the meaning of such a course, which in the opinion of most men will be deemed not more reprehensible than unjust. Mr. M'Donagh before the magistrates ably contended for the reception of Mr. Barrett's informations against Mr. Hughes. Had he succeeded, as we think he ought, upon the case, Mr. Hughes would have stood a very strong chance of suffering a conviction, because Mr. Kemmis did not deem it prudent to make known the truth! An innocent man would have been sacrificed to a cunning one.

By the magistrates, the case was recommended to the Commission for the initiation of a prosecution—by the Commission to the Term. We believe, there are none who would now regret more than his then prosecutors, the success of their own proceedings. Mr. Hughes has since proved himself a man of truth and honour. But he should only accuse, for the annoyance the proceedings must have caused him, his friend the Crown-Solicitor.

This episode in the proceedings having terminated, the prosecutions were no more heard of until the commencement of

MICHAELMAS TERM, 1843.

Term opened upon Thursday, November 2nd, and the account of the proceedings from that period absorbed the attention of the public to the exclusion of every other topic.

On that day the State Prosecutions opened, by the charge of Mr. Justice Burton to the grand jury of the city of Dublin. But before we proceed to give that elaborate paper, we shall state some preliminaries, which we doubt not will be found interesting, and will render this portion of the case more clear and familiar.

STATE PROSECUTIONS.

COURT OF QUEEN'S BENCH,

THURSDAY, NOVEMBER 2.

The Court of Queen's Bench was crowded to excess at as early an hour as half-past nine, though the judges were not expected to arrive before twelve or one o'clock. The audience in the galleries was very numerous, a large proportion being ladies of rank and fashion, who thus early evinced an interest in the proceedings that became each day more intense until the close. The greatest possible anxiety was evinced to hear the charge of the judge in addressing the grand jury, it having been generally understood that bills of indictment "for conspiracy and other misdemeanours" would be this day sent before them against the Liberator and the other Repeal leaders.

Mr. O'Connell, accompanied by his son, the honourable member for Kilkenny, left the residence of the former in Merrion-square about 12 o'clock, and they proceeded together to the courts. An immense concourse of respectable individuals accompanied and followed the honourable and learned gentlemen through the streets, and cheered them in their passage. Both those personages wore their Repeal badges in a very conspicuous manner. The windows of the houses along the line of streets through which they passed were crowded with elegantly-

dressed females, who, with evident enthusiasm, waved their handkerchiefs, and exhibited every token of respect and attachment to the Liberator and his son. On arriving at the courts, where several thousand persons had assembled, both father and son were greeted with a warmth and cordiality such as even they were seldom accustomed to receive, and on their entry into the hall another joyous welcome awaited them. After walking about the hall for some minutes they retired to an ante-chamber, where they remained until the court rose. This measure was taken, in order that the learned gentlemen might attend in court, should their appearance be required there. On leaving, the same popular and generous feeling was manifested towards them.

A large body of police were in attendance in the hall of the Four Courts, we presume because they were not needed.

The Hon. Judge Burton entered the court about one o'clock, and the Clerk of the Crown proceeded to call over the grand panel. The Attorney and Solicitor-Generals, Sergeant Warren, Mr. Bennett, Q.C., Mr. Tomb, Q.C., and Mr. Brewster, Q.C., Messrs. Holmes and Napier, took their seats shortly after the arrival of his lordship. Messrs. Ford, Cantwell, Mahony, and Gartland, the agents of the parties against whom prosecutions had been instituted, were in court at an early hour. The following counsel of the accused were present:—Messrs. Pigot, Hatchell, M'Donogh, and Whiteside, Queen's Counsel; Sir Colman O'Loghlen, Messrs. O'Hagan, Close, and O'Hea, of the outer bar.

Mr. George Frederick Brooke having been called upon to act as foreman of the city grand jury declined to discharge that duty, but expressed his willingness to act as an ordinary juror.

Attorney-General—I wish in this case that the usual course should be adopted, and the usual course is, that the first gentleman who answers to his name shall be foreman of the grand jury.

Solicitor-General—Except the gentleman is exempt or disqualified.

Judge Burton inquired if there was any objection made to Mr. Brooke?

Attorney-General—There is no legal objection, my lord.

Solicitor-General—Neither privilege or disability, my lord.

His Lordship then directed Mr. Brooke to be sworn as foreman.

CITY GRAND JURY.

George Frederick Brooke, Esq., foreman; Robert Latouche, jun.; B. L. Guinness, Philip Doyne, Henry Roe, Sir Beresford M'Mahon, Bart.; Sir Robert Harty, Bart.; Richard Armitt, Andrew Vance, George Pim (Quaker), F. A. Codd, R. W. Law, Patrick Waldron, Thomas Hutton, Richard O'Gorman, Simon Foot, Henry Courtney, John Wisdom, B. M. Tabuteau, R. Caldwell, W. Henry, W. Newcombe, and William Sherrard, Esqrs.

JUDGE BURTON'S CHARGE.

Mr. Justice Burton then proceeded to deliver his charge, which was heard with profound attention. His lordship said—Gentlemen of the grand jury of the county of the city of Dublin, there is not, that I am aware of, any of the ordinary business of this county of the city that makes it necessary for me to address any particular observation to you upon. If any difficulty in the discharge of that part of your duty should occur to you, the court will be ready at any time to give you any advice or assistance in their power. But, gentlemen, you are yourselves, I am sure, well aware that there is a matter likely, I believe I may say certainly, to be brought before you of a very important nature, and upon that, gentlemen, I think it my duty, as summarily as I can upon such a subject, to lay such observations upon the case before you, as I hope may somewhat facilitate the discharge of that important—but perhaps you may find it in this case not very difficult—duty that you will have to discharge. Gentlemen, the case that I allude to is that which is the subject of an indictment—I believe one indictment that is likely to be referred to you—and I have to state to you that with which, I dare say, you are perfectly well acquainted even without any information of mine on the subject, that an indictment, even when found, is only an accusation against which the party accused is then—that is, after a bill is found by the grand jury—called upon to make his defence. The grand jury are, therefore, only to hear the evidence in support of the prosecution; that evidence is to be given on oath by witnesses sworn before them (the grand jury), and the grand jury are not only to hear the evidence so given, but also, as far as they find it necessary, to cross-examine the witnesses, so as to be able to form a satisfactory judgment on their credit. If, on a careful consideration of such evidence, they (the grand jury, or a majority of them, amounting at least to twelve) are satisfied that a sufficient case is laid before them to evince the propriety of putting the party on his trial, they then find the bill to be a true bill, and thereupon the party becomes formally accused. If, on the contrary, the grand jury, upon such an examination, are satisfied of the insufficiency of the evidence in support of it, they then reject it, and thereupon the party is discharged of that bill for that time, but he is not finally acquitted of the charges contained in it. The sufficiency, therefore, of the evidence for this purpose depends upon this—namely, whether, if this party was actually upon his trial on a plea of not guilty, and no evidence given on his behalf, so that the whole case rested on the evidence on the part of the prosecution, he could justly be found guilty. Gentlemen, it is further to be observed that, if you find the bill to be a true bill, as to some or one of the counts contained in it, you may reject it, as to some one or other of those counts, and find it a true bill as to the other of those counts, in which case the party accused would be put upon his trial on those counts only which were so found to be true; but the grand jury cannot properly find the bill a true bill, as to part of any particular counts, and not a true bill as to any other part of the same particular counts; and further, where the bill is preferred against several parties, it may generally be found against some of those persons, and rejected as to the rest, subject, however, to this plain exception, that where a bill is preferred, charging two persons only with conspiracy, between those two only the bill cannot be found against one of them only. Gentlemen, I am now to tell you that, as I understand the bill likely and intended to be submitted to you, it is a bill against a certain number of persons specified in it, the whole being a charge of conspiracy, that is of conspiring, the sense of which is, agreeing amongst themselves altogether, or together with others, and concurring with each other in a design to effectuate certain unlawful purposes, or at least to effectuate certain purposes, whether in themselves unlawful or not, by unlawful means. Gentlemen, I believe I may state that the great, ostensible, and as I would collect from the informations sworn before me, the avowed object of the persons being, in this case, the abolition of the legislative union of Great Britain and Ireland, as at present subsisting. Gentlemen, it appears to me to be right, with reference to the term legislative union, and the terms in which I have described it as at present subsisting, to advert to some expressions stated in some part of the informations on which the indictment has been, or will be, framed, and which I think

material to state to you. It appears, then, that some or one of the persons charged, have, or has asserted, at some or one of the certain public meetings referred to in the informations, that this legislative union is in itself unlawful, and that it is absolutely void, the consequence of which might be that every statute made since the union, and importing to bind Ireland, would to that extent be void, and of no legal effect. Gentlemen, whether this imputed language be correctly stated, or whether any language to that effect was actually used, and if used, was used in that sense, is for you, as far as may be necessary, to examine and satisfy yourselves of. But I think the statement in the sworn informations, as I have collected it, authorises and makes it incumbent on me to say to you in this place, that such a proposition has no legal foundation, and that the legislative union is not only practically, but lawfully, in force in Ireland; and that you, in exercising your judgment upon the indictment that will be presented to you, are bound so to consider it. Gentlemen, this certainly is not to be supposed to amount to a denial of the right of the subjects of this country, or any portion of them, to contest the political expediency of continuing that legislative union in its present state, or of seeking by lawful means an alteration of it; and, accordingly, the charge in the indictment applicable to this question is, or will be, this, or to this effect—namely, that the persons charged conspired unlawfully and seditiously to excite disaffection and discontent amongst the Queen's subjects, and to excite them to hatred and contempt of the government and constitution, as by law established, and to unlawful opposition and resistance thereto; and it is to this description of opposition to the constitution and government, as now established, that, in your consideration of this part of the indictment, you are to direct your attention; and you will so direct your attention to it, not merely with reference to that particular count, but also as it may give any light to you on your examination of all or any other of the counts in the indictment. Gentlemen, I will now proceed in addition and with reference to the observations I have just concluded, to call your attention to one of the charges in the indictment, which appears to me to be of paramount importance, and that is the one which charges, as part of the alleged conspiring, the inducing and procuring large numbers of persons to assemble and meet together, in order, by intimidation, and the demonstration of physical force, to procure changes to be made in the constitution of the realm, as by law established. Gentlemen, with respect to this charge, it is to be observed, so far as I can collect from the informations that have been before me, and upon which the bill must, at least, be in part grounded, that the intimidation spoken of does not necessarily impute to the persons calling together those multitudes—who appear to have assembled at different times, and to have been occasionally addressed, as it appears by the informations, by the appellation of fighting men—it does not, I mean to say, express any design or intention of promoting or encouraging any infraction of the public peace on those occasions. On the contrary, it would appear to me that a principal object, and one very earnestly pressed upon those multitudes, was the strictly abstaining at those times to hazard any breach of the peace. The charge, as I understand it, is this—namely, an intention to intimidate, by the demonstration of great physical force, all persons who might be adverse to an alteration in the constitution and government of this country, and also and especially by such demonstrations to affect or endeavour to affect the proceedings of the legislature on the subject. The exhibition of immense bodies of men, being persons petitioning for a repeal of the union, and, at the same time, asserting in their presence that (in part at least) by their intervention it must and should take place, seems to me to afford ground for charging it in the indictment as a purpose of intimidation. Gentlemen, whether it really had that purpose or not must be, in the first instance, for you to judge of—that is, to judge whether it is or is not a matter of charge fit and proper to be tried by a jury on the plea of not guilty. Gentlemen, I have further to tell you that the charge in the indictment upon this ground is, if true, that of misdemeanour; and further, that there does appear to me to be evidence of the truth of that charge; but of the truth of that evidence, and of the inferences to be drawn from it, if true, you are in the first instance to judge, and on that ground either to find or reject the bill. Gentlemen, I have intimated that the evidence in support of this charge is in part of a circumstantial or inferential character, and it may therefore be considered in connection with other charges in the indictment which may be found to have a relation to it. Gentlemen, I here allude to one of the charges which is part, or is one of the subjects, of the conspiring—that of exciting discontent or disaffection amongst, and to seduce from their allegiance, divers of the Queen's subjects, and amongst others her subjects serving in the army and navy. Gentlemen, if the evidence to this fact appears to have any weight, it not only tends to establish what is in itself at least a high misdemeanour, but also to corroborate the evidence on the charge of intimidation, and it therefore in both these views deserves your serious attention. Gentlemen, the principal evidence in support of this charge, so far at least as it has fallen under my observation, is to be found in what imports to be a letter or letters, published in a newspaper, or perhaps in several newspapers, of which some one of the parties accused are or is the editors or editor. These documents, or whatever documents there may be of this description, should be considered with care, with the view on the one hand to elicit the true meaning and intention of the composition itself—for it may well be supposed that a design of such a description would be conveyed in ambiguous and in very careful and studied language—secondly, to the fact of its being published with or without the knowlege of that meaning by the party publishing—and lastly, whether the publication bearing that guilty meaning, was or was not in accordance with the intentions of the parties accused, or any of them Gentlemen, there is another charge with the same view—that is, its relation to a design to intimidate by the demonstration of physical force a subject which appears to me to deserve the particular consideration of the jury. Gentlemen, that is, the charge of soliciting and obtaining, as well from the different parts of the United Kingdom as from foreign countries, large sums of money in order to promote and effectuate the objects charged by the indictment. Gentlemen, there is certainly evidence, and I think I may venture to say, clear evidence of the receipt of contributions from different parts of the United Kingdom, and also from foreign countries, and, I think, as it may appear by the manner and terms of the acknowledgement of such receipts, of encouraging, if not directly soliciting, the continuance of them. Gentlemen, the question on this will then, as I apprehend, be, whether these contributions were so received for the purposes charged by the indictment, or at least whether it does not so raise the question, or presumption on the evidence, either direct or inferential, as to make it a case requiring a defence from the parties charged in the indictment. Gentlemen, this will be a matter for your consideration. I feel, however, that I must, according to my view of the subject, add that this offence, as it appears to me to be charged—I allude here to the motives and purposes ascribed to the collection of these contributions—is

a misdemeanour, and I cannot but feel myself bound to say that in my own present views of this part of the case, the fact of itself opens considerations of very great importance, and such as would, in my judgment, under the admitted or hitherto uncontested circumstances of it, disclose a case very fit for, and which possibly could only be satisfactorily adjudicated on by, a trial under the plea of not guilty to the indictment. Gentlemen, there is another charge of a specific offence to which I think it right to call your notice. It is in itself a charge which deserves attention and consideration, and it is not without an application to the other charges in the indictment, so far, at least, as respects the motives and possible consequences of those proceedings which are the immediate subject of the indictment. Gentlemen, I here allude to the charge of endeavouring to bring into contempt and disrepute the legal tribunals of the country, to diminish the confidence of the Queen's subjects in the same, and to assume and usurp the prerogatives of the crown in the establishment of courts for the administration of the law. Upon this, gentlemen, I shall only say that the offence as here charged, is a misdemeanour, and that there is evidence partly, but not altogether of an inferential character in support of that charge, inasmuch as the evidence in some parts of it goes to the actual appointing of persons to fill the office of administering justice in public courts, designated for that purpose, and accompanied by a declaration, if the evidence be true, that judges shall in future be appointed by the people. Gentlemen, such a measure —I mean the appointment of public arbitrators to decide on matters in litigation or dispute between the Queen's subjects (if that should be considered a beneficial measure for the public)—should properly be effected by an act of parliament, so that the measure appearing to have been adopted for the effectuation of it may seem to have been so adopted, upon the assumption that the parliament of the United Kingdom is not a lawful parliament, and that, therefore, the inhabitants of Ireland are justified in acting in opposition to, or in contempt of its authority. The fact of such an assumption is, however, in this particular, wholly inferential, and it is therefore for you, under all the circumstances, to determine upon this as well as the other charges. I cannot, however, but observe further, that in cases of such a description, in which the character of the act or acts on which the indictment is grounded, depends on the question of a supposed guilty design, and consequently on inferences; and those inferences turning on grounds or reasons of law, applicable, perhaps, to hypothetical cases—it must, or, perhaps may, be matter of much difficulty for a grand jury, in the exercise of its functions, to come to a determination upon them; and that, therefore, if the facts on which the evidence is charged are clearly proved, it may be the better course to find the bill on that evidence, leaving them, together with their legal consequences, to a trial, on an issue joined on a plea of not guilty. Gentlemen, I hope that, so far I have succeeded in making myself intelligible to you as to the course of your duty, and as to the consequences attendant upon the exercise of that duty. By the exercise of your duty I mean the finding or the non-finding, as to you must appear most fit and proper, of a true bill; which, if found, will send the case to be decided upon by a jury chosen to decide between the crown and the subject. Gentlemen, there is another circumstance upon which I confess I feel some difficulty in speaking to you, but at the same time I feel that it may not, perhaps, be improper or inexpedient to offer an observation in reference to it. It is, I believe, very generally understood, and the circumstance is one of which it is not likely that you should yourselves be unaware, that one of the witnesses from whom informations on oath have been taken, and partly upon whose information the indictment may be grounded, has been publicly charged with a misrepresentation in a matter of identification—that is to say, in identifying some particular person. You, gentlemen, will probably, if this witness be brought before you, cross-examine him in reference to this subject; and, gentlemen, I have only to observe, that if it should appear to you, that a misrepresentation has been made by him, upon his oath, and that you should be of opinion that such misrepresentation has been made wilfully—that is, with a consciousness of the matter sworn to be true, being false—such a misrepresentation justly disentitles him to any credit at your hands; and I will even say further, if it should appear to you that the misrepresentation has been made through any negligence or inadvertence on his part—that is to say, through a want of proper care and attention to the important duties he had to discharge—the fact may, under all circumstances, be sufficient to materially affect his credit as to the truth of other portions of his testimony. Gentlemen, the case, as far as is in my power to bring it under your consideration, with a view to facilitate the discharge of your duties, is now substantially before you, as far at least as the informations sworn before me, and the securities taken from the persons against whom indictments will be framed, have enabled me to speak upon it. I allude to the securities, gentlemen, because you are aware that the parties against whom it is contemplated to institute prosecutions—these parties came forward immediately, and with an alacrity very creditable to themselves, to enter into recognizances, and tender bail for their appearance in court to answer any charge that might be brought against them by the crown. You will now therefore proceed, gentlemen, to the careful examination of the evidence which may be adduced before you; but previous to your retiring to your room, allow me very earnestly to entreat of you to bring to the consideration of this case, minds free from every taint of prejudice or of prepossession—I mean as far as concerns the alleged guilt of the parties upon whose case you are called to decide. Gentlemen, it is a most important case; indeed, that is a very feeble epithet to apply to it. It is, from the movement which has led to it, from the means used in the conduct of that movement, and from its possible results—it is in my mind most awful; but this I only mention as proving the necessity for a strictly impartial judgment upon its legal character. You will bear in mind, gentlemen, what I have already said to you, that at the present moment the parties are not even, legally speaking, accused. Offences are imputed to them, but upon that imputation you are to judge, in this respect, however, not whether the parties be guilty or not, but whether such a case has been proved against them as would render it proper that they should be called upon either to admit or disclaim the imputations, and in case of their disclaiming them, to reply to the accusation by evidence adduced on their part to meet that of the crown, or by explanatory construction and legal argument upon the evidence of the prosecution. Upon all these topics the jury which will have to decide upon the guilt or innocence of the parties (in case you find a true bill) will be assisted by an accurate and minute exposition of the law on every question that may arise as to the construction of it.

His Lordship's charge, which lasted forty-three minutes in the delivery, was listened to with breathless interest.

The Attorney General said that the indictment in the case alluded to by the court, would be laid before the grand jury at half-past ten o'clock next morning, or at any other time that would suit the convenience of the jurors. The witnesses would be punctually in attendance.

Mr. Hatchell, Q.C., said that the parties bound in recognizance to attend the court were now in attendance, and were perfectly ready to abide by any order that might be made relative to them.

As soon as Mr. Hatchell made this observation, Mr. Brewster conferred with the Attorney-General, who immediately rose and said (with much apparent acerbity)—Oh, Mr. Hatchell, as to that, the terms of their recognizance are, that they are to attend the court not only on the first day of term, but from day to day, pending the pleasure of the court.

Mr. Justice Burton—That is, of course, understood.

The jury then retired to their jury-room.

The Chief Justice (Pennefather), with Mr. Justices Perrin and Crampton, entered the court at half-past two o'clock, and took their seats with Mr. Justice Burton.

Having already explained the nature of the charge made by Mr. Barrett against Mr. Bond Hughes, we should not feel it necessary to advert to the proceedings against the latter had in court this term, but that they disclose a portion of the practice adopted in these Crown Prosecutions, by the officers of the court, and by a majority of the judges, varying, as the accused alleged, from the ordinary course adopted by them in other cases, and evincing on the part of the officers a feeling in the matter highly reprehensible, unwarrantable, and unjust. As evidence of the truth of this allegation, they are indispensable to a true history of the cause.

The Queen, at the prosecution of Richard Barrett, Esq. proprietor of the Pilot Newspaper, v. *Frederick Bond Hughes.*

Mr. M'Donogh applied to the court, on behalf of Mr. Barrett, for an order in the nature of mandamus.

[Counsel here stated the circumstances which Mr. Barrett conceived to be his justification for the charge preferred by him against Mr. Bond Hughes, and continued:] It was the right of Mr Barrett to bring the case before the court, as he was entitled to a *quasi mandamus* directed to the magistrates, in order to make them receive the informations in the case, and for that purpose there were the affidavits of thirteen persons brought by Mr. Cantwell, Mr. Barrett's attorney, to the officer of that court (Mr. Bourne), and tendered by him to be sworn; but he refused to receive them, alleging that they were not affidavits, but informations for an ulterior object. The officer of that court had no right to turn round, and say, when affidavits were tendered to him, that he could not receive them, because they amounted to informations. The officer had no right to examine with such an object the documents, and then refuse to have the parties sworn to them; and his (Mr. M'Donogh's) application to the court was, that an order be made to the officer compelling him to receive the affidavits tendered to him in the case.

Chief Justice—Have you served notice of this application on the Attorney-General?

Solicitor-General—We have had no notice whatever of this, it comes on us quite by surprise.

Mr. Bourne said he refused to receive the documents or swear the parties to them, because the documents were not affidavits but informations against a party.

Chief Justice—Mr. M'Donogh, you must serve notice of this motion on the crown.

Mr. M'Donogh—Does your lordship mean that we are to serve notice of such a motion? We have a right to make this application relative to the officer of the court who refused to receive the affidavits.

Chief Justice—The Clerk of the Crown has nothing to do in the matter but to receive affidavits. To swear informations before him for criminal purposes is quite another matter.

Mr. Cantwell (Mr. Barrett's solicitor) said the Clerk of the Crown was misinformed on the subject; the documents were not informations but affidavits.

Judge Perrin—What is your present motion, Mr. M'Donogh?—can't you go before the grand jury?

Mr. M'Donogh—To order the officer to swear the parties to the affidavits, that we may then be in a position to come before the court for an order on the magistrates to take the informations.

Judge Perrin—Why did you not prefer a bill of indictment at the commission?

Mr. M'Donogh—It was impossible we could have done so, looking at the dates and other facts; and besides we should, in a case of perjury, have the original documents on which we grounded the charge sent before the grand jury in the case your lordship mentions. The affidavit of Mr. Cantwell merely refers to the thirteen informations.

Chief Justice—There must be something strange in the case; you come here and make this application with a view to ulterior proceedings, and do you suppose the officer of the court would take informations in it?

Mr. M'Donogh—We called on the officer of the court to file the affidavits of the attorney and others. Any one of the Queen's subjects has a right to file affidavits in the Queen's courts, at his own proper risk and peril; and the officer of the court cannot refuse to take such documents when properly tendered to him. The attorney asked the officer to swear the parties to the affidavits, but the officer refuses; and what right had he to say, "I will not allow you to complain in this case?" and because the officer had refused to act, and referred us to the court on the subject, is the reason why I make this application.

Judge Crampton said the officer would not object to receive affidavits, if made and tendered to him in the usual way.

Mr. M'Donogh said the affidavit of Mr. Cantwell, the attorney, was made and tendered in the usual way, and yet it would not be attended to by the officer; and it was of this he complained to the court. All the affidavits were properly made, and the officer had no right to refuse them as affidavits.

The Chief Justice said the view the court took of the case was this:—Mr. M'Donogh's client applied to the officer of the court to receive certain affidavits. The court knows nothing of the contents of these documents, and therefore they could not adjudicate on them. If a party came to the officer of the court and tendered affidavits, if the officer refused to take them, and that an application was made to the court on the subject, the court would make a rule that the officer should receive the documents without answering for the consequences. If a party filed an affidavit, and that the court would find fault with it after, it was another matter; but at present the court were of opinion that the affidavits of the parties should be received by the officer.

Mr. Bourne—Let the affidavits be handed up now and sworn in court.

Mr. Cantwell handed up the affidavits, and said he would not be dictated to by the officer of the court. He would come prepared to swear the affidavits on the following day, as he was resolved to adopt his own course in the matter.

The Court intimated that the affidavits should be then sworn.

Mr. Cantwell said that of course if the court so ordered, he would have the affidavits sworn at once; but he did not acquiesce in the principle that, as an officer of that court, he was at the dictation of another officer of it, to be placed under the species of surveillance suggested. He was quite prepared to perform his duties at his personal peril. If he did any thing wrong he was open to the correction of the court, but until then he claimed the privilege of being a free agent.

It was then arranged that the affidavits should be sworn at the sitting of the court in the morning.

The court then adjourned to ten o'clock the following morning.

FRIDAY, NOVEMBER 3.

The Queen at the prosecution of Richard Barrett v. *Frederick Bond Hughes.*

In this case several persons, amongst whom were Mr. John O'Connell, M.P.; Mr. Barrett, Mr. Steele, Rev. Mr. Tyrrell, Mr. Ray, Mrs. Barrett, Dr. Gray, &c., swore affidavits in open court, for the purpose of sustaining the charge of perjury brought against the defendant.

During the period which elapsed between the swearing of the grand jury and the finding of the bills, the reports prevalent, which even got currency through the press, were exceedingly unpleasant. Members betraying brothers of the association—committee-men abstracting papers—plots the most extravagant were confidently rumoured to have been discovered, and every repealer was looked upon by the anti-nationalists as a baffled tamperer with treason. This was said to have been the basis of the fresh bills of which Mr. Attorney-General held out the threat. The repealers laughed heartily, however, at the idea of traitorism amongst their body, where they knew there was nothing to disclose, and a few days sufficed to suppress these rumours, because those who promulgated them perceived that they were utterly bootless. There were, it is true, persons who were members of the association in communication with the government, but there never was a public body so long banded, and having so many members, in which the proceedings were so entirely free from illegality, and the conduct of the members so little exposed to designing accusations.

Much strength no doubt—much vitality, perhaps all which they possessed, were given those rumours by the Attorney-General.

Upon the 6th November, the fourth day of term, Mr. M'Donogh moved the court in an able argument, that it should issue a mandamus to the magistrates of College-street police office, directing them to take informations in the case of *Richard Barrett* v. *Frederick Bond Hughes.*

Mr. Attorney-General opposed the application, and in the course of his argument, in which he represented the application as one intended to prejudice the case, at that time still before the grand jury, he used the following very remarkable language:—*If the present bill before the grand jury* was found, he would undertake to establish as wicked and foul a conspiracy as ever disturbed an empire!

This very strong declaration was the subject of much comment at the time, both in society and at the press, and a declaration of such a nature, while it was protested against as likely to prejudice the grand jury, yet shocked and alarmed many timid men, while it thus gave an advantage of the most extended nature to the alarmist and the designing.

The Court refused Mr. M'Donogh's application for a mandamus, but permitted him to send, if he desired, bills of indictment against Mr. Hughes, before the grand jury, restraining him, however, from proceeding in that way until after the bills for conspiracy then before them should have been disposed of.

THE BILLS.

A BLUNDER.

SATURDAY, NOVEMBER 4.

On Saturday, November 4th, the Court sat at a quarter past 12 o'clock. The Attorney-General and Mr. Brewster present for the prosecution. Messrs. Pigott, Hatchell, M'Donogh and Whiteside, Queen's Counsel, were present for the accused, and Messrs. Ford and Cantwell, as the agents, were present. Mr. Kemmis sat in his usual place.

The grand jury having been sent for, appeared in their box.

The foreman said there appeared to be a clerical error in the fourth count of the indictment, in which the names of two parties, Thomas Tierney and Peter James Tyrrell, should be mentioned. Those names appeared in that count as Thomas Tierney and Peter James Tierney, the word Tierney being substituted for Tyrrell. Some of the jury thought it was a clerical error, and wished to have Tyrrell inserted in the proper place, instead of Tierney; and he begged to know if he should hand the bills down to be altered.

Chief Justice—You had better, if you please. Has Mr. Tyrrell any counsel in court?

Mr. M'Donogh—I am counsel for Mr. Tyrrell, my lord.

Chief Justice—Do you make any objection?

Mr. M'Donogh—I object, on the part of Mr. Tyrrell, to that bill being now meddled with. It is given in charge of the grand jury, and it is for them to ignore it or find it, as they think right, and I object to my client's name, Tyrrell, being put into that indictment.

The foreman observed that the mistake had only occurred in one count.

Chief Justice—All the other counts are right.

Attorney-General—I apprehend there can be no doubt about it, and I will not trouble the court.

Mr. Brewster—The court has a right to do it.

Attorney-General—Yes, the court has a right.

Mr. Hatchell, Q.C.—They can withdraw the indictment if they please, my lords, but they cannot amend it in court.

Chief Justice—This being a misdemeanour if Mr. Tyrrell, or his counsel, consented to the alteration, it could be made; but if he does not——

Attorney-General—I apprehend there is nothing to be done, my lord, but for the officer to amend the clerical mistake in the indictment, and hand it back to the grand jury, the bills not having been found by the grand jury yet.

Mr. M'Donogh—May I beg to ask the learned attorney, what has the officer of the court to amend by—what authority or knowledge, official or judicial, has Mr. Bourne of what name should be in the indictment?

Chief Justice—The informations.

Mr. M'Donogh—I submit that the learned Attorney-General must produce some authority to justify that course.

Chief Justice—It is an indictment founded on information. This is a clerical error, and they have the informations to correct it.

Mr. M'Donogh—I don't think that this can be considered as the work of the Clerk of the Crown; it is the Queen's Attorney-General in person that prosecutes here. He had the preparation of the indictment, and doubtless prepared it with great propriety and skill, and sent it to the grand jury. It is given to the grand jury to dispose of it, and I know of no law that enables the Clerk of the Crown to amend it.

Attorney-General—I am under the apprehension that Mr. M'Donogh is acting as *amicus curiæ* here; if not, he will be good enough to hand in his license to appear for Mr. Tyrrell.

(This demand on the part of the Attorney-General created a considerable sensation in court.)

Mr. M'Donogh—I was under the impression that the licenses had been obtained in all the cases before I took retainers.

Mr. Cantwell (agent for Mr. Tyrrell)—I have obtained the license.

Attorney-General—Then produce it.

Mr. Cantwell—I have the license, but it is not in court, but I pledge myself that I have it, and I am much surprised that the Attorney-General should make that statement.

Mr. M'Donogh—I did not accept the retainers until I was told the licenses were taken out.

Mr. Close said he was also counsel for Mr. Tyrrell, and was proceeding to address the court—but

Mr. Cantwell said—My client, my lord, calls upon Mr. M'Donogh in this court, and claims to have his assistance in this court, having obtained the Queen's letters of license. I now call upon Mr. M'Donogh to act for him. It is monstrous to make such an objection.

Mr. M'Donogh said there was no doubt about the license having been obtained. He had a knowledge of the licenses in the several other cases, but not in this particular case; but he was sure the gentlemen would be satisfied with the word of the attorney.

Mr. Brewster said that as Mr. Cantwell stated the license was obtained, they were satisfied.

Mr. M'Donogh then called upon the Attorney-General to produce an authority, authorising the course of proceeding he proposed to take.

The Attorney-General contended that counsel for a party could not be heard before the indictment was found, and submitted that Mr. M'Donogh, or any other counsel, had no right to be heard on the part of Mr. Tyrrell, at this stage of the proceedings.

Mr. M'Donogh said the Attorney-General had stated that he ought not be heard, but the court would recollect that it had called upon him.

Chief Justice—I dare say the irregularity is attributable to me.

Mr. Brewster—But if Mr. M'Donogh goes on further, the irregularity will be his from this moment.

The Chief Justice said the court were of opinion that in this state of the proceedings this could not be properly called a bill of indictment; it was no such thing until the judgment of the grand jury was passed on it, and until then it was merely a proceeding sent up to the grand jury, on the part of the crown, by the Attorney-General, through the hands of the Clerk of the Crown. At present there was no third person that had a right to be heard in it at all, and if the grand jury pointed out a clerical error to the court, and if the Attorney-General were desirous to have the mistake rectified, the court will give him full permission to do it, or he might do so without asking the court at all.

The Clerk of the Crown then erased the word "Tierney" in the fourth count, where it was inserted instead of "Tyrrell," and the word "Tyrrell" was substituted for it.

The Attorney-General then applied to have the word "affirmation' introduced into the opening of the counts. Since the jury was sworn they found that one of them belonged to the Society of Friends, and that rendered the alteration necessary. The indictment commenced—"And the jurors of our lady the Queen, on their oaths, present," &c.; whereas it should be—"And the jurors of our lady the Queen, on their oaths and affirmation, present," &c. He wished to have it altered, lest any objection should be made to the indictment hereafter. He referred to a case recently decided in England in support of the application.

Chief Justice—I object to the court being called upon to make an order on the subject. Let the crown take any course they think right.

Attorney-General—We want no order, but as we cannot go into the jury room we want authority to have the bill brought down to be amended.

Chief Justice—We will give leave to the grand jury to hand back the bill to the Clerk of the Crown.

Nothing further was done in the matter of the State Prosecutions, until the following Wednesday, when the grand jury returned the bills, having taken five days in the consideration of them.

THE BILLS FOUND.

WEDNESDAY, NOVEMBER 8TH.

Judge Burton entered the court at twenty minutes past three o'clock, and the Chief Justice and the other members of the court subsequently took their seats. The court was very much crowded, and the greatest anxiety prevailed to ascertain the finding of the jury. Three of the traversers, namely, Messrs. Steele, Ray, and Duffy, were in attendance. The agents for the traversers, Messrs. Cantwell, Gartland, Mahony, and Ford, were also in court. The following counsel attended for the crown:—The Attorney-General, Solicitor-General, Messrs. Brewster, Bennett, and Tomb, Q.C.'s, and Messrs. Holmes and Napier; and for the accused—Messrs. Moore, Hatchell, Fitzgibbon, Whiteside, M'Donogh, Q.C.'s, Sir Colman O'Loghlen, and Messrs. O'Hea, O'Hagan, and Close. Mr. Sheil was in court at the close of the proceedings, but did not wear his wig and gown.

In a short time after this announcement was made, the grand jury entered their box and handed down the bill to the Clerk of the Crown.

The Clerk of the Crown then read out, "A true bill—for self and fellow jurors, George Brooke."

Mr. O'Gorman—I beg leave to express my dissent from that bill as one of the jurors.

Chief Justice—What is your name?

Mr. O'Gorman—Richard O'Gorman is my name.

The indictment was well called the "monster indictment," because it was at all events the most monstrous in size and the multiplicity of places, times, acts, and circumstances with which it was versant. It would fill a very reasonably sized volume—larger than the number of the publication which we now issue. An abstract of it, however, which was very generally used at the time in all the leading journals, appeared in the *Freeman* of Thursday, November 9, and of that we insert a copy here, as a document not only of present importance but of the utmost value in all future times.

THE INDICTMENT.

FIRST COUNT.

County of the City of Dublin } The Jurors for our
to wit. } lady the Queen upon
} their oath and affirmation present and say that Daniel O'Connell late of Merrion-square in the county of the city of Dublin Esquire John O'Connell late of Derrynane Cottage Blackrock in the county of Dublin Esquire Thomas Steele late of Lough O'Connell in the county of Clare Esquire Thomas Mathew Ray late of the Corn Exchange Rooms Burgh-quay in the city of Dublin Esquire Charles Gavan Duffy late of Rathmines in the county of Dublin Esquire the Rev. Thomas Tierney late of Clontibret in the county of Monaghan Clerk the Rev. Peter James Tyrrell late of Lusk in the county of Dublin Clerk John Gray late of Sion Lodge in the county of Dublin Esquire and Richard Barrett late of Drimna Lodge in the county of Dublin Esquire unlawfully maliciously and seditiously contriving intending and devising to raise and create discontent and disaffection amongst the liege subjects of our said lady the

Queen and to excite the said liege subjects to hatred and contempt of the government and constitution of this realm as by law established and to excite hatred jealousies and ill-will amongst different classes of the said subjects and to create discontent and disaffection amongst divers of the said subjects and amongst others her Majesty's subjects serving in her Majesty's army and further contriving intending and devising to bring into disrepute and to diminish the confidence of her Majesty's subjects in the tribunals duly and lawfully constituted for the administration of justice and further unlawfully maliciously and seditiously contriving intending and devising by means of intimidation and the demonstration of great physical force to procure and effect changes to be made in the government laws and constitution of this realm as by law established heretofore to wit on the thirteenth day of February in the year of our Lord one thousand eight hundred and forty-three with force and arms to wit on at the parish of Saint Mark in the county of the city of Dublin unlawfully maliciously and seditiously did combine conspire confederate and agree with each other and with divers other persons whose names are to the jurors aforesaid unknown to raise and create discontent and disaffection amongst the liege subjects of our said lady the Queen and to excite such subjects to hatred and contempt of the government and constitution of this realm as by law established and to unlawful and seditious opposition to the said government and constitution and also to stir up jealousies hatred and ill-will between different classes of her Majesty's subjects and especially to promote amongst her Majesty's subjects in Ireland feelings of ill-will and hostility towards and against her Majesty's subjects in other parts of the United Kingdom of Great Britain and Ireland and especially in that part of said United Kingdom called England and further to excite discontent and disaffection amongst divers of her Majesty's subjects serving in her said Majesty's army and further to cause and procure and aid and assist in causing and procuring divers subjects of our said lady the Queen unlawfully maliciously and seditiously to meet and assemble together in large numbers at various times and at different places within Ireland for the unlawful and seditious purpose of obtaining by means of the intimidation to be thereby caused and by means of the exhibition and demonstration of great physical force at such assemblies and meetings changes and alterations in the government laws and constitution of this realm as by law established and further to bring into hatred and disrepute the courts by law established in Ireland for the administration of justice and to diminish the confidence of her Majesty's said liege subjects in the administration of the law therein with the intent to induce her Majesty's subjects to withdraw the adjudication of their differences with and claims upon each other from the cognizance of the said courts of law established and to submit the same to the judgment and determination of other tribunals to be constituted and contrived for that purpose.

The several overt acts alleged to have been committed, and upon which the above charge is founded, are then set forth, and occupy over fifty-four pages of the printed indictments.

The first overt act set forth is the monster meeting held at Trim, on the of 19th March, 1843, where 50,000 persons are said to have assembled, and for attending which Mr. O'Connell, Mr. Steele, and Mr. Barrett are charged. The same parties are also charged with attending another meeting at Trim on the same day (the dinner), and what purports to be a short extract from the speech of Mr. O'Connell is set forth, and R. Barrett, J. Gray, and C. G. Duffy, are charged with publishing the same in the *Pilot*, *Freeman*, and *Nation* newspapers.

The second alleged overt act is charged against Mr. O'Connell, Thomas Steele, and John Gray, for that they attended a meeting at Mullingar, on the 14th day of May, 1843, at which 100,000 persons were assembled, and Mr. O'Connell, Richard Barrett, Thomas Steele, and John Gray, are charged with attending another meeting on the same day at Mullingar (the dinner); a short extract from what purports to be Mr. Barrett's speech is set forth, and Mr. Barrett is further charged with having published same in the *Pilot* newspaper.

The third alleged overt act is the attendance of Mr. O'Connell and Mr. Steele at a meeting held at Cork, on the 21st May, 1843, where 500,000 persons had assembled. The same parties are also charged with attending another meeting (the dinner) on the same day, and what purports to be an extract from the speech of Mr. O'Connell is set forth, and Richard Barrett, John Gray, and Charles G. Duffy, are charged with having published same in the *Pilot*, *Freeman*, and *Nation*.

The fourth alleged overt act is a charge against Mr. O'Connell, John O'Connell, and Thomas Steele, for attending a meeting at Longford, on the 28th of May, 1843, at which 200,000 persons were assembled; and Mr. O'Connell, John Gray, and Thomas Steele, are charged with having attended another meeting (the dinner) at the same place, and on the same day, and what purports to be an extract from the speech of Mr. O'Connell is set forth, and Richard Barrett, John Gray, and C. G. Duffy, are charged with publishing same in the *Pilot*, *Freeman*, and *Nation*.

The fifth alleged overt act is charged against Mr. O'Connell, Thomas Steele, Richard Barrett, and "Peter James Tyrrell" (the title reverend is omitted), and is for attending a meeting at Drogheda, at which 200,000 persons were assembled, on the 5th June, 1843; what purports to be an extract from Mr. O'Connell's speech is set forth, and Richard Barrett, J. Gray, and C. G. Duffy, are respectively charged with having published same.

The sixth alleged overt act charged against Mr. O'Connell, Thomas Steele, and John O'Connell, is for attending a meeting at Kilkenny, at which 300,000 assembled, on the 8th of June, 1843, and the same parties are further charged with attending another meeting (the dinner) on the same day, and in the same place; and what purports to be an extract from the speech of Mr. O'Connell at same is set forth, and Richard Barrett, John Gray, and Charles Gavan Duffy, are charged with having respectively caused same to be published.

The seventh alleged overt act is the meeting at Mallow, on the 11th June, 1843, at which 400,000 persons are said to have been present. Mr. O'Connell and Thomas Steele are charged for being present. The same parties are charged with being present at another meeting (the dinner) at the same place and on the same day, and what purports to be an extract from the speech then pronounced by Mr. O'Connell is set forth, and R. Barrett, John Gray, and Charles G. Duffy, are charged with publishing same.

The eighth alleged overt act is the meeting held at Dundalk, on the 29th June, at which 200,000 persons are said to have assembled. Mr. O'Connell and Thomas Steele are charged with being present. The same parties are also charged with attending another meeting at the same place (the dinner), on the same day, and what purports to be an extract from Mr. O'Connell's speech is set forth, and R. Barrett, John Gray, and Charles G. Duffy are charged with having published same.

The ninth alleged overt act is the meeting at Donnybrook, at which 200,000 persons are said to have assembled. Mr. O'Connell, John O'Connell, Thomas Steele, and John Gray, are charged with having attended. What purports to be an extract from the speech of Mr. O'Connell is set forth, and

Richard Barrett, John Gray, and Charles G. Duffy, are charged with having published same.

The tenth alleged overt act is charged against Mr. O'Connell, John Gray, and Thomas Steele, for that they attended a meeting at Baltinglass, where 300,000 persons had assembled. The same parties are also charged with having attended another meeting (the dinner), at the same place, and on the same day. What purports to be an extract from the speech of Mr. O'Connell at the dinner is set forth, and R. Barrett, John Gray, and Charles Duffy, are charged with having published same.

The eleventh alleged overt act is charged against Thomas Tierney (meaning the *Rev.* Thomas Tierney), for that he attended a meeting at Clontibret, on the 15th August, 1843, at which 30,000 persons are said to have attended.

The twelfth alleged overt act is charged against Mr. O'Connell, John O'Connell, Richard Barrett, John Gray, Thomas Matthew Ray, and Peter James Tyrrell (meaning the *Rev.* Mr. Tyrrell), and Thomas Steele, for that they attended a meeting at Tara, at which 800,000 persons assembled, on the 15th August, 1843. What purports to be a portion of the speech of Mr. O'Connell, at said meeting, is set forth; and R. Barrett, John Gray, and Charles G. Duffy are charged with having published same. The same parties are charged with having attended another meeting on the same day and in the same place, and what purports to be an abstract of the speeches of Mr. O'Connell, and of John Gray, at the dinner, are set forth; and R. Barrett, John Gray, and Charles G. Duffy are charged with having published the said alleged speeches, and also a speech uttered by John O'Connell, which latter is not however set forth in the indictment

The thirteenth alleged overt act is charged against Mr. O'Connell, John Gray, Thomas Steele, and Richard Barrett, for that they attended a meeting at Loughrea on the 10th of September, at which 100,000 persons had assembled; and the same parties are further charged with having been present at anbther meeting (the dinner) in same place and on same day, and what purports to be portions of the speeches of Richard Barrett and John Gray, at the dinner, are set forth; and R. Barrett, John Gray, and Charles G. Duffy are charged with publishing same.

The fourteenth alleged overt act is charged against Mr. O'Connell, Thomas Steele, and John Gray, for that they attended a meeting at Clifden on the 17th September, 1843, at which 50,000 persons were assembled. What purports to be an abstract of Mr. O'Connell's speech at the meeting is set forth, and R. Barrett, John Gray, and Charles Gavan Duffy are charged with publishing same. Mr. O'Connell, Thomas Steele, and John Gray are further charged with having attended another meeting (the dinner) at the same place, and on the same day. What purports to be a part of Mr. O'Connell's speech at the dinner is set forth, and R. Barrett, John Gray, and Charles Gavan Duffy are charged with having published same.

The fifteenth alleged overt act is the meeting at Lismore, on the 24th of September, 1843, at which 100,000 had assembled. Mr. O'Connell, Richard Barrett, and Thomas Steele are charged with being present, and what purports to be a portion of Mr. O'Connell's speech at said meeting is set forth, and Richard Barrett, John Gray, and Charles G. Duffy are charged with having published same. Mr. O'Connell, and Messrs. Barrett and Steele, are further charged with having attended another meeting (the dinner) at the same place, and on the same day, and what purports to be a portion of the speech there delivered by Mr. O'Connell is set forth, and Richard Barrett, John Gray, and Charles Gavan Duffy are charged with having published same.

The sixteenth alleged overt act is the meeting at Mullaghmast, on the 1st of October, 1843, at which 100,000 persons are said to have assembled. Mr. O'Connell, Thomas M. Ray, John Gray, Thomas Steele, and Richard Barrett, are charged with being present. What purports to be a portion of the speech then uttered by Mr. O'Connell is set forth, as is also the resolution declaring "that no power on earth ought of right to make laws to bind this kingdom, save the Queen, Lords, and Commons of Ireland," and Richard Barrett, John Gray, and Charles G. Duffy are charged with having published said speech and resolution. Mr. O'Connell, John O'Connell, Thomas Steele, John Gray, are charged with having attended the dinner at Mullaghmast on the same day, and what purports to be portions of the speech of John O'Connell and Mr. O'Connell, are set forth, and R. Barrett, J. Gray, and Charles G. Duffy, are charged with having published same.

The seventeenth overt act is charged against Mr. O'Connell, John O'Connell, Thomas M. Ray, Thos. Steele, John Gray, Charles G. Duffy, Thomas Tierney, Peter James Tyrrell (meaning the Rev. Messrs. Tierney and Tyrrell), and Richard Barrett, for that they on the 27th of September, 1843, did "endeavour" to "collect" a meeting at Clontarf; and Charles G. Duffy is charged with having published in the *Nation* newspaper an advertisement headed "Repeal Cavalry;" and Charles G. Duffy and John Gray are respectively charged with publishing certain other advertisements referring to the said intended meeting.

The eighteenth alleged overt act is charged against Mr. O'Connell, Thomas M. Ray, and Charles G. Duffy, for that they attended a meeting on the 13th of February, 1843, at a place not set forth, but which we presume to be the Corn-Exchange, and at which 300 persons were assembled; what purports to be a portion of a speech delivered at said meeting by Mr. O'Connell is set forth, and R. Barrett, John Gray, and Charles G. Duffy are charged with having published the said speech.

The nineteenth alleged overt act is charged against Mr. O'Connell, Thomas M. Ray, Peter James Tyrrell (meaning the Rev. Mr. Tyrrell), Charles G. Duffy, John Gray, Richard Barrett, and Thomas Steele, for that they on the 16th of March, 1843, attended a meeting at which 500 persons were present, at a place not named, but which we presume to be the Corn Exchange, and at which it is alleged that Mr. O'Connell uttered seditious words and speeches, but none of which are set forth.

The twentieth alleged overt act is charged against Mr. O'Connell, John O'Connell, Thomas M. Ray, John Gray, and Thomas Steele, for that they attended a meeting on the 30th of May, 1843, at which 500 persons were present, and at which Mr. O'Connell is said to have uttered a speech, a portion of which is purported to be set forth; and Richard Barrett, John Gray, and Charles G. Duffy, are further charged with having published said alleged speech.

The twenty-first alleged overt act is charged against Mr. O'Connell, John O'Connell, Charles G. Duffy, and Thomas Steele, for that they were present at a meeting at which 300 persons were assembled, and at which certain letters are alleged to have been read, and also certain statements of the receipts of the Loyal National Repeal Association for the two corresponding quarters of two successive years. One of the alleged letters, purporting to be from John Corry, date 30th of June, 1843, and purporting to enclose 100*l.*, is set forth, and R. Barrett, John Gray, and Charles G. Duffy, are charged with publishing all said documents, and certain alleged speeches of Mr. O'Connell's, parts of which are purported to be set forth.

The twenty-second alleged overt act is charged against Mr. O'Connell, John Gray, Thomas M. Ray, John O'Connell, Thomas Steele, and Charles G. Duffy, for that they attended a meeting on the 22d day of August, 1843, at which there were 200 persons present, at which Mr. O'Connell is alleged to have made a speech, a part of which is purported to be put forth, as also a document alleged to have been read at the same meeting by Mr. O'Connell, entitled "Plan for the renewed action of the Irish parliament," and R. Barrett, John Gray, and C. G. Duffy, are charged with publishing said alleged speech and document.

The twenty-third alleged overt act is charged against Mr. O'Connell, John O'Connell, John Gray, R. Barrett, and Thomas M. Ray, for that they were present at a meeting on the 23d day of August, 1843, at which 300 other persons were present, and at which it is alleged that John Gray made a statement in reference to the dismissal of such magistrates as possessed the confidence of the people, and that he read a certain document purporting to be a report from a sub-committee on the adoption of a general system of arbitration, and to be signed by him as chairman. Richard Barrett, John Gray, and Charles G. Duffy, are charged with having published said alleged statement and report.

The twenty-fourth alleged overt act is charged against Mr. O'Connell, John O'Connell, Thomas M. Ray, Thomas Steele, and John Gray, and is, that they attended a meeting on the 4th of September, 1843, at which 200 persons are said to have been present. What purports to be a part of the speech made thereat by Mr. O'Connell is set forth, and Richard Barrett, John Gray, and Charles G. Duffy, are charged with having published same.

The twenty-fifth alleged overt act is charged against Mr. O'Connell, John O'Connell, Thomas M. Ray, R. Barrett, John Gray, Thomas Tierney, Peter James Tyrrell (meaning the Rev. Messrs. Tierney and Tyrrell), and Thomas Steele. The allegation is that they attended a meeting, at which 400 persons were present; what purports to be an extract from a document read thereat by Mr. O'Connell, and entitled "An Address to the Inhabitants of Countries subject to the British Crown," is set forth. All the parties above named are charged with having caused one hundred copies of said document to be printed on broad sheets and circulated; and Richard Barrett, John Gray, and Charles G. Duffy, are respectively charged with having published said address in the *Pilot*, *Nation*, *and Freeman*.

The twenty-sixth alleged overt act is charged against Mr. O'Connell, Thomas M. Ray, John O'Connell, and John Gray. The accusation is that they attended a meeting on the 26th of September, 1843, at which there were 300 persons, and in the presence of whom, it is alleged, that Mr. O'Connell made a speech which is pronounced to be "seditious," but which is not set forth.

The twenty-seventh alleged overt act is charged against Mr. O'Connell, Thomas M. Ray, Thomas Steele, and John Gray, the allegation being that they attended a meeting on the 27th of September, 1843, at which 300 persons were present, and at which Mr. O'Connell delivered a speech said to be "seditious," but none of which is set forth.

The twenty-eighth overt act is alleged to have been committed by Mr. O'Connell, John O'Connell, Thos. M. Ray, and Thomas Steele. The allegation is, that they attended a meeting on the 2d of October, 1843, at which there were 300 persons present, and that at said meeting the Liberator uttered seditious language not set forth.

The twenty-ninth alleged overt act is charged against Mr. O'Connell, John O'Connell, Thomas M. Ray, Thomas Steele, Charles G. Duffy, Thomas Tierney (meaning the Rev. Mr. Tierney), and John Gray. The accusation is, that they attended a meeting, held on the 3d of October, 1843, at which there were present 300 persons, and on which occasion Mr. Steele is alleged to have made a seditious speech, a part of which is purported to be set forth, in which the following passage occurs:—

> "Behemoth, biggest-born of earth,
> Upheaved its vastness;"

and at which it was alleged that John Gray "spoke with a loud voice, malicious and seditious words," the purport of which is set forth as recommending Mr. O'Connell as an arbitrator for the city of Dublin, and that Thomas Tierney (meaning the Rev. Thos. Tierney) made a certain speech, a part of which is purported to be set forth, and Charles G. Duffy is further charged with having published said alleged speech of the Rev. Thomas Tierney.

The thirtieth alleged overt act is charged against Mr. O'Connell, John O'Connell, Thos. Steele, Thos. M. Ray, John Gray, and Peter James Tyrrell, (meaning the Rev. Mr. Tyrrell). The allegation is, that the parties named attended a meeting on the 9th of October, 1843, at Abbey-street, at which meeting one thousand persons were present, and at which divers sums of money are alleged to have been handed to Mr. Ray for the objects of the conspiracy, and at which Peter James Tyrrell (meaning the Rev. Mr. Tyrrell) is said to have made a seditious speech, and to have proposed certain resolutions, both of which are purported to be set forth. Richd. Barrett, John Gray, and C. G. Duffy are charged with having published said speech and resolutions.

The thirty-first alleged overt act is charged against Richd. Barrett. The accusation is that he published in the *Pilot* on the 10th of March, 1843, certain "seditious" matter, headed "Repeal in America," which is set forth.

The thirty-second alleged overt act is also charged against Richard Barrett, and is that he on the same day, and in the same paper, published the speech of R. Tyler, son of the American President, which is set forth.

The thirty-third alleged overt act is charged against Charles G. Duffy. It is, that he on the 1st day of April, 1843, published in the *Nation* "seditious matter," and there is set forth as such an ode entitled "The memory of the dead." The first lines of the ode are as follows:—

> "Who fears to speak of ninty-eight,
> Who blushes at the name?"

The thirty-fourth alleged overt act is also charged against Charles G. Duffy. The allegation is, that he published in the *Nation* of the 29th of April, 1843, an article, headed "Something is coming." The article is set forth and has reference to the contemplated council of three hundred.

The thirty-fifth alleged overt act is also charged against Charles G. Duffy. It is the publishing of an article headed "Our Nationalty," on the 29th of April, 1843.

The thirty-sixth alleged overt act is also charged against Charles G. Duffy. It is the publication of an article entitled the "Morality of war" in the *Nation* of the 19th of June, 1843.

The thirty-seventh alleged overt act is charged against Richard Barrett. It is the publication of a letter entitled "The duty of a Soldier," and signed "Richard Power, P.P.," in the *Pilot* of the 18th of August, 1843. The letter is set forth in full.

The thirty-seventh alleged over act is also charged against Richard Barrett. It is the publication in the *Pilot* of the 4th September, 1843, of an article headed "The Irish in the English army—Mr. O'Callaghan's letters." The article is set forth.

The thirty-eighth alleged over act is also charged

against Richard Barrett. It is the publication of an article headed "The Army, the People, and the Government," which is set forth as having been printed in the *Pilot* of the 25th September, 1843.

The thirty-ninth alleged overt act is also charged against R. Barrett. The allegation is that he published, in the *Pilot* of the 25th September, 1843, an article headed "Rumoured Death of General Jackson—The Battle of New Orleans." The article, which is very long, is set forth at full length.

The fortieth alleged overt act is also charged against R. Barrett. It is the publishing in the *Pilot* of the 6th October, 1843, certain matter alleged to be seditious, under the title of "The Battle of Clontarf—This is the Repeal Year." The article set forth is short.

The forty-first alleged overt act is also charged against Richard Barrett. The accusation is, that he published in the *Pilot* of same date as last-named other matter set forth at length, and designated seditious. It is a review of the incidents of the battle of Clontarf.

The forty-second alleged overt act is charged against Charles G. Duffy, and is said to have been committed by the publication in the *Nation* of the 24th of August of an article entitled "The Crisis is upon us!" The article is set forth.

The forty-third alleged overt act is also charged against C. G. Duffy, and is the publication of a letter in the *Nation* of the 7th October, 1842, signed "A Delcassian," in which it is proposed that after the intended meeting at Clontarf the new names of several localities in Ireland be abandoned, and the old names restored. The letter is set forth in full.

The last clause in the count contains a sort of hook-all allegation, that Mr. O'Connell, John O'Connell, Thomas Steele, T. M. Ray, Charles G. Duffy, Thomas Tierney, Peter James Tyrrell, John Gray, and Richard Barrett, did, on the 1st of March, 1843, and on divers other days and times before and after that day, and at divers other places in divers other parts of Ireland," seek to carry on the alleged conspiracy by meeting, collecting money, making seditious speeches, and adopting resolutions.

In the foregoing summary we have enumerated the several alleged overt acts upon which the first count of the indictment is sought to be sustained. The remaining counts being short, we subjoin them in full.

In enumerating the several overt acts, we attached the same number to such meetings and dinner as occurred on the same day.

SECOND COUNT.

And the jurors aforesaid upon their oath and affirmation aforesaid do further present and say that the said Daniel O'Connell John O'Connell Thomas Matthew Ray Charles Gavan Duffy Thomas Tierney Peter James Tyrrell John Gray and Richard Barrett unlawfully maliciously and seditiously contriving intending and devising to raise and create discontent and disaffection amongst the liege subjects of our said lady the Queen and to excite the said liege subjects to hatred and contempt of the government and constitution of this realm as by law established and to excite hatred jealousies and ill-will amongst different classes of the said subjects and to create discontent and disaffection amongst divers of the said subjects and amongst others her Majesty's subjects serving in her Majesty's army. And further contriving intending and devising to bring into disrepute and to diminish the confidence of her Majesty's subjects in the tribunals duly and lawfully constituted for the administration of justice and further unlawfully maliciously and seditiously contriving intending and devising by means of intimidation and the demonstration of great physical force to procure and effect changes to be made in the government laws and constitution of this realm as by law established heretofore to wit on the thirteenth day of February in the year of our Lord one thousand eight hundred and forty-three with force and arms to wit at the parish of Saint Mark aforesaid in the county of the city of Dublin aforesaid unlawfully maliciously and seditiously did conspire confederate and agree with each other and with divers other persons whose names are to the jurors aforesaid unknown to raise and create discontent and disaffection amongst the liege subjects of our said lady the Queen and to excite such subjects to hatred and contempt of the government and constitution of this realm as by law established and to unlawful and seditious opposition to said government and constitution and also to stir up jealousies hatred and ill-will between different classes of her Majesty's subjects and especially to promote amongst her Majesty's subjects in Ireland feelings of ill-will and hostility towards and against her said Majesty's subjects in the other parts of the said United Kingdom and especially in that part of the said United Kingdom called England and further to excite discontent and disaffection amongst divers of her Majesty's subjects serving in her Majesty's army and further to cause and procure and aid and assist in causing and procuring divers subjects of our said lady the Queen unlawfully maliciously and seditiously to meet and assemble together in large numbers and at various times and at different places within Ireland for the unlawful and seditious purpose of obtaining by means of the intimidation to be thereby caused and by means of the exhibition and demonstration of great physical force and at such assemblies and meetings changes and alterations in the government laws and constitution of this realm as by law established and further to bring into hatred and disrepute the courts by law established in Ireland for the administration of justice and to diminish the confidence of her said Majesty's liege subjects in Ireland in the administration of the law therein with the intent to induce her Majesty's subjects to withdraw the adjudication of their differences with and claims upon each other from the cognizance of the said courts by law established and to submit the same to the judgment and determination of other tribunals to be constituted and contrived for that purpose in contempt of our said lady the Queen and the laws of this realm to the evil example of all others in the like case offending and against the peace of our said lady the Queen her crown and dignity.

There were nine other counts in the indictment, which, however it is unnecessary here to insert, because they merely vary the charges which are embodied in the first and second counts.

Attorney-General—I have now to move your lordships, that the defendants be called upon their recognizances to appear.

Clerk of the Crown—Call Daniel O'Connell, Esq.

Mr. Ford—Mr. O'Connell will be in attendance in five minutes.

Mr. Mahony observed that from the crowded state of the passage, it was impossible for Mr. O'Connell or his friends to attend. It was impossible to get either in or out.

High-Sheriff—Policeman, clear the court; clear both sides of the court.

Clerk of the Crown—Call John O'Connell, Esq.

Mr. Ford—He will be here immediately.

Chief Justice—Mr. Sheriff, there must be a clear passage made for those gentlemen. Those gentlemen are now called under recognizance to appear, and there must be way made for them.

Clerk of the Crown—Call John Gray, Esq.

Mr. Cantwell—He will be here in a few moments.

Clerk of the Crown—Call Thomas Steele, Esq.

Mr. Steele—I am here. I am peculiarly——

Clerk of the Crown—Call Richard Barrett, Esq.

Mr. Cantwell—He will be here immediately.

Clerk of the Crown—Call Rev. Thomas Tierney.

Rev. Mr. Tierney—Here.

Clerk of the Crown—Charles Gavan Duffy, Esq.

Mr. Duffy—Here.

Mr. Steele—My lords, I take this opportunity of stating that I am under your lordships' peculiar protection, as it is my intention to defend myself without counsel, as I have done before, and successfully, on a former similar occasion.

[Here there was a strong sensation, and some noise in the court, owing to the entrance of the Liberator and Mr. John O'Connell.]

Mr. Bourne—John Gray.

Mr. Steele—I beg pardon, sir; I have occasion to address the court. My lords, I also think it right to inform you—speaking for myself alone, and leaving my friends, the other traversers, to act for themselves according to their own discretion—that I decisively object to be prosecuted by the Attorney-General (great laughter throughout the court). It is no laughing matter; it is a matter of the administration of the public justice of the country! (The laughter instantly subsided into dead silence.) I say, my lords, that I decisively object to my being prosecuted by the Attorney-General, as it is matter of notoriety through the press, that he has publicly prejudged the question, and has prejudged it too in terms of great malignity to the accused, while their case was actually under the consideration of a jury. Under these circumstances, I hope the Attorney-General will have the sense of propriety, or indeed, my lords, I ought rather say, the sense of common decency to withdraw himself on this occasion from the function of public prosecutor for the crown, and leave that duty to be performed by his highly gifted, and patient, and good-tempered colleague, the Solicitor-General.

Clerk of the Crown—Thomas Matthew Ray, Esq.

Mr. Ray—Here.

The Clerk of the Crown then called the Rev. Peter James Tyrrell, who also appeared. The Liberator and Mr. J. O'Connell took their seats in the front of the side bar, near their counsel. Dr. Gray and Mr. Barrett also appeared.

Clerk of the Crown (to the Attorney-General)—They have all answered.

Attorney-General—Now, my lords, I have to move your lordships that your lordships do order that the defendants do plead in four days, to be computed from the present time. I move, under the statute 60th George III., in which there is an express provision to that effect, and I move, on the precedent of a similar order, made in the case of the King *v.* O'Connell in the year 1831. I now ask for the same order that was made on that occasion—on the 26th of January, 1831.

Chief Justice—What is the condition of the recognizances entered into by the traversers?

Attorney-General—The recognizance is, my lord, to appear personally. I have a copy of the recognizance before me, and they are bound to appear in person, and, pursuant to the terms of it, they have appeared in person. The officer of the court has taken down their appearance, and, in pursuance of that statute, I now move that they plead in four days. That statute makes express provision for the purpose, and provides that where any person is prosecuted in the Court of Queen's Bench in Westminster, or in the Court of Queen's Bench in Ireland, or any indictment or information for misdemeanour either is found in or removed into said respective courts against him, he shall appear in that term to answer such indictment or information, and such defendant shall not be permitted to imparl to a subsequent term, but shall plead thereto within four days from his appearance. In pursuance of that act of parliament, a rule will be found to have been made on the 26th of January, 1831, and I now ask to have a similar rule made by the court. In that case the rule was somewhat special, in consequence of the defendant being called, and not being in attendance; and his attorney having undertaken that he should appear on the following day, he did appear, and the rule was entered to plead in four days from the preceding day, being the day on which he ought to appear, but had neglected to appear. The statute provides that at this period the party should be charged with the indictment, and I apprehend, that the duty of the officer of the court now will be to state the charges in the indictment to the defendants now present.

Mr. Hatchell, Q.C.—I am not aware that course of proceeding was ever adopted. I, on the part of Mr. O'Connell, he having appeared, apply under the provisions of the same statute that he be furnished forthwith with a copy of the indictment.

Mr. Moore, Q.C.—I submit that the time to plead should only run from the period when the defendants are furnished with copies of the indictment.

Mr. Whiteside, Q.C.—I make a similar application to that made by Mr. Hatchell on the part of Mr. John O'Connell.

Mr. M'Donogh—I make a similar application on the part of the Rev. Mr. Tyrrell.

Mr. Close—I make a similar application on the part of Mr. Barrett.

Mr. O'Hagan—I make a similar application on the part of Charles Gavan Duffy.

Mr. O'Hea—I make a similar application on the part of John Gray.

Mr. Perrin—I make a similar application on the part of the Rev. Thomas Tierney.

Mr. Steele—My lord, and I, on the part of myself, respectfully solicit the same.

Mr. Close—I make a similar application on the part of Mr. Ray.

Mr. Kemmis (Crown Solicitor)—The officer will be furnished with copies this day, and you will get them from the officer.

Mr. Moore—It would be impossible in the course of this day to do anything with the indictment.

Mr. O'Connell observed that he was to furnish them to the officer, from whom the parties were to receive the copies.

Attorney-General—The copies of the indictment will be furnished to the officer in a very short time. The section of the act of parliament is quite precise, the rule to plead is to be entered to-day, and I apply, pursuant to the 1st section, to which I refer, that the rule to plead be entered.

Mr. Moore—According to that construction of the statute they might furnish us with the copy of the indictment only the moment before the defendants were called upon to plead.

Chief Justice—But the act of parliament is peremptory, and the court have no discretion.

Judge Perrin—The only thing is, if a party is to be charged with an indictment before he receives a copy of it, or hears it read.

The Chief Justice referred to the rule pointed out to them by the Attorney-General, which was made by the court in the case in 1831.

Mr. O'Connell—There was no discussion upon that case, and I believe the Crown Solicitor will recollect that a copy of the indictment was furnished immediately on its being found.

Chief Justice—There is no reason for anticipating that in this case it will not be furnished immediately.

Mr. O'Connell—We know it is not furnished when the application is made.

Mr. Fitzgibbon—The copy of the indictment is given as a substitute for such deliberate reading of the indictment for the party charged, as would enable him to take down a copy of it while it was

being read. He might now insist upon its being read. It is to save the public time that the copy is directed to be given, and until that copy is given, which is a substitute for the reading of the indictment, the party ought not to be called upon to say what he has to offer in answer to the indictment. He should not be called upon to answer until he sees the copy, not having heard it read in court.

Chief Justice—He has four days to consider the course he shall take. If that be enough for his purpose what is the necessity for stipulating beforehand that he shall have further time given to him.

Mr. Fitzgibbon—That four days, according to the old practice, was reckoned from the time the indictment was completely read to him. That is not done, but it is said that a copy will be furnished in the course of the night. The accused might be called upon to plead when he has read it, and the reading of it will occupy until to-morrow——

Mr. Whiteside—The grand jury were three days reading it.

Mr. Fitzgibbon—But it is premature to call upon him to plead now when he has not read it.

Chief Justice—It is not premature when the act of parliament directs it to be done.

Mr. M'Donogh—I take the liberty of urging upon the court that the application of the Attorney-General is premature now. There are two questions in this case—first, what is the meaning of the words "on his being charged therewith;" and, secondly, what is the construction of the statute when you read the first and eighth sections together? The party is not charged with the indictment until he is called upon in due course of law to hear it read to him to make his defence. That that is the true construction of the statute is perfectly plain on turning attention to the first section of it. (Counsel read the section.) If the defendant shall have been on his appearance effectually charged with the indictment, then he shall be obliged to plead, or demur thereto within four days, and he has not his antecedent common law right of imparlancing, but he is not charged here or cannot be charged until every syllable of that indictment shall be read for him. If the Attorney-General called upon the officer of the court to read that indictment from beginning to end, which is the right of the subject, then when that is concluded, the Attorney-General is in a position to say that he shall plead in four days from that time. The present application, therefore, is premature, for we are not charged with the indictment until we have heard the indictment read. The learned gentleman having referred to the eighth section, proceeded:—Its plain and palpable object is to give the parties charged with an indictment for misdemeanour where questions of very intricate law do arise an opportunity of considering the indictment, and it is a species of substitute for what was taken away by the first section. I admit that if we were before to-day furnished with a copy of the indictment, then, my lord, it would be tantamount and equal to reading it for us, and we might be deemed to be charged with the indictment.

Chief Justice—How can he furnish a copy of the indictment before it is found?

Mr. M'Donogh—That, my lord, was for the consideration of the other side. I think it possible to have done it; and if a party wish to expedite his proceedings he might have done it.

Attorney-General—They have been informed by the Crown Solicitor that copies will be furnished immediately. I directed them to be ready; I have reason to believe that such is the fact, and there is not the least desire to evade the eighth section of the act of parliament. The proper person to hand them to the defendants is the officer of the court; within an hour from this time they will be given to him, and he will lose no time in transmitting them to the defendants. If Mr. M'Donogh wishes to have the indictment read, I don't oppose the reading of the indictment; if it be demanded that it should be read in court, I will not oppose the reading of it in open court. The act of parliament does not provide that we shall give a copy of the bill to the parties; it only provides that a copy of the indictment, when found, shall be given to them.

Mr. M'Donogh—It is not to be supposed for a moment that when I was referring to the common law right, I was going to ask the court to do that which would be inconvenient. He says that in about an hour, the copy of the indictment will be delivered. Let the rule be entered as of to-morrow, and then we will have an opportunity of reading over the indictment. Otherwise, if we require the bill of indictment to be read, it will take until to-morrow morning to read it. If this proposition be not complied with I shall press the court to give its decision, if a party is charged with an indictment, on being merely called upon his recognizance, or until it is read for him.

Chief Justice—Do you object to that, Mr. Attorney General?

Attorney-General—I object to that, and I call upon your lordship to have a rule entered according to the terms of the act of parliament. I don't object to their having the indictment read if they require it, but I don't wish to have a course adopted which is certainly without a precedent.

Judge Crampton said he apprehended that under the statute the parties could not be called upon to plead until they were charged by the indictment, and that could not be done until the charge was read by the Clerk of the Crown. If the party were satisfied with a short statement of it it would do; if he wished it to be read at length he could.

Solicitor-General—We now propose that he shall be charged with the indictment, and if he choose let the whole of it be read.

Mr. Whiteside—It is right to apprise you that in this case if you read the indictment, there being eight persons charged in it, you must read it eight times over (laughter). And it took the grand jury three days to read it.

Attorney-General—Let Mr. Bourne charge the party with the indictment, either by reading it at length or reading over the counts. I call upon your lordships that the defendants may be charged with the indictment. So far as the counts are concerned, independent of the overt acts, it will not take more than a quarter of an hour. If the defendants require the whole of the indictment to be read I won't object to it.

Mr. Whiteside—You cannot object to it.

Attorney-General—I am told I cannot object to it, but I don't object to it. All I require is to have the defendants charged with the indictment one way or the other.

Chief Justice—I would ask the leading counsel for the defendants whether he is satisfied to have the substance of the indictment communicated and read, or whether he requires the whole to be read?

Mr. Moore—What I originally meant to convey to the court, and what my learned friends conveyed to the court is this, that this day being now passed over, even if copies of the indictment be furnished this night, that no opportunity will be afforded to the counsel of any of the parties to look into them. I don't think we are asking anything unreasonable. If the Attorney-General insists upon a right under the statute to enter a rule now to plead to the indictment, the result is that we will have only three days to consider what ought to be done. We think we should not concede anything to the Attorney-General, and if he insists upon doing what we consider as a hardship, then we think we should call for the alternative of having the indictment read from beginning to end.

Solicitor-General—There would be a good deal of weight in what Mr. Moore said, if there was not a distinct provision, authorising the court, if a case be made for their interposition, to enlarge the time of pleading.

Judge Crampton—Will there be any time lost to the crown, or gained to the opposite party, if the rule be entered now to run from to-morrow morning. It can be done by consent.

Solicitor-General—Yes, by consent, and if it be understood that no application will be made hereafter to enlarge the time of pleading, it can be done.

Mr. Moore—I don't think myself warranted in entering into any consent. Let the Attorney-General have his right if he pleases.

Attorney-General—I understand Judge Crampton's proposition is this, that the rule will be entered now to run from to-morrow, the defendants being understood to be now charged with the indictment shortly.

Solicitor-General—I think the proper course for the Clerk of the Crown is to read the first count *pro forma*, and they will be charged with it. He can then enter it, and the terms on which the rule to plead is entered.

Counsel for the traversers remarked that this was not done at their instance—it was an arrangement between the court and the crown.

The Clerk of the Crown then read from the indictment the names of the persons charged thereby, and the crown agreed that the rule to plead should be made on the following day.

It was then arranged that copies of the indictments should be furnished forthwith by the Crown Solicitor to the Clerk of the Crown, and that the attornies for the traversers should call for those copies.

ANOTHER INDICTMENT MENTIONED.

The Attorney-General, when the former question had been decided, said—I must trouble the grand jury to be in attendance in the morning. There is another bill to go up against four of the defendants. It is ready now, but it is too late to get into it. I don't think, gentlemen, it will occupy much of your time, but I must request you will attend to-morrow morning. The jury then retired. [This bill was never subsequently mentioned, and was never sent before the grand jury.]

Thursday, November 9.

Mr. Justice Crampton sat at half-past ten o'clock. He retired about twenty minutes past eleven o'clock, to join the other judges, intimating that the court would sit again. The Chief Justice and the other members of the court took their seats on the bench at twenty minutes past four o'clock. Mr. Sheil was also in court, and sat in the inner bar.

The Chief Justice said the court were very sorry that they were not able to sit at the time they proposed last night, but they were indispensably occupied with the further consideration of a case that was pending for two days before the twelve judges, and which was not yet concluded.

The Queen v. *Daniel O'Connell, M.P., and others.*

Mr. Henn, Q.C., said that in the case of the Queen v. Daniel O'Connell and others, he applied on the part of the traversers for liberty to compare the copy of the indictment furnished to them with the original bill. He moved on the affidavit of Messrs. Ford, Cantwell, and Mahony, the solicitors for several of the traversers; and Messrs. Ford and Cantwell swore that in the performance of their duty as such solicitors, they attended at the office of Mr. Walter Bourne, Clerk of the Crown, at or about the hour of eleven o'clock in the forenoon of that day, to compare the copy of the indictment with the original bill, and they asked then and there, and required of the said Walter Bourne to allow the said copy to be compared with the said indictment; whereupon the said Walter Bourne stated that the said indictment was at his private residence, and not in his office, and consequently that same could not be compared; but that he would go for same, and that it should be brought to his office in two hours he n when he would allow same to be compared; and that they should call on him at that time; and that at such period there was a judge sitting in court. And Messrs. Ford and Cantwell further stated that, according to the directions of the said Walter Bourne, they attended at his office without waiting for the full lapse of the two hours, and they found there the said Walter Bourne and William Kemmis, and other persons; and Mr. Ford stated that, in answer to an observation of deponent as to the necessity of sending for the indictment to have it compared, the said Walter Bourne said he had procured it, and that same was in his office, but he would not allow same to be compared; and understanding the said Walter Bourne to mean that he had received such directions from Mr. Kemmis, deponent asked him if he gave such directions, or if such directions were given on the part of the crown? Mr. Kemmis said he did not, and that in his opinion it was the right of deponent to have the copy compared; that deponents called the attention of said Walter Bourne to the observation of Mr. Kemmis, and that said Walter Bourne then expressly stated, that he would not allow said copies, or any of them, to be compared, without an order of the court for the purpose; and Mr. P. Mahony, for himself, stated that he went about six o'clock on the preceding evening to the house of the said Walter Bourne to get a copy of said indictment, and on said occasion he required to see said indictment, when he was informed in the presence of said Walter Bourne, and from which the said Walter Bourne did not dissent, that he could not then see said indictment, for that same was in the Crown Office. And deponents stated that the comparison of one copy, at least, was necessary, and that the application was not made for the purpose of delay.

Chief Justice—Whose affidavit is that?

Mr. Henn replied it was the affidavit of Messrs. Ford, Mahony, and Cantwell, three solicitors concerned for three of the traversers; and he did not see why the officer should refuse to do what they required without an order of the court, but his refusal rendered the present application necessary. They were entitled to a copy, and before they took any step it was necessary that they should ascertain that the copy they received was a true and correct copy. They would frame their proceedings according to the copy that had been furnished; and suppose they should demur to this indictment, and it should turn out that there was a material variance between this copy and the bill of indictment, the demurrer would be ruled, not according to the copy furnished to them, but according to the record of the court.

Mr. Cantwell observed that the Crown Solicitor denied that he gave any such directions.

Chief Justice—Does any person appear for the crown?

A gentleman from the office of the Crown Solicitor stated that he attended on the part of Mr. Kemmis.

[Directions were then given to have the Attorney-General called.]

Mr. Bourne made some observations in a low tone of voice to the bench.

Mr. Ford—We did not hear what Mr. Bourne said, my lords.

Judge Crampton—It was nothing in reference to you.

The Attorney and Solicitor-Generals entered the court.

Chief Justice—Mr. Attorney-General, an application is made to the court, on behalf of the parties accused, that the copies of the indictment, or at least one of them, that had been furnished, should be compared, and that they should be at liberty to compare it with the original.

Attorney-General—I apprehend that all the copies that have been served on the parties have been, according to the course of the court, certified by the Clerk of the Crown; if that be the case, I certainly do not feel that there should be anything done out of the ordinary course in the present case. I believe those several copies have been certified to be true copies of the indictment.

Chief Justice—Is that the fact?

Clerk of the Crown—They are, my lord.

Mr. Whiteside supported the application, and referred to the fact, that alterations had been already made in the indictment when it was before the grand jury. It was not too much to ask to have one copy compared, when the Crown Solicitor said it was the right of the party. They merely asked that to be done, which was promised by the Clerk of the Crown to be done, but which had not been done. If any officer thought fit to certify that this was a true copy, he was not to conclude the party by it.

Chief Justice—The common course of the court, both criminal and civil, is not merely to give a certified copy, but a compared copy.

Solicitor-General—This is, I understand, certified to be so.

Mr. Ford referred to a copy of the indictment which he held in his hand, on which was written—"A true bill—for self and fellows, George Brooke." "A copy—Walter Bourne."

Solicitor-General—But it cannot be certified to be a copy except by comparison.

Chief Justice—I don't think any objection can be made to the application, and they only require one copy to be compared.

Mr. Henn—That is all.

Attorney-General—I don't apprehend it is necessary to go into particulars, but I object to their right to see anything endorsed upon the bill.—They have no right to see the bill of indictment, or the names of the witnesses on the back of that bill.

Solicitor-General—If the court think right to direct the officer to compare it, it is all right; but the parties have no right to see it.

Mr. Henn—All we require is to have the copy compared in the ordinary way. I submit that the rule to plead should only run from the time we have compared it.

Chief Justice—I think this is the subject matter of a distinct and independent motion, and one of which you should give notice to the Attorney-General, if you intend to bring the matter before the court. I think the motion you have already made is, that you should have a compared as well as a certified copy.

Mr. Henn—It cannot be said that we got a copy at all, until we have it compared; and, therefore, is it not from that time the rule is to run?

Judge Crampton—No, it is not from that time.

Mr. M'Donogh applied that they should be furnished with the caption of the indictment. The copy of the indictment, with which they were furnished, did not contain the caption. Nothing could be clearer than that the traverser was entitled to a copy of the indictment. The words of the statute were, that the officer should furnish a true copy of the indictment. There was an express authority on this subject, or rather on a statute containing the same words. In Foster's Crown Law, page 229, it was laid down that a party should have a copy of the caption, with the indictment; for it was in many cases as necessary to him to conduct him in pleading, as the other part. It was, therefore, plain that they were entitled to it.

The Chief Justice—That is the high treason act, I suppose?

Mr. M'Donogh—Yes, my lord, and applying the language of that statute to the present case, I think it a matter of right on the part of my clients.

Attorney-General—There is a short answer to Mr. M'Donogh's application, that it is a motion without notice. If Mr. M'Donogh came forward to apply for time to plead because he is not furnished with the caption——

Mr. M'Donogh—That is not my motion.

Attorney-General—I don't know very well what your motion is.

Mr. M'Donogh—So it appears (loud laughter).

Attorney-General—You may serve notice of the motion, but I will oppose the application. In the meantime the court will not make an order on your motion.

Chief Justice—I don't understand how we can make an order until notice is served.

Mr. M'Donogh submitted that the officers had not complied with the order of the court. We are not applying for time to plead, but we come to tell the court that the officer has not complied with the order made yesterday. We are not bound, I submit, to serve notice of motion when the four days allowed to plead are running on.

Chief Justice—Are you moving on any document?

Mr. M'Donogh—Yes, my lord, on this defective document that has been furnished to us, and we make this application because the officer has not complied with the order of the court, or the directions of the statute.

Chief Justice—If the words of the statute are not complied with, you must take your course.

Mr. M'Donogh—If the court directs us to serve notice we will do so.

Chief Justice—The court directs nothing.

Judge Burton observed that it was in the power of the court to enlarge the time to plead if an application were made for that purpose.

Chief Justice—We have nothing before us to show that the order we made yesterday is not complied with.

Mr. M'Donogh—You have, with great respect, the attested copy of the indictment, with the signature of the officer of your lordship's court.

Chief Justice—Serve your notice.

Mr. M'Donogh—Of course we will do so, my lord, and we will serve notice for to-morrow. We cannot serve a two-day notice, for this reason, that this requisition for the caption must be made before plea.

Judge Crampton—Serve notice for Saturday.

Mr. M'Donogh urged that they should be allowed to serve notice for the following morning. He was applying as a statutable right to get a copy of the indictment.

Judge Crampton—You complain that the order was not complied with, but you bring nothing before the court to show that it was not complied with.

Mr. M'Donogh—We have, my lord. May I beg to refer you to the affidavit read by Mr. Henn, in which reference is made to this document. You have the indictment, the affidavit referring to it, and the act of parliament directing that the officer should deliver the copy.

Mr. Henn—It strikes me that this is not a case in which notice is necessary under the terms of the act. We were entitled without any notice to an order to be furnished with the copy of the indictment; the court made that order, and we say that the officer of the court has not complied with that order. It is not necessary to have any notice to bring that under the cognizance of the court. The

officer is here, and the court can ask him if the copy has been furnished, and if it appear to be an imperfect copy, will not the court make him obey its former order, and that is all we ask.

Chief Justice—I conceive you cannot make this application without notice, Mr. Henn, the more especially as the Attorney-General has said that if he gets notice he will oppose your motion.

Mr. Cantwell—Then we will give notice for to-morrow.

Attorney-General—I insist in a case of this kind that the usual course of the court shall be adopted. I will not take notice for to-morrow morning.

Mr. Whiteside—It is for the court to decide whether a short notice shall be given or not. It is plain that it is the right of the party to obtain the document, and that document, notwithstanding the order of the court, is withheld.

Chief Justice—You have no right to assume that.

Mr. Whiteside—We have a right to ask that the court allow us to give notice for to-morrow morning.

Judge Burton—You may give notice for further time to plead.

Mr. Whiteside—We don't mean to ask time to plead.

The Attorney-General again submitted that it was necessary the usual notice of motion should be served. The precise terms of that notice should be reduced to writing, and he should have time to consider it.

Chief Justice—According to the common and ordinary rules of the court, if a party has a motion to make he may serve notice of it. That rule is the more required to be observed where the counsel at the other side says, I have no notice of this application. I require notice of it in order that I may be able to decide whether I will oppose it or not. That is the rule of the court, and he shall have the benefit of that rule. Why should we now go out of that rule, the ordinary and common rule of the court, that notice of motion should be given?

Mr. M'Donogh inquired if the court would direct them to give notice for Saturday?

Chief Justice—We make no order but that the ordinary rule of the court be observed.

IN THE QUEEN'S BENCH,

Saturday, November 11.

The Queen v. *O'Connell.*

Mr. Whiteside, Q.C., moved on the part of Mr. Duffy, that the paper furnished by the Clerk of the Crown, as and for a fair copy of the indictment, be amended, by having added thereto the entries and endorsements in the indictment, including the names of the witnesses, which motion was grounded on the paper purporting to be an indictment heretofore furnished by the officer of the court and affidavits filed. The affidavit of traverser's attorney, Mr. Gartlan, identified the document as furnished to them by the Clerk of the Crown, and stated that the matters sought by the present notice were not stated in that copy; that it was necessary to have those witnesses names, and that the application was not made for the purpose of delay. Two questions naturally arose: first, was he entitled to this under the strict interpretation of the act of parliament, and if not, whether under the present circumstances of the case it ought to be granted. Having referred to Deacon's Criminal Law, he proceeded. The names of all the witnesses that were examined before a grand jury should b endorsed on the bill of indictment, the witnesses being previously sworn. The bill, or whatever it might be called, became an indictment or true bill after the finding of the grand jury. He respectfully submitted that the accused was entitled to a copy of that bill, for he had a right to know whether in point of fact the bill had been found, and the endorsement of the grand jury was the evidence of the finding, and then, and not until then, the charge became a legal accusation; and if he had a right to the finding of the grand jury, he submitted that he had a right to that which preceded the finding of the grand jury, namely, the names that were endorsed on that bill. The names were first written on the bill, and it was difficult to say that he was to have what preceded the names and what followed them, and that the names themselves were to be withheld. He considered when the party accused was entitled to a copy of the indictment, he was entitled to a full copy of the record, and that which appeared thereupon was virtually part of it. That that was the correct view of the case was proved by the act of the legislature regulating the trials for high treason and misprision of treason, the 7th Will. III. c. 3. The statute recited, that whereas nothing was more just and reasonable than that persons prosecuted for high treason and misprision of treason should be fairly and equally tried, it enacted that all and every person whatever who was accused of, or indicted for high treason, should have a true copy of the whole indictment, but not of the names of the witnesses, delivered to them, or any of them, five days before he or they were tried for same, to enable him or them to advise with counsel thereupon. That statute was referred to in Foster's Crown Law, p. 228, and it was stated that the reason the names were not to be furnished was because that act of parliament excluded them. The words of the act of parliament under which he applied were, in substance, the same as that act of parliament, with this difference, that act of William III. contained that exception which was not introduced into the act of parliament on which this application was founded. The meaning of the saving and exception was this, that were it not for its introduction the thing excepted would have been granted. Every word in that act of parliament must be held to have a meaning, and a fair and liberal construction must be put upon it; and unless it was excepted by the act it should be included within that which by the statute was considered as part of it. Having referred to King *v.* Cooke, State Trials, vol. 13, p. 330, he called the attention of the court to the statute on which he founded his application, and which contained no exception. It was directed that in all prosecutions for misdemeanours instituted by the Attorney-General, the court should make an order, if required, that a copy of the indictment should be delivered to the party free of all expense to the party so applying; and he submitted that the statute being general must be construed to include that which the other statute, but for the exception contained in it, would have included, or it must be allowed that the exception introduced into that other statute was a useless proceeding.

Judge Crampton—You consider that the names of the witnesses are part of the indictment.

Mr. Whiteside—I do, my lord. It was considered so by that act of parliament, or the framers of it would never have said that a copy of the indictment should be furnished, excepting the witnesses names. He next referred to the 56th George III., chap. 87, and to the statute of the 1st and 2d Victoria, by which he submitted the legislature had prescribed the mode of proceeding before the grand jury. The witnesses must be produced and examined on oath, and an entry of that must be made by the juryman who administered the oath. The name of the witness must be verified, and not until then are the jury to find the bill to be a true one, by subjoining their finding, and delivering same to the officer of the court. It was of that complete record, and not of any part of it, the accused was entitled to have a copy. He was entitled to have a copy of that which preceded the finding, and which must appear on the indictment by the express law of the land. He referred, in support of his position, to 1 Carrington

and Payne, p. 85, 4 Carrington and Payne, and 9 Carrington and Payne. The argument might be urged on the other side, that it was not consistent with the particular case before the court that those particular names should be furnished; but it appeared from the prisoners' counsel act, 6 and 7 William IV., that it was the intention of the legislature that there should be no concealment of the parties who swore against the accused man. The learned gentleman contended that all the statutes upon this point should receive a liberal construction. One great reason why, in this case, the names of the witnesses should be supplied was, that his client, Mr. Duffy, was charged in the indictment with acts said to be done by other parties in remote parts of the west and south of Ireland, where he was not when those alleged acts were committed. The learned counsel quoted several authorities in support of his position.

The Attorney-General rose to show cause why the application made by Mr. Whiteside should not be granted; but previous to entering on the question he had to complain of the great irregularity of the proceedings on the other side. He had to complain that the motion which had just been made by the learned gentleman was not, properly speaking, exactly germaine to the matter of the notice of motion which had been served on behalf of this defendant, and which was to the following effect. (The learned Attorney-General here read a notice of motion, purporting to have been served by Mr. M'Evoy Gartlan, agent for the defence.)

Mr. Whiteside—My lords, that is not my notice of motion, and I know nothing about it (laughter). That is another notice altogether, to which it will be competent for the learned Attorney-General to address himself when it comes in due course to be submitted to the consideration of the court. Here is my notice of motion, my lords, which I will read for you. It is, my lords, to the effect, that the paper furnished to my client by the Clerk of the Crown as and for a copy of the indictment, be amended, by having thereto added the names of the witnesses examined before the grand jurors, which are endorsed upon the back of the document. Now, let me see what valid objection the crown can urge against so fair and legitimate a proposition ?

The Attorney-General said he was well aware that Mr. Whiteside, or rather his solicitor, had given such a notice of motion as he had now read, and it was the same which he had just moved, but he found that a second notice of motion had also been proved on behalf of this same defendant, which second notice, though it differed slightly, perhaps, in language, did not differ in any essential or substantial respect whatsoever from the first. Now, he wished to learn from Mr. Whiteside, whether it was his intention to abandon the second notice of motion, or to bring it forward, for, in case the learned gentleman had resolved upon adopting the latter course, he (the Attorney-General) contended that he ought to submit it at once to the consideration of the court, for, by bringing both notices simultaneously forward, he (the Attorney-General) could consolidate his opposition to both applications, and so need only address the court once. He really did not think it at all reasonable that he should be called upon to give distinct and separate oppositions to two motions, which differed only in some trivial particulars, and might be said to be essentially the same. If Mr. Whiteside thought the second motion necessary, let him bring it forward at once, and by this means they could be both dealt with simultaneously. If they were essentially different, one from the other, he could not press this point; but as they were so nearly allied, he put the learned gentleman to his election either to abandon the other or to bring it forward at once.

Mr. Whiteside—Really, my lords, I cannot clearly comprehend what the learned Attorney-General would be at (laughter). All I know is that I have moved the only notice of motion which was entrusted to my care, and I hope I have made out a good case for my client (laughter). I really can give no further information to the crown or court (laughter). It is very possible that there may be such a notice of motion in existence as is alluded to by the learned gentleman; but if so, it will be moved by another counsel, and it will be then the proper time for the crown to stand up to oppose it (laughter). I know nothing at all about it; and I protest, my lords, I cannot understand how my motion, now distinctly before the court, is to be met by telling your lordships that there is another notice of motion in existence (laughter). Another counsel will move the second motion if it is to be moved.

Mr. O'Hagan said he was on the same side with his learned friend Mr. Whiteside.

The Attorney-General—Both notices are substantially the same, and this being the case I am sure the court will not, after I shall have laid before them my views with respect to the present motion, sanction such a waste of public time as that another counsel should be permitted to stand up and move the same thing (or very nearly) all over again. I again call on the learned counsel at the other side to say whether he will abandon the other notice or bring it forward at once? I am sure I ask nothing unreasonable.

Mr. Whiteside (having consulted with the agent for the defence) said that without further argument he would relieve the Attorney-General of an infinity of trouble and anxiety, for he believed he might say that it was not in contemplation to move the second notice. He was inclined to think that it was only served for some purpose of caution.

The Attorney-General—Very well: the second motion is not to be moved. That is to be expressly understood.

Mr. Ford—I beg your pardon, Mr. Attorney-General, it is not to be understood that the second notice is abandoned in the case of all the traversers. The other motion is not abandoned in the case of Mr. O'Connell. Mr. Richard Moore will move it on *his* behalf.

The Attorney-General said that he did not understand why any allusion should be made in the present case to the case of Mr. O'Connell. He was only speaking in reference to the case which now engaged the attention of the court—the case of the defendant, Mr. Duffy—and the understanding was expressly, that in *that* case the second notice of motion was to be abandoned. To come, therefore, to the question now under the consideration of the court, the motion which had been made by Mr. Whiteside was to the effect that the document furnished to the traverser's attorney, as and for a true copy of the indictment, be amended, by being thereto added the entry and endorsement on the back of said indictment, together with the names of the witnesses. Now, as far as he understood that notice, what was relied upon by Mr. Whiteside was this, that by the 8th section of the act of parliament to which he had referred his client was entitled as of right to a copy of the indictment against him; that upon that indictment were endorsed the names of the persons examined before the grand jury—that such endorsement was part of the indictment, but that the endorsement was not included in the copy which had been already furnished pursuant to an order of the court—that, consequently, it was not a true copy, and that for this reason they were entitled to enter a rule to plead *de novo*.

Mr. Whiteside—I never said a word, my lords, about pleading *de novo*.

The Attorney-General—Well, it was of little importance whether the learned gentlemen used the

words or not. He would now come to the subject-matter of the present motion, which was one their lordships would acknowledge to be one of a somewhat strange and unprecedented character. He would not, on the present occasion, enter into that branch of the case which was referred to in the second notice which had been served on behalf of the present defendant—he would reserve his remarks upon the legal propriety or impropriety of the defendant being furnished with a copy of the caption of the indictment until a fitting opportunity should arise—until some move towards this point should be made by the opposite counsel; and whenever this was done, he trusted that he would be able to demonstrate to the entire satisfaction of the court that the defendants had not a particle of right in law to be furnished with a copy of the caption. This was not, however, the question now under consideration. He would confine himself to the proposition for which Mr. Whiteside had so strenuously contended—namely, that the defendant was entitled to a copy of the endorsement on the indictment containing the names of the witnesses, and, by a brief reference to the law authorities on the subject, and to the course of practice from time immemorial, he was confident of being able to convince their lordships that the concession of such a proposition would be directly at variance with law, justice, and expediency. The counsel on the other side contended that the witnesses' names constituted a portion of the indictment, and that for this reason the defendant was entitled to a copy of them. He utterly denied that the legislature could ever have had any such thing in their contemplation as that the names of the witnesses should be furnished to the accused, and he contended that they constituted in law no portion of the indictment. Much had been said about the 8th section of the act of parliament referred to, which appeared to be the authority upon which the learned gentleman at the other side principally grounded his motion; but a false construction had been put upon that section, the object of which was merely to concede to an accused party the right in certain cases of obtaining free of expense a copy of that which he previously could only get by paying for it. This was what the legislature had in contemplation, but in the act which conferred this right, he found nothing whatsoever that conferred any such privilege as was contended for by Mr. Whiteside. He appealed confidently to the experience of the court, and maintained that a reference to the course of legal practice from the remotest periods to the present hour, would clearly substantiate the fact, that as well in this country as in England the practice was utterly unknown of furnishing to accused parties in the copy of the indictment the names of the witnesses. He appealed to the experience of their lordships as to what the practice was in Ireland; they must know that the thing was unheard of, and that no such custom was permitted to prevail in England was a fact which he could prove by reference to a recent decision by one of the judges of the English Court of Queen's Bench, which decision was completely opposite in the present instance. The case to which he alluded being of recent date, had not as yet found its way into the regular law reports; but it was reported in page 996 of the *Jurist* for 1842. By a reference to that work it would be seen that the practice of giving the witnesses' names with a copy of the indictment was altogether unknown in England, and would not be permitted to exist there on any pretence whatsoever. The case to which he alluded was that of the Queen *v.* Bourne, which came on in November, 1842. In that case an application was made similiar to the present to the court, but the court distinctly refused to grant it, notwithstanding that the defendant grounded his application on an assertion upon his oath, that he had reason to believe that the witnesses whose names he wished to learn had been bribed and suborned to give evidence against him. The court even under these circumstances refused to give a copy of the names.

The Chief Justice, after consulting with Mr. Bourne, said—Mr. O'Hagan, the officer reports to us that the practice has never been to give the names on the back of the indictment, and is against the motion.

Mr. O'Hagan proceeded to say, that the question did not appear to have been raised; and that, besides, the later legislation for Ireland had very much changed the character of the indictment, and, as he should show, had rendered the ground of the present application much stronger than it would have been at any former time. He should first advert to some observations of the learned Attorney-General, and he took leave to say, with all respect, that the imputation of the motive of delay by that gentleman was wholly unfounded, and proved to be so by the strongest evidence. The Attorney-General had a right to form any opinion he pleased on the matter, but against that opinion he (Mr. O'H.) had the affidavits of three of the officers of their lordships' court—Messrs. Mahony, Gartlan, and Reilly—gentlemen as respectable and as experienced as any of the profession, positively swearing that the motion was made because they were advised it was material to the defence, and not for any purpose of delay. On his own part, on the part of his client, and on the part of those gentlemen, he repudiated the charge; and the court could not act on such a suggestion or assumption of any one, when the nature of the application proved its importance to the defendant, and, above all, when they had before them the oaths of witnesses beyond impeachment against a mere assertion. So much he was bound to say; and next, with respect to the arguments of the Attorney-General, he asks us for an authority. Reason and principle are with the motion, and is there any authority on the other side? One, and one only, is produced, and that is an authority against the Attorney-General, and not for him. In the case cited from the *Jurist*, the application was, not to have the witnesses' names from the officer of the court, but from the attorney of the prosecution, and not to have the names only, but also the addresses of the parties. That case was totally distinct from the present, but it proved for the defendant, that the practice in England is to allow the names on the back of the indictment to be communicated. The motion there was altogether based on the affidavit of the traverser, stating that he did not know the persons whose names were endorsed, or their residences. But he must know the names before that affidavit could have been made; and it was plain as light that he must have seen those names which were endorsed, and that is all we ask. So that the authority, *quantum valeat*, quoted as decisive by the Attorney-General, is decisive, if at all, against his own argument.

Judge Burton—There the application was for the addresses.

Mr. O'Hagan—It was so; and the names were known to the party from the indictment. There are two grounds of this application, on either of which it ought to be granted. If the names endorsed are a part of the indictment, the defendant is entitled to them under the express words of the 60th Geo. III., c. 4. But, even if they be not strictly so, he is entitled to them upon a fair construction of that act, its scope and aim, and upon decisions with respect to statutes *in pari materia*. Before the act, the party could obtain, at common law, a copy of the indictment in misdemeanours, though not in felonies, under a decision of some of the English judges—Tutwood's Case, Cro. Car., 483; Morrison

v. Kelly, 1, W. B ; Lewins's C. Cases, 1, 206; and the statute only gives that indictment free of expense. Now, what is an indictment? Not the parchment, nor the statement of the charge written on it, but the bill as it comes found from the grand jury. Until then it is no indictment, and a necessary part of its description is, that it must be sent to the grand jury with the names of the witnesses endorsed upon it. This provision is made by the late statutes 1 and 2 Vic., c. 37; and the peculiarity of that statute makes the mere novelty of this motion no argument against it. With those names endorsed, and the finding also endorsed, the bill comes back to the Clerk of the Crown; and then only is it an indictment—Dickenson, 153; Jabbet, 196; 1 Salk., 376. If this be so, it has at least three necessary parts—the statement, the names of the witnesses, and the finding—any one of which being absent, it is no indictment It cannot be contended that we would have had a copy of the indictment within the meaning of the statute, if the finding has been omitted; and this is practically conceded, for the copy furnished to us has the endorsement "a true bill." This is a part of the indictment, as is shown in Yelverton 99, Chitty C. Law 324, Comyn's Indictment A. The late statute makes the endorsement of the names essential before the bill is found at all; and is it to be said that this endorsement is less a part of the indictment than the other which is subsequent to it, and could never be made if it had not preceded? If the one is part of the indictment, is not the other?—and if we are entitled to the one, why not to the other? Mr. O'Hagan then proceeded to argue that the treason act—7 Wm. III., c. 3—as interpreted by the judges, was a legislative declaration on the subject. That act provided that the person indicted should have a true copy of the whole indictment, but not the names of the witnesses, implying, by the exception, that if it had not been inserted the right to the indictment must have included a right to the names. And that the names of the witnesses in that statute meant the names endorsed on the indictment might be considered settled by the authority of Lord Chief Justice Downes—State Trials, 31, 574. If they be so, and if the acts regarding subject matter of the same kind are to be read together, the omission in the second of an important exception stated in the first, amounts to a declaration that the legislature did not intend to apply the exception to the second. In Delap *v.* Leonard, 5, Irish Law Reports, 308, the Lord Chief Justice referring to the omission in the 4 S. t. c. 5, of the reference to a right of entry contained in the act of Anne, declares that it must be considered intentional, and that an equitable construction should be put on the statute, so as to carry out its intention. This was an authority on the construction of the act now under consideration, and opened properly the second branch of the argument—namely, that even if the endorsement were not strictly a part of the indictment, a liberal interpretation of the act would entitle the defendant to carry his motion. Legislation in modern times has been directed to enlarge the privileges of accused persons, and mitigate the harshness of the common law. The prisoners' counsel's bill recites that it is just and reasonable that persons charged with offences should be enabled to make full answer and defence; and reading the statute in question in the light of that salutary principle, he submitted that, on its equity, this motion should be granted. If it be not, the accused cannot have the means of making a full defence. He may be tried and convicted on an indictment which is a nullity. The foreman of the grand jury, under the 1st and 2nd Victoria, c. 37, can administer an oath only to the persons named on the back of the indictment, and when he does so, he must affix his signature or initials to their names. Suppose he administers it to persons not named by the Clerk of the Crown, or does not sign or initial it as the law directs, traverser may plead an abatement. Yet, if the endorsement on the back of the indictment is withheld, such a plea is impossible. In Lewin's Crown Cases, 322, a case is reported in which it was discovered some time after the grand jury was discharged, that the witnesses whose names were on the back of the bill had not been sworn, and Judge Park refused to detain the prisoner or hold him to bail. At the Carlisle spring assizes of 1832, a similar discovery was made before the grand jury had been discharged, and the witnesses were sent back and re-examined.

Judge Perrin—Do you mean that the bills were found without swearing the witnesses?

Mr. O'Hagan said that that was the fact ; and in the King *v.* Dickenson, Russel and Ryan's Reports, where a similar discovery was made after the conviction, the prisoner was recommended for a free pardon. He used these cases to demonstrate that an accused person should not be exposed by the court to arraignment, trial, and conviction, upon an indictment which may afterwards appear to be entirely void, when, if he obtains a copy of the endorsement in the first instance, he will be enabled by a proper plea to guard himself against peril to his life and liberty. Is it unreasonable that such a privilege should be sought? Again, suppose that a prosecutor is also a member of the grand jury, and his name appears on the back of the indictment, this will be matter for plea in abatement, and why should a denial of a full copy deprive the prisoner of the benefit of such a plea? He pressed these cases, because it would be monstrous to contend that a right of defence given by the law should be taken from the subject by the refusal of the means necessary to assert that right. To obtain any one of the advantages to which he had alluded, a copy of the endorsement was essential; and did not this tell strongly in support of the propriety of the application? But, further, the admitted privilege of the prisoner to have all the witnesses named on the back of the indictment called by the crown should, he submitted, strongly incline the court to grant this motion. That was a privilege of the greatest value, and had often availed to save innocent men from ruin. It was exercised frequently; the crown counsel were very often required to concede it practically on circuit, and the indictments were continually inspected by the prisoner's advocate without objection. He (Mr. O'H.) had done so very many times. In one case, before Baron Vaughan, three medical witnesses named on the indictment had been called; a fourth, the crown did not wish to examine ; but he was introduced, and his evidence changed the result of the trial. This right should be jealously guarded for the sake of justice; and yet, if the application were denied, of what value was that right? It would only be enjoyed if the prisoner knew the names of the witnesses, and was so enabled to insist on their production. Was it to be obtained only by chance or accident, at the caprice of a judge, or from the humanity of a prosecutor, or was the accused to be enabled to claim it effectually for himself? He could only do so if the principle contended for in this motion was established; for, if it were not, he never could have a right to see the endorsement. His right at the trial would not be stronger than at this moment, and if it was not yielded, how could he insist on the production of persons of whose names he had never heard? The case cited by the Attorney-General, and those relied on by his learned friend, Mr. Whiteside, from Carrington and Payne, showed that, practically, the inspection of the endorsement was allowed in England, and on the trial of the Chartists 4 C. and Payne 107, Mr. Roebuck required the prosecutors to produce a witness whom they had

held back. Sergeant Talfourd acceded to the demand, and the witness was produced. There it was plain that Mr. Roebuck must have seen the endorsement or he could not have made such a demand at all, and why should the liberty given in England be denied in Ireland? Why should the traverser in this case not be enabled to insist on the production of all the witnesses, and for that purpose be allowed to learn their names? It would be a strange doctrine to admit the legal right, and at the same time render its assertion impossible by withholding the only conceivable means of asserting it. Mr. O'Hagan then said that the English decisions as to the right of a prisoner to a copy of the caption applied strongly to this case. Though the caption was not a part of the indictment, the judges of England had unanimously held a prisoner charged with treason, entitled to that caption under the act, merely granting him, in terms, the indictment, and for the wise and humane reason, that it was as necessary to enable him to plead and defend himself as any part of the indictment, 1 East Pleas of the Crown 113, Foster 229, 230. This principle applied to, and ought to govern, the present case, for the endorsement was clearly as necessary to the defence as the caption could be. In fact, it must often be more necessary, and the construction of the treason act, in this respect, should go very far to decide this motion in favour of the defendant. He called on the court to interpret the statute liberally, and in the benignant spirit of modern legislation. The changes of latter days had taken away the strongest arguments which could be urged on the part of the prosecution. They all tended to afford the accused a full and fair opportunity of meeting the charges against him, and taking advantage of every legitimate mode of defence, and the law which had given him a right to the depositions of the witnesses could never have intended to deny him their names. No evil could result to the crown if the motion was granted, whilst the most serious injury and embarrassment might arise to the traverser if it was refused. Relying on the letter and the spirit of the act, on principle and authority, he submitted that the copy of the indictment ought to be amended.

The Solicitor-General rose to reply.

Mr. O'Hagan objected. He had waited to see if any other counsel would follow the Attorney-General, and he submitted that the crown had no right to the reply.

The Solicitor-General considered that right established, and would not waive it.

The Chief Justice conceived that it was so.

Mr. O'Hagan said that on trials, or law arguments, the rule might be settled; but this was a mere interlocutory motion, and that rule did not apply. He repeated his objection.

After some further discussion, the objection was overruled.

The Solicitor-General said a proposition more destitute of authority than that sought to be supported by the learned counsel on the other side, could not, in his opinion, be propounded to a court of justice. As to authority, he was utterly unable, after a very attentive consideration of the argument of his learned friend who had just sat down, to perceive a single case approaching to an authority in support of the point relied upon—namely, that after an indictment had been found, and before plea pleaded, the defendant is entitled to have what?—A list of the names endorsed on the bill found by the grand jury. He would repeat that a proposition more destitute of authority could not be discovered. It was a very extraordinary circumstance that after a lapse of nearly 25 years, not a single precedent could be produced of an application of that kind having been made. He would mention again some of the cases brought forward by his learned friend, in support of his case, and one of the first of them was that very case of the King *v.* Sheridan, in the State Trials. That was an application before the passing of the present statute. But his learned friend brought it forward for the purpose of bearing out a very extraordinary kind of argument, used by him and Mr. Whiteside. But surely that authority showed that the application would not be complied with, before the passing of the present statute. It was perfectly plain that defendants had no right whatever to the names of the witnesses at that time, and if they now claim any such right, it is solely on the construction of the 60th George III. It is by positive enactment, and nothing else, that this right can be claimed; for at common law no person had a right to a copy of the indictment against him; and in cases of felony the law is so to this day. It was in many instances *ex-gratia* that copies of the indictment were given in misdemeanours, as in Coke, Charles 483, but for the last two or three centuries no single case had been decided in which the point at all applied. He would show, by the authorities cited by Mr. O'Hagan, that the indictment was complete without all that was returned by the *certiorari*. A copy of the indictment was conceded to the defendant, to enable him to plead, and he has accordingly a right, under the 8th section, to get a copy of the indictment. But what was to enable the party to plead? According to the argument of the learned counsel opposite, it was not merely the charge that was preferred against him, and which was to be found in the indictment, but also the names of the witnesses on whose evidence the indictment was found. A number of cases had been cited, which appeared to him to have no more reference to the argument than that if at the trial the crown did not produce some of the witnesses endorsed on the indictment, the prisoners would not then be held to bail. They never intended to dispute that proposition, and if, at the trial, the indictments were called for from the court, and if the court thought fit to order its production, for the court had a discretion on the subject, as it was not then even a matter of right to the defendant to have it produced if the judge thought it unfit, at the solicitation of the prisoner or defendant, to order the production of the indictment, and if it then appeared that some of the witnesses returned on the back of the indictment were not produced, the defendant would not in such case be required to give bail; that was the full extent to which the cases cited on the other side went, but there was clearly a wide distinction between that and calling for a list of the witnesses endorsed on the indictment before plea pleaded. It became then a matter of fact whether the witnesses were examined on the trial or not, but he could not see how it was to be ascertained what witnesses had been examined before the grand jury. He wished then to call their lordships' attention to the 8th section. It provided that the defendant shall be entitled to a copy of the indictment free of expense, but the court would recollect that in that 60th George III. the legislature, while they gave that benefit to the defendant, were at the same time depriving the defendant of some advantages which he would otherwise enjoy. They were taking away from him the right to traverse *in prox*, and in return they gave him certain privileges, amongst others that of calling for a copy of the indictment free of expense. That being the case, it was perfectly plain that the argument could only be sustained by the positive words of the enactment. But it was argued that the names of the witnesses on the bill was part of the indictment, and among other authorities cited in support of that proposition, was one which he had brought with him in his bag as an authority the other way. That was the case of the King *v.* Ford and others, Yelverton page 99, in which it was stated that "the endorsement is part of the indict-

ment, and the perfection of it." But that meant merely, that without the endorsement by the grand jury finding it a true bill, it was not a perfect indictment. He never heard of anything being a parcel of the indictment that was not a parcel of the record, and Mr. O'Hagan referred to a passage in Lord Coke's Reports, that all the Queen's subjects had, as a matter of right, the power of access to public records. There was no doubt on that point, but then see to what an extent the argument of his learned friend would draw that principle. If the names of the witnesses were part of the indictment, they would be part of the record, and then in all cases of felony, or of treason, the parties accused would have a right to take out copies of the record, and thus to get a list of the witnesses' names, which it was well known they were not allowed to do; and accordingly, the record commences with a memorandum, that at a certain place and time, before a certain jury, the following bill was found, but the names of the witnesses endorsed on the bill were never given. It was, therefore, useless to assert that because the act of parliament said the defendant was to have a copy of the indictment, he was also to have a copy of the evidence of the crown. When his learned friend spoke of a refusal of the names of the witnesses being a hardship, he should recollect that it was a hardship which was not remedied by common law. It was true that the legislature had relaxed that rigour to a certain extent, and he admitted that any enactment touching on the rights of a prisoner, ought to be construed in a liberal sense; and he for one would never be found standing up to support a restricted view of any such enactment, or preventing an accused party from obtaining the full benefit intended to be afforded to him; but there was no trace in the act of parliament, or in any authority of the right contended for being intended to be given to a defendant. He never heard a more singular argument than that, because the finding of the jury was sometimes endorsed on the bill, every endorsement for that reason became a part of the bill. The finding was sometimes on the foot of the bill, and he was informed was so in the present case. The learned Solicitor-General concluded, by submitting that no case had been made out on the other side why the application should be complied with.

The court unanimously pronounced judgment against the application.

Mr. M'Donogh, Q.C., then moved on the part of the Rev. Mr. Tyrrell, that a copy of the caption of the indictment against his client should be delivered to his attorney, or that the copy of the indictment, already furnished to him, might be amended by adding thereto the copy of the caption. He moved on an affidavit, which stated that the copy of the indictment furnished to him did not contain the caption; that a copy of the caption was necessary for the traverser's defence, and that the present application was not made for the purpose of delay, and he hoped to satisfy the court that he was entitled to carry that application, and a great deal of the reasoning that fell from the learned Solicitor-General in the last case was calculated to sustain his application. This was a question of the greatest importance, and was deserving of the most careful consideration. It was material to examine the state of the common law antecedently to the introduction of any statutes on the subject. At common law the prisoner in a case of treason or felony was never entitled to a copy of the indictment. That had been decided in Sir Henry Vane's case, 1 Levinge's Reports, p. 68, and in the King *v.* Holland, by Lord Kenyon, 4 Terms Reports. On the other hand, where the party was accused of an offence inferior in point of criminality to treason or felony, the right to have a copy of the indictment had been at all times admitted, 1 Chitty's Criminal Law, page 463; and the indictment against the present traverser being for a misdemeanour, he was entitled at common law, as a matter of right, to a copy of that indictment. He did not require the aid of any statute to entitle him to it, but two statutes had been passed on this subject, and both referring to state prosecutions. At the threshold of the argument he laid down this proposition, that in cases of misdemeanour the party was entitled to a copy of the indictment, though in cases of treason he was not entitled to it until the passing of the statute, and he rather thought he was not previously entitled to it in cases of felony; but that might be doubted. In the reign of William III. the statute of treason was passed, and the analogous act in this country was the 5th George III. It contained two short sections, which embodied in them the entire of the first section of the statute of William III. The act of William III. had received judicial exposition, and during a long course of practice was unshaken by a single instance to the contrary; and that said that nothing was more just or reasonable than that persons prosecuted for the acts therein mentioned should be justly and equally tried, and they would see what it pointed at, as a just and equal trial was, that the persons accused of the offences mentioned therein should not be debarred from a just and equal means of defence; and it directed that in order thereunto, and for the better regulation of persons prosecuted for high treason or misprision of high treason, they shall have a true copy of the whole indictment, but not of the names of the witnesses delivered unto them or any of them, five days before he or they shall be tried for same, thereby to enable them, or any of them respectively, to advise with counsel thereupon, to plead or make any other defence thereto. The construction put upon that statute was this—that in order to carry out the intentions of the act a copy of the caption should be furnished—4 Blackstone, p. 351. It was stated clearly that the prisoner should have the copy of the indictment which included the caption, but not the names of the witnesses, five days before the trial, that he might have time to take exception thereto by plea or demurrer. In 1746, upon the trial of David Morgan and others, of the Scotch rebels, Sir Michael Forster, in his reports, page 1, says the prisoners were brought to the bar and informed that bills were found against them, of which they should have copies, and the court adjourned to that day se'nnight, and the copies of the indictment with the caption were delivered the same day to the prisoners. In Forster's Discourses on the subject of High Treason, page 227, he says—"He shall not consider the several clauses in the order in which they stand, but as far as he can arrange them under the following heads:—What privileges the prisoner was entitled to, and what was incumbent on him previous to the trial; and enumerating those privileges, he says, in p. 229, that the act mentioneth only the copies of the indictment; yet the prisoner ought to have a copy of the caption delivered with the indictment, for this was often as necessary for him to conduct himself in the pleading as the other. In the present case they said it was necessary for their pleading to have a copy of the caption; and they rested not only upon their rights, but they demanded this favour—if favour it should be called—on the case they made. He referred the court to 1 East, Pleas of the Crown. Though this act only mentioned the whole indictment, the prisoner should have a copy of the caption with the indictment. This was in many cases necessary to conduct him in pleading, and this was now the constant practice; but, after pleading, it was too late to object to the want of the copy or any deficiency in it. The first edition of Sir Michael Forster's work appeared in February, 1765, and in 1826, they found the law and

practice the same as it was in the time of that eminent judge. The passage from Forster was cited in Chitty, and acknowledged during a period of nearly 62 years, from 1765 to 1826. In Howell's State Trials in 1796, in the case of the King *v.* Jackson, Mr. Ponsonby claimed, on the part of the prisoner, to have the caption read, and the Attorney-General acknowledged he had a right to have a copy of the caption, and therefore had a right to have it read; and when Jackson was brought to the bar to have judgment passed on him the caption was called for, and the Attorney-General conceded the right to have it read. In Forster's Discourses on the State Trials, p. 230, it was stated that the requisition for the caption ought to be before plea; but if the prisoner pleaded without a copy of the caption, it was too late to make that objection or any other objection. For by pleading he admitted that he had a copy sufficient for the purposes of the act. By a reference to the case of the King *v.* Cooke, State Trials, it would be found that that proposition was abundantly sustained. He begged to call the attention of the court to a passage in Forster, p. 231, the materiality of which their lordships would find on referring to the statute which they were now going to consider. He referred to the 6th George III., and the section on which this question arose dealt exclusively with state prosecutions. In the language of Sir Michael Forster, state prosecutions were peculiarly the object of that section. Not only was the object of that section the same, but the language of the section was the same, as in the statute of William III. He referred to the 8th section. The privilege given there was somewhat larger than that given in the statute of treason, for by that statute there were fees to be paid to the officer for the copy. Let them examine those statutes, and they would see that there was no difference between them. The words in the statute of treason were "a true copy of the whole indictment;" the words in the statute of George III., were "a copy." That made no difference, neither did the words "whole and true" in the slightest degree affect the case. Both statutes spoke of the same thing—that was the indictment. The introduction of the words "whole and true" in the statute of treason, and the omission of them in this statute did not affect the case. It was not the intention of the legislature in the statute of treason that the party should have the names of the witnesses, and therefore they used the words a true copy of the whole indictment, but not the names of the witnesses. The statute of 7 Anne further extended those privileges. They found that by that statute the names of the witnesses should be given, and when it directs that they shall be given it drops the words "true and whole," as in the 60th George III., and says that a list of the witnesses shall be given when a copy of the indictment shall be given to the party accused. This application for the caption of the indictment had this additional auxiliary to sustain it—that at common law, and from the remotest period the traverser in a case of misdemeanour had a right to a copy of the indictment. The greatest latitude was allowed in cases of misdemeanour. The traverser was allowed the privilege of imparling in that court until the passing of the 60th Geo. III. It was deemed to interfere with the due administration of justice, and therefore the 60th George III. abolished imparlances, and narrowed the right of the party to traverse *in prox.* But it took care that the defendant should have the fullest information to enable him to plead, and it directed that a copy of the indictment should be furnished without expense in case it should be a state prosecution. He should take the liberty to say that two considerations were that the party had a right to take advantage of the errors in the caption, and next if he did not demand it before plea he lapsed his opportunity. In cases of felony even before the statute, the indictment used to be read once, aye twice, slowly, in order that the prisoner might take a note of it. He asked could this proposition be maintained in a court of justice, that a party had a right to take a legal objection to a document, and yet that he should not have an opportunity to see the document to which he may object? Should it be contended that a party should be at liberty to take exceptions and objections to a document, and yet shall not have a copy of it or hear it read? And yet it was said they were not to have a copy of the caption, although they might take objection to it. In "Hawkins's Book," and "Chitty's Crown Law," it was laid down that when there is any material defect in the caption the court may either quash it, or leave the defendant to demur, as in the case of the indictment itself. He also referred to "Bacon's Abridgement," for a further authority in the case, and asked how could they plead or demur, unless they got the means of doing so? He said with good reason, as the judges had stated in Gregg's case, and in the case of the rebels at Carlisle, that the party accused should have a copy of the caption, for they would not be giving him what the law said he should have except he got a copy of the caption. It was said that the accused should have equal rights and a fair trial, and to do that the assembled judges of England came to the conclusion that the copy of the caption should be furnished as well as the indictment. The practice after the statute of William III. probably arose from reason and justice, but it also took its rise from this—the adoption of the practice that existed in misdemeanours antecedently to the passing of the act. He submitted that from the earliest periods the common law had been to allow a copy of the indictment in cases of misdemeanour to the party accused. The rule was otherwise where parties were accused of more aggravated crimes, until the passing of the statute of William III., and from the passing of that act the practice was that the caption should be given as well as the indictment. That was evidence to the court of the law in cases of misdemeanour before the statute, and the caption was always given with a copy of the indictment whenever it was required. He next contended that it was essential to the proper pleading to get a copy of the caption, for they might either demur to it or apply to have it quashed. And let it not be thought that their object was frivolous, and when that copy of the caption was furnished, it would be seen whether a frivolous plea would be put on the record. He next submitted that it should be furnished before plea, and there was not an argument used by the Chief Justice in his late judgment that was not applicable to this case. The names of the witnesses were not necessary for pleading, but this was necessary for pleading. No declamation or argument could be applied against him in the present case. It could not be said that this was not required for a proper purpose. According to the statute of William III. it was right and proper to grant it, and the statute of George III. said that, according to our excellent constitution it was becoming that the party accused should have every means of defence. And lest there should be declamation or observation in this case on the other side, he would meet it by anticipation, by referring the court to the legislative declaration of the statute of George III., which said it is most becoming in our excellent constitution that every man that is charged should have the right of equal and just defence, and a copy of the indictment on which to consult his counsel. He then had the interpretation of the twelve judges of England, on an analogous statute, that it was equal justice between the crown and the subject, that the party should be furnished with a copy of the caption. He had, in addition to that, the authority of perhaps

one of the most eminent judges, and most humane men that ever lived, Sir M. Forster—the man who Blackstone said had a great mind for crown law; and Chief Justice De Grey said that Judge Forster might be called the Magna Charta of the people's liberty as well as their fortunes. He founded his application upon those authorities, and he said that what he claimed was the right of every British subject. He called for the due administration of the law in this case, and he submitted his motion was not to be resisted, for he had there the affidavit of the Rev. Mr. Tyrrell, stating that it was necessary for him to get the copy of the caption, to enable him to plead, and that this motion was not made for the purpose of delay.

The Attorney-General rose to oppose the application. The notice of motion which had been served by the attorney of the accused party was to the following effect. (The learned gentleman read a notice of motion.)

Mr. M'Donogh—My lords, that is not my notice of motion (laughter).

The Attorney-General—Well, now, I really must in this case, as in the former, complain of the irregularity of proceeding. The notice which I have just read has been signed on behalf of the Rev. Peter James Tyrrell, by his attorney, and it has been sent to the Clerk of the Crown's office.

Mr. M'Donogh—Yes, and so has the notice which I have just moved (laughter). There are two notices of motion in existence, and they are distinct.

The Attorney-General—They are not substantially distinct, and I call upon you either to abandon the second or bring it on now.

Mr. M'Donogh—It will be brought on all in good time, you may rest assured (laughter). It will be moved by-and-by (laughter).

The Chief Justice—Not by-and-by, Mr. M'Donogh. It may, perhaps, be moved on Monday, but certainly not by-and-by (laughter).

Attorney-General—My lords, the present motion is, that a copy of the caption be furnished to the attorney for the accused, or that the present copy of the indictment be amended by the introduction of a copy of the caption. There is another notice on the part of the Rev. Mr. Tyrrell, applying for the same thing in language somewhat different; and as the notices are not substantially distinct, I do respectfully urge upon you the propriety of ruling that Mr. M'Donogh shall bring on both notices simultaneously, that the same opposition may apply to both cases. I do not think it at all reasonable that when the subject matter is the same he should first take up one notice and then the other, and so create a necessity for a double argument on the same question.

Mr. M'Donogh—My motion, my lords, is distinctly different from that which is still in abeyance, nor would there have been any necessity for it, nor need there have been any argument at all, if the learned Attorney-General had been kind enough to give my client the caption when I asked him for it the other day (laughter).

The Attorney-General—The two motions are substantially the same. Will the court permit them to be taken up severally?

The Chief Justice—I think, Mr. Attorney, you ought to have mentioned this before. You ought to have stated your objection when Mr. M'Donogh first stood up and read his notice. It is now rather too late to make your objection.

Mr. M'Donogh—Precisely so, my lords (laughter).

Chief Justice—Proceed, Mr. Attorney-General; one is enough at a time, I think (laughter).

The Attorney-General then proceeded to argue at considerable length against the motion, and contended that such an application as the present, on behalf of parties who were accused of a misdemeanour, was totally without a precedent. The motion was to the effect that a copy of the caption of the indictment be furnished to the accused with the indictment, or that the indictment should be amended by the introduction of the caption; but the question of whether this application ought or ought not to be granted, depended very much upon the relative construction to be placed upon the act of William III., and the act of the 6th of George III. The learned gentlemen on the other side seemed to contend that the acts were analogous, and should be interpreted similarly, but this he denied, as the one had reference to high treason, the other to misdemeanours only, and it was notorious that the course of legal proceeding in cases of high treason differs in many respects from that pursued in cases of misdemeanours. The learned gentleman appeared to attach great importance to the case of the King *v.* Gregg, and evidently considered that it afforded a ground and precedent for the present application, but he (the Attorney-General) was of opinion that it was not a case in point, for there the prosecution was one for high treason, and what was ruled in a case of that description was not necessarily to be regarded as furnishing a precedent for a case such as the present when the prosecution was for the misdemeanour. He denied that the accused had the slightest right in point of law to a copy of the caption, for the caption was not in the eye of the law a component part of the indictment. He begged leave to call the attention of the court to this circumstance, which, if he was properly informed, was a fact beyond all controversy, that at no period remote or recent had it ever been the practice in cases of misdemeanour to give as part of the indictment or at all a copy of the caption. He challenged the experience of any of their lordships upon this point, and he was confident he was justified in hazarding the assertion that the court never knew of such a thing.

Mr. Justice Perrin inquired whether in the present case there was as yet any caption in existence?

The Attorney-General replied in the negative. The caption was never made out until the last day of term, and this circumstance, he contended, afforded yet another proof, if another were required, that it never could have been the intention of the legislature that the caption should, for the purposes of the accused parties' defence, be looked upon as part of the indictment. Indeed that the caption was no part of the indictment was a fact admitted by every writer of eminence who had written upon the common law of England. The great Lord Hale, in the second volume of his Pleas of the Crown, page 165, had laid it down expressly that "the caption of the indictment is no part of the indictment, but merely the stating or preamble," defining the jurisdiction of the court, and that Lord Hale's view of the question was perfectly accurate in point of law was clearly demonstrated in point of fact. That in the Court of Queen's Bench, no matter how many cases came on to be decided by their lordships, there was only one caption for the entire session. If, therefore, it was to be contended that the caption was part of the indictment, the inference would naturally follow that countless indictments in that court were defective, there being one caption for them all. The original caption remained in the court below, if the proceedings were removed by *certiorari*. But no matter what had been ruled, in cases of high treason there could be no falser construction of an act of parliament than to contend that by the 60th George III. parties accused of misdemeanour were entitled to have, with the indictment, copies of the caption also, which, he again repeated, was never regarded as part and parcel of the indictment.

Mr. Justice Crampton—I confess there is one

difficulty which presents itself to my mind in the present case, and it is this: the present application is for a copy of the caption. That caption is not as yet in existence, nor will it, according to the ordinary course of proceeding, until the last day of term. Do the gentlemen who make the application mean that the officer should be ordered by the court to make up a caption, in order that the accused may be furnished with a copy?

Sir Colman O'Loghlen—Yes; our application may be regarded in that light, in case there is no caption in existence.

Mr. M'Donogh—My lord, we take it for granted that the officer has done his duty.

Mr. Justice Crampton—But, then, Mr. M'Donogh, it appears that it is not the officer's duty to make out the caption until the last day of term; but let the Attorney-General proceed.

The Attorney-General continued to address the court—Mr. M'Donogh had contended that by the construction of the 60th George III. he had a right derivable from act of parliament, to get a copy of the caption; but let them calmly consider what could have been the object of the legislature in passing that act, and also what was intended by giving a copy of the indictment to the accused? What was the legal meaning of the word indictment? Did it, in point of law, include the caption or not? If it did, they in being entitled to a copy of the indictment, were of course entitled to that which was a component part of it—the caption; but if, on the other hand, it could be shown that the caption, in point of law, was no component part of the indictment, it was clear that the accused had no particle of legal right to what he was applying for. Now, he distinctly asserted, and the whole current of legal authorities was in favour of the allegation, that the caption was no part of the indictment. He had already quoted the words of Lord Hale, who stated it as his opinion that the caption was no part of the indictment, but merely the preamble or preliminary statement, conveying the style and description of the court at which the indictment was found. He would draw their lordships' attention to a decision which was solemnly made by the judges of the Queen's Bench in England, upon a point exactly analogous to the present, when the court ruled in express conformity with the opinion of Lord Hale. The case to which he referred was reported by Sergeant Williams in a note to the case of the King *v.* Atkinson, as reported in Saunders's Reports; and the question then to be decided being, whether the caption was amenable, the court ruled that the caption was no part of the indictment in law. The learned reporter who gave the case fully concurred in the propriety of the decision, and the doctrine had also obtained the approval of so high an authority as Lord Mansfield, who had repeatedly adopted it. In more recent days this view of the case was also fully borne out in "Gabbett's Treatise on Criminal Law," where, in vol. 2, page 278, in treating of the very thing now under discussion, he expressly said, we are to observe the caption is no part of the indictment itself, but merely the preamble, which does not appear until after the return of the writ of *certiorari*. So they saw that the whole current of authority went to prove that this document, so far from being part of the indictment, was nothing more than a preliminary memorandum, describing the character and jurisdiction of the court. In the last edition of "Archbold's Summary, by Jervis," page 26, it was stated that the caption was no part of the indictment, but a mere preamble affixed when the record was made up, or when the return was made to a *certiorari*. If he was rightly informed, there was no instance on record of a copy of the caption having been given in a misdemeanour prosecution, and this being the case, and furthermore such a thing never having been applied for before, (for he defied Mr. M'Donogh to cite a single instance of such an application,) it was for the court to consider whether they would be the first to make a precedent which might be attended with danger and inconvenience.

Mr. Justice Burton inquired when the copy of the caption was returnable in a high treason case.

The Attorney-General replied that in such cases instances had been known where the accused parties had been permitted to have a copy of the caption, with a copy of the indictment, as, for instance, in Gregg's case; but he denied that there was any analogy between a high treason case and a case of misdemeanour. It was on this ground that he maintained that Gregg's case, decided by the judges in 1707, was not in point, and even from that case, much as had been said upon it, he thought it very doubtful whether an absolute authority could be derived for granting the caption in treason cases, for the judges had not ruled this point absolutely; they only decided that in that case it would be "the safer course" to let the accused have a copy of the caption. When another motion was under consideration the other day in that court the counsel at the other side asserted that the right of having a copy of the indictment had been conceded by the legislature to the accused as a substitute for having the indictment read out. He took them at their own showing, and contended that the argument cut against themselves; for, if when the grand jurors came into court with the bills the indictment were read out, there would be no necessity for a caption. He never heard of the caption being given on circuit. If this were a case of felony, they would not be entitled even to a copy of the indictment; and he did not see how they were placed in more difficulty in a misdemeanour case, with respect to pleading, than in a felony case, in which they would be obliged to plead without either indictment or caption. The learned gentleman alluded to the inconvenience caused by these applications from the other side, without any precedent, and said it was very desirable under the circumstances that they should abide by what was a principle of law from the earliest period. It was impossible to say what the object of those applications was, but this was fully proved, that the party on whose behalf Mr. M'Donogh then applied had received what the law entitled him to, a copy of the indictment found by the grand jury against him, and that being the case the court would not be justified in granting the motion, which would be an innovation on the practice of the court in this country.

Sir Colman O'Loghlen wished to know if the Solicitor-General intended to speak; as, if he did, that was the proper time for him to do so?

The Solicitor-General said the course of proceeding would be the same as in the last case.

Sir Colman O'Loghlen said in the case of the Queen *v.* Gregg, Mr. Monahan applied to reply on behalf of the crown, and was refused by the court.

The Chief Justice said, if he did not mistake, it was decided in the case of the Queen *v.* Sheridan that the crown had a right to reply.

Mr. Hatchell, Q.C., said the cases were very different.

Mr. Monahan, Q.C., said in the case of the Queen *v.* Gregg, counsel on behalf of the prisoner moved that he be discharged. The Solicitor-General opposed the motion in the absence of the Attorney-General. After counsel for the prisoner had been heard, he (Mr. Monahan) then claimed the right to reply, but the court ruled that as the prisoner's counsel moved the motion, the right to reply lay also with the prisoner.

The Chief Justice inquired if the case of the Queen *v.* Kirwan was not an authority the other way.

Mr. Napier, on the part of the crown, read an extract from that case, in Burke's Reports, 134.

Sir Colman O'Loghlen said that decision was in a writ of error, and not in a motion, whereas the Queen *v.* Gregg was directly in point.

The Attorney-General said they could not think of giving up a very important privilege that in this country always belonged to the law officers of the crown, when they appeared. In the case of the Queen *v.* Kirwan that right was controverted by the defendant's counsel, but the court held that the crown had the right to reply.

Mr. Justice Perrin said the case of the King *v.* Frost was otherwise; but he should say that the practice in Ireland was, that the person who did not begin was to reply. That was Irish practice (laughter).

Mr. Justice Crampton said he would not then give any opinion whether it was or was not an inconvenient practice, but he recollected that in the case of the King *v.* O'Connell he was himself counsel on the part of the crown on a motion to withdraw a demurrer, and it was then ruled that the crown had the right to reply.

Judge Perrin said on that occasion he was placed in the same position which Sir Colman O'Loghlen now occupied, and he insisted on his right to reply, but the court told him to go on.

Mr. Monahan said the last case that had been decided was the other way.

The Chief Justice said he did not understand why there should be a difference between the practice in an important case and a trivial case. He always considered it to be the privilege of the crown to reply in all cases.

Mr. M'Donogh said it would be probably unnecessary for their lordships to interfere, as the Solicitor-General said, in the last case, that he would be the last man to stand up in support of any rule that pressed on a defendant (laughter).

The Chief Justice then called on Sir Colman O'Loghlen to proceed; but considering the lateness of the hour the court adjourned.

QUEEN'S BENCH, November 13.

The Argument of November 11 resumed.

The Queen v. *O'Connell and others.*

The Chief Justice called upon Sir Colman O'Loghlen to proceed with the argument o ' this case, which stood over from Saturday evening.

Sir Colman O'Loghlen said that in this case he appeared as counsel for the Rev. Mr. Tyrrell, and as their lordships had decided upon Saturday that if he had any observations to offer to the court he should offer them at this stage of the proceedings, it was his duty to show that he was entitled to carry this motion, notwithstanding the arguments of the Attorney-General. At the commencement of the case, and before going into the law of the case, he would remind them of two facts. In the first instance he would remind their lordships that this motion was not a motion to enlarge the time to plead or alter the rules to plead; but it was simply and solely for the purpose of obtaining for his client that which he believed he was entitled to, and his application was grounded not alone upon its own merits, but he had in its support the affidavit of his client's solicitor, who stated that this motion was not made for the purpose of delay, and that it was necessary for his client's defence that he should have a copy of the caption. He would now proceed to discuss the law of the case. Before going into the real question in this case he wished to remove from their lordships' mind any misconception as to the time in which the caption should be made up. Regularly speaking, it was the duty of the officer to make up the caption and prefix it to the indictment as soon as it was found. He knew in practice it was not the custom so to make it up, but in the eye of the law the caption ought to be made up and prefixed to every indictment the moment it was found, and no indictment was a complete record without it. The Attorney-General, upon Saturday, stated that the caption was not made up until the record was made up, or when a writ of *certiorari* was issued. He admitted that the Attorney-General had authority for this position in some of the modern text books, but that was not the case, and he trusted their lordships would declare that in point of law it ought to be made up as soon as the indictment was found. In cases of treason, it was the practice to give the copy of the caption with the indictment, and it was clear in that case that the caption was made up as soon as the indictment was found. In Johnston's case, 6 East, 583, which was a case of misdemeanour, they would find there, that the caption should be prefixed to the indictment as stated in the report of that case. But even if they had not this practice in their favour, he would say on reasoning, and in point of law, the officer was bound to have the caption made up, for nothing was more settled than this, that in order to obtain the copy of the caption the party must apply before plea. In Forster, p. 230, which had been already cited by Mr. M'Donogh, it was stated—"but if a prisoner pleaded without a copy of the caption as some of the assassins did, he was too late to make that objection or any other objection." The same principle was laid down by the Chief Justice, or the King *v.* Coke, 13, Howlan's State Trials, 330. He said that a copy pursuant to the act of parliament was to be delivered to the prisoner's agent or counsel if he required same, and that the party lapsed his time for obtaining the copy of pleading to the indictment. It was clear from that authority that the time of making the application for the caption was before plea pleaded.

Chief Justice—In cases of treason.

Sir Colman O'Loghlen—In cases of treason; and it was therefore clear in cases of treason the caption should be always prefixed to the indictment. Again nothing was better settled than that an indictment might be quashed for a defect in the indictment, and that was the rule, not in cases of treasons alone, but in cases of felony and misdemeanour. That point was ruled, in the King *v.* Browne, 1 Lord Raymond, 592, and 1 Salk, 376. All the authorities were collected on the point in Hawkins' Pleas of the Crown, B 11. He says—"I take it to be settled by the common law that the court may, in its discretion, quash an indictment for any insufficiency, either in the caption or in the body of it, as will make any judgment whatever given upon any part of it against the defendants erroneous." Suppose it appeared here by the caption that there were more than 23 grand jurors on the jury, or that the indictment was found by a lesser number than 12, their lordships would be bound to quash the indictment. He made use of that position to show that the caption should be made up; for there was no principle more settled than this, that any application to quash the indictment must be made before plea is pleaded. That was decided in Rockwood's case, 13 State Trials, 161-8, and Frith's case, Leech's Crown Law, p. 11; and a number of authorities were referred to in those cases. Therefore if they were at liberty to quash an indictment for defect in the caption, and that the application should be made before plea was pleaded, it was clear that the caption must be prefixed to every indictment before plea was pleaded. It was said by the Attorney-General that in this case no caption was made up, but that was no answer to their objection; for they said it ought to be made up, and it was clear the court should assist the party to get a copy of the record by directing it to be made up. He referred the court to an authority in 5 Barnwall and Adol-

phus, where the court granted a mandamus to the sessions' court to make up the record, and *a fortiori*, would it refuse to make its own officer do so? Not only had they that authority, but they had an authority in Hawkins in support of that very principle. In Hawkins, B 2, chap. 25, sec. 97, it is said "a caption is left as a thing of course to be drawn up by the clerk of the court when occasion shall require," and there was no time when occasion required it more than when a party applied for a copy of it. If there was any force in that authority in the practice in cases of high treason, it was clear, in point of law, that the caption should be made up the moment the indictment was found; and if it were not made up the court would direct the officer to do so. Having said so much on this part of the case, he would now come to consider what was the real purport of this motion, and that was, were they entitled to a copy of the caption, supposing it to be made up? He submitted they were entitled to it; first, on principle, and in the second place, on the statute law; and if there was no statute they were entitled to it at common law. They were entitled to a copy of the caption in the first place upon principle, for they were entitled to be put in a position that they could take advantage of any defence which the law allowed them. See the position they were in at the present moment. They had an indictment before them, and at present they could not legally know anything about that indictment, except that it was an indictment for conspiracy. Of course they might know it as a matter of rumour, but they could not know from the indictment when it was found, where it was found, or by whom it was found. But if they had the caption they would know it, for the caption contained the style of the court, the names of the persons before whom the indictment was taken, and the manner in which taken, and if the indictment were improperly found; or if they had no jurisdiction, or in several other cases that might be supposed. If they had these particulars, they might have reason to plead special matter—they might plead in abatement, and they could not only plead in abatement, but they could move to quash the indictment, and not only that, but to take advantage of any defect on demurrer. That was decided in the King *v.* Fearnley, 1 Leech 425, and 1 Term Report 316, and in the King *v.* Ware, Strange 698. Would it not be monstrous that they should have the right to quash the indictment for a defect in the caption, or to demur to it, and that they should not have a copy of it? How could they know how to frame their demurrer or to plead, except by the copy of the caption which he submitted the law gave them? In the second place, he said not only were they entitled to a copy of this caption on principle, but were entitled under the statute. The statute to which their lordships had been referred, the 60th Geo. III., expressly enacted, that in all cases of prosecutions for misdemeanour, instituted by the Attorney-General or Solicitor-General, the court should, if required, make an order that a copy of the indictment after the appearance of the party prosecuted should be furnished to him. The learned Attorney-General on Saturday had cited a great number of cases, to show their lordships that the caption formed no part of the indictment, but he thought he should be able to show their lordships that notwithstanding the numerous cases, and numberless dicta he had cited, that that proposition was not correct, but a mere play upon the words. The words of the indictment, as he thought he could show, had two distinct meanings. It had first a limited original meaning, and in the second place a more extended and enlarged meaning. In its original meaning their lordships were aware that it was simply an accusation not of record. They would find it defined by Lord Coke (Coke, Littleton, B. III., 126) to be "an accusation, found by an inquest of twelve or more on their oath," and Blackstone (Blackstone's Commentaries, 302) defined an indictment to be "a written accusation, presented on oath by a grand jury." The original limited meaning of the word indictment then was, "an accusation, not of record," and in that case the caption certainly formed no part of it, for the caption was not an accusation, or formed on the oath of the grand jury. Nor did it form any part of the document that was sent before the grand jury. But in addition to the general or limited meaning of the word indictment, it had also a more extended meaning—namely, the record of the accusation, and consisted of two parts, the body and the caption. That the word "indictment" had that signification from Sergeant Hawkins, an authority of the very highest character. Treating of indictments in book 11, chap. 25, Hawkins proceeds in his usual luminous manner to subdivide the subject for the better understanding of its nature into several divisions, and says, "I shall consider first what ought to be the form of the body of an indictment, and secondly, what ought to be the form of the caption of the indictment," thereby clearly showing that the indictment of record consisted of two distinct parts, the body and the caption; that in his use of the word indictment, it had a larger signification than a mere accusation, and that he divided an indictment into two parts, the body and the caption. In the passage to which he before referred their lordships, Hawkins made the very same distinction, and showed that, in his opinion, the indictment of record consisted of two parts. The passage to which he referred was, he thought, in book the second. "I take it to be settled," he says, "by the common law, that the court may, in its discretion, quash an indictment for a defect, either in the caption or the body of it, so as to make the judgment on it erroneous;" thereby making it to consist of two parts—the body and the caption. Wherever the indictment is spoken of, it is considered as speaking of the indictment of record, consisting of two parts—the body and the caption. He asked the Attorney-General if he ever saw a copy of the indictment put in evidence without the caption, or whoever saw an indictment of record pleaded without the caption? It was the caption gave validity to the indictment, and showed where it was taken, when it was taken, and before whom it was taken. In support of this view of the case he referred their lordships to the case of the King *v.* Smith, 8 Barnwell and Cresswell, 341. If they were treating this subject only for the first time, it might be contended that in the word indictment the caption was included, for the word indictment had two distinct meanings; first, an accusation, not of record, and in that sense the caption was not included; but it had another meaning that was an accusation on the record, and in that sense of the word the caption was necessarily included. But they were not driven to argue in that way, for they had express authority that when the statute granted a copy of the indictment the caption was necessarily included. By the statute of treason, 7 William III., cap. 3, sec. 1, in England, and 5 George III., cap. 21, sec. 12, in Ireland, it was directed that a true copy of the whole indictment should be given to the prisoner. He also referred, in support of this proposition, to Forster, 229, and 1 East, P.C., 113. Even to the present day that practice was continued: for by reference to the trial of Frost it would be found that in that case the copy of the caption was delivered with the indictment. Such had been the construction put upon the words of the statute of treason; and let them now consider whether there was any substantial difference between the present statute and the statute of treason. He respectfully submitted that

there was not the slightest difference between them. He fully admitted that the wording of both statutes was not the same. In the first statute it says "a true copy of the whole indictment;" in this statute it says "a copy of the indictment." But there was no substantial difference between them; for how could a copy be a copy and not be a true copy? Did the Attorney-General mean to contend that the requisition under the statute for a copy of the indictment would be complied with by furnishing them with a false copy of the indictment? It could not be contended that he was only entitled to part of the indictment; and he would remind their lordships of an observation of Mr. M'Donogh's, which showed why the word "whole" was introduced. It was the practice before the act to give the prisoner a copy of part of any indictment that he wished to make objection to, and it was enacted by that statute to give him a copy, not of part, but of the whole. Why should there be a different construction put upon this act from the high treason act, for both acts had reference to state prosecutions? The Attorney-General had put this construction upon it: he said that the words in the treason statute were introduced in *favorem vitæ*. But there was no evidence of that; on the contrary, it appeared that the caption was granted to the party for the purpose of enabling him to plead to the indictment. The words used by Judge Forster were the same as the words used in the Pleas of the Crown, that the prisoner should have a copy of the caption, not in *favorem vitæ*, but because it was as necessary to conduct him in pleading as the other. It might be said it would have been easy to put the word "caption" in the statute. It was true it would be easy to do it, but the legislature seeing the practice that had prevailed for a century and a half on the treason statutes, never thought a different sense would have been contended for.

Chief Justice—In ordinary cases, except the statute of treason, what is the practice?

Sir Colman O'Loghlen thanked his lordship for calling his attention to that. He would be able to show their lordships that in cases of misdemeanour the party always got the copy of the caption whenever it was made up. At common law they were entitled to a copy of the indictment as matter of right—Deacon's Common Law—and a copy of the caption was always given whenever it was prefixed to a copy of the indictment. In support of the proposition he referred to the King *v.* Marsh, 6 Adolphus and Ellis, p. 244. He would appeal to their lordships, and he thought he could state that in every case where the record was made up it was the custom to give a copy of the caption. Such was the practice where proceedings were removed by *certiorari*, and he submitted that in this case the court should compel the officer to make up the caption, and when it was made up they were entitled to a copy of it.

Judge Crampton—If you come in here with a motion that the officer be ordered to prefer the caption to the indictment, it would be well; but this motion is to get a copy of that which is not made up.

Sir Colman O'Loghlen said his lordship would recollect that they had been refused to look at the indictment, and that they knew not whether the caption existed or not; and in point of law it was necessary the caption should exist. It was the duty of the officer to make up the indictment, and they thought he had done every thing that he was bound to do. Even if there were no caption in this case, he would say that their lordships should direct the officer to make up the caption, for they were entitled to get a copy of it. Those were all the authorities he had been able to collect, and he had endeavoured to show their lordships that, in the first place, it was the duty of the officer of the court to make up the caption, and if he failed in his duty the traversers should not suffer for that; and if no caption were at present in existence, that their lordships would order him to make it up, and when made up they were entitled to a copy of it. The court were now called upon by the crown to deny the subject that which he swore was essential for his defence—namely, the copy of the caption; and they were called upon to do that in a state prosecution—a prosecution in which, as Judge Fosrter had said, the greatest possible advantage should be given to the subject. He now called upon them to give a deliberate construction upon a statute that had been passed avowedly in favour of the subject. They said they were entitled to the caption, and claimed it as a matter of right. They asked for it *ex debito justitiæ*, and if the court were not quite satisfied in point of law, that they ought to have it; yet if they entertained a doubt on the subject, they were to give the traversers the benefit of it, and of a liberal and sound construction of the statute.

The Solicitor-General said it was his duty on the part of the crown to resist this innovation, which appeared to him to be of a dangerous character, and like the former attempt on the last motion, to be wholly unsupported by precedent, and he thought he should clearly demonstrate that it was wholly unsupported on principle. Before he went into what he might call the reasons for this application, he should advert to one or two topics that Sir Colman O'Loghlen relied upon, and which appeared to him to have no bearing on the case, and to disembarrass the court in the first instance of those considerations. He was a little surprised to hear Sir Colman O'Loghlen claim this as a privilege to which the defendant was entitled at common law. His argument was, that in cases of misdemeanour there was a common law right to a copy of the indictment, and that that common law right carried with it a title not only to the indictment itself, but to the caption. For this an authority had been cited, and he thought it would be found on reference to the only case that had been urged in support of that proposition, that it only established a principle which he did not dispute, that where a record was removed the caption accompanied the indictment. In cases of *certiorari*, where the court called upon a court of inferior jurisdiction to return an indictment, the invariable practice was, to return not merely the indictment properly so called, but the caption of the court in which it was found. The reason why the caption in that case was returned was this, that one of the objects of removing the indictment from a court of inferior jurisdiction was to raise the question of jurisdiction, as it must appear to the court issuing the *certiorari*, which had no judicial notice of the fact, what the style of the court and the jurisdiction of the court was in which the indictment was found; but to apply that to the Court of Queen's Bench, and an indictment found in its judicial knowledge before itself, and by a grand jury sworn before itself, appeared to him to be quite monstrous. With respect to the case cited from 8 Barnwell and Cresswell, he submitted that it had not the slightest bearing in this case. Sir Colman O'Loghlen contended that the word indictment was capable of two significations, and in the abstract he did not dispute that it might; but so far from that helping his argument, it told against him, for it established the distinction between the record and the indictment. With respect to the case of the King *v.* Johnston cited by him, he thought their lordships would see that no caption was given there at all. The question raised on that trial was with reference to the jurisdiction of the court upon matter appearing on the face of the indictment, and the party accused contended he should be tried before the tribunals in Ireland; and not in the Court of

Queen's Bench in England, before whom the indictment was found. The case of the King *v.* Marsh had also been referred to by Sir Colman O'Loghlen, but that was a case of the removal of proceedings after conviction in a court below. No person ever denied that proposition, and it was an authority for that and no more. He submitted that neither at common law or on the statute was there any foundation for granting the application; and having referred to several authorities in support of his proposition, submitted that the application could not be sustained by reason or authority.

Mr. Napier stated that in cases of treason two counsel were invariably heard on the part of the prisoner—one in opening the case, and another in speaking to evidence after the case had closed, while in felonies and misdemeanours only one counsel could be heard.

Mr. Fitzgibbon—Does that give liberty, Mr. Napier, to have two counsel to speak for the crown?

Mr. Ford observed that Mr. Napier was the third counsel that had spoken on this motion for the crown.

The Chief Justice, at the conclusion of the argument, intimated that the judges would retire for some time to consider their judgment.

On the return of their lordships into court,

The Chief Justice delivered judgment. After stating the nature of the notice of motion, he said that though this motion purported to be grounded, amongst other things, upon an affidavit, and though an affidavit had been made, the effect of which, as he heard it stated by counsel on Saturday, went to this, that the parties making the application meant thereby no unnecessary delay; yet he did not make any particular or special case as the ground of the application. He could conceive certain circumstances might by possibility exist, which, if properly brought before the court, and openly stated to the court in sufficient documents and affidavits, might be forcibly and strongly made use of in order to sustain the present application—such as this, for instance:—If there was an allegation that the bill of indictment purported to be signed by the foreman, on behalf of himself and his brother jurors, and was not in point of fact signed on behalf of the majority of the grand jury, or in fact that twelve jurors did not concur in the finding of that indictment. If the names of all the jurors did not appear on the indictment as it at present stood, the party to enable him to make his defence, by bringing forward such subject matter as he had alluded to, might make a case to be placed before the court, to show them that it might be necessary for his defence that the names of all the jurors who found the bill might be set forth, which would be the case in the production of the caption, and such a statement as that might probably induce the court to comply with the application. He did not put that case from an idea that such a state of things existed here, but to exemplify the proposition he laid down, that perhaps a party might bring forward an application of this kind upon certain circumstances which would call to give a decision in his favour, but which would not be the case unless such circumstances were laid before the court. This application was not grounded upon any special circumstances of that kind, but was brought before the court and insisted upon, as he thought he heard Sir Colman O'Loghlen frequently say, as a matter of right, which the party was entitled to insist upon *ex debito justitiæ*, and as that application was brought forward the majority of the court were not of opinion that it ought to be complied with. This case has been argued very much on analogy, on the statute of treason; and it was insisted that, by reason of the similarity of the wording of the clauses in the statute of treason and in the statute of 60 Geo. III., the same construction was to be given to the statute now in question, the language of the two statutes not being essentially or materially different. He confessed that he went very much with the argument that there was no substantial distinction in the words made use of in the statute of treason and in the words made use of in the present statute. But he would observe this, that the language of the statute of treason had been extended by interpretation beyond its original meaning; but though it had received that construction at a meeting of the judges, yet in point of fact there never was a judicial interpretation to that effect or extent. The language used by the judges at their meeting was this, that for the safety of the subject it would be better he should have a copy of the caption as well as of the indictment. But that language was used by the judges in giving a construction to one of the most penal acts of parliament that ever was passed. He apprehended, therefore, that it would be a very unsafe rule, indeed, to apply the language of that most highly penal act—the act of high treason—to other cases and other crimes which the law had not placed in a similar degree of condemnation with it, and that the judges had been actuated in this construction of the statute of treason, more by reason of the extraordinary nature of the pains and penalties created by it in this instance, than by anything like a general rule. At common law, the party accused of a misdemeanour would have been entitled, at least there is no instance of his being refused, to a copy of the indictment against him, on paying certain fees to the Clerk of the Crown; but he had the authority of the officer for saying, that a party accused of misdemeanour, applying for and obtaining a copy of the indictment against him, had never been furnished with a copy of the caption of the indictment. He believed also that the same appeared to be the universal practice in the administration of the law in England up to this day. He took it for granted, that if it were otherwise, some one or more of the acute and intelligent gentlemen who appeared for the traversers, would, on that—the second day's argument—be able to produce a solitary instance of an application of this kind being made and granted. The very fact of the absence of practice in its favour, was a further demonstration to his mind, that the construction imposed upon the statute of treason, had never been thought applicable to criminal cases in general, and there was no strong moral rule that entitled the party to call for it. He was afraid to make a precedent on such a subject, for he could not see the danger and inconvenience that might not follow from this novel introduction, now, for the first time. It was not difficult to show the difficulty that might be introduced into the administration of criminal justice in this country, if such an application as this was necessarily to be acceded to as a matter of right. This application was grounded on the 60th George III., an act not confined exclusively to the Court of Queen's Bench, but an act of parliament that was equally applicable to criminal proceedings at the Commission of Oyer and Terminer, and inferior courts. It was open to any person accused of a misdemeanour, at the suit of the Attorney-General, not only in that court but in any one of these other courts, to make an application to be furnished free of expense at any period of the proceedings with a copy of the indictment; and if that were to include a copy of the caption, and if that was to be introduced as a new practice, against all regulation and precedent, see what inconvenience might not the operation of the practice introduce, and how much it would embarrass without aiding or assisting the criminal business at the assizes. There was no end of the instances that might be conceived of the inconvenience and danger that might be attendant upon the introduction of a new prac-

tice, without authority or warrant, and which was now, for the first time, pressed as a matter of right, and demanded of the court. Now, in point of fact, the indictment, popularly so called, and the caption of the indictment, were quite different; he did not say quite different, but they were essentially different. The indictment was completed by the finding of the grand jury, on their oaths. The caption was not made up at the same time, nor had the grand jury anything whatever to do with it. It was the ministerial act of the officer of the court who completed the record, by the introduction of a certain description of the court, which, in point of fact, made no part of the charge, and which was only introduced on the record, when the record came to be properly made out. The present indictment was not in a state to furnish the party applying with the caption, which he applied for; for until the record came to be finally made up, and until it was completed, there was, in point of fact, no caption in existence. To comply with the present application, would be, in point of fact, to order the Clerk of the Crown to comply with an impossibility; for there being no caption at present, he could not furnish it as a matter of right, with the copy of the indictment. It might be fair, if particular reasons existed, to stay other proceedings in the office, for the purpose of directing the Clerk of the Crown to lay aside the other business of the office, and to make out a special caption at the suit and instance of the party applying. An application of that kind might be made, if the ends of justice were shown to require it. If the party came to tell the court he complained on what the indictment did not in the face of it show to them, that the bills were only found by eleven jurors; and that to enable them to take advantage of that in a legal way, he required that a copy of the caption might be made and furnished to him. But that was not the present application. They said that in all cases, without reference to what the object was, or stating what the object was, they had a right, because that construction was given to the statute of treason, to insist as a matter of right that a similar construction should be applied to the words of this act. Now he would say that in ordinary cases the word indictment did not mean the caption, but something else, and different from it, and that a party applying to succeed in their application must show that in the construction of the 60th George III., the ordinary language must be laid aside, and the meaning which they gave to it adopted. The meaning they gave to it was different from the fact, and both fact and law were *prima facie* against, and in opposition to their proceeding. The caption was not in existence. The caption could not, therefore, be considered as part of the indictment which was in existence, and therefore, unless a case was shown that they were entitled to adopt the same construction that was given to the statute of treason, grounded upon its very peculiar circumstances, he did not see what right they had to say that they should take this word "indictment," and use it with a meaning quite different from its common one, and insist that that meaning was the one that should be acted upon and adopted by the court. It was enough to say that the practice was universally against them. This act of 60th George III. had been in force now for upwards of 20 years—for 23 or 24 years. It had been frequently acted upon, and cases had been brought to trial under it in that court and elsewhere, and that was the first time that such a construction of it was ever thought of. On the other side they had the construction adopted from universal habit, because they found that such a demand was never made, and that when copies of the indictment were furnished either on the old rule of paying for them to the Clerk of the Crown, or under the new provisions of this new act, where a party obtained them as a matter of right without paying for them, up to this hour the habit and usage had been, though they granted the indictment, not to give a copy of the caption. He believed there was no more settled rule than that the practice of the court was the law of the court, and it required the application of no authority for the establishment of that proposition! The law of the court was against the present application, and the law of the court was the law of the land. The law of the court was against the application, the established practice of both countries was against it, the application and the strict language of the late act was against the application. On those grounds it was his opinion that the party applying had not made out his case to have the application granted.

Mr. Justice Burton said he did not hope to add anything to the opinion of the Chief Justice, in which he concurred, but he felt called upon to say a few words as to the reasons why he had come to the same opinion, because he was bound to confess that during the time they were engaged in the case he was disposed to entertain a different judgment till he had consulted with those of his brethren, with whom he agreed. He would very shortly explain his views of the subject. It was not an application made to the discretion of the court in a particular case for an order to the clerk, to add a copy of the caption to the copy of the indictment—that is, a right of using the caption for these purposes. Now, as it was contrary to the custom of the court, it was quite clear but for such an application, and on the supposition of its being granted, that caption would never have been made till the end of the term. But they had applied to have it as a matter of right under the statute law of the realm. Now at common law, there was no instance of any party applying for a copy of captions or of any dictum being made on the subject. He thought there was no manner of doubt, that all the authorities cited tended to show that the indictment was altogether a different thing from the caption, and that it was a document by itself—an addition to, but no part of it. Under such circumstances, let them look into the question of right which was asserted. There was nothing to show in law or practice that a person applying for and obtaining a copy of the indictment necessarily was entitled to a copy of the caption also. He is entitled merely to a copy of the indictment as it was when it came from the jury.

Judge Crampton was of opinion that the present application was one deserving the name of an innovation—one against precedent, and also tending to interfere with the due administration of justice—it was one utterly unnecessary for the purpose of the traverser; for these reasons he felt bound to agree with the Lord Chief Justice and his brother Burton in refusing the application.

Mr. Justice Perrin said he was of opinion that the application should be complied with, and that the accused ought to have a copy of the caption of the indictment, in order that he might advise with his counsel as to the proper plea he should put in. The statute which had been so often referred to—namely, the 60th Geo. III., was one which abridged the existing rights of the persons prosecuted for misdemeanour. It shortened the time for pleading, and obliged the parties to plead within four days of the time at which they were charged. It provides, in particular, that in prosecutions for misdemeanours, namely, prosecutions instituted by the state, by the Attorney or Solicitor-General, the party shall be furnished after appearance with copies of the informations, or indictment, free of all expense. The parties were obliged by a previous provision of the enactment to plead within four days, having previously a right to imparl, and in order to enable them to meet this new state of things, and the con-

dition in which they were placed, the statute obliges the crown to give the parties a copy of the indictment or informations on demand. And for what purpose? Why, for his defence, and putting in a proper plea is a most essential part of the defence. Therefore in his opinion the parties were clearly entitled to a copy of the caption to enable them to consult with their counsel as to the nature of the plea they should put in, or whether they should demur to the indictment altogether. The application was made on the analogy of the enactment, so that in the statutes of 5 George III., chap. 21, in Ireland, and the 7th William III., and 7th Anne, in England, under which statutes it had been held uniformly by the judges ever since the passing of those acts, that the party was entitled not merely to a copy of the body of the indictment, but to a copy of the caption. That was an act not to abridge the rights of the accused. That was a statute not requiring to be liberally construed, because it was inflicting a deprivation or disadvantage. On the contrary, it was an act enlarging the rights of the party, and giving him additional advantages. It was an act of which Judge Foster said that it seemed as if it were intended to hold men safe in treasonable practice, and yet the judges in putting a construction upon that statute said, that the provision which gave the prisoner a right to the copy of the indictment gave him a right to the caption of it. A good deal of argument had been used on one side and the other as to whether the caption was part of the indictment, and the learned counsel who opened the case disclaimed the notion that it was on that ground he had applied to the court, but upon looking into the authorities to which he had been referred, and on looking into the views taken by the learned judges and able lawyers who were considered as authorities, he doubted very much the soundness of that disclaimer. He found in "Hawkins' Pleas of the Crown," chapter upon indictments, a work of high authority, and a writer that never was supposed to have taken too favourable a view to those prosecuted, that he conceived the indictment consisted of two parts, the caption and body of the indictment. In "Hawkins' Pleas of the Crown," he states that, "an indictment is an accusation at the suit of the crown, found to be true on the oaths of twelve men of the county returned to inquire into all the offences contained therein." Now, that being so, is it not necessary that the party accused should have a copy of the caption? Supposing the caption states on the face of it, that the indictment was not found by twelve men of the county, or leaves the matter uncertain, then the parties would be entitled to demur to the indictment, because, if not found by twelve men, the indictment is bad, or if not found by the twelve men of the county, it would be sufficient to warrant the parties in demurring. It, therefore, appeared to him, according to Hawkins, that the indictment consisted of two parts, and consequently the accused were entitled to the caption as well as to a copy of the body of the indictment. This dictum of Hawkins was not contradicted by any authority except by the note to Lord Mansfield's judgment by Saunders, but he (Judge Perrin) scarcely thought that that judgment warranted the conclusions drawn from it. His lordship says, "that the caption is erroneous if it do not set forth the court wherein the jurors before whom, and the time and place in which the bills had been found." It would, therefore, he (Judge Perrin) thought, be unjust to hold that Lord Mansfield considered that the caption was no part of the indictment. The copy is demanded for the purpose of enabling counsel to see how he is to plead —and how can he plead unless he knows what the matter of fact is? How can he plead special matter to it, unless he be acquainted with the special facts of the case? It has been urged, that if it was alleged that the bill had been found by less than twelve persons, an application might be made, and then the court might order a copy of the caption to be supplied to the parties. But what was to show by how many jurors the bill had been found? How was that fact to appear? Why, by the caption, and the caption only. The caption must name the jurors by whom the indictment has been found, and if found by less than twelve, the indictment is bad. Suppose, again, that the parties allege that disqualified persons have served on the grand jury—how can that be ascertained? By the caption and the caption only. The ancient and original course pursued in framing an indictment was, that the jurors found the facts, and the officer put it into form, and so the officer did still. It had been alleged that the caption was not in existence, and therefore no copy could be furnished. But in agreeing to the present motion, the court would be doing no more than ordering the officer to do that which it was his duty to do *de die in diem*. He did not mean to cast any blame on the officer of the court, because the practice had fallen into disuse, but nevertheless it was his duty, and these entries ought to be made every day, and not deferred to the close of the term. Another objection urged to the application was, that it was contrary to the practice, and that the practice of the court was the law of the court. No doubt the practice of the court was the law of the court, but he never heard any instance in which there was a dictum of a judge before to-day, that the party under this statute was not entitled to the matter here claimed. He had not heard of any instance in which it was refused, and he could not concede to the position that because the objection had not been made during twenty, or twenty-four years, or that the case had not arisen within twenty-four years, that the statute was in force—that, therefore, there was a practice against the application. The practice of the court must mean a settled course in the court, either under a rule of the court, or where there has been such a course of proceeding as fixes and shows the proper course of proceeding, and an unobjected-to course of proceeding. If it appeared that during the times in which crown prosecutions have been carried on in that period, that an application was made to the officer for the caption, and that he refused to give it, and that that had been submitted to for a course of years, he would admit that that was practice, but he could not imagine because the question was never raised before, in the absence of any rule of the court, it was to be considered as a practice of the court binding the court as a law. He never knew an instance in which the right to a copy of the caption was questioned; but it was not always asked for or given, because the party had been in the habit of applying at their own expense, and they paid for what they got, and they did not ask for more than they wanted (laughter). There might, however, be special cases in which the caption was applied for, and he thought there were cases in which the caption was applied for and furnished, though he could not immediately recollect them; but, however, he did not think on a negative practice that the application should be refused. Those were the grounds on which it appeared to him that the construction of the statute of the 60th Geo. III. ought to be governed by the construction that had been uniformly put on the statutes of William and Anne in England, and 5 Geo. III. in Ireland. When he had the disadvantage to differ with the rest of the court it was very probable he was wrong; but if so, no disadvantage could arise from it in this case, because the rule of the court would be different from his opinion.

The Queen v. *Duffy.*

Mr. Whiteside, Q.C., said in this case he had made

an application on Saturday for a return of the names of the witnesses endorsed on the indictment, which had been refused by the court, on the ground that there was no precedent for granting such an application. Since then he found a case which went distinctly to sustain the right of the defendant to the list which he claimed. The case he alluded to was the King *v.* Burton, cited in the case of the King *v.* Dr. Parnell, in Sir William Blackstone's Reports, 1st volume, page 36, where the Lord Chief Justice of the King's Bench gave it as his opinion that the prisoner was entitled, as a matter of course, to a copy of the endorsement on the back of the indictment. He would beg leave to hand up the case to their lordships, and call upon them, in accordance with that high authority, to direct their officer to furnish the defendant with the list of the accusers.

The Attorney-General said that their lordships had already decided on the two motions brought forward on behalf of Mr. Whiteside's clients; and, there being no notice of the present motion, of course he should oppose it.

Mr. Whiteside—In the case I have handed up to the court the granting of a list of the names of witnesses is mentioned as a matter of course.

Mr. Justice Crampton—But the objection here is, that you are taking the crown by surprise.

Mr. Whiteside—The crown have nothing to do with it (a laugh). I would not ask a favour from the crown, because if I did, I know they would not grant it (laughter). All that I want is, that the officer of the court do that which, according to the dictum of the Chief Justice of England, is a matter of course.

Mr. Justice Crampton—You must give notice to the Attorney-General.

Mr. Whiteside—I did not know that it was in the power of the Attorney-General to grant or refuse it.

Mr. Justice Crampton—Nor is it in his power to grant it; you are not mistaken there; nevertheless, you must give notice.

The Attorney-General said that there were eight other notices of motion served on the part of the defendants, upon the two points that had been decided by the court, and he wished to know if they intended to move upon any of them.

Mr. Fitzgibbon, Q.C., said they had sent for Mr. Moore who was to move the next motion.

The Chief Justice—Very well; but certainly the court will not allow a motion similar to those motions already refused, to be now brought forward under another name.

Mr. Fitzgibbon said that the motion was different from those which preceded it.

The Chief Justice—If I were allowed to give my opinion I would say that the two last motions should have been moved at one and the same time.

The Queen v. *O'Connell.*

Mr. Moore, Q.C., said that he had been instructed to move an application on the part of Mr. O'Connell, one of the traversers, to set aside the rule to plead that had been entered. That motion was consequent on the two motions which had been disposed of by the court, but their lordships being of opinion that the defendants were not entitled either to a list of the witnesses on the back of the indictment or to a copy of the caption, he and the gentlemen with whom he acted were of opinion that the ground on which they could sustain that motion was taken from under their feet, and they should not, therefore, bring forward the third motion. The learned gentleman then said that in the same case there was another notice of motion served on Saturday which should come on to-morrow at furthest (as that was the last day for pleading) otherwise they could not move it at all.

The Chief Justice—What is the nature of the motion?

Mr. Moore said that it was to get a bill of particulars of the charges in the indictment.

The Chief Justice said that they had in the first instance to hear further argument on to-morrow on a demurrer which stood over, and then they had agreed to go into the case of the Queen *v.* Samuel Gray. The court would consider whether they should give a priority of hearing to Gray's case, or to Mr. Moore's motion.

Mr. Moore said that if they did not move it to-morrow it would be too late.

The Chief Justice—Very well, be ready to move it.*

COURT OF QUEEN'S BENCH,

TUESDAY, NOVEMBER 14.

The Queen v. *Duffy.*

Notice had been served on the Crown Solicitor that on the sitting of the court on that morning counsel would move for a bill of particulars of the ten counts in the indictment to which no particulars were attached in the indictment. In the morning, however, the following letter and the accompanying bill of particulars were transmitted to the solicitors for the traversers:—

IN THE QUEEN'S BENCH, CROWN SIDE.

The Queen
ag.
Daniel O'Connell, John O'Connell, John Gray, Thomas Steele, Richard Barrett, Rev. Thomas Tierney, Charles Gavan Duffy, Thomas Mathew Ray, Rev. Peter James Tyrrell.

SIR,

In reply to your notice of the Eleventh Instant in this Cause, I hereby inform you that although it is conceived on the part of the Crown that the Defendants are not entitled to a specification or bill of particulars of the charges under the Indictment in this cause, and although your notice of application for the same is irregular, no affidavit having been duly filed to ground the same, nevertheless I herewith furnish you with a statement of the particulars of the charges in the said Indictment contained.

Dated this 13th day of November, 1843.

WM. KEMMIS, Crown Solicitor,
40, Kildare-street.

To Peter M'Evoy Gartlan, Esq., Attorney for the Traverser, Charles Gavan Duffy, Esq.

IN THE QUEEN'S BENCH, CROWN SIDE.

The Queen
ag.
Daniel O'Connell, John O'Connell, John Gray, Thomas Steele, Richard Barrett, Rev. Thomas Tierney, Charles Gavan Duffy, Thomas Mathew Ray, the Rev. Peter Jas. Tyrrell.

In addition to the several matters and things set out in the first count of the indictment, it is intended to give in evidence in support of the prosecution, the speeches made, the resolutions moved or adopted, the acts done, the letters and other documents read, and the several proceedings which occurred or took place at

* Mr. H. Sugden, son of the Lord Chancellor of Ireland, was in the vicinity of the bench during the delivery of the judgment in this case, and appeared to take much interest in the result. Immediately on the conclusion of Mr. Justice Perrin's judgment, Mr. Sugden left the court.

Mr. Steele was accommodated with a seat on one of the benches parallel with the side-bar. He had not been there many minutes when Sam Gray, in custody of his gaoler, entered the court, and took his station on the same seat. Mr. Steele, on being informed of his companion's name, immediately left the seat, and went to another part of the court.

each and every of the several meetings in the said first count specified or referred to, and any entries of the said several proceedings made by the defendants or any of them, or by the directions of them, or any of them, and the manner and order in which the persons composing said several meetings respectively went thereto, and also the speeches made, the resolutions proposed or adopted, the acts done, the letters and documents read, and the several proceedings which occurred or took place at each of the several occasions following, that is to say—at meetings of persons styling themselves the Loyal National Repeal Association, at the Corn-Exchange Rooms, on Burgh-quay, in the city of Dublin, which took place respectively. [Here the document enumerates the various meetings in the Association and elsewhere, as well as the dates of the various publications in the *Pilot*, *Freeman*, and *Nation*, of the proceedings and resolutions of said meetings, intended to be relied upon, and which constitute *thirty-four* allegations against the *Pilot*; *forty-one* against the *Freeman*; and *thirty-nine* against the *Nation*—all on the score of publication.]

Mr. O'Connell handed in his plea, which was engrossed on a large skin of parchment.

Mr. Ford stating that the document in question was Mr. O'Connell's plea.

Chief Justice—Mr. Daniel O'Connell's?

Mr. Ford—Yes, Mr. Daniel O'Connell's.

The Attorney-General wished the Clerk of the Crown to read the pleas.

The other traversers then severally handed in their pleas, coming forward to the bench, the laymen of them wearing the repeal button.

The Clerk of the Crown then proceeded to read Mr. O'Connell's plea, Mr. Ford stating that they were all the same in matter and form.

COPY OF THE TRAVERSERS' PLEA—CROWN SIDE.

Daniel O'Connell, John O'Connell, Thomas Steele, Richard Barrett, Rev. Peter James Tyrrell, John Gray, Thomas M. Ray, Rev. Thomas Tierney, and Charles G. Duffy, at the prosecution of the Queen.

And now the said Daniel O'Connell, in his own proper person comes into the court of our said lady the Queen, before the Queen herself, and having heard the said alleged indictment read, and protesting that he is not guilty of the premises charged in the said alleged indictment, or of any part thereof, for plea in abatement thereto, nevertheless, saith that he ought not to be compelled to answer the said alleged indictment; and that the same ought to be quashed, because he saith that the said alleged indictment heretofore, to wit, on the 2nd day of November, in the year of our Lord, 1843, to wit, at the said court of our lady the Queen, before the Queen herself, to wit, in the parish of St. Mark, in the county of the city of Dublin, was found a true bill, by the jurors aforesaid, upon the evidence of divers, to wit, four witnesses then and there produced before, and then and there examined by the jurors aforesaid, who were not, nor was any of them, previous to their and his being so examined by the jurors aforesaid, sworn in the said court of our lady the Queen, before the Queen herself, or according to the provisions of a certain statute passed in a session of parliament, holden in the 56th year of the reign of his late Majesty King George III., entitled an act to regulate proceedings of grand juries in Ireland on the bills of indictment, to wit, in the parish of Saint Mark, in the county of the city of Dublin aforesaid, and this he is ready to verify, wherefore he prays judgment of the said indictment, and that the same may be quashed, and soforth.

The Attorney-General objected to those pleas being received by the court; and he had to apply to the court to allow him time until next morning to be fully prepared to bring forward authorities to sustain his view of the case. He would, however, state shortly his grounds of objection—namely, that the traversers were late to put in pleas in abatement, and that they should have put them in (if at all) when called upon to plead. He would look into the authorities on the point before morning, and in the meantime he called on the court not to receive the pleas tendered.

Mr. Ford—The time for pleading expires to-day.

Chief Justice—Are exactly similar pleas tendered for all the parties?

Mr. Ford—Yes, my lord, and the time for pleading expires this night.

Chief Justice—Mr. Attorney-General, you wish to have the matter postponed until morning in order to consider it, and I don't think the application unreasonable.

Attorney-General—Yes, my lord.

Chief Justice—Then it must be without prejudice to the traversers, and the pleas should be taken as put in now.

Attorney-General—Certainly, my lord.

Mr. Hatchell understood the case thus—The parties put in those pleas, one of which was read, and which was verbatim with the others; they were he considered legally put in, and on the word, and as the traversers sought no extension of time, but complied with their recognizances, they should not be prevented tendering their pleas. If the Attorney-General conceived that any of them ought not to be received, his course would be to move that they should be set aside upon such ground as he might be best advised.

Attorney-General—This is a matter that must be left to the discretion of the court. If those pleas are not pleas that they would be justified in putting in at this stage of the proceedings, and if the course Mr. Hatchell suggests were pursued, the consequence would be this—I would have to serve notice to-morrow; that notice could not be regularly moved until after to-morrow, and that will delay the investigation of that which ought to be investigated without delay—namely, the right of the traversers to put in those pleas at this stage of the proceedings.

Mr. Hatchell—The court has already decided that a question arising in those trials shall not be debated without due notice. Such was the course adopted with respect to us. I conceive the Attorney-General will not be too late to serve notice for after to-morrow. He will then have full time to consider the bearing of the case, and to move to set aside those pleas or to demur to them.

Judge Crampton—And if it were convenient for the Attorney-General to state his grounds of objection now, he might make his motion, and the court would let it stand until the following morning.

The Chief Justice thought the matter was in the discretion of the court, and that counsel on either side ought not to interfere with that discretion. The court had no right to go into the case then if it would be inconvenient, and if no ends of public justice could be attained by it. It was, he conceived, in the discretion of the court to postpone it until the following morning, the parties having tendered their pleas.

Mr. Whiteside—That, of course, is between the crown counsel and the court. We are not bound to appear on that notice.

Mr. Fitzgibbon—Suppose the court shall determine to-morrow that those pleas are not in time as pleas in abatement, the time to plead to the merits lapses. But if the court now determine it, the traversers are now in time to plead in bar. But if the court postpone that consideration until to-morrow morning, it is only right that to-morrow will be considered as to-day; and if the court will deter-

mine to-morrow that those pleas are not in time, all we want is, that the plea in bar shall be received to-morrow.

Attorney-General—When the matter is discussed to-morrow, that and the other circumstances of the case will be under the control of the court; but I trust that nothing will be anticipated or decided to-day.

Chief Justice—The traversers are not to be prejudiced by the matter not being further discussed to-day.

Mr. Whiteside—There is no decision calling upon us to appear on the part of the traversers, so you may argue it yourselves.

Mr. Henn—I submit that by the course the Attorney-General asks the court to take, we are deprived of a benefit which we are entitled to—not a benefit I would say, but a matter of right—and the reason assigned by the Attorney-General discloses that fact, for if the pleas were received now, and there is no reason why they should not be received, the Attorney-General conceives it would be necessary to serve notice, and that that would cause delay. But if so, it was a delay the party were entitled to. That notice should apprise us of his reasons for objecting to the pleas. He complained of our making a motion without giving him two days' notice, and is it not reasonable that he should be required to give notice to us?

Chief Justice—I doubt if there can be any objection to the course the Attorney-General proposes, and I say, as a member of the court, that four o'clock is not a proper hour to go on with the discussion of this case.

[His lordship had scarcely concluded those observations when the officer directed the crier to adjourn the court, and the court was accordingly adjourned at about twenty minutes to four o'clock without further discussion of the case.]

COURT OF QUEEN'S BENCH,

Wednesday, Nov. 15.

The Queen v. *Daniel O'Connell.*

The Chief Justice called upon the Attorney-General to proceed with this case, which stood over from the previous evening.

The Attorney-General said the question which now was raised before their lordships was, whether or not the pleas which were tendered on the preceding day on the part of the defendants ought, at this stage of the proceedings, to be received, and he thought it would be found to depend upon the construction of the 60th George III., c. 4, and he contended that the traversers were bound, if they intended to plead in abatement to the indictment, to have so pleaded in abatement when they were "charged" with the indictment. Such he apprehended was the practice, both in cases of felonies and misdemeanours. In 1 Chitty, Criminal Law, p. 447, it was stated that in case of felony or treason the plea in abatement may be pleaded *ore tenus*, and issue joined without delay; but the regular practice was to engross it on parchment and have it signed by counsel, and the defendant was to deliver it in open court on being charged with the indictment; and in the fourth volume of the same work, Chitty's Criminal Law, 2nd edition, in which the precedent for plea in abatement is given, page 520, there is a note which states the proper time for pleading it. It says it is more usually engrossed and signed by counsel, and the proper time for pleading is immediately on arraignment, when it is delivered into court by the defendant or his attorney, and in Gabbett's Criminal Law, vol. 2, page 328, it is laid down that the plea in abatement must be pleaded before pleading the general issue or other plea in bar, and the time to take advantage of such dilatory plea was on the arraignment, when the prisoner was called upon to answer. In 1st Burns' Justice of the Peace, by Chitty, page 2, it is stated that the plea in abatement must be pleaded before any plea in bar. It must be put in on arraignment when defendant is called up to answer; and that such had been the practice in this country appeared from the case of the King *v.* Kirwan, which their lordships would find in Howell's State Trials, vol. 31, p. 576. He referred to that case for the purpose of showing that in cases of misdemeanour the practice had been as laid down in the authorities to which he referred their lordships. He was now considering the matter independently of the statute of George III., and submitting that the party who thought fit to put in a plea in abatement was bound to put in that plea on arraignment, on the indictment being read. He begged leave to submit to the court that independently of the act of parliament the traversers were clearly bound to put in this plea on being charged with the indictment. And the question then wanted to be raised was, that under the 60th George III. they acquired a privilege which, he apprehended, did not exist independently of that act, and that they had a right to plead at the close of the fourth day a plea of abatement.

Mr. Brewster—On the fifth day.

Attorney-General—It was in point of fact on the fifth day. On the civil side of the court the days of pleading are running days; and if this case were on the civil side of the court, the rule to plead having commenced to run from Thursday, they had Friday, Saturday, Sunday, which was counted in cases of a dilatory plea, and they should come in to plead on Monday; therefore, they would have been late in a civil case. The question their lordships would find would turn on the construction of the statute to which he had referred—a statute which had been so frequently before the court. He now begged to call their lordships' attention to the language of the act of parliament. That act recited that great delay had occurred in the administration of justice by reason of persons prosecuted for misdemeanours, &c., having—according to the practice of the courts—a right to postpone their trials by imparlance. Now, he thought he might say, looking to the preamble of that act of parliament, that so far from being with a view or object to give facilities to dilatory proceedings that do not exist independently of the act of parliament, the preamble showed that such construction was not in accordance with the object, and spirit, and policy of the act. The act then proceeded to enact, that the party on being charged shall not be permitted to imparl, but shall plead or demur within four days from time of appearance; and it directs, that in default of appearance, in person or by attorney, judgment may be entered; and in case such defendant should appear by attorney, it should not be lawful for such defendant to imparl to the following term, but that a rule requiring such defendant to plead might be entered and enforced, or that judgment by default should be entered thereupon, in the same manner, as might be done before the passing of the act, in cases where the defendant imparled from the previous term. With respect to this branch of the act, it was clear that they were entitled, in the term in which the party appealed in person, or by attorney, to compel him to plead or demur, as they could have done before, in a case of imparlance to another term, in that following term. He apprehended that where there had been an imparlance prior to the passing of the statute, it would not be open to the party to plead to the jurisdiction. He referred to the 6th Bacon's Abridgement, page 227, title, Pleas and Pleadings, c. 3. It was laid down that, after general imparlance, the defendant could not plead a dilatory plea. He contended that, under this section, when

the rule to plead, or giving the party time to plead or demur, is spoken of, that in no portion of the section did it contemplate or intend to apply to the case of a plea in abatement or plea to the jurisdiction. It was never within the contemplation of the act to give the party advantage by way of dilatory pleading; for, if he were right, previous to the act, he must plead in abatement on arraignment, according to the ordinary course of this court, in which rules to plead were entered every day during term. The rule to plead was an eight-day rule, and that was followed by a rule for judgment unless plea in four days, and that eight or four-day rule had no reference to a plea in abatement or to the jurisdiction, which must, according to the course of the court, be put in in four running days, which would include Sundays; and if they applied the practice in civil cases to this case, the plea was not in time in this case, because the plea was not tendered until the preceding day.

Judge Perrin believed the practice in that court before the passing of the act was, that a party had the same time to plead in abatement in the case of misdemeanour as in civil cases, and the four days there granted ran on the crown side in the same way as on the civil side, and it was only in cases of felony or treason that the party was bound to plead on arraignment.

The Attorney-General said if that were the case, and from his lordship's experience he had no doubt it was, the plea could not be received, for it was too late, according to the practice in civil cases, and if they wanted to raise the question, they should have tendered their pleas on Monday.

The Chief Justice said the officer reported the practice to be according to Judge Perrin's recollection.

Attorney-General—Then your lordships will find that there is an end of the case; and now that that preliminary point was settled by the recollection of Judge Perrin being borne out by that of the officer of the court, he begged to be allowed again to refer to the act of parliament. When the mischiefs to be remedied by that act were delays occurring in the administration of justice in that court, it was not, he contended, to receive a construction that would extend the time for pleading dilatory pleas, and that was the construction they were called upon by the other side to put on the enacting part of the act of parliament; for it was now clear that, except under the act, their pleas were irregular. He apprehended it was clear, on looking to the act of parliament, which was passed to prevent delay, that they were entitled, at the expiration of four days, unless a full defence was put in (that was to lead to final judgment), to mark judgment; and he denied, and he thought their lordships would find it clear upon principle, that if they should be permitted to put in a plea in abatement at the expiration of four days, that would not lead to final judgment. It was settled by the authorities that there was not final judgment to be had upon it in case a demurrer was taken to it, and the defendants would not have put in this plea if they had not fully ascertained that to be the law. The crown would only be entitled to a judgment *respondeas ouster* if he was driven to carry out the object of delay by demurring to this plea—1 vol. Chitty's Criminal Law, p. 457. If they were to take a demurrer to those pleas in abatement, and if, after the delay of arguing them, they got judgment, it would be only a judgment to *respondeas ouster;* and, accordingly, the consequence was this, that on the construction of this act of parliament, which was framed to prevent delay and not to create it, he thought there was a strong ground for showing that the plea spoken of was the plea that would lead in its result necessarily to a final judgment. He referred to the provision in the act which directs that if a party appear in person or by attorney, he should have no imparlance as before, but is compelled to plead or demur in the same term. And by the same course as under the old law, he could not plead to the jurisdiction or in abatement after imparlance; it was clear that in the section of the act the plea mentioned was not a plea in abatement.

Judge Perrin inquired if he considered in such case the plea in abatement was taken away.

The Attorney-General, after again referring to the propositions he had laid down, replied that what he contended for was this—not that the plea in abatement was taken away, but that it was left untouched, and that the statute had no operation in cases of pleas of abatement. If he were right, independent of the act of parliament, it was plain their pleas were not receivable. The question only depended upon this, whether the act of parliament altered the rule upon the subject. His argument was that the act of parliament had no such effect, and when the act of parliament spoke of pleading, it was only with reference to pleading in bar or demurrer, and that it was not intended to extend the time of pleading in abatement. Under all the circumstances of the case he submitted to the court, that the act of parliament could not sustain the defendant's application. The court were clearly called upon to reject the pleas, and not put a construction upon the act that would contradict its policy, and that when the legislature expressed an intention to prevent delay, they would not put a construction upon the act that would create delay. He, therefore, called upon the court to refuse to receive the several pleas that had been tendered by the defendants.

Mr. Moore, Q.C., appeared as counsel for one of the traversers, Mr. O'Connell, and as he understood the case, the Attorney-General had in substance and in fact moved for an order of the court to its officer not to receive the pleas. He was not in court on the preceding day; but he understood the pleas were given in to the officer and read, and the Attorney-General was now, he thought, in fact, calling upon their lordships to give directions to the officer that the pleas should not be received. It appeared to him that it might have been fully competent for the traversers to have insisted upon that strict measure of right, which he recollected his friend, the Attorney-General, had insisted upon on a former occasion—namely, that no application should be brought under the consideration of the court without giving that notice that was required by the rules of the court. But, however, he did not mean on the part of the traversers to turn round on the Attorney-General in point of practice. He was now quite ready and willing to discuss the question he had raised, and to submit to their lordships on principles of law, that according to the true construction of the act of parliament in question, the pleas in point of time were quite regular, and could not be refused to be received. He believed there was no controversy—he was sure there could not be any controversy upon their having the entire of yesterday to put in a plea of some kind or other. They had the certificate of the officer to this effect, and it was undoubted that they had the right on the preceding day to put in a plea of some description, and he understood the Attorney-General as conceding, and properly conceding, that whatever decision the court should come to that day, it was to be considered by the officer as a decision of the preceding day; and if the court were satisfied that the plea they put in was a plea that ought not to be received, which he trusted they court would not do, that they were entitled, as they would have been entitled on the previous day, to plead such other plea as would be proper on the occasion.

Judge Perrin said he understood the Attorney-General as objecting to the pleas in that way, and

therefore it was, he thought he was at liberty to make his objection without motion. This was not a motion; if it were he would say that the rule of the court should apply to one case as well as the other, and notice should be given of it.

Mr. Moore said he was not complaining of the conduct of the Attorney-General, or insisting that there ought to be notice. He was only saying, and he had grounds he thought for stating that the present application came within the rule, but he was unwilling to have any controversy on that ground, and was ready at once to discuss the question brought forward by the Attorney-General. The argument of the Attorney-General, as he understood it, was this, first, he took the case as it would have been antecedent to the passing of the act; secondly, he considered how far the act had made any alteration in the practice, and whether, under the act, they would be placed in a different situation from what they would have been, if the act had not passed.

The Attorney-General wished to mention a fact which he had forgotten to state in the course of his argument. Their lordships were aware that an application was about to be made for bills of particulars, and notices were served on the crown to that effect, and he had now to state that all those notices had been complied with, and bills of particulars furnished to the parties on Monday night.

Mr. Moore said he was not apprised of anything that occurred with respect to that.

Mr. Brewster—It is now mentioned, that it may not come to you by surprise when I state it in reply

Mr. Moore—I must say it comes on me now by surprise.

Attorney-General—I am surprised at that, when you were going to make the motion.

Mr. Moore—I was not aware of the bill of particulars being furnished, and I submit that if you rely on any facts you must do so on affidavit.

The Attorney-General referred to Moody's Crown Cases to show, that where a party obtained a bill of particulars he could not avail himself of any objection afterwards.

Mr. Moore resumed his statement. The first ground of argument of the Attorney-General was that if the statute had not passed, they would not be at liberty now to plead in abatement; and he had contended that the time for pleading in abatement was after the party had been arraigned, and it therefore became a question, when antecedent to the passing of this act was the period of arraignment. He referred their lordships to 2 Hale's Pleas of the Crown, p. 219, in which he described what an arraignment of a prisoner consisted of. It consisted first in calling the prisoner to the bar by name, and commanding him to hold up his hand; secondly, in reading the indictment to him distinctly in English, and making him understand the charge; thirdly, in demanding from him whether he was guilty or not guilty, and if he pleaded not guilty, the Clerk of the Crown joined issue with him. Now that was the arraignment, getting him to appear, reading to him the indictment, and calling upon him to say whether he was guilty or not guilty. What does Hale say after that? He says, "but if the prisoner have any matter to plead in abatement or in bar of the indictment, then he pleads it without immediately answering to the felony." So the time that is given to a party that is arraigned for putting in a plea in abatement is the period of time in which he is called upon to answer, and say whether he is guilty or not. He fully conceded to the Attorney-General that he could not do it after pleading in bar, but when he was called upon to plead he had the option of pleading in abatement or pleading in bar. It was impossible for any authority to be more express or direct than the authority he had read on that point, and what time had he to put in a plea of abatement except it was that period of time when he was called upon to plead? It was when he was called upon to plead that he came in and pleaded in abatement if he had such a plea. He was never arraigned until he was called upon to do that, and that was the time the law allowed him before the statute to plead in abatement. When had they in the present case been called upon to plead by the rule of the court served upon them? Within four days, and would it now be said that the moment the rule was served on them then they were bound to state instantaneously whether they would plead in abatement or what they would do? No such thing. They were called upon to plead within a certain time—they attended to plead on the day they were bound to do so, and on that day, and not until that day, was the arrangement of the traversers complete. They then stated their plea—they stated whether it was a plea in abatement or a plea in bar, and he said with the greatest respect that antecedent to that act of parliament, and standing upon the principle of the common law, they were under no obligation to plead; and there was no ground for their being called upon to plead until the preceding day. They were under no obligation until that day to state to the Attorney-General or the court what their plea would be, or whether it would be a plea in abatement or a plea in bar. He submitted that the first ground on which the crown had rested their case had altogether failed them; and if they rested their case only on the practice antecedent to the statute, he would be entitled to insist on the right of the traversers to put in that plea of abatement. The Attorney-General then came to the consideration of the statute, and in his (Mr. Moore's) humble judgment, whatever doubt there might have existed antecedent to the statute, there could not be a particle of doubt with respect to the right of the traversers to plead in abatement under the circumstances of this case. It appeared to him to be perfectly clear, and to be the settled law, that in cases like the present, a case of misdemeanour, that at common law it would have been the right of the traverser to imparl till next term. He would not refer to the many cases that were decided on the subject, but would merely refer to one that was directly in point, namely, the Queen *v.* Rawlins, 3 Salkeld, p. 185. An information was preferred against Rawlins in the first day of Michaelmas term, on which day he was bound to plead. He appeared, and prayed imparlance. That was resisted by the Attorney-General of the day, and Holt, Chief Justice, said he had a right to imparl, and it was reasonable to give him time to imparl—not to a day of the same term, but to another term. That authority established unequivocally the proposition that, if the act of parliament had not passed, and if the traversers in this case were brought before the court on the first day of term, and the indictment found against them, they would have, at common law, the right to imparl until the ensuing term. The Attorney-General then said, that if they had entered an imparlance to the ensuing term, then that they could not, after that imparlance, put in a plea of abatement. Whatever that argument might be worth in a civil case, he (Mr. M.) had not been able to find any authority saying that, after imparlance in a criminal case, in exercise of the right of the traverser from one term to another, that he was thereby deprived of his right to plead in abatement, and he said, with very great respect, and arguing upon all the principles that were applicable to criminal cases, that the court would be slow before they would extend a rule that might be applicable to the civil side of the court to the crown side, the effect of which might be to deprive the traverser of the benefits that he would be otherwise entitled to have. For he need scarcely say to their lordships

that there were many cases in which a plea of abatement put in by a traverser was of such importance, and contained as much merits as any plea that could possibly be put in, and until an authority was cited to establish the proposition, that the rule in civil cases was to be applied to crown cases, he would submit that the court should not say that was the principle of law, and if he were now discussing this question before the act of parliament, and if the traverser had prayed an imparlance, he would contend that notwithstanding that imparlance, he would, in a criminal case, still have the right to plead in abatement. But be that as it may, there was no question but the traverser had a great and considerable privilege in his right to imparl to the ensuing term, and if there was a case in which the enjoyment of that right would be of advantage to a man, he thought the present was that case. Why, he asked the court, was that right given? It was given to afford the traverser every possible opportunity of making his defence. It was given to afford him every opportunity, in point of time, of making himself acquainted with the acts with which he was charged, and to make the best defence that he possibly could to the charges brought against him. He assented that great advantages which the common law gave the traverser was taken away by the operation of the act of parliament in question. It appeared to him that the act of parliament was to be considered in the nature and light of a penal act of parliament, because it did appear to him that every act of parliament that goes to abridge or qualify the common law right of the party accused, must be considered to some extent as a penal act of parliament, and if the court should agree with him in that observation, he then said, that this act of parliament instead of receiving from the court an interpretation for the purpose of excluding the party from the benefit of any privilege that he would otherwise have, ought on the contrary to receive from the court the fullest and most liberal interpretation in favour of the party accused. Now, his learned friend the Attorney-General, had read for their lordships the preamble to the act, and he said the object of it was to prevent delay. It was stated in that preamble, that according to the (then) present practice, the traversers had an opportunity of postponing their trial to a distant period by means of imparlance, in the King's Bench. Now, the thing that was intended to be taken away was, that great privilege of imparlance, and that privilege was undoubtedly taken away from them. And what was substituted in its stead? Why it was substituted in its stead, that he or they shall be required to plead or demur to the indictment in four days from the time of his or their appearance. Now what did his learned friend call upon their lordships to do? By this act of parliament the right of imparlance was taken away, and the party was required to plead in four days. His learned friend called upon their lordships to read that, as if it had been to plead in bar within four days. What right had he to have those words introduced at all? A plea in abatement was just as valid and good a plea as a plea in bar. A plea in abatement was as much known to the common law as a plea in bar. It was often speaking equally to the merits, and protected the accused as well as a plea in bar; and when a great common law right was taken from the traverser, and when he was directed in a short and limited time to plead, he was not to be bound to plead in a particular way. He asked on what construction of this act of parliament abolishing the common law right, he was to be deprived of the privileges that the act of parliament gave him? But it was said that before the act the practice of the court was, that he was to plead in four running days. But what the practice was antecedent to the act of parliament could have no effect in ruling the practice under the act of parliament. It gave them four days—those four days did not expire until the preceding day; they then tendered a plea in abatement, and the Attorney-General said it was not to be received, for though they came in in time to plead, this act of parliament was to be read as if it only gave them permission to plead in bar, and that they were thus precluded from pleading in abatement. On what authority—on what principle of common sense—on what principle of justice could the Attorney-General call upon the court to give that narrow construction to the section in question, and to bring into an act of parliament certain words that were not there, and which would be there if the legislature intended that it should be confined to pleas in bar? What would be more easy than for the legislature to say, "we wish to take away the right of imparlance, and we will give you four days to demur if you please, or to plead in bar if you please, but not to plead in abatement?" and as the legislature had not done so, and they could not suppose the framer of the act of parliament was ignorant of the doctrine of pleas in abatement, he thought in the construction of this act of parliament they were not to introduce these words. When one right was taken away, and a qualified and limited right substituted, to plead or demur within four days, would the court introduce words that the legislature did not put in the act, and would the traversers be excluded from the right of putting in a plea of abatement within four days, which the act of parliament had given them? He submitted that there was nothing in the principles of common law or justice, or in the provisions of the act of parliament in question, that warranted the Attorney-General in calling upon the court to give that limited construction to the act, and that, therefore, the court would not accede to his application to reject those pleas.

Mr. Hatchell, Q. C., said he was on the same side with Mr. Moore, to resist the application of the Attorney-General. Their lordships would be pleased to call to their recollection the position in which the traversers now stood. On Friday morning they were called on by the four-day rule to plead, that four-day rule being a rule given by the statute of the 60th George III. Their lordships were also aware of the applications that had been made pending that rule on the part of the traversers for such assistance as they considered necessary, to enable them, as they alleged, to plead to the indictment. Those motions came on, and were disposed of, and the four-day rule having been issued and served by the Crown, it became a matter of great importance to the traversers to ascertain, beyond any question of doubt, the nature, the force, and the effect of that rule—a rule which had been first introduced by the statute superseding all the old practice respecting the right of imparlance. It was of the last importance to the traversers, who were advised to plead that plea on behalf of each and all of them, showing that the indictment could not be proceeded on, and ought not to be excluded from the benefit which the statute intended to give them by the four-day rule. It was verified by affidavit, that an application was made to the officer of the court, who was now, it appeared, the organ of the practice of the court, to ascertain what was that practice which was decided a few days back to be the law of the court, and therefore the law of the land. It became of the utmost importance to the defendants to know what the law was, and they applied accordingly to the officer of the court, whose certificate he would read for their lordships. They wished to know whether Monday or Tuesday was to be the last day under the rule, when the defendants should put in their plea, or any plea which they were entitled by law to plead. The

plea had been read to their lordships, and Mr. Moore had shown that it was not to be taken, although, perhaps, in the nature of a plea in abatement, as a frivolous or dilatory plea. If it were ruled to be a good plea, the indictment must, in the end, become a nullity, and, therefore, the defendants were entitled to the favourable consideration that they had pleaded in abatement at the first step, and had not waited the termination of the trial to raise the objection. On Saturday last, the 11th of November, the attorneys for the accused addressed a letter to Mr. Bourne, the Clerk of the Crown. He then read the letter, which was as follows:—

"Law Society Rooms, No. 4, Nov. 11, 1843.

The Queen *a.* O'Connell and others. } "Sir, One of the officers connected with your department, has, in answer to an inquiry made to him on the subject, given it as his opinion, that according to the practice of the court in such cases, the traversers are bound by the rule to plead entered herein, and of which a copy is subjoined, to plead or demur in the course of Monday next, and that that will be the last day for doing so. This view of the effect of said rule being at variance with your communication to Mr. Mahony on the same subject, and from which we understood that Tuesday, and not Monday next, will be the last day for so pleading or demurring, we take leave to trouble you on the point, and to ascertain from you whether Monday or Tuesday next will be the last day for so pleading or demurring. The magnitude of this case, and the important consequences of which any error or mistake on our parts, might be productive, will, we hope, justify us in making the inquiry in this specific shape, and in asking you to have the goodness to favour us with an answer to it in writing.

"We have the honour to remain, Sir, your obedient and humble servants,

"Pierce Mahony,
"William Ford,
"P. M'Evoy Gartlan,
"J. M. Cantwell,

"Walter Bourne, Esq."

To that communication they received the following reply, the plea in abatement being at the same time ready for filing:—

The Queen *v.* O'Connell and others. } "Sir, In reply to Mr. Mahony's letter of this day, relative to the effect of the rule of the 9th instant, the parties have the entire of Tuesday next to comply with it—so says the Clerk of the Crown.

"Walter Bourne, Jun.

"To the several Solicitors concerned."

He did not know whether his learned and able friend the Attorney-General had been apprised before he made the objection to the reception of their pleas, of that certificate having been got from the clerk of the crown; but however that might be, the affidavit had been sworn by the attornies, and those facts and documents detailed in it. Their lordships would be pleased to recollect that they were not then acting on the ancient practice of the court, as it existed two centuries ago. They were about to fix the practice of the court under that act of parliament, which, he might be permitted to add, was not confined to Ireland, but extended to England also, and on which the judges in England might, upon one of those days, be called upon to give their opinion. It was the first time that a court had been called on to deal with this provision of the statute—and he hoped that their lordships would not countenance the limited construction sought to be given to it, and the attempt made to deprive his clients of their legitimate, fair, honest, and legal right to put in those pleas. They denied that their object was to cause delay; and the court would now give the respectable gentlemen who were concerned as attorneys for the traversers the benefit of their sworn disclaimers, that the former motions were made for the purpose of delay, as their lordships must now see, that the information sought by the previous application was required for the purpose of that plea. They had been advised that a copy of the caption was necessary for that plea, and they had been also advised that the names of the witnesses, whom they now alleged were not sworn according to law, ought to be communicated to them for the same purpose, and they ought not therefore, upon mere surmise, to have been subjected to those imputations that were sought to be cast upon them by the other side. They sought to have the benefit of that plea, and the question now was, were they to be met on the threshold of the court and turned out of it on the objection that they were, forsooth, some four hours too late. That was the judicious course now sought to be taken by the Attorney-General, and he could well see what difficulties it would give rise to. It was not of course for him to suggest to the learned Attorney-General the course which he should pursue in this important case, but he would ask was it, in point of prudence, right for him to pursue such a line of acting? Would the Attorney-General venture to dispose of the indictment, or proceed in the case, until the law with respect to those pleas was settled? The greatest, the ablest, and the most learned men, or body of men, might commit an oversight—a point of complicated law might escape them; but was it not better in such a case to endeavour to set matters right in the first instance, than to pursue a course of error farther? With respect to the construction of the act of parliament, he could have very little to say, as his learned friend Mr. Moore, who had the power of compressing, within the shortest time, and in the fewest words the strongest and the ablest views on any subject that he took in hands, had, in in his judgment, disposed of that part of the case. Of course the learned Attorney-General, when he made the objection to the reception of the pleas, had no previous knowledge of the pleas, but he now held that that plea ought to be pleaded on the arraignment; and the question was, what was the arraignment? Though the arraignment might be only momentary, as in the case of a prisoner called to the bar and required to plead to a felony, as they saw at the assizes, it was different in other cases. What was the language of the crown in the present instance? "Here is the indictment to which we require you to plead." We do not ask you to plead instanter, but we require you to plead within four days. Suppose a party were placed at the bar at eleven o'clock in the forenoon, and that the clerk of the crown read the indictment to him, but added that he would not ask him to plead to it until four o'clock in the evening, he would call the period that would elapse between the reading of the indictment and the time for pleading the arraignment. In the present case the traversers were not called on to plead until the end of four days, and the arraignment was, he submitted, the period between the reading of the indictment and the time when they were called upon to plead. They had the law of the court, from the officers of the court, and under that direction they put in their pleas; and he humbly submitted that having done so, they ought not now to be turned out on that objection of the Attorney-General. He contended that there could not be a doubt but that under the old practice if a party came in on his recognizances he had a right to imparl to the next term, and that he would have the whole of that term, and the commencement of the next term, to plead. The learned counsel then referred to 1st Lewin's Crown practice, 90, and then proceeded to observe that the attempt on the other

side was to limit the time to plead to two days, and to include Friday, Saturday, Sunday, and Monday, as the four days under the rule. He cited Starkey's Criminal Pleadings, 1st vol. p. 310, and then said, that independent of those authorities, he considered that the case which he sought to establish rested on the true and legitimate construction of the act of parliament, of the 60th Geo. III. alone. The object of the legislature being to prevent delay, took away the right of imparlance, and gave the party four days to plead, even a dilatory plea. It was admitted to be a substantive enactment with respect to a plea in bar, or a demurrer, and he did not see on what principle his learned friend, the Attorney-General, could assert that it did not equally apply to a plea in abatement. No distinction was taken. The plea in abatement is not abolished—but the whole of the old practice is, and therefore all pleas stand upon the same rule. The legislature said, "we will put all pleas and demurrers on the same footing, and we will give four days to plead anything the parties have to plead in bar or in abatement of the indictment," and it would be a monstrous injustice, and a perversion of the law to construe an act of parliament otherwise that cut down the time for pleading from one term to four days. There had not been any direct decision in either country under that act, and their lordships were then to make a precedent that would govern the law, he would say, in both countries. He need not call their lordships' attention to the case of the seven bishops, which was a very distinguished case in the history of the law of these realms. They were charged with a misdemeanour, and were directed to plead instanter. They were told that they were not entitled to an imparlance, and they put in their plea of privilege as lords of parliament, as a plea in abatement, and their plea was immediately overruled. And why was the law violated in their case? Because the Clerk of the Crown certified such to be the practice. But in the next reign, Chief Justice Holt, in a case in 12th Modern, 356, decided when the Attorney-General called upon the defendant to plead instanter, as in the seven bishops' case, that the defendant could not be, and was not compelled to plead instanter, and that the contrary practice could not be countenanced or upheld, and he ruled that the party had a right to imparl to the next term. He thought that the safest course for the court now to pursue was this: they had got a modern act of parliament, to which they were called on to give a construction; it was the case of a criminal proceeding. Would they not give the act a liberal construction in favour of the accused? Was not that the spirit of the British law? or would the court, on the contrary, adopt the construction required by the crown, and say that the legislature having deprived the defendant of his former rights or abuses, if they were such, and having in lieu of them given four days to plead, did not contemplate pleas in abatement in that arrangement, and that these therefore must stand on the ancient ground; and that in the present case, as the defendants were twelve hours too late, although they had the certificate of the officer in their pockets, stating that they were not late—they ought to have their pleas refused?

Mr. Henn, Q.C., said he was for another of the traversers.

The Chief Justice said he did not think they should hear any other counsel for the defendants, as they had a common case, having put in each the same plea. It would be a great waste of public time if they were to hear counsel for each of the defendants on the same points.

Mr. Monahan, Q.C., said there was not the least disposition on the part of the defendants' counsel to delay the time of the court. Their lordships would not bind any man without hearing him, and they might therefore claim the right to have counsel heard separately for each, but they would be satisfied to forego all such right if the court would then hear Mr. Henn.

The Chief Justice said if they heard Mr. Henn there was no reason why they should not hear counsel for all the defendants.

Mr. Whiteside, Q.C., said they would be all satisfied if Mr. Henn was heard.

Chief Justice—Why did you not consult together beforehand?

Mr. Monahan said they had no opportunity to do so. He had some suggestions to make to Mr. Moore, but he had no opportunity of doing so, and he was then obliged to communicate them to Mr. Henn.

Mr. Pigott, Q.C, said he had been similarly circumstanced, and could not approach Mr. Moore to consult with him.

The court having consulted together for some time—

Chief Justice—Do you state to the court, Mr. Henn, that there is fresh matter that has not been opened in the discussion?

Mr. Henn—I think there is some, my lord.

Chief Justice—The court must have an objection to have the same ground gone over again and again, no matter how ably.

Mr. Moore said he had not an opportunity to consult with any of his learned friends, as his brief did not come to his house until long after he had retired to rest on the night before.

Mr. Monahan said it was twelve o'clock at night before his brief had been sent to him.

Mr. Whiteside said all the counsel present were similarly circumstanced.

Chief Justice—If Mr. Henn is to speak, I take it for granted we are not to have any more counsel applying to be heard, and for my own part, I must protest against such a course being adopted.

Mr. Henn then proceeded—He said he wished in the first instance respectfully to call the attention of their lordships to the nature of the plea which the court were called on to prevent being pleaded. The Attorney-General had spoken of it as if it had been a mere dilatory plea, formed for the purpose of delay. He would submit that, though a plea in abatement, it was not a mere dilatory plea, but that it was framed to raise a most serious and important question. The question raised by the plea in abatement was, whether the bill of indictment had been found on the testimony of sworn witnesses.

Chief Justice—On the testimony of witnesses sworn in court?

Mr. Henn—Yes, but if our construction of the law be right, the witnesses were not sworn at all in point of law, unless they had been sworn in court.

Chief Justice—You need not go into that question now.

Mr. Henn—No, my lord; but before I leave this part of the case, I wish to refer your lordships to a case in Russell and Ryan's Reports.

Attorney-General—I object to Mr. Henn going at all into that question of the pleas.

Mr. Henn—I do not intend going into it.

Mr. Justice Crampton said the court conceded the great importance of the question, but what they expected from Mr. Henn was, something in addition to the argument already addressed by the other counsel to the court.

Mr. Henn said, with great respect, he would submit that he was not to be tied down to that. He claimed a hearing as a just right, and not as a favour, from the court. The application was to dismiss each plea that had been put in separately by the several defendants, and they had each a right to have counsel heard on their behalf. It was impossible for him to speak at all, if he were to be restricted to such a

narrow line as undertaking to say nothing that was not material, or that had been said before. He never gave such an undertaking in his life, and never would.

Mr. Justice Crampton said the rebuke was called for by his remark, and not by the court at large.

Mr. Henn said he did not mean his remarks as a rebuke. He was about directing the attention of the court to the case of the King *v.* Dickenson, in which after conviction it was contended that some of the witnesses who attended before the grand jury had not been sworn, and he cited it to show if their view of the law were right, no conviction could stand in the present case. He would submit that if there were any doubt in the point, and if the court had any discretion in the case, they should receive a plea of such vast importance. It had been contended by the Attorney-General that the only time for putting in such a plea was on the arraignment, but he thought that point had been decided by the argument of Mr. Moore. The authorities of the Attorney-General were all founded on a passage in 2d Hale, 175, which only went to the extent that if the defendant intended to take advantage of a misnomer in the christian name and sirname, he should do so on his arraignment. But it was not therefore the meaning of that merely, that they should put in a plea in abatement before putting any other plea? It was impossible to contend that the time for pleading under the 60th George III. was the time when the parties were charged with the indictment. But let them see how the case stood since the passing of that statute. That act of parliament certainly pressed heavily on persons charged with a misdemeanour. It was, he would say, a penal act, which deprived them of many advantages which they held before it passed, and he should say that its restrictions ought, on no account, to be extended. It took away the imparlance which the defendant had before, but in return it provided that he should not, if indicted in the Queen's Bench, be called upon to plead until after he had a four-day rule served upon him. That act of parliament also took away the old practice until then existing, and in the new practice which it introduced, it in terms required that the party shall plead or demur within four days. On the face of it no distinction was made in the different species of pleas, and there was not one word introduced in it to show that any such distinction was intended. He would say that one plea ought to follow the legal construction as well as another, and, in a penal act in particular, such as that was, the literal construction ought to be followed, if the court had any discretion at all in the matter. Before filing their pleas they made an application to the officer, which had been read to the court, calling his attention to the importance of the matter, and to the great mischief that might result from any error, and after receiving his certificate they acted upon it. He would, therefore, put it to the Attorney-General whether, even if the practice were what he contended it to be, he would press it against them, seeing that they would have been misled by the officer. But had any authority been cited to show that what the Attorney-General contended for was the true construction of the act of parliament, and that the legislature intended it to exclude a party from their right to plead in abatement? No authority had deen cited, and yet they were called upon to give a construction to that act which was opposed to all practice—which was at variance with its words. The officer was apprised of the importance of the matter, and was told to state the practice of the court in writing, and he made no distinction between pleading in abatement and pleading in bar. He said they had the whole of Tuesday to put in their pleas. That answer they got on Saturday, and confessedly, according to the construction of the crown, the time could not run out until Monday, when they could have put in their plea, but that they had on the faith of the officer of the court, delayed filing their pleas until Tuesday. He would, therefore, ask the Attorney-General would he enforce the law, even if it existed as he described it? and with great respect he would call on the court, if it had discretion in the matter, not to lay down a rule not previously in existence, and which was intended for the purpose of exclusion.

Mr. Brewster, Q.C., replied on behalf of the crown, and commenced by calling for the letter that had been sent by the defendants' attorneys to the officer.

Judge Burton—Did not Mr. Hatchell read the letter to Mr. Bourne and his answer to it?

Mr. Whiteside, Q.C.—He did, my lord.

Mr. Brewster—Mr. Henn called on the Attorney-General to know would he press his motion after that letter, but I will show it was no motion at all, and I must say that it surprises me that Mr. Henn should make such an appeal. I would sooner have expected that any gentleman at the bar would have done so.

Judge Burton—You mean any *other* gentleman (a laugh).

Mr. Brewster said—Yes, any other gentleman. His friend, Mr. Moore, did not press that point, and in not doing so he showed an instance of sagacity that did him credit, for I appeal to any honest, fair, and upright man, reading that letter, if it has not been evidently contrived and concocted to deceive and entrap the officers.

Mr. Pierce Mahony—I protest against such language being used towards us, the attorneys, who swore in our affidavit, that the contrary was the fact.

Mr. Cantwell—I also protest against the observations of Mr. Brewster.

Chief Justice—You must keep order there.

Mr. Mahony—My lord, I have a great respect for this court, but I have a greater respect for myself. Such an attack calls for remark.

Mr. Ford—It is unjust that the crown should constantly attribute to us motives which we deny by our affidavits.

Mr. Fitzgibbon, Q.C.—That letter was read to and approved of by counsel, of whom I was one, and I still approve of it.

Mr. Whiteside, Q.C.—And so do I.

Mr. Moore, Q.C.—Though the letter was sent by the attorneys, still what was done by them had the sanction and concurrence of counsel, and I say it was sent without any intention to entrap any man, as our object was to get accurate information as to the time the rule had to run. I aver that this was our only object, and that what was done had the approbation of my friends who acted with me.

[The counsel for the traversers here declared their assent].

Mr. Brewster said, after what Mr. Moore had stated, he was willing to admit that the letter was not sent for the purpose he had mentioned, as he believed his learned friend would be incapable of acting in any unfair spirit.

Mr. Mahony—Is it not hard that conduct is imputed to us, the attorneys, the imputation of which, as to counsel, has been disavowed. Mr. Brewster has no right to say he believes the statement of counsel, while he hesitates to believe the sworn statements made by us.

Chief Justice—You ought not to interrupt the court, Mr. Mahony.

Mr. Mahony—Nobody respects the court more than I do, but I must say that it is very hard that counsel's mere assertion is to be believed, while it is insinuated that we, the attorneys, are not to be believed upon our oaths.

Chief Justice—If you don't remain silent you must leave the court.

Mr. Mahony—I shall always vindicate myself, but I will obey the order of the court.

Mr. Brewster said, he did not impute any impropriety to Mr. Mahony, he merely said the officer had been deceived, and he supposed the counsel and the attorneys had been deceived also. A mist must have obfusticated all his learned friends on Saturday, and clouded their understanding in an extraordinary manner. They admitted that the plea was ready on Saturday, and would it not have been right to tell the officers that they had got a plea in abatement to put in, and that they wished to know what was their time to put it in? On the contrary they stated they wished to know if they were bound by rule to plead or demur on Monday. He would say that the rule to plead had nothing at all to do with the plea in abatement, and that after that rule they had no right to put in a plea in abatement. If he had been consulted as the officer had been, he confessed he would have thought of nothing but a plea in chief or a demurrer. He would maintain that no rule whatever ought to be taken into consideration in estimating the time they were to plead in abatement, and therefore the officer could only have thought at the time of giving his certificate of pleas under the rule. If the object of the parties had been to get full, complete, and perfect information, would they not have asked the officer—"What is the rule—whether we plead in chief or plead in abatement?" He was bound under the circumstances to suppose that both attorneys and counsel, at the time of writing that letter overlooked the extraordinary circumstance that they had prepared a plea in abatement, or else that they did not think it worth their while to notice it in their communication. It was strange that gentlemen who had prepared a plea in abatement on Saturday, and whose object, above all things, was not delay, should on Monday serve notice in open court for a bill of particulars, they having in an affidavit stated it to be necessary for their pleas. That notice was complied with by the crown, and it was not, therefore, moved on the day after. They said that their object was not delay, but there never were men so misled in their own proceedings, or so little capable of judging of what they required as they appeared in that case to be, though they had eight or nine of the most learned men at the bar amongst them. They were certainly a simple set of poor fellows, and because the officer had misled them, or because the attorneys had misled themselves, they now called on the Attorney-General not to enforce the law against them; but he trusted that all who would so attempt to act would find themselves placed in the same position. Next, as to the merits of the plea.

Chief Justice—I think you may pass that by for the present.

Mr. Brewster said he intended to do so, but if it had been well founded, and if it had been pleaded when the party were arraigned, as it ought to be, the court would, if they thought necessary, have ordered the witnesses to be sworn at once, and after a few questions were asked of them, the bill would be sent down a good bill. That was supposing the law to be as the other side contended it was. It had been thrown out on the preceding night that that was a motion of the Attorney-General, but one of their lordships settled that point by explaining it not to be a motion. He thought he had a right to go a little farther, but his learned friend the Attorney-General objected to do so in mercy to them, but in law he thought they would have a perfect right to have gone in that morning, when that plea was on the file, and have marked judgment. But he had not done so; but, on the contrary he appeared there, and cautioned them on the rashness of what they were doing. He thought the rule with respect to pleas in abatement the same as had been stated by the Attorney-General; but if the party did not plead in abatement immediately on arraignment, he should plead in the same time as on the civil side of the court. On the civil side of the court there were two clear days to plead in abatement, and on the fourth day the party must plead, just subject to the qualification that if that fourth day happened to be Sunday he is to plead on the Monday. After citing a case in 1st Term Reports, 207, in which the informations had been found on the 16th, the party pleaded in abatement on the 20th, but the plaintiff was declared entitled to mark judgment against him, as he ought to have pleaded in abatement on the 19th.

Mr. Justice Perrin said there was no question as to the rule in such cases. It was clear that in civil cases the defendant should always plead in abatement in four days, or leaving only two clear days.

Mr. Brewster submitted that the same rule should apply to the case before the court, and said that it was also to be observed that on the civil side of the court there was no plea in abatement allowed after a general imparlance. He then referred to 1st Salkeld and Stevens, 4th Term Reports, 227, to show that pleas in abatement were regarded with as much disfavour in criminal cases. Under the statute of the 4th Anne, in England, and the 6th Anne, in Ireland, pleas in abatement should be verified by affidavit, and in the case of the King *v.* Granger, 3rd Burrow, 617, it was held that the plea in abatement was entitled to no more favour in criminal cases, than in civil cases. It had been also decided, with respect to what was called traversing *in prox* in this country, and imparling in England, that a party desiring to traverse *in prox*, if called on to appear must appear and plead before he can traverse.

Mr. Justice Perrin said that was his impression, but in a case which occurred before him at Carrickfergus assizes a number of persons wished to traverse *in prox*, and he asked the Clerk of the Crown if they had not a right to plead before they traversed, but the counsel for the crown, after looking into the act, held they were not bound to plead until the next assizes.

Mr. Brewster cited Moody and Robinson, 291, 2d Devon, 347, and Dickenson's Quarter Sessions, 461, in support of his view of the law.

Judge Perrin—Here is a case where, the party having pleaded, it was admitted he could traverse *in prox*. It is in 1st Crawford and Dix, 183.

Mr. Brewster said he thought that a strong authority for him. He would cite a case to show that if a party once imparled, he could not afterwards plead in abatement.

Mr. Justice Crampton—You are speaking of the law in civil cases.

Mr. Brewster said he was, but it had been held that the same rule applied quite as strong in criminal as in civil cases. He admitted that Mr. Moore had argued that part of the case with great ability, but he submitted that he had taken a view which it was impossible to sustain. He charged them with a desire to introduce words into the statute which would give it an effect that the legislature never intended; but he submitted, with the greatest respect, that they wanted no such thing, and that it was the other side that wanted to introduce an enactment that the legislature never had in view. The act was intended to prevent postponement of trials, and it took away the right of imparlance, and he would endeavour to satisfy their lordships that after imparlance there could be no plea in abatement. He confessed he was unwilling to dwell on that part of the case, as he heard nothing from any of his learned friends on the other side that tended to cut down the argument of the Attorney-General.

Judge Crampton—You argue that the word "plead" in the act means to plead in bar only.

Mr. Brewster said he did. He denied that it was a penal statute, but, on the contrary, he regarded it as a remedial measure, and if the court had discretion they were bound to carry out the object of the legislature. It was clear the statute giving a right to plead double, did not give any right to plead in abatement double, and he had several authorities to show that a plea in abatement should be given at the time of arraignment.

Judge Crampton—What is the arraignment?

Mr. Brewster said the argument on the other side was, that the arraignment meant the period when the pleas were to be put in; but he denied that proposition altogether, and in support of his view he referred to 1st Byrne, page 2.

Judge Perrin—That authority says, when he is called on to answer; but when is that?

Mr. Brewster—I submit it is the moment he is arraigned.

Judge Perrin—But he is given four days to plead.

Mr. Brewster—He has four days to plead in bar, but not in abatement.

Judge Crampton—The statute says that the party shall appear in term time to answer, and having been so charged, then he is to plead in four days after, or if he does not plead within the four days, judgment is to be entered against him. The statute has taken away certain privileges, and it says the party shall plead or demur in four days, and you now call on us to say that they are not to plead in abatement.

Mr. Brewster—What I submit on that point is, that the statute took away nothing in pleas of abatement, but left them as before. What it gave was in lieu of what it took away, and when nothing was taken, he contended that nothing was meant to be given.

Mr. Justice Perrin said he took it that the arraignment was the calling on the party to answer. As soon as the indictment was read, the clerk of the crown should ask the defendant—"How say you, are you guilty or not guilty?" But since the passing of that statute that question is no longer asked, and the four-day rule is put in instead of the answer.

Mr. Brewster said the rule was to compel the defendant to plead, not to answer. He then mentioned 2nd Hale, 175; 2nd Chitty, 147; and especially the case of the King *v.* Sheridan, as authorities in favour on the point.

Judge Perrin—The case of the King *v.* Sheridan was before the passing of the present statute.

Mr. Brewster said the other case with which he would trouble their lordships was the case of the King *v.* Shakspeare, 10th East. Without trespassing further on the time of the court, he submitted that, on these grounds, the defendants were too late with their plea, and that the crown were entitled to mark judgment against them.

The Chief Justice, after a brief conference with the other members of the court, proceeded to give judgment. He said that in this case of "The Queen *v.* O'Connell and others," the application before the court had been treated and argued as, in point of fact, he conceived it ought to be, on an application by the Attorney-General that the respective pleas in abatement which were tendered and lodged in court in the afternoon of the preceding day, should not be received. The Attorney-General contended that those several pleas, which were all one and the same with the mere change of name, were not pleas in bar, but were pleas in abatement—mere dilatory pleas; and he insisted, in the first place, that being dilatory pleas, they were bound to have filed them, or tendered them, if at all, within four running days; and he had argued that, because they were not tendered in court until the close of the fifth day, and being dilatory pleas, and not being pleas in bar, that they were too late, and ought not to be received by the rule of the court. Now, in general terms, if that was the rule, he would for himself say that the present was a case in which such a rule of the court ought not to be applied. There had been a good deal of dispute and controversy—he would not advert again to the method or manner of it—with regard to what passed in the Crown Office on an application from three or more of the traversers on Saturday last. Whatever might have been their object—whatever might have been their intention—it was perfectly certain that on last Saturday a formal application was made on behalf of, he would say, all the traversers, because there was no distinction between them—to know from the proper officer what length of time the parties had to plead, and it was perfectly certain that the Clerk of the Crown—the officer of that court—being thus seriously applied to, did give a serious answer in writing, that the parties who made that application had the whole of Tuesday to put in their pleas. Now it was said that the officer was imposed upon and taken in. The officer might not have his attention called to the subject; but he (the Chief Justice) must say he thought the terms "taken in, or imposed upon," as applicable to that particular subject, were terms that might as well not have been used. There were no means of deceit practised. The party might not have known that there was any difference in the time for pleading the plea, which, it appeared, was at that time prepared, and that which would have been the length of time allowed, if a plea in bar as to the merits was intended to be pleaded instead of the plea in question. Perhaps both parties were mistaken, or both parties were in error. Perhaps none of them were mistaken, or none of them were in error. He did not think it necessary to decide upon that; but again he said that the charge of a trick being practised was one for which he meant to say he did not think there were any grounds. He did not find how it was that the court could give attention to the Attorney-General that day insisting that Monday was the last day for pleading, when, on last Saturday, on a formal application, the regular officer of the court gave it under his hand to the parties interested that they had the whole of Tuesday to plead. Now, if that were a case in which, generally speaking, the question of abatemant would be brought under the operation of the four-day rule, as upon a dilatory plea, still his opinion would be, that, after that communication, made by the officer of the court to the parties, the Attorney-General could not insist upon the rule of the court. However, he thought it was necessary to consider the case otherwise and further, and that the court were called upon to give an opinion whether, according to the ordinary practice of the court, under the statute of 60th Geo. III., the parties traversers were precluded from putting in a plea of abatement that had not been filed before the regular day of pleading. He would not say the fourth or fifth day, but assume the regular day of pleading in this case to be the day which the Clerk of the Crown had pointed out. He would assume that Tuesday was the regular day of pleading, and the Attorney-General said that must be taken to be the day for pleading in bar, and not in abatement. Now, if a distinction of that kind was intended to be taken or relied upon, when the officer was applied to for his opinion relative to the time of pleading, he would say, if that distinction were intended to be relied upon, the officer ought to have apprized the parties that that distinction existed. On the contrary, he made no distinction whatever, but said the time for pleading—being silent as to whether it was to be in bar or abatement, that the time for pleading would be out on Tuesday,

and that the party had the whole of Tuesday to file his plea. That was another reason why the distinction now insisted upon was hardly open to the officer of the crown. It was his business, and he (the Chief Justice) took it for granted he might assume that it was not without the knowledge of those concerned for the crown——

The Attorney-General thought it right to say that he never heard of this until Mr. Moore stated it in the course of his argument, and the Clerk of the Crown made no communication on the subject to the crown officers.

The Chief Justice then would withold the observations he was about to make. The Clerk of the Crown was the regular officer of the court in cases of this nature. He was the proper party to apply to; he gave an answer equivocal if it were intended to rely upon the distinction between the pleas, but perfectly plain if it were not intended to rely upon that distinction, and from that answer, it appeared that they had Tuesday not only to plead in bar, but to put in any other kind of plea they were permitted to file. They would now see under the statute whether it would be permitted to file a plea of the nature in question on last Tuesday. He would put it out of view or consideration that the general answer having been that which was given by the officer of the Crown office, would, of necessity, have had a strong tendency to mislead the traversers applying to him on the subject to ascertain if they were not to have as much liberty to plead the one as the other plea; and now whatever might have been the rule of the court in civil cases, he apprehended it had nothing to say to this. He would say further that with regard to the rule of the court as applicable to the criminal jurisdiction, there appeared to be little or no room for any habit or practice to be resorted to under the construction of the statute in question. That statute was passed some three or four-and-twenty years ago, and he had not heard it stated that a single question as to practice under that statute had ever arisen with reference to the point in question on which any court was ever called upon to make a decision. It was, therefore, a case to which the practice in a peculiar case was not applicable as a rule upon the subject. Then he had already said he did not see the analogy between a civil case and a case of criminal jurisdiction. The court were, therefore, called upon to see what was the interpretation to be put upon the statute in the absence of authority, either from decision or from practice, and they were obliged to resort for the construction of the act of parliament not to the internal consideration of the things effected by that act of parliament, of the privileges of which the traversers were deprived, or the benefits which were to be conferred upon them. It had been truly stated that the right of traverse *in prox* was a most valuable privilege, which every person accused of misdemeanour under the circumstances stated in the statute were entitled to before that statute was passed, and the effect of which was that a person accused of misdemeanour before the passing of the statute, without preparing for his defence, without taking any sort of trouble, except consulting his own convenience, was entitled, if he did not chose then to go to trial, to defer the trial to the following term. Now he must agree in the representation made, that that was a most valuable privilege, and they were called upon to give a construction to the act of parliament which unquestionably took away that privilege, and they were asked to say what was the true interpretation of the statute by the terms of which the party was deprived of that privilege which he before undoubtedly possessed. Well, what was given him in lieu of it, or what did the act of parliament give him, which was introduced to amend the law, but which in amending the law operated as a penal statute against the parties deprived of those rights. But it was convenient that the law should be amended, and therefore, the law in one respect said there is no sufficient reason for the continuance of that right of traverse *in prox*, which for aught that appears might not be necessary for the defence of the accused party, and was perhaps rather to be looked upon as an indulgence, than as the exercise of a wholesome right. The indulgence was taken away, but the rights of the parties were intended to be effectually preserved. And though the party might not have until the next term to prepare himself for trial yet he was to be furnished by the enactment of the statute with all necessary and useful means to enable him to prepare for his defence. His lordship then referred to the words of the statute, and discussed their effect, which he said were in accordance with his views, and concluded thus:—Without going further into this case he hoped he had sufficiently and clearly explained his views on the subject. He thought under the true construction of the act they were not bound to give a narrow construction to it, but if there was any doubt it to give it a more general construction. Moreover, he would not throw out of his consideration of the case that the officer of the court made no restriction as to the nature of the plea. The party was at liberty to plead, not within four but within five days, and if the case turned on that, he for one would not say he would permit the parties who were suitors in that court to run the risk of being misled by the officer of the court to whom they applied. And supposing it to have been a mere mistake he would hold the party in this particular case entitled to the benefit of it. Those were his views on the subject, and he believed the rest of the court were of opinion with him.

Attorney-General—I understand these several pleas are now received, and I demur. I have handed in demurrers to each and every of those pleas, and I submit to your lordships that I am entitled to call the traversers now to appear and join in demurrer.

Mr. Moore—I think my learned friend will state some authority before he can say we are bound to join in demurrer at once. We have taken our step; he has taken his. Surely we must have an opportunity to see what he has done before we can join in demurrer. I am not aware of any rule or precedent that justifies the application of the Attorney-General.

Attorney-General—Instead of using my own language in answer to the objection of Mr. Moore, I will read the language of the Lord Chief Justice in the state trials on a motion to plead in abatement, in which the same object was sought to be attained by the defendant's counsel of not joining in demurrer forthwith. It was on the trial of Charles Layer, and "I dare say," said the Lord Chief Justice, "this is the first case when the Attorney-General demurred that the party asked time to join in demurrer;" and Mr. Justice Allan said, "I am of the same opinion, the prisoner can have no benefit by allowing him to join demurrer, except to put off his trial."

Chief Justice—We are of opinion, Mr. Attorney-General, that he is bound to join in demurrer instanter.

Mr. Moore—The authorities, my lord, are the other way. I think it rather hard that the Attorney-General should call upon the traverser to join in demurrer, without affording an opportunity to counsel on the other side of considering what they are bound to do, or what step they should take. My lords, I have no objection if, on a discussion of the question, you are of opinion that we should join in demurrer at once—that we should be bound to join in demurrer as of this day—but our impression is that we are not bound to join in demurrer peremptorily. I have just had a case on the subject put into my hand by my friend Sir Colman O'Loghlen,

that is the case of the King *v.* the Hon. Robert Johnstone, reported in 6 East, 583. There was plea on abatement by defendant—there was a demurrer by the Attorney-General; and having issued the four-day rule, there was an application by the Attorney-General for a peremptory rule on defendant to join in demurrer, the usual four-day rule having expired.

Judge Crampton—Is that a demurrer to the indictment?

Mr. Moore—No, my lord, but as here, a demurrer to the plea of abatement put in by the prosecutor. There the rule is expressly laid down between cases of misdemeanour, which this is, and capital cases like that cited by the Attorney-General. The rule to which he refers is adopted with regard to capital cases, but in cases of misdemeanour there is no right in the crown to call upon a party to join in demurrer at once, but, on the contrary, there must be two rules—one a four-day rule, and the other a peremptory rule.

Mr. Hatchell referred to another express authority on the subject in 6 Durnford and East, 6 Term Reports, 594, the King *v.* Jenever. He also referred to Chitty's Criminal Law, p. 432, "Chap. on rules to plead and pleadings on indictment"—to Cumming's Digest, and Skinner's Reports. If the Attorney-General had still any difficulty on the subject they would have no objection, as was done on the preceding evening, to adjourn the case to the following morning.

The Attorney-General was much obliged, but the design of the other side was palpable, and he had no wish to concur in their views or objects. Whatever the practice in England was, the practice was not so in this country. In the King *v.* Kirwan, State Trials, 598, two pleas in abatement were put in; the Attorney-General forthwith demurred *ore tenus* and the case was argued on the very same day. He must make one observation which he felt strongly himself. He was not aware of the rules that existed in the other country, and he knew such rules did not exist in Ireland. But, said the learned gentleman, I represent the crown here, my lords, and I, with every respect for the court, deny the right of the court to delay the proceedings of the crown, and representing the crown, I call upon the parties to join in demurrer, and I call on you, my lords, to prevent your being made a party to the delay that is called for.

Mr. Moore—I don't think that the Attorney-General has any right to say delay is called for by us. That may be his opinion, but I do not think he is warranted in saying that that is the object of the present discussion. I am not come here prepared to argue the case. I could have no knowledge of what course the court would take, or whether they should receive the pleas or reject them. The court having decided that the pleas should be received, and the Attorney-General having made up his mind as to the course to take, put in a demurrer. The proposition which I made is one which cannot, in point of fairness, be objected to, and is an answer to the observation of the Attorney-General, that delay is intended; and that is, if it shall appear to the court, in the discussion of the case, that he had a right to compel an immediate joinder in demurrer; that that joinder should take place as of the day the demurrer was put in. But we think it hard upon us to be called upon, without getting time to see what the law is.

Judge Crampton—Do I understand you to say, Mr. Moore, that you don't object to joining immediately in demurrer, if the argument be postponed until to-morrow.

Mr. Moore—No; but we will agree that the joinder in demurrer shall be of this day, if the result of the argument satisfies the court of the right the Attorney-General claims. If we are able to satisfy your lordships to-morrow that that is not a valid right, the court will not, I am sure, extend it to him.

Judge Crampton—What do you say to the case of the King *v.* Kirwan.

Mr. Pigot said he believed it would be found in that case that an informal plea of abatement was put in. There was a plea of abatement followed by a plea of not guilty. In that case the Attorney-General would have a right to go to trial on the plea of not guilty, and pass by the plea of abatement.

The Attorney-General said there was a plea of general issue in the plea of abatement, and he again repeated the same authority, which he had before cited, and said he rested his case on it.

Judge Perrin—There was a previous arrangement in that case, that the party should plead not guilty.

Attorney-General—Yes; but the court called on the parties to join in demurrer, and they did so, and the reasoning of the judges in Layer's case is distinctly applicable to this case. The judges there say that the plea in abatement ought not to have been put on the file, unless the defendants were prepared to support it. I altogether deny the right of a party to put in a plea in abatement, and when a demurrer is taken to it, not to be then ready to join in demurrer instanter.

The Court having spent some time in consultation with Mr. Bourne, the Clerk of the Crown,

The Chief Justice said, on inquiring of the officer of the court, it appeared that the practice in this country is to give a four-day rule in such cases.

Attorney-General—I know that the ordinary practice may be so; but the question is, whether the party bound by their recognizances to the crown, as I have bound them in this case, to appear from day to day, are not thus obliged to join in demurrer instanter. The learned gentleman read the recognizance, and then continued—"I insist that, as chief officer of the crown, and representing the Sovereign in this case, I am at liberty to form my opinion, and I say again that I consider these pleas to have been put in for delay. If this is not so, why should they not be ready to argue them to-morrow? I call on them, if their object be not delay, to join in demurrer instanter, and whatever rules of practice may exist on this point, I insist and claim it as my right that they should not be adhered to strictly. It was well observed by Lord Plunket that the rules of the court are the servants of the court, and where a plea in abatement is put in, as I assert, in order to create delay, and where I sustain that view by demurring as rapidly as I could, I say, that considering these circumstances, I trust your lordships will, notwithstanding any rule of practice to the contrary, require them to join in demurrer forthwith, as I require them" (much sensation among the bar).

Mr. Moore, Q.C.—The learned Attorney-General has made one of the most extraordinary propositions that was ever made by any counsel in any case. There is, according to the report of the officer, a certain practice existing in the court, entitling a party accused to a certain privilege, and yet, the Attorney-General gravely calls upon your lordships to disregard the former practice of the court, because, and *merely* because he has made up his mind that our object is delay, and because he has also made up his mind to argue the matter to-morrow, and that therefore all these rules that have been established by the court for its guidance, and that are for the benefit of the accused, are to be laid aside at his bidding. If the Attorney-General can bring forward any authority to support this strange and unconstitutional doctrine, it will be one that I never heard of before, and I trust will never hear of again.

Attorney-General—I have been asked for an authority, and I give as my authority the case of the

King *v.* Kirwan which I have already cited, and which took place in this court, and having referred to that authority, I now again call on the court to require the traversers to join in demurrer instanter.

Chief Justice—Was there any objection taken in that case by the traversers, or any application on their behalf, for a postponement?

Attorney-General—No, my lord, there was not.

Chief Justice—And don't you know that that is no authority?

Attorney-General—Of course I leave the matter to the court to have the rule entered.

After a pause of some moments,

The Attorney-General again rose and said—I now call for the rule to join in demurrer in four days.

Chief Justice (addressing the Attorney-General) said—When you mentioned the matter at first, and cited Layer's case, it occurred to me that what you read appeared exceedingly reasonable, and that the party who had put in a dilatory plea, which undoubtedly this plea must be confessed to be, should be prepared to defend it when called upon to do so. I cannot see the reason why a rule should hold in capital cases and not in other cases; and when the thing was first mentioned I did concur in your reasons, and I thought the party were bound to join in demurrer forthwith; but as the practice is reported by the officer to be to enter a four-day rule, we cannot now depart from it.

The case then stood over until the 20th November.

COURT OF QUEEN'S BENCH,

Monday, November 20.

At four o'clock, the solicitors for the defendants handed in the joinders in demurrer on the part of their clients.

Clerk of the Crown—I have received the joinder in demurrer on the part of Mr. O'Connell, and the rest of the parties indicted.

The following is a copy of the joinder in demurrer:—

"IN THE QUEEN'S BENCH—CROWN SIDE.

"Daniel O'Connell and others at the prosecution of the Queen. } "And the said Daniel O'Connell saith that the said plea of him, the said Daniel O'Connell, by him in manner and form aforesaid above pleaded, and the matters therein contained in manner and form as the same are above pleaded and set forth, are sufficient in law to preclude our said lady the Queen from prosecuting the said indictment against him, the said Daniel O'Connell; and the said Daniel O'Connell is ready to verify and prove the same, as the court here shall direct and award. Wherefore and because the said Right Honourable Thomas Berry Cusack Smith, Attorney-General, as aforesaid, for our said lady the Queen, hath not answered the said plea, nor hitherto in any manner denied same, the said Daniel O'Connell, as before, prays judgment, and that the said indictment may be quashed and soforth."

The Attorney-General inquired if they were handed in personally.

Clerk of the Crown—They are handed in by attorney.

Attorney-General—Let me see them.

Mr. Ford—I have handed in Mr. O'Connell's joinder in demurrer.

Attorney-General—Are they all the same?

Mr. Ford—They are all the same. If it be necessary to hand them in personally by the defendants I will send for them.

Attorney-General—I have no wish whatever to put the parties to inconvenience; but the parties have appeared in person, and not by attorney, and as I cannot take upon myself to have any proceedings taken about which there could be any question as to regularity, I wish the parties to attend, not with a desire to inconvenience them, but from an apprehension that no person is authorised to hand in any document on the part of any of those gentlemen.

Mr. Mahony—Our names are to all the pleadings in the case.

Mr. Ford intimated that he would, if necessary, send for his client.

Mr. Cantwell—You will find the attorneys' names at the foot of the rejoinders and at the foot of the pleas.

Attorney-General—To prevent inconvenience, which I do not wish to put the parties to beyond what is necessary, they may be handed in *de bene esse* now, and let the traversers be in attendance in the morning and be subject to the rule as if it was made to-day; but I think it will not be regular to hand them in except by the parties themselves. I will now take it that they are handed in personally. I have to apply to your lordships that the demurrer be argued to-morrow.

Mr. Ford, attorney for Mr. Daniel O'Connell, opposed this motion, and concluded that it would be at variance with the rules of the court, which made it necessary to serve a four-day rule. It was necessary to have paper books made up, and those they could not have ready by the next morning (Tuesday).

The Attorney-General offered to provide the paper books without any expense to the defendants.

Mr. Shiel, Q.C., here interposed to remind the court that it had arranged to hear argument of counsel in the case of Lord Hawarden *v.* Duffy, a prosecution for libel at the suit of the noble lord against the defendant, as proprietor of the *Nation* newspaper, for the publication in that journal of a series of letters from the pen of the Rev. Patrick O'Brien Davern, a Catholic clergyman in the arch-diocese of Cashel, reflecting, in the severest terms, upon the character of that nobleman as a landlord, and giving in detail a history of the extermination of tenantry practiced on his estates at Dundrum in the county of Tipperary. We may observe, *en passant*, that the noble lord, a lord of the bedchamber to the queen, afterwards gave up the prosecution. Mr. Shiel, with great force and earnestness, pressed upon the court his right, according to the arrangement the court had made on the previous Saturday, to be heard on the next day, Tuesday, 21st November, in the case above named; but he could not succeed in binding the court to an arrangement which, though made unconditionally, the Chief Justice held was not binding when business of more importance, as his lordship considered the case of the Queen *v.* O'Connell to be, was waiting for their adjudication.

The Attorney-General, too, insisted on his right to precedence; and though Tuesday, November 21st, was the last day for moving in criminal informations, the right honourable gentleman would not listen to any proposition which should have the effect of interfering, in the most remote degree, with his proceedings.

After a good deal of conversation by counsel on both sides,

Chief Justice (to Mr. Moore)—What is your ground in point of law?

Mr. Moore—The existence of the rule of the court, which is, we say, applicable to the case.

Court (to the Clerk of the Crown)—Is there any such rule?

The Clerk of the Crown said that, whenever a party calls upon his adversary to join in the expense of books, he had the right claimed on the part of the traversers; but when he made them up at his own expense, the opposite party had no such right.

The Attorney-General said they had made up

the books at their own expense, and they asked for no costs for doing so. The books were ready, and would have been already furnished to the judges, but they thought it better to wait until they added to them the joinder in demurrer. The clerk had now the joinder in demurrer, and would introduce it, and their lordships would have the books within an hour.

Mr. Moore said there was another object for furnishing the paper books. They were intended not only to give information to the court, but to the parties, of the points that were intended to be relied upon on the other side.

The Attorney-General said that hitherto the traversers had adopted the plan of requiring *nine* copies of every document from the crown. He would not act upon that rule in this case, but he would give one copy of the points to any of the solicitors that was named.

Mr. Hatchell said the question was, what was the rule of the Court of Queen's Bench? They were prepared to show that the rule uniformly acted upon was this:—when the joinder in demurrer was put in there was a rule to join in the expense of books. If there was such a rule, and if it were applicable to cases of indictments, unless the Attorney-General could show that he possessed the privilege not only of precedence but of dispensing with the rules of the court, or except there was something peculiar in this case which distinguished it from all other cases, they were entitled to have that rule entered.

The Attorney-General said the rule had reference to *quo warranto* proceedings, and had no reference to this case.

Mr. Hatchell—If we had notice we would be prepared to resist the application.

Judge Crampton—I understand that a party who pleads in abatement should be ready to sustain his plea when the joinder is handed in.

Mr. Whiteside said that the court decided that they were not bound to argue the pleas when handed in. They got four days to give in demurrer, and the demurrer in this case, as in any other case, could not be argued in this term.

The Chief Justice said he took it for granted that they would be prepared to go on with the argument of the case on the following morning.

Mr. Whiteside applied to have the time extended to Wednesday to afford the attorneys of the traversers an opportunity to prepare briefs for counsel.

The Chief Justice said they already had four days, during which it appeared they were doing nothing.

Mr. Gartlan—We have not a single brief made out, my lord.

Chief Justice—It is your own fault that you have not.

Mr. Gartlan observed that if the time were not extended they must remain up all night to have the briefs prepared.

Messrs. Ford and Cantwell also urged the court to extend the time to Wednesday.

Chief Justice—The court will call on the case tomorrow.*

COURT OF QUEEN'S BENCH,

Tuesday, November 21.

The full court sat at eleven o'clock. Lord Ingestrie sat near the bench.

The Queen v. *O'Connell, and others.*

The Chief Justice called upon the Attorney-General to proceed in this case.

The Attorney-General—The first thing to be done, my lord, is to require that the traversers, pursuant to the arrangements made last night, hand in their joinders in demurrer in person.

Mr. Ford—Mr. O'Connell told me he would be here at a quarter past ten o'clock.

After some time had elapsed,

Mr. Ford said that Mr. John O'Connell was in court, and that Mr. O'Connell would be there in a few moments.

Attorney-General—Where are all the other defendants?

Mr. Ford—They are all here.

Attorney-General—Let them hand in their joinders in demurrer.

Mr. Ford—Yes.

Their joinders in demurrer were then handed in by Mr. John O'Connell, M.P., Dr. Gray, Rev. Mr. Tierney, Rev. Mr. Tyrrell, Mr. Ray, Mr. Barrett, Mr. Steele, and Mr. Duffy.

Mr. Ford—Mr. O'Connell will be here in a few moments.

The Attorney-General wished the Clerk of the Crown to take down that the parties appeared in person, except Mr. O'Connell, and handed in their joinders in demurrer.

Clerk of the Crown—Yes.

Attorney-General—And that Mr. O'Connell was not present but would hand in his joinder in demurrer when he came into court, and he would proceed with his argument, on the understanding that they had all been handed in, and handed in of course as of the preceding evening. The plea he would first bring under the consideration of the court, was the plea pleaded by Daniel O'Connell, Esq. to which he had demurred on the part of the crown, and it lay upon him to state to the court the ground on which he sought to sustain that demurrer. The general nature of the plea was, it stated that the indictment was found a true bill on the evidence, to wit, of four persons produced before and examined by the jurors aforesaid, that is, by the grand jury, and that said witnesses were not nor was any of them previous to their being so examined as jurors aforesaid sworn in the said court of our lady the Queen, according to the provisions of the 56 George III. chapter 87, and the point that was intended to be raised by that plea in abatement was this, that the statute of 1 and 2 Vict., chap. 37, does not extend to the Court of Queen's Bench, and that the witnesses to support an indictment preferred in that court should be sworn according to the provisions of the 56 George III. Before he proceeded to submit to the court the grounds upon which he considered that the 1 and 2 Victoria did extend to the Court of Queen's Bench, and other superior courts of Oyer and Terminer in the county of the city and county of Dublin, he begged, in the first instance, to call the attention of the court to the fact that he was seeking to support the construction of the act which it had received from all the judges in Ireland from the period when it received the royal assent. The earliest occasion at which notice was taken of this act by any of the judges in Ireland was at the Commission Court held immediately after the passing of the act of parliament, that is to say at the close of the year 1838. On that occasion the judges who presided at the commission were the late Lord Chief Baron Woulfe and Mr. Justice Moore, and the act having passed since the commission which had been held previously to the time he was mentioning, the Lord Chief Baron thought it his duty to charge the jury respecting that act, and to inform them of its provisions, and to tell them especially that they were to act under the provisions of that act. That charge was printed in the various public journals of that day, and he found the following report of it in the *Freeman's Journal*, 9th October, 1838:—"Chief Baron

* "The Court," say the reports of the journals of the day, "was completely in the dark during the foregoing discussion." Their lordships adjourned at five o'clock till next day.

Woulfe said—Gentlemen of both grand juries, in the last session of parliament an act was passed, to which I beg to call your attention, to facilitate the administration of justice in this country, and it provides that it is no longer necessary, as heretofore, to have the witnesses examined by the grand jury, previously sworn in court, but they may be sworn before the foreman or others of the grand jury—twelve of the jury being present. Gentlemen, this is a remedial act, and I shall order it to be sent to you, (and he added), my brother judge has suggested to me, and I have to state to you that you are not to administer the oath to any prosecutor whose name is not endorsed on the back of the bill." At the following commission the Lord Chief Justice Doherty and Mr. Justice Johnston presided, and Chief Justice Doherty charged the jury. That was in Green-street, on the 3rd January, 1839, which was the next commission but one after the passing of the act of Victoria, and his lordship stated that they should proceed to the grand jury room and dispose of the cases that came before them with as much despatch as was consistent with due deliberation. That as to those who were not on the last grand jury, he thought it necessary to inform them that there was an alteration in the practice, and that the foreman was to administer to the witnesses the oath that was formerly administered in open court; and that would give them an opportunity of administering that solemn obligation in a more imposing manner than in open court. Since that time, although every judge in Ireland had presided at the commission—(which was governed by the same provisions as that court, and if that court were excluded from the operation of the statute, the Commission Court would be equally excluded)—that was the practice uniformly acted upon, and sentence of death had been pronounced upon prisoners and carried into execution, and at that moment hundreds of thousands (!) were undergoing transportation and imprisonment on that construction of the act of parliament; and no later than the first day of the present term, when one of their lordships was charging the grand jury on the present occasion, his lordship was reported to have stated distinctly to them that evidence would be given on oath, by witnesses sworn by them, the grand jury; and what had been suggested on the part of the traversers was this—that it was his duty, as Attorney-General, to throw aside the deliberate opinions of the learned judges of Ireland, acted upon since the statute passed, and to adopt a course which would throw an imputation on the correctness of that construction on which men suffered death and transportation, and adopt a construction that, if well founded, would lead to the pardon of every man now undergoing sentence of transportation or imprisonment from the Commission Court. He trusted that was a sufficient vindication of the course it had been his bounden duty to pursue; and he would not be deserving of holding his office for an hour if he were capable of taking any other course, and he trusted that would silence some of the observations which persons, in ignorance of the law and in ignorance of the facts, had thought proper to make on the course pursued in this case. But he was not going to rest his argument, strong as that would be, on the opinions of all the judges of Ireland that presided at the commission six times a year in rotation, and who uniformly acted upon that construction of the act of parliament. He was going to show the court, although it might be thought unnecessary, that the judges of Ireland came to a true construction of the act of parliament, and that any other construction was inconsistent with its spirit, its intent, and its object. Before he adverted more particularly to either of the acts of parliament, the 56th Geo. III., and 1st and 2nd Vic., he thought it necessary to bring under the consideration of the court and to call the attention of their lordships to how the law stands in England on the subject, and to show the law as administered might be considered as what the common law on the subject was. He would refer to cases and authorities where the subject was under consideration, and more especially to one case in which the very point now before the court was under consideration. The case was not reported in the book in which it was referred to as having been decided, Carrington and Marchmont's Reports, but he had succeeded in getting from Sir Gregory Lewin, one of the counsel who made the point, a report of the case, and which he would hand into the court in Sir Gregory Lewin's handwriting. In referring to the cases in the books he did not think it necessary to go into a lengthened detail of them. He had first to observe that in England, in the case to which he would presently advert, that very matter was brought under the consideration of the court at Durham, it having been the practice always there without an act of parliament for the grand jury to administer the oath to witnesses. That they would find in Teesdale's case, 2 Lewin's Crown Cases, p. 294. He also referred to a more recent case which came before the courts in England, where a similar point was raised, the case of the Queen *v.* Russell—Carrington and Marchmont, page 247, that book being a continuation of Carrington and Payne's Reports. In that case in Carrington and Marchmont, Lord Denman and Mr. Justice Wightman had referred to the case which he (the Attorney-General) had handed up to their lordships in Sir Gregory Lewin's handwriting, and he would hand to his learned friend Mr. Moore the portion of his letter that referred to the report. Having read an extract from the report, the learned gentleman proceeded—That was the law as laid down in English cases; but he would now, however, bring under the attention of the court, more particularly, how the law stands in this country. It had been the custom in Ireland, as their lordships judicially knew, prior to the passing of the 56th George III., for grand juries in Ireland to find bills of indictment, not upon their own knowledge, but in a manner which the law did not now recognise—that was, upon the sworn informations, without examining the witnesses at all. The object of the 56th Geo. III. was to alter the practice in that respect; and accordingly, by that statute, ch. 87, it recited—"Whereas a practice hath prevailed in many of the grand juries in Ireland, to find bills of indictment, without examining witnesses for the crown; and it is expedient that this practice shall for the future be discontinued: Be it therefore declared and enacted, by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons, &c., that from and after the passing of this act, no bill of indictment shall be returned a true bill by any grand jury in Ireland, unless the same hath been found, by the jurors upon the evidence of one or more witnesses for the crown, sworn in court, and produced before them, with such other lawful evidence as the nature of the case may require or admit of." That act appeared to be a declaratory act, but he should not now, nor did he intend to trouble the court, although, perhaps, it might be a subject worth consideration whether it, being a declaratory act, could affect the authority of the cases to which he referred the court, it being the common law in England, and of course in Ireland, because he did not think it necessary to his argument to go into that question: and he was ready to take it that, under the 56th Geo. III., that declaratory act, one or more of the witnesses should be sworn in court. The object of the act was not with respect to the place of swearing the witnesses, the whole object was to do away

with the existing practice of finding bills on sworn informations without the *viva voce* evidence of the witnesses themselves. That was the mischief to be remedied; and the act directed that a *viva voce* examination of witnesses should take place, and that that was to be under the sanction of an oath. It did state certainly that the oath was to be administered in court; but that was not the object of the act. The object of the act was, that there should be a *viva voce* examination on the testimony of sworn witnesses; and, accordingly, that act was passed, and the practice arose under that act of swearing the witnesses that were to be examined before the grand jury in court, and the witnesses, on being sworn, were sent before the grand jury. He prayed the attention of the court to this fact that was not questioned upon the other side, on the contrary, the plea admitted it, and there was no doubt on the subject. The plea was that the witnesses should be sworn in that court under the 56th George III.; that was a general provision extending to every grand jury in Ireland exclusive of the grand jury of the Court of Queen's Bench. Their lordships would observe that there was no dispute on that subject, and if the 56th Geo. III. and 1 and 2 Vic. were both out of the way, the English authorities would at once bear upon the case. But it was contended at the other side, and by the case made in this plea in abatement, that the witnesses should be sworn in that court notwithstanding the direction to the contrary given by Judge Burton in charging the grand jury. Their case was that the witnesses should be sworn in court before the officer of the court under the provisions of the 56th Geo. III., the statute referred to by the plea, and, therefore, the court would observe that there was no question, and he would wish their lordships to bear in mind that there was no question, as to its being a general provision extending to every court and grand jury throughout Ireland, and that it was an act passed as already stated with the object of removing the mischief that was supposed or felt to exist from finding bills of indictment in the mere sworn informations without a *viva voce* examination, and the object and intent of the legislature was to substitute that *viva voce* examination at all events to a certain extent. That statute, which, as he had already stated, extended to every part of Ireland, and which was general in its provisions, not excluding any court or grand jury, led to this inconvenience, that the proceeding particularly of the Courts of Oyer and Terminer throughout the country were interrupted by swearing the witnesses in court, and it was considered better to administer the oath to them in the grand jury room, there being twelve of the jurors present, than amidst the noise of a crowded court. That inconvenience had been adverted to by Chief Justice Doherty in the Hilary sittings in 1839; he said that it led to an irreverend administration of the oath. The object of the 1st and 2d Victoria was to avoid that mischief in every Court of Oyer and Terminer, and in none of them would the proceedings be more seriously interrupted than in the Court of Queen's Bench if many bills were sent up to the grand jury. It was to remedy the mischief arising from the administration of the oath in court, but still carrying out, and seeking to carry out, the principles of the 56th Geo. III., of having a *viva voce* examination, that the act of 1 and 2 Vic. was brought in and passed, and now he would beg leave to read the preamble of that act of parliament, and he would venture to say, that the ingenuity of man would not be able to show anything in that preamble to confine it to any particular class of courts of Oyer and Terminer. The act by its title was "an act to empower the foreman, or any other member of grand juries in Ireland, to administer oaths to witnesses on bills of indictment," and though he admitted that no great stress was to be laid in the title of a bill, it had not been thrown out of consideration in all cases; but had been adverted to by judges from time to time, and the title of this act of parliament, which he would show was in conformity with its provisions, did not seek to confine it to any particular class of courts, but to meet the mischief that existed by empowering the foreman, or any other member of a grand jury in Ireland, to administer the oaths to witnesses in bills of indictment. He then would come to the preamble of the act of parliament—"Whereas by an act passed in the 56th year of the reign of his Majesty King George III., intituled an 'act to regulate proceedings of grand juries in Ireland upon bills of indictment,' reciting that a practice had prevailed in many of the grand juries in Ireland to find bills of indictment without examining witnesses for the crown, it was enacted that from and after the passing of that act no bill of indictment should be returned a true bill by any grand jury in Ireland, unless the same had been found by the jurors upon the evidence of one or more witnesses for the crown, sworn in court, and produced before them." That was the recital of the 56th George III., a statute that was applicable to every Court of Oyer and Terminer in Ireland, and that was applicable to every grand jury in Ireland; and then the 1st and 2nd Victoria proceeded as follows:—"And whereas the provisions for the *viva voce* examination of witnesses by the grand jury upon the consideration of bills of indictment has been found most salutary, but the administration of the oath in court has been productive of delay and other inconveniences, for remedy whereof"—He begged to be allowed to stop there for a moment, and to ask the court whether there could be a doubt which the ingenuity of man could place in the language of that preamble, to show that it did not recite a general mischief arising on proceedings before all grand juries. The words of the preamble referred to the mischief arising in all cases coming within the 56th of Geo. III., including that court and every Court of Oyer and Terminer in the country, and in the county and county of the city of Dublin. He therefore had it, as plain as language could make it, on the face of the preamble of the act of parliament—that portion of the act by which he was entitled peculiarly to look to and ascertain the intentions of the legislature—that the clear, and palpable, and undeniable object of the legislature was to provide a remedy for existing mischief, that existing mischief being traceable to every case of every grand jury in Ireland, that is to say, to the swearing of the witnesses in open court. With that preamble, showing the intention of the legislature, and it appearing on the face of it to be a remedial act for beneficial public purposes, he would now come to the enacting portion of the act of parliament, and he thought the court would find this clear, when looking to the whole of the act of parliament, that the provisions, as far as the grand juries are concerned, were as general and comprehensive in their terms as the provisions of the 56th George III., and yet it was sought to control the language of the act, and to prevent the mischief from being remedied in a particular class of cases, and the objects of the legislature, as declared in its preamble, from being carried out, by this attempt at construing its provisions, which he would just now show, namely, two ministerial officers were to do two ministerial acts, the one at the assizes and the other at the quarter sessions, namely, the clerk of the crown and the clerk of the peace, and because the mode in which this particular portion of the duty was to be performed, not of swearing the witnesses, but en-

dorsing their names on the bill, the court were called up to control the general provisions and enactments of this act of parliament that were general in their nature, and equally comprehensive in their nature, and referable to grand juries, as the 56th Geo. III., and to put this construction in its directory provisions on the faith of the declaration of the act of parliament "for remedy whereof;" for remedy of what? for remedy of the mischiefs arising in cases brought before every grand jury in Ireland. Was that without any reason or object to be held to exclude grand juries in Dublin, and at the commission—was it without reason or object to exclude the Queen's Bench and the commission for the city, and the commission for the county? "For remedy whereof be it therefore enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that in all cases where bills of indictments are to be laid before the grand juries in Ireland for their consideration, the clerk of the crown at the assizes, (and in these words the whole technical construction was sought to be put in the act) and the clerk of the peace at quarter sessions, or his or their deputy, shall endorse upon the back of the bill of indictment the name or names of the witnesses for the crown in support of such bill, and shall send the same so endorsed to the grand jury; and the foreman or other member of the grand jury so empannelled, twelve members of the said grand jury (at the least) being there present at the time, shall and they are authorised and required so to do, previous to the examination of any witness whose name shall so appear endorsed upon the back of any bill of indictment, administer to such witness the oath or (in case of persons by law permitted to make a solemn affirmation in courts of justice) the solemn affirmation required so to be taken by such witnesses; and the foreman or other member of the grand jury who shall have administered such oath or affirmation, shall upon the back of such bill of indictment state the name or names of such witness or witnesses as shall have been duly sworn, or shall have made such affirmation before him, and authenticate the same by his signature or initials;" and then came the two provisions which were of considerable importance, and to which he begged the attention of the court. "Provided always that the said oath, or affirmation, is not to be in addition to, but in lieu of that heretofore administered in court under the provisions of the said act passed in the 56th year of the reign of his late Majesty King George III." Now he would ask the court, looking to that proviso, and to the preamble, which was general in its nature, and looking to the undoubted fact of the 56th George III. being applicable to every grand jury throughout Ireland, was it not plain and palpable to the commonest and dullest understanding, that the object of the act of parliament was this, to leave that untouched which was found to be beneficial under the 56th George III. namely, the *viva voce* examination of witnesses, and to apply a remedy to that which was not found to work well, the mode of administering the oath. But there followed another proviso that was equally strong, "and provided also that no foreman of any grand jury, nor any other member thereof, shall have power to administer such oath, or affirmation, or to examine any witness in support of any bill of indictment whose name shall not have been previously endorsed on such bill of indictment by the clerk of the crown, or clerk of the peace respectively." They had not there introduced the clerk of the crown at assizes, or the clerk of the peace at quarter sessions, but they had a general proviso as general as the English language could make it, "provided also, that no foreman of any grand jury, nor any member thereof shall have power to administer such oath or affirmation to, or to examine any witness in support of any bill of indictment, whose name shall not have been previously endorsed on such bill of indictment by the clerk of the crown, or clerk of the peace respectively." For he was told that because it was thought advisable by the legislature with respect to proceedings at the assizes, that a popular meaning might be given to the words, and that the clerk of the crown was to perform that ministerial duty, and that at quarter sessions it was to be performed by the clerk of the peace, the court were to act in contradiction of the legislature, as appeared by the preamble and provisoes of the act, and narrow the construction which it had received from all the judges in Ireland since it passed to the present day. This matter might be considered on principles of common sense independent of authority; but if he were to show authorities, he would produce authorities to prove that if a ministerial duty be imposed on a ministerial officer by act of parliament, that duty may be in similar cases performed in other courts, not having such ministerial officer, but to which it is to be presumed the act intended to extend. The act did not refer to grand juries at assizes, or quarter sessions only, but to every grand jury; and the words clerk of the crown and clerk of the peace respectively would embrace every officer that was to perform the ministerial act. If they were called upon to look to the act of parliament and nothing else, and even to give the meaning to those words at assizes, which was sought to be put on the language at the other side, he would submit to their lordships that the construction of this act of parliament was plain and clear, and that it would be contrary to every principle of construction from the earliest time to call upon the court now to make a decision with respect to it, by which all the convictions that had taken place at the commission, from the year 1838 down to the present, were illegal convictions. It would be calling upon them to decide that all the persons that had been tried at the commission, and had undergone the last sentence of the law, had undergone that sentence illegally; that every person then undergoing sentence of transportation had been illegally transported, and that all persons now suffering sentence of imprisonment were illegally in custody. Were their lordships to be called upon, in violation of the clear, plain, palpable, and undeniable meaning of the legislature, as appeared from the preamble and provisions of the act, to hold that those words were to control and contradict the objects and intentions of the legislature? Were they to narrow the objects of the preamble, and to hold that that, which by the enacting part was for the remedy of what was stated in the preamble, was not to have that effect and operation? And were their lordships to be called upon after their invariable construction of the act of parliament, now, for the first time, to put that construction upon it? According to the general rules of law, which scarcely required that there should in this case be any elaborate argument upon them, there was no doubt that in the case of a remedial act, it was to receive a liberal construction, so as to extend, to remedy, and suppress the mischief complained of. He referred to the case of Murphy *v.* Leader, Jebb and Burke's Reports, p. 75, and to the judgment of the Chief Justice in that case, with reference to the construction to be given to an act of this description. He would not trouble the court by going through the authorities at length, but they would find the same principle of construction adopted in Ivor *v.* Man, Scott's New Cases, commencing at p. 362; the New River Company *v.* Graves, 2 Vernon; the King *v.* the Inhabitants of Eversham, 9 East 101; and Bryan's case, 5 Term

Reports, 511. In all those cases the same principle had been laid down as was laid down by the Lord Chief Justice. He did not concede that in this case it was necessary to go the lengths which the court had been called upon to go in the cases to which he referred, or to construe the act of parliament against its letter, but he referred to those cases to show that the court had construed acts even against their letter in order to carry out what it was palpable were the intentions of the legislature. There were two or three older cases to which he begged to refer. The first case to which he would call the attention of the court was in 2nd Institute, p. 395, and was a commentary upon the statute of Westminster the 2nd. The next case to which he would call their attention was in page 393 of the same book, 2nd Institute; and Lord Coke, in commenting upon another passage of the same act of parliament which gave jurisdiction in term to Justices of Eyre, said, that although Justices in Eyre were particularly mentioned, yet it doth extend to the Court of Common Pleas. He next referred to the 2nd Institute, page 256, which referred to the mischief which, under particular circumstances, might arise.

Judge Perrin—What was the mischief there, Mr. Attorney-General?

Attorney-General—The mischief before this statute was with respect to the preposterous hearing of cases; for the Courts of Queen's Bench and Common Pleas, at the request of great men, put off the matter to be heard from one day until another (laughter). He would venture to say that if this case was to be governed by the rules of construction which he submitted, from the earliest time to the present governed acts of parliament of that kind —if the intentions of the legislature were beyond doubt and beyond question as appearing upon the preamble of the act, keeping always in view that the 56th George III. was admittedly general in its nature and enactments and applied to all cases, what he contended was for this, that looking to the title and preamble and to both the provisoes, the clauses of the section, and the general provisions which were applicable to all grand juries, and the circumstances of mischief being applicable in all cases, that the duty referred to was not confined to the clerk of the crown at assizes. Were they prepared to contend that no grand juries within the meaning of this act of parliament were referred to except the grand juries of courts outside the county and city of Dublin, because if the act were inapplicable to the Court of Queen's Bench, it was just as inapplicable to Courts of Commission held in Green-street. He would ask the court this, when the judges went down to hold the Commission of Oyer and Terminer, or to hold a special commission in the country, was it ever thought of swearing the witnesses in open court? He was satisfied his argument was clear to the court, and that he had shown it to be the intention of the legislature that it was not to be confined to any particular grand jury, and the ministerial act to be done was to be done by the officer of the court. If a narrow construction was put upon the act, it was to be put upon every branch of the act of parliament, the clerk of the peace was to do the duty at quarter sessions. Now the Recorder of Cork sat every six weeks, and was every act that he did to be illegal, because he did not sit at quarter sessions? Were the proceedings before the two assistant barristers for the county of Cork to be affected in like manner by this special pleading upon the act. He believed the fact to be that the Recorder of Dublin adjourned from month to month, and, therefore, according to the construction sought to be put upon the statute, all the convictions had before him would be illegal.

Mr. Perrin observed that the Recorder sat at quarter sessions, but he adjourned them.

The Attorney-General said that did away with the effect of that observation, but it gave rise to another important question. He now took it that the Recorder held a quarter session, properly so called. If so, the proceedings in his court were within the construction of the act, and the construction the court were called upon to put upon this act was this: the Recorder sits to-day and sends a witness to the grand jury, the Commission sits next day, and in the very same place, and yet the sending the informations to one instead of to the other, was to depend on the mode of administering the oath. The case then was this, that although it applied to that court, it excluded the other courts of Oyer and Terminer and Queen's Bench, but if he were called upon there, where there was special pleading upon this act, for a strict liberal construction of the act of parliament, it was open to him to submit that it was a mistake, to say that court was not a court of assize. He referred to the difference that would occur where cases were removed into the Queen's Bench from courts below, between the practice of those courts, if the construction which was sought to be put upon the statute by the traversers was recognised by the court. Now, with respect to the general jurisdiction of the Queen's Bench, he would refer to Dagg's Criminal Law, page 106, and Bacon's Abridgement, title *assize* letter A, and in the last edition vol. 1, page 332. Also to Cummins' Digest, title *assize* B 21. He read those authorities to show that there was an inherent jurisdiction in the Courts of King's Bench and Common Pleas under common law to act as courts of assize. Therefore if those words were construed in their strict literal sense as being intended to refer only to courts of assize, that the clerk of the crown in that court could act in the same manner as the clerk of the crown at the assizes. And if the court were to be held elsewhere, as had been the case in England at the time of the plague, and at other times when it followed the King's person according to the terms of his title, "wheresoever he removes;" if they removed to another country they would have the effect of suspending the assizes by the mere fact of arriving in a particular country, and accordingly it was necessary to pass an act of parliament, he believed in the year 1723, remedying the grievance which thus arose, as was stated in second Gabbett's Criminal Law, page 13. Their lordships were also aware that if the first day of term arrived during the sitting of the commission court, the business of that court could not be proceeded with, even though the business of it should not have terminated. Therefore where they had the construction of that act by Chief Baron Woulfe and Mr. Justice Moore at the first commission, and by Chief Justice Doherty and Judge Johnson at the next commission, and subsequently by every one of the judges sitting at commission, he submitted the construction ought not to be now departed from. He would only say, in conclusion, for he was not about to argue the point at length, that those pleas had been most inartificially drawn up. It was only necessary to state the objection in order to point out the impossibility of sustaining such a plea. It said that four witnesses had been examined before the grand jury; but it did not state the names of those witnesses, or allege that they were unknown, which might possibly be the case. The rule of law was, that if they did not know the names of the parties endorsed on the indictment, they should, *a fortiori*, in a plea in abatement, state that the parties were unknown; but they were not at liberty to put in any plea that averred that a certain number of persons did a certain act, as, if it were known, the traversers would have to verify it on their oaths. The general principle in criminal cases would be found in Stevens on Pleading, 2d edition, 353, and the cases in the cri-

minal courts were referred to in 2d Gabbett's Criminal Law, 321. As to the inartificial mode in which the plea had been prepared, he had to add, that they had in that dilatory plea omitted to state that the witnesses had not been affirmed in court, as they might have been. He mentioned that, merely to show that in point of form it was as untenable as it was illegal in point of law. In eight out of nine pleas they did not state the names of the traversers in the beginning, and he had taken up the other plea because the name Daniel O'Connell appeared in it. Under these circumstances, and without going further into the objections against the form of the plea, he submitted that, according to the policy of the legislature, he had put a proper construction on the act of parliament, whereas the court were called by the opposite side to put a most narrow construction on the statute, calculated to defeat the object of the legislature. He trusted, therefore, that the court would have no difficulty in allowing the demurrer which the crown had taken in that case.

Sir Colman O'Loghlen said in that case he appeared on behalf of the traversers, and he could assure their lordships that he never rose to address the court with feelings of greater embarrassment and responsibility than at that moment, because he could not disguise from himself that matters of vast importance rested upon the impression he should be able to make upon the court. Before going into the case he wished to observe that it had been alleged by the Attorney-General, upon a former occasion, in reference to the plea now at argument, that it had been intended for purposes of delay, but he thought their lordships would agree with him, that though, technically speaking, it might be considered to be a dilatory plea, still that the question raised by it was of the most serious importance, and one which perfectly justified the traversers putting that plea upon record, in order to have the necessary decision passed upon the matter by the ultimate tribunal. The Attorney-General began his argument by referring their lordships to what had occurred at the Commission Court in Dublin after the passing of the statute, and in a subsequent part of his argument he referred to the practice at the special commissions, a few of which had taken place since the act came in force. But if ever there was a case in which practice ought not to rule the decision of their lordships it was the present. In matters of mere form the rules and practice of the court were an invaluable guide, but where the question involved was a matter of law, he would respectfully submit that practice ought not to be taken as a guide by the court in coming to their decision. In support of that observation he would refer their lordships to a very strong authority which was to be found in 3d Term Reports, 725. After reading the opinion of Lord Kenyon in that authority, he proceeded to say that it was no matter how often an error might have been committed by witnesses being sworn before grand juries, and not in open court, still if the law did not allow such a course to be taken it should not be continued, no matter how long the practice might have existed. Having said so much as to the practice contended for by the Attorney-General, he would next come to consider the other parts of the argument which he had put forward. The Attorney-General had cited some cases, not, however, very numerous, to show that it was not necessary to have the witnesses sworn upon whose testimony bills of indictment were to be found. One of these was from Lewins's Crown Cases, and the other was from Carrington and Marshman. He had been able on that point to find a great number of cases which he would proceed to lay before the court, and it would be seen that the current of the entire was far from bearing out the Attorney-General. It should be remembered that he was speaking of English cases, and not of cases decided in Ireland. The principle he had found laid down in many cases, that unless the witnesses were sworn before being examined by the grand jury, any indictment found by them was bad. The first authority to which he would refer their lordships upon the subject was one from 1st Lewins's Crown Cases, 322. That was a case which occurred at the Carlisle spring assizes, 1832, and then before the grand jury were discharged, it was discovered that the witnesses on one of the bills which had been delivered into court as found, had not been sworn, and Alderson, Baron, sent for the grand jury and desired them to take back the bill and examine the witnesses afresh. In another case, too, mentioned in the same work, "when the witnesses on a bill of indictment were found not to have been sworn after the grand jury had been discharged, Park J. refused to detain the prisoner in custody until the next assizes, or to find bail." And in the case of the King *v.* Dickenson, 1st Russell and Ryland, 401, it was held by the twelve judges that if witnesses go before the grand jury without being sworn, and the bill is found, and the prisoner tried and convicted, it is proper to recommend him for a free pardon. Now none of those cases were referred to in the case cited by the Attorney-General from 1st Carrington and Marshman, but they were, on the contrary, in direct opposition to it as well as to the manuscript case said by the Attorney-General to have been furnished to him by Sir Gregory Lewin. But not only must the witnesses be sworn, but they must be *properly* sworn. It was decided in 6th Carrington and Payne, 90, that a prisoner could not be legally convicted unless the witnesses were properly sworn before the grand jury. In that case it was held that a party could not be legally convicted upon an indictment found by a grand jury upon the testimony of witnesses who were sworn by an officer of the court after the session had lapsed, in consequence of its having on two successive days been opened and adjourned without the presence of any justice; and so much importance was attached to the objection in that case, that a special commission was issued to try over again all the prisoners thus irregularly tried. From authorities it was clear that, in order that a bill should be considered as a good indictment, it must be found on the evidence of witnesses who were not only sworn before being examined by the grand jury, but who were properly sworn. But then the question arose, were the witnesses properly sworn in the present case. It was admitted by the demurrer the witnesses here were not sworn according to the provisions of the 66th Geo. III., c. 87, sec. 1, and to be properly sworn they should have been sworn according to the provisions of that statute unless it be repealed. The crown had asserted that statute was repealed by the 1st and 2nd Victoria, c. 27, so far as the swearing of witnesses in court was concerned; but the traversers, he said, contend that the latter statute only partially repealed the former act on that point, that the latter statute only applies to assizes and sessions. The learned counsel then read an extract from the 1st and 2nd Victoria, c. 37, which, after reciting the act of the 56th George III., and the benefits that had accrued from it, and the mischiefs which arose under it, provided that in all cases where the bills of indictment were to be laid before a grand jury in Ireland, the clerk of the crown at the assizes, and the clerk of the peace at sessions, shall endorse the names of the witnesses on such bills, and shall then lay them before the grand jury, and that it should be lawful for the foreman, or other member of the grand jury, to swear and examine witnesses whose names were so endorsed on the back of the bill of indictment, and then it went on to provide that no foreman or member of the grand jury should have power to examine any witnesses whose names had not been previously endorsed

on the bill by the clerk of the crown at the assizes, or by the clerk of the peace at the sessions. The first question that arose on the construction of the statute was, could the word assizes mean Queen's Bench, for if it could, then be admitted there was an end to the case, and that the Attorney-General was entitled to have judgment on the demurrer. According to 3d Blackstone's Commentaries, 185, the word "assize," or "assise," signifies originally the jury who try a cause, and sit together for that purpose, and the word retains its original signification in the Scottish law to the present day. In the English law, however, its original signification was lost at an early period, but the word was retained in connection with a form of action now abolished, which was made use of for the recovery of lands. The history of that action he might observe was to be found in 3d Blackstone's Commentaries, p. 184, and 1st Reeves, English Law, pp. 178, 244. By the common law "assizes" were taken only in the Queen's Bench and Common Pleas, and before Justices in Eyre, who were appointed in the reign of Henry II., to go round the kingdom once every seven years to take these assizes. By *Magna Charta*, however, that practice was altered, and justices were appointed to go once every year to take the assizes. This latter arrangement was found to be attended with many advantages, and in the reign of Edward I. it was further improved. By the statute of Westminster, 13th Edward I., it was directed that two justices should go into each county at most three times in the year, to take assizes. By the same statute a commission of *Nisi Prius* was directed to be granted to them, as also commission of Oyer and Terminer, and of gaol delivery, in order that they might try all civil cases, and deliver the gaols. The courts which these judges held was technically called the assizes. By the 3d Edward IV., chap. 5—an Irish act—similar provisions were established in Ireland, and certain justices were assigned to take the assizes of *Mort Daucestor* and *Novel desseisin*, and to deliver the gaols in all the counties of Ireland, and that was the origin of what in Ireland was now called the "assizes." In 3d Blackstone's Commentaries, 185, "assizes" were defined to be "The judicial assemblies held by the King's commission in every county, as well to take writs of assize as to try causes at *nisi prius*," and in 2nd Gabbett's Criminal Law, page 8, he found the following passage: "Ireland has been since 1796, divided into six circuits, and the courts held in any county, county of a city, or county of a town, on these circuits for the trial of civil as well as criminal business is called the 'assize.'" The court would perceive from those definitions, that it clearly appeared that whatever might have been the original meaning of the term "assizes," yet it had acquired in time a specific technical meaning, and that the Court of Queen's Bench was not, properly speaking, a court of assize. Now in the case of Smith *v.* Harman, 6th Modern, 143, it was laid down, that "if a statute made use of a word, the meaning of which is well known, and has a certain definite place at the common law, the word shall be expounded and received in the same sense in which it is understood at the common law;" and thus the term "cottages," which is used in the act of 31st Elizabeth, chap. 7, has the same signification there as it had at the common law, and is applied to it in Doomsday Book, 2; Cooke's Institute, 736; and Dwarris on Statutes, 702. It was stated that, "the words of a statute are to be taken in their ordinary and familiar signification and import, and regard is to be had to their general and popular use; for *jus et norma loquendi* is governed by usage, and the meaning of words spoken or written ought to be allowed to be, as it has constantly been taken to be, *loquendum est ut vulgus*." Therefore, he would say that if he had no other authorities but the general principles just quoted, and the definitions given by the text writers, he would be justified in urging their lordships to construe the word "assize," in the present statute, not in its general sense, but to construe it in the sense that it had acquired by usage; but he thought he would be able to show the court from other sources that in the statute law the word assize did not in any case include the Queen's Bench. On that point it would be important for him to refer their lordships to what they were already familiar with—the acts relating to malicious burning. The first act on the subject was the 7th William III., c. 21, which was entitled "An act for the better suppression of tories, rapparees, and robbers, and for preventing robberies, burglaries, and other heinous crimes." The act of the 9th William III., c. 9, was passed to supply defects in the former act, and was also described to be for the better suppression of tories, rapparees, and robbers. After reading several extracts from those statutes, the learned gentleman continued to observe that it had been held that those statutes did not include the Queen's Bench, because the word "assizes" was used throughout in them, and that, therefore, it was found necessary to enact the 29th George II., c. 14, to enable petitions for compensation for malicious burnings to be extended to the Queen's Bench. He then said that the object of those statutes had been discussed in a very able document—*In re* Miller, 2d Jebb and Symes, 273. But it was not, however, confined to those malicious burning acts to prove that the word "assizes," in acts of parliament, precluded the Queen's Bench from their operation, because he could show their lordships that there were other acts, and most important acts, in which a clear distinction is taken between the Court of Queen's Bench and courts of assize. The act to which he wished first to call their lordships' attention was an act which had been very often mentioned in the course of the present term before the court. It was the 60th Geo. III., chap. 4, in which there was a clear distinction made by the legislature between the Queen's Bench and the courts of assize. The same distinction, too, occurred in the grand jury act, the 6th and 7th Wm. IV., chap. 116, under which grand juries were at present constituted. There the legislature thought it necessary to enact that, *for the purposes of the act*, the word "assizes" should include and import "presenting term," and that the words "judge of assize" should include "judge of the Queen's Bench." Now what was the necessity of that enactment, unless the legislature thought that the word "assizes" did not of itself include the Queen's Bench? Their lordships would be also pleased to observe the distinction that was drawn between the clerk of the crown in the Queen's Bench, and the clerk of the crown at assize, in the act of the 2nd William IV., chap. 28. The same distinction between assizes and Queen's Bench was also taken in the 5th and 6th William IV., chap. 26, under which the Lord Lieutenant was empowered to change the assize town, and to divide counties in Ireland for the purpose of holding courts of assize. He did not think it was necessary for him to dwell longer on that part of the case; but it was clear that neither at common law, that is, taking as the common law meaning, the meaning that the term had acquired by usage, nor at statute law could the word "assizes" mean the Queen's Bench, and he trusted he had made it equally clear on the authority of the statute that he had cited that the "clerk of the crown at the assizes" did not include the "clerk of the crown in the Queen's Bench." He had next to consider whether, independently of these views, the act of the 1st and 2nd Victoria applied to term grand juries. It was said that the term grand juries were included in it—first, because the words of the act are general

and sufficient to include them, and secondly, because they fell within the policy of the act. But before adverting to the wording of the act, he thought it right to remark that the statute ought to be construed strictly, first, because it was a penal statute, and contrary to the modern policy of legislature, inasmuch as it deprived the accused of the means of knowing the names of his accusers; secondly, because it took away the common-law right, and created a new jurisdiction. Statutes of that description were never to have an equitable construction. By the 56th Geo. III., the witnesses were obliged to be sworn in open court, and the defendants had thus the means of knowing who their accusers were; but the 1st and 2nd Vic. took away that right, and by the practice of that court, which their lordships had decided to be the law in Ireland, the names of the witnesses on the back of the indictment could not now be given. The modern policy of the legislature was, as is well known, to give the traversers and prisoners the greatest facilities for preparing for their defence, and therefore it was that copies of the informations were granted to the parties accused, and that act, as he had already mentioned, was at variance with that policy, and it ought therefore to be construed strictly. There was also another reason why it should be held not to apply to the Queen's Bench, and that was, that in a mere enacting law, the Queen's Bench (and consequently its grand juries) was not as in a general rule included, unless it were expressly named in the enactment. That principle had been laid down by the court in Foster's case, first Coke's Reports, 64, where it was stated that "although there be negative words in an act of parliament, yet in many cases they shall not bind the Queen's Bench, because the pleas there are *coram ipso rege.*" In the second Hawkins, chap. 27, sec. 124, it was said "where a statute (8th Henry VI., chap. 10,) speaks of indictments to be taken before justices of the peace or others having power to take indictments, it shall not include indictments taken in the Queen's Bench." That principle had been acted on in modern times, and he found a strong case on the subject in 8th Barnwell and Cresswell, 420—the King *v.* Richards and others. The case of the King *v.* Kelsey, 18th Dowling's Practice Cases, 481, was an argument for the same point. The act ought to be construed strictly. First, because it was a penal statute. Secondly, because it took away the common law right from the defendant; and third, because the Queen's Bench was not included in enacting statutes, unless it was expressly mentioned. It was true that the Queen's Bench was included in the 56th George III., chap. 87, but that was on a declaration, as well as an enacting statute, and the Queen's Bench was, therefore, included in it, because it was included in all declaratory acts, though not in enacting statutes. He had next to see if there was anything in that act of the 1st and 2nd Victoria to take it out of the general rule. It was indeed asserted that the title of it was general, but there was no principle better established than that the title was no part of the statute. That was laid down in the case of the King *v.* Williams, 1st Blackstone, 95, and by a very eminent judge, Lord Mansfield, in Dwarris, 153, where he stated that "the custom of prefixing titles to statutes did not begin till the 11th year of the reign of King Henry VII. It is usually framed by the clerk of the house in which the bill first passes, and is seldom read more than once." Again, Lord Holt, in the case of Mills *v.* Wilkin, 6th Modern, 62, said—"The title of an act of parliament is no part of the law, or enacting part, no more than the title of the book is part of the book; for the title is not the law, but the name and description given to it by the makers." The title was in fact a most unsafe guide in determining what the object and meaning of the act was; and no reliance could be placed upon the wording of it, because it frequently alluded to the subject-matter of the act in the most general and sweeping terms, and is often, in its wording, more extensive than the provisions of the act itself. In Dwarris, 654, it was stated that "the mere title of an act is the most unsafe guide to assist us in ascertaining, even in the most general way, the scope and purport of the act." But even admitting, for argument sake, that the title may be brought in, if of a doubtful nature, in order to afford some aid in the construction of it; yet there was nothing in the title of the present act to militate against the construction that the traversers sought to put upon the statute. They held that the words "grand juries in Ireland," in the enacting part of the statute, derived a limited construction from the words which immediately followed, and that they meant "grand juries at assizes and sessions in Ireland," and did not include grand juries at "a presenting term." There was nothing in the title of the present act to contradict that construction. It was true that the title was "An act to empower the foreman or any other member of *grand juries in Ireland* to administer oaths, &c." But the title of the other grand jury acts were equally general, though they only applied to grand juries at assizes and sessions, and not to grand juries at presenting terms. Thus the title of the 3rd or 4th William IV. chap. 78, was "An act to amend the laws relating to *grand juries in Ireland,*" and yet that statute had only relation to assizes and sessions' grand juries, and not to term grand juries. So the 6th and 7th William IV. chap. 116, was entitled "An act to consolidate and amend the laws relating to the presentment of public money by *grand juries in Ireland,*" and yet that act did not apply to sessions' grand juries, and a subsequent act, 7th William IV., chap. 2, was rendered necessary to extend it to them. When acts were in *pari materia,* if the same words were used in both statutes, a distinction made in the one was a legislative exposition of the sense it was to be construed in the other. In support of that position he cited 4th Term Reports, 419, and 5th B. and C., 162. Now, supposing the title to be out of the question, they were to consider the words of the enacting part. The words "grand juries in Ireland" in the enacting part were said to be general, but he would contend that they were controlled by the subsequent words. General words might be controlled or qualified by subsequent words of limitation, as was laid down in the case of Petty *v.* Goddart, Orlando Bridgman's Reports, 40. Thus the words "repeal" in a statute was not to be taken in an absolute sense, if it appeared upon the whole act to be used in a limited sense, as in the case of the King *v.* Rogers, 1st East, 513. It was an acknowledged maxim of law that general words were to be restrained "unto the fitness of the matter and person," and the principle had been expressly laid down to that effect in Dwarris on Statutes, 689. This was the construction which in Second Institute, p. 310, was put upon cap. 9 of the Statute of Gloucester. The words of the statute were *Purvieu est que nul appeale soit abattu,* &c. The clause taken by itself is general, and literally extendeth to all appeals of death, robbery, rape, felony, &c., but *ex antecedentibus et consequentibus fit optima interpretatio,* and as all the antecedent clauses do concern the death of a man it was held the appeals of robbery, rape, and felony, were not within the act." In the present instance, however, the general words of the act ought to be, to use the language of Dwarris, "restrained unto the fitness of the matter and thing." The statute, it would be observed, at first dealt in general terms, but afterwards it specified expressly the *modus operandi* at assizes and sessions; but it studiously refrained from making any allusion to the *modus operandi* in the Queen's Bench; and he

would put it to the court, did not this in substance amount to a clear and manifest declaration that the legislature had not the Queen's Bench in their view at the time they passed the act, and that it was their clear intention to confine the application of the general words which were used in the commencement of the act exclusively to assizes and quarter sessions? The legislature never had the Court of Queen's Bench in their contemplation when they were framing the 1st and 2nd of Victoria, cap. 37, for as they deemed it expedient and advisable to define the *modus operandi* in the one case, they clearly would have considered themselves bound to do so in the other case also if it had ever been the design or object of the framers of that act that it should have reference to the Court of Queen's Bench. The words of the statute were that "in all cases where bills of indictment were to be laid before grand juries in Ireland for their consideration, the clerk of the crown at assizes, and the clerk of the peace at quarter sessions, or his or their deputy, shall endorse upon the back of each bill of indictment the names of the witnesses for the crown;" and he contended that having regard to the context of the entire act, and taking into consideration the manifest intention of the legislature in introducing that act, it was clearly obvious that the framers of the statute intended that the words "in all cases" should be construed as meaning all cases, *i. e.* all crimes *in courts* of assize and quarter sessions. If the wording of the statute ran specifically thus—"Be it enacted, that in all cases where bills of indictment are to be laid before grand juries in Ireland, the names of the witnesses shall be endorsed upon the indictments by the clerk of the crown at the assizes, and the clerk of the peace at quarter sessions, and by no other person," could any one have a doubt, but that the words "grand juries in Ireland" would mean grand juries at assizes and sessions in Ireland? But it would be said that that was *not* the wording of the section, and that the statute in the present instance was not imperative, but merely directory. This however, was a line of argument that could not be sustained, for the rule was quite settled that if an affirmative statute which is introductory of a new law, direct a new thing to be done in a certain manner, that even in the absence from the statute of any negative words (such as those he had imagined to be supplied), it shall not, and cannot be done in any other manner. This he maintained was a legal proposition which it was impossible to gainsay, and the doctrine would be found expressly laid down and acknowledged in Wethen *v.* Baldwin, first Siderfin, page 56. So, too, if a new power be given by an affirmative statute to a certain person by the designation of that one person, all other persons are excluded from it for *inclusio unius est exclusio alterius.* Thus in Shadley's case, reported in Plowden's Commentaries, p. 206, it was held that when the statute 31 Edw. III., cap. 12, enacts that error in the Exchequer shall be amended and corrected before the chancellor and treasurer, that it cannot be amended by any other; and a case was cited out of Dallison's Reports that forasmuch as the statute of 6th Henry VIII., cap. 9, of forcible entry, designeth justices of the peace to make restitution thereby (although the statute be in the affirmative), others are excluded; and therefore, neither justices of Oyer and Terminer, or goal delivery, shall do it." That case was clearly in point, and demonstrated that when an affirmative statute was introductory of a new law, as the present statute undoubtedly was, and directed a certain act to be done by a certain officer, such a statute was to be construed precisely in the same sense as if it contained negative words, and rendered it incompetent for any other officer whatsoever other than the officer to whom express allusion was made to discharge the prescribed duty. Affirmative words, if they were absolute, explicit, and peremptory, and showed that no reservation or discretion was intended, rendered a statute as completely imperative as if the case were also put in the negative. The general words in the present statute were of that description. It could not be denied that they were absolute, explicit, and peremptory. These were the words in the act—that "in *all cases* the clerk of the crown at the assizes, and the clerk of the peace at the sessions shall endorse." Nothing, surely, could be more express or more distinct, and at the same time that it assigned the duty positively to a certain officer, did it not also manifestly imply the condition that no other officer should do it? The test for this was to see whether an indictment of perjury could be sustained for false swearing upon a grand jury at the assizes, where the oath was administered to a person whose name was not endorsed on the bill by the clerk of the crown. Now, not only must such an indictment declare that the names were endorsed by the clerk of the crown, but the fact was one which it would be incumbent on the counsel for the prosecution to prove by evidence; otherwise a conviction could not be had. Nor was this all. It was imperatively necessary that the most scrupulous care and caution should be used in framing an indictment for perjury. In an indictment for perjury it must appear to be alleged in the indictment, that the person by whom the oath was administered had competent power to administer it. Thus, upon an indictment for perjury before a justice in swearing that J. S. had sworn twelve oaths when the charge as stated did not import that the oaths were sworn in the precise county for which the justice acted, Judge Eyre arrested the judgment, because as the charge did not so import, the justice had no jurisdiction to administer the oath in question to the defendant. Counsel referred to the case of King *v.* Wood, Russell on Crimes, p. 340, and also cited the case of the King *v.* Rawlins, 8 Carrington and Payne, 440. The foreman of the jury, it should be borne in mind, had no power to administer an oath, unless the names of the witnesses were endorsed on the indictment, and an indictment for perjury, he contended, would be utterly invalid in law, and must fall to the ground if it did not contain an averment that the names were duly endorsed by the proper officer, pursuant to the act. If he was right in his argument, it went to prove that the reference which the act made to the clerk of the crown at assize, or the clerk of the peace at quarter sessions, was not directory merely, but imperative; and if these words having reference to the officers be imperative, they could not but control the former words of the act. This clearly showed the intention of the legislature, and it was the best means whereby it could be shown, for it was always better to interpret the intentions of the framers of a law by a reference to the enacting part of a statute than by any other portion of it whatsoever. Lord Coke, in the First Institute, 8, page 381, acknowledged this obvious principle, and declared, "It is the most natural and germane exposition of a statute to construe one part of it by another part, for that best expresses the meaning of the makers, and such construction is *ex viscæribus actis.* It was in the spirit of this great law maxim, as laid down by Lord Coke, that he argued that the words in the act having reference to the officers, explained and controlled the words "grand juries in Ireland," imparting to them by an irresistible inference, the natural and obvious signification of "grand juries at assizes and quarter sessions in Ireland." But the learned Attorney-General insisted that the statute should be construed by the preamble; and the preamble being general, he argued from this that the act ought to be the same. But he (Sir C. O'Loghlen) protested against this process of logic, and maintained that the preamble, be it what it might,

could not fairly afford a key to the construction of an act of parliament; for the fact was notorious, that the preamble was no part of the statute. (Counsel cited several cases in support of this motion, and amongst others the case of Willis *v.* Wilkins, 6 Modern, 62.) The preamble might occasionally explain and restrain, but it could never amplify the powers of an act. In the present case the preamble consisted of three distinct parts. First, it recited the benefit to have accrued from it; secondly, the benefit which had accrued from it; and thirdly, the inconvenience to which it had given rise. Now, no doubt the last recital was very general, but in many cases it happened that the preambles of statutes, when they recited the mischief for which a remedy was intended, were more extensive than the enacting part of the statute. (Counsel referred to the decision in the case of the King *v.* Powell, Fourth Term Reports, page 376, in support of his argument.) But even though the question for consideration was this, whether the particular case now under discussion was or was not within the mischief which it was the object of the act of Victoria to remedy, even upon these grounds he contended that the act referred to could never have been designed to refer to the term grand juries. Let them consider what the mischief was and when it existed that rendered it advisable to introduce the new act, and even upon this showing the case was with him. Prosecutions but seldom were instituted in the Queen's Bench, and therefore the mischief in that court was but small. At assizes and sessions, however, the mischief was of every-day occurrence, and that most probably was what the legislature had it in contemplation to remedy. Indeed, that this was the case would appear from the statute itself, and it was not competent for their lordships to strain a point for the purpose of making an act apply by what was called in law "an equitable construction" to anything to which it was not designed by the legislature originally that it should have application. It was a maxim in law which it was not possible to controvert, that if the words of a statute do not reach to an inconvenience rarely happening, they will not be extended to it by an equitable construction, for the objects of a remedial statute are mischiefs *quæ frequenter accident.* It is good reason in such case, therefore, and sound discretion, not to strain the words further than they reach, but the case is to be considered as a *casus omissus.* But no matter what might be the mischief contemplated by the act, the court was bound to inquire what was the remedy that had been provided, and that remedy was to be gathered from the act itself. The true meaning of a statute was to be sought not from the title—not from the preamble, but from the body of the act. It mattered not how general might be the title or preamble, if the body of the act—if the words of the enacting part of it be not equally general, the court was bound to give effect to the latter, and not to the former—for it was in the latter, that the intention of the legislature was most clearly stated and most unequivocally defined. The words of the act were that "in all cases where bills of indictment were sent before grand juries in Ireland for their consideration the clerk of the crown at assizes and the clerk of the peace at quarter sessions shall endorse upon the back of each bill of indictment the names of the witnesses for the crown, and the foreman or other member of the grand jury so empannelled shall, &c. &c." But what he contended for was this (and the words "*so* empannelled" aided him to the conclusion) that the "foreman or other member" here alluded to could mean in the intention of the legislature none other than the "foreman or other member" of a grand jury in a court of assize or quarter session. The use, moreover, of the word "respectively," the word with which the statute concluded, furnished, if he read it aright, another argument in favour of his construction. The concluding proviso of the act was to this effect:—"And provided also that no foreman of any grand jury, or any member thereof, shall have power to administer such oath or affirmation, or to examine any witness in support of any bill of indictment, whose name shall not have been previously endorsed on such bill of indictment by the clerk of the crown or clerk of the peace *respectively.*" What was the meaning of that word? Was it not manifestly with a view to restrict the application of the act to the two courts previously described? Did it not manifestly apply to the clerk of the crown and the clerk of the peace *at assizes and sessions?* This was the obvious signification of the act, the signification of which it was most easily and most naturally susceptible. It had been laid down as high authority that "a statute ought to be so construed if possible as to present no clause, sentence, or word that appears superfluous, and in carrying it into effect the latest intentions of the legislature should be those explicitly followed by qualifying the more general words by subsequent particular ones if necessary." If the construction of the present act for which the Attorney-General contended were the true construction there would be many superfluous phrases in the statute. But they should be equally careful in excluding words which were essential to the sense, and they would be excluding sensible and operative words were they to exclude the words "clerk of the crown at assize." In a word, in construing this and all other statutes, especial care should be taken to put such a construction on the entire as might make the parts consistent, one with the other. Having dwelt upon this point for some time, and having cited several cases in reference to it, the learned counsel proceeded to observe that although this case was confessedly not within the words of the statute, the Attorney-General had contended that it might be considered as coming legitimately within the equity of it. But it had been held by many eminent judges in England to be a very dangerous thing to strain an act of parliament under what was legally termed an equitable construction; and in a case reported in Barnwell and Cresswell, page 475, Lord Tenterden was reported to have expressed himself on this point in the following words:—"This case is not within the words of the statute, but it is said that it is within the equity; speaking for myself alone I cannot forbear observing that I think there is always danger in giving effect to what is called the equity of a statute, and that it is much safer and better to rely upon the plain reading, although the legislature might possibly have provided for other cases had their attention been called to them." So spoke the distinguished Lord Tenterden, who on another occasion, reported in 8th Barnwell and Cresswell, page 164, also was reported to have delivered himself thus:—"If the words of a statute go beyond, or do not come up to the intention of the legislature, it rests with the legislature to make an alteration. The duty of the court is only to construe and give effect to the provision." The same excellent doctrine was again enforced in the following language, as reported in the same work:—"Our decision (said the learned judge) may perhaps, in this particular case operate to defeat the object of the act, but it is better to abide by the consequence than to put a construction on it not warranted by its words, in order to give effect to what we may suppose to have been the intention of the legislature." The omission of a reference to the Queen's Bench might have been designed and deliberate, or it might have arisen merely from the fact of the legislature's attention not having been called to that court; but let this be how it may, their lordships were bound to take the act as they found it; and it was not (he said it most respectfully) the province of the court to supply a

casus omissus. This doctrine had received the sanction of the highest legal authorities, and Mr. Justice Buller, in the case of Jones *v.* Smyth, First Term Reports 52, had expressly laid it down that the court was bound to take acts of parliament as they found them; and that it was not *admissible* that they should take upon them to supply a *casus omissus*, for that by doing so, they would be departing from the legitimate sphere of their duty, and would be making laws instead of administering them. The learned Attorney-General had dwelt with much force upon the probable consequences that would result from a decision adverse to him upon the present point, and had directed their lordships' attention to this fact, that if the plea in abatement now under discussion were deemed to be valid by the court, all convictions which had been had under indictments liable to the same objection as the present indictment must be regarded as illegal convictions, and that countless prisoners had suffered death or were now under sentence of transportation on indictments which were invalid in point of law. This inference had been ingeniously brought under the consideration of the court, but he (Sir Colman O'Loghlen) respectfully maintained, that the court were not at all justified in taking consequences into their consideration. They had nothing to do with consequences. They were called upon to give their decision upon the law of the case, and their decision was not to be controlled by any reference to possible events, nor could possible events at all alter the legal complexion of the question. If it be contended that it was a defect in the act of parliament that it did not contain any allusion to the Queen's Bench, the circumstance was perhaps to be regretted, but the construction of the law was not to be altered in that court. It was the legislature alone that could do that, and if their lordships were of opinion that the omission was indeed a serious one, and one that was to be regretted, he was sure the learned Attorney-General, who was himself a member of the legislature, would have much pleasure in introducing next session a bill for the remedy of the defect. The learned gentleman had objected to the manner in which these pleas of abatement had been drawn up. He had declared that they were inartificial in the mode in which they were framed, and he founded his objection upon this ground amongst others, that the names of the witnesses were not mentioned in them; but he could not help saying, that in his opinion such an objection as this came with peculiarly bad grace from the learned Attorney-General, after all that had occurred, and that even within the judicial knowledge of their lordships.

Attorney-General—I did not make any such point as you state against the plea.

Sir Colman O'Loghlen said that if the learned gentleman had not made the objection thus in express terms, it was at all events clearly conveyed in the special grounds of demurrer, for one of those grounds was that the plea did not contain the names of the witnesses, or in the absence of the names did not contain a statement to the effect that the witnesses were unknown. But this objection, or at all events the first part of it, came he must again declare with exceedingly bad grace from the Attorney-General, who could not but be aware of this fact, that the traversers applied for the names of the witnesses, and that they declared upon affidavit that the names were necessary to their defence; but the motion was strenuously opposed by the learned Attorney-General, and the court decided that they should not get them.

Attorney-General—My objection to the plea was, that it did not contain an allegation that the names of the witnesses were unknown.

Sir Colman O'Loghlen said that it would have been impossible to comply with this condition. The plea, it would be recollected, was verified by the traversers on their solemn affidavit, and it was impossible for them with a safe conscience to have shown that the names of the witnesses were completely unknown to them, because it was well known that public report pointed to one gentleman at all events to whom he would not further refer, but who was very generally understood to have been examined before the grand jury. How then could they consistently with truth aver that they did not know the names of the witnesses? But even though it were otherwise, and that they were in reality acquainted with all the names of the witnesses, he contended that it would have been scarcely necessary to have introduced the names into the plea, for it was an acknowledged principle that it was not necessary to set forth in such a plea as the present a matter coming peculiarly within the knowledge of the opposite party. Such was the case in the present instance, for surely it would not be contended that the names of the witnesses did not come peculiarly within the knowledge of the learned Attorney-General. But then it was said, reference to an affirmation was omitted in the plea. And this objection was made when they were not allowed to know who they were—whether the witnesses were Quakers or not. He had intruded, perhaps, too long a time upon the attention of the court, but he hoped he would be excused for doing so when they considered the extraordinary magnitude of the case. If their lordships decided in favour of the traversers, no injury could be done to the crown. It could instantly send up new bills to the grand jury. If they decided against the traversers they would subject them to all the anxiety, and all the annoyance of a trial, a trial too of no ordinary nature, but of a nature unparalleled in the annals of criminal jurisprudence, and this with a point depending as to its legality, which, ultimately, might be decided in their favour, and render null and void not only all that yet had happened, but also all that which afterwards might take place. He called upon their lordships not to decide this case against the traversers unless they were satisfied as to the law of the case beyond the possibility of a doubt; and he said most respectfully that if they had a doubt, that doubt should decide them in favour of the traversers. He said to their lordships that they should remember, in construing the statute, that they were administering and not making laws, and that if there were a defect in the act it was not their province to remedy it. The Attorney-General, on former occasions in these proceedings, had frequently reminded their lordships that he opposed on behalf of the crown. He was aware that such appeals to his office would not have any effect upon their lordships. It was their boast, and a proud boast it was, that their law recognised no distinction of persons—that in their courts all men were equal, and that by their judges the rights of the meanest subject was as much respected as the rights of the crown itself. This was their boast, and he was confident their lordships would justify it in their decision. He was satisfied in his own mind, whatever might be their decision, whether for his clients or whether it might be against them, that that decision would be an upright one—that their lordships would decide the case simply as a case between party and party irrespective of any consideration whatsoever, save as to what the law was, and that the traversers would obtain at their hands that which was their dearest birthright and richest inheritance—impartial justice between the crown and the subject.

Mr. Moore, Q. C., followed on the same side. If this were an ordinary case he would not trouble the court at all, after the masterly, clear, and elaborate manner in which Sir Colman O'Loghlen had han-

dled the question. He (Mr. M.) was not at all sanguine as to his capability of adding anything of much importance to what had already fallen from his talented friend, nor would he have run the risk of impairing the effect of so eloquent an address, were it not that he felt that the case was one of no ordinary importance, and for this reason he would take the liberty of explaining to their lordships, as briefly as possible, the views which occurred to him upon the subject. It was, in every sense of the word, a case of the deepest importance, and he therefore thought it his duty, even at the risk of breaking the effect of Sir Colman O'Loghlen's admirable observations, to submit to the court what his opinions were in reference to it. The Attorney-General had, on the present occasion, adopted just such a course as from his long knowledge and experience of that gentleman he was led to expect he would have pursued—he had boldly come to the consideration of the main question in the case, declaring with frankness that he would have deemed himself guilty of a gross dereliction of public duty if he had not at once grappled with the point, as it arose out of the construction of the act. The learned Attorney-General had made only a slight and cursory objection to what he regarded as informalities in the pleas. He evidently considered them as matters of very secondary importance, and their lordships, he was sure, would regard them in a similar light; nor would the court, even though there were a thousand such trivial informalities, shrink on account of their existence from expressing decisively their opinion upon the construction of the statute which was now brought under their consideration. The Attorney-General had enlarged with much force of language upon the disastrous consequences which would probably result, if the court were to decide the point adverse to him; but no consideration of possible contingencies could alter the actual state of the law in this regard, and the arguments of his learned friend only went to show that it was of the last moment that the case be decided one way or the other. If the proper construction of the act be that which he (counsel) contended for, it was right that an act of the legislature should be introduced with the least possible delay, to prevent further injury; but if, on the contrary, the true construction was that for which the crown contended, it was right that they should have their lordships' decision to that effect, which would for ever put the question beyond controversy. He trusted, therefore, that the court would give their decision upon this interesting question, utterly regardless of the informalities in the plea—if any such informalities did indeed exist. It had been asserted on the other side that in some places it had been the common-law practice in England, and particularly in Durham, for the grand jury to administer an oath to witnesses without any act of parliament authorising them so to do; but, without stopping to inquire whether there were any circumstances in the case which would nominally explain or excuse so anomalous a practice, he would take the liberty to say, that if the grand jury proceeded to find bills on evidence not duly and legally sworn before them, they had indulged in a practice which, in his humble judgment, was neither constitutional nor legal. His learned friend, the Attorney-General, after having alluded to the case of the jury in Durham, next proceeded to direct their lordships' attention to the fact that several special commissions, presided over by judges of that high court, had been held since the passing of the act of Victoria, and that at none of these commissions had the practice prevailed of swearing the witnesses in open court. He need scarcely inform their lordships that the fact of the whole practice of that court, from the year 1838 to the present day having been (if so it should prove to have been) contrary to what it should have been according to the proper interpretation of the law, furnished no reason whatever why the court should now refuse to decide upon the true construction of the act. There was not upon that bench—he was confident of it, a single judge, who, if it were proved to the satisfaction of his own judgment that he had been accessory to a practice at variance with the law, would not cheerfully come forward to rectify the mistake, nor hesitate to admit that he had been inadvertently in error. His learned friend, the Attorney-General, had also alluded pointedly to the charge delivered to the grand jury by one of their lordships on the opening of the present term, and he appeared to rely upon the conduct of the learned judge upon that occasion as though it inferentially was in favour of the construction of the act for which he (the Attorney-General) contended; but if there was upon the bench, or in the community, one who would scorn to set up his own mistake to justify and perpetuate an erroneous course of proceeding (if it should be proved to be so), that man was, undoubtedly, the learned judge to whom Mr. Smith had alluded. Whatever may have been the law of England, it was plain that after the passing of the 56th George III., no bill of indictment could be found without being founded upon the testimony of witnesses sworn in court. The words of that act were express and peremptory. The first question for the consideration of their lordships was, whether the act of the 56th George III., had been repealed, in its entirity, or in any portion of it, by any subsequent enactment. He (counsel) contended that it had not been repealed, and as the law now stood, notwithstanding the act of Victoria, there could still be no legal objection to swearing the witnesses in court, if it was deemed fit to do so. The act of Victoria had done nothing more than to substitute at discretion another mode of swearing witnesses in particular cases, and did not (as he held) profess to repeal 56th of Geo. III. That act was recited in the act of Victoria, and if it was the intention of the legislature to repeal any portion of the ancient statute, they might have said so in the act of Victoria; but there was nothing in the new act to intimate any such intention, and he contended that both acts were concurrent. If it was conceded that the 1st and 2d Victoria, chap. 37, did not apply to the Court of Queen's Bench, the crown need not have been under any difficulty as to their course of proceeding, because, in his opinion, the original act of George III. remained still unrepealed, and in full force, and the witnesses could still be sworn in court, according to the old practice, if it were considered expedient so to do. The inconvenience, therefore, as far as future proceedings were concerned, that would result from overruling the demurrer, were not at all as serious as it was apprehended by the Attorney-General, that they would prove, for he again submitted that the old act being still in operation, might be had recourse to whenever the crown thought fit. What the court had to decide now was the true and rightful construction of the act of Victoria. The Attorney-General contended that that act extended to all cases where bills of indictment were sent up, and that it consequently extended to that court. He (counsel) adopted the reverse of the proposition, and contended that the act did not extend, either directly or inferentially, to the Court of Queen's Bench; that there was nothing in the Act of Parliament to give it such signification, and that it was out of the power of the court to make the act have an extent and signification which it was not originally the intention of the legislature that it should possess. The Attorney-General had alluded emphatically to the title of the act as supporting his position in the case, but the court had heard the judicious remarks upon this point of Sir Colman

O'Loghlen, who showed how little importance was to be attached to the title of an act. But even though it were important, he denied that the title in the present instance carried such authority as the Attorney-General claimed for it. For what was the title of the act? It was entitled, an act to empower the foreman, or any other member of grand juries in Ireland, to administer oaths to witnesses on bills of indictment. There were undoubtedly some grand juries in Ireland to which that title applied, but it did not apply to *all*, else what could have been more easy than to have written "an act to empower the foreman of all grand juries in Ireland, &c. &c."—The Attorney-General maintained that the preamble being general, ought to afford a clue to the interpretation of the entire act, but he (Mr. Moore) denied that any such importance was to be attached to the preambles of acts of parliament. Let them rather study the intentions and objects of the legislature. What was the mischief which it was designed to remedy, and where did it exist? Was it not a partial mischief, and wherefore then should general interpretation be attached to the act having reference to it? The act was introduced to remedy the delay and inconvenience of the old system, but where was that delay and inconvenience found to exist? Clearly in the courts of assize and quarter sessions, and not in the Court of Queen's Bench, where the criminal prosecutions were exceedingly few. But few bills of indictment had been sent up by the Court of Queen's Bench to a grand jury in the interval which elapsed between the passing of the acts of George the Third and Victoria, and even in those few instances it could not be alleged with truth that any delay or inconvenience had occurred. It was plain, therefore, that the legislature could not have had the Queen's Bench in contemplation. Taking into consideration the obvious intentions of the government, and having regard to the whole context of the act, nothing could be more rational and natural than the interpretation which Sir Colman O'Loghlen put upon the words, "in all cases where bills of indictment are to be sent before grand juries, &c.," reading it as though it meant all cases in the courts of assizes and quarter sessions. He asked would it be competent for a grand jury to examine a witness whose name did not appear on the bill, and as Sir Colman O'Loghlen had put it, could they support a prosecution for perjury if such a witness were examined and were to swear falsely? Should they not say in the indictment that his name had appeared on the back of the bill? It followed clearly and distinctly that the authority given to the foreman of a grand jury to administer an oath was not an act done by an officer specially entitled by an act of parliament, but that it was the machinery by which the legislature thought fit to mark out the remedy intended by that act of parliament. The language of the act was, that at the sessions or assizes the officer was to give authority to the foreman of the jury to administer the oath. But he would ask his learned friend the Attorney-General, suppose the words "clerk of the crown at the assizes" were omitted, and that the sentence ran thus:—"that in all cases where bills were laid for the consideration of the grand jury, the clerk of the peace and his deputy were to endorse the names of the witnesses," would it then be held that the act applied to every possible tribunal, if the court interpolated the assizes and the Queen's Bench, and if that supposition would not be permitted, why should other courts be now included where the assizes and quarter sessions alone were mentioned? He could very well understand that the legislature, though desirous to remove the inconveniences which existed, would not at the same time be desirous of preventing what he thought a most legal, constitutional, and desirable practice. He considered it of great importance that an oath, instead of being administered in the private room of the grand jury, should be administered with the greater formality attendant on a swearing in open court. He would say that that practice ought not to be broken in upon unless to avoid greater inconvenience. Another observation which he considered of much weight, and which had been strongly put by Sir Colman O'Loghlen, was that that act was to be regarded in the same light as a penal enactment. Every act of parliament that abridged in the slightest portion the rights and privileges appertaining to the accused, and intended to protect him against the charge brought against him, was most properly styled a penal act of parliament. In the present case the traversers did consider it of importance to get the names of the witnesses. The court had judicial knowledge that they swore they considered the names of the witnesses necessary for their defence; but the Attorney-General refused them that right—whereas, if the act had not passed, they would not have been under the necessity to have come into court with such an application at all. It was also worth while to observe the peculiar phraseology of that section. It did not say the clerk of the crown generally, but it said the clerk of the crown at assizes, and the clerk of the peace at quarter sessions. That would clearly imply that the assizes and the quarter sessions were alone intended to be included in the enactment. If it was the intention of the legislature to go beyond the two tribunals mentioned, and to include the Queen's Bench, they would have done so in express terms. Was there any mention made of any officer of the Court of Queen's Bench to send up the witnesses' names to the grand jury?

Chief Justice—Would your argument go the length that in the Queen's Bench that duty was not to be done by any body?

Mr. Moore—I would go the length of saying that that act of parliament was not intended to apply to the Queen's Bench at all.

Chief Justice—I only wanted to know how far your argument went; but I did not want to interrupt you.

Mr. Moore—I go to the length I have stated, and I fully and fearlessly assert that the statute did not at all mean to apply to the Queen's Bench, and if any officer of their court took it upon himself to endorse certain names on a bill of indictment, he would be taking an authority that the legislature did not intend to give him.

Chief Justice—In the same way you say that the act does not apply at all to the Court of Commission.

Mr. Moore said it was not necessary for him to go into that question; for a question might be raised as to the nature of the tribunal, and how far it might answer the name of the assizes.

Mr. Justice Perrin said he thought it was necessary for Mr. Moore to argue that point. His argument was, that the act was confined to the assizes and to quarter sessions; and, in order to sustain that position, he should show that it not only did not include the Queen's Bench, but also that it did not include the Commission Court.

Mr. Moore said the only objection that he had to enter on that question was, that he was, not then particularly apprised of the nature of the commission under which that court was held, and was not aware whether it was not to be regarded as a court of assize; but he would go the full length of saying, that unless something appeared in the commission of the court which would include it with the assizes courts, it was as much out of the provisions of the act as the Queen's Bench itself.

Judge Burton—You include both the commissions for the city and the county of Dublin.

Mr. Moore said perhaps both the commissions

came within the same signification as the assizes, but if they did not, he, without hesitation, would say, that they were not included in the provisions of that act. He then proceeded to argue that the grand juries mentioned in the act, only included the grand juries of the assizes and of the sessions, as it was to these only that the clerk of the crown and the clerk of the peace were to send up the bills of indictment. The clerk of the crown at the assizes could not send a bill to the grand jury of the Queen's Bench, and the clerk of the peace at quarter sessions could not send up a bill before the grand jury at the assizes.

Judge Burton inquired what he would say to cases at special commissions to the country not at the time of assizes?

Mr. Moore said he thought they were included in the observations he had applied with respect to the commission court. It would depend on the question whether they did not substantially come under the term assizes, but if they did not, then he would exclude them, on the same grounds as he would exclude the Queen's Bench.

Judge Crampton asked what construction would he put on the words in the statute, "so empannelled?

Mr. Moore said he would consider them to signify the grand jury of the assizes of which he was clerk of the crown, or the grand jury of the quarter sessions of which the officer was clerk of the peace.

Judge Crampton said the words "so empannelled" appeared to him naturally to bring back to the first description "all the grand juries in Ireland."

Mr. Moore said that would imply that the clerk of the crown at the assizes was to send up a bill before the grand jury of the Queen's Bench.

Judge Crampton—Then the effect of the argument would seem to be this, that no officer is empowered to send bills to the grand jury at the assizes, but the clerk of the crown.

Mr. Moore—Or his deputy.

Judge Crampton—Or his deputy; or at quarter sessions but the clerk of the peace or his deputy.

Mr. Moore said he certainly went that length. Suppose an assizes in the county of Louth which was to continue for two days, and that on the morning of the first day the clerk of the crown were to drop dead, he would ask, with great respect, where would be the officer to act in that case, as, even if the deceased officer had appointed a deputy, his deputation would end with the death of his principal? The Attorney-General argued that the word "assizes" comprised in it the Court of Queen's Bench, but he would venture to assert that there was not an individual in the community having the passage read to him, who would conceive that it meant the Queen's Bench. If he said that a particular person was indicted at the assizes, and that he meant by that that he had been indicted before the Queen's Bench, he would be laughed at. He then proceeded to observe, that however desirable it might have been for the legislature to have used more emphatic language, still it was the duty of the court to deal with the words as they found them in the statute; and, in his humble judgment, the court could not give the act of parliament the construction contended for. After proceeding at some farther length he concluded by submitting that on the whole of the case, and especially considering the powerful and able argument of his learned friend, Sir Colman O'Loghlen, that the proceedings taken in that case by the crown were not according to law, and that, therefore, the demurrer ought to be overruled.

Sir Colman O'Loghlen said he wished to draw the attention of the court to the 36th Geo. III., ch. 20, sec. 14, in which a clear distinction was taken between the assizes and the presenting term.

The Solicitor-General said it was his duty, on the part of the crown, to reply to the arguments of his learned friends Sir Colman O'Loghlen and Mr. Moore, and he thought he should have no difficulty whatever in satisfying their lordships that this plea in abatement was bad, both in point of form and point of substance. He felt with his learned friend the Attorney-General that the important question raised on this plea as to the construction of the act of parliament was of such vital consequence that he proposed to devote the principal part of the observations he had to offer to their lordships to that part of the case, and he should merely confine himself so far as related to the question of form, to two or three authorities and principles, upon which it was demonstrable that this plea could not be sustained in point of form. He should, therefore, in the first instance, apply himself to the question relating to the construction of the act of parliament—certainly as impotent a one as had, for a long time, come under the consideration of any court of justice, involving as it did the regularity and legality of the solemn proceedings that had taken place with the authority and sanction of the judges of the land, ever since the passing of that act of parliament of the 1st and 2d Victoria. Before he entered into the consideration of the statute itself, he might just advert to one of the last positions laid down by Mr. Moore, in support of which he cited an act of the 29th George II., chap. 14, and that act was referred to by his learned friend for the purpose of showing their lordships that the legislature was conscious that by using the word "assizes" in two preceding acts of parliament, they had not included the Court of Queen's Bench or city of Dublin, and it became necessary, as they thought, to pass the 29th George II., for the purpose of enacting that those provisions should so extend. Now, he thought it was not quite fair in his learned friend to read the act of parliament, as he understood him to read it, as an enacting statute, for he found, on reference to the act itself, the words were "be it declared and enacted." So far, therefore, from its being an authority in support of the proposition that these previous acts properly considered did not include the city of Dublin or the Court of Queen's Bench, the fact was, by a declaration of the legislature, that they did include and were intended to include that court. Therefore he said his learned friend should not refer to that part of the act that he thought established its operation, namely, its being a declaratory act. Having disposed of that which he thought to be an important question satisfactorily, he should proceed to submit to their lordships his view of the true construction of the act of parliament, the 1st and 2d Vic., c. 37. That was the substantial question raised by this plea, and he understood the construction which the learned counsel upon the other side put on that act to be this, that at assizes, that was to say, when the judges of assize held their circuits, and at the Court of Quarter Sessions, the old mode of administering the oath prescribed by the 56th Geo. III., shall be abolished and superseded. But that in all other cases the law should continue as it was under the 56th Geo. III., and so far as related to that high court, and to courts of Oyer and Terminer throughout the kingdom, he meant in the county and city of Dublin particularly, and at special commissions throughout Ireland, the act of 1st and 2d Vic., chap. 37, was inoperative, and that the act of 56 Geo. III. was still the law with respect to those courts. Now, before the court adopted a construction of that kind, which would be pregnant with consequences to which the Attorney-General had strongly adverted, he said, before the court would feel itself warranted in adopting a construction of the act, attended with those consequences, the court would be bound, if necessary, to strain

the language of the act of parliament, to avoid giving it such an interpretation. One of the first duties of a court of justice, in interpreting an act of parliament, was to further the intention of the legislature, when it was clearly discernible by the act, though the legislature might not have adopted words sufficiently extensive if technically or narrowly construed to do it. They were bound also to give it a construction that would further the objects and remedy the mischief proposed to be remedied by the act, and if it were necessary either to add words, to omit words, or to strain words, the court would do so for the purpose of promoting those objects. He referred their lordships to the following cases to show the general rules adopted in the construction of acts of parliament, and it was by those general rules that their lordships should be guided in their decision:—1st vol. Plowden's Commentaries, p. 36—2d vol. Commentaries of Plowden, p. 467—and 2d Institute, 156. He also referred to Bryan's case, 5 Term Reports, p. 509, Saunders *v.* Plumber, Orlando Bridgeman's Reports, and to several authorities cited in 1st Saunders, p. 217. Also, Johns *v.* Johns, 3d Dowes' Parliamentary Reports, p. 15, and to another case in 2d Institute, p. 33. It being perfectly obvious to his judgment, that upon those authorities, and upon this principle, their lordships were bound to give effect to what upon the whole of the act of parliament they would find to be the intention of the legislature, notwithstanding that that may have been incorrectly expressed or imperfectly expressed. He would proceed to advert more particularly to the subject of the present act of parliament, and he hoped to leave no more doubt on the minds of the court than rested upon his own that this act of Victoria was intended to be a general one in its operations, and, in point of law and true construction, was general in its operations. Let them first see what were the words of the 55th Geo. III., which, as they contended, was to apply to the Court of Queen's Bench, and it was now conceded and admitted, and the foundation of the argument on the other side, that that act was universal in its operations. There was no court mentioned there, it did not mention the Court of Queen's Bench, or assizes, or the Court of Oyer and Terminer, but was a general enactment to correct the vicious practice that prevailed in Ireland of sending up informations to the grand jury, and the grand jury finding bills upon them, and no witnesses sworn in support of those bills. With respect to an observation of Mr. Moore on the argument of the Attorney-General, he wished to remark that the Attorney-General did not say that the grand jury could not act upon unsworn testimony, but he said that they were sworn as at Durham, for instance, before the grand jury, but were not examined without being sworn. In the 56th Geo. III. it was recited—"Whereas a practice hath prevailed, in many of the grand juries in Ireland, to find bills of indictment without examining witnesses for the crown; and it is expedient that this practice should for the future be discontinued; be it therefore declared and enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act no bill of indictment shall be returned a true bill, by any grand jury in Ireland, unless the same hath been found by the jurors, upon the evidence of one or more witnesses for the crown, sworn in court and produced before them, with such other lawful evidence as the nature of the case may require or admit of." Now, Mr. Moore contended that that act of parliament was not repealed, and the question for their lordships' consideration was this—had the statute of Victoria repealed this act of parliament to any and what extent? He admitted that the act of parliament did not use the word repeal, but it contained enactments inconsistent with the enactments of 56 Geo. III., and substituted others in place of them: and so far as they substituted enactments for those of the 56th Geo. III., that were omitted, the court were bound to follow the provisions of the act of Victoria, and not those of the 56th Geo. III. The second section had reference to the deposition of witnesses, which it was unnecessary to advert to, but he would come to the third section, which provided —"And whereas by an act passed in the fiftieth year of the reign of his present Majesty, it was amongst other things enacted, that if any person who hath given or shall give any information or examination upon oath, against any person or persons, for any offence against the laws, hath been or shall, before the trial or trials of the person or persons respectively against whom such information or examination hath been or shall be given, be murdered or violently put to death, or so maimed or forcibly carried away and secreted, as not to be able to give evidence on the trial of the person or persons against whom such information or examination was given, the information or examination of such person, so taken on oath, shall be admitted in all courts of justice in Ireland, as evidence on the trial or trials of the person or persons respectively against whom such information or examination was given; be it further enacted, that so long as the said recited enactment shall be in force, the informations or examinations therein mentioned shall be evidence to the grand jury upon the bill preferred against the person or persons against whom such information or examination was given; provided always that the information or examination of a witness secreted shall not be evidence to the grand jury, unless it shall first be proved to the grand jury by witnesses sworn, or other lawful evidence, that the person so secreted has been secreted by the person or persons against whom the bill is preferred, or by some person or persons acting for him or her, or in his or her favour." The 36th Geo. III. having so enacted, and it being in its application confessedly universal, the legislature found that certain provisions of that act were salutary, and ought to be continued, but that certain other regulations in that act were inconvenient and ought to be discontinued, and, accordingly, they had in so many words stated in the early part of the 1st and 2nd Vic. that that was a state of things that wanted a remedy. He did not press the argument on the title of the act of parliament with a view to show that it was to control or guide the court as to the construction of the act of parliament; but he submitted that it showed the intention of the legislature, whether they expressed it or not. Let them refer to the act of parliament, and see the construction sought to be put upon it; and let them see if the gentlemen at the other side were not trying to do the very thing which they said his side were trying to do—that was, distorting the act of parliament against its plain object, and altering the phraseology, and including words in it which it did not contain. Nothing, he contended, could be more narrow or illiberal than the construction which the gentlemen at the other side were endeavouring to put upon the act. The act expressly stated—"Be it enacted that in all cases," and, in perversion alike of sense and language, they wanted to insist that these words, "all cases," should be construed to mean "certain cases." The act referred to all courts.

Mr. Justice Crampton thought that the interpretation to be put on the words, all courts, was very important. On one side it was contended that the phrase referred to all the courts alluded to by the act of Geo. III., and on the other hand it was urged that it merely meant the courts where

there was a clerk of the crown, and clerk of the peace.

The Solicitor-General said that the rival constructions were exactly so; but he contended for the more extensive, and he made bold to say the more rational, construction. The act of Victoria had been introduced to remedy delay, but a false interpretation had been put upon that word "delay," whereby it was endeavoured to be shown that the mischief could have only existed in a certain description of courts. But the mischief which it was in reality designed to remedy was delay in the proceedings of the grand jury, attributable to the witnesses. The witnesses used to be sworn on one day, but several days might elapse before the grand jury met, and it was to remedy this delay that the act was introduced. It was also introduced with a view to inculcate a greater reverence for the oath, for when such a long time elapsed between the swearing of a witness and his giving evidence, he was apt to regard the obligation of the oath he had taken as less solemn and restrictive than it ought to be regarded. Sir Colman O'Loghlen had talked about a *communis error*, but on behalf of the judges, who regarded this point in the same light as he did, he repudiated the idea that there was any *communis error*. There were high judicial decisions on the point, but nothing more. He contended that the words in the act having reference to the officers of the court were merely directory, and not imperative.

Judge Perrin—But how do you dispose of the words "so empannelled?"

The Solicitor-Gen.—Any grand jury duly empannelled, and before whom bills of indictment are laid "so empannelled," meant whenever empannelled.

Judge Perrin—I have been informed Mr. Solicitor-General, though I am not in a position to vouch exactly for the truth of the assertion myself, that on an occasion when this point was under discussion at one of the commissions, the witnesses were sworn both ways. Are you aware of that fact?

The Solicitor-General said he was not aware of the fact alluded to by his lordship, but it was possible the thing might have occurred, though he found it difficult to reconcile it with the words of the act. It seemed to him that an alternative must be taken. He then proceeded to observe that they had the judicial exposition of the act by the several judges who presided at the commission court; but even supposing that the practice had prevailed for five or six years, *sub silentio*, which was not the case, they should not now alter it. The court were bound to give such a construction to a doubtful act of parliament as would show that the judges had not been wrong heretofore—that the convictions that had taken place for such a period under it had not been wrong, and that injustice had not been done by it. They should give that construction, even if the words were doubtful, which he contended they were not. He did not mean to trouble their lordships with the other objections taken to the plea, though to a purely technical plea technical objections should prove fatal. He then referred to Burns' Justice Article Abatement 2, and to 2d Barnwell and Cresswell, 871. It was said that it came with a very bad grace from the Attorney-General to object to the plea, because the names of the witnesses had not been known, and so it would if the objection had stopped there, but it had added that it did not state that they were unknown. It was also objected that though it stated the witnesses were not sworn in court, it did not add that they had not been affirmed in court, which might possibly have been the case. In conclusion he observed that the other side called upon the court to give a narrow, and illiberal, and, as he was going to say, a pettifogging construction to the act of parliament, while the Attorney-General required them to give the words their fair and extended meaning. It was said that it was a penal act, as they might have seen the witnesses sworn in open court; but it was well known that the witnesses used in general to be sworn in a corner of the court, while the prisoners were generally in gaol. He would, on all the grounds put forward, respectfully submit that, both in point of form and of substance, the plea was bad, and that the Attorney-General's demurrer to it should be made absolute.

The Chief Justice intimated that the court would take time to consider their judgment until next morning, November 22d.

COURT OF QUEEN'S BENCH,

Wednesday, November 22.

Judge Perrin sat at half-past ten o'clock. The full court sat at eleven o'clock.

The counsel for the crown, and also the counsel and solicitors for Mr. O'Connell and the other traversers, were in attendance.

Chief Justice—Call the case of "The Queen *v.* O'Connell."

Clerk of the Crown—"The Queen *v.* O'Connell."

Crier—Daniel O'Connell, Esq.

The Lord Chief Justice then proceeded to deliver the judgment of the court. He said—In this case of the Queen *v.* O'Connell—Mr. Daniel O'Connell—it becomes my duty now to deliver the opinion and judgment of the court upon this case, in which I am happy also to have the concurrence of the opinion of my learned brethren of the bench. The principal question turns upon the true construction of the 1 and 2 Vic., chap. 37. It is contended on behalf of Mr. O'Connell, who has put in the present plea, that the operation of the act of parliament is to extend only to cases where the officers employed to carry the act into execution were the clerk of the crown on circuit, or the clerk of the peace at sessions. It is contended on behalf of the crown that that is a narrow construction of the act of parliament, not according with its purport and extent, and that it ought to be held to extend to cases going before the grand juries in the courts of the city of Dublin, either in the Court of Queen's Bench or before the Commission of Oyer and Terminer, or at the Commission of Oyer and Terminer in the country. Now, I am bound to say, that after a great deal of anxious and due deliberation given in this case, and taking advantage of all the aid that has been afforded on the argument of the case by so many able gentlemen, the decision of my mind, and that without much doubt, has come to this, that the construction of the act of parliament given by the officers of the crown is a right and true one. His lordship referred to the much-to-be-lamented consequence which must result if the law contended for by traversers' counsel should be held to be the true one, and said, that, nevertheless, if the court held it to be law, it must be established. Fortunately they did not. He next adverted to the fact of the late Chief Baron Woulfe and the Chief Justice of the Common Pleas (Doherty) and Justices Moore and Johnstone having charged the commission grand juries of Dublin, that they would take cognizance, and be under the operation of the 1 and 2 Vic., chap. 37. Now the same practice has continued from that time to the present. It has been asserted by the gentlemen who have argued this case on behalf of the traversers, first of all, that the practice or habit is of too short duration to make or form a law upon the subject. I grant it so. Nor do I understand that the crown has put the question upon any such matter. They have only put forward the practice of the judges as being in conformity with the several charges that have been delivered, and as showing that the judges concurred in the law as it had been deliberated upon and pro-

nounced. And to that extent I conceive the Attorney-General is warranted in the view he took of the act of parliament. I will say that the argument of the traversers assumed a very extraordinary sort of shape, when having first made the objection that in point of time, the practice and usage was not sufficient, and then boldly and unreservedly announced the fact that all the judges that had interfered in the matter had acted erroneously; they agreed that, inasmuch as all the judges were wrong and in error, their common error could not establish the law upon the subject. Now certainly, with all respect to the gentlemen, I never before heard a counsel who took upon himself to say, that all the judges who decided against him were in one common error. I conceive that the concurrent opinion of those respectable judges is one of the highest authority that could be produced before us for the direction of our judgment upon the present occasion. I, for one, must say that I do feel myself very much influenced by the authority of these respectable personages when I am called upon to form judicially a judgment on the same subject, which it appears passed under their consideration on a previous occasion. I will go now to consider the act of parliament. I think it well to state certain rules with regard to the construction of acts of parliament, and how far eminent judges upon former and other occasions had felt themselves bound to take into consideration the various circumstances that are to be considered, in arriving at a just interpretation of an act of parliament, concerning which there is any difficulty whatever. The first rule I will mention is a rule laid down by one of the most eminent judges who adorned the English bench, whose authority has been mainly relied upon, and insisted upon by Sir Colman O'Loghlen, in his argument on this case. I am quite willing to adopt the rule as laid down by Lord Tenterden, and to bring his opinion to bear upon the question, what is to be taken into consideration upon the construction of an act of parliament. Lord Tenterden, in 7 Barnwell and Cresswell, p. 760, in the case of Doe *v.* Brandon, says, "the question in this case depends entirely upon the construction of a particular act of parliament, and, in construing acts of parliament, we are to look not only to the language of the preamble, or to any particular clause, but to the language of the whole act, and if we find in the preamble, or in any particular clause, any expression not so large and extensive in its import as those used in other parts of the act, and upon a view of the whole act we can collect from the more large and extensive expressions used in other parts, the real intention of the legislature, it is our duty to give effect to the larger and more extensive expressions, notwithstanding the phrases of a less extensive import in the preamble or in any particular clause." Now, in the progress of the argument of Sir Colman O'Loghlen, it was insisted upon in different parts of his argument—first, that the title of the act was not part of the act; secondly, that the preamble of the act was no part of the act. I don't know how he would maintain that argument by a reference to the authority of Lord Tenterden, whose unquestionable authority he does not dispute; and it is not merely the authority of Lord Tenterden, or any other lord, but it is the authority of common sense, and when you are called upon to see what the meaning of a given instrument is, in order to collect that meaning you must look to the whole of the instrument, and take it all, and not to take it in parts. In further elucidation of these views, the Chief Justice contended that the court was bound "to give such a construction to the act of parliament as will advance the remedy intended to be provided by that act." He referred in support of these his views to Plowden's Commentaries, to the act of Henry IV., and to the statute of Gloucester; to Second Institute pp. 256, 393, 431, and also a case in East, p. 106, the King *v.* the Inhabitants of Everton, and to Lord Ellenborough's judgment thereon, and continued: Now, having premised those general rules for the construction of an act of parliament, I come to the consideration of the statute in question, and I come to it fortified, as I have already stated, by the practice of all the judges since the time of the passing of this act of parliament, and since the time only that their decision could be called for. The 37th chapter of the 1st and 2d Victoria, in fact, contains a history of all that has passed in this country within a short period of years upon the subject matter and mode of swearing witnesses before a grand jury. It is entitled an act to empower "the foreman or any other member of grand juries in Ireland to administer oaths to witnesses on bills of indictment." Now, I agree with Sir Colman O'Loghlen in saying the title of an act of parliament is not, strictly speaking, part of an act of parliament, and that you could not overbear the enactent part of an act of parliament by an inconsistent passage appearing in the title. That is not the present case. We are now come to the construction of an act of parliament, and to make out the meaning of the legislature it is perfectly allowable, and perfectly competent for those who are called upon to construe that act of parliament, to take into consideration what the legislature had in view when it passed that act of parliament, and what it intended to effectuate by it—what was the mischief and the remedy in this case, and on behalf of common sense, I say, that in order to assist me in coming to that interpretation, I shall look to every part of the act of parliament, including the title of it, as throwing a light on the subject. Now, this is not the title of an act to be passed for any particular part of Ireland—it is the title of an act about to be passed for all parts of Ireland—one part as much as another, but there is no reason whatsoever to curtail the general application of the general words contained in that title, inasmuch as the mischief about to be remedied prevailed in one part of Ireland just as much as another, and the remedy intended to be provided was equally extensive. The act recites—"Whereas by an act passed in the 56th of George III., entitled an act to regulate proceedings before grand juries in Ireland on bills of indictment,"—(that is a general recital applicable to all parts of Ireland, and the city of Dublin and Court of Queen's Bench as much as any other part of the country)—"reciting that the practice had prevailed in grand juries in Ireland of finding bills of indictment without examining witnesses for the crown." (That was recited to be a prevalent evil pervading every part of Ireland). It was enacted that from and after the passing of the act no bill of indictment should be returned a true bill by any grand jury in Ireland, unless the same had been found by the jurors upon the evidence of one or more witnesses for the crown, sworn in open court, and produced before them. No man who reads the act of parliament so recited, the 56th Geo. III., can have a question but that the evil complained of—the evil which the 56th Geo. III. was passed to reform—was one that prevailed as much in the city of Dublin as in any part of the country—in one part of Ireland as much as in another, and requiring a general application of the act of parliament to correct that abuse in one part of Ireland, Dublin included, as in another. And then it goes on to say what has happened since the 56th George III. was passed, "And whereas the provision for a *viva voce* examination of witnesses by the grand jury has been found most salutary, but the administration of the oath in court has been productive of delay and other inconvenience." And here I must observe upon the argument of the gentlemen on this point, and that argument, however ingenious, I must beg leave to say I cannot adopt it, for I will not take the *ipse*

dixit of any counsel against the express recital of the act of parliament, which does recite that delay and other inconvenience resulted from the practice of swearing the witnesses in court. I will not go beyond that to inquire or listen to counsel asserting that, in point of fact, no delay and inconvenience can arise, when the act of parliament I am bound to administer tells me in express terms, there was, and to such an extent that it became necessary to do something to meet the evil and to repress the mischief, and to do that the act of parliament itself was passed, and then there was, as demonstrated by the act of parliament, an evil that existed, of a character so serious as to call for the interposition of the legislature. What was that evil, and delay, and inconvenience arising out of? Out of the practice of witnesses being sworn in court. Now, I would be glad to know is that in its nature a mischief, which prevails in the country of Ireland at large, but does not prevail in the city of Dublin. That was not what the legislature contemplated. It contemplated the existence of an evil, which existed in that particular way, by delay and other inconvenience, at least as much in the city of Dublin as the country. Before the Commission of Oyer and Terminer, or elsewhere in the country, as before any of the assize courts in this country, we have as plain as words can make it an existing evil, of a general nature, and universal over the country—and we have the legislature setting about reforming the evil, which they have recited to exist. I would be glad to know what reason can be suggested for giving this act of parliament a contrary construction? What sort of fatuity is to be imposed upon the legislature who were to pass an act of parliament, and yet, according to their views of the subject, do it in such a way as to frustrate the object they had in view? And yet notwithstanding, with all respect to Sir Colman O'Loghlen and Mr. Moore, that is the object of their argument. Well, now we will go on with the act of parliament. "For remedy whereof be it therefore enacted by the Queen's most excellent Majesty, and with the advice of the lords spiritual and temporal and commons, and by the authority of the same, that in all cases where bills of indictment are to be laid before grand juries in Ireland for their consideration." There was the case that the legislature contemplated, and it was to be expected from the observations in the recital that the remedial statute it was about to pass was to be in its operation as extensive as the mischief of which they complain, and that there was no case to be excepted from its operations, no reason being assigned why any case should be excepted. The act goes on to say, "that in all cases where bills of indictment are to be laid before grand juries in Ireland for their consideration, the clerk of the crown at assizes, and the clerk of the peace at quarter sessions, or his or their deputy, shall endorse upon the back of the bill of indictment the names of the witnesses." That is, where such officers exist; but that is not in exclusion of other cases where similar proper officers exist, though their offices are not distinctly enumerated in the act of parliament. If you take the meaning insisted upon by the traversers, they impose a duty upon the clerk of the crown at the assizes, and the clerk of the peace at sessions, in cases where they have not the power of acting. This case is unlike several others that have been stated. This is not a case where you can take this act of parliament, and adhere to a literal construction in carrying it into operation. It is impossible to do so, because the clerk of the peace at sessions, or the clerk of the crown at assizes, have no jurisdiction to interfere with the Queen's Bench or the commission courts in Dublin or the country. I find, in the way I construe the act of parliament, no part of the act in opposition to another; but I find each bearing upon the other, and all co-operating to the same end. Then, there was the following provision:—"Provided always, that the said oath or affirmation is not to be in addition to, but in lieu of, that heretofore administered in court under the provisions of the said act, passed in the 56th year of the reign of his late Majesty King George the Third." Now, it appears to me to be a further argument in support of the same view of the subject, that there is an express provision that the oath that is to be administered by the grand jury in pursuance of this act, is not to be in addition to but in lieu of the oath that was to be administered under the 56th George III. It appears to me to be completely a substitution, and, therefore, it necessarily follows that it is to be as extensive as the oath in lieu of which it is to be substituted. It is to be a complete and entire substitution, not an addition. Then is it to be said by the parties if this oath is not to be administered, that the city of Dublin is to be thenceforward without any oath to be taken in court, because another oath has been substituted in lieu of it? There is another question which has not been overlooked by the Attorney and Solicitor-General, though it has not been pressed by them. In the view I have taken, it becomes unnecessary to make a decision on the objections to the plea that had been taken in point of form; but I must confess, that if I were called upon to make a decision on the point of form, I would be of opinion that the plea was *nil*. This must be considered a dilatory plea; whoever the parties may be, it is still, in contemplation of law, a dilatory plea, and that is a kind of plea to which no favour is held out, as tending rather to defeat than promote justice, and no strictness can be well imagined to be held to be too great for the regulation of the law in reference to proceeding on such pleas. I don't think it necessary to go into the cases on the subject, but they are to be found in 2 Saunders 209 E. In the case of Baker *v.* Cross, Crook, James 82, and in a case in 3 Term Reports, 18, the principle is well established, that those dilatory pleas are always to receive disfavour from the court for the reason I have mentioned, as tending rather to defeat justice than promote it. I shall now mention an instance in which it appears to me that there has been an insufficiency in the form of this plea. This plea is, that the bill of indictment was found upon the testimony of one or more witnesses who was not sworn in court. Suppose that bill had been found upon the affirmation of one or more respectable gentlemen of the profession of Quakers, would that be a bad bill of indictment because it was not found on the testimony of a sworn witness. On that ground, on the matter of form, I think the plea was bad.

Mr. Justice Burton said that he fully concurred in everything that had fallen from the learned Lord Chief Justice.

Mr. Justice Crampton founded his judgment exclusively upon the construction to be put upon the statute itself. He adopted unreservedly the comprehensive construction which had been contended for by the Attorney-General, and he was strengthened in the opinion of the propriety of doing so by the consideration that such construction was concurrent and identical with the first judicial construction which had been placed upon the act immediately after the introduction of the statute. He had considered the point with much care and consideration, and he could not help coming to the conclusion that the construction contended for by the crown was the only one which was consistent with the context of the statute, and the only one, moreover, which could carry out the views and intentions of the legislature in having introduced it, as these views and intentions appeared upon the face of the statute itself. What he regarded as the false construction of the act—namely, that for which the traversers contended, was founded upon a misinterpretation of the word "assize" and "quarter ses-

sions," which words, he was of opinion, had been introduced into the act, not with a view to confine its operation to any particular courts, but rather with a view to designate and particularise the officer by whom the duty of endorsing the names of the indictment was to be performed.

Mr. Justice Perrin said the question to be considered was this—whether under the law, as it existed in this country, a bill of indictment could be legally found a true bill upon the testimony of witnesses not sworn in open court, but in the grand jury room, pursuant to the provisions of the act 1 and 2 Victoria, cap. 37. The question depended on the relative construction put upon two acts of parliament, the one the 56th of George III., the other the act already referred to. In the arguments which had taken place with respect to these constructions, many authorities had been cited, which, in his opinion, did not at all bear upon the real question at issue, and of these he would, of course, not take any notice. Several positions, too, had been contended for on both sides, which, according to the view he took of the case, he did not deem at all necessary to discuss, no question as to their applicability appearing to him to exist or arise in the case. One proposition, however, had been put forward which certainly appeared to him a startling one. It was this—that a grand jury might find a bill without evidence, and that the matter was not inquirable into in that court. Against that assertion he begged leave to protest, and to declare that an indictment could not be possibly found except upon the evidence of sworn witnesses lawfully introduced—he meant, of course, regularly sworn. The question then became, whether the witnesses must be sworn in court or before the grand jury? Now, the 56th George III., distinctly and most explicitly provided that no bill of indictment should be returned a true bill, unless the same had been found upon the evidence of one or more witnesses, sworn in open court, and produced before the grand jury. Thus, that statute declared the law: accordingly, that had been the law ever since. It was found, however, that this practice was in some respects bad, as regarded the administration of the oath in court. It was found to produce delay and certain want of decorum, and to be, in fact, very injurious to the administration of justice. The witnesses were sworn in a hurried manner, in batches, their affidavits were sent up to the grand jury, and they themselves were examined either immediately, or at considerable intervals. This was found to be injurious not only in practice, but in decorum, as it was separating the witness's mind from the impression that he was giving his evidence under the sanction of an oath. That inconvenience was general. It was found to prevail as well at the Commission Court of Dublin as at the assizes in the country. Accordingly, in the 1st and 2d Victoria, the act passed to remedy the inconvenience, is stated that the practice of swearing the witnesses in open court had been found to be injurious, and declared that its provisions were intended to remedy that inconvenience—an inconvenience as general as the provisions of the statute under which it was proposed to remedy it. Accordingly the statute enacted that in "all cases" where bills were to be laid before the grand juries in Ireland—that was, in every case—the clerk of the crown at assizes, or clerk of the peace at sessions, should endorse the names of the witnesses upon the bills to be sent up, and those witnesses were to be sworn before the grand jury by the foreman. He thought the statute defective in not being more explicit, and mentioning other clerks of the crown, &c., and in using general terms; its express terms, "the foreman of the grand jury shall administer the oath," were general, and not confined to any particular grand jury. The learned judge proceeded to sustain his view of the general nature of the bill, and of its intention to remedy the general inconvenience subsisting in Dublin as in Ireland under the old practice, by a minute and elaborate analysis of the terms of the act itself, and comments upon the extent to which its provisions went. Thus, without having particularised any grand jury, it spoke of "the grand jury so empannelled," evidently alluding to any of the grand juries of Ireland before mentioned. There was no particular allusion to any empannelling in the previous part of the act, and the words, "so empannelled," in his opinion had no other meaning than this, when any grand jury was empannelled, the oath under the 1st and 2d Victoria was administered in lieu of the oath taken under the 56th George III.; and it was provided that the foreman should state the names of the witnesses, and authenticate the jurat by his signature, and should not administer the oath to any witness whose name was not put upon the bill by the clerk, whose duty it was to do it. These provisions (continued the learned judge) were distinct and explicit. Under 56th George III. any clerk of the crown or of the peace endorsed the bill. There was then no difficulty in his continuing to do so. Indeed it had been rather suggested than argued, that it was necessary to give the clerk the authority to do so by act of parliament; but surely an act of parliament was not necessary to give him the authority which, as the officer of the court, he already possessed, and which an order of the court could, in any case, enforce. An act was necessary to give the foreman of the grand jury the power to swear witnesses, which he had not had before its passing; but the clerk was an officer whose duty it was to endorse the bill, and an order of the court would be quite sufficient to give him that authority without any act of parliament being necessary. The argument that the grand jury of the Court of Queen's Bench or of the commission in Dublin was not to be included in the general terms "any grand jury in Ireland," was not sustained by anything in the act itself; and further, he would say, that he did not consider the act of 1 and 2 Victoria a penal act at all; but relying upon the plain words of the act, which required no forced assistance to come at their meaning, it appeared to him that the statute would apply to any bill which could be sent up before any grand jury in Ireland. He confessed he thought the clause, with respect to the clerks of the peace and sessions, inacurate; but still it was obvious that the words of the act were sufficiently large to include them, and that the same reasoning would apply to them also. He did not think he could find any authority which had been cited to prove—first, that the grand jury of that court was not included in the meaning of the act; secondly, that the witnesses in any bill before them should be sworn in open court and not before the grand jury. After a careful, diligent, and an anxious examination, he had come to the conclusion which had been adopted by all the judges. He felt himself strongly justified in his opinion by their judicial declaration and concurrence, and he must conclude that the matter would have received from them every consideration if it were held to be valid. On these grounds he was of opinion that the demurrers should be allowed, and that the pleas were not sufficient. With respect to the special demurrer, it was not necessary that he should, nor did he, express any opinion upon it, but he must say that if he were satisfied that the reply to the special demurrer was well founded—it would go very far indeed to convince him that the rule of that court made on a former day was decidedly erroneous in refusing the names of the witnesses to the accused parties if that was necessary to make their plea good, and indeed the argument, as it was, had gone very far to

shake his confidence in that decision. The learned judge concluded by again expressing his concurrence in the present judgment.

Attorney-General—Your lordship will now give judgment of *respondeas ouster* in this case.

The Chief Justice nodded assent.

Attorney-General—Let the clerk of the crown take down the judgment. I intend to ask your lordships to pronounce a similar judgment in the cases of the other pleas put in by the other traversers, as they all separately put in the same pleas with some slight technical difference that I before referred to. A similar order will be made in each case, as separate judgments of *respondeas ouster* must be given, and it is necessary the judgments should be separately taken down in the rule book in each case.

Chief Justice—Like case like rule.

Attorney-General—Exactly so, my lord. And now the court having pronounced judgment of *respondeas ouster* in each case, what I would suggest is that the traversers be called upon their recognizances to appear and to plead instanter. In the case of the King *v.* Sheridan, and in the case of the King *v.* Johnson in England, reported in 6th East, 601, when a plea in abatement had been put in, and where the demurrer was allowed, the court awarded judgment of *respondeas ouster*, and it was then required of the traversers by the court that they should plead instanter or otherwise that judgment should be awarded against them instanter. In the case of the King *v.* Kirwan, judgment having been given on demurrer, and the demurrer having been allowed, it did not appear by the report that the parties pleaded instanter, but it appeared beyond doubt that they actually did plead instanter, because the trial was fixed instanter. By the 60th George III., and the 1st George IV., the parties got four days to plead or demur, but eleven or twelve days had now elapsed since the entry of that rule. That four day rule has now expired two or three times over, and now, under the provisions of the act, I submit I am entitled to have the parties called on their recognizances to appear, and plead instanter, or if they refuse to plead, then to enter judgment against them on the general issue. He then read the 9th George IV., chap. 54, sec. 8.

Mr. Hatchell, Q.C., said he appeared for the traversers, to show their lordships respectfully, that they were entitled to a rule to plead over *in chief* after the court had pronounced judgment of *respondeas ouster*. With respect to the observations of the Attorney-General, he had to observe that, in the case of the King *v.* Sheridan, the whole proceeding appeared to have been taken with the consent of the defendant, as no objection had been raised; and it was agreed in open court between the leading counsel for the traverser and the Attorney-General of the day, to fix a day for the trial, and therefore he would say, with great respect, that that case decided nothing. With respect to the case of the King *v.* Johnson, he admitted that, after argument, and after the plea in abatement had been disallowed, and judgment of *respondeas ouster* had been given, the court did direct the parties to plead forthwith, but there was no objection taken by the defendants to that proceeding; and, therefore, he thought it stood upon the same footing as the preceding. No point had been raised, or no question agitated as to the right of the parties to plead *in chief* in those cases; but he trusted he would be able to satisfy their lordships, on express authority, that the defendant was entitled to a further rule, and that a rule for four days to plead *in chief* after the judgment of the court of *respondeas ouster* was given against him. It might be said that the granting of that four-day rule was in the discretion of the court, but he thought their lordships would find that wherever the court had discretion in misdemeanour cases, it was in the practice of exercising it in favour of the traversers, and of giving them the benefit of a rule that, in civil cases, they would perhaps have refused. It was stated in 1st Tidd's Practice, page 164, of the ninth edition, that "if there be judgment for the plaintiff in demurrer to a plea of abatement, that judgment is only interlocatory, *quod respondeas ouster*. In the latter case the defendant has in general four day's time to plead, but this is in the discretion of the court; and they will sometimes order him to plead instanter or on the morrow." That was the rule on the pleas' side of the Court of Queen's Bench; but so far the granting of the rule was qualified, and he should admit, therefore, that so far he could not demand it as a matter of right, but merely as a question for the consideration of the court. But when he came to look at what the practice of the court was, he thought their lordships would find the matter much stronger in his favour. He admitted, that if the court thought the plea in abatement put in a civil case, to be a merely frivolous and insignificant plea, then that in deciding against it they might call on the party to answer instanter, and without giving him the benefit of the four-day rule; but he would call their lordships' attention to criminal cases on trials for misdemeanour, in which they would find that even in the worst of times, when there was little or no indulgence given to the party accused, the court still gave defendants the benefit of that four-day rule; and when such was the case, then, he trusted, that under present circumstances, and at the present time, the Court of Queen's Bench in Ireland would not refuse the accused party a similar protection. He would first call their lordships' attention to a case referred to by Mr. Lidd in his note. It was the case of the King *v.* Williams and others, reported in two different reports, in 2d Sher., 471, and Comberback's Reports, pp. 18, 19. In that case, informations were filed in the last year of the reign of King Charles II., and it came on before the Queen's Bench in the first year of the reign of King James II. The learned counsel then read the two reports of the case at length, and then read the forms of the pleas and demurrer, and the rule to plead in the same case as given in Tremaine's Pleas of the Crown, 48. He then continued. In the arguments on that case of the King *v.* Williams reference was made to another very important case of the King *v.* Sir John Elliot and others, reported in Crook Charles, 181, In that case the defendants were indicted for language used by them in the House of Commons, and they put in separately pleas in abatement that they had been elected members of the House of Commons, and that, therefore, they ought not to be called upon to answer to the charge in the Court of Queen's Bench. That plea was demurred to, and after argument it was adjudged that they ought to answer. Divers rules were afterwards given to them to plead, but they refused to plead, and judgment was then given against them, which was, however, subsequently reversed on a writ of error. After reading the case, he continued to say that it was a direct authority that after judgment of *respondeas ouster*, divers rules were made for the defendants to plead in chief. But that there might be no ambiguity he would turn to the whole of the proceedings in 181 Tremaine's Pleas of the Crown, 294, where the pleas of privilege were respectively set forth, together with the demurrer that had been taken against them. He then read several extracts from the work, and said that in that case they had it on record that the informations had been filed, and the pleas put in within the same term. The demurrer by the Attorney-General, and the rejoinder to it, together with the decision of the court, in pronouncing judgment, was given on the 23d of January, but the rule to plead in chief was

extended to "the Octave of the Purification," which feast the court was aware was celebrated on the 2d of February. That was one of the cases cited as governing the court in the case of the King *v.* Williams, and yet under it the defendant was entitled to a four-day rule to plead over in chief. If that was the law in those times, and if such indulgence were then given to the parties to enable them to plead over, he submitted that in the present case, considering the unprecedented length and complexity of the indictment to which the traversers were now called upon to plead in chief, he did not ask a great favour from the court, though he was willing to accept it as a favour, and not as a matter of right, in requesting their lordships to order the four-day rule to plead over in chief to be given.

Mr. Whiteside, Q.C., said he was on the same side with Mr. Hatchell for Mr. O'Connell, and he respectfully submitted that he was entitled to require the four-day rule after judgment of *respondeas ouster*. He would contend that the statute of the 60th Geo. III., referred to by the Attorney-General, had nothing to do with the case before the court, as their lordships had held that the plea in abatement fell within the section of the act. The case cited by his learned friend was also reported in Skinner, 217, where it was distinctly stated that the court gave two rules for joining in demurrer, as it did in pleading, and it then gave a peremptory rule, after which if the party did not join they would give judgment. After commenting at some length on the case of the King *v.* Elliot, as given in the several authorities, he referred to Kirwan's case, 31st volume of the State Trials, 575, which had been relied on by the Attorney-General. He did not know why the party had pleaded not guilty in the first instance in that case, but after that plea had been put in and issue joined, still, because they did not afterwards apply for the four-day rule to plead, the Attorney-General gravely put it forward as an authority why the rule should not be granted. But he referred to another case which he would admit would be more in point if it had been argued. The difficulty in that case was how to get the Hon. Robert Johnson to join in demurrer. He then cited that case from the 6th East 586, and then referred to the case of the King *v.* Williams, and said that that case showed the parties to be distinctly entitled to a four-day rule to plead over in chief after judgment of *respondeas ouster*. The first point to be considered was, whether there was an analogy between cases of misdemeanour and cases on the civil side of the court, and he contended such analogy did exist. In the case of the King *v.* Cooke, 1st Barnwell and Cresswell, 871, the plea in abatement contained a slight informality, and an application was made to the court to admit it. The court refused the motion, and it was ruled that the rule acted on in civil cases was to be applied to misdemeanours, of not allowing pleas in abatement to be amended. In the case of the King *v.* Taylor, 3d Barnwell and Cresswell, 512, it was also shown that an analogy existed between civil actions and misdemeanours. He also referred to 2d Archbold's Practice by Chitty, 691, where it was laid down that after judgment of *respondeas ouster* the defendant has four days to plead, and in illustration of that rule he quoted the case of Cantwell *v.* the Earl of Stirling, 1st Moore and Scott, 305, where the defendant was allowed a four-day rule to plead after judgment against him of *respondeas ouster*. After referring to one or two other law cases in support of his position, the learned counsel again drew the court's attention to the analogy which he contended had always been held to exist upon this point between cases such as the present and civil actions, and concluded by respectfully calling on their lordships to grant the traversers a four-day rule to answer over in chief.

Mr. Brewster replied on behalf of the crown, and said that a few days since he endeavoured to impress on the court the necessity of refusing to receive this plea, and contended, on that occasion, by analogy and in the practice in civil cases, that the court were bound to reject the plea. The court, however, differed from him. It was convenient now, however, for his learned friend to argue on analogy between civil and criminal cases—then it was most inconvenient. Now with reference to the authority with which the court had been pressed. In the first place all the cases referred to were cases of informations where the party appeared by attorney, whereas in the case then before the court, the proceeding was by indictment, and the parties appeared in person. There was a clear distinction, therefore, between the present case and the one that had been cited. The gentlemen on the other side had relied very much upon the decision given many years ago in a certain case, as reported in Camberbatsch: but it was worthy of remark, that the report of the case in question, as given by Camberbatsch, differed in many essential respects from all the other cotemporaneous reports of the same case. It was notorious that Camberbatsch's reporting was, in many instances, grossly incorrect, and Lord Ellenborough, in 4th East, page 540, had borne testimony to this fact in very strong language, for his lordship declared that Camberbatsch's report of a certain case, to which reference had been made, had misstated the facts, the points, and the names of the parties; and yet, this was the authority relied on by the counsel for traversers. In the report of the case on which Mr. Whiteside principally found his application, it was stated that Mr. Pollockson, an eminent counsel of that day, admitted that "he had no more to say," and when such a man as Pollockson made this avowal it was to be inferred that his case was bad indeed, for he was not a lawyer who died easily. Of all the men who ever practised at the bar he was, perhaps, to use a vulgar expression, the most sticking (laughter).

Mr. Hatchell—You allude, of course, to the lawyers of bygone days (laughter).

Mr. Brewster said that he did not allude exclusively to bygone days. He thought that Mr. Pollockson might be pitted, for obstinate pertinacity, against all lawyers, ancient and modern (laughter). The reported cases showed that there was no man so slow to yield to a decision adverse to him. Mr. Pollockson declared he had no more to say; and all authentic reports of the case concurred in declaring that the judges decided that judgment should be entered instanter. He (counsel) denied altogether that the same rule could be made to apply to indictment cases and information cases. There might, perhaps, be some reason for granting a four-day rule to answer in chief to an accused party in an information case, for the party appeared by his attorney, from whom he might be miles distant, but there could be no pretext for granting the indulgence in a case such as this, where the party appeared in person. And now he would consider how the case would have been, in place of demurring, had the crown taken issue on the plea. When issue was taken, the sheriff usually returned the jury instanter, which generally put the traversers upon their trial, as was laid down in Starkey's reports, 316; and there was nothing better settled than "that if the issue was found against them the court would be called upon to give final judgment absolutely." But if the crown was driven to a demurrer, it was the judgment of *respondeas ouster* which was entered according to what he (Mr. Brewster) knew of the practice, after which the parties (as he said before) should plead instanter. If the principle for which the traversers were contending were to be conceded, there would be no end to confusion and delay—the statute would be rendered nugatory, and the admi-

nistration of justice would be wholly impeded. The accused party, when called on to plead, would then have nothing to do but to hand in a plea of abatement, which, though true in fact, might be quite immaterial in point of law, and by thus raising a question which did not at all affect the merits or legal bearing of his case, he entitled himself to four days' delay; and then, after demurrers had been joined, and that the court decided that his plea in abatement was worthless, he had the modesty to come forward and demand four additional days to answer in chief. Why there would be no end to the delay, and delay would be a mockery. In the first instance, he had four days to plead—at the end of that period he put in a plea of abatement; that took up another day; then, according to the rule of the court, four days must be granted for joining in the demurrer—that made nine days; then the demurrer came on to be argued, and the judges required time to consider their decision, and thus a day or two more was consumed; and by this means a delay of eleven or twelve days was consumed. And was it to be brooked, that after such delay as this an accused party should come forward and demand a further delay of four days, under the pretext forsooth of having time to answer in chief! The object of the statute was to bring the party to issue on the subject at once, and he trusted the court would not be a party to frustrating that statute. Mr. Hatchell had put it to the discretion of the court to grant this application, and he (Mr. Brewster) would only remark that no special case had been made out to warrant their lordships in coming to such a conclusion. In point of fact, the traversers had got already more time than any parties ever obtained since the passing of the statute. What was to prevent their demurrer to the indictment, or pleading guilty? The latter course required little time. The learned gentleman concluded by calling on the court to call on the traversers to plead instanter.

Judge Burton—How many days have elapsed since the traversers appeared?

Mr. Brewster—A fortnight, my lord.

Mr. Hatchell wished to remark that the appearance in Elliott's case to which he referred was in person.

The Chief Justice said this appeared to be an application to the discretion of the court. It had been so stated by the counsel who made the application, and seemed to be so considered in Archbold, and some of the other authorities handed up to guide them in their decision. What was there to influence them on this occasion? It was competent to the party who asked for delay to make a statement upon oath of the facts and particular circumstances which it lay with him to bring forward, or even to state generally. He was not able and could not be prepared to put in his plea at once to the merits of this case. He did not at all put forward in the way of blame or imputation, that he had by his counsel very ably and ingeniously argued a dilatory plea, instead of a plea to the merits. There was a great deal of matter in that plea, and he would say it was a subject matter very proper for discussion, and consideration, and adjudication by the court. Now, they came to another question. What was Mr. O'Connell to do now? He had been furnished with a copy of this indictment, and had been given in charge to this indictment, a fortnight ago. There was no statement that he was not perfectly aware of the subject matter of that indictment, with a copy of which he was furnished a fortnight ago, and that he did not perfectly understand everything that it was necessary for him to understand in order to prepare his plea. He had the power of pleading "not guilty," or taking a general demurrer. He did not say which course he had been advised to take, or that he had made any preparation at all toward defending himself against the imputed charge. But admitting that this case was one applicable to the discretion of the court, and therefore admitting that he had no right to insist as a matter of right that he should have further time, he withholds any case from the court If he thought proper to make no case to the court, what was the conrt to do but to assume that he had no case, or could not, consistent with truth, make a case for the discretion of the court. He was, therefore, in the position of a person applying for further time to the court, merely on the ground of delay; and the court, in the exercise of its duty, would not comply with the request of the person who so put himself before the court. If he confessed himself he had no case, it did not differ substantially from that which was the case that the court had to deal with; and as he pretended to no case, there was no reason why the justice of the country should be delayed; and the Attorney-General, as a matter of right, should have an answer to the indictment preferred by the crown. The court were all of opinion that it was a case in which Mr. O'Connell should answer *instanter*; and in the case of "the King *v.* Johnston," the court made precisely the same order.

Mr. Whiteside said that in the cases referred to there was no affidavit made. He stated that for their own justification.

Attorney-General—My lords, the defendants must appear personally upon their recognizance now, and be called by the clerk of the crown to plead forthwith.

Mr. Ford—They will be here immediately.

Clerk of the Crown—Some of them may be here. Call Daniel O'Connell.

Mr. Hatchell—He is coming in.

Clerk of the Crown—Crier, call Daniel O'Connell.

Crier—Daniel O'Connell, come and appear here, you and your bail.

Mr. Hatchell and Mr. Cantwell again informed the officer that Mr. O'Connell was coming into court.

Clerk of the Crown—Call John O'Connell.

Mr. Cantwell—They will be here in one moment.

The Liberator, accompanied by Mr. John O'Connell, M.P. and the Rev. Mr. Tyrrell, entered the court in a few minutes afterwards, and took his seat at the side bar. The other traversers were previously in attendance.

Mr. Cantwell immediately afterwards said—I now hand in the plea of Mr. O'Connell.

Chief Justice—Is Mr. O'Connell present?

The Liberator here rose and bowed to the court.

The Clerk of the Crown then read the plea, which was in the usual form of a plea of "Not Guilty."

Mr. Cantwell then handed in successively the pleas of John O'Connell, Thomas Steele, Richard Barrett, John Gray, Thomas M. Ray, and the Rev. Peter J. Tyrrell.

Mr. P. M'Evoy Gartlan—I hand in the plea of Charles Gavan Duffy.

Mr. O'Reilly handed in the plea of the Rev. Mr. Tierney.

The Clerk of the Crown then said—All the defendants have handed in to me pleas of "not guilty."

The Attorney-General inquired if all the pleas were similar.

Mr. Cantwell replied in the affirmative.

Attorney-General—The clerk of the crown will add a *similiter*. I myself state it *ore tenus*, and join issue on these pleas, and the clerk of the crown will take it down from me.

The Attorney-General again rose after a short pause and said—I know an objection might probably be made if I applied to the court without notice to the traversers to fix a day for the trial. Notice will be served on each of the traversers in the course of this day for Friday, when I will apply for a trial at bar in this court. I cannot now make that motion, as I know they would object to its not being on notice.

Chief Justice—I think you mentioned applying for a trial at bar.

Attorney-General—Yes, my lord, notice of the motion will be served on Friday, and I will on that day move for a trial at bar to be fixed for some day in the next vacation.

Chief Justice—Do you move anything else, Mr. Attorney-General?

Attorney-General—No, my lord.

Chief Justice—Do you, Mr. Hatchell?

Mr. Hatchell—No, my lord.

Mr. O'Connell and the other traversers then left the court, followed by the majority of the persons present during the proceedings.

IN THE QUEEN'S BENCH,

THURSDAY, NOVEMBER 24.

The full court sat at eleven o'clock.

The Queen v. *O'Connell and others.*

The Attorney-General said that in this case of the Queen *v.* O'Connell and others, he had humbly to move their lordships, that there should be a trial at bar in this cause, and that such trial be fixed to commence on Monday, the 11th day of December next, or such other day as the court shall please to appoint; and that the said 11th day of December, and the following days up to and including the 10th day of January, in the year of our Lord, 1844, should, for the purpose of such trial, be deemed and taken to be a part of this present Michaelmas Term, or for such other order as the court might think right. It was right to state to their lordships the form of a cross notice which had been served upon him on the part of one of the defendants, and it might be as well, before the affidavits were opened to the court, to state it. It was as follows:—"Take notice that the affidavit of William Ford, Pierce Mahony, John M'Namara Cantwell, Thomas Reilly, and Peter M'Evoy Gartlan, and also the affidavit of the defendants, are this day filed for the purpose of resisting the motion of which the Attorney-General had given notice, in so far as the same extends to the fixing of a trial at bar in the vacation after the present term, and take notice that, at the time of the discussion of the said motion, counsel, on behalf of the said traversers, will move the court that the trial in this cause be fixed to take place on the 1st day of February, 1844, or such other day in Hilary Term next, or the vacation after the same, as the court shall please to appoint, upon the grounds that the jury pannel, as at present constituted, is not in accordance with the provision of the statutable enactment in that behalf, and on the ground that the jury lists are at present under revision before the Right Hon. the Recorder, and will be completed on Tuesday next, and will come into operation on 1st of January, 1844, and also on the grounds of the magnitude and importance of the cause, the voluminous nature of the indictment, and the vast variety of matters alleged against the traversers, and the impossibility of being prepared to defend themselves in this cause, within a shorter period, which motion will be grounded on the several affidavits aforesaid, the information and indictment, and bill of particulars in this case, the nature of the case and reasons to be offered." That in fact, though a cross notice, stated shortly grounds of opposition to the motion that he brought under the consideration of the court; and he should state to their lordships fairly and fully, as he should do, the affidavits made on the part of the traversers in this case, and he should state them as fully as the gentlemen on the other side could do.

Mr. Henn said it would be more regular for the Attorney-General, when they were to move a cross notice, to allow them to open the matter of their own affidavits, on which their application was founded.

The Attorney-General said that these affidavits—though the traversers had served a cross notice—were filed, in fact, in opposition to his motion; and the usual course was for the person to open the affidavits who made the motion.

Mr. Henn said that the Attorney-General's motion was not grounded upon any affidavit. He came in there, as he had a right to do, to have a trial at bar granted by the bench, and to fix a day for such trial. Their notice was served for the purpose of postponing that trial, and they were entitled to open to the court the matters on which they resisted this application. It was unnecessary for the Attorney-General to anticipate them. He had, therefore, to ask the court for a trial of bar; it was a matter of right to grant it to him, and to fix the day for the trial, and it was for them to open their cross application for a postponement of that trial.

The Attorney-General—I don't want to be discussing or considering matters of a formal nature, and if Mr. Henn be so desirous—

Judge Crampton—Does the cross notice state that these affidavits are used in opposing the motion of the Attorney-General?

The Attorney-General replied that they did, and he had a distinct right to call the attention of the court to the affidavits which were filed in opposition to his motion, and could not be precluded from this right by the fact of a cross notice being served, which would be served in every case similarly circumstanced with the view mentioned. But as it might be said that the affidavits would not be as fully opened by him as by Mr. Henn, and as he did not want in a case of this importance to be standing on minor points, if Mr. Henn thought he could open the affidavits more fully, and as it was necessary that the affidavits should be brought fully before the court previous to any discussion, and as it was urged on the other side that they would prefer opening the affidavits themselves, he should not interpose an obstacle in the way of their opening their own affidavits.

Mr. Henn said that nothing could be fairer than the conduct of the Attorney-General in this respect, and therefore it became his duty, on the part of the traversers, to move the cross motion, which was, in fact, in opposition to the motion of the Attorney-General, as well as a distinct substantive motion on his part. That notice was read by the Attorney-General, and it is a notice that counsel on behalf——

Chief Justice—Send up a copy of it.

Mr. Henn having read the traversers' notice of motion which was previously stated by the Attorney-General, proceeded—That was an application for a postponement of the trial; for what in one sense of the word might be called delay; but it was not an application, he thought he would satisfy their lordships, for unnecessary or vexatious delay; and before he opened to their lordships the particular matters on which the application was founded, he thought it his duty to advert to some of the proceedings that had already taken place in this case; for he (Mr. H.) thought it important to impress upon their lordships' mind that they had not hitherto been, nor were they now, actuated by any desire to cause unnecessary delay. He thought it the more incumbent on him to do this on the outset, because more than once in the proceedings that took place the Attorney-General thought fit to assert that in his opinion the object of the different applications on the part of the traversers was merely for the purpose of delay. Any opinion of his—any opinion coming from a person of his high rank—and he would say, of his high personal character—was calculated to have great weight; and when, as he (Mr. H.) conceived, improperly made, was to be deprecated on the part of his clients. He would now advert to the course of proceeding in this case

which was within their lordships' judicial knowledge, premising that it was new to him to be a just cause of reproach for a person charged, or the counsel under whose advice he acted, to use all the privileges that the law allowed him for his defence. It might be a cause of reproach for a prosecutor to try to abridge those privileges, or even to insist upon the rigid rule of right. If he seeks to deny those privileges it may be a cause of reproach to him, but it can be no cause of reproach to a traverser, who seeks to avail himself of those privileges. The indictment was found late in the evening—on that very day the Attorney-General sought to have them put in charge, and if he had succeeded the effect would be to deprive them of one of the few days that the act of parliament allowed them to plead. They insisted upon their right to have the indictment read, and by that means the attempt to put them in charge at once was frustrated, and they were not put in charge until the next day; but still one day was lost to them by the officer refusing, without an order from the court, to allow a comparison of the indictment. Then there was an application made for the names of the witnesses, and with respect to the reproach of delay, that accusation could not be made with regard to that application, for that application was made while the rule to plead was running. It was not made for the purpose of delay, but for an important reason. Until the statute of Victoria the witnesses were sworn in court. They only asked for their names because they were deprived of that opportunity of knowing them, and he thought the application was in accordance with the liberal spirit of the legislature that gave them a copy of the indictment. Therefore that application was not intended for delay. They then applied for a copy of the caption of the indictment, because the counsel for the traversers advised them that it would be necessary to procure it, in order to enable them to frame the plea, which was not then put in. Respectable solicitors of that court stated on oath that the application was not intended for delay, and it was, therefore, with regret he heard the Attorney-General reiterate the charge that those proceedings were intended for delay. Then came the time for pleading, and their lordships would recollect what occurred, and the resistance of the Attorney-General to those pleas. He relied upon what he thought to be the strict rules of the court, and the provisions of the act of parliament, and the court ruled against him. He thought he had a right strictly to enforce the rule of the court to the prejudice of the traversers, but he not having such right they were allowed to put in those pleas, and it would be more gracious for him, even if he had the right, under the peculiar circumstances of the case not to insist upon it. The Attorney-General demurred to the pleas, and called on the traversers to join in demurrer instanter, refusing them the four-day rule to which they were entitled. He charged them with delay; but though he stated that it was a rule that did not exist, their lordships found the practice of the court to be with them (the traversers), they accordingly claimed the benefit of that practice, and he submitted that they were not entitled to any reproach for that. They got that four-day rule, and when it had expired sought for further time. Unfortunately the rules of the court were not in print (if they asked for further time in England they would get it), and the court refused them; but certainly it was no cause for reproach against them, that they applied to the court to know what the rule was, and if the rule was what they considered it to be that they should avail themselves of it. There was a similar application for a four-day rule to plead after judgment of *respondeas in ouster*, and under those circumstances he regretted that the Attorney-General should think fit in the manner he had done to reiterate a charge of this nature calculated to prejudice this case, which ought to come before the tribunal that was ultimately to decide upon it free from the slightest prejudice at all. Having premised so much, he would now come to the grounds on which the present application was put forward. They had, in making this application, distinct and altogether uncollected grounds to rest upon: first, upon the present state of the jury list, or jurors' book, and upon the prospect, if not the certainty, of having a fair one, if their application were complied with, and one constituted according to law, which the present was not. And the second ground was, as stated in the notice, the importance of the case—the voluminous nature of the indictdictment—and the vast variety of matters alleged against the traversers, it was impossible they could be prepared to defend themselves within a shorter period. He meant not only to open the matter on which the application was founded fully to their lordships, but he felt it would be his duty to read at length to their lordships every word of the two principal affidavits on which the application was grounded. There were other affidavits which did not contain any matter or details with which it would be necessary to trouble their lordships at length, but with respect to the two affidavits that supported those grounds it would be necessary for him to read every word of them; and the Attorney-General would not have to complain that he had not brought them fully under the consideration of the court. He would first call attention to the affidavit with respect to the jurors' book, and that was the affidavit of Mr. Pierce Mahony.

IN THE QUEEN'S BENCH.

The Queen *ag.* Daniel O'Connell, Esq., M.P., and others.

Pierce Mahony, of William-street, in the city of Dublin, Esq., and attorney, being duly sworn, deposeth and saith that upon the 14th day of October last, this deponent was employed to defend John O'Connell, Esquire, M.P., one of the traversers in this case. That in three or four days afterwards deponent applied during the office hours at the office of the sheriff of the city of Dublin to George Pounder, Esquire, sub-sheriff of said city, for a copy of the jurors' book, and of the list of special jurors for the present year for said city, both of which applications were on such occasion by the said sub-sheriff refused. That subsequently deponent attended at the office of the clerk of the peace for said city, and there inspected the several returns made by the collectors of grand jury cess for said city, as well for the year 1843 as for the coming year 1844, upon which occasion deponent expressed his surprise at the inaccuracy of the returns, and the smallness of the numbers returned, inasmuch as deponent had, at a considerable cost and expenditure of time and labour, previously caused a calculation to be made which deponent believes to be true and correct, by which it appears that in said county of said city 6,176 houses are rated for the poor rate at from 10*l.* to 20*l.* per annum, and 11,122 at 20*l.* and upwards as appears by the schedule No. 1, hereunto annexed, and to which deponent begs leave to refer this honourable court, while by the lists returned by all of said collectors taken together, the entire number of persons returned as liable to serve as jurors only amount to 4,631 for the year 1843, and 4,819 for the year 1844, as by schedule No. 2, hereunto annexed, as well as the copies of said lists in deponent's possession, and to which deponent begs to refer this honourable court, may appear. Saith that on said occasion deponent remonstrated with Robert Dickenson, Esq., one of the clerks of the peace for said city, as to the incorrectness and deficiency in said lists for 1843,

and the inaccurate manner in which said lists were made up, by which it will appear that the christian names of 408 persons are not set forth, and the names of 38 mercantile firms are set down in the lists for 1843 in the said lists, without the names of the individuals composing said firms; whereupon the said clerk of the peace agreed with deponent, that the said lists were most *inaccurate and imperfect;* and that the collectors of grand jury cess, though frequently remonstrated with, always neglected their duty in that respect; and he the said clerk of the peace then stated that the Recorder of the said city had, while presiding in open court, and revising the said lists, frequently complained of the collectors' neglect of duty, and the said Dickenson further stated that he and his colleague, George Archer, Esquire, frequently had made similar complaints as to the inattention and inaccuracy of said collectors in that behalf. Saith that upon the occasion above referred to, deponent asked for copies of said collectors' lists for said years 1843 and 1844, but said Dickenson declined to give same, without consultation with his colleague, although deponent offered to pay for same. Saith he several times afterwards repeated said application, without effect; and on the 23d of October last, deponent wrote a letter, of which the following is a copy, to said clerks of the peace:—"Gentlemen—I beg of you to furnish me with copies of the returns, made to your office, by the several grand jury cess collectors of this city, of persons entitled to serve as jurors for the year 1843, and for the ensuing year 1844. I will pay you for same. Your humble servant, PIERCE MAHONY.—October 23d, 1843. To the clerks of the peace for the borough of Dublin." And deponent saith that said clerks thereupon promised to give an answer in two days. Deponent received copies of said lists on the 30th day of October, for which he was obliged to pay the sum of 22*l.* 2s., the said clerks of the peace having informed deponent, as he has no doubt the fact was, that there were no printed copies thereof, and that it never had been the habit of the said collectors to have said lists printed. Deponent saith that pending said applications to said clerks of the peace, this deponent applied again at the sheriff's office for a copy of said jurors' book, and upon one occasion he observed upon the inaccuracy of said lists, which he deponent had seen at the office of the said clerks of the peace; and as to the non-compliance of the said collectors with the terms of the act for regulating juries, and of the precept issued to them by the clerks of the peace pursuant to said act. And deponent saith that upon such occasion said George Pounder, the sub-sheriff, concurred in deponent's observation, saying, that same had been a constant source of complaint in the same office; and so much so, that Sir Edward Borough, Bart., the late high sheriff of said city, had made an official complaint to this honourable court thereupon during his year of office. Saith that deponent having made personal inquiry from two of the said collectors, Mr. Henry Vigne, and Mr. Newenham Graydon, as to the causes of the great inaccuracy and deficiency of their lists, as returns to the clerk of the peace's precept; and notwithstanding the provisions of the statute, and that they the said Vigne and Graydon replied in open court to deponent on the 21st instant, that they never before the present revision understood the exact nature of their duties, and that they returned the names merely as they happened to be on the applotment books delivered to them for their guidance in the collection of grand jury cess. Deponent further saith, that upon receipt of said lists of said collectors, deponent caused same, as far as time would permit, to be examined by competent persons, and compared with the poor rate books for said city, and that said comparison was made with a view, amongst other things, to ascertain how many resident householders or occupiers rated at the nett value of 20*l.* and upwards, and being in all other respects competent to serve as jurors, had been omitted from their lists by said collectors. Deponent saith that the result of said comparison is set forth in schedule No. 3, to this affidavit annexed, which deponent verily believes to be true, and to which he begs to refer. Deponent saith that by said comparison the omissions of qualified persons from said lists for 1843 amount to 3,086, and for 1844 to 2,892; saith that, after repeated solicitations, he, deponent, upon the 26th day of October last, also obtained a list from said Pounder, purporting to be a copy of the special jurors' list for said city for the year 1843; saith he found said special jurors' list to contain only 388 names of persons purporting to be the names of all the persons qualified to serve as special jurors for said city; saith deponent has made most diligent inquiry respecting the persons whose names appear in said last mentioned list, the result of which, according to the best of deponent's information and belief, is, that upwards of 70 at least of said 388 persons are disqualified or incapable of serving as special jurors, some being dead, others being non-resident, others being aldermen and town-councillors, others being magistrates for the borough of Dublin, and others being incapable by reason of age or bodily infirmity; and saith that some of said names, during the last and present week, have been struck out of the lists now under revision before said Recorder; and deponent saith, for the reasons aforesaid, he is enabled to state to the best of his information and belief, that there are, out of 388 persons, only 53 who profess the Roman Catholic religion, according to deponent's information and belief; and that of said number of 53, not less than 30 are, as deponent believes, disqualified or incapable to serve as special jurors on the grounds assigned, but chiefly for being town councillors or magistrates; thus leaving only 23 persons professing the Roman Catholic religion qualified to serve as special jurors for the present year in the city of Dublin; while this deponent has a conviction, almost amounting to certainty, and arising from his general knowledge since the year 1809 of said city, and having struck a great many special juries since that period, that, at least, 300 Roman Catholics reside in said city who are qualified by law, and able and entitled to serve as special jurors, and who are not on said list of special jurors for 1843; saith that the revision of said list commenced at a special sessions, holden for the purpose at the Court-house, in Green-street, on the 14th November, inst., before the Right Hon. the Recorder of said city, at which sessions counsel and agents, acting and assisting in the revision of said lists, attended; saith that at the opening of said sessions, it having been stated to the said Recorder, then and there presiding, that such attendance was given for the purpose of aiding him in correcting said lists, in order to form a correct jurors' book, the said Recorder expressed himself much pleased thereat, and stated to the effect that he, the Recorder, had for several years been endeavouring to make up a correct jurors' book, but had never yet succeeded in doing so, and that he found it hitherto quite impossible, and that the return made by the collectors were so imperfect in many instances that it was not in his power to make from them anything approaching to a proper juror's book. That he had for several years been complaining to each successive sheriff of the imperfect state of the jurors' book, and of the inadequate means supplied to him to amend said lists; but that he, the said Recorder, then confidently expected by the aid likely to be furnished to him in the present revision, which was, in fact, the first *bona fide* revision, that he would, for the first time, be enabled to prepare a full and fair jurors' book. [Mr. Mahony here enumerates the reasons for his objection to the then ex-

isting jury book, and the causes which must operate in producing a more perfect one for the succeeding year. And deponent saith, that having examined the lists returned by the grand jury cess collectors in 1842, out of which lists alone the jurors' book for the year 1843 ought to have been framed, he (deponent) verily believed that the existing jurors' book for the present year, an inspection of, and access to which hath been refused to be given to deponent up to the present time, and also the special jurors' list which has been framed therefrom, are grossly imperfect; and deponent verily believes that a special jurors' list, framed according to law, and calculated to secure a fair, impartial, and satisfactory trial of the said traversers, or any of them, cannot be had *until the revision now in progress is complete*, and a proper jurors' book, and a proper special jurors' list prepared therefrom, be had and perfected, according to law, nor until said jurors' book, and said special jurors' list to be taken therefrom, be prepared and brought into use for the following year; and in said revision the said Recorder has added to the names of the jurors their respective qualifications, according to rank and property, so far as he has been enabled to do so, but that he has not, during said seven days, so revised more than about 1100 names, which is not more than about one-fourth of the number of persons appearing on the collectors' lists before him, independent of the persons entitled to serve, but who have not as yet claimed their right to do so. Deponent saith that he begs leave to refer to the several lists for 1843 and 1844, now in the official custody of the said clerk of the peace, and also to the jurors' book, and the special jurors' list for the present year, in the official custody of the high sheriff of said county, or of his under-sheriff, and deponent saith that by a comparison between the lists for 1843, and those for 1844, as they now are, it will be shown that the supposed revision for 1843 was merely formal and totally insufficient. Saith that since the preparation of the foregoing portion of this affidavit, this deponent has applied to George Magrath, deputy clerk of the peace for the city of Dublin, for a return of the names of persons struck off the said lists by the said Recorder, also the number of the names of persons qualified to be special jurors, described as such by rank or fortune, also the names of persons put on said lists, by said Recorder, as qualified to be special jurors, also the number of common jurors added to said lists, and also the number of persons whose names have been corrected up to the evening of Tuesday, the 21st instant, and that the said deputy clerk of the peace has furnished to said deponent a tabular statement set forth in the schedule 4, to this affidavit annexed, of the said several classes, which statement this deponent believes to be correct and true, and deponent has no doubt that in the further progress of said revision, that many further important alterations will be made in the said collectors' lists, and this deponent saith that, in addition to the number of persons described by the present revised lists as entitled to be special jurors, a vast number of persons are named in such lists whose description has not been corrected, and if properly described, would be entitled to be put upon the special jurors' list. And this deponent believes, that there are a considerable number of persons qualified to be special jurors for said city whose names do not now appear upon said collectors' lists, and who, therefore, cannot be placed on the list of special jurors. This deponent saith he has just been informed, and believes, that during the sitting of said sessions court yesterday, eighty-five persons were added to the number of five hundred and thirteen in schedule number four, to be special jurors for said city, and one hundred and forty-five as jurors generally, and that said court was adjourned until to-morrow, and that according to the best of deponent's information and belief, there has been already added to said collectors' lists upon said revision, and described therein so as to entitle them to be special jurors, upwards of one hundred persons professing the Roman Catholic religion, in addition to those on the present special jurors' lists.

Sworn before me this twenty-third day of November, one thousand eight hundred and forty-three.

W. Bourne, Clerk of the Crown.

P. Mahony, Attorney.

[The schedules mentioned in the affidavit contained first the number of houses in the several wards, rated at 10*l.* and under 20*l.*, being 6,176; the number rated above 20*l.* being 11,122. By the jury act the occupiers of the latter are all qualified to act as jurors. No. two contains the persons returned by the collectors as qualified to serve, amounting for the year 1844, to 4,819. The numbers omitted to be returned by the cess collectors for the year 1844, as appeared by a comparison of the lists with the poor rate book, were in 1844, 2,892. These are set out in schedule No. three, and in schedule four, is contained the various information respecting the process of revision then in progress before the Recorder, and which are referred to in the body of the affidavit.]

IN THE QUEEN'S BENCH, CROWN SIDE.

The Queen *ag.* Daniel O'Connell, John O'Connell, John Gray, Thomas Steele, Richard Barrett, Rev. Thomas Tierney, Charles Gavan Duffy, Thomas Mathew Ray, the Rev. Peter Jas. Tyrrell.

William Ford, of Arran-quay; Pierce Mahony, of William-street; John Macnamara Cantwell, of Bolton-street; Thomas Reilly and Peter M'Evoy Gartlan, of Dominick-street, all in the city of Dublin, five of the attorneys, severally make oath and say—and first, this deponent, William Ford, for himself saith that he has been, and is the attorney of, and entrusted by the said defendant, Daniel O'Connell, with the preparation and arrangement of his defence in this prosecution; and secondly, this deponent, Pierce Mahony, for himself saith that he has been, and is the attorney of and entrusted by the said defendant, John O'Connell, with the preparation and management of his defence in this prosecution; and thirdly, the said John Macnamara Cantwell, for himself saith that he has been, and is the attorney of, and entrusted by the said several defendants, the Rev. Peter James Tyrrell, John Gray, Richard Barrett, and Thomas Mathew Ray, respectively, with the preparation and management of their several and respective defences in this prosecution; and fourthly, the said Thomas Reilly for himself saith that he has been and is the attorney of, and entrusted by the said defendant, the Rev. Thomas Tierney, with the preparation and management of his defence in this prosecution; and fifthly, the said Peter M'Evoy Gartlan for himself saith that he has been and is the attorney of, and entrusted by the said defendant, Charles Gavan Duffy, with the preparation and management of his defence; and these deponents severally say that, in the discharge of their duties as such attorneys, they have exerted themselves to the best and utmost of their power and ability respectively, to make themselves well acquainted with all the circumstances of this prosecution, so far as same affects their said respective clients. And these deponents, William Ford, Pierce Mahony, John Macnamara Cantwell, and Peter M'Evoy Gartlan, say, which deponent, Thomas Reilly, believes to be true, that on or about the fourteenth day of October last, the said several defendants were required to enter into securities respectively by recognizances to appear and attend in this honourable court in the

present term to answer such matters as should be alleged against them by her Majesty's Attorney-General, as therein mentioned; and that certain of said defendants did upon the same day, and that others of them did upon subsequent days respectively, enter into such recognizance accordingly, and that upon the said fourteenth day of October applications were made on behalf of certain of said defendants at the Crown Office of this court for copies of all such informations as had been sworn against them to ground such proceedings by the said Attorney-General; and that office copies of a certain information, purporting to have been sworn by one Frederick Bond Hughes, and of a certain other information purporting to have been sworn by William Kemmis, Esq. the Crown Solicitor, concerned in said prosecution, and also of a certain other information, purporting to have been sworn by one Charles Vernon, were obtained from said office on or about the seventeenth day of October, aforesaid. And all these deponents say that the said informations of the said William Kemmis, and the said informations of the said Charles Vernon, do not nor does either of them contain any statement of facts of a nature sufficient to enable the defendants or deponents to make any practical arrangements for the defence necessary in this prosecution. And further say, that if this prosecution had been limited to the matters disclosed in the said informations of the said Frederick Bond Hughes, William Kemmis, James Ireland, and Charles Vernon, they believe that so far as relates to time they would have been able to prepare to go to trial on the 11th of December next, without requiring postponement. Deponents say that no further informations of the matters intended to be made the subject of prosecution, or of any particulars of the several matters herein before mentioned, was or were obtained by these deponents, or any of them, or by the said defendants, their respective clients, or any of them, as deponents verily believe, until these deponents respectively obtained copies of the said indictment, at the time in that behalf herein after mentioned; say that on the 3d day of November instant, the bill of indictment in this cause was submitted to the grand jury, and that same was not returned a true bill by said jury until late in the afternoon of Wednesday, the 8th of November instant, on the evening of which day these deponents received copies of same for the respective defendants. [The deponents proceed to detail the reasons which induced them to apply for the postponement, namely, the number of informations sworn, viz.:—two by Mr. Bond Hughes, one by Mr. Kemmis, one by Mr. Vernon, of the Stamp Office, and one by Mr. Ireland, a Police Inspector, residing at Clifden in the county of Galway. The affidavit proceeds to advert to the reasons which would prevent the parties from being prepared to go to trial, the number of overt acts charged being no less than fifty-eight, of which forty-three relate to meetings and dinners held in various parts of Ireland, and attended, according to the indictment, by over three millions of people, and extending from February 13 to October 9, 1843. Next reference is made to the various particulars necessary to be inquired into and prepared for the defence, not only as to the general charge of conspiracy, but as to the particular and separate acts of each traverser. The affidavit thus concludes:—] And these deponents say they are advised and believe that, wholly irrespective of the particular and separate defence so rendered necessary, in many instances, for each of the said defendants in this prosecution, it is absolutely necessary for the defence of the said defendants generally that these defendants should be prepared with evidence as to the true numbers, character, conduct, and demeanour of the persons assembled at, and other circumstances connected with, each and every of the meetings in the said informations, indictments, and bill of particulars respectively specified or referred to, and that they should also be prepared with evidence as to the several speeches made, the several resolutions proposed or adopted, the several acts done, the several letters and documents read, and the several proceedings which occurred or took place at each and every of the said several meetings; and further, that they should be prepared with evidence as to the object, character, and effects of the said several meetings, the said speeches so made, the said resolutions so proposed or adopted and the said acts so done thereat: and these deponents say they verily believe that if time be afforded until the 1st of February next, for the necessary preparation for the trial of the said defendants, they will be able to procure such evidence for said defence; and these deponents say that since they received copies of the said indictments, and bill of particulars, they have caused inquiries to be instituted and proceedings to be taken in the various districts of the country in which the meetings aforesaid are alleged to have been held, and that they have procured information to some extent material to the preparation of the defence; and say that they have been, in the manner aforesaid and otherwise, actively, and almost exclusively, employed since they were retained as attorneys for the said defence in the collecting such information and in preparing such defence, but have found it utterly impossible with the utmost diligence, to procure the necessary information or complete the arrangements which they are advised and believe are essential to the said defence; and these deponents say that from the number of local inquiries which they are advised and believe it will be necessary for them to make personally and otherwise, at and in the neighbourhood of each and every of the several places at which the several meetings aforesaid are alleged to have been held throughout Ireland, and from the number of witnesses whom it will be necessary to examine, and the immense body of evidence, both oral and in writing, which must be collected, digested, and arranged, it would be wholly impossible for those said deponents to be prepared for trial before the said first day of February next; and these deponents say they are able to state upon their oaths that if the said trials be postponed until the said first day of February there will be, during the progress of said trial, a great saving of the public time, inasmuch as these deponents and the counsel of the said traversers will have an opportunity of maturely considering, selecting, and arranging the evidence necessary and material for the defence, which they believe it would be wholly impossible to do in a satisfactory or safe manner, at an earlier period than said first February. And say that if said trial be pressed on in the present unarranged and imperfect state of the materials for the defence, it is utterly impossible to anticipate or foresee, with any degree of accuracy, the length of time which will be consumed by said trial. And these deponents submit that this is a prosecution without precedent or parallel in this country, in the extent of its details, the number of facts and circumstances which it proposes for investigation, and the difficulties of preparation and arrangement to which it involves the defendants, and that it should not therefore be dealt with as in ordinary cases, nor the defendants be limited to the time and opportunity for preparing their defence which in ordinary cases would be sufficient, and that they cannot be so limited, without most serious injury to them, amounting to a denial of justice; and these deponents say, that this affidavit is not, nor is the application intended to be founded thereon, made for the purpose of any unnecessary or vexatious delay, but *bona fide* for the

purpose of having a fair trial of the defendants in this prosecution, and that these deponents may have time to make preparation for the defence of their said clients.

Sworn before me this twenty-third day of November, one thousand eight hundred and forty-three.

W. BOURNE, Clerk of the Crown.

W. FORD, Attorney.
P. MAHONY, Attorney.
J. M. CANTWELL, Attorney.
T. REILLY, Attorney.
P. M'EVOY GARTLAN, Attorney.

Chief Justice—What is the date of your notice, Mr. Henn?

Mr. Henn—Last night, my lord, the 23d.

Attorney-General—I do not make any objection to the date of the notice.

Chief Justice—I only wanted to know the date it was sent up to us in blank.

Mr. Henn—It would be necessary to call their lordships' attention to schedule four of the list, to show their lordships that important changes would be made when the Recorder had completed his revision; up to Thursday night he had only got through one-fourth of the list, and they found the result of that revision to be that on the special jury list there were 513 qualified persons, when the Recorder had gone through one-fourth. On the present there were only 388, of whom 70 are disqualified. He had next to call their lordships' attention to the provisions of the jury act, and when he had done so their lordships would see the vast importance of the facts detailed in that affidavit of Mr. Mahony; and that it was utterly impossible, in the present state of the jury book, they could have anything like such jury as the provisions of this statute intended for the trial of any person. The act was the 3d and 4th Wm. IV., chap. 91. It enacted "That the sheriff of any county, county of a city, or county of a town in Ireland shall not, in answer to any writ of *venire facias* or precept for the return of jurors, return the names of any persons not qualified to serve on juries according to the provisions of this act; and that every man, except as hereinafter excepted, between the ages of twenty-one years and sixty years, residing in any county in Ireland, who shall have, in his own name, or in trust for him, within the same county, ten pounds by the year, or who shall have within the same county fifteen pounds by the year, and also every resident merchant, freeman, and householder having a house and tenements in any city, town, or borough, situate within the said county, of the clear yearly value of twenty pounds, such city, town, or borough not being a county in itself, shall be qualified with respect to property, and shall be liable to serve on juries for the trial of all issues joined in any of the King's courts of record in Dublin, and in all courts of assize, *nisi prius*, oyer and terminer, and goal delivery, such issues being respectively triable in the county in which every man so qualified respectively shall reside, and shall also be qualified with respect to property, and liable to serve on grand juries in courts of sessions of the peace, and on petty juries for the trial of all issues joined in such courts of session of the peace, and triable in the county in which every man so qualified respectively shall reside; and that every man, except as hereinafter excepted, being between the aforesaid ages, residing in any county of a city or county of a town in Ireland, and being there qualified as aforesaid, and also every resident merchant, freeman, and householder having lands or tenements, or personal estate, of the value of one hundred pounds, shall be qualified with respect to property, and shall be liable to serve as a juror for the trial of all issues joined in any of his Majesty's courts of record at Dublin, and in all courts of assize, *nisi prius*, oyer and terminer, and general goal delivery, such issues being respectively tried in the said city or town in which every man so qualified shall respectively serve. And, for the assistance of the sheriff in framing the jurors' book, be it further enacted, that the clerk of the peace in every county of a city and county of a town in Ireland shall, within one week after the commencement, in every year, of the midsummer sessions hereinafter next mentioned, issue and deliver his precept (in the form set forth in the schedule hereunto annexed, or as near thereto as may be) to the high constable and collectors of grand jury cess in each barony, half-barony, or other district of collection, and to the collectors of other cess or assessment where no grand jury cess is levied, requiring such collectors respectively to prepare and make out, within one month then next ensuing, a true list of all men residing within their respective districts qualified with respect to property, and liable to serve on juries according to this act aforesaid, and also to perform and comply with all other the requisitions in the said precepts contained. And be it further enacted, that every such clerk of the peace shall cause a sufficient number of precepts and returns to be printed according to the several forms set forth in the schedule marked (A), hereunto annexed, at the expense of the county, city or town, and shall annex to every precept a competent number of returns for the use of the respective persons by whom such returns are to be made. And be it further enacted, that such high constable and collector, or collectors, shall forthwith, after the receipt of such precept from the clerk of the peace, prepare and make out in alphabetical order a true list of every man residing within their respective districts of collection who shall be qualified and liable to serve on juries as aforesaid, with the christian and surname written at full length, and with the true place of abode, the title, quality, calling, or business, and the nature of the qualification of every such man, in the proper columns of the form of return set forth in the schedule marked (B), hereunto annexed. And be it further enacted, that the sheriff shall not, in answer to any writ of *venire facias*, or precept for the return of jurors, return the names of any persons not contained in the jurors' book for the then current year; and that where process for returning a jury for the trial of any of the issues aforesaid shall be directed to any coroner, elisor, or other minister, he shall have free access to the jurors' book for the current year, and shall not return the names of any persons not contained in the said book. Provided always, that if there be no jurors' book in existence for the current year, it shall be lawful to return jurors from the jurors' book for the year preceding; and that if it shall happen that any person not in the jurors' book shall be returned, and any trial shall proceed, and verdict be found, without any objection to any such person as a juror, such trial shall not be deemed a mis-trial, nor shall the verdict thereupon be impeached or questioned on account of the return of such juror; provided that nothing herein contained shall be construed to prevent any sheriff or other returning officer, in making returns to any writ of *venire* or precept, from exercising his discretion in framing the pannel annexed to such returns in such manner as he is now by law directed to do, save only so far as to prevent the insertion in such pannel of any names not contained in the said jurors' book." The court would see that the machinery provided by that act to carry its provisions into operation was this. In obedience to the precept of the sheriff, the clerk of the crown was bound to return the names of all persons qualified to serve as jurors, and to state the description of their qualification, so as to facilitate the sheriff when he came to the discharge of another part of his important duty—the formation of a special jury list. From that the jurors' book was formed, but

no person could serve on that jury but a person whose name was on the book. Those being the provisions of the act, let them see the state of things at present in this great city. There were only 4000 and odd names on the common jury book to serve as jurors, and on the special jury list there are only 388 names, not more than 300 of them being really qualified, and of that 300 only 23 were Roman Catholics—that was the state of the lists at present. There had been a version of the list going on before the Recorder, and it was sworn that the Recorder had repeatedly expressed his satisfaction at the result likely to be produced by that revision, that the number of persons to serve as special jurors by that revision were already over 500, whereas they did not amount to more than 300 before—that 100 Catholics were already put on the list, though there were only 23 on the list before, and Mr. Mahony swore, from his knowledge of the city, that there were 300 qualified whose names were omitted. It was impossible, therefore, that a fair and satisfactory trial could be had from any jury returned as the list was at present constituted. This was a most important prosecution; it was not an ordinary case at all—it was one of vast importance; and it was of vast importance to the ends of justice, to use the words of Lord Ellenborough, that the administration of justice should not only be pure, but unsuspected. It was impossible that any verdict had from a jury taken from such a small number out of the immense mass that ought to be returned could be satisfactory. He would submit that on this ground alone the application was most reasonable, and that application was, that this trial should not take place in the present vacation, and that no day earlier than the first of February should be appointed for it.

Chief Justice—The first of January I think you said.

Mr. Henn—The 1st of February, my lord. The revised list would not come into operation until the 1st of January. There would be six days to summon the jury; that would bring it near the next Term, and they proposed that the trial should take place on the 1st February, and after Hilary Term, for the reasons mentioned in the affidavit. They showed that the present jury-book was incorrect, and that as it was formed a satisfactory jury could not be procured. They showed that from the course taken before the Recorder that there was every reason to believe that on the 1st of January they would have a jury-book from which a jury beyond suspicion could be selected. Upon that branch of the case he would abstain from saying any more at present, but he had another affidavit which sustained the second ground mentioned in his notice for a postponement of the trial in this case. The affidavit was made by the solicitors for the several parties. (Mr. Henn here read the affidavit, which will be found in our seventy-second page, and then continued:)—That affidavit was sworn by all the solicitors concerned for the traversers, and the traversers had made a short affidavit verifying it. He abstained, while reading that affidavit, from offering any comment upon the facts which it disclosed—they spoke for themselves more strongly than any comment he could make upon it. If he took up the bill of particulars alone and relied upon it, it would justify his application. It could not be thought that that bill of particulars was intended to mistify or mislead the traversers. He could not think so, and if that bill of particulars truly disclosed the number of meetings, and the number of charges with respect to which it was intended to offer evidence to prove them, was it, he asked, possible that the traversers could be prepared in the time specified in the notice of the Attorney-General with evidence to meet all those charges? He need not repeat the number of places set forth—the distance of those places—the number of miles to be traversed to obtain information, with respect to certain occurrences that took place at those distant and remote places. He asked could any person doubt that it was impossible for human activity, or for any solicitor, however acute or active, or any set of men, under these circumstances, to have the necessary information arranged and fit to be produced within that time for the defence of the traversers on this trial? He earnestly requested that the court on the consideration of this application would keep this in mind, that but for the enactment of the 60th Geo. III. they would, as a matter of right, even without coming to the court for the exercise of its discretion, have at least as large a time as they now asked for. The crown could not, but for the provisions of that act, compel them to join issue in the present Term. Nay, even if it were not a proceeding in that high court—if it were an ordinary case of misdemenour at the sessions or assizes, the traversers had the right to traverse *in prox* if they were held to bail within twenty-one days before the commencement of said assizes or sessions. In this case they were not held to bail until the 14th of October, and Term came on within twenty-one days from that period. The act could not take away the right of the traversers, for it had not interfered with the discretion of the court. The act certainly was passed to abridge the time for going to trial, but it could not be the object of the legislature that it should affect the rights and liberties of persons situated as his clients were, or to interfere with the discretion of the court. If the Attorney-General thought fit to include in one indictment so many persons and charges, and to apprize them by the bill of particulars they would give evidence of such an immense number of facts, would not that alone take the case out of the ordinary rule, and show that the time they required was not unreasonable? If time were not given to them to prepare for their defence justice could not be done. It was impossible that they could be prepared in the time which it was proposed to give them, and in such a case no verdict returned could be satisfactory. It was impossible that the object of the Attorney-General could be to procure, *per fas aut nefas*, a conviction. He was as much interested as any other person that the trial should not only be conducted to a just result, but so conducted as to leave no doubt on the public mind that justice had been done; and if a trial took place, with a jury selected from such a pannel, and if the defendants were forced on their trial in such a way that it was impossible they could be prepared for their defence, the verdict, if for a conviction, would be a mischievous one, and not conducive to justice. He appealed to the Attorney-General, for the sake of his own character—for the sake of the character of this prosecution—and for the sake of the character of the government that instituted it, not to urge the court to refuse this application. He thought he was entitled to his aid and co-operation rather than his resistance.

The Attorney-General said—Mr. Henn had introduced some topics which he might as well have omitted, and he thought Mr. Henn would, on reflection, come to the same opinion. Mr. Henn commenced his address by an allusion to the proceedings that had already taken place in that case, and which had no reference to the present application. He commenced by stating that more than once he (the Attorney-General) in the course of his observations to the court on that case had attributed delay to the defendants, and that notwithstanding affidavits made to the contrary. With respect to those affidavits—he did not allude to the affidavit applicable to the present motion—he wished to observe that it

was no part of his duty; it was a course which he never unnecessarily adopted, to attribute to gentlemen making affidavits that they intentionally stated what was not true, and he was willing to believe this, that every gentleman who made an affidavit in this case did believe that what he stated was true. It was not a part of his business to cast imputations, but he had at the same time a right to form his own opinion upon facts; and while he believed that the gentlemen swearing those affidavits believed their object was not delay, still he certainly must reiterate his charge, that the proceedings which had been taken were for what he considered purposes of delay. He promised their lordships that he would be very short in the few observations which he found it necessary for him to make in reply to Mr. Henn's remarks. His learned friend commenced his statement by referring to their application to enter the rule to plead on the evening of the day on which the indictment was found. But in so doing he made no application not warranted by act of parliament—the act of parliament that the defendant was to plead in four days after being charged under the indictment. The indictment came down from the grand jury, and the traversers were charged, but the court suggested that it would be substantially depriving them of a day, if the rule was to reckon from that evening, and it was in the recollection of their lordships that he at once acquiesced in the suggestion of the court. The next step taken was by Mr. Henn, or those connected with him, and was an application that the copy of the indictment furnished should be compared. He opposed that motion as being unnecesary, the copy having been already certified, and printed from the same type. The object of that comparison, he believed then, and he believes now, was for the purpose of delay. The next step taken was an application by the other side to the court, to order the crown to give the names of the witnesses endorsed on the bill of indictment, and the ground on which that application was contended to be supported was, not that the names were necessary for the defence of the parties, but it was grounded on this argument, that the crown had been required by the court to furnish a copy of the indictment, and that the witnesses' names, being a part of the indictment, the order of the court had not been complied with, and he opposed the application on that ground. The next motion was for a copy of the caption, and was grounded on the same argument—namely, that the caption was a part of the indictment. Now, what was the object of those motions? That the object was delay, was not a matter resulting from any interference of his, but that such was the object was proved by nine other notices of motion, which had been all withdrawn, and not brought under the notice of the court at all. They were to set aside the rule to plead, because the copy of the indictment ordered by the court had not been furnished, inasmuch as it did not contain the names of the witnesses or a copy of the caption. These nine notices were withdrawn and not brought under the consideration of the court or of the public, but they proved that the object of the parties were delay. In the discharge of his public duty he opposed those motions. He deliberately considered it necessary, in the discharge of a public duty, to do so, and he opposed them successfully. Because he said that the form of the notice was one requiring the rule to be issued *de novo*, and had been under the impression that the motion before the court was a notice served by some one individual when the notice on which counsel was moving was from another, he was interrupted and not allowed to state the terms of the other notice, because the object of the party was to mislead the court, and those nine notices were then withdrawn by his friedd, Mr. Moore, to keep them out of court. On these grounds he successfully opposed those motions. He did think then, and he still thought, that they were intended for delay. After that came the plea in abatement, which they did not put in until the court were about to rise on the last day which they had for pleading. He resisted the receiving of those pleas because he foresaw what afterwards took place, and because he knew if he demurred to them the traversers would then attempt to get time before joining in demurrer. The court decided against him on the construction of the act of parliament, and he would not presume to say that he had not been mistaken because the court had decided against him, but he would boldly assert this, that the argument was one of that difficulty and doubt on the construction of the statute, as to enable him to take the decision of the court whether the parties had not been late in putting in those dilatory pleas. What took place after? He demurred *ore tenus* to the pleas. His demurrer was handed into court, and he then called on the traversers to join in demurrer forthwith as in felony cases. When a party puts in a plea in abatement he is required to be ready to join in demurrer at the bar. He was ready to demur when he had scarcely seen the pleas, but that would not suit their purpose, and they required a four-day rule to join in demurrer. The court decided they were entitled to a four-day rule, and he would not dispute that decision. They required four days to consider whether they would abide by their own plea or not. Under these circumstances they joined in demurrer at the last moment, and he then applied to the court to fix the following day for the argument of the case. That application was resisted, and they were told by the attorneys that they must sit up all night to prepare the briefs for counsel, that the counsel were then out of court, and two of the gentlemen who were then in court, Mr. M'Donogh and Mr. Whiteside, declared they were there by accident. Though he might have required to join in the expense of the paper books, he did not do so, but gave directions that they should be made out without calling on them for a single penny. The case came on next day, and it was decided unanimously by the court that the pleas were defective. He then obtained judgment *respondeas ouster*, and then a question arose as to whether they were entitled to plead *instanter*. Their lordships were obliged to listen to an argument that lasted for an hour or two on that point, and yet they were now told that had not been done for the purpose of delay. That point having been decided against the traversers, he was driven, in the discharge of a public duty—and he would be unworthy of the position which he held if he acted otherwise than as he did—to drive them to plead the general issue, and to declare whether they were guilty or not guilty.

Chief Justice—When was the plea of general issue put in?

Attorney-General—On the day before yesterday, my lord—on Wednesday. He trusted he had thus vindicated himself for the course which he had thought it to be his bounden duty to pursue; and having since reconsidered what he had done, he was satisfied that he had only discharged his duty in resisting the attempts that had been made to prevent the case from being put to issue on its merits. It was his bounden duty to have that done at the earliest period consistent with the practice of the court and with the law of the land. It was his bounden duty to resist an attempt to throw the case into the next term; and he was satisfied that he had not taken a step in the case that it was not his duty to have taken, holding the office that he filled, in having the matter brought to issue, after having satisfied himself that those proceedings had been, as he considered them, taken for delay; for, though others entertained a different view—and he was

satisfied that those gentlemen who swore affidavits did entertain a different view—still, he deliberately entertained the opinion that they were for delay, without a shadow of doubt being on his mind on the subject. Having said so much with regard to the preliminary proceedings, which he would not have considered it necessary to say a word about if his learned friend, Mr. Henn, had not introduced the subject, he would next go into those matters which were more immediately the subject of the present motion. The ground on which his learned friend, Mr. Henn, rested his motion was, that no proceedings ought to be taken pending the trial of this momentous case to prejudice the administration of justice. He could wish that that observation, which was worthy of the character of his learned and respected friend, had been during the course of the last month impressed on the minds of his clients. He wished it had been generally felt as it ought to be felt, that pending a great prosecution of that description, and he was ready to admit that perhaps there was no trial of so great moment took place in any period of the history of this country; it would be most desirable on all sides if that advice which had fallen from his learned friend had been attended to, and if the attempts which had been made to prejudice the administration of justice and to poison the public mind pending the prosecutions had not been adopted, and that by those whose counsel deprecated it. It had been further stated by his learned friend, who had stated his case with that ability which characterized every thing he did, that he opposed the application with respect to fixing a day for the trial on two distinct grounds. The first of these grounds to which he would advert was that which his learned friend had last mentioned, and that was the great magnitude of the case, the number of meetings which had taken place, and which were adverted to either in the indictment or in the bill of particulars. He stated that it was impossible consistently with the time which had elapsed since the informations were sworn, although the utmost activity had been used, for the defendants' solicitors to make the various inquiries which might be necessary, and which they said were necessary for their defence. As to the several matters which had taken place at those meetings respectively, which had been held in so many different parts of Ireland, they stated in their affidavits that it would be a denial of justice to the defendants if time were not given to them. He might observe with respect to that portion of the case that none of those meetings adverted to in the indictments or in the bill of particulars had been held secretly, or in a manner not notorious to the public or to the defendants themselves. Some of the defendants were present at every one of those meetings, and the precise detail of every thing which occurred preliminary to and at those meetings were detailed at length by the public press—by the reporters of three of the defendants themselves—who are under their control, and capable of verifying every word of what was put forward in the newspapers of which they are the owners. It was impossible to suppose any case that was ever brought to trial in which the parties ought to be so well prepared, considering all the circumstances, unless, indeed, this be their case, that the proceedings at those several meetings so detailed by the public press, and in their own newspapers, were misrepresented to the public. And, therefore, though he would admit there were a great variety of meetings, and that that was a case that in its details was perhaps of as great magnitude as ever came before a court of justice—and he did believe there never was a case of such magnitude in its details—still he believed there never was a case in which the defendants could suffer less by a speedy trial, or that—keeping in recollection the constitution of those several meetings—by whom they were attended—who were on the platforms, and who were present at other parts of the meetings or dinners—was so completely under the control of the parties against whom the charges were made. So much for that portion of the case. The next ground which his learned friend took was quite distinct in its nature, and had reference to the constitution of the jury book, and the special jury list. In that part of his address he stated that it was impossible—he (the Attorney-General) took down his words—that it was impossible there could be with the present jury list a fair and satisfactory trial; that it was impossible that a jury could be selected from so small a number as are on the special jurors' list, and that if the parties were tried by a jury selected from the present pannel, and the present jury book or list, that justice would not be done. Now he should say, that he could not assent to that proposition. He thought it was right the public should understand this, for the court already understood it perfectly—that the present jury list was made out prior to the 1st of January last. It was made out under the act of parliament, at a time prior to the holding of a single meeting mentioned in the indictment, or in the bill of particulars as appeared from the dates, without the slightest possible reference to the subject of the prosecution now pending. It was the list of names from which, in every case, civil and criminal, that came to trial since the 1st of January last, the juries had been selected, and yet his learned friend now stated to the court and the public that a book and a list had been made out without the slightest reference to the present trial, or without the possibility of the parties who made it out contemplating the present trial, and without a single fact having arisen which had reference to the present trial. That, under these circumstances, that imputation was to be cast on the jurors' list and on the jurors' pannel, by which the rights of property to the present trial, and the rights of her Majesty's subjects in Ireland, had been disposed of, and that without a breath or a murmur from those parties themselves; and he would think himself to be acting most unwarrantably and unjustifiably if he remained without meeting and encountering his learned friend's assertion, that a fair trial could not be had, as one destitute of foundation. However, his learned friend had stated the proceedings which had taken place recently in the Recorder's Court for the revision of the jury list. He stated that the Recorder had in the course of that revision made observations to the effect that the present was the first *bona fide* revision. He further stated, that the Recorder made use of the expression that he would be for the first time enabled to prepare a full and fair jurors' book, and he freely admitted that weight was to be given to what fell from an eminent judge presiding in that court; but he should say, also, that in contrasting the present jurors' book and the present special jurors' list with the revised book and list, not as contrasting them as to who were on each, for he was ignorant himself on the subject, but contrasting the times that both were made out, he thought, if one were to make an observation on the subject at all, that the jurors' books that were made out when the pending prosecutions were not thought of admitted of a much more favorable observation than could be made respecting a list, however respectable it might be, which had been made out during the excitement of the present prosecution, and when, without adverting to it as a cause of complaint, the defendants' attorneys was in some respect, which he would not then discuss, engaged in the steps taken for carrying out that revision. But, although he felt that it was his imperative duty to resist to the utmost of

his power the technical objections made to the progress of that momentous case, and although he had, in the discharge of his imperative duty, forced the defendants to plead—for he could call it by no other name than coercion—although he had driven them out of every attempt made at delay, another duty imposed itself upon him when the cause was at issue. He had a duty to discharge not only to the crown but to the public; and he agreed with his learned friend, Mr. Henn, that it would not be desirable that a trial should take place so rapidly, or under such circumstances as would enable any fair, unprejudiced mind to say that he had pressed forward the defendants improperly. Now he would say, so far as he was individually concerned, he felt an anxiety beyond what language could express to have that case brought forward to trial. He had been subject personally to imputations, and he had necessarily the strongest desire, not to anticipate what would take place at the trial, but a desire not only before the jury who would try that case, but before another tribunal that would also try it—the inhabitants of the British empire—that the day of trial should arrive, and he should not permit, so far as any humble resistance of his could prevent it, any attempt to keep the day of trial from being fixed at a period when, without pressing on the defendants in a manner which every fair man would consider fair and reasonable, he would, on the other hand, resist to the utmost of his power any thing like unfair or unnecessary delay. Under these circumstances, and he confessed with a degree of anxiety greater than he ever felt at any period of his life, he had endeavoured to come to the consideration of what he ought to do in the discharge of his duty; and he believed that, on the whole, the best course that a public man could adopt was, without reference to what might be said on the subject, conscientiously to come to the conclusion of what he believed to be right, and then to take that step; and, although he would resist the postponement of that trial as far as he could do to the first of February, he was, after the statements that had been made on oath, and the facts stated in those affidavits, which he should add were of great importance, and after, he believed, as anxious a consideration as ever was brought to bear on a case in the mind of a public man, come to the conclusion that he would best discharge his duty if he were not to oppose a postponement of the trial until the second day of the approaching term. He would on no account consent to having the case postponed till the after-sittings of the next term; but he had no objection that it should be fixed for hearing on the first Monday of the term, whenever that would be, and he believed it would fall on the 15th of January. He was perfectly aware of the public inconvenience that must arise from the trial at bar of such a case in term; but although mischief to some individuals might accrue, they were in that court, and they came into it as suitors, subject to the rule that public justice, in the case of a prosecution by the crown, must not be delayed in the first criminal court in the land. By ceding this extension of time he should put an end to the objection made to the present jury pannel, on the ground that they could not have a fair trial by it. That objection must now fall to the ground, for before the period which he had named, the revised list would be completed, and they could select a jury from it. As to the allegations about the difficulty of procuring evidence, he would say that if the case only rested on them, it would not be for a moment supported. At all events they would now have a month's additional time, which would afford them ample opportunity to prepare their clients' defence in a case undoubtedly of extraordinary magnitude. All he wanted was that that case should be brought forward in such a manner as to show that justice, impartial justice, was administered—that alone was what he sought for and desired, and nothing else. He trusted that the course which he had adopted, after the most anxious consideration, would meet with the approbation and concurrence of the court, and he should not care what might be said regarding it by those who sought for opportunities of casting blame upon him. In conceding so much to the defendants, he was proceeding under a solemn feeling of the obligation to do what was right and proper; and, firmly believing that he had acted rightly, and careless as to what might be said regarding his conduct by those who sought for opportunities of imputing faults to him, he would enjoy the satisfaction of having proceeded in accordance with the dictates of his conscientious duty.

Mr. Pigot, Q. C., replied on the part of the traversers, and said that the Attorney-General having felt it necessary to yield to a postponement of this trial to the extent to which he had consented—namely, to an early period in the approaching term, he could not understand what valid objection the learned gentleman could possibly have to a further concession of time till the 1st of February—a very brief period in addition to what had been already granted, but a period which the traversers' attorneys solemnly alleged upon their affidavits that they considered absolutely necessary for the purposes of their clients' defence. The concession which the learned Attorney-General had already made rendered it unnecessary for him (counsel) to discuss that portion of the cross motion which had reference to the present condition of the jury lists, the Attorney-General having already virtually admitted the validity of his clients' application in this respect; but it having been now admitted that the ends of justice could not be satisfactorily attained without fixing a time for the trial so distant as that which it had been agreed to permit, he would beg leave respectfully to submit to the court that for the purposes of public convenience as well as for the essential interests of his clients, it was highly advisable that their lordships should grant the short additional indulgence which they now solicited. The Attorney-General had not exactly put the matter before the court in as comprehensive a form as he should have done, for it was a mistake to suppose that the case of the traversers depended wholly and exclusively on the mere circumstance of their being charged with having attended a variety of meetings. They had fully explained their true position in their affidavits, by which they showed that a variety of overt acts had been set forth against them in the indictment, and so numerous were those alleged overt acts, and so remote were they in scene and date one from the other, that they (the traversers) in making their defence to the charges preferred against them, were compelled to take into consideration transactions commencing in the month of February, and concluding only in November—transactions extending all over the island, and covering a space of nine months. Not only were they charged with attending illegal meetings, but they were also accused of conspiring with a vast number of other persons for various illegal objects defined in the counts, and presenting several distinct matters of charge variously described. The informations upon which the indictment was framed were in the hands of the traversers on the 13th of October, but the traversers derived little or no benefit from that, for it was of course impossible to gather from the informations what were the particular points of charge upon which the crown intended to rely. Indeed, if the prosecution had been founded on nothing else but those informations, it would have been of a comparatively brief and simple character, for they only specified four transactions, all of which were laid as having

taken place upon various days in October. For a long time the traversers were in the dark as to the precise character and extent of the offences alleged against them, for at first no information whatever was given to them with respect to the exact nature of the charges beyond what appeared upon the face of the informations. Upon the 8th of November the bill of indictment was found a true bill, and it presented several charges of conspiracy, and a detail of no less than 58 alleged overt acts, explanatory of what it was intended by the crown to rely on in support of those charges. The indictment was understood to contain allusions to forty-three meetings, and reference was made in the counts to ninety-three alleged illegal publications in certain newspapers: but when a perfect bill of particulars was at length furnished to the traversers (and be it remembered, it was not delivered until the 14th of November) the traversers found to their astonishment that further allusion was made in the indictment to 49 additional meetings, and 112 additional newspaper publications, so that they were now called upon to prepare for a trial in which was involved an investigation into the circumstances connected with no less than 92 meetings, and into the alleged consequences of no less than 204 publications in newspapers. Need he call upon their lordships to consider what an expenditure of time and labour was necessary in order to make preparations for such a trial? It was an error of the learned Attorney-General to suppose that all they had to do was to remember the meetings, and call to mind whether they had attended them or not. The very first sentence of the bill of particulars would show that every circumstance connected with those meetings was to be made the subject of the most minute and careful investigation, for they were told that the crown intended to give in evidence the speeches that were made there—the resolutions that were passed there; in fact, a detail of all the proceedings that took place at each of them—and finally, even to adduce evidence to show the manner and order in which the multitudes proceeded to those meetings. Now, when the traversers came before their lordships soliciting adequate time for preparation, in order that they, too, as well as the crown, might be enabled to adduce evidence upon more numerous and elaborate points, what answer was it to their application to tell them that they knew the meetings that were held—that they were public meetings, and that consequently the traversers must konw all about them? It was absolutely indispensable for the ends of justice that proper and adequate time should be granted, to enable the traversers to make preparations for their trial—for it was impossible to say on what points the Attorney-General might endeavour to fasten his case, and it therefore behoved them to be prepared at all points. On the 14th of November the Attorney-General not only informed them that he would rely on everything in the indictment, but told them that he would apply evidence to each and every of the distinct transactions mentioned in the indictment, whether the same had reference to public meetings or to publications in the newspapers. How were the traversers to make their preparations? Witnesses, credible and respectable witnesses, must be procured to give testimony, in respect of these meetings, and those witnesses were not to be found in Dublin only, or in any one particular place, but were scattered over the entire expanse of the country, some in Waterford, some in Cork, some in Lismore, some in Limerick, some in Roscommon, some in Galway—places most remote from the scene of action in that court. In fact, the preparations for the defence involved a multiplicity of inquiries which it was impossible to obtain without a great division of labour, and the expenditure of much time and trouble. If the trial was to be postponed at all upon the admitted grounds, why should it not be taken into consideration whether there were not other grounds equally honest and equally cogent upon which a further postponement for a few days (and they only asked a few days) ought to be granted? The Attorney-General had not expressed it as his opinion that the present jury pannel was not defective; on the contrary, he yielded to the objections which had been made against it, very properly declaring that it was most desirable for the ends of justice that whatever may be the result of the approaching trial it shall be satisfactory to the public. He (counsel) fully concurred in this sentiment of the learned gentleman, and it was in order to the attainment of this most desirable object that he urged upon the court the propriety of granting the further postponement of the case. Where was the object of preventing a postponement for an additional period so short as that which was now required? The solicitors of the accused parties were still engaged in making the necessary inquiries; and being daily in the receipt of information from various parts of the country, they were in a position to safely swear, that unless the required time be granted they would not be prepared at all. The analogy of the former criminal proceedings of that court furnished an argument in favour of his application. Before the passing of the 60th of George III., the practice of the court in this respect was settled by a short rule which was to this effect, that all motions for trial at bar must be moved within the first ten days of the preceding term. If the state of things were now as it was before that act was passed—if in fact the course of practice had not been altered by an act of parliament, the Attorney-General could not have had a trial at bar earlier than Easter term, for he could not even have made his motion sufficiently early in the present term to obtain a trial in the preceding term. He respectfully submitted that it was the duty of the court to apply that act of parliament in such a manner as to afford to the accused a similar privilege to that which the rule of practice had heretofore invariably allowed them. He would take leave to say, that unless it could be shown that the case of the traversers, as stated in their affidavits, was one to which credit could not be given, it was impossible to have a trial satisfactory to the country, and, above all, satisfactory to the ends of justice, if the application which he now made were refused. The Attorney-General had referred to previous proceedings in the present case. He (counsel) did not know that it was necessary for him to enter into any vindication of those proceedings, but he would take occasion to make a cursory allusion to him. In the early part of the proceedings in the present case the counsel were of opinion that they were fully justified in raising a defence upon the law case, and believing it to be a substantial one, they called upon the court for the decision. They did nothing covertly, nothing disingenuously, but made public avail of their defence. They demanded a copy of the caption—they demanded the names of the witnesses, and their lordships must have seen that these motions were made for the fair and unobjectionable purpose of raising on the records what was looked upon as a substantial defence. An argument was the result; the court decided against them, and they bowed respectfully to the adjudication of the court; but he denied that the Attorney-General had any right to misrepresent their motives, and to aver that all these applications were made, not for the purpose of facilitating their defence, but rather for the purpose of delaying the course of law. He could not understand what right the Attorney-General should have to make such charges, and assuredly there was nothing now before the court to warrant any such imputation. The traversers did not make any charge that those prosecutions commenced in motives

similar to those which were charged against themselves; and yet, it could not be denied that their patience had been severely tested, for not only had they been charged with an attempt to defeat justice, but they were spoken of as though they were guilty of the offence imputed to them in the indictment, of which offence there had been a fore-judging already. He submitted, however, most respectfully, that his clients had made out an excellent case upon the present occasion: and having regard to the orderly conduct of the business of the court—to the convenience of private suitors—and, above all, to the results which were likely to follow if the traversers did not obtain the short additional time which they had sworn to be necessary for their proper defence, he earnestly trusted that their lordships would acknowledge the propriety of acceding to the application of his client.

The Solicitor-General rose to reply on behalf of the crown, and was about to address the court, when he was interrupted by their lordships.

The Chief Justice said that the court were of opinion that it was not necessary to call upon the Solicitor-General to reply to Mr. Pigot. He would forbear purposely throwing out anything like an expression of opinion of the most remote kind upon the merits of the present case. In the first place, except from popular report, which was nothing; they did not know anything at all about it. In the next place, it would be premature to express a knowledge of what they did happen to know before the case came on for trial, when the accused have to meet the charge that will be made against them, and when they will be prepared to do so. It was of the utmost importance that a due regard should be paid to the due administration of justice. The punishment of crime, if it had been committed, was not to be overlooked, or frustrated, nor upon the other hand was it consistent with the due administration of justice for any accused person to be brought and put upon his trial until he had every due and reasonable means of defending himself. The Attorney-General had very properly given way to the postponement of the trial of this case until everything like an imputation upon the selection of the jury was to be remedied by the process of revision which it appeared on all hands was now going on before the Recorder. He had acceded at once to the representation made, that it was necessary to the ends of justice, and for the satisfaction of the public mind, that the jury lists should be put upon a different footing in the course of the present revision, so that all persons interested in this great and public trial should be satisfied with the justness and correctness of the tribunal before which the case was to be investigated. Therefore, the application for a postponement on that ground was acceded to by the Attorney-General, and the day on which he now proposed for the going on of the trial, would amply meet the anxiety of the party and the public to have the jury list corrected in the manner in which it was alleged it ought to be, and certainly would be before the present tribunal (the Recorder of Dublin), which was appointed by the law for the revision of this list. It then remained to be considered whether the day named by the Attorney-General—the fifteenth of January—would be sufficiently late to comprehend the new jury act, and whether that day was not also sufficient for all reasonable preparation for the accused to be ready to take their trial in all respects upon that day. He knew that there had been an affidavit made by the several gentlemen solicitors, for the respective parties, in which they made a representation upon their oath that they did not think they would be ready before a day which they speak of and name in their affidavit, being a few days only later than that agreed to by the Attorney-General. But what was it they swore to? was it a matter of fact within their own knowledge? He for one would certainly dwell and pause very much before he would disregard the oath of those gentlemen swearing to a matter of fact. He would not do it except under the most extraordinary circumstances which he did not suppose could exist. But that was not the case in a matter of opinion, and not a matter of fact which they stated. And the question was, whether in a reasonable man's judgment, such as the court might range themselves within, there was or was not—there had or had not been a reasonable or sufficient time allowed to enable these gentlemen to come to trial on the 15th of next January. It was not alleged by the affidavits which these gentlemen made, that any peculiar difficulty existed with regard to the evidence which they might find it necessary to produce on the trial. There was no statement of witnesses being abroad, and out of the jurisdiction of the court. It seemed to be a perfectly admitted fact, that whatever witnesses did exist—whatever evidence it might be necessary for them, in the progress of their defence to lay before the court and jury, all those witnesses, and all that evidence was to be found within the kingdom of Ireland. Let them see the time which, supposing the trial to take place on the 15th of January, the traversers would have to be ready with those witnesses and that evidence on that day. They were to compute the time of their being ready for their trial, from the period when they got such distinct notice of the charges against them, that they were bound to be making preparation for the trial which they must know was hanging over them. The bills of indictment were found on the 8th of November, and on that day was put in a charge against the several traversers. They got on the same evening copies of that indictment. They had previously copies furnished to them of the informations of Hughes and two or three other witnesses who were afterwards examined before the grand jury in support of that indictment, and though the informations did not particularise all the charges against the accused, yet they contained a specification of the leading features of the charges upon which the accused were afterward to be tried. He understood, generally, that the general nature of the charges against all the prisoners was, that of conspiracy with a view of disturbing the public peace—of promoting and creating sedition and insubordination in the country, and by means, if not of force and violence, by the demonstration of force to procure and bring about an alteration in the laws and constitution of the country. That was the general nature of the charge, and those were the general grounds for the furtherance of which it was alleged that the several traversers committed the several overt acts in furtherance of the conspiracy which were recited in the indictment. Now those overt acts committed, as was alleged, with those views, being the substantial nature of the charge, in all its details, they were to every common intent, for the purpose of giving information with respect to the nature of the charge against the traversers, quite sufficiently detailed upon the face of the indictment, with a copy of which they were furnished on the 8th of November. It was said that the indictment did not contain a particular specification of all the charges, or the various particulars of the charges with which the several parties were intended to be put upon their trial when the case came on for trial, and they complained of there being an omission, and in some of the counts a mere statement, in general terms, of certain charges against the accused. They called on the crown for a bill of particulars requiring the crown to specify at length, and in detail, the particular circumstances of those general charges which were contained in the indictment in general terms, and not stated in detail. They called for a minute detail, and the several

items of the several charges on which the traversers were to be called upon to account when they came on trial, and they were furnished with that bill of particulars on the 16th of November. Now, therefore, from the 16th of this month they were perfectly well aware of all the particulars for which they were to account, and for which they were to stand their trial on the 15th of January. Taking the time for which they were to account to be the 16th November, when the information given to them was complete (they said they could not be ready for their trial on the 15th of January next), the time was this—14 days in November, 31 days in December, and there were 15 days in January.

Mr. Pigot—Just two months.

Chief Justice—That made sixty days, in order to prepare for trial of a variety of acts imputed to them, and alleged to have been committed within the last year, and all in the recollection of everybody. There was no difficulty in finding witnesses; none was alleged as growing out of any peculiarity in the case, and every witness which the parties had to call upon being resident within the kingdom of Ireland—at least there was no statement that they were elsewhere, or that the parties had to go look for them to any other country. Now the court were of opinion that appeared to be a sufficient time for those parties respectively to be prepared to stand their trial. There was no fatality alleged which would deprive them of the power of being prepared for trial at the end of two months from the time they got notice. There was no statement that satisfied the court that those two months, under the circumstances, were not abundant time for those respective parties to be prepared for their defence. The interests of the public, and the administration of public justice, required that the investigation of crime, if it had been committed, should not be delayed by unnecessary postponement, and upon the whole, without meaning to give the most remote shade of an opinion on the merits of the case one way or another, the court were of opinion that no sufficient case for a further postponement had been made out, that would satisfy the conscience of the court, and of the public. They were of opinion it had not been made, and in exercise of the discretion which the law gave them, agreed to the day named by the Attorney-General, the 15th of January next.

Mr. Steele here rose and said—I most respectfully beg permission to make a single observation to the court.

Chief Justice—The judgment of the court has been given, and your time for speaking is past.

Mr. Steele—I have but one observation to make, my lord.

Chief Justice—I fear we cannot hear you, Mr. Steele.

Mr. Steele—My lord, I hope I will have the same magnificent justice from you that I have had from your illustrious brother when I was tried before him. My lords, I feel it right to rise lest my silence on any particular point, if I were to be silent, should be construed by your lordships into an acquiescence. The Lord Chief Justice, in his judgment, stated that all the witnesses are resident in Ireland. Now, I pray leave most respectfully to state that in this his lordship is under a misconception. The only witness resident in Ireland whom I intend to examine when defending myself in this court is Lord Plunket, whom I with great pain draw from his retirement. Every other witness whom I intend to examine is resident in London.

Chief Justice—The observations which I made use of were founded on the affidavits that have been laid before the court, in which it is not alleged that any of the witnesses are out of the country.

The Attorney-General said it was necessary *pro forma* that the officer in taking down the order should have the parties present, as, strictly speaking, they had no attorneys in court.

Mr. Pigot said to facilitate matters the attorneys would then accept the orders.

Mr. Bourne said there was yet no appearance for the parties by attorney.

Mr. Brewster said if the parties were not present when the order was taken down they could bring an action against the officer.

Mr. Gartlan said he appeared for Mr. Duffy.

Mr. Mahony said he appeared for Mr. John O'Connell.

Mr. Ford said he appeared for Mr. O'Connell and three of the other defendants. Dr. Gray, Mr. Steele, and the Rev. Mr. Tyrrell, were then present in court.

The appearances were then taken down, and the matter dropped.

COURT OF QUEEN'S BENCH,

Saturday, November 25.

The Queen v. *O'Connell, and others.*

Mr. O'Hagan moved the court that the Clerk of the Crown be directed to furnish to Charles Gavan Duffy, or his attorney, a list of the names of the witnesses endorsed on the back of the indictment in this case.

Chief Justice—Are you opposed?

Mr. O'Hagan—We have served notice of our motion on the Crown Solicitor.

Attorney-General—I appear to oppose it.

Mr. O'Hagan—An application had already been made to the court apparently similar to the present, but they were in their nature essentially distinct, and their lordships were not called on to hear new argument on a question which they had decided. The former motion was to have the copy of the indictment amended by furnishing the names of the witnesses, and all other endorsements upon it, and it had been submitted that those names were a part of the indictment, according to the statute law of Ireland. It was important to the defendants to take the opinion of the court on that present position; but as, after full argument, the judgment was against them, he (Mr. O'Hagan) did not now mean at all to rely upon the reasoning and authorities which had been urged before. Yielding to the declaration of their lordships, that the names form no part of the indictment, he would present the claim of the defendants to a list of those names on other grounds; on the special circumstances of the case, the affidavits of professional persons, the spirit and tendency of modern legislation, and the established practice of the English courts. The question raised was one of extreme moment not only to the defendants, but to the country generally, as affecting the administration of criminal justice and the rights of accused persons; and it was important that the court should come to the consideration of it with a clear understanding that their former judgment in no way affected the present application, or bound them to deny it. He (Mr. O'Hagan) did not know whether the Attorney-General would repeat his imputation of the intention of delay, notwithstanding the oath of the defendant's attorney, that no delay was intended. He had before repudiated that imputation—he strongly repudiated it again, and he prayed the court to remember, if it should be repeated, that he now moved on behalf of the traverser who had joined issue with the crown, and who could have no possible motive for making the application but a desire to obtain substantial aid in preparing for his trial. He would rely first, on his special case; next, on the reason of the thing, and

the course of legislation in Ireland; and finally, on the universal practice of England, and the absence of all practices here. If ever the nature of a charge and the position of a traverser justified a demand of the names of his accusers, that demand was justified in this prosecution. Mr. Gartlan, the attorney for the defendant, swore that he considered the furnishing of the names on the back of the indictment essential to his defence, and when the person, of all others, most competent to form an opinion on the subject pledged his oath to such a statement, would the court refuse to the accused the means of obtaining justice? The affidavit of Mr. Gartlan should be conclusive on this matter: but there was no difficulty in sustaining it by a reference to the nature of the accusation. Even in common cases their lordships must have continually had judicial experience of the importance of inquiry as to the character of witnesses, and their means of knowledge for the protection of innocence and the discovery of truth. How often had a perjurer been discredited, not by any distinct contradiction of his statements, but by proof of his want of faithworthiness? How often, in every criminal court, were fabricated charges met by exposing the absence of proper means of knowledge in the fabricator, and demonstrating the impossibility of the truth of his story? It was plain that, for the purpose of defence, even in a common case where the sphere of action was limited, and the facts to be investigated, and the persons to be produced were necessarily very few, the grossest injustice might be prevented by enabling a traverser to know his accusers before his trial; but the case of the defendants here was no common case. It was without example in the history of criminal jurisprudence, in the magnitude and complexity of its details, the extent of time and space through which the transactions proposed for inquiry are stated to have ranged, and the difficulties of preparation in which it involves the traverser. He resides in Dublin, and he is called on to answer as to nearly one hundred meetings, held in almost every county in Ireland, from week to week during the greater part of an entire year. He must be ready to meet every charge which may be preferred as to the acts done, and the speeches spoken at each and all of these assemblies.

Judge Burton—Is there an affidavit as to this?

Mr. O'Hagan—No, my lord; but we rely on the indictment, and on it these things appear. But further, it is remarkable that the defendant is not charged as having been present at a single one of this multitude of meetings out of the city of Dublin, and yet everything that occurred at every one of them which the prosecutor can possibly employ as founding or colouring the accusation will be imputed to him for crime.

Chief Justice—Is not the charge against Mr. Duffy that of publications in a newspaper?

Mr. O'Hagan—The charge is one of conspiracy, and all the meetings are made to affect all the defendants as overt acts. The publications are also made overt acts, and are laid in the same way against them all. So that the traverser may be required to answer for all that took place at seventy or eighty meetings, held at distances of hundreds of miles, throughout nine successive months, though he was not present at any of them, and has no personal knowledge of any of the words or acts of those who were. How is he to prepare if he does not know his accusers? Suppose that persons are brought from the extremities of the island, who, in their own districts, have forfeited all claim to credit by their evil life and conversation, how is he on the instant to confront them? Suppose that persons are produced who make a rule for the occasion, and whom a disclosure of local circumstances would confound, how is he on the instant to obtain evidence of those circumstances? The Attorney-General may produce his first witness from Dundalk, and his second from Cork, and his third from Baltinglass, and his fourth from Clifden—he may sweep the kingdom, from the centre to the sea; and if the defendant does not know beforehand those who will be called to give testimony against him, how is it possible that he can be ready to show that they are not to be believed, though they may be utterly unworthy of credit—or that they have spoken ignorantly and falsely, though there may be facts demonstrating their total want of veracity? Surely if ever there was a case, from its extraordinary character and special circumstances, entitling a traverser to rely upon the assistance of the court for obtaining information sworn to be essential to his defence, the present is that case. But, passing from this, do we ask anything unreasonable in itself, or is our application discountenanced by the spirit or the letter of the law? The privilege we claim is a privilege peculiarly important to the innocent. The guilty man knows the facts of the transaction with which he is charged—knows the persons connected and conversant with it, and therefore likely to be produced, and is so enabled to anticipate the case against him, and organise his defence. But the innocent, from the very fact of his innocence, knows of the accusation only when it is made, and cannot foresee by what species of false evidence it may be supported. To him it is of the last importance to discover his concealed accusers, and the discovery of them may afford his only chance of justice. Again and again has the principle for which we are contending been recognised in our criminal code and practice. In England we shall prove that persons charged with misdemeanours have always the names of the witnesses for the crown; and the legislature, in the statute of treasons, has given to the accused not only the names of the witnesses in the indictment, but the names of all the witnesses to be examined on the trial. In Ireland, the 56th Geo. III., c. 87, condemned the practice of finding bills without the examination of witnesses, and required that all persons to be sent before the grand jury should be sworn in open court. That was a practical assertion of the right of the accused to know his accusers, for, if he or his agent were in court, those accusers could be seen as of course. As long as that act was in operation, this motion could not have been necessary. It would have been our statutable privilege to see the persons whose names we now wish to learn. What has occurred to take away that privilege? The passing 1 and 2 Vic., c. 37. But was that act ever intended to take it away? Is it within the mischief which that act was destined to remedy? Not at all. The delay and inconveniences alluded to in the preamble have no connexion whatever with the traverser's knowledge of the witnesses, and though the effect of the statute in requiring the examination to take place before the grand jury, is to prevent the exhibition of them in open court, it is clear as light that the object of the legislature was in no degree to limit the existing rights of the accused. And, if it was not, will the Attorney-General contend, that we should have one of the most valuable of those rights taken from us through the accidental working of an enactment which was manifestly never meant so to operate? He has called on the court in the argument of the plea in abatement to hold this enactment remedial, and construe it liberally. He has succeeded in that appeal, and will the court now allow the same statute, passed for the general good, to work the greatest individual injury, and deprive a traverser of a privilege which may save him from ruin, and which is positively sworn to be essential to his protection? There is another act which ought to be well considered by the court in deciding on this motion. By the 6th and 7th Wm. IV., c. 114, the legislature has

declared that "it is just and reasonable that persons accused of offences against the law should be enabled to make full answer and defence to all that is alleged against them;" and by that act the accused is entitled to copies of the informations on which he has been held to bail. That act was passed deliberately, after long consideration, and notwithstanding the suggestion of many dreaded mischiefs, and it demonstrates the anxiety of Parliament to furnish all necessary means of defence to traversers. Is it to be said that those who directed the informations to be given intended to refuse the names of the witnesses? Can it be alleged that any reason capable of being urged for giving the informations will not authorise the giving of the names—and can the Attorney-General assert or imagine any objection to the giving the latter which will not more strongly apply to the giving of the former? The act professes to afford opportunity of "full answer and defence" by enabling a traverser to learn the particulars of the evidence against him; but, in this case, the informations in no ways disclose those particulars. They regard only two or three transactions out of scores on which the prosecutors intend to rely; and can it be said that by looking at those informations the defendants have the means of full answer and defence intended by the act? And if the great body of the evidence is not put in the informations, and is so concealed from them, is not the purpose of the statute thwarted, and will not the court be the more inclined to carry its spirit into action, by affording to them the names of the witnesses, and thereby aiding them to make "full answer and defence?" The court should enforce the humane and liberal policy of our later legislation, which, day by day, is extending the privileges of the accused and narrowing the harsh prerogatives of the accuser; but, in this case, the Attorney-General calls upon it absolutely to refuse a right which was practically enjoyed in Ireland until the passing of the 1st and 2d Vic., c. 37, and which is enjoyed in England at this moment by every man who will procure an office copy of the indictment against him. Is it proper that, whilst Parliament is systematically extending the opportunities of full defence, the judges should be required to contract them? Reason is with the motion; the whole current of our later law is with it; and what has occurred in the progress of this case exhibits some of the evils which must arise from a refusal of it. He (Mr. O'Hagan) would not now insist upon the advantages which a traverser would derive from being enabled to object to an indictment, in the first instance, if found on unsworn testimony, or found on the testimony of a prosecutor being a member of the grand jury, or found without strict compliance with the terms of the act; but to this he would advert, that their lordships had been called on to hold the plea in abatement of the defendant bad, because it did not state the names of the witnesses, or that they were unknown. The names could not be stated, because, at the instance of the Crown, they had been refused to the traverser; neither could it be said that all the witnesses were unknown, for one of them was known, had sworn an information, and had been referred to specially by the learned judge who charged the grand jury. No man could swear that all the witnesses were unknown—so that it was perfectly plain, that if the objection were good, the traverser could not possibly have cured it, and he could never have pleaded in abatement at all. This was one of the mischiefs of denying the motion, and it had been put forward in the strongest relief by the counsel for the crown. Having said so much to prove that the court ought to grant the application, regard being had to the statute law and the tendencies of legislation, it only remained to show that, according to the practice of England, the defendant had a right to carry it. The clerk of the crown had said that the Irish practice was against it; but he (Mr. O'Hagan) thought he could demonstrate that, in fact, there was no practice in Ireland on the subject, in any way to guide or coerce the court. Before the 56th Geo. III., c. 87, the grand juries found bills without the examination of witnesses; and of course there were no witnesses' names to be sought or be obtained. The act required the witnesses to be sworn in open court, and when they were so sworn, the accused, or his attorney, could watch and see them; and when they were seen, no application for their names was necessary, and accordingly no application was made; and there was then, and until that act ceased to operate, in 1838, no practice either for or against the motion. Since the passing of the 1st and 2d Vic., c. 37, no practice has been established. The time has been short. On circuit no difficulty ever arises, for the original indictment is given to the prisoner's counsel, with the names upon it, as a matter of course, and the question was never before submitted to the Queen's Bench. Is it not plain, therefore, that there is no practice here? If the application was never granted it has never been refused; the point has not been mooted—the judges have made no decision upon it, and there is, in fact, no practice worthy of the name. In this state of things, it is proper to inquire what is the practice of the English courts? That practice is decisive in favour of the traverser. In the books there are few distinct references to it, because the giving of the names appears to be a thing of mere course, requiring no special motion, and never objected to. The whole class of cases in which the counsel for the prisoner in England is found to insist on his rights to have all the witnesses examined on the indictment called by the prosecutor, go to show that the right is conceded there—R. *v.* Bull, 9 C. and P. 22; R. *v.* Holden, 8 C, and Payne's 606; R. *v.* Thursfield, 8 C. and P. 269, all tend to establish this. In the King *v.* Gordon, 6 *Jurist*, 936, which was an application for the addresses of the witnesses before trial, the affidavit of the prisoner shows manifestly that he had been furnished with a list of the names. To the same purpose is the King *v.* Vincent and others, 9 C. and Payne 91, where the charge was similar to that made in the present case; and the counsel defending had, beyond doubt, the names of the witnesses on the indictment. But there is further authority. The case of the King *v.* Burkins, cited by the Attorney-General in the King *v.* Purnell, 1 Wm. Blackstone, 34, demonstrates that at the time to which it has reference, the indictment and the names upon it were obtained as of course, and without motion, from the officer; and, referring to that case in the course of the argument, the Chief Justice says, "the King *v.* Burkins shows the tenderness which the court always has for accused persons, and was to let him know his accusers." That tenderness the defendant claimed from their lordships, insisting that "the right to know his accusers" is sustained by reason and justice, and in accordance with the spirit of the law of the country. Such was the English practice in past days; and there was evidence to show, that that wholesome practice continued without change. Since the former motion was disposed of, inquiry had been made in London, and he would read the affidavit of an English solicitor of much experience, Mr. Coppock, sworn before a commissioner of the court. Mr. O'Hagan then read the affidavit, which was in the following terms:—

"James Coppock, of number three, Cleaveland-row, in the Parish of Saint James, in the City of Westminster, an Attorney of her Majesty's Court of Queen's Bench, in England, maketh oath and saith, that he is well acquainted with the practice of the courts of law, and particularly with the practice of the crown office, and the Court of Queen's Bench in England, as to in-

dictments for conspiracies or misdemeanours, and that from his own knowledge, and from his own personal experience, he can depose to the facts herein set forth and deposed to; and this deponent maketh oath and saith, that in all cases of indictments for conspiracies or misdemeanours, the office copy of every indictment supplied by the crown office to any person applying for a copy of such indictment, contains the caption, and also the names of the witnesses examined before the grand jury on the finding of the said indictment; and that, to the best of this deponent's knowledge, information, and belief, there never has been an instance in which the office copy of an indictment, supplied upon request to any defendant, or to his agent or solicitor, or to any person applying for the same before trial, and as soon as the same indictment could be obtained, did not contain the caption and the names of the witnesses examined before the grand jury; and deponent saith such practice is invariable, and is well known to be the usual and common practice in the crown office in England upon all indictments for conspiracies and misdemeanours."

If that affidavit were true—if the practice in England were such as that affidavit described it—he (Mr. O'Hagan) confidently put it to the court that he was entitled to carry the motion. The cases to which he had referred, and office copies of indictments obtained from England sustained the statement of Mr. Coppock; and, if an English traverser was entitled to the privilege of knowing his accusers, would the court deny it to the defendant? The reason of the thing being in favour of his claim—the fairness of that claim being practically recognised by various statutes—the whole spirit and tendency of modern legislation coming in aid of it—and the peculiar circumstances of this prosecution rendering it, of all others, that in which the defendant most requires, and is most entitled to the consideration of the court, in assisting him to prepare for his trial—should not the practice of England be conclusive in favour of his claim? Should a distinction be created between the countries in a matter of vital consequence to accused persons? Should a precedent be now, for the first time, established, denying to them, in one district of the empire, the opportunities of defence which are enjoyed of right, and of course, in another? Should a privilege which may continually avail to the prevention of injustice—which may enable the innocent man to confront the perjured accuser, and rely on the infamy of that accuser's life as the best answer to his false swearing—through which alone it may be possible, in many cases, to expose misrepresentation, and ascertain the truth—should such a privilege be refused on any mere suggestion of imaginary mischiefs, whilst reason and humanity require that it should be yielded, and the improving spirit of modern legislation, and the settled custom of the English courts, combine to authorise its concession. And finally, would it not be well for the law officers of the crown to consider, having regard to the peculiar character and circumstances of this prosecution, whether it be politic or wise to proclaim to the country, that an Irishman, charged with a political offence, shall not possess in Dublin the same immunities and means of protection, which would guard the liberty of an Englishman, charged with the like offence in Westminster Hall?

The Attorney-General opposed the application, and said he would, in the first instance, read the notice of motion previously moved in the present term on the part of the traverser.

Mr. Whiteside submitted that the Attorney-General could not use this document, no notice having been served upon the traverser, on the part of the crown, to use any document on this motion, and if the same rule applied to the crown, as to ordinary cases, he could not therefore put forward this document. They had got over a copy of the indictment in the Chartist case in England, and if the Attorney-General allowed them to use that on this motion, they would allow him to use any document he pleased. That copy of the indictment had the names of the witnesses on the back of it, and that of the solicitor that gave it to them.

The Attorney-General must say that nothing could be more irregular than the course of his learned friend. He (the Attorney-General) would take the opinion of the court as to whether he was entitled to state this notice, and he declined to enter into any compact to admit a document of which he knew nothing. It was a settled rule of the court, of which their lordships were perfectly aware, that they would not allow the same subject matter to be discussed in the same term, and he was at liberty to call their attention to this notice, and to refer to it as an authority. If he were not at liberty to use it for any other purpose, he could refer to it as an authority, and he would take the liberty of reading the notice of motion which the court had already disposed of. Having read the former notice of motion, he proceeded to say that the present application was put forward upon two grounds: first, as a matter of right, and secondly, as a matter entitling them to call upon the court, in the exercise of its discretion, to comply with the application of the traverser. He would observe, in the first instance, that what the court was now called upon to do was brought before the court on a former occasion, and at no period in Ireland had such an application been complied with. It was an application for a privilege which, to the extent to which it was now carried, did not exist in the highest crime known to the law, the crime of high treason; and now he begged to call their lordships' attention to what the privilege in cases of high treason was, which would be found referred to in Bacon's Abridgement, title Treason, Letter C. C. Their lordships knew that by the statute of William the Third, every person charged with high treason was entitled to have a true copy furnished to him of the whole indictment, but not of the names of the witnesses, and that statute was before the court on a former occasion. By the subsequent statute of Anne, where a person was indicted for high treason he was to have a list of the witnesses and of the jury, mentioning the names, profession, and place of abode of such witnesses and jurors to be given at the same time with the copy of the indictment ten days before the trial. So that even in the case of high treason, the highest offence known to the law, where privileges were allowed to the party that existed in no other case, the names of the witnesses, &c., were only to be given ten days before the trial. Were their lordships, then, to be called upon to make such a precedent in cases of misdemeanour? He submitted that they should not, and from the consequences that would arise from it to the administration of justice in Ireland he felt it to be his duty not to assent to it in the present case. It was alleged that all the advantages now sought for, the accused practically had before the passing of the 1st and 2d Victoria, and the court were called upon for the first time to make this precedent. The way they attempted to explain away that there was no precedent for the application was that it was unnecessary to make a precedent before the passing of that act, because the witnesses being sworn in open court the traversers knew the witnesses who would be examined before the grand jury. He was surprised to hear that stated in the presence of their lordships, who practically knew that the traversers never knew the names of the witnesses. He would submit to them whether, when witnesses were sworn in open court in hundreds, any person ever knew on what indictments they were to be called

upon to give evidence before the grand jury. They were sworn in a corner of the court by the clerk of the crown; the prisoners were in gaol, or the traversers were out on bail, and accordingly when the witnesses were sworn in open court no person knew with reference to what bill of indictment those witnesses were to be called upon to give evidence. It was a matter that was only in the knowledge of the clerk of the crown as to what particular case or indictment they were sworn to give evidence. Under those circumstances, as to its being suggested that the swearing of the witnesses in court afforded the traversers a means of knowledge, he would not occupy the time of the court by meeting such a proposition as that; and Mr. O'Hagan himself must know if he reflected for a moment that not the slightest information was given to the parties by the practice of swearing witnesses in court. The 1st and 2d Victoria, therefore, did not deprive the party of a well known privilege, which was assumed to exist without the slightest foundation for supposing that it did ever exist, for he repeated that the swearing of the witnesses in court did not afford any knowledge with regard to what the witness would be called upon to give in evidence, so the attempt at endeavouring to account for there being no practice in Ireland, on this assumption, that under the 56th Geo. III. the witnesses were known, could not be maintained. It was no part of the right of the prisoner to know the evidence against him until the time of his trial, for if he did, and he was not now speaking of this case, it might lead to consequences of the most dangerous character to the administration of justice. The suggestion made on the other side was, that as the party was informed of the names of the witnesses at the time of the trial, he should be furnished with them at an earlier period. But it was a different thing to give them to the traversers when the trial came on and at an earlier period, for if they were given before the trial many dangers might occur to prevent any opportunity of carrying their evidence into effect. Having adverted to the authorities cited by Mr. O'Hagan, and to a passage in a judgment of Judge Butler, 4 Term Reports, 694, to sustain the proposition that a defendant was not entitled to inspect the evidence until the hour of trial, he called the attention of the court to a matter relied upon, on the argument of the plea in abatement, that the names of the witnesses were not known to the traversers. But on that occasion particular attention was called to the fact, that the traversers had not sworn that they did not know the names of the witnesses, and there was no affidavit on the present application that they did not know the names of every one of the witnesses. With the exception of James Coppock's affidavit, who took upon himself to state the practice of the Court of Queen's Bench in England, which he submitted was not to be known by such an affidavit, but by a certificate from the Crown Office in England, the only other affidavit made on the present application was that of the attorney of Mr. Duffy, who only said the copy of the names was essential for the defence of the traverser, but he did not state how it was essential, or a single circumstance in order to show it was necessary he should have those names, and yet he called upon the court to make a precedent in the case of the traverser, Charles Gavan Duffy, for the first time it had been made in this country. It was by no means clear but that as a precedent it might be productive of mischievous results in other cases. It was not desirable that the evidence on the part of the crown should be known, on the contrary there were many reasons against it; and even if he were driven to refer to this case alone, he could suggest, from what took place in this case, grounds why the names of the witnesses should not be given. When the name of one of the witnesses in this case was known it was made the subject of commentary before the trial, for the purpose of endeavouring to prejudice the testimony of that witness. And if it was essential for the defence, supposing the names of the witnesses to be known, to carry on a proceeding of a similar nature, and to have the like commentaries made upon those other witnesses that were examined before the grand jury in the interval between this and the trial, he must say that such a proceeding was not calculated to attain the ends of justice; therefore it was not on a sweeping statement of this kind that it was essential to the defence of the traversers to call upon the court in the exercise of its discretion to grant this application. If the court were inclined to make an order in a case of first impressions, it was not, he submitted, on such swearing the court would make the first order that ever was made in this country of a similar nature. He begged leave to say that he was not seeking to deprive the party of any privilege whatever; he was only seeking, in the discharge of his duty, to submit to the court that when an application of this nature, affecting the administration of justice generally, was made, it was to be very maturely considered before a precedent was made. If it were necessary, for the administration of justice, that the names of the witnesses to be produced on the part of the prosecution were to be known, with a view of investigating their character previous to the trial, that very principle, if it be a principle of law, would entitle the prosecutor to know the names of the defendants' witnesses, with a view of making a similar inquiry to ascertain their character, and if they were faithworthy. They would, by making this order, be placing the parties on an entirely different footing; they would be putting the defendants into possession of the evidence on the part of the crown, without the crown, on any principle of law, being in possession of the evidence on the part of the defence. On these grounds he submitted that this was a re-discussion of the former motion, and it was decided in that former motion that the names formed no part of the indictment, and that, therefore, they were not entitled to a copy of them under the provisions of the statute, which entitled them to a copy of the indictment. If it had been the practice in England to give a copy of the names, it was not the practice in Ireland; and no case was made, by the affidavits in the present application, to induce the court to make such an order.

Mr. Whiteside wished to know if, in a motion of this kind, the crown was entitled to the reply?

Solicitor-General—Yes.

Mr. Whiteside continued—Then his learned friend, the Solicitor-General, would reply to the arguments of his leader, the Attorney-General. He (Mr. W.) would state as well as he could his views of this motion. Their motion was, that the traverser should be furnished with the names of the witnesses on the indictment. It was a naked application, for that one particular thing to be conceded or not as the court should think proper. They did not ask for the addition, address, or any other matter or thing whatever but the names of the witnesses, and they asked that that under the order of the court should be given by the officer of the court; and the question was, whether it be granted or not. The accurate and technical mind of the Attorney-General took objection to this motion in the first instance; and that objection was that on a comparison of this notice of motion with the former notice, it would appear that this technically was the same motion, and he urged that the rule which applied in trifling cases should apply to this case, and that the motion should not be heard at all; but his arguments and his facts, to prove that they were the same, both failed him. It was not the same motion as the former one. The former motion was, that the indict-

ment should be amended, being an imperfect document; and this was a motion for a copy of the witnesses' names. This application was founded here on the nature of the indictment, the character of the case, and the complexity of the case; all this was familiar to the mind of the court, and a repetition of it on his part could only lessen the force of the observations of his learned friend, Mr. O'Hagan. He rested his application on this ground, that it was the admitted practice in England to give a copy of the names of the witnesses to the accused, and no authority was cited—no affidavit was made controverting a single fact that was mentioned there in support of this application; and though suggestions had been thrown out to the mind of the court, they should not affect the case, or induce the court to give a judgment here which in no court in England would be delivered, and which the whole practice there would contradict. They might have served eight or nine notices if they wished to do so; but they conceived it was the honest way for the person who made the former application to bring it before the court again, and it was stated that the matter sought for was essential to his defence. He objected to the mode of debating this case on the part of the crown, or to a hypothetical case being put forward without a single fact being sworn to by the crown solicitor. If it were sworn that they wanted to make an unworthy use of those names, it should of course have great weight with the court; but the fact that they got no person to make that affidavit should have great weight in his favour; and however worthy of respect the assertion of the Attorney-General might be, that assertion should not be taken to over-master the distinct affidavit on which they relied. He respectfully submitted that the honesty of this application must be plain to every understanding; it was sworn that the copy of the names was essential for the defence of the traverser, and the nature of the charges in the indictment should form an irresistible argument in favour of the soundness and honesty of their application. He relied upon the fact that when the crown got notice of bringing forward this application they should have inquired and ascertained if they could get affidavits contradicting the facts that they could bring forward in support of it. What law were their lordships administering in that court but the law of England? and it would be calculated to startle any man, if an accused person were to be prosecuted by one law in England and by another law in this country. The Attorney-General had handed up a letter the other day, stating what was the practice in a particular case in England, and he (Mr. W.) would take the same course now, and hand up a letter stating the practice in England on this subject, and he would also hand up a document showing what the practice was there, and that the practice was to give a copy of the names.

Judge Crampton—What the Attorney-General handed up was a report of a case.

Mr. Whiteside—And this is a report of a case also, and I will not use it if I am not allowed to do so by the court. The learned gentleman handed in the document, observing it is an unreported case, and therefore falls exactly within the principle which the Attorney-General relied upon.

Judge Crampton—Who is the letter from?

Mr. Ford—It is from the solicitor on the Chartist trials in England, and there are the names of the witnesses in the Chartist trials.

Mr. Whiteside—We know what the practice was in England in ordinary cases; but, wishing to know what the practice was in political cases, we applied for information to the solicitor on the Chartist trials, and there is his letter, and there are the names of the witnesses which were furnished to the prisoners.

Chief Justice—What were the Chartists indicted for?

Mr. Whiteside replied that they were indicted for an unlawful conspiracy. They had an affidavit stating the practice in the Central Court in England, but he thought it would be well also to have the indictments in those cases, for he knew it was impossible that the practice in England could be understood.

Judge Crampton—What time were these names given?

Mr. Whiteside—Before the trial.

Judge Crampton—What time before the trial? Were those persons tried at a special commission or at the assizes?

Mr. Brewster—At a special commission.

Mr. Whiteside said that this case was tried at the Oxford circuit, and not at the special commission. Before he stated the affidavit he was to read, he must call the attention of the court to this fact—if they brought a piece of paper there that would not be evidence; but they applied to a person who got copies of the names over and over again, and they undertook to satisfy the court on his oath that it was the universal practice in England to give the names of the witnesses as soon as the indictment was formed when they were called for. The learned gentleman then read the affidavit of Mr. Coppock, and proceeded—He thought nothing could be more clear than the practice in England, as stated by Mr. Coppock in his affidavit. He swore that he practised in the courts, that he knows the practice there to be for the defendant to get a copy of the indictment, with the names of the witnesses endorsed on it. That was the criminal law as administered in England, and they had also the fact that on the Chartist trials after the indictment had been found, and before the trial, the witnesses' names were furnished as a matter of course. That being the practice in England, the Attorney-General told the court sitting to administer the law of England as they always had done, that they were not to allow a similar practice in Ireland. The Attorney-General said that that right was not allowed to defendants even in cases of high treason, and he referred to an act of parliament to show that such was the case; but the special provision of the statute proved the reverse of what the Attorney-General alleged. The case of the King *v.* Holland referred to by the Attorney-General was not applicable to the present case, for there the defendant called for an inspection of certain reports, and he might as well call for an inspection of the great bag of papers that the Crown Solicitor had at the present moment for the purposes of the present trial. After referring to the case cited from 9th Carrington and Payne, he said he hoped sincerely that the practice before the passing of the statute was not what the Attorney-General alleged it to be—namely, having the witnesses sworn by the clerk in a corner of the court.

The Attorney-General said Mr. Whiteside had a right to comment on his argument, but he was not justified in misrepresenting what he had said. He denied using the words attributed to him.

Mr. Whiteside—There are my notes of the words as you spoke them—"sworn by the clerk in a corner of the court." He then proceeded to say that, with every respect to the Attorney-General, he would maintain that the argument of his learned friend, Mr. O'Hagan, was a good one; that before the passing of the statute the defendant would have an opportunity of seeing the persons who were to be examined against him.

Judge Burton—Just as he might now see them when they are going to the grand jury room to be examined.

Mr. Whiteside said the fact of their being sworn in open court proved that the legislature sought for no concealment, and if the witnesses had been seen

by any person when going to be examined the present application would not have been made. He submitted that the application ought to be granted.

The Solicitor-General replied. He said Mr. Whiteside had very vehemently disclaimed the imputation that the object of the present motion was to reagitate the discussion that had taken place on the former motion for the defendant to get the names of the witnesses on the back of the indictment; but assuming that the present application was *bona fide* distinct from that which had been already decided, they should see what the question was and how it had been argued. He took the question to be neither more nor less than this—whether after an indictment is found, the prisoner or defendant is entitled to have for the purposes of his defence a list of the witnesses endorsed on the bill of indictment, and that independent of legislative enactment and by the rules of the common law. That, he contended, or nothing short of it, was the argument submitted on the other side, but with great respect for his learned friends, he should utterly deny that such was the law at any time, either in England or Ireland. There was no authority, no argument, no sentence from any text writer cited to support such a proposition as that put forward by the other side. It was therefore an attempt to introduce into the law of this country a new practice, but before the court would be ancillary to the introduction of such a practice, it would not be immaterial to reflect on the consequences that might follow from it. If the names of witnesses were to be always given after the indictment was formed, it might happen that witnesses would be tampered with, taken away, or deprived of life. He was not assuming the existence of any such circumstance in the present case, but he had a right to use it as an argument, especially as he found it stated in the 56th George III., c. 87, that witnesses were often murdered or disabled from attending, or tampered with, and provision was accordingly made for putting a stop to such practices. It was said that this was a peculiar case, but it was contended that the defendants had a right to the application, independent of any discretion in the case. But it was impossible the court could see the existence of any such necessity in the case before the court. Mr. Duffy was charged as one of the parties implicated, but it was not charged that he had been present at any meeting out of Dublin, and the meetings with which he was charged with being present at in Dublin were distinctly pointed out and brought before him. The singlar argument of Mr. Whiteside was, that in the English case, when the defendant applied for the addresses of the witnesses, *ergo* he knew the names already, but admitting that some how or other, as Mr. O'Hagan had said he had got the names, it might be said that "some how or other" they might have got the names of the witnesses here, for neither on this or any other occasion was that denied. They then cited the act of the 6th and 7th William IV., chap. 114, but that act showed that by the common law they would not have a right to get copies of the informations. There was a practice long antecedent to the 56th Geo. III., and they did not show what that practice was, and if a right of the kind contended for existed, some single instance would be found either in England or in Ireland in which it had come before the court. He disclaimed the imputation of seeking to have one law in England and another law in Ireland. In Mr. Coppock's affidavit he stated that in all cases of indictment for conspiracies or misdemeanours the office copy of every indictment supplied by the crown office to any person applying for it contained the captions, and also the names of the witnesses examined before the grand jury, but if that affidavit was worth a farthing, it would show that that was the practice in every case, and yet the counsel opposite also read a letter from a Mr. Jones showing that an indictment for a conspiracy did not contain the caption.

Mr. Whiteside said what Mr. Coppock swore was that "he is well acquainted with the practice of the courts of law, and particularly with the practice of the crown office, and of the Court of Queen's Bench in England as to indictments for conspiracies or misdemeanours," and from his own knowledge and experience he deposes to what that practice is.

The Solicitor-General asked why did they not go to the crown office in England and get a certificate of the practice from the proper officer?

Mr. Whiteside said he was quite willing to let the application stand on the result of a communication from the clerk of the crown in Dublin to the clerk of the crown in Westminster.

The Solicitor-General declined acceding to the proposal, and after some further remarks concluded by submitting the application should be refused.

The Chief Justice, having conferred with the other judges, proceeded to give judgment. He said that the majority of the court were of opinion that the present application ought not at present to be granted. The application was that the clerk of the crown should furnish to the traverser a list of the names of the witnesses appearing upon the record of the indictment which had been found against him. It was properly distinguished from the application on which, though of a similar nature, yet being materially different, that court gave judgment a few days ago He need hardly say to the gentlemen whom he was now addressing himself to that if there was not an essential difference between the two applications, the discussion of the self same subject would not have been permitted by the court as long as the other rule stands. He would observe in the first place that Mr. Duffy, the traverser, on whose behalf the application was made, had made himself no affidavit at all. His attorney had made an affidavit, and that affidavit, if he did not misunderstand it, was in general terms, that the obtaining the names of those witnesses was material for the preparation of his defence. He thought that was it. Now, it was a very odd thing, particularly when it was considered how often and how fully this question in substance had been discussed before the court, that up to that hour there was not an affidavit from Mr. Duffy's attorney or himself that he did not know the names of the witnesses. He might have an imperfect knowledge of them; and yet substantially the affidavit made by his attorney might be supposed to be true, that was a reason to be taken strongly into consideration, as influencing the discretion of the court. Another thing to be observed was that though it was stated generally that the names of those witnesses would be necessary and useful for the defendant's attorney to prepare his defence, he did not attempt to show how or in what way the furnishing of the names of the list of witnesses could be of any use to him whatever. Now the case had been argued, and very properly argued as addressed to their discretion, that according to the known rules and practice of the law, it had been the custom to grant to the parties in misdemeanours a copy or list of the witnesses against them. He had heard that argument made, but as far as his experience went, or so far as he had heard on the argument of the case in court, he had not heard stated, or read the decision upon which that allegation was supposed to be founded, that from the earliest times it had been the practice in misdemeanours to supply the accused with the names of the witnesses against them. So far as he knew the law, and so far as he had heard the case argued, that proposition was not sustained by the authority of any judge, or the dictums of writers on the subject, and he thought it was plain, that in advancing that proposition, as corresponding with their practice of the law, a mistake had been

committed, and did exist on the part of the counsel of the traverser. It was advanced generally, and as applicable to all cases. Now, though there might be a principle applicable to all cases, that it was desirable that the parties accused of criminal offences should have every due and fair means afforded them of preparing for their defence against the charge on which they were arraigned, and though that principle applied in all its length and extent to the cases of felonies, as well as to cases of misdemeanour, yet it was not attempted to be argued, that it ever was heard of, that the rule was applied to cases of felony; and he would say, considering the rule in itself, that if there be a distinction to be taken between the application to felonies and misdemeanours of such a rule, it ought to be applied more favourably towards persons accused of the greatest offence than in favour of persons accused only of lighter crimes. But it was, and must be conceded, that there was no instance ever known in history from its beginning until now, of that having been a principle applicable to cases of felony. But it was said that it was applicable to cases of treason, and that by analogy to cases of treason the rule ought to be extended to cases of misdemeanour. He took that also not to be the law. If there was an analogy to be applied between cases of treason and misdemeanour, he would be glad to know on what principle it was that it was not equally applied from treasons to felonies, and he repeated again, that it had never been applied to cases of felony, nor could it be argued that it ought to be so. What was the law as applicable to cases of treason? He begged to say they were cases *sui generis*, and they were not to be brought under the consideration of the court, as governing the cases of misdemeanours at all, and though in its mercy the law had extended privileges to persons on trial for their lives, and liberties, and properties, as persons were who were accused of high treason, in consideration of the dreadful penalty that attached to them if they were found guilty, there was not any one of the same principles of application referrable to felonies as there was to high treason. He would consider the case of treason. As the law originally stood in cases of treason, the parties accused had no right to a copy of the names of the witnesses against them. Neither had they a right originally to a copy of the indictment. But by the statute of treason—the statute of William—it was enacted, that from thenceforward, persons accused of treason of a certain nature, involving the crown's dignity, should, in consideration of the dreadful penalty which had been inflicted upon them if they were found guilty, and in tender consideration of that, be furnished with a copy of the indictment against them, but making a reservation at the same time—"but not a copy of the names of the witnesses." So that in no case up to that time was the accused party, whether accused of treason, or felony, or of misdemeanour, entitled at the common law to be furnished with a list of the witnesses against him. There was not in the statute of treason that which had been brought forward as showing that by analogy it ought to govern the present case, but there was in the statute of treason that which appeared to him to form a strong argument the other way. It was not actually silent with regard to furnishing the list of witnesses, but furnishing the list of witnesses was expressly excluded out of the operation and benefit of the law. There were counteracting principles, which might be the rule of governing those who established the common law, and which might be the rule of governing those who enacted for the improvement of the common law, and he could conceive, and did conceive, and the case had been so put to the court by the Attorney-General, that there was a very cogent reason why a copy of the list of witnesses should not be furnished to the accused, though he was to be furnished with a copy of the indictment against him, and a copy of the charges against him. The statute law of the country had furnished melancholy principles which were to be called into action with reference to this position. Witnesses had been murdered—witnesses had been maimed—witnesses had been intimidated—witnesses had been bribed, and by all those means the administration of justice had been frustrated and defeated instead of being promoted by the furnishing of witnesses' names. Now, that being the case, they were called upon, without a reason that appeared to them satisfactory—without the affidavits which he had referred to, as being to be looked for and expected, on an application of this kind, to make, for the first time in this country, a new rule which would be applicable not only in the present, but to every other case of misdemeanour; that in every case, without exception, the party accused of misdemeanour should be furnished with a copy of the names of the witnesses. The legislature had, from time to time, made enactments, and made additions to the common law in cases of misdemeanour, which the parties would be entitled to as a matter of right. They were entitled to, and they had received the copy of, the indictment—they were entitled to, and had received, a copy of the original information, sworn against them, on which they had been held to bail, and one might suppose that the legislature did conceive that having got those privileges, which, by the common law, they were not entitled to—that sufficient and reasonable ground of defence was afforded to all such persons accused of misdemeanours, without furnishing, in addition, the names of the witnesses who had sworn against them, whereby the safety and security of those witnesses who had sworn against them might be compromised, and whereby a clue would be afforded to the frustrating and defeating the objects of the prosecution instead of the attainment of justice. Now, it appeared to him when the party came *ex gratia* to the court they should make it most satisfactory to the court that it was necessary to have for their defence the names of these witnesses, the non-furnishing of which he could suppose a very fair reason to subsist, and not having done so they should at least confine themselves to the analogy of the existing cases, where the law had made a provision that the names of witnesses should not be furnished. He would go back to the case of high treason. By the statute of Anne the provision was made that the names and additions of the jurors, and the names and additions of the witnesses, should be furnished to the prisoner; but when? Ten days before the trial. Was that a precedent to induce the court, without sufficient reason being assigned, to apply that as a principle to make an order for the furnishing of the names of witnesses in this case of misdemeanour at a period of fifty or sixty days before the trial? That would be making upon the face of it a new precedent that was never thought of before. No such precedent—no corresponding precedent existed with regard to felonies up to that day, and though the party accused of felony might require as much as the party accused of misdemeanour to be furnished with the names of witnesses against him, the law allowed him no such favour, or such means of enabling him to defend himself. The officer of the court upon the former occasion reported to them that the furnishing of the names in this country in misdemeanours was never known. It was very ingeniously put by the gentlemen who argued this case, that in this country no practice existed, and they urged that there could not be a practice existing in this country to show what the practice was or was not for this reason; it was stated by Mr. O'Hagan, that the practice could not have sprung up before the 56th George III., that was the year 1816,

because, said Mr. O'Hagan, it was then only, and for the first time, that the law made it clear that the witnesses that were to be examined before the grand jury were to be sworn in open court, and inasmuch as the parties had an opportunity of knowing who the parties were that were sworn in open court, the accused persons did not require since that time to be furnished with the names of the witnesses. Mr. O'Hagan's argument was that thereby the parties accused acquired the privilege which they did not before possess; they acquired the privilege of being able to become acquainted with the names of the witnesses who were to be examined against them, and that they were deprived of that privilege by the operation of the 1st and 2nd Victoria, whereby it was enacted that the practice of swearing the witnesses in open court should be discontinued, and that the witnesses should be sworn before the grand jury. Mr. O'Hagan's argument was that, in the period between the passing of the act of the 56th Geo. III., and the act of the 1st and 2nd Victoria, accused persons did not want to be furnished with the names of witnesses, and that, therefore, there was no need of any such application here, and Mr. Whiteside treated, rather with ridicule, the observation of the Attorney-General on the subject, as if, in point of fact, he was rather overdrawing the manner in which witnesses were sworn in open court, and the nature of the advantages which the accused party derived from it. He did not think it necessary to consider whether there was an exact statement or misrepresentation made of the manner in which the oath was accustomed to be administered; or on the other hand of the advantages and privileges which the accused derived under the system; but he thought it very likely that neither one or the other was a correct statement of what took place. But supposing the advantages to go to the extent contended for by Mr. O'Hagan, did it necessarily follow that there was no rule for the existence of a practice in this case before the year 1816? Up to that time the parties had not the means of being furnished with the accusers' names by seeing them sworn in court before him, because the practice in this country, as recited in the act of parliament, was to find the bills of indictment without the witnesses being examined before the grand jury. If such were the case, how did it happen that up to 1816 no person accused of misdemeanour required to be informed of the names of the witnesses against him unless it was that there was no such practice existing in this country. But if such a practice did exist, he did not see why it should exist beyond that allowed in cases of high treason, where the witnesses' names were furnished, but not until within ten days of the trial; and the cases cited from the 8th and 9th Carrington and Payne did not show the existence of such a rule as was contended for, as they only went to this, that at the trial when there was no longer any danger resulting from the witnesses being known, if a case be made to the satisfaction of the judge, that the attainment of justice would require that the absent witnesses should be called if any witnesses were mentioned on the back of the indictment—the judge having power to have that indictment laid before him, he could make an order to have those witnesses called, in order to give the accused a right to cross-examine them. He did not think those cases went one jot beyond that, and they were, therefore, no precedents for the present application. The present case was widely and distinctly different, and it appeared to him that the rule was a most useful and sensible one for the protection of witnesses. It was no small matter for the witnesses to be exhibited in the public papers day after day, and night after night, and their character discussed and vilified. That was one danger that might be apprehended; and the other danger was that unfortunate people might be put out of the way. He did not say by foul means, but he would say by foul means or otherwise, and that was a consequence that ought to be guarded against. That would be purely and manifestly a frustration of justice to allow such things to be done, and he did not therefore see on any ground why they should at this time make an order so utterly without precedent not only in this country but in England. There was nothing more desirable than that the same practice should exist in England and Ireland, but he should observe, that not a single case had been produced to them to show what the practice was in England, or on what that practice was founded. Not even a text writer's assertion was produced in print to show that the practice is such as is contended for; but the allegation of the existence of a practice founded on a statement made by a gentleman of the name of Coppock, who appeared to take on himself to swear—he not being an officer of the Court of Queen's Bench in England, or belonging to it—that such, in his opinion, is the practice. But how did they know what his experience was, or how far that statement was to be relied on? Why, give him leave to ask were they not to be satisfied of the practice from an authentic statement under the hand of the authorised officer of the Queen's Bench in England. He did disclaim being guided or governed by a statement of practice supported by the testimony of this Mr. Coppock, or Mr. Roberts he believed his name was, or Mr. Jones. They were not authorised personages, and though in a particular instance one of them appeared to have been furnished with a copy of the names on the indictment, yet he did not state such a matter of fact that he could lay a ground for a positive affidavit that such was the established practice in the Court of Queen's Bench in England. Perhaps on inquiry a particular reason in the particular case might have been suggested, but in any case the practice did not appear in any case that had been laid before them to have been brought under the deliberate discussion of the court in England. It did not appear on what or when such a practice took its rise; and if he were driven to the necessity of deciding by what practice he should abide—regretting as he should do most extremely the existence of a difference of practice between the two courts—still he should, until he saw a better reason than had been yet laid before him, abide by the practice in this country. But he mentioned what he was then saying not out of collision, but to show that the present course was governed by, or brought within, the rule of practice in either countries. For these reasons he was not satisfied this gentleman should be furnished now with the names of those witnesses, and his opinion therefore was that the motion should be refused.

Mr. Justice Burton said he concurred fully in the opinion expressed by the Lord Chief Justice, that the application ought not at the present time be complied with. He considered himself left entirely open to re-consider the question whenever it should come before him, notwithstanding the decision of the court on the former motion, and when the present application was opened on the part of the traversers, he confessed he felt a wish that it might be considered on the part of the crown as one which there was sufficient reason for conceding. But the court was not now to consider the case in that light. They were to consider whether the traverser had a right to a list of the witnesses named and examined before the grand jury, and he considered the traverser had not that right at the present time for the reasons given by the Lord Chief Justice in so distinct and clear a manner. He felt a difficulty in taking up the public time by entering into those

reasons, but they were grounds entirely in confirmation of the reasons that the Lord Chief Justice had given. He then entered at some length into the arguments put forward by the Chief Justice, and said that it was his opinion it was desirable that the accused should have some time before the trial a list of the witnesses who were examined before the grand jury, and those who were likely to be examined before the petty jury who were to try him, in order that he might be the better able to prepare for his defence. He would thus be enabled to know what witnesses it would be necessary for him to summon, as he might otherwise summon some of the very witnesses who were to be examined against him. He considered it reasonable that the traverser should therefore have a list of the witnesses to be examined against him a reasonable time before the trial, but he considered that very distant from the present motion which was in effect, that any time after the bill was found by the grand jury, the traverser had a right to the witnesses' names on the bill at the same moment that he is entitled to a copy of the indictment. He was very forcibly struck with the argument that mischiefs might result if such a practice as that contended for were established, and from the nature of the crime and the peculiar circumstances attending it in the present case, as well as from the situation of the country, it was possible that if the names of the witnesses were furnished so long before the trial, it would be attended with very considerable risk to the ends of justice. He did not think, under all the circumstances, that it was incumbent on the court to comply with the application at the present time, whatever they might do at any future application of the same kind.

Mr. Justice Crampton said at that late hour he would feel himself not at all warranted in saying more than that he concurred in opinion with the Lord Chief Justice, were it not that one of the members of the court differed from the majority in a point of considerable importance. The application was made full seven weeks before the day fixed for the trial. It should be grounded either on a right possessed by the traversers, or on grounds on which the court should be called on to exercise a discretion vested in it. He would say nothing with respect to the former motion being substantially the same as the present, but he held that neither by statute law nor by common law had the traversers such a right. The traverser called on the court to make an order, changing the practice in criminal proceedings, and they were told to do that on what was alleged to be the English practice. He would say it had not been shown to be the English practice, and even if it had been so shown that would make no change in his opinion. If such a practice did exist in England, it appeared to have been never brought under the attention of the court there, and they had on the other hand the report of their own officers that such a practice never did exist in Ireland. After going over the same ground dwelt on by the Chief Justice, on that part of the case, he said that another ground on which the matter had been put was to the discretion of the court, and he confessed if proper grounds had been stated to the court by affidavit of the party, or possibly of the attorney calling on the court at the proper time, he would be disposed to grant such an application. But what were the grounds of the present application? Was it that the party was ignorant of the names of the witnesses? No; he was obliged to assume, then, that in all probability the traverser may know the names of the witnesses already, because on neither of the two occasions, when the application had been made to the court, did the traverser himself, or the respectable gentleman who was concerned for him, state, on oath, that they did not know the names of the witnesses, and though there might be no legal way in which they might be known, still it was possible that they might have transpired. There was no affidavit by the traverser, and the affidavit by Mr. Gartlan was only that he considered it essential to the traverser's defence that the names of the witnesses should be furnished without stating that he does not know them already. He thought the affidavit in this respect quite defective. Another matter which he thought very strong was, that the present applications had been made seven weeks before the trial. According to the English practice, vouched to them in that clandestine way, it was at the time of trial, or shortly before it, that the prosecutor was called on to furnish that species of information to the parties, whereas they were called on to make an order at that very long period before the trial.

Mr. Whiteside said when the notice of that motion was served they were not aware that the trial would have been postponed.

His Lordship said he did not think that altered the case, as there was abundance of time for making the inquiry. The motion was one without a single adjudged case to warrant it in this country. He thought it safer, especially in criminal matters, to stand by the established practice than to indulge in the introduction of a novelty, the consequence of which might be attended with much danger. His opinion was clearly that the motion ought to be refused at present on those grounds.

Mr. Justice Perrin said notwithstanding all that he had heard at the bar, and from the Lord Chief Justice, and from his learned brethren on the bench, he was still under the disadvantage of differing from the rest of the court, as he could not see any good reason for refusing the application, or withholding the names of the witnesses endorsed on the indictment. That was a perfectly distinct application from the former motion, as had been already clearly put—so clearly, that it was not necessary for him to make any further observation on it, save this—that when the former order of the court was made—when the motion to amend the copy of the indictment that had been furnished by adding the names of the witnesses, was, in his mind, properly refused—the court came to their decision principally on the ground, that the names endorsed on the back of the indictment formed no part of the indictment itself. The present application was made on the affidavit of the traverser's attorney—the gentleman who was employed to arrange and prepare the defence—and in that affidavit the names of the witnesses were stated to be essential, to and for the purpose of enabling the traverser to defend himself effectually. He thought there could be no doubt that it may be and generally is, very important to a man's defence—as well to know who his accusers are, as what the extent of the charge brought against him is; and the statute to which they had been referred by Mr. O'Hagan, of the 6th and 7th William IV., chap. 114, altering the law in a very essential particular, proved the giving of that knowledge to be sound principle and policy, and was, in his mind, a very complete answer to many of the objections that had been urged against the application. The defence may depend much on the veracity and character of the witnesses who are to be produced for the prosecution, and a knowledge of the names of those witnesses was therefore of the greatest importance to the traverser and those engaged for him. But, as had been well observed by his brother Burton, it might be very important for the prisoner to know that certain witnesses would be produced against him, on whose testimony he might be enabled to rest a part of his case. It might be very necessary for him to know that matter in making preparation for his defence, in order to be satisfied what provi-

sion it was necessary for him to make for the presence of other witnesses to support his case; but it was not necessary to go through the instances in which it may or may not be essential for the traverser to know the names of the witnesses that are to be produced against him, because in the present case the person who, above all other persons, was qualified to form and express an opinion on the matter, namely, the traverser's attorney, had distinctly sworn that it was, according to his belief, essential to the defence of the traverser that he should be apprized of those names. He was surprised that it should have been suggested as an objection to the motion, that the party had not made an affidavit expressly stating that the names of the witnesses were unknown. He could not conceive how any gentleman of respectability or veracity could swear that it was essential that his client should be furnished with the names of the witnesses, if he were at the time conscious that his client knew those names already. He took it that the statement in the affidavit that it was essential for the defence of the traverser that he should be apprised of the names of the witnesses against him, involved to every well constituted mind a distinct denial that he did know those names at the time, because if the fact were that he did know them at the time, the furnishing of them to him could not be essential for his defence, and the affidavit would, therefore, in his mind be direct, downright false swearing. He could perceive no very sound or fair objection to the disclosure of the names of the witnesses, nor had any good reason been given to satisfy his mind that it was desirable those witnesses' names should be suppressed or concealed. There was no general or special reason suggested bearing on that particular case why the names should not be given. He wished at that late hour of the last day of the Term to be as brief as possible in his observations, and he would, therefore, do little more than refer to the reasons that influenced his opinion. He before adverted to the effect of the 6th and 7th William IV., ch. 114, and he would not dwell upon it then. But not merely was there no objection in principle to the motion, but no inconvenience had been pointed out as likely to arise in this particular case from furnishing the names of the witnesses. Under the statute, the traverser is entitled to the depositions of all witnesses who have been sworn before he was held to bail, and if the law required that he should have these, he (Judge Perrin) was yet unapprised of any inconvenience that would follow from furnishing him with the names endorsed on the indictment. It appeared to him that the fact of the traverser having got the informations, furnished an additional reason why he should get the names on the indictment, in order that he might know whether it was likely additional proof had been given before the grand jury against him. There appeared to be no sound objection to such a course being taken. The court on the preceding day fixed the trial to take place on the first Monday in the next term, and they did that on due consideration of the affidavits that had been brought before them, and of what they regarded as a fit time for the traversers to prepare for their defence, taking also into consideration the important circumstances as to the state of the jury book. Having done so, it appeared to him that the present was exactly the time at which the parties ought to make the application for the names of the witnesses, provided it were a proper and *bona fide* application. If they really believed these names necessary for the preparation of their defence, this appeared to him to be exactly the time when they should make it, as it could not be otherwise made until the next term, for it could not be brought forward as a motion in chamber unless some particular circumstances or grounds were relied upon. It was said there was no practice on the the matter in this country, or that the practice was against the application. But he did not find it stated, or if it had been it escaped his notice that any case was on record in which the names of the witnesses were ever refused, and if they never in fact had been refused, then it would follow that no necessity could have existed for making such an application. He thought therefore it should be taken that in this country there was no fixed or settled practice existing on the point. He was not sure whether the case of the King *v.* Keon had been mentioned in the argument.

Mr. Whiteside said it was not mentioned.

His Lordship continued to say that that case occurred long before the passing of the 56th Geo. III., c. 87. It did appear to him on the best consideration that he could give to the documents that had been laid before them, supported, as he thought they were, by the case to which Mr. O'Hagan and the Attorney-General referred of the King *v.* Gordon, that the practice in England was to give the names of the witnesses endorsed on the indictment, and he thought it was impossible not to admit that that was the practice, as it had not been suggested on the other side that the practice was otherwise, and especially as when the offer was made at the bar on the part of the traversers to allow the matter to rest on the result of an application from Mr. Bourne to the clerk of the crown in England, as to the practice there, that offer was not acceded to. Therefore he must take it, that if that application were deemed necessary to be made in Westminster Hall it would be granted there. Taking that to be the case, he considered without asserting that the practice of the courts in England was to govern the practice in that court, that if they had no settled practice of their own, and if they found a convenient rule established in England, they ought to be ready to follow it. But without going to that extent he thought at least it was to be fairly inferred from that practice that there was nothing inconsistent with, or obstructive to the due course of the administration of justice, in adopting it. He considered the common law in England to be the common law in Ireland, and that a lengthened and uninterrupted practice proved what the common law was, and that that was to be relied on rather than the unsettled and uncertain practice in this country. Before the passing of the 56th Geo. III., c. 87, the general, almost the universal practice was to have the bills sent up without any witnesses' names endorsed on them and found by the grand jury on the informations solely, contrary to the practice in England, as well as contrary to the common law. That practice was endeavoured to be sustained and supported, and difficulties were suggested as likely to follow any alteration of the practice or the establishment of the common law in this country. It was asserted that injury and damage to witnesses would be sustained, and that their examination before the grand jury would be attended with a great deal of difficulty, but yet the change was found to be followed by many advantages, some of which had been specified, and others had not been mentioned. After a great deal of perseverance the 56th Geo. III. c. 87, was passed, and the common law declared and established. He had, in the course of what he had said, scarcely adverted to the different grounds on which his mind had come to the conclusion at which he had arrived. He rather alluded to, than observed upon, those grounds, as he would have been disposed to do at length, but for the lateness of the hour, in a case so important, and in which he had the disadvantage of differing from his brethren, but he would now merely add that, in his opinion, the motion ought to be granted.

Mr. Whiteside said they had never contemplated getting the list of witnesses two months before the

trial. It would be recollected that the Attorney-General's motion was that the trial should be fixed for the 11th December, and they were now content, the trial being fixed for the 15th of January, if their lordships would give them an order to get the list of witnesses ten days before the trial—say the 5th of January.

The Attorney-General resisted this proposition, on the grounds that it would be introducing a new practice here, and as the court had refused the motion made on the part of the traverser, he would stand on that decision.

APPLICATION FOR A SPECIAL JURY.

Mr. Smyly moved on the part of the crown for an order to strike a special jury in this case—such order not to be acted upon of course until the new jury list was made out.

Application granted.

[The case was no more heard of in court until the ensuing Hilary Term.]

Cotemporaneously with a large portion of those proceedings, which almost exclusively occupied the Queen's Courts even during the month of November, there was another process of law bearing very largely upon the issue, in the case before the Recorder's Court in Green-street. This was the revision of the jury lists for the year 1844, which the law fixed to take place at the sitting of the City Sessions in November. This year the proceedings commenced upon the 14th of that month, and excited for several days more attention than even the proceedings in the Queen's Bench.

Under the provisions of the jury act, all freemen of every city in Ireland, and all householders occupying houses of the value of 20*l.* a-year and upwards, are entitled to act as jurors. The collectors of grand jury cess are bound to make returns of those parties, and the Recorder, when presiding at sessions in November, is directed to inquire into those returns, and to place upon the jurors' book the names of those who shall be found qualified, unless some reason to the contrary be shown. For many reasons the cess collectors quite neglected this duty, and the Recorder on the opening of the sessions declared that he had frequently regretted the way in which this important portion of the public business was neglected, and pronounced the then existing lists to be filled with errors and inaccuracies. He stated that the information necessary to enable him to adjudicate had never been supplied, and expressed his pleasure that on that occasion he should have that information.

Impressed as well with the importance of the matter to the proper dispensation of public justice, as with the fact which the Recorder was free to acknowledge, the solicitors for the traversers had made preparations to effect the correction and arrangement of the jury pannel. Many names had to be removed which ought not to be on the pannel, thousands had to be added which ought to have been there and were not.

Besides, the lists of special jurors which were at the same time to be arranged, were still more imperfect, to use no stronger phrase, than those of the common jury. Those special jurors' lists include the names of peers, eldest sons of baronets, and their eldest sons, of persons entitled to the rank of Esq., of wholesale traders, and of all persons in trade who are worth 5000*l.* Of this list under the old arrangement only 50 were Catholics, and of those again about 27 were totally incapacitated from serving—some of them indeed we believe having been long dead. Counsel and agents were engaged for the purpose of enlarging the lists of both classes of jurors, by the admission of persons properly qualified, and by purging the lists in existence of the names of parties disentitled or disqualified. The machinery not only of counsel and agents, but of the clerks employed also by the Conservative Registration Society of the day, were engaged to oppose the admission of those parties offered by the gentlemen engaged on behalf of the traversers. The traversers' friends and agents did the like by those whom the Conservatives offered, and the whole process assumed the shape, and was contested with the urgent pertinacity which would attend a political registration.

For a full fortnight this contest was kept up, and each day attached to the proceedings added interest. As an incident in the trial of the state traversers, it could not with justice be passed over. For the facts connected with the revision as well previous to as after it had concluded, they can best be learned from the proceedings in the Queen's Bench.

The practice, we believe, adopted in dealing with the lists was this:—The several parishes were taken separately, and the parish lists revised. From these were made one general list, a copy of which having been first duly arranged and numbered, was given to the sheriff, to be used by him for the purposes required by law. Shortly after the close of the revision the Recorder started for England, on a visit to some friends. He reached Tamworth, where he spent some time with Sir Robert Peel a few days after her Majesty had left the Premier's seat. We believe the lists, into which the parish lists had been transferred, were forwarded to the right honourable gentleman while in England, and that he arranged the order of the special jurors' lists according to what he believed a proper precedence. They were then returned. One, however, a parish list, was not copied into the general list, and this happened to contain fifteen names, of which thirteen were the names of Catholics. The omission was discovered by the agents for the traversers, and it was asserted that that list, upon search being made, had been found in an inner office of the Clerk of the Peace, under a desk, where the parish lists had been in use fully three weeks before. The names of other gentlemen, again, who ought to have been on the special pannel, and who also, it is known, were Catholics, were misplaced among the common jurors. Taken altogether twenty-seven names were thus subtracted from the special jury list, and the chances which they must give the traversers were of course lost to them.

On the evening of Friday, the 29th December, the Crown Solicitor caused to be served upon the traversers copies of a notice that the Clerk of the Crown, Mr. Walter Bourne, had appointed Wednesday, 3d January, 1844, for the "nomination" of the special jury.

Counsel had applied to the Recorder in open court on the previous day on behalf of the traversers, that they might be furnished with copies of the special jurors' lists, for the purpose of becoming more intimately acquainted with the pannel, and of thus being enabled with better effect to take the course which the law permitted in the nomination. The clerks of the peace had been previously applied to for copies, for which payment was offered, but they declined to give them.

The Recorder denied that the officers were bound to grant what had thus been asked; and for himself he said though there was nothing mandatory in the act, he would have no objection to comply with the application made to him if the crown consented. The crown would not consent, and the Recorder refused the application. Subsequently, and on the very eve of the day on which the "nomination" was to have taken place, copies of the lists were obtained from the high sheriff.

During all this vacation, agents for the traversers were in progress throughout the country, busied in

the collection of evidence, and in the arrangement of whatever they believed might be material to the defence.

DEATH OF THE REV. MR. TYRRELL.

But previous to this period an incident occurred which created at that time a very deep sensation throughout Ireland. This was the premature and all but sudden death of the Rev. Peter James Tyrrell, P.P., Lusk, one of the indicted conspirators.

The rev. gentleman had made great exertions on the night of the 7th October, for the purpose of preventing the people in his neighbourhood, who had all prepared to go there, from proceeding to Clontarf on the day appointed for the meeting, Sunday, October 8th. He never slept on that night; much rain fell, his clothes, as he rode on horseback from one portion of the country in his neighbourhood to another, became quite saturated, and the rev. gentleman took ill in consequence.

However, the excitement day after day recurring kept up his system, and, though a man of delicate constitution, he took no precaution against the consequences. But after the proceedings of the November term had concluded, the stimulus of intense anxiety which they had supplied having been removed, and having returned to the tranquillity of his home, he sunk rapidly, and on Monday, the 4th December, 1843, his spirit departed to another world. His death was produced immediately by severe erysipelas, brought on by neglected cold and continued anxiety; but the physician who attended on him at his death declared it as his opinion that it was the indictment did it all! In point of fact, though the rev. gentleman died in the full possession of his faculties, yet a few moments before he breathed his last, his mind wandered to the subject which had produced his death-sickness, and he made a feeling but firm appeal to the court, before which he must have felt persuaded he was then standing, upon the harshness of the proceedings to which he had been subjected.

It is a strange incident in the history of the Rev. Mr. Tyrrell, that previous to the French Revolution of 1830, he was a parish priest in Brittany, and that he fled from France through horror at a revolution; yet that man was persecuted to death in his own country for his supposed conspiracy to produce a revolution here! How strange are the events of man's life—how strange his fortunes! No man who knew Mr. Tyrrell or his history would believe the accusation made against him. No man can doubt that had he lived he would have been pronounced guilty of the charge.

The remains of the rev. gentleman were honoured with a public funeral by the Repealers of the metropolis and its neighbourhood, and the Repeal Association with great consideration made provision for the latter days of the father of the rev. gentleman, who survived him. Mr. Tyrrell died as poor as a Christian missionary ought.

The following account, which we extract from the *Freeman's Journal* of December 8, will be found not uninteresting:—

It is but necessary to add that in his parting moments, when mental and bodily suffering had triumphed over reason, and when the cold hand of death was pressing upon his faculties, his ravings were of the indictment and of the recent scenes in the Queen's Bench—those scenes at which he was compelled at the sacrifice of health, and ultimately of life, to be a daily spectator, and which he still fancied were present before him. The last words which fell from his lips were "the law, the law, the law."

The arrangements for the funeral were made by the committee of the Repeal Association. All the members of the committee at present in Dublin assembled on Thursday morning at half-past nine o'clock, at the Corn Exchange, where fifteen mourning coaches, with four horses each, were in waiting to convey them to the place of burial. The private carriage and four of the hon. and learned member for Kilkenny, of Alderman Gardiner, and numerous other private vehicles, were also in attendance. The committee left Dublin at ten o'clock, and reached their destination shortly before twelve o'clock.

The Chapel, which had been so often the scene of the sacred labours of the deceased, and which contained so many memorials of his piety and zeal, was selected for the final resting place of his remains. At the earnest request of the poorer parishioners, the grave was placed in the portion allotted for their use, and was dug near the centre of the side wall to the left of the front entrance.

The body, after being placed in the coffin on Wednesday morning, was laid in state in the chapel, immediately in front of the sanctuary. The chapel was crowded during the entire night with numbers of the parishioners, who ardently offered up their orisons to heaven for the eternal repose of the soul of their sainted pastor.

The coffin bore on a brass plate the following inscription:—

"THE REV. PETER JAMES TYRRELL,
Died 4th December, 1843,
Aged 51 years."

At one o'clock The Procession, which formed in front of the martyr's residence, proceeded to the chapel three deep. The *De Profundis* was then chaunted by the choir of priests, after which the funeral proceeded in the following order:—

The Reverend Mr. Doran,
(Curate to the deceased.)
A Crucifix.
Acholytes bearing tapers.

Pall Bearers.	THE COFFIN, (Borne by Six Parishioners.)	*Pall Bearers.*
J. O'Connell, Esq., M.P.		Richard Barrett, Esq.
Thomas M. Ray, Esq.		Thomas Steele, Esq.
Dr. Gray.		Charles G. Duffy, Esq.

Chief Mourner,
Mr. Tyrrell,
(Father of the martyr.)

S. R. Frazer, Esq. Thomas Carroll, Esq.
(The martyr's bail.)
Alderman Gardiner. Patrick O'Brien, Esq.
Alderman Grace. John Kelch, Esq.
(Bailmen of the other traversers.)

CHOIR OF PRIESTS,
(In sutans and surplices.)
MEMBERS OF COMMITTEE,
(Three deep, wearing white hat-bands and scarfs.)
ALDERMEN AND TOWN COUNCILLORS OF DUBLIN,
(Three deep, white hat-bands and scarfs.)
THE NEIGHBOURING GENTRY,
(Three deep, white hat-bands and scarfs.)
PARISHIONERS OF THE REVEREND MARTYR,
(Three deep, white hat-bands and scarfs.)
PEASANTRY,
(Three deep.)

The pall-bearers, who were six of the fellow "conspirators" of the reverend martyr, and the venerable and afflicted chief mourner, wore black silk scarfs and hat-bands, with white gloves and rosettes. The persons wearing white scarfs and bands numbered from 700 to 800.

The grave had hardly closed around the body of the martyr, when the anti-Irish organ of the Irish

Government manifested a vileness which, we believe and hope, was never equalled in this world. The demand was openly made that *proof* should be given of the death of the rev. gentleman—*legal* proof, and they demanded that an inquest should be held upon the body.

Now the death of the rev. gentleman was in no way unexpected; he was attended by physicians, waited on by friends, and because he was charged to have been guilty of a conspiracy against the authorities, the atrocious doctrine was contended for and published to the world that his clay should be subjected to the indignity of the imprisoned felon or the suicide.

STATE PROSECUTIONS,

JANUARY, 1844.

QUEEN'S BENCH—CROWN OFFICE,

WEDNESDAY, JANUARY 3.

On this day, shortly before 12 o'clock Mr. Brewster, Q.C., and Mr. Kemmis, Crown Solicitor, attended on the part of the crown, in Mr. Bourne's office.

Mr. Whiteside, Q.C., and Mr. Close, attended as counsel, and Messrs. Ford, Mahony, and Cantwell, as agents for the traversers, in pursuance of notice to that effect.

The ballot box having been produced by the under sheriff,

Mr. Whiteside, Q.C. on the behalf of the tra-traversers said:—Before the business of the ballot was entered upon, he had to make an application that the ballotting for the jury should not then be proceeded with, but be postponed to such future day as, under the circumstances, should be considered proper and expedient. The facts and circumstances on which this application was founded demonstrated its perfect fairness. In fact, it could not, in any point of view, be refused or resisted. The statute under which they were proceeding gave to the parties the right of making to any person, whose name should turn up in the course of the ballot, any proper objection which could be urged against any such person acting as a juror in the case. It further enabled the parties to support and prove that objection by evidence, of which evidence the clerk of the crown was the judge. But what was the fact? Up to that moment the parties had not seen the pannel, and they were refused a copy of it. How, then, could the parties come prepared with their objections when they did not know the names of the persons on the pannel? The sheriff did not get the jurors' book until the 29th of December last, yet the summonses upon which they were now about to proceed had been issued on the 28th of that month, being a day before the jurors' book was handed to the sheriff, and a number of days before the special jury pannel was even in existence. It was expected by the parties that the summonses would not have been issued until the pannel was in existence. A party is entitled to at least five days' notice of such a proceeding as the present. Indeed under the statute it is doubtful if the time be not six days, and he was instructed to state that Mr. Smyly, in applying on the part of the crown for the order to strike the jury, said nothing should be done upon it until the 6th of January.

Mr. Bourne (Clerk of the Crown)—He did not say any such thing.

Mr. Whiteside—I am instructed that he did.

Mr. Cantwell—I was present in court when Mr. Smyly said so.

Mr. Whiteside—At all events it was understood that the jury should be taken from the book of 1844. He pressed his application as being most reasonable and fair, and one which the crown could not object to.

Mr. Bourne—This seems to me to be rather an application to the discretion of the crown.

Mr. Brewster, Q.C., said that on the part of the crown he would be most anxious to accommodate the traversers, and he would be willing to adjourn if it could be done with safety, but he feared it could not. There must be some misapprehension as to the statement made by Mr. Smyly, which was merely meant to convey that the jurors would be taken from the book of 1844, and it was from the pannel made up from that book they were now about to select the jury. After further observations Mr. Brewster concluded by saying that he was not in a position to state whether the sheriff would give either of the parties a copy of the pannel, or if he could have a copy of it prepared by to-morrow. If he could he (Mr. B.) would have no objection to a postponement until that time.

Mr. Ford remarked that it was the uniform practice on such occasions to give the parties copies of the special pannel.

Mr. Brewster—As to the practice in that respect, I personally know nothing of it.

Mr. Cantwell—Yes; but I am sure Mr. Brewster took some pains to procure proper information with respect to it before he came here.

Mr. Brewster—I can assure Mr. Cantwell I did not make any inquiries about it.

Mr. Mahony—I can say that in the course of thirty-five years' practice I never knew it to be otherwise.

Mr. Brewster—Very likely; but I do not know if the sheriff will give it in this instance. According to my reading of the statute, there is nothing compulsory upon him to do so.

Mr. Close followed Mr. Whiteside, and contended that the unbroken uniformity of the practice gave to it the strength and character of law, and at considerable length enforced the necessity of acceding to the adjournment. It would be most unfair to press them on the ballot, without giving them the opportunity of seeing the pannel.

Mr. Bourne—The sheriff should have been applied to before this for the pannel.

Mr. Cantwell—I made daily applications to him for it but without success.

Mr. Bourne—That does not appear in any thing before me.

Mr. Cantwell—Neither does the contrary, and you should recollect that I have made the statement in the presence of the sheriff to whom I can appeal, feeling assured that he is a gentleman of too much honour to assign any reasons which are not well founded.

Mr. Close said that an application had been made to the Recorder for the pannel.

Mr. Bourne—But he was not the proper person.

Mr. Mahony said it was made at the suggestion of the clerk of the peace, who was ready to give the lists if the crown would consent.

Mr. Bourne stated that in the absence of any proof of an application to the sheriff he could not entertain the application.

Mr. Cantwell begged to remind Mr. Bourne that the sheriff was present.

Mr. Whiteside insisted that the clerk of the crown had abundant authority to adjourn the summons if he considered the grounds submitted sufficient for that purpose.

Mr. Bourne said he would not postpone the summons unless with the consent of the crown.

Mr. Brewster observed that he would consent if

copies of the pannel would be made out in time for to-morrow.

Mr. Whiteside having asked the high sheriff if he would give the pannel,

Mr. Latouche came forward to the table, and said his whole anxiety was to do his duty with perfect fairness to all the parties. With that feeling he had resolved on not giving a copy of the pannel to one party without the consent of the other. It was not his province to construe but to obey an act of parliament, and the statute in question did not direct him to give a copy of the pannel to any party, but he was quite willing to give a copy to the traversers if the crown consented to his doing so.

After a deal of conversational discussion, the proceedings terminated by the summons being postponed with the consent of Mr. Brewster until twelve o'clock the following day, the crown and traversers in the meantime to get copies of the pannel, for which purpose it was arranged that the sub-sheriff should read out the pannel, and that the crown solicitor and Mr. Cantwell should take copies of it as read.

The pannel contains 717 names, with residences and additions, and the copying of it in the manner described occupied from two o'clock in the day until half-past eight o'clock in the evening.

THE JURY LISTS—THE BALLOT.

THURSDAY, JANUARY 4.

The special jury pannel having been copied during the night, the parties attended again on the next day at Mr. Bourne's office, together with their counsel and agents. Mr. Kemmis, the Crown Solicitor, was attended by the government short-hand writer, and Mr. Mahony introduced a gentleman to act for the traverser, Mr. John O'Connell. Mr. Bourne at first refused to consent to this, being inclined to exclude reporters, until it was made known to him that the government had a note-taker in the office. Him he did not attempt to exclude or object to, and then he admitted one other for one traverser.

The agents for Mr. O'Connell, for Dr. Gray, and others, Messrs. Ford and Cantwell, insisted on their right to have short-hand writers present but in vain. Mr. Bourne would not admit any others.

It will be seen from the following account of what occurred in the office on that occasion, that the traversers were then for the first time made aware of the errors and omissions in the special jury pannel.

Mr. Whiteside, Q.C., then rose and said he wished to call the attention of the officer to a matter of so much importance, that he doubted not he would admit they could not proceed with the case for the present. There was a fact of which the agents for the traversers became aware for the first time yesterday evening. At an advanced hour they received a copy of the special pannel from which the jury in this case was to be struck, and on looking through it they had discovered that by some most extraordinary and unaccountable mistake the names of a large portion of the public who were entered on the jurors' book as qualified to act as special jurors had been omitted from the special list. They had in a very short time discovered the names of no less than sixty-five persons which had been adjudicated upon by the Recorder, and entered in the common jury-book as special jurors, altogether omitted from the special jury list. He (the learned counsel) then read the section of the jury act, which describes the class of persons qualified to act as special jurors, by which it appears that a merchant or trader must be possessed of 5,000*l*. He was sure that a feeling of surprise would be created when it was stated that among these sixty-five persons whose names were omitted were a great number of the most eminent, wealthy, and respectable individuals in the city, gentlemen who could not only qualify for 5,000*l*., but for four or eight times 5,000*l*. This mistake was the more remarkable, because when the list was under revision before the Recorder, the station of several of these gentlemen was particularly pointed out, and, as it was conceived, the proper measures taken to place them in their proper position upon the pannel. He had now to call upon the sheriff to produce the jurors' book and the special list. He begged him to refer to the name of Nicholas J. Caffrey, of No. 3, Usher's-quay, who was immediately declared to be a qualified person to be on the special jurors' list; and then he would ask the officer to look to the list and see the omission of his name. There were Mr. Duffy, of Bridge-street; Mr. Martin, of Bridge-street; Mr. John Elliott, of Thomas-street; Mr. Egan, of High-street, and several others, equally qualified to act as special jurors, but whose names were omitted from the pannel. Thus, by some inexcusable mistake, had the names of one-tenth of the special jurors of this city been omitted from the list on which they should have been placed. The jury-book should be now produced, and it would be seen that, according to the form in which their names were entered, they should be placed upon the special list. He did not wish to use harsh language to any person, but he could not help observing that this had occurred either from an unpardonable mistake or from some underhand collusion. He submitted, on the whole, that the officer could not proceed to strike a jury on such a pannel as had been returned by the sheriff.

Mr. Bourne—Surely I have no power to alter the list, nor can you appeal to me from the Recorder?

Mr. Whiteside—I ask for the common jurors' book as a matter of right.

Mr. Brewster—I object to your giving that book to any person.

Mr. Ford—I call upon you to look for the name of Nicholas J. Caffrey.

Mr. Bourne—Here is the book. I don't refuse to do that.

Mr. Brewster—But I object to you looking into the common jurors' book at all. The act of parliament orders you to put the numbers corresponding with the name on the pannel into a box and draw forth 48, which are to form the jury list in this case.

Mr. Ford—I object to your proceeding to do that now; and on the part of Mr. O'Connell I declare here openly that there is a gross and infamous suppression of the jurors, let the fault be where it will.

Mr. Bourne—You have counsel, and you ought to abide by their declarations.

Mr. Ford—I dismiss my counsel now, and I am going to give you a protest against your proceeding to strike a jury, and then I will retire from your presence. I tell you that 16 names, of most respectable Roman Catholics, have been suppressed in that list.

Mr. Bourne—Have I anything to do with that?

Mr. Ford—I would appeal to Mr. Latouche, if he were present, to take the ten days allowed to him by law to make out this list properly.

Mr. Brewster—I will go on. I know nothing of the fact you mention.

Mr Dickenson, the sub-sheriff, said that in the absence of the high sheriff he felt bound to state that every single person selected by the Recorder was placed upon the list, and every single one appearing on the Recorder's book marked as special jurors was on the special pannel. Every single one was compared by the high sheriff and him, name by name, and even letter by letter. If, then, there were any omissions or inaccuracies, they were not to be attributed to the sheriff or to him.

Mr. Whiteside—What Mr. Dickenson had just now stated was only what every one who knew him fully believed to be, the literal truth. He had taken

the names from the book, no doubt; but the gravamen of their complaint remained unanswered. Mr. Sylvester Young and other most respectable merchants appeared in court—their names were adjudicated upon by the Recorder—the officer was directed to take down their names. They appeared to do so, but whether from accident or design, the proceeding was most unfair; in fact it was conduct that struck at the very root of justice. If this be admitted the sheriff should take back the book and make out a proper pannel.

Mr. Brewster—I respectfully call upon you, sir, to do that which alone the law authorises you to do, to take the box and draw out the names of forty-eight persons.

Mr. Mahony—I now present a list of persons omitted from the pannel, and I tender evidence of their qualification. They are here to depose to the facts already stated. Their names are—Sylvester Young, N. T. Caffrey, Hugh Duffy, N. Martin, B. Martin, John Elliott, James Egan, and Bernard M'Garry.

Mr. Ford—Every man of them a Roman Catholic, and the first worth 20,000*l*.

After a lengthy discussion on this subject it was overruled by Mr. Bourne, Messrs. Mahony, Ford and Cantwell entering protests against the decision of the officer.

STRIKING THE JURY.

The ballot-box was then placed upon the table, and Mr. Dickenson having counted into a heap on the table 716 cards, numbered respectively from one upwards, they were placed in the box, and forty-eight were drawn forth, the numbers of which stood opposite to the names of the following gentlemen:—

1 John Behan, 4, Upper Bridge-street, merchant.
2 George W. Boileau, 87, Bride-street, druggist.
3 James Hamilton, 14, Upper Ormond-quay, wholesale merchant.
4 Laurence Gorman, 27, Kevin's-port, grocer.
5 John T. Boileau, 58, Stephen's-green, East, druggist.
6 James P. Smith, Old Kilmainham, law student.
7 James C. Papworth, 106, Marlborough-street, merchant.
8 Captain Edward Roper, 15, Eccles-street.
9 Stephen Parker, 2, St. Andrew-street, pawnbroker (dead).
10 William Ring, 47, South George's-street, hosier.
11 James C. St. George, 52, Abbey-street, wine merchant.
12 Edward Clarke, 128, Stephen's-green, Esq.
13 Benjamin Eaton, 8, Prince's-street, builder.
14 John Thwaites, 52, Upper Sackville-street, soda-water manufacturer.
15 James Hamilton, 15, Chamber-st., ironmonger.
16 John Irwin, 2, Fitzgibbon-street, Esq. D.L.
17 Francis Faulkner, 78, Grafton-street, grocer.
18 John Croker, 36, North Great George's-street, merchant.
19 James Fallon, 71, Stoneybatter, grocer.
20 Robinson Carolin, 22, D'Olier-street, builder.
21 John Fry, 30, Dame-street, trimming manufacturer.
22 William Hendrick, 24, Grenville-st., merchant.
23 William Fitzpatrick, 23, Dame-street, grocer.
24 Henry Flynn, 25, William-street, pianoforte maker.
25 Henry Thompson, 28, Eustace-street, merchant.
26 Michael Dunne, 62, Cook-street, brazier.
27 Anson Floyde, 19, Wellington-quay, china warehouseman.
28 N. Wade Monserratt, 55, Summer-hill.
29 John Dennan, 49, Abbey-street, wine-cooper.
30 John Rigby, 175, Great Brunswick-street, gunmaker.
31 Robert Hanna, 12, Henry-street, merchant.
32 John Holmes, 10, William-street, merchant.
33 George Whitaker, 48, Mount-street, Esq.
34 Robert Chamley, 28, Bachelor's-walk, merchant.
35 William Longfield, 19, Harcourt-street, Esq.
36 William Ord, 79 and 81, Cork-street, tanner.
37 William Joseph Cainan, 20, Christchurch-place, jeweller.
38 Robert S. Stubbs, 2, Dame street, linen-draper.
39 Joshua M'Cormick, 16, Usher's street, merchant.
40 William Scott, 42 and 44, Stafford-street, cabinet-maker.
41 John White, 32, Mary's-abbey, seedsman.
42 William Woodroofe, 50, Abbey-street, merchant.
43 George Mitchell, 20, Lower Sackville-street, tobacconist.
44 James Waller, 20, Suffolk-street, engraver.
45 John Carolin, 50, Lower Gardiner-street, builder.
46 George Fowler, 4, Anglesea-street, merchant.
47 Henry M'Gloin, 89, Great Britain-street, grocer.
48 Timothy Greene, 161, Capel-street, publican.

The names of several on the above list were objected to by the agents for the traversers, on the grounds of non-residence at the houses mentioned; for instance, in the case of Mr. Boileau, of Bride-street, it was urged that he actually resided out of town, but kept his warehouse and office in Dublin, and that according to the act of parliament, which required "residence" within the borough, and the decisions of the English judges on late cases, that "residence" meant a place in which a man partook of his meals and slept, he should not be retained upon the list. Evidence was tendered to Mr. Bourne to this fact with respect to several of the parties that were rejected. The objections, however, were taken down, and form matter of record for further consideration.

Mr. Brewster objected to Thomas Farrell, Esq., of Merrion-square (a Catholic), because he is a magistrate of the city of Dublin, which was allowed. The learned gentleman also objected to Mr. Fallon and Mr. Fitzpatrick as town-councillors—the corporation act precluding members of that body from acting as special jurors.

Mr. Close called upon Mr. Brewster to prove that Mr. Fitzpatrick was a member of the town council, and not being prepared with a proper affidavit, Mr. Brewster observed that he should have one presently. He then proceeded to draft an affidavit, while Mr. Bourne stopped the ballot. A considerable delay took place, during which the counsel and agent for the traversers protested against such an unprecedented proceeding; but Mr. Bourne remained immovable. When the affidavit was ready, Mr. Kemmis swore it, and Mr. Bourne took it into his hands and declared it "filed."

Mr. Whiteside objected to the affidavit being used, as the usual course of practice had not been pursued—namely, to give notice of the filing of the affidavit to be used, so as to enable him to take out a copy and answer it if necessary. The officer, however, received the affidavit, and the ballot proceeded.

When the numbers were all drawn it was arranged between the parties that they were to meet again at twelve o'clock next day, to reduce the list to twenty-four gentlemen, striking off twelve names for each party.

CROWN OFFICE—Friday, January 5.

THE STRIKE.

The solicitors for the crown and the traversers again attended this day for the purpose of reducing the list as balloted for to 24.

[It is perhaps not out of place to state here, that the *Packet* newspaper, which, upon the accession of Lord De Grey to the government of Ireland, announced itself as the government "organ," printed the names of the 48 names ballotted for on the night

before, accompanied with the notes to each name, describing the religion and political opinions of the individuals.]

On entering into the business of the day, Mr. Mahony handed in a protest against proceeding further until the jury lists should be amended by the insertion of the missing names, and for other legal reasons, and he refused to be a party to any further proceedings in that regard. Mr. Mahony said:—I am prepared, sir, with the affidavits of the individuals concerned—some of whom are ready to be produced—and who will prove that they were entered on the jury list as qualified to serve as special jurors, and have, notwithstanding, been omitted from the special pannel used on this occasion. It so happens, and very unfortunately, I think, that all those mistakes have been committed at one side; and in the present state of the country I would ask, was such a circumstance to be treated lightly? These persons so omitted, strangely enough, happen to be nearly all of the Roman Catholic persuasion, and those who are not are considered not hostile to them.

Mr. Bourne—This question has already been propounded and decided, and I have no more power over this pannel than you. I cannot entertain the subject, and I cannot see any use in stating facts here over which I have no control whatever.

Mr. Kemmis could not entertain the subject, and that there was nothing for them to do but to proceed to reduce the list.

Mr. Mahony—I have a document by me which I think of importance now. It is the *Evening Packet* of the 31st January, 1837, which contains a fact not undeserving of consideration after looking over the list of jurors struck yesterday. In this paper there is an article, stating that a "great Protestant meeting was held on the previous day," and there stand the names of some of the jurors as persons taking part in the proceedings. They are the two Mr. Boileaus, George Whitaker, and ——

Mr. Bourne—I really must again observe that I have nothing to do with this.

Mr. Mahony—I offer this in addition to my former grounds, before asking the solicitor for the crown will he consent to allow the jury list to be amended.

Mr. Kemmis—I cannot consent to anything, but my immediate duty, which is to reduce the list.

The following gentlemen were struck off by the crown, Mr. Cantwell exclaiming, as each was removed, "There goes another Catholic."

Struck by the Crown:—Timothy Greene, Michael Dunn, Cook-street; James Fallon, John Behan, J. P. Smith, John Dennan, W. J. Cainen, Laurence Gorman, William Fitzpatrick, John M'Gloin, William Hendrick, and William Ring.

Struck by the Traversers:—John Carolin, John White, Robinson Carolin, John Thwaites, John Irwin, George Whitaker, Robert Chamley, John T. Boileau, N. W. Montserratt, George W. Boileau, James Cuffe St. George, and John Foy.

This reduced the list to twenty-four names. Mr. Bourne then read the following as the jury list:—

1 Jas. Hamilton, 14, Upper Ormond-quay, wine-merchant.
2 James C. Papworth, 106, Marlborough-street, architect.
3 Captain Edward Roper, 15, Eccles-street.
4 Stephen Parker, 2, St. Andrew-street, pawnbroker.
5 Edward Clarke, 128, Stephen's-green, West, Esq.
6 Benjamin Eaton, 8, Prince's-street, builder.
7 James Hamilton, 15, Chamber-street, ironmonger.
8 Francis Faulkner, 78, Grafton-street, grocer and wine merchant.
9 J. Croker, 36, North Great George's-street, wine merchant.
10 Henry Flynn, 25, William-street, pianoforte maker.
11 Henry Thompson, 28, Eustace-street, wine merchant.
12 Anson Floyd, 19, Wellington-quay, china warehouseman.
13 John Rigby, 175, Great Brunswick-street, gunmaker.
14 Robert Hanna, 12, Henry-street, wine merchant.
15 John Holmes, 10, William-street, merchant.
16 William Longfield, 19, Harcourt-street, Esq.
17 William Ord, 79 and 81, Cork-street, tanner.
18 Robert S. Stubbs, 5, Dame-street, linen draper.
19 William Scott, 42 and 44, Stafford-street, wine merchant.
20 Joshua M'Cormack, jun., 16, Usher-street, cabinet-maker.
21 William M. Woodroofe, 50, Abbey-street, merchant.
22 George Mitchell, 20, Lower Sackville-street, tobacconist.
23 James Waller, 20, Suffolk-street, engraver.
24 George Fowler, 4, Anglesea-street, wine merchant.

Mr. Mahony—We might have reduced this list yesterday by striking off at once all the Catholics.

Mr. Bourne—Surely you might strike off whom you pleased from the other side.

AGGREGATE MEETING OF CATHOLICS.

In consequence of the striking off the list from which the special jury must be selected every Catholic which it contained, the members of the Catholic body determined upon holding an aggregate meeting, for the purpose of giving expression to the indignant feelings which such a course was calculated to arouse.

The meeting was called by requisition, and was signed by the Earl of Kenmare, the only Catholic nobleman at that time in Ireland. This noble lord had never mingled in public life subsequent to 1829, save as an opponent of the policy of Mr. O'Connell. Some few years previously he was the political opponent of that gentleman's family, and his views on public questions were believed to be more than Conservative. Yet even he was roused to action by what was universally felt to be an insult,

It is not a little remarkable, that though an endeavour was afterwards made to convince the people of this country, and the language was freely held in Parliament, that the parties were struck from the list of forty-eight, not because they were Catholics, but because they were Repealers—it is rather strange that at the time Mr. Kemmis was striking the names in Mr. Bourne's office, it never occurred to him to use this apology. On the contrary, he knew it was believed by the people present there, and that their persuasion would be presented to the country, that he was striking off Catholics, because they were Catholics. He never then alleged that such was not the fact, but that he was striking off Repealers. It is no less strange, that though the apology of repeal opinions was afterwards so much relied upon, Mr. Kemmis never, in any affidavit that he made, alleged that he did not strike off men because they were Catholics. These circumstances, therefore, are calculated to lead to the persuasion that Mr. Kemmis did intend the insult against which the Catholic body rose.

Men who had taken no part in public life for years, came forward on that occasion. The assemblage was still more respectable than numerous; the theatre in which it was held was crowded from floor to ceiling. The Right Hon. T. O'Brien, Lord Mayor of Dublin, presided at that meeting. Men who were opposed to repeal pressed into the front ranks, and those who were personally hostile to O'Connell were not laggards. From one end of Ireland to the

other, the resolution seemed adopted that it was time the Catholics made such a demonstration as should convince the government of the impolicy of again uniting them in opposition to their rulers, and prove that they could not be insulted with impunity.

This much we felt it necessary to give in this place, in reference to a proceeding which arose out of the proceedings in the case of the government against the repeal leaders. But we shall not pursue this collateral portion of the subject further, but return to the proceedings consequent upon the opening of the trial.

O'CONNELL'S PROGRESS TO THE COURTS.

But before we enter the court, we shall give, as a matter of fact not inappropriately referred to in this place, the procession of the powerful traverser, Mr. O'Connell, from his residence in Merrion-square to the Four Courts.

Many gentlemen, personal as well as political friends of Mr. O'Connell, expressed their anxiety to accompany him to the courts on the morning of the 15th of January. He felt it necessary, therefore, though not without some hesitation, to comply with their solicitations. It was arranged that the carriages of such as should be desirous to pay this respect to the first "conspirator" and first of Irishmen, should be drawn up in Merrion-square at an early hour, and that a procession should be formed, which should accompany Mr. O'Connell to the precincts of the Queen's Bench. Long before the hour at which the honourable and learned gentleman left his house, his levee had increased to such a magnitude, as that the gentlemen filled his house, and the carriages occupied more than one side of the square before it.

At half-past eight o'clock vehicles began to set down, and from that hour to a few minutes of ten, the arrivals were continuous. The company were received in the drawing-rooms, and when the "conspirator," after having attended his morning devotions, at length made his appearance, he was greeted most enthusiastically. The honourable gentleman appeared in buoyant health and spirits, and conversed for a few minutes with his friends in his usual strain of good humour.

The procession at length started, and consisted of upwards of forty private carriages containing the traversers, the members of the corporation in their robes, and several of our most respectable fellow-citizens, who took this opportunity of testifying their respect for the father of his country, and their sympathy with the cause in which he was engaged. The city marshal, Mr. Reynolds, headed the *cortegé*, mounted on a spirited charger. Next came the state carriage of the Right Hon. the Lord Mayor, containing his lordship, the Liberator, and Mr. John O'Connell, M.P. One of his lordship's private carriages followed with his son and secretary, Patrick O'Brien, Esq. barrister-at-law; and amongst the occupants of the carriages which followed were the seven other traversers, and the majority of the aldermen and town councillors, most of them wearing their robes. Among Mr. O'Connell's private friends were L. Dillon, Parliament-street; James L. O'Beirne, Esq., Gardiner-street; Richard Scott, Esq., James Haughton, Esq., P. Hayes, Esq., M. Harding (Cork), Dr. Atkinson, J. Dillon, jun., &c. At every successive point of their progress the crowd of pedestrians accumulated, and long before the foremost carriage of the procession reached the entrance of the Four Courts the entire line of Ormond-quay was all but impassible. On arriving at their destination, and when the Liberator alighted, a deafening cheer rent the air, and many a thousand voices cried "God bless him!" The honourable gentleman having made his way with difficulty through the dense multitude, entered the hall, leaning on the arm of the right honourable the Lord Mayor, who wore his undress robes, and carried his wand of office, and proceeded to the side bar in the Court of Queen's Bench. Mr. O'Connell, on taking his seat, warmly shook hands with his lordship, who then retired from the court, and was loudly cheered on returning to his carriage. The traversers, on alighting from their carriages, were each loudly cheered by the crowds as they entered the court, as were also several well-known gentlemen of the popular party, who were recognised by the people.

INTEREST EXCITED BY THE TRIAL.

From so early an hour as eight o'clock the avenues to the Queen's Bench were besieged by groups of persons anxious to obtain admission. This eagerly sought privilege was necessarily denied to the majority, and barristers, in their costume only, and a few who were fortunate enough to secure tickets from the sheriff, were permitted to enter. At nine o'clock, with the exception of the seats specially reserved for the traversers, the professional gentlemen on both sides and the jury to be empannelled, the court was occupied in every part. Several foreigners and some ladies of distinction occupied places in the gallery opposite to the bench. The muster of the "fourth estate" was immense; not less than thirty English reporters had come over from London journals, and many artists were also present for the purpose of sketching the traversers, judges, and counsel engaged in the cause, as well as the court itself, for the illustrated English newspapers.

The gallery to the left of the bench was appropriated to the purposes of the reporters, who, during the whole of the proceedings, had established a system of relief precisely similar to that which is adopted in the gallery of the houses of legislature.

Having thus despatched, as briefly as might be, the antecedents of the trial, we shall now take up the public proceedings in the court.

THE IRISH STATE TRIALS

OF 1844,

IN THE QUEEN'S BENCH.

PROSECUTION FOR MISDEMEANOUR AND CONSPIRACY.

FIRST DAY.

MONDAY NEXT AFTER HILARY TERM.

The QUEEN *v.* Daniel O'Connell, Esq. M.P., John O'Connell, Esq. M.P., Thomas Steele, Esq., John Gray, Esq. M.D., Charles Gavan Duffy, Esq., Richard Barrett, Esq., Thomas Mathew Ray, Esq., and the Rev. Thomas Tierney.

The Chief Justice, (Pennefather,) and Judges Burton, Crampton, and Perrin, took their seats on the bench at five minutes past ten o'clock.

The Attorney-General, Solicitor-General, Sergeant Warren, Messrs. Brewster, Martley, Bennett, Freeman, of the inner, and Holmes, Smyly, Baker, and Napier, of the outer bar, appeared for the crown.

The following counsel attended for the traversers: Messrs. Moore, Q.C., Sheil, Whiteside, M'Donagh, Monaghan, Fitzgibbon, Henn, Hatchell, of the inner, and Sir Colman O'Loghlen, and Messrs. O'Hagan, Close, Clements, M'Carthy, Moriarty, O'Hea, and Perrin of the outer bar.

The Crown Solicitor and his assistants, and Messrs.

Mahony, Cantwell, Gartlan, Ford and Reilly, the attorneys for the traversers, were also in attendance.

Clerk of the Crown—Crier, call Daniel O'Connell.

Crier—Daniel O'Connell.

Clerk of the Crown—John O'Connell.

Crier—John O'Connell.

Clerk of the Crown—John Gray.

Crier—John Gray.

Clerk of the Crown—Thomas Steele.

Crier—Thomas Steele.

Clerk of the Crown—Richard Barrett.

Crier—Richard Barrett.

Clerk of the Crown—Rev. Thomas Tierney.

Crier—Rev. Thomas Tierney.

Clerk of the Crown—Charles Gavan Duffy.

Crier—Charles Gavan Duffy.

Clerk of the Crown—Thomas Mathew Ray.

Crier—Thomas Mathew Ray.

Clerk of the Crown—Rev. Peter James Tyrrell.*

Mr. Cantwell—My lords, I was attorney for the Rev. Peter James Tyrrell, and I have to state to you that the reverend defendant has been summoned before the Judge of judges. His soul and body are alike beyond the power of this court.

Mr. Ford—I propose, my lords, that the witnesses' chair should be changed from its present position in the centre of the table to the end of it, as it is necessary for the counsel engaged in the cross-examination of witnesses to see their faces and hear their replies, which they cannot well do in the present position of the chair. I move, therefore, my lords, that the chair be changed.†

Chief Justice—It appears to be a fixture.

Mr. Ford—No, my lord, it is moveable.

Chief Justice—Then you need not make a motion about it.

Mr. Eaton (one of the gentlemen summoned on the jury) said—I have, my lords, to object to serve on the jury, in consequence of want of bodily strength, and because I feel myself incompetent to do my duty. I have the certificate of the medical gentleman who attended me. I fell off a scaffold in the front of a house in May last, and was confined to my bed for several weeks. I had a great struggle, indeed, between life and death, and I beg you will excuse me from serving on the jury. The certificate I hold in my hand is quite sufficient to show that I have not bodily strength to do my duty. If it were a trial that would only last for two, three, or four days, I would not object to be in it; but I have not strength to act upon this jury, the more especially as I understand the jury will not be allowed to go to their homes. I therefore submit that this certificate from my medical attendant be read.

Chief Justice—Wait until the traversers come into court.

Mr. Ford—We have no idea of the traversers losing the benefit of Mr. Eaton's attendance.

Mr. O'Connell and the other traversers entered the court about half-past ten o'clock.

Mr. Ford—Mr. O'Connell requires five minutes to robe, my lords.

The Chief Justice signified that the court granted the time required.

After some time had elapsed,

The Chief Justice said—You applied about ten minutes ago for five minutes time, and I wish to put you in mind that the public time is consuming.

Mr. Ford—We are going for Mr. O'Connell, my lord.

The officer again called the names of the other traversers, who answered to their names.

Clerk of the Crown—Crier, make proclamation for a jury. Gentlemen, answer to your names.

James Hamilton, Upper Ormond-quay; James Collins Papworth.

Mr. Papworth—My lords, my name is not James; my name is Collins Papworth.

Clerk of the Crown—Captain Edward Roper; Stephen Parker.

Mr. Parker intimated that he had a medical certificate of his inability to serve on that jury.

Clerk of the Crown—Edward Clarke, Stephen's-green; Benjamin Eaton, Prince's-street; James Hamilton, Chamber-street.

Mr. Hamilton—My name is Joseph.

Clerk of the Crown—Francis Faulkner, Grafton-street; John Croker, North Great George's-street; Henry Flynn, William-street; William Thomson, Eustace-street; A. Floyd, Wellington-quay; John Rigby, Great Brunswick-street; Robert Hanna, Henry-street; J. Holmes, William-street.

A gentleman said he attended on the part of Mr. Holmes. He tendered a certificate of indisposition on the part of that gentleman.

Clerk of the Crown—William Longfield, William Orr, Joseph M'Cormick, William Scott, Stafford-street; William Woodroffe, Abbey-street; George Mitchell, Sackville-street; P. Waller, Suffolk-street; George Fowler, Anglesea-street.

A gentleman attended on the part of Mr. Woodroffe, and said he was unable to come to court.

Attorney-General—I wish those jurors who have not attended to be called on fines; and if they have any just grounds for exemption let them state it. But I think they should answer to their names.

Chief Justice—They must be called upon fines—those gentlemen who are not present.

Dr. Patterson said he attended on the part of Mr. Mitchell, with a medical certificate of his inability to attend.

Clerk of the Crown—Call John Holmes, of William-street, on a fine of 50*l.*

Mr. Carey—I appear here for him, and I have a certificate from his medical attendant that he is unable to attend.

Clerk of the Crown—Call Robert Smyth Stubbs on a fine of 50*l.*

Clerk of the Crown—Call George Mitchell on a fine of 50*l.*

Mr. Carey produced a certificate signed by Dr. Patterson, and verified by Dr. Graves and Surgeon Adams, stating that they were in attendance on Mr. Mitchell, and that he was ill with asthma.

Chief Justice—Pass him by.

Clerk of the Crown—Call George Fowler.

Dr. Davis—I am the medical attendant of Mr. Fowler, and I have a certificate that he is unable to attend.

Clerk of the Crown—Have you an affidavit to that effect?

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* There was some reason to conclude that the same course taken by the friends of the Irish government in the press would be followed by the government officers in court on the opening of the trial, and that evidence, in legal form, of the fact of the death of the Rev. Peter James Tyrrell, would be demanded. There was, therefore, great sensation felt in court upon the mention of his name. The traversers' counsel had considered the subject, and had determined if such evidence was required of them, that they would take no steps whatever in the matter, but would leave the crown to its elected course. Even to the estreating of the recognizances of the departed, it was determined that no opposition should be offered or explanation tendered. But the crown, fortunately for its own character, did not adopt the line of proceeding which had already disgusted the community, and after the answer of Mr. Cantwell, the solicitor for Mr. Tyrrell, no question was raised as to the death of the reverend gentleman. It is but just to state, too, that so much mention of his name must, for legal purposes, have taken place in open court

† This chair was placed upon a dais fixed upon the table, immediately in front of the traversers' counsel, and so as to intercept their view of the jury to a great extent. It was, however, afterwards removed, unless while used by the witnesses during their examination.

Dr. Davis—I have not an affidavit; but I am ready to verify my statement.

Chief Justice—You must come forward to be sworn.

Dr. George Davis was sworn to the following effect:—Mr. Fowler has been for fifteen days confined to his bed, and is unable to attend the court.

Chief Justice—What are you, Mr. Davis?

Mr. Davis—I am a physician.

Chief Justice (to Mr. Davis)—What is your opinion as to the possibility of Mr. Fowler attending this trial?

Dr. Davis—I think, my lord, at present he could not attend it.

Clerk of the Crown—Call James Collins Papworth, on pain of 50*l*.

Mr. Papworth—My name is Collins Papworth.

Attorney-General—James Collins Papworth and James Hamilton stand here and say their names are Collins Papworth and Joseph Hamilton. I don't know whether any mistake has occurred in the names, but I wish that James Collins Papworth and Joseph Hamilton be called upon fines.

Judge Crampton—He does not appear.

Clerk of the Crown—Call James Hamilton, of Chamber-street.

Mr. Hamilton—Joseph Hamilton is my name.

Mr. Moore, Q.C., suggested that the crown should prove service of summonses on those persons who were summoned and did not attend.

Dr. Frederick Stack said that he attended with a certificate of the health of Mr. Holmes, of William-street.

Chief Justice—Are you a physician?

Dr. Stack—I am a physician and surgeon, and I have been in attendance on Mr. Holmes for the last five days. He is in fever.

Mr. Holmes was excused.

An affidavit was handed in to the effect, that Robert Smyth Stubbs was afflicted with asthma.

Clerk of the Crown—What rule does your lordships make in the case of Mr. Stubbs?

Chief Justice—He must be excused.

The Clerk of the Crown addressed the traversers (all of whom had now answered to their names), and said the jury were now about to be sworn to try the issue.

Mr. Moore, Q.C.—I understand that some of the jurors summoned have not attended, and no excuse has yet been made for their non-attendance. The Attorney-General has called on your lordships to inflict fines on them; and I think it would be desirable that the service of the summonses on those gentlemen should be proved in the first instance, before a fine is inflicted, or anything further said.

The Attorney-General—I have no objection. I take it for granted that the sheriff has caused proper service to be effected; and if the officer is in court it can be proved.

The Clerk of the Crown then called Daniel Ireland, who answered, and came on the table.

Daniel Ireland sworn, and examined by the Clerk of the Crown—Did you serve a summons on James Collins Papworth? I did. State how and when. On the 5th of January, at 106, Marlborough-street.

Did you know him? I served a person in the office who said his name was not James.

Mr. Moore—Look up at the gallery, and see if you recognise him there.

Witness, after looking round, pointed out the juror on whom he effected the service.

Mr. Moore—Do you know that gentleman to be James Collins Papworth? No, sir.

Mr. Moore—Did you ever see him before the service? No, sir.

Mr. Moore—Then you have no knowledge of him but from what was in the summons? No, sir.

Mr. Moore—He told you he was not James Collins Papworth? He did.

Mr. Moore—And that was the only service you made? That was all.

Clerk of the Crown—State the circumstances of your service on James Hamilton, of Chamber-street.

Witness—On the same day I served a copy on him at 15, Chamber-street.

Mr. Moore—Was it a personal service? No; I gave it to a brother of his. I did not know him; the person I served told me Mr. Hamilton's name was Joseph. The next day I went to the same place, and saw a woman there who said she was the mistress of the house, and that her husband's name was Joseph.

Mr. Moore—Is that the only service you made? Yes.

Attorney-General—Was it at the house mentioned in the summons you served the copy in both instances? It was.

The Clerk of the Crown then proceeded to swear the jury, the traversers being all in court. The Liberator sat near his counsel, and wore his wig and gown. The following traversers sat at the side bar: John O'Connell, M.P.; Thomas Steele, John Gray, Richard Barrett, T. M. Ray, Rev. Mr. Tierney, Charles Gavan Duffy.

Clerk of the Crown—The book to James Hamilton, of Ormond-quay.

THE CHALLENGE OF THE ARRAY.

Sir Colman O'Loghlen—Before the jury are sworn, I have to hand in a challenge to the array on the part of Daniel O'Connell. Counsel then read the following:—

IN THE QUEEN'S BENCH.

The Queen *a.* O'Connell, and others.

And now on this day, to wit, on the 15th day of January, in the year of our Lord 1844, comes the said Daniel O'Connell, in his proper person, and the jurors empannelled, and soforth, also come, and thereupon the said Daniel O'Connell challenges the array of the said pannel, because he says that at the special sessions heretofore holden in and for the county of the city of Dublin, to wit, on the 14th day of November last past, to wit, at Dublin, in the county of the city of Dublin aforesaid, before the Right Honourable Frederick Shaw, Recorder of the said city of Dublin, for the purpose of examining a list of jurors for the said county of the city of Dublin, for the now current year, to wit, the year 1844, pursuant to the statutable enactment in such case made and provided: the clerk of the peace in and for the county of the said city of Dublin duly laid before the said Recorder divers, to wit twenty, lists theretofore duly furnished to the said clerk of the peace by the several collectors of grand jury cess within the said city, in that behalf duly authorized to make such lists containing, or purporting to contain, a true list of every man residing within their respective districts of collection who were qualified and liable to serve as jurors, pursuant to the statutes in such case made and provided, with the christian and surname of each written at full length, and with the true place of abode, the title, quality, calling, or business, and the nature of the qualification of every such man, in their proper columns, pursuant to the statutable enactments in such case made and provided. And the said Daniel O'Connell further says that the said several lists respectively were by the said Recorder at the said special sessions duly corrected, allowed, and signed by the said Recorder, pursuant to the statutable enactments in such case made and provided; and that the several persons whose names are hereinafter mentioned were then and there adjudged by the said Recorder to have the qualification hereinafter named, and that the names of the said several persons were then and there contained in the said several

lists so corrected, allowed, and signed as aforesaid; but the said Daniel O'Connell says that the said Recorder did not, as by statutable enactments is directed, cause to be made out from said several last-mentioned lists one general list containing the names of all the persons whose qualification had been so allowed, arranged according to rank and property, nor did the said Recorder thereupon at all or at all deliver such general list containing such names to the clerk of the peace to be fairly copied by said clerk of the peace in the same order as by the said statutable enactments is directed, but on the contrary thereof neglected so to do; and the said Daniel O'Connell further says that a certain paper-writing, purporting to be a general list purporting to be made out from such several lists so corrected, allowed, and signed as aforesaid, was illegally and fraudulently, and for the purpose and with the intent to prejudice the said Daniel O'Connell in the cause made out by some person or persons unknown, and the said Daniel O'Connell says that the said list purporting to be such general list, does not contain the names of all the persons whose qualification has been allowed upon the correcting, allowing, and signing of said lists as aforesaid by the said Recorder, but omitted the names of divers, to wit sixty persons, whose qualification respectively to be on said list had been so allowed as aforesaid by said Recorder, which said several persons, whose names were so omitted, are as follows, that is to say [here follow sixty names inserted in the challenge]. And the said Daniel O'Connell further says, that the said several persons whose names were so omitted from the said fraudulent paper-writing, purporting to be the general list as aforesaid, were at the time of the return of the said collectors' lists, and at the time of the said special sessions, and still are, severally resident within the county of the said city of Dublin, and were at said several times, and now are, duly qualified to be, and should and ought to have been, placed upon the said general list; and the said Daniel O'Connell further says, that from the said fraudulent paper-writing, purporting to be such general list as aforesaid, and a certain book, purporting to be the jurors' book of the said county of the city of Dublin for the current calendar year, to wit for the year 1844, was made up and framed, and that from the said book so purporting to be the jurors' book of the said county of the city for the said current year was made up the special jurors' list for the said current year, to wit the year 1844, and that the said Daniel O'Connell saith that the said several persons, whose names were so omitted from the said fraudulent paper-writing purporting to be such general list, were also omitted from the said book, purporting to be the said jurors' book, and from said list, purporting to be the said special jurors' list; and the said Daniel O'Connell further saith that the said several persons so omitted as aforesaid had been duly adjudged and allowed by the said Recorder at the said special sessions to be persons having the qualification and qualifying, and entitling them, and each of them respectively, to be upon the jurors' book, and also to be upon the special jurors' list for the current year, to wit, the year 1844; and the said Daniel O'Connell further saith that the pannel aforesaid made and returned to try the issue in this cause between the crown and the said Daniel O'Connell is arranged and constructed from the said list, purporting to be the said special jurors' list for the year 1844, so made out, as aforesaid, to the damage and wrong of the said Daniel O'Connell. And the said Daniel O'Connell further saith that the said fraudulent omission of the said several persons named on the said paper-writing purporting to be such general list as aforesaid was without the knowledge, consent, privity, contrivance, suggestion, or sanction of the said Daniel O'Connell, or of any person or persons for him or with him, or with his privity, or in any way whatsoever by his authority, or on his behalf, or with his privity, and that the said pannel was so arranged as aforesaid from the said paper-writing, purporting to be such special jurors' list, as aforesaid, without the consent, and against the protest and will of the said Daniel O'Connell, and that the clerk of the crown for the county of the city of Dublin, and the crown solicitor, acting for the crown in this prosecution, had due notice of the premises before the said pannel was so arranged, and this the said Daniel O'Connell is ready to verify, wherefore he prays judgment, and that the said pannel may be set aside, and quashed, and soforth.

GERALD FITZGIBBON.
COLMAN O'LOGHLEN.

W. FORD, Attorney.

Counsel stated, after having concluded the reading of the document, that challenges in the same words had been proposed on behalf of the other traversers, and would be speedily handed in.

The Attorney-General—A challenge of this kind being brought forward now, and never having seen or heard anything of it before, your lordships will permit us a very short time, with a view of consulting what course we shall adopt in reference to them. In the meantime, I expect the other challenges will be prepared at once, as it is quite necessary they should be all disposed of at the same time.

The Chief Justice called for the act of parliament, which having been handed up to him, counsel on both sides retired.

The crown counsel returned into court at two minutes past one o'clock, having been absent for an hour and three quarters.

The Attorney-General asked if the challenges were handed in.

Mr. Mahony said they would be ready in a very few minutes.

Mr. Moore—We wish to have your lordships' opinion as to whether the other traversers are bound to put in challenges at present. The charges against them are separate and distinct; they appear by separate counsel and separate agents, and one of them has put in a challenge to the array by Sir Colman O'Loghlen, as his counsel. It appears to us that it should be disposed of, and then leave the other traversers to adopt what course they please when that challenge is dealt with.

Chief Justice—You appear to be shifting your ground considerably, Mr. Moore, for when the matter was first mentioned the other traversers declared they only wanted time to prepare similar challenges to that put in by Sir Colman O'Loghlen.

Mr. Moore—If that was done I think I should not press my application further.

Chief Justice—It was done in open court.

Attorney-General—I think it proper that the death of one of the traversers, the Rev. Mr. Tyrrell, who was included in the indictment, should appear upon the record; and it would be a proper course to enter a suggestion to that effect. Let the officer now take it down in court.

Chief Justice—It has been already stated by the solicitor who acted for the late Rev. Mr. Tyrrell.

The memorandum was accordingly made, after which another delay of three quarters of an hour took place.

At a quarter to two o'clock all the challenges were handed in to the officer.

The Attorney-General having asked for one of the last challenges which were handed in, and compared it with the first one, said—My lords, taking it for granted that the other challenges are similar to this, we take demurrer on the part of the crown to these several challenges; and I think it would be

here convenient to call your lordships' attention to the statute. My lords, the 24th section of the jury act, the 3d and 4th Wm. IV., cap. 91, provides that the sheriff of every city shall, within ten days from the delivery of the jury lists, take from them the names of all such persons, as sons of peers and so-forth, who are qualified as special jurors, and cause the same to be fairly copied in alphabetical order in a separate list to be attached to the jurors' book, which said list shall be and constitute the special jurors' book, and the 25th section provides for the mode in which a special jury shall be struck from that list. Now, my lord, in the first place, looking to those challenges it must be taken, for the contrary is not averred, that the special jury struck in this case was taken from the special jury list and properly made out by the sheriff from the document given him, purporting to be the special jury book for 1844, and as far as the high sheriff is concerned, there is nothing to show that he has not regularly and correctly performed his duties. So far everything has been done by him in compliance with the law in that particular. We then go back to the 9th section for the purpose of looking to the manner in which the jury book ought to be made out, from which the sheriff is to take the special jury list The effect of the challenge, or the designed effect was, to endeavour to establish by the averments which it contained, this doctrine, that the jury book for 1844 was absolutely null and void. The earlier portion of the act having explicitly provided for the mode and manner in which the collectors' lists were to be corrected by the justices, or, in their absence, by the Recorder, the 9th section went on to provide that, when such lists had been corrected, allowed, and signed by the justices, a general list was to be made therefrom, containing the names of all persons, whose qualifications had been adjudicated upon, arrayed in order, according to their respective rank and property; and the clerk of the peace was bound to make out from that general list a jury-book at the expense of the county, which he was to hand over to the high sheriff; and furthermore such jury-book was to come into use upon the 1st day of January, and from it were to be taken all special juries that might be required for the purposes of the administration of justice during the period of one year next ensuing. From a perusal of the act it was easy to understand what were the duties of the Recorder, clerk of the peace, and high sheriff respectively, in connexion with the jury lists. The Recorder having corrected the constables' or parish lists, was bound to cause to be made out therefrom a general list, containing the names of all persons whose qualifications had been allowed, arrayed according to rank and property; and this general list he was then bound to hand over to the clerk of the peace. This was the duty of the Recorder, and here his duty ended. He gave the general list he had caused to be made out from the parish lists to the clerk of the peace, whose duty it was to make out from it a jury-book; and then this said jury-book, when duly and properly made out, according to the provisions of the act, he was obliged to hand over to the high sheriff. When he read the averments of this challenge, which had been most studiously framed, he would call the attention of the court to the character and nature of the allegations which it contained, and would show their lordships that certain facts which it did not attempt to negative were, according to the principle of law, to be regarded as conceded. It was a settled maxim of law that public officers were *prima facie* presumed to have properly discharged the duty devolving upon them, and in the absence of a distinct averment in the present challenge of non-performance by the public officer of the specific duties assigned to him, it was a clear inference of law, of which he had a right to avail himself, that all these duties had been strictly and regularly performed. The case of Williams *v.* the East India Company was a case completely in point, and showed that the rule of law was precisely as he (the Attorney-General) stated it. Keeping this legal principle in view, and assuming the right of inference granted by that principle, he would now proceed to show what the statements in the challenge were, and the court would find that the performance of the following state of facts by the respective public officers was not negatived by the challenge, and was, therefore, in point of law presumed to have taken place. In requesting of the court to apply the legal principle for which he was contending to the case now under the consideration of their lordships, he was only contending for that which would be admitted even by his adversaries to be a well-known and universally acknowledged maxim of law in those countries. And now let them come to a dispassionate view of the case. There was no averment in the present challenge to the effect that the Recorder had neglected to deliver a general list to the clerk of the peace. The learned counsel who brought forward this challenge was endeavouring to establish a negative pregnant, but it would be seen that the negative pregnant for which he was contending led to this affirmative, and this only, that a general list had been furnished and duly delivered. His proposition, not attempted to be negatived, and which he (the Attorney-General) was entitled to assume as conceded, was, that a general list of some description had been handed by the Recorder to the clerk of the peace. There was no statement in the challenge to the effect that the jury book had not been made out from that general list, nor was there an averment in the challenge that the clerk of the peace did not hand over that jury book to the high sheriff. It was clear that the high sheriff took his oath from the special jury list for 1844, which was made up from the jury book for that year, and it was conceded by not being negatived that that jury book of 1844 was delivered by the proper office; and yet, though it was not contradicted that such jury book was made up by the clerk of the peace from a general list delivered to him by the Recorder, the court was called upon to allow this challenge, and to admit the illegality of the pannel, because there was not to be found upon the lists the names of a certain person or persons who they alleged were entitled to be there. This state of facts, by not being denied, was in point of law admitted, viz., that the Recorder had corrected and allowed the parish lists, and that he caused a general list to be made out therefrom, containing the names; and because some persons employd by the Recorder might have left out some name of one, or it might be, perhaps, of fifty-nine persons therefrom, the allegation of the challenge was, that this having occurred, and the Recorder being ignorant thereof (for no fraud was attributed to him), the list was not such an one as was contemplated by the act, inasmuch as it did not contain the names of all the persons whose qualification had been admitted, arranged according to their rank and property. It was on these grounds that they wished to make all proceedings illegal that had been taken not only in this case but in all others similarly circumstanced with respect to the pannel, thereby seeking to render the jury book for 1844 absolutely void and nugatory. In this argumentative challenge, or rather appeal, it was complained that the Recorder did not cause to be made out one general list containing the names of ALL persons allowed, ranged according to their rank and property, and that he did not deliver any such list so arranged to the clerk of the peace to copy. This was their argument, but it was one which might with safety be made by them, if there had been the omission ac-

cidentally or otherwise of a solitary name, or if a peer's son had been transposed accidentally for a baronet. They complained that it was not a list of *all* persons who had been admitted, and that they had not been arranged with a jealous regard to the order of precedence, according to rank and property; and this was the kind of ingenious special pleading on which they relied, when they called upon their lordships to infer that no general list of qualified persons had been made out. And it did not even negative that a list purporting to be a general one, was not delivered to the clerk of the peace, or caused to be made out by the Recorder. So much they would see by that portion of the challenge. Then, it being consistent with that portion of the challenge, and it being the duty of the officer of the Recorder to make out a general list, and for the Recorder to give a general list to the clerk of the peace, the court was not to presume anything but what was directly offered, that was, the non-delivery by the Recorder to the clerk of the peace of a general list, containing every single name on the parish list, and not only every name, but those according to rank and property. The challenge set forth that such, contrary to law, was omitted to be done, and the said Daniel O'Connell further saith, that a certain paper-writing, purporting to be a general list, purporting to be made out by such several parish lists, was illegally and fradulently made out by some persons unknown, and he saith that said paper-writing did not contain all the persons whose qualifications had been allowed in the correcting, allowing, and signing of said list, but omitted the names of divers persons to the number of fifty-nine, who are there respectively mentioned, and then it went on to state that from the same fraudulent paper-writing purporting to be such general list, a certain book purporting to be the jurors' book for the county of the city of Dublin for the current year was made up and framed. It did not, however, state what became of that book—it did not negative that it was delivered by the clerk of the peace to the high sheriff, and, such not being negatived, the court must presume that it had been duly delivered, and the special jurors' list was made up from that book. As he had already stated, there was no pretence now, that what purported to be a juror's book for 1844, which was now amongst the records of that court, and of all the courts, not simply in the case of the Queen against O'Connell and others, but in every case to be tried in every court, had been handed to the high sheriff by the officer properly authorised by law to hand it, namely, the clerk of the peace; and it having been so handed, the special list had been regularly made out from that jurors' book, and the court were then called upon to interfere, without the slightest shadow of imputation or allegation against the clerks of the peace, the officers authorized, and upon whom the duty was imposed by law, of handing the jurors' book to the high sheriff, without the slightest imputation that the high sheriff had not done his duty, without the slightest allegation that a general list was not handed by the Recorder to the clerk of the peace. Under those circumstances the court, forsooth, were to nullify that record—that they were to declare the proceedings null and void *in toto*, because some unknown person, whom nobody could suggest the name of, may have, or did, as the challenge alleged, fraudulently, perhaps, erase a name, or omit a name on the list. Such being the argument of the other side, if the court were to assent, every jury to be struck in Dublin or elsewhere in the year 1844 should be struck from the jurors' book for the year 1843—that was, no doubt, rather a singular argument to fall from the other side after the imputation sought to be cast upon that very book. Their argument was this, that there should be no trial at all unless a trial by the jury book for 1843. There was no mode suggested by which the book for the year 1844 was to be set right, and the crown having acquiesced in the postponement of that trial with a view of having a special jury struck from a greater number, they were encountered now by a statement of some unknown persons having done some act, which (although not set out in Mr. Daniel O'Connell's challenge) the other traversers declared had been done to prejudice him. Now, he (the Attorney-General) would beg leave, without adverting to any other statement than this to say, that it was pretty clear that an alteration of that kind had the effect, whether intended or not, to prejudice the crown, by delaying the trial, postponing the trial, and by endeavouring even to the last moment to carry out that system of delay of which so many examples had been given. Now, what he had to submit to their lordships was this—there was no averment, as he had already stated, that the Recorder did not make out a general list. On the contrary, it was to be inferred from the challenge that a general list had been made out. There was no averment that the Recorder did not hand a general list to the clerk of the peace, and there being no such averment the law presumed that he did. There was no averment that the clerk of the peace did not make out the juror's book from a general list handed to him by the Recorder. There was no averment that the juror's book was not handed by the clerk of the peace to the high sheriff. It was assumed that such jurors' book was handed to the high sheriff. There was no averment that the high sheriff did not make out his special jurors' list of 717 names from that book so handed to him by the public officer. There was no averment that the jury was not properly struck, and ballotted for from that special jurors' book. There was no allegation of fraud, contrivance, or design, on the part of the crown, or any body connected with them. There was no allegation of fraud on the part of the high sheriff, or any body connected with, or employed by him, or on the part of the clerk of the peace. And, with this plain state of things before them, the court were to set aside the whole of these proceedings—because some unknown person may, for some object of his own, have gained access to the general list, and may have designedly omitted some of the names particularly specified on the parish lists. Now he (the Attorney-General) submitted that the jurors' book was the final record—it was the record under which the high sheriff was to act. It was perfectly clear, and it was decided in the case of the King *v.* Conry, reported in Crawford and Dix, a circuit case, that an irregularity in those previous proceedings did not affect the book in any way, so as to justify a challenge. That was decided in one or two other cases. And then they sought to affect that book, not for a fraud on the part of the clerk of the peace—not that he did not make it out from a general list furnished to him by the Recorder—nor that the Recorder did not furnish a general list to the clerk of the peace, but that at some unknown stage of the proceedings names were omitted by nobody, to whom a great many things were attributed (laughter), for the purpose of prejudicing Mr. O'Connell and the other traversers. I may be permitted to suggest, in reference to acts done by this unknown person, it is said to have arisen to the prejudice of Mr. O'Connell. If any party is to be prejudiced by the proceedings, we may consider it is the crown, who have brought those proceedings to the eve of trial; it would be the crown who would be prejudiced, and I am at liberty to refer distinctly to the fact, that no allegation to the contrary appears, and to the fact that no averment is mentioned referring to the name of any individual. It might be caused by some private person who

made out an erroneous copy of the parish lists which was handed to the public officer, in reference to ulterior proceedings of inquiry into the jury lists, and got a special jury summoned for this issue, in order to found a challenge to the entire pannel, by attributing indifferency to the sheriff. The jury were drawn according to the law of the land, and, under the circumstances, your lordships are not called on to decide they are an improper jury, drawn from a special pannel improperly framed, because it is alleged there has been some fraud committed, no one knows by whom. It would destroy all proceedings in a court of justice if it was in the power of any party to nullify the proceedings by an irregularity of this kind. This might be a fair course if we were proceeding to consider who has caused this irregularity, and were taking means to bring him to justice, and it would be desirable to have him brought to justice, and I am sure the crown is just as much interested as any. Under all the circumstances, I trust, I may observe it is exactly the case of the King *v.* Edmonds, 4 Barnwell and Alderson in England. The court decided in that case that challenge for indifferency of the master of the crown office should not lie to the array. I trust the court will allow the demurrer to this challenge, and hold that the trial must proceed.

Sir Colman O'Loghlen—My lords, I appear on behalf of the traversers, and I have to express my regret at the delay which has occurred. I assure your lordships it was entirely involuntary on our parts, and by way of atonement I shall occupy very few moments. My lords, I shall just remark in reply to an observation made by the learned Attorney-General respecting our right to challenge the array, I did not understand the learned Attorney-General as having raised the point. If he intends to rely on it I have a great number of authorities on the point.

Attorney-General—I do.

Sir Colman O'Loghlen—I refer, then, to some of the authorities. The learned counsel then called the attention of the court to Dickinson, Quarter Sessions by Talford, 401; Hayes, 443; Bacon's Abridgement; Tit. Juries D. In addition to these several text books I beg to refer your lordships to the King *v.* Burridge, 3; Wilson's Reports, 439; King *v.* Johnson, 2; Strange, 1,000; King *v.* Nolan, 1; Hudson and Brooke, 164. This case was argued at the bar by my Lord Chief Justice and Justice Perrin, and in hearing that case, Baron Pennefather stated the King *v.* Edmonds could not be controverted; but that the challenge, because of indifferency of the master of the crown office, and the sheriff, were not on the same grounds. Does he not receive the grand pannel, and has he not the names of the jury? Having referred the court to these cases, I come next to the form and effect of the present challenge. The learned Attorney-General stated several points relating to the form. I call attention, first, to the form of the challenge. He contends we omitted to state there was no general list made out by the clerk of the peace—this fact is most distinctly stated. The challenge states that after the lists were signed by the Recorder the said Recorder did not, as by the statute required, make out a general list containing *all* names (and the Attorney-General laid stress on *all* ranged according to their rank), nor did the Recorder give such list to the clerk of the peace to be copied according to said statuary enactments, but, on the contrary, omitted so to do. The list is to be made out of those names who have been allowed, and this is the list he is imperatively required by the statute to deliver. Shall deliver what, my lord? The same list containing the names of all persons. It is the averment that they did not deliver such list to the clerk of the peace. We then go upon a further statement. Daniel O'Connell further was after averring that a certain heap of writing, purporting to be the very list, was willfully and fraudulently made out by some person or persons unknown. This the Attorney-General does not dare to deny. I will show you that the pannel, the jury book, and the special pannel, were made out from that list so fraudulently concocted. The next averment is, that the said Daniel O'Connell avers——

Chief Justice—What does he aver was done with the list?

Sir C. O'Loghlen—My lord, that said paper writing did not contain the names they got, nor set out the names and qualifications given—that several persons were omitted who were returned—that the said list was not a fair registry of the city of Dublin, and did not contain the names of all persons duly qualified.

Chief Justice—Is there no abstract of this?

Sir Colman O'Loghlen—No, my lord, we averred that from the said fraudulently prepared writing purporting to be made from the list aforesaid that the pannel of 1844 was made up; that it was made up from a fraudulent list; that Daniel O'Connell says that the several persons whose names were omitted were also omitted from the jury book. He said also that the aforesaid several persons had been duly qualified to be upon the jurors' book, and he further says that the pannel is concocted from the said list so made out to the manifest injury of Daniel O'Connell. He avers that no general list, required by the statute, was made out by the Recorder. It was not given to the clerk of the peace, but it was made out by some persons whom we do not know. We have it averred that this jury book was made out from a fraudulent list, and that the pannel was made out from that. Before I pass this form point I have to observe that the learned Attorney-General made no argument against it. It was further admitted that the fraudulent list was concocted, that the special pannel was made from it, as also the jury list. There could be no doubt——

Chief Justice—I do not doubt but you are pushing the matter further than your pleading.

Sir Colman O'Loghlen—In our pleadings, my lord, we aver that it was not made out. The principle meant to be drawn from it is, that all the other lists were made out from the fraudulent one. If the sheriff omitted the names that ought to be upon it, that would be sufficient grounds for a challenge. (The learned counsel here alluded to a case tried at the Maryborough special commission before the Chief Justice, and ably and eloquently argued from it that the present proceedings were to Mr. O'Connell's manifest wrong.) From this it was evident that, if they brought home a fraud to the sheriff, it would be sufficient ground for a challenge, but it was already allowed that the fraud arose before the list came to the sheriff; but was there any manifest difference in what manner it was done so far as the traversers were concerned? The Attorney-General had admitted that a fraud had been committed, and that we had our remedy—that it was in our power to sue for redress. If life and death were pending on the case, where would the remedy be, or what would be its use? The Attorney-General has referred to two cases reported in Crawford and Dix's circuit cases. The first case was the Queen *v.* Conroy, in which Mr. Justice Torrens decided that certain provisions of the act were merely directory, and the non-compliance with them did not vitiate the pannel. But there is no analogy whatsoever between that case and the present, for the challenge to the array in that case did not impute fraud, and we have clearly placed that allegation upon the face of our challenge. In the other case reported in the same book, Chief Justice Doherty overruled the challenge, because, as he said, it seemed to be taken *pro forma*, and as a writ of error lay, the question might be argued before the twelve judges. Both of

these were blind cases, and should not be taken as precedences in the present argument.

Chief Justice—Why do you call them blind cases—was there no conviction?

Sir C. O'Loghlen—They should be considered so because in neither of them was there any allegation of fraud; and here it is alleged as a principal cause for the challenge. If the court should decide that the challenge did not lie in the present case, what remedy had the traversers, although the error complained of was admitted by the Attorney-General? The attorney has said, that if the challenge be admitted, a formidable and inconvenient precedent will be established in the administration of justice. This is not a fair conclusion; the utmost that can ensue in the present case is a little delay; and if the court decides against the traversers they decide this principle, that if the conduct of the sheriff happens to be unimpeachable—no matter how culpable or fraudulent the conduct of other officials in arranging the pannel may be—the pannel will not be vitiated. It is suggested that an action may be taken against them. What benefit would that be to the traversers? It is said that there is no precedent for such a challenge being allowed. Why such a case never occurred before, and the novelty of the application should be no reason for its refusal.

Mr. Justice Burton—How is the fraud alleged?

Sir Colman O'Loghlen—Mr. O'Connell in his challenge alleges that a paper containing the names of several persons qualified to act as special jurors was illegally suppressed from the list by some person or persons, and concludes by asserting "to the manifest injury of him the said Daniel O'Connell, on the present trial." The other challengers allege the suppression of the names "illegally and fraudulently," and for the purpose of injuring——

Chief Justice—Have they alleged that it was done fraudulently, and for the purpose of injuring the traversers at the present trial?

Sir Colman O'Loghlen—It is alleged that "the said paper list was illegally made out for the purpose of injuring the said John Gray in this cause." The fact comes to this, that no list had been made, in pursuance of the provisions of the act of parliament. It has not been so made out by the Recorder—a fraudulent list has been made out by some persons unknown, and the traversers were quite willing to enable the court to discover who those persons were; but the Attorney-General refused to go to issue upon that past, and adopted a demurrer. The solicitors for the traversers had given full notice of his objections to Mr. Bourne, the clerk of the crown. Mr. Kemmis also had notice; yet, notwithstanding, they struck the jury list from that imperfect pannel. The question is, does fraudulent proceeding by any party vitiate the pannel? Clearly; it would be vitiated by the impropriety of the sheriff, and why not then by the improper conduct of any other party?

Mr. Justice Perrin—There appears to be a clerical mistake in one of the challenges—the word objected is used for the word omitted.

Sir Colman O'Loghlen—We allege that the jury list has been packed. It is no answer to that to say the correction of it would delay the trial. How can the Attorney-General expect that the result of a trial under such circumstances could satisfy the country? It cannot be his private wish to proceed with the facts in such a position, and with this gross error admitted by him.

Attorney-General—I have admitted no such thing.

Sir Colman O'Loghlen—When counsel for the crown demurred instead of joining issue, they admitted the allegations of the challenge as to the errors in the pannel.

Mr. Fitzgibbon suggested that the clerical errors which were in the challenge be now amended from the copy. He then proceeded to say that the court had decided that time should not be occupied by hearing counsel for each of the traversers, and if anything was particularly plain in the jury law, it was evident from the anxiety the legislature evinced in framing the act, that special jurors should be fairly and properly constituted, so as to satisfy every individual in the country that justice would be fairly administered. The first thing the act required was, for the collectors to furnish proper lists to the clerk of the peace, and these lists were to be left for three weeks open for public inspection, that names improperly placed on them should be struck out, and those omitted supplied. These lists should contain the names of all persons qualified, as the act directed, and that act contemplated that every man, woman, and child in the community was interested in their proper revision. We have had here instances of two persons who have been taken off this small pannel for an error in their names, of which we are not accused, not because they are not the individuals summoned, but because their names are wrongly stated in the list, which shows that every person ought to have a correct copy of the list. The Attorney-General has said that a mistake in this general list, if it was not well and properly constituted, which had not been done in this case, which has not been caused by the crown, should not affect the proceedings. Does he mean that this averment is any answer to the challenge? Would it be an answer if it was put on parchment? Even so, I do not think it would. It has been said that there is some fraud on the part of whoever omitted those names, but the traversers do not shrink from endeavouring to find out who these parties are. If he (the Attorney-General) chose to do so, he had an opportunity of trying to discover who these parties were, and whether there was any fraud committed or not, and it is no answer to our challenge that the fraud has not been committed by the sheriff or the crown. All persons accused of crime are entitled to be tried by a jury legally constituted *inomnibus*—it is no answer to give a person about to be tried to say, "it has been illegally done, no doubt, but your accusers are no parties to it." Is that any answer to any man of common sense? It is, in my mind, no answer to him, nor are the crown to take advantage of a fraud which has been committed. Some individual, I care not who, has been dexterous enough to take away a portion of the list revised by the Recorder—it may be his footman—and, in consequence, 59 names have been omitted, near a tithe of the whole pannel. I'll assume that it has been done by the Recorder's footman. Now, what the Attorney-General says is, if so, he ought to be punished; but what does the law say? it says to the Recorder—you shall cause a correct general list to be made out and delivered; it does not say by what means, but you (the Recorder) shall do it. The question is, did he cause that to be done? It is plain he did not; some person unknown to the crown, I won't say unknown to the Recorder, has suppressed a number of those names. He (the Recorder) should not have left those lists accessible to any one who would not take as much care of them as he would himself, but he has left them to the mercy of a person who has decimated them, by taking away one tithe of them. He could conceive many excuses he could give for not doing it. He might say that he was in a hurry, that he was going to London, that he could not stay here until he did his duty, but at all events he did not do his duty—at all events, the list he caused to be made out was not the list the law said he ought to cause to be made out. Now, he was in a hurry, or he was blind, he was careless, or he was not. Suppose they had him there on the table, or at the bar of that court under prosecution by the Attorney-General for this act of his leaving out a tithe of the names, might he not say a portion of those names were in cramp writing, and when he

came to the names that he could not read, that he skipped them over, and was in too great a hurry to go look for his glasses (laughter)—that he was not guilty of fraud, but of negligence; but could any negligence be more gross than that on the part of the Recorder, when he got back that list from his servant not to compare it with the list he had revised, and satisfy himself that he clearly, fairly, and honestly had done his duty? The traversers attended at the revision, which was a matter of publicity, and which was a matter to be done only in open court, where they had liberty to attend, in pursuance of the privilege which the law gave them. As soon as the list was placed under their eyes, and as soon as they had an opportunity of knowing whether it was properly or improperly constructed, they forthwith proceeded to compare it with the notes they had previously taken, and the very moment they discovered that the list had been fraudulently tampered with, or accidentally, at all events, wrongly framed, that very hour they, *in limine*, gave a distinct and express notice, as averred in the challenge, and not denied, to those acting for the crown, that the list was fraudulently and illegally constructed, and objecting to any further proceedings, and to having a jury taken from that list until it had been completed. Let me suppose that a crown prosecutor or prosecutors are desirous for nothing more in the world than plain and simple justice, and abhorring nothing more than an unjust conviction of any innocent man—abhorring nothing more especially than the hunting into a prison a fellow-subject, should they not be desirous, at any stage or step of those proceedings, particularly if there be fraud alleged, and should they not gladly embrace the opportunity given them of immediately correcting that fraudulent list? It was not too late to do it. It was a thing very easy of accomplishment—it was only to discover who, or by whom, or by what accident—if there was fraud committed, and that those names were omitted from that list. What had they to do but to go back to the Recorder? The materials were there to correct the list. He had the original lists, or ought to have them, and nothing could be easier than to add the names that were omitted. What could be fairer than that it should be required of the crown to add them? The traversers were willing to consent that they should be added in any legal way, and why should not the crown be also willing that this fraud should be effectually and properly corrected, and at all events that those traversers should not have cause to complain of this list? They had only then to adjourn till the next day, and inquire if those fifty-nine persons that were omitted were qualified persons, and if he adjudged them to be qualified persons they could put fifty-nine cards into the box and let the jury again be drawn. That was substantially proposed by the traversers, but not agreed to by the crown, and this decimated list was acted upon and the jury taken from it, thus excluding the traversers from the chance of having one in the jury out of the fifty-nine who might be a most honest and efficient juryman. Did the traversers stop there? No, again they made a motion to that court, submitting to the discretionary and equitable jurisdiction of the court the whole case, and that with notice to the crown. They met the crown here again; they called on this court to have this fraud or accident, whichever it was, rectified; the crown came there to resist them, and called upon the court not to allow them to meddle with the fraudulent list, and the court agreed with them; and what remedy had the traversers, suppose the list was so cut up as to reduce it to twelve of the greatest partisans in the community? And suppose the sheriff thought that was a jury list from which the special jury should be taken, was it to be said that a man was first to be tried, next hanged, and thirdly, that he had his remedy against the fraudulent persons who did that? Did not every argument against that challenge go that full length—was not that the whole scope of the argument at the other side—that they might have a remedy against those unknown persons who committed the fraud, and they could have none against the Recorder, who was guilty of nothing but negligence? Was the law so monstrously unjust or revolting to every principle of humanity as to say a fraud of this description committed in some dark hole by some unknown person, or by any other individual in the community who had the duty upon him to cause the proper list to be constructed—was it, he repeated, for a moment to be alleged in a court of justice that a man shall be convicted by a jury taken from that pannel so concocted, though he may be innocent in the eyes of every man in the community, except the twelve partizans on his trial—that on that conviction he might undergo sentence of death, and that the law has no remedy for correcting that until a legal murder is committed. They were told here that the officer connected with the completion of the list had anxiously done his duty. The Attorney-General thought it necessary to propound to the court, as a legal and necessary presumption, that every man connected with, and whose duty it was to have the list properly constructed, did anxiously do his duty in that respect. Did it show anxiety on the part of the Recorder to take, upon the word of his understrapper, as a complete list that which was not a complete list? When he had the means in his handwriting of correcting it, where was his anxiety when he did not apply a little of it to that case and correct it? He admitted it was always presumed that a public officer did his duty until the contrary appeared. Did the contrary appear here? No; the Recorder had not, as he should have done, seen that the list was correct when he got it from his officer, and what *prima facie* case had they to presume that he had done his duty after giving the public those outrageous proofs that he had not? It was one of the first propositions in law settled in his own mind, and, as he thought, never to be doubted, that fraud vitiated everything: that fraud would vitiate one of the judgments of their lordships' court: that fraud would vitiate a judgment of the House of Lords: that fraud committed not even by the parties to a most solemn deed, but by a third party, would vitiate that deed. Was there, in the whole course of the law, a single proceeding in which, if fraud existed, it ought to be so narrowly inquired after by the court, or so completely, so radically corrected, as in regard to the existence of fraud in constituting the tribunal to act under that court, and pronounce upon the innocence or guilt of an individual whose innocence, in the loudest language of the law, was to be presumed until he was legally convicted, and a verdict of guilty pronounced upon him by such of his fellow-citizens as by the law were entitled to pronounce that verdict? Was there a single case that could be suggested by the human imagination in which any tribunal professing to be just ought more narrowly look after a fraud or more powerfully raise the arm of the law to cut down that fraud, and deal with it in the most complete manner, and if within the reach of the court punish the man who committed it, than in the present, and prevent the individual against whom that fraud was perpetrated from suffering by it? Was it not in such a case in which a court of justice ought to struggle through all technicalities, and discredit the authority of this man or that man, to say we will administer even justice, and not allow any man to be put on his trial before a tribunal not legally constituted? Why, you may as well call in a jury of Frenchmen to try him as one fraudulently constructed. Suppose that

some unknown individual, or this *employé* of the Recorder, whose name has not been even given to the Attorney-General, takes away from the list every qualified name that should appear on it, and inserts in their place the commonest mendicants in the community, is it to be argued that the individual charged shall be compelled to take his trial before them, instead of the legal and qualified jurors whom he is entitled to have empannelled? They had heard a great deal here about the evil of delaying justice. Let justice be delayed until this fraud was rectified. Was it a desirable thing to delay justice? No; but it was most desirable to delay injustice. It would be most desirable to put off injustice until the day of that final judgment when no injustice can take place. The time for doing so was very short. The Attorney-General said that our allegation is, that this is a void list of jurors. That is not our allegation; nor do we allege that the list of 1844, being imperfect, the officer should have gone back to the list of 1843. He did not agree in that argument at all. Their argument did not allege that the list of 1844 was a mere nullity; but what they said was, that it contained defects which it was in the power of the crown to correct; and those defects existing, it was clearly the right of the subject to demand their correction, and of the crown to aid in obtaining it; and they would thank the Attorney-General a great deal more for doing so than for his proffered assistance in prosecuting the individual, whoever he may be, that was yet in the colehole in these transactions. The allegation was, that the list professing to be a correct one was constructed, which was a defective one, and that it was to defective by the design or fraud of some one. He (Mr. Fitzgibbon) did not know what was meant by saying that the crown did not admit this fraud. He thought it was another proposition of law that everything legally put in was admitted in fact, if demurred to, and if the challenge was not legally put in it should not have been received at all. If the objection was illegal it was their duty to meet it by a special demurrer. The Attorney-General said there was no averment in the challenge that the Recorder did not hand a list to the clerk of the peace. To be sure there was not. Did he suppose they would be insane enough to aver that; but they allege that what he did hand him was an illegal list. The list, if not framed by the Recorder, was framed by some one by whom it should not be framed. Then he had the Attorney-General in this plain dilemma, that either the Recorder caused this fraudulent list to be made out, or that it was not a list made out by him at all. If it was not a list made out by him, what right had the Attorney-General to take a jury from it? The duty of the Recorder was to make out a perfect list, and they alleged that he did not do that duty, and plainly and distinctly they alleged that the crown had taken a jury from a list either made out imperfectly by the Recorder, or made out by some unknown person, and a fraudulent list, and that they did so, being duly apprised that it was not a list the Recorder ought to have signed, and that with notice given them to that effect they forced it upon the traversers. Let the court look to the 35th section of the act of parliament, and they would see whether to the end it did not provide the means of rectifying those lists when they were defective. The legislature contemplated the probability as well as the possibility of collectors fraudulently leaving out of the lists, through the influence of individuals, names of those liable to serve, and provided against that by a penal remedy. The act of parliament was not so absurd as to rest satisfied, after being provided for the conviction of those who were guilty of the fraud of the wilful omission of names. The views and intentions of the legislature were very properly not confined to the conviction of the guilty parties, for, after having very justly provided for their punishment, this act went on to show that measures should be taken in order to the restoration of the names that had been thus fraudulently and illegally omitted. It was absurd to suppose that it was the intention of the legislature that the remedies suggested in the section here referred to should only apply to a certain class of cases, and not to all cases indiscriminately where a similar occurrence had taken place. The legislature did not presume by anticipation that any officer would be guilty of a dereliction of duty, but they provided for the punishment of those who were thus guilty, and by the 36th section they evinced an equal anxiety to have the omission supplied as to have the persons who had been guilty of it brought to punishment. The traversers in the present application sought nothing more than that to which in law and equity they were strictly entitled. They had failed in their motion to have the list sent back for amendment to the Recorder, and now that by the misconduct of some person or persons over whom they had no control, were they to be hurled down the gulph, and solaced for destruction by the reflection that they had, forsooth, their remedy against the parties by whom they had been aggrieved? To this, in point of fact, did the proposition of the Attorney-General amount, when it was stripped of its vague pretences, and exposed in its natural deformity, as it ought to be, to the cool judgment and common sense of mankind. It was idle to talk in such a strain. The traversers had no redress if the present challenge was not admitted by the court. A challenge of the array was a privilege which the law of the land conceded to a traverser, and it meant nothing more nor less than a simple objection taken to the jury at the proper moment, and before the jurors were put upon their oaths, to the effect that the pannel had not been properly constructed. Was it nothing to a man who was entitled, as by the right of a free citizen, to be tried before a legally constituted tribunal—was it nothing to him that the jury that was to sit in judgment upon him, was not thus legally constituted; or when he attributed such fact to the fraud of some unknown *employé*, what satisfaction was it to tell him that there was no fraud in the matter, and that it all resulted from neglect or accident? But he trusted that nobody in that court, or out of it, would for an instant misconstrue his motives, or misinterpret the feeling and intention with which he offered those observations. Let it not be for a moment imagined that in challenging the present array he intended to allege or insinuate that any one of the gentlemen who were then assembled in the jury-box was not as fair, as honourable, and as upright a man as any that could be found in the universe? He thought it necessary, emphatically, to guard himself against any such imputation. The respectability of the jurors now in court was not the question now under discussion. He did not allege nor entertain the slightest suspicion of that respectability, nor did he mean to imply that there was a man amongst them by whom he would not himself be happy to be tried, if he were to-day in the unfortunate position of the traversers; but he was contending for a great principle, and was standing up for what was the inherent right of every British subject, without sectarian or political differences—the right to be tried by a tribunal constituted in strict accordance with the law and British constitution. Without suggesting, therefore, in the remotest degree, that the case would not be tried honestly and with the strictest propriety by the gentlemen at present in the box, he begged leave most respectfully, but most earnestly, to urge upon the court the expediency of admitting the present challenge and quashing the demurrer.

The Solicitor-General rose to reply on the part of

the crown. Before entering on the discussion of the various legal topics which had been stated by the gentlemen on the other side, he thought it right to make an allusion to one expression which had fallen from his young friend, Sir Colman O'Loghlen, in the commencement of his speech. He certainly deeply regretted to hear his young friend make use of one expression in the course of his argument which he (the Solicitor-General) willingly attributed to inadvertence on his part. He alluded to the phrase "a packed jury," and he was bound to give his young friend the benefit of the supposition that he used the word through inadvertence, for he did not like to suppose that he had deliberately intended to use an expression exceedingly reprehensible, and totally unjustified even by the case of his own client. He (the Solicitor-General) should not have adverted to this circumstance were it not that he feared an erroneous and utterly unfounded impression might go abroad upon the public mind, in consequence of an expression of the kind, thrown out, perhaps, by inadvertence, but in point of truth and justice wholly untenable. That such was the case in the present instance was induced by the course pursued by the learned gentleman who spoke after Sir Colman O'Loghlen, and who at the conclusion of his argument admitted there was no ground for saying that any of the respectable men in court to-day would not fairly decide the issue between the crown and the traversers. He would now proceed to the discussion of the legal grounds on which it was contended that the challenge ought to be accepted, and deemed good by the court. The Attorney-General did insist, and so did he (the Solicitor-General), that in point of strict law this challenge did not lie. It was quite a different case from a case of partiality on the part of the high sheriff. But in the present case no such imputation was made against the respectable gentleman who filled the office of high sheriff. He now turned to the argument of his learned friend, Mr. Fitzgibbon, and he thought that argument unjustifiable, as it implied a charge of fraud or negligence against a high judicial officer, who was not then before the court to defend himself. It was built on the assumption that the Recorder had been guilty of a gross violation of his public duty, and certainly all assumptions of that kind were most sincerely to be deprecated. There was a gentleman of high rank and character absent from court and not represented there by counsel to reply to the observations that were made upon his conduct—observations actually charging him with nearly criminal neglect. He could not but condemn such allusions, and he was sure very many persons echoed the same sentiment. He would pass from that topic for the present, and come to the legal points for discussion. Sir Colman O'Loghlen argued that the word "all" is a material word in the act of parliament and in the challenge. They would recollect that the point contended for by his learned friend, the Attorney-General, against that challenge was, that certain averments were omitted which it was necessary for the party insisting after the challenge to make, and he (the Solicitor-General) also contended that the word "all" was rather an argument in favour of the crown, for it was because "all" was material that the issue would be decided against the party making it if one name was omitted. It was idle to say that they had put upon that record anything like the allegation that no list had been made out by the Recorder. Suppose that any person or persons had tampered with the jury list, and practised fraud upon the Recorder, it would be monstrous to say that the fraud thus practised upon him was to vitiate his act, as his own fraud, if he committed one, would unquestionably do. It had been said that the book was made up from this illegal list—did they say by whom? The challenge was cautiously silent upon that point. It was a general abstract assertion, that from that list so made up the jurors' list was constructed. Why, suppose that the fraud was committed before the Recorder had revised the list, it came to the same thing he said before—namely, that the Recorder was not responsible, and his act was not to be vitiated.

The Chief Justice called the attention of the learned solicitor to a part of the challenge; it was this—"The said Thomas Mathew Ray further saith that the several lists respectively were adjudged by the Recorder to be qualified, but that the said Recorder did not, as by statutable enactment he was directed to do, cause to be made out from the said several lists mentioned, one general list, containing the names of all the persons whose qualifications had been so allowed by him." The challenge also saith, that the Recorder did not, as required by the statute, furnish a copy of the general list to the clerk of the peace, but, on the contrary, refused to do.

The Solicitor-General said that was a mistake. The traversers had withdrawn the word "refused;" if they had persisted in using it, the crown would have taken issue at once.

Mr. P. Mahony said the word ought to be omitted.

Chief Justice—Very well.

Solicitor-General in continuation—The challenge alleges a default in the Recorder, by whom a list containing all the names should have been made out, and that an omission took place to make up the list, not alleging it occurred fraudulently; but that such occurred, my learned friend (Sir C. O'Loghlen) says.

Mr. Ford—The abstract was prepared for the judges by counsel.

Chief Justice—At the time I was furnished with mine, there were no copies in court.

Solicitor-General—Supposing our objection to the challenge is well founded, we are said to admit it was to the prejudice of the traversers; but that would be a conclusion of law, and we are not to be taken as admitting anything. He thought it right to disabuse the public mind of erroneous impressions produced by reason of anything said by counsel on the other side. There is no fraud in issue. He always considered if fraud was imputed it should be specified. It is not enough to say a judgment was obtained by fraud, as in a deed so obtained there must be particularity. What issue could be taken on this? what pleading framed? We are said to admit fraud—we do no such thing. It is one of my arguments that we could not take issue on this. They framed this plea studiously that no fraud could be imputed to any particular person. If a case was sent to him to advise proofs he confessed he could not do so. He was not so ingenious perhaps as some of his learned friends. Mr. Fitzgibbon insinuated this may have occurred by means of a domestic in the Recorder's establishment. He objected to counsel putting forward such suggestions; when not put on the challenge they ought not to be introduced into the argument.

Mr. Fitzgibbon—It must have been so.

Solicitor-General—Then he doubly protested against such insinuations. Why is it not so stated in the challenge that the omission occurred through the fraud or default of the Recorder, or some one in his employment whose name is unknown? If it had been so averred we might fairly be called on to go before a jury and rescue the character of the Recorder; but they have not done so.

Mr. Fitzgibbon—I did not state it, but it must have been so.

Solicitor General—If the jury was guilty of misconduct it would have been ground of challenge; but it is said there is no difference between fraud in the sheriff before and after the list comes into his hands. This is a *non sequitur*. What we contend for is, when the book comes into the sheriff's hands

it cannot be altered, but must be the book for 1844. It is argued the 35th section gives penalty against sheriffs. He contended it did when they neglected their duty, but here the sheriff did exactly what he ought. If he put one of the fifty-nine names on he would be liable to the penalty of the law, or if he refused to take the book when the clerk of the peace offered it.

Judge Crampton—It is averred the fraud was committed in omitting the names.

Solicitor-General—Admitted the challenge says that fraud was committed, but, in legal parlance. He contended, inasmuch as no one was charged with fraud, such could not be presumed. This further it alleges in charge, that the fraud was done to the prejudice of Daniel O'Connell and the other traversers; but, in answer, he would say that this should not be replied to. If the traversers had alleged that some of the fifty-nine persons were friends of theirs, or that any one was put on the list unjustly, it would be a change in the circumstances of the case. He put this only as a conjecture—the jury had to try the fact. There was an absence of proof, but there is a sweeping allegation altogether that it was done fraudulently by some persons unknown. Suppose it was done with an intention to serve the traversers—it may be done by persons wholly unconnected with them. He did not allege that it took place with their privity, or whether they knew it or not, or if it took place through the means of any person over which the court had control; but that was no reason why the book should be thrown overboard. He believed that no such challenge ever took place before. It was argued if the challenges were not admitted that the trial would not give satisfaction to the country. That the Attorney-General should give in to the challenges in order that the trials might give satisfaction to the country, was a topic which he did not intend to introduce at the present time. He would ask if the array was to be quashed, not because the jury was corrupt, but on account of the book being imperfect, having fifty-nine or sixty names omitted from it. He understood that perfectly well, but he did not admit of its relevancy. He was told it was from the jury book for 1844, from which were omitted fifty-nine names, that the jury was selected, and for that reason the trials should be suspended until next January; or if the traversers be now tried that they must be tried by that condemded book. When Mr. Fitzgibbon speaks of the jury panel and the fraud committed, he launched out upon the duties of the several officers, and exclaims is it not monstrous that the law should be thus tainted? He spoke of the defendants as not being privy. How could it be said that they were privy to the acts of a person unknown? It seemed quite monstrous to induce the necessity of arguing upon such a topic. His learned friend said the jury book was an illegal one in point of fact; he could well understand the effect an assertion of that kind would have in court. When he took demurrer to the challenge, he would say there was no illegality in the book. It was for the purpose of determining whether it was illegal or not that the demurrer was taken, and when that was done he was told that he admitted its illegality. His argument was founded upon the denial of its illegality. Counsel for the traversers sought to set aside the trial until a new list would be made out. He would deny that the Recorder neglected his book; for if an issue was taken, their lordships would have to try the qualification of the different persons admitted. He would make an observation, rather with reference to the public than to the law: If the Attorney-General had given his consent, their lordships well knew that he would act improperly. When once the book gets into the high sheriff's hands no alteration can take place in it; and if the Attorney-General had consented to such a course, he would have consented to that which was not right. He would take upon himself to say, with great respect, that that high court could not order it to be done. This case was as if there was no case to be tried but that of the Queen *v.* Daniel O'Connell. He wished to observe that an expectation seemed to be abroad that because the present trial was one in which Mr. O'Connell was a defendant, there ought to be a different course pursued. He did not think so. He could see no difference in the present case between the traversers and any other individuals. Supposing that the sheriff had added the fifty-nine names which it was asserted were allowed by the Recorder, and should have been on the list, why then, indeed, a legal cause of challenge would have arisen, and no doubt the traversers would have taken advantage of it. Had that occurred the crown would indeed have been in a difficulty. The Attorney-General was censured for not adopting an erroneous excuse.

Justice Perrin—If in copying out from a regular list an error was made, and that error discovered, might not the error be corrected after delivery to the sheriff?

The Solicitor-General said he thought not, and proceeded to read the section which made provision for the correction of an error. It stated that if any person offending against the act by altering the jury list should be convicted he would forfeit a sum not less than 40*s.* or more than 50*l.*; and after such conviction the clerk of the peace should then procure a correction by the sheriff of the error in the list. That section was pregnant to show the sheriff, even if aware of an error in the jury list, could only amend it after a conviction of some offender for procuring the error. One chief object which the act evidently had in view was finality. It directed that sufficient pains should be taken to have the jurors' book properly made up for the year, and permitted no alteration in the list except after a conviction. It was thus clearly shown that if the fifty-nine names had been added by the sheriff he would have acted completely without authority, have allowed the traversers a proper cause of challenge, and left himself liable to a penalty. He wished it to be understood that the traversers had that day put in a challenge not upon their oaths, and to that challenge is annexed an averment that Mr. O'Connell was not connected with, or did not know the person or persons who committed the fraud.

Mr. Fitzgibbon—We have no notice of this being referred to, and cannot understand why it should be referred to.

The Solicitor-General said he was justified in the observation. Mr. Warren had suggested to him the possibility of a trial at an assizes occurring after the delivery of the jurors' book to the sheriff, and after verdict a conviction occurred under the act for a fraudulent error in the book, and then, pursuant to the act, the book was amended. Surely, in such an event, the verdict could not be set aside, and if so, it followed that a finding by a jury selected from the present list must be a good one. He admitted that fraud would, if proved, be a good objection, but it must be a fraud committed, not as is alleged in the challenge, by a person or persons unknown, but by some known and named, and there was no allegation that the person or persons were known. Mr. Fitzgibbon had said that he expected he would have a fair trial from the persons who were now ready to constitute the jury. He was a good deal puzzled after hearing this to know why the challenge should have been put in. He contended that the challenge was bad in law; there could be only one book made for the entire year, and therefore, it cannot now be set aside, and on these grounds I submit that this challenge must be overruled.

Mr. Moore, Q.C., then said that he was instructed on the part of the traversers to enter into a consent that the lists shall be sent back to the Recorder, in

order that he may insert the names which have been improperly omitted, and that then a new special jury should be struck at once, and the trial proceeded with.

The Attorney-General—I object altogether to the proposal of my learned friend. I am astonished that he would make a proposal which he ought to know could not possibly be complied with; there is no power under the statute by which it could be done; the alteration would affect every proceeding taken during the whole year, and he must have known that it was illegal, and that if any person was tried under that new list it would be erroneous, and a party unbound by the consent could object to the proceedings. I should not be fit to hold my office for one hour if I were to permit this illegal course to be taken.

Mr. Moore, Q.C.—The Attorney-General has very grossly misconceived the proposition which I made. I am surprised he would have thought that I should exhibit such monstrous ignorance as to make a proposition, the effect of which would be such as he states. I disclaim all intention of the kind. I made a proposition in perfect good faith, in consequence of instructions I received from my clients. I will not reply to his observation in reference to myself; but in making my proposition I did that which I conceive could be done without displaying that degree of impropriety or ignorance of my proposition which he has thought proper to allude to. (loud applause.)

The Attorney-General—My lords, if again in the course of these proceedings any persons in this court shall conduct themselves in the manner we have just heard, I will beg leave to request that your lordships will order the gallery to be cleared. The learned counsel on the other side called upon me to do that which is illegal.

[The cheer which called forth this observation came principally from the bar.]

Mr. Moore—Certainly not.

The Attorney-General—What he did call upon me to do was this—to consent to the jurors' book being amended by the Recorder; and I say that cannot be legally done. I said it would affect the legality of every judicial proceeding of this nature in 1844, and I reiterate that assertion.

The Chief Justice delivered judgment. He said the majority of the court in this case were of opinion that the demurrer must be allowed, and consequently that the challenge must be overruled. The subject matter was not new to the consideration of the court, inasmuch as the argument at both sides embraced substantially the greater part of what the court were occupied with pretty nearly the entire of last Friday.* The court then gave judgment, and upon every consideration that he had been able to give to it since he found no reason to find fault with the judgment of the court then through him pronounced; on the contrary, all the consideration he had been able to give the case ever since, or in the progress of the argument this day, had tended to confirm him in the opinion he then entertained. The application that was for the consideration of the court was that for certain reasons then brought forward the pannel should be quashed. In the present proceeding the same question precisely was not the question upon which they were now called up to give their judgment; but he confessed he could not see the principle which would lead him on the present occasion to entertain different judgment from that which he then formed, and which his brethren concurred with him in. The present was an application which came before the court in the shape of a challenge to the array. He would speak of it only as one challenge, though there were so many traversers; yet in giving the judgment of the court he should consider the case as there were only one, as the case of the traversers as between themselves did not contain a ground of distinction between them, and whatever rule was right in one case was right in the other. Now the objection, as spread upon the face of the challenge was this—that the Recorder of Dublin, having on the revision of the names presented to him for his judgment and consideration upon the question of their allowance to be admitted on the jury list or not, did not as he was bound to do by the law make from the list as presented to him a revision of all the names contained upon those lists, nor did he make the arrangement required in the new list prescribed by the statute, when he came to arrange according to rank and property the names of all the persons that had been presented to him for his revision and decision as coming from the officers in the first instance, but that on the contrary he neglected to do so.

Attorney-General—That is a mistake.

Chief Justice—I have said "neglected."

Mr. Bennett—The word is omitted.

Chief Justice—That he omitted to do so. The word in the indictment before me is, that he objected to do so. It then goes on to state and to aver, that the said list purporting to be such general list as aforesaid, did not contain the names of all the persons whose qualifications had been allowed upon the correcting, allowing, and signing the said lists as aforesaid by the said Recorder, but omitted the names of sundry, that is to say, fifty-nine persons whose names are set on it. It then appears that the said several persons whose names were so left out were still resident within the district to which they belonged, and were qualified and competent to serve and ought to be put upon the jurors' book. His lordship having recapitulated the substance of the challenge continued—The fact having been demurred to by the Attorney-General, and it so far admitted that they were properly pleaded, form the grounds for the challenge to the array of that jury pannel. It was necessary to consider what the law was under which those proceedings had taken place. It was not an act restricted to the case of the Queen *v.* Daniel O'Connell and others. It was not restricted merely to one county in the kingdom, but applicable and intended to be a statuteable provision for the appointment of jurors through the entire of the kingdom. Now, what were the steps to be taken under it. The act found already appointed a number of officers, some of high rank and distinction, others of subordinate station; some, like the Recorder, invested with high judicial authority, the same as magistrates in counties, and others again, merely ministerial officers, entrusted in different stages with the administration of the laws as connected with the enrolment and empannelling of jurors. The officers of one class were judicial; of the other ministerial; the Recorder and magistrates were judicial; the sheriff, the clerk of the peace, and the collectors, were ministerial. The act, though it appeared to be an exceedingly well considered act, intended to provide for a general system of the highest importance to all who had life, property, or character at stake in the country; and though it was intended as repealing all former acts, he held that no further provision existed, or was intended to control the persons administering it than what was specified therein. The learned judge then proceeded to detail the duties of the several ministerial officers who were to carry it out, commencing with the clerk of the peace, and the collectors, who were bound to

* His Lordship referred to a motion made on that day by Mr. Moore, on behalf of the traversers, to postpone the trial on account of the omitted names, which the court unanimously concurred in refusing.

make certain returns to him, at a time pointed out, which lists were to be laid before the Recorder for the city of Dublin, for his revision and adjudication upon. The meaning of the Recorder's adjudication was this—the admission on the jury list of every man in the parish who, having a rightful claim to be a special juror, substantiated that claim before the Recorder, or else the rejection of all such persons as failed to make their claims good. Now, in order that these matters might be judicially investigated the lists as returned by the parish collectors were ordered to remain open to public inspection in the office of the clerk of the peace for at least the period of three weeks, and any one who desired during these three weeks to get information on the subject, or to make himself master of the lists, was entitled to do so. And furthermore, it was open to all persons to oppose, if they thought there was reason for so doing, the claims of parties applying to be admitted as jurors, and it was for the Recorder conclusively and finally to adjudicate upon each claim, whether for its admission or its rejection. The Recorder was armed with full power to enable him to conduct the investigation to a satisfactory conclusion; but he was not permitted to do so without giving the parties interested due notice as to whether their claims would be disputed or substantiated. After that public investigation the Recorder was to make his judicial decision, which was not controllable by any tribunal in the country unless there was a charge of fraud or corruption. The Court of Queen's Bench had a superintending power over all magistrates and officers if any attempt were made to avoid the law or to violate it, but it was only in such cases they had a right to interfere, and if no such violation of the law were imputed to the Recorder the court had no possible authority to interfere with his decision in the present instance. His conduct, as long as no accusation was brought against him, was beyond the investigation or control of the Queen's Bench. The Recorder had been selected by the legislature as the first determiner of matters of this nature. It was a very high privilege with which he was invested, for, no doubt, his jurisdiction in this respect was very much connected with the flow of justice and the purity of the administration of the laws. But he was left without control, and there must have been very good reasons, as we were to presume there had, for making his decision final and beyond appeal. In the particular case under the consideration of the court the precepts were issued and returned, the lists were duly made out by the parish officers—the requisite investigation took place—the Recorder made his revision, and having pronounced his decisions they were irreversible, and could not be reviewed by any one. After that revision another duty was imposed upon the Recorder, and it was this, that he should cause to be made out a new list or lists, containing the names of all the persons on whose claim he had adjudicated, arranged according to rank and property. But no penalty was imposed upon the Recorder for omitting to do this or any other duty devolving upon him by the act. There was no imputation in this challenge that the omission of names which it complained of having occurred on the part of the Recorder, was the consequence of wilful impropriety or corruption, nor in the argument of the case had the slightest wilful impropriety been imputed to that highly respectable individual, the Recorder of Dublin. But it had been contended that the act directed that he should make out the new list in statutable order, according to rank and property, and that he was obliged to do so with respect to *all* on whose claims he adjudicated, and he was to suppose that the learned gentleman who contended thus would of course go the length of arguing that it was equally his duty to make that list of classification as it was to have made his revision of the lists in the first instance. And he was equally bound in the one instance as in the other to have made no omission, but to have included the property of every individual, just as much as he was bound by the act of parliament to have allowed or disallowed his claim generally to be received as a juror. Now, how far was that argument pushed? how far was it to be carried? Suppose the Recorder included every individual whose claim had been allowed and supported—but suppose he omitted to class the individual according to rank or property, were all subsequent proceedings towards the execution of this act to be made good for nothing if the Recorder omitted to follow the directions of the act of parliament in one instance more than in another; supposing he did make a classification according to rank and property, and even suppose he included all the individuals whose claims to be jurors were admitted in that classification, would it be contended that he had made a wrong classification? If by the judgment he had come to be placed at the bottom, or lowest part of the list, men who qualified for 2,000*l.* and placed above them men whose qualifications were not worth over one or two hundred pounds, unquestionably his classification would be wrong, and unquestionably in not sticking to the act of parliament he had deviated from its directions; but was that a reason why all those proceedings were to be made null and void, and that if a trial took place at any time in the course of the year it would be in the power of the parties to allege that the act of parliament had been deviated from—that its directions had not been attended to, and therefore the jury were good for nothing. Now, if the argument used by the gentlemen that day were correct, he could not avoid thinking that the consequences must go to that length which he conceived would be dangerous to the community. Well, then, what was the consequence of this? The Recorder's judicial act in the one case was as much as his judicial act was in the other. It was directory, pointing out at what it was his attention ought to be directed; but it left to him, as a judge, his own discretion, trusting to his character and discretion as to the manner in which he would act. Now, if that were so, and that was the position in which the Recorder stood, then he said his act was not to be made the subject matter of challenge to the array. He did not take up the question whether the challenge was wrong in the case of a special jury. Sir Colman O'Loghlen had cited several cases in which he said it had been so decided—he did not mean to controvert or question that, and the more so, as it did not seem to have been in opposition. But the challenge alleged certain duties to devolve on the Recorder by virtue of the act of parliament in question, which had not been acted on by him, and that somebody else, because it was some unknown person, and not the Recorder, had the opportunity of making some alteration in the list so returned, the effect of which was, that a certain number, say sixty persons, were allowed recently by the Recorder, but do not stand upon the jurors' list. The Recorder was not answerable for that—no blame was imputed to him in the way of anything corrupt or fraudulent—such an imputation was disclaimed—no gentleman would contend that if he did make a mistake in a matter committed to his judicial discretion, that therefore that was to be made the subject matter for a public investigation. The judge was protected, and moreover, if the Recorder came to wrong conclusions on the law, and rejected persons who ought to be allowed, or allowed those who ought to be rejected, the Court of Queen's Bench had no power to investigate whether he was right or wrong. There was no averment that he did not make out a list pursuant to the act of parliament and the ranks and properties.

The list so made out according to right and property is handed to the clerk of the peace, who is the proper officer appointed by the statute, and the Recorder's duty is then at an end. It goes into the hands of a subordinate officer, whose duty is chalked out by act of parliament, which he is bound to follow independent of the sheriff. The duty of the clerk of the peace to make out jurors' lists for the ensuing year is express, and he is provided with funds for that purpose, and then he is to give the jury lists into the hands of the sheriff. If malversation or corruption be displayed on the part of the sheriff, who is the officer of this court (which the Recorder is not)—if he acts corruptly he is liable to be called to account, and such misconduct is properly the subject for a challenge to the array as arising out of unindifferency of such sheriff. Who is to try the unindifferency of the Recorder? He is here or represented by counsel; his unindifferency is not allowed to be assigned as cause, besides being an independent judicial officer he stands in the position of the master of the crown officer in the case cited from Barnwell and Alderson. And if the conduct of the master of the crown officer formed no ground in that case *a fortiorari*, the Recorder's cannot. He has decided on the matter and his decision is final. It is a great inconvenience that delay should arise in this case, because the formation of the jury pannel is a matter which the country is interested in upholding. A proposition was made by Mr. Moore. I am not called on to say whether the Attorney-General was right or wrong in not yielding to it, but I say there is not a man who may be a suitor during the year 1844 who is not interested in upholding the proceedings. What would be the consequence if this course was allowed—if one party could take objections by which his adversary might be rescued from delay? This is a general list for the whole country, and perhaps some of these employed in preparing it would be suitors during the year 1844. The law has provided the proceedings of the Recorder of Dublin should be final, and not subject to the revision of any other tribunal. The result is having the jury list prepared, and the sheriff is to take his special jury list from the general list, returned by the clerk of the peace. He could not add one of these names said to have been omitted. It might not be explained—it might be that the subject was under a cloud: but that is not the question. The question is whether these proceedings are to be set aside, in consequence of the mistake which has occurred. His lordship, after adverting to the delay which had occurred in the case, declared his judgment to be that the challenge should be overruled, and the demurrer allowed.

Mr. Justice Burton said that the question must be considered, not with reference to any other cases, but upon the present case as it stood before them. Being of the same opinion with his learned brethren on the subject, he would not occupy more of the public time than possible; he could only say he had felt a great deal of anxiety on the subject, that every thing should be as free from imputation as possible, and that a court of justice where it is possible to act in such a way as to render the proceedings free from imputation, it should be achieved if possible, but in the present case it was the opinion of his brethren that the irregularity which had occurred in this instance did not vitiate the proceedings. It is a natural wish I am sure, in every judicial mind, that not only as regards the parties who are now before the courts, but also all other parties, that every thing should be done with the utmost fairness and regularity. I was much struck with the proposal made by Mr. Moore, and which I understood exactly in the terms which he expressed, that the arrangement which he proposed should be merely for the present, that a jury should be selected out of his list, after those names were inserted, as matter of accommodation between the parties, and I was caught with what I thought was an offer consistent with good sense, and I am sure that it was meant in perfect good faith. But, inasmuch as it would be to leave the list as to all other parties open to the same kind of objection, and would leave courts of justice in great embarrassment on future occasions, and we must endeavour to see exactly what the law is on the subject, and we must consider the particularity with which this statute provides for the way, and one which was more calculated to prevent any mistake could not be imagined; but it shows how the human mind may be deceived, for it has opened a wide field for discussion. The first question raised in this case is, is not this special jury list, and is not the jurors' book, as at present existing, a perfect nullity? We must first see what jurisdiction the court have to declare it a nullity. The matters directed by the statute in this case all take place, and is there then any case to show that it is all a nullity? His lordship proceeded to observe that the list should comply in obedience to the statute view of it. They could not say but a better jury list might be the consequence of more carefulness, but whether the omission was of a description to render the proceedings null and void was another consideration. He would suppose an extreme case, and say, suppose the omission avers a fallacious piece of fraud in itself, and yet extreme cases were not always to be held out. There were 717 persons admitted to be fit and proper, and out of these the jury was struck. The presumption was that there were a certain number of persons omitted who ought to be on the list, but were left out owing to some blunder or mistake, and which in the challenge was not attributed to the gross mistake of the Recorder, but which still left an ample number of 717 out of which a jury might be fairly selected. After enumerating the several arguments on both sides of the question, his lordship expressed himself in favour of the demurrer.

Mr. Justice Crampton said that after the elaborate judgments already given, and at that late hour, he would not occupy the time of the court if he did not feel bound to state the reasons why he agreed with the majority of the bench upon so important a case. The challenge put upon the record was novel and unprecedented in form and substance. He had no difficulty in coming to the conclusion that the challenge should not be allowed, and he was aware that some members of the bar and of the bench are of opinion that a challenge did not lie to a special jury. This principle was discussed in the case of the King *v.* Edwards, and he wished it should not be supposed to affirm the doctrine that challenges lie in the case of special juries. But suppose a challenge can be maintained, what was to support it in the present case? There was no imputation against the sheriff or the clerk of the crown. The sheriff's duty was merely formal—the rest was performed by the clerk of the crown. There could be no challenge to the array where elisors have made their return impartially. The ground of challenge in the case before them was not unindifference in the sheriff, and yet Lord says that want of unindifference in the elisor or sheriff is the only cause of challenge to the array. But the extraordinary challenge they adjudicate on was the want of impartiality in some unknown person, who was supposed to have had access to the jury list. The person committing the fraudulent act is not named—the fraud itself not distinctly set out. He supposed, however, the challenge was as well framed as it could be under the circumstances. The ground of challenge is, that sixty names are omitted in the jurors' book, which were admitted by the Recorder, but not found

on the general list. There is no fault, then, imputed to the officers. The fault of a stranger was no good cause for challenge. There was no imputation against the Recorder. Even Mr. Fitzgibbon had imputed to him nothing stronger than negligence. The curious challenge alleged that the Recorder properly admitted sixty persons who were not afterwards found on the general list. The Recorder's duty is judicial, and that court had no control over it. There might be a remedy, but it was in another place. His duty was first to adjudicate on the list, and afterwards to arrange the list—that is, make out a statutable copy, placing the jurors according to rank and property, and not alphabetically, and afterwards to see this fairly copied. His act is final—no court could go behind it. Some individual may have perpetrated a fraud—an individual may be injured by it, but the general principle of the law must prevail. They were then giving a decision which would affect the whole community for a year to come, and individual grievances must be suffered for the public good. If the challenge were permitted, twelve months would elapse before a special jury list could be framed. If the omission of sixty names would render the list a nullity, so would the omission of one name. He concluded, after giving some further reasons, by expressing his concurrence with the judgment already pronounced.

Judge Perrin said he had carefully considered the act of parliament and its provisions since the motion which had been before the court on Friday, and applying its provisions to the motion which appeared upon the challenge here put in, he was under the disadvantage of not coming to the conclusion to which the Lord Chief Justice and his brethren had come. He thought it a subject of considerable doubt that the challenge ought to be allowed. By the act of parliament the collectors were to make out, in alphabetical order, two lists of all qualified persons in their districts, and to deliver them to the clerk of the peace, who shall keep them for public inspection a certain time, and at the special sessions fixed for the revision and correction of those by the insertion of the proper person, or the omission of an improper person, at those special sessions fixed for that purpose, when every such list shall be duly corrected by the justices in counties at large, and by the Recorder in the city of Dublin, and shall be allowed and signed by them, or three of them, he or they shall cause a general list. He (Judge Perrin) would pause here. He concurred entirely in the view taken by the Lord Chief Justice as to the judicial functions of the Recorder, and he would say that there was a distinction to be taken between his judicial and his ministerial duties, and that here the judicial duties of the Recorder terminated. He said that as far as that the proceeding of the Recorder was strictly judicial —that he himself, and the justices themselves, in the case of justices, after the public court was closed, and the lists allowed and signed, could not make any alteration in that list, he meant after the court had closed, and, therefore, he took it that the judicial duty of the Recorder then closed, and what remained for him then to do was not to write in his own hand, but to get a general list made containing the names of all those whose qualification had been so allowed, otherwise it would be idle if the general list did not contain all the names, and which list was to be framed from the several lists sent in by the several collectors, upon which severally adjudications had been made, and thereon it was the duty of the justices or the Recorder to cause a general list to be made of all qualified persons arranged according to their rank and property, and he would never hold or think that if a mistake were made in the arrangement of any of those persons, or if an error were made by the justices or Recorder in that arrangement, that that was a matter in which the justices' book could be impeached, or that if an issue were taken on it, that the question of arrangement would be a matter one way or another to affect the finding. He thought that arrangement was a matter on which no appeal could be made, and on which the acts of the Recorder or justices were conclusive. And it was directed that the presiding justices or Recorder shall deliver the same—that is, the general list of all who have been allowed. He would go further—he would say that if there was a casual mistake or omission, that it should not vitiate it, and if the Recorder on handing it in to the justices had examined and considered it to be a full and correct list, was it to be said that it should not be a matter inquirable into, whether or not there was an error of one or more names made? and he shall deliver the same to the clerk of the peace, who shall cause the same to be truly copied, in a particular way; and the clerk of the peace shall forthwith deliver that same book. A true copy of what? A true copy of the general list. Containing what? All the names that have been allowed and proved to be qualified, which book shall be called the jurors' book. Then the statute provided, that the jurors' book, not so handed in or lodged, but the jurors' book so prepared—that is, prepared according to the provisions of this act—shall be brought into use on the 1st January, after it shall be so delivered, and shall be then in use for a year. Those are the provisions of the act of parliament. It was not necessary for him to go through every section in it. The only one bearing upon this part of the argument was, that clause which showed that an error in the judge's book might be corrected by authenticated documents, not one respecting any matter which had been the subject of conversation either by the Recorder or the justices. What did this challenge say? It said that after the Recorder had duly revised, examined, and corrected the parochial list—that after he had signed them that he did not deliver, or cause to be delivered, a general list of all those names, arranged according to rank or property, but that he omitted to do so. And, on the contrary, so far from that being then done, some person unknown fraudulently, as alleged in some of the challenges "as to the prejudice of the traversers," in one averment that was omitted, made out a list omitting sixty names purporting to be in the general list, and from which fraudulent and imperfect list the jury book was made out, omitting those names. Now this is not a cause of allegation that by error or omission a mistake occurred in making out the lists, and that some names were thereby accidentally omitted. The charge here is not one of unintentional error; there is a charge of omission against some person unknown by whose act that list has been falsified to the extent of omitting sixty names. The Attorney-General very properly insisted that the matters not contravened or met must be taken to be admitted, and he insisted, I think justly, that he was at liberty to do so on that; but it must be considered that the Recorder handed in a list which was a defective list. I am satisfied that he knew no more about it than I did. I think it would be monstrous to hold that there was even a shadow of suspicion upon him; there is nothing to warrant or sustain it. It must, then, be taken that the Recorder was imposed upon by the person whoever he was that was appointed to make out that list, and that he had no more cognizance of it than any body here. Is that general list to be taken as authenticated by the Recorder, or as an exemplification or voucher of the correctness of what he hands in? He is no more answerable for that in my mind than the person that brought it. It matters not whether he hands it in himself or sends it in, for he must be taken to be ignorant of the omission; but the injury is not the less to the parties who want a full jury—the loss, as far as they are concerned, is as great as

if the Recorder were conscious of it. It appears to me that this challenge maintains that this was not in truth a general list made from the other lists (made perfectly and fully from the other lists), which it ought to be, in order to constitute a foundation for the jury book. It has been observed that this act of parliament was framed with great care, and for a most important object—the securing of proper and competent jurors, and leaving as little in the power of particular officers as could be left to them. I think it had in view a much more important object than what may be called the mere finality of its terms. If we hold that an alteration or suppression of this sort made by those persons who must be employed to do a particular duty, and, unknown to the officer, is incurable and not to vitiate the act purporting to be done by the judge or superior officer, I am at a loss to understand what security there is for the purity of the jurors' book. The correct one may be mutilated and another substituted, and I cannot imagine that it would be contended that because it was handed in by the officer, that it should be regarded as a true copy, and the real foundation from which the jurors' book ought to be made out. It seems to me that if such a thing was practised, and that it came to the ears of the Justice or Recorder that not only the first thing he would do, but the first thing he would be bound to do, would be to go to the sheriff with the real list and call upon him to repudiate the fabricated one, and correct his book according to the true one. There seems to be some difficulty suggested as to whether he could do that. It strikes me that, in my humble judgment, that it is not only what he would do, but what it would be his bounden duty to do. Taking another view of the case—suppose the sheriff in framing his special jury list had marked off names from the general list for his clerk, and that he omitted many of those names, and that the special jury list was framed with the omission of those names, and that the omission was not discovered until the forty-eight names were about to be drawn—it does strike me that would be a cause for challenging the array. On the same principle I may suppose a *Nisi Prius* trial in the country for which the sheriff returns a *distringas* to this court, and here it lies for some days. Suppose that an under-officer or clerk of the court was to alter the names on that *distringas*, and that when it went down to the country for the first time the alteration was discovered, surely that would be a ground for challenging the array. It might be objected against the present challenge that it was novel, but its novelty arose from this, that the act of parliament was one of recent date. Before the passing of that statute the high sheriff was uncontrollable in his duty. He might, if he chose, return whom he liked for his jury; but the statutable provision confined his power of selection to a particular jury book, to be taken from a particular list, and if the provisions of the law, in this respect were violated, even though there was no fraud in question, it still came within the principle upon which the challenge of array rested, and was originally founded. Much had been said about the inconvenience which would result from admitting the present challenge, as thereby an embarrassing precedent would be established. But he did not think that they (the judges) ought to regard the consequences of their decisions, except in as far as they made them studious and anxious that their decisions should be well-founded, and rest upon sound principles of law. Further than this, however, they were not to look. It was their duty to decide all legal questions to the best of their judgment and ability; and if any inconvenience resulted, it was no consideration of theirs, but must be remedied by those whose province it was to make laws. But he was inclined to think that the inconvenience would not be so great in the present instance as was apprehended; for if errors existed in the jury book, there could be no objection on the score of inconvenience to amend them by making the jury book conformable to the true and general list constructed from the parish lists. Those were the grounds on which he felt himself compelled to come to a different conclusion from his brethren; but he was bound to admit that he did so not without considerable doubt as to the correctness of his opinions.

At eight o'clock the court rose, and adjourned till ten o'clock next morning, and a direction was given to the jurors to be in attendance.

SECOND DAY.

TUESDAY, JANUARY 16.

The Judges took their seats upon the bench shortly after ten o'clock.*

Clerk of the Crown—Does Daniel O'Connell appear?

Mr. O'Connell—Here I am (laughter).

Clerk of the Crown—John O'Connell, Esq.

Mr. John O'Connell—Here.

Clerk of the Crown—Thomas Steele, Esq.

Mr. Steele—Here.

Clerk of the Crown—Thomas Mathew Ray, Esq.

Mr. Ray—Here.

Clerk of the Crown—Charles Gavan Duffy, Esq.

There was no reply.

Clerk of the Crown—John Gray, Esq.

Dr. Gray—Here.

Clerk of the Crown—Richard Barrett, Esq.

There was no reply.

Clerk of the Crown—The Rev. M. J. Tierney.

Rev. Mr. Tierney—Here.

Clerk of the Crown—Gentlemen of the jury, answer to your names. James Hamilton, Upper Ormond-quay.

Mr. Hamilton—Here.

Clerk of the Crown—Captain Edward Roper.

Captain Roper—My lords, I am here in punctual attendance, according to your summons; but I trust you will be so kind as to excuse me from serving. I am in a delicate state of health, and am 72 years of age. I have not been called upon to serve as a juror for the last six years, and I trust you will excuse me now.

* The interest attached to the proceedings of this day was intense. It was confidently believed by the public that many other law points equally difficult with that which had been disposed of the day before, remained to be decided ere the jury should be sworn. It was still more confidently expected that many of the jurors would be absent when called upon. There are many obvious reasons why this latter accident should occur. But there was one paramount reason, and that was the fact, that the Attorney-General had moved the Court that, for the purposes of that trial, the period between the day of its commencement and the opening of Easter Term might be declared a portion of that Hilary Term. The jurors therefore, not unreasonably, thought that they must be engaged in a duty onerous and unpleasant, as well as dangerous to their health and injurious to their interests, for nearly all of them were men of business, to whom time was very valuable and confinement very irksome. The anxiety to learn what further should be done was extreme, for curiosity was aroused, and many expected that the swearing of the jury might hardly be anticipated even upon the second day. The precincts of the courts were filled at an early hour, and the Great Traverser was received in his progress to the Queen's Bench with, if possible, greater enthusiasm than on the day before. Many of the other traversers were also well received by the assembled people as well without the courts as in the hall. The same admirable arrangements were observed yesterday which had given such satisfaction on the day previous, and not the slightest inconvenience was felt by those who had business in the court in obtaining admission or egress.

The portion of the court set apart for the bar not engaged in the trials was crowded to the utmost possible extent. Several ladies occupied the galleries, and many others, amongst them those of the Attorney-General's family, occupied the approaches to the bench.

Chief Justice—Why did you not make your objection before now?

Captain Roper—My lord, it did not occur to me that there was any occasion for so doing, for I did not think I would ever be called upon to serve again.

Clerk of the Crown—Stephen Parker, of St. Andrew-street.

There was no reply.

Clerk of the Crown—Stephen Parker, of St. Andrew-street, come and appear on pain of 50*l*.

There was no reply.

Clerk of the Crown—Edward Clarke, of St. Stephen's-green.

Mr. Clarke—Here.

Clerk of the Crown—Benjamin Eaton.

Mr. Eaton—I attend. My lords, I yesterday took the liberty of addressing your lordships and explaining to you the circumstances under which I am placed. My lords, I fell off a scaffold on the 18th of——

Chief Justice—Wait a while, if you please, sir.

Clerk of the Crown—Francis Faulkner.

Mr. Faulkner—Here.

Clerk of the Crown—Henry Flinn.

Mr. Flinn—Here.

Clerk of the Crown—John Croker.

Mr. Croker—Here.

Clerk of the Crown—Henry Thompson.

Mr. Thompson—Here.

Clerk of the Crown—Anson Floyd.

Mr. Floyd—Here.

Clerk of the Crown—John Rigby.

Mr. Rigby—Here.

Clerk of the Crown—Robert Hanna.

Mr. Hanna—Here.

Clerk of the Crown—William Longfield.

Mr. Longfield—Here.

Clerk of the Crown—William Ord.

Mr. Ord—Here.

Clerk of the Crown—Joshua M'Cormick.

Mr. M'Cormick—Here.

Clerk of the Crown—William Scott.

Mr. Scott—Here.

Clerk of the Crown—William Morton Woodroffe.

Mr. Woodroffe—Here.

Clerk of the Crown—James Waller.

Mr. Waller—Here.

Clerk of the Crown—All of them answer, my lords, except Mr. Parker.

Judge Crampton—Call him again.

Clerk of the Crown—Stephen Parker, come and appear on pain of 50*l*.

There was no reply.

Clerk of the Crown—Two of the traversers have not as yet replied. Neither Mr. Duffy nor Mr. Barrett have answered.

Mr. M'Evoy Gartlan, attorney for Mr. Duffy—Mr. Duffy left court last night very seriously unwell, but I expect him in court every moment. I am here as his solicitor to appear for him.

Clerk of the Crown—Stephen Parker, come and appear on pain of 50*l*.

Mr. Parker here ascended the jury-box with a paper in his hand, which he presented to the court.

Clerk of the Crown—Richard Barrett, Esq., come and appear.

Mr. Cantwell said—Mr. Barrett has not yet arrived, my lords; but I undertake that he will be here in a few moments. I am his representative here, and assent on his behalf to the proceedings of the court.

Mr. Gartlan—And I, my lords, make the same undertaking on the part of my client, Mr. Duffy.

A gentleman in the body of the court here came forward, and, addressing the court, said, my lords, I am here on the part of Mr. Stephen Parker (laughter).

Chief Justice—Mr. Parker appears for himself, sir (laughter).

The Attorney-General—My lords, I wish to direct your attention to the fact of two of the traversers not having answered to their names. I do not mean at all to question anything that may have been said by Mr. Cantwell, nor do I mean to say that Mr. Barrett would fail to adhere to any undertaking entered into on his behalf by Mr. Cantwell; but I think that in a case of this kind everything ought to be conducted with the utmost possible regard to order and regularity. I must strongly object, therefore, to the absence of any of the traversers from court, or to their appearing in court through their attorney. A very bad precedent might be established by such a practice, for it would infallibly lead to irregularity and inconvenience. If a traverser absents himself from court for ten minutes on the first day of the trial he may absent himself for a longer period on some subsequent day, and thus all would be irregular and disorderly. I object to the traversers appearing by their attorneys, and had much rather wait ten minutes for Mr. Barrett and Mr. Duffy than go on without them.

Mr. Justice Crampton—In misdemeanour cases, Mr. Attorney, is it not very frequently the case that traversers are permitted to appear in court by their attorneys?

The Attorney-General—Yes, my lords; but that privilege is only granted *ex gratia*, and can never be conceded except with the consent of the crown; and the present is not a case in which the crown think it expedient to give any such consent. If the traversers were permitted to absent themselves at the commencement of the trials, and that a question as to their identity arose in the course of their proceedings, it might be difficult to establish that identity at a later period of the trial. It has been expressly decided in England that the privilege of appearing by attorney in misdemeanour cases cannot be granted unless the crown gave their consent.

Mr. O'Connell—It would not be very difficult to establish identity in our cases, my lords; for I do not think that we are amongst those who are described in the indictment as "certain persons unknown" (loud laughter, in which the court joined).

Chief Justice—Mr. Cantwell, it is now half-past ten o'clock, we have given you time, and I fear it is not in our power to continue to delay the business of the court any longer.

Mr. Cantwell—Mr. Barrett, my lord, lives four or five miles from town.

Chief Justice—No matter, it is his business to be here.

Mr. Gartlan—I have also to state, my lord, that Mr. Duffy is very ill, and that circumstance has delayed him.

Chief Justice—I am very sorry for it, but we cannot delay any further.

Mr. Cantwell—Five minutes more, my lord.

Chief Justice—Very well.

When the five minutes had expired,

Mr. Henn, Q.C., said—My lord, I would suggest there should be separate appearances entered now for the traversers, for, in misdemeanour cases in point of law, appearances may be entered by the attorney. Thus, my lord, we would avoid the delay.

Chief Justice—Did you hear the Attorney-General?

Mr. Fitzgibbon, Q.C.—Mr. Henn was not in court, my lord, when the Attorney-General was speaking.

Chief Justice—Then, Mr. Henn, I must inform you that the crown have already suggested their intention not to accede to any other arrangement but that the traversers shall appear in person, as it may be necessary for their identification that they should be in court.

Mr. Henn—We would of course undertake that they should be in attendance when the proper time for identification arrived, for certainly in point of law there is no opposition in misdemeanour cases to appearance by attorney. We are willing now to substitute that for the present appearance, and to undertake that they shall appear.

Attorney-General—I think it right to state that if any application had been originally made on this point, I was prepared to show by authority that traversers bound by recognizances had no right to appear by attorney. I have a right to make them appear in person, as it may prevent delay otherwise incident to this trial, and, therefore, I require that they shall appear personally from day to day during the trial.

Mr. O'Connell—That is liable to seven or eight accidents every day, which may detain us two hours; and if that happens three times, we will lose three days.

Clerk of the Crown—Crier, call Richard Barrett to come and appear, to save him and his bail, as he is bound to do, or forfeit his recognizance.

The Crier called Mr. Barrett accordingly.

Clerk of the Crown—Crier, call Timothy O'Brien and James Rooney, to bring forward the body of Richard Barrett, or forfeit their recognizances.

Mr. Barrett at this moment entered court. (His appearance just at that moment created much merriment.) He said—My lord, I have to apologise to your lordship, and the other members of the court, for not being here sooner; but the sickness of a member of my family, I assure you, prevented me. I shall, however, take care that it shall not happen again.

Chief Justice—That is no reason whatever that you should not attend the hours of the court.

Mr. Barrett—It shall not happen again, my lord.

Court—If such an occurrence take place again the court will be obliged to estreat the recognizances.

Clerk of the Crown—Prosecutors and traversers, the jurors are about to be sworn.

Clerk of the Crown—James Hamilton take the book.

Mr. Hamilton was sworn as foreman.

Captain Edward Roper was next called. He said—My lords, I hope you will excuse me, I don't find myself able to serve on this jury. I am in my seventy-second year.

Chief Justice—Pass him over for the present.

Clerk of the Crown—Stephen Parker.

Mr. Parker—My lords, I regret my state of health will not allow me to be on the jury.

Mr. Henn, Q.C., submitted that Mr. Parker could not be excused. His time for making the objection was at the revision of the list. The learned gentleman also submitted that Captain Edward Roper, who had been passed over, should serve on this jury. His allegation as to age was not for this court. His time for making that application was at the revision of the list, and not here.

Mr. Justice Crampton—There is an affidavit from the juror, stating that it is not only from age but from infirmity he claims to be excused.

Mr. Henn said if the affidavit was sworn in court, their lordships could deal with it.

Mr. Justice Crampton said the reason he was passed over for the present was, that he had a certificate from a physician as to ill health. It was not quite clear certainly, but that was the reason the court passed him over for the present.

Mr. Henn submitted, with great respect, that Mr. Roper ought not to be passed over.

Captain Roper said he was subject to rheumatism, and could not sit during the trial.

Mr. Henn—He has been put upon the list by the proper tribunal, and he can't be now excused.

Justice Crampton—Is it clear, under the statute, that you can compel a gentleman beyond sixty to serve, for I am not quite sure that you are right on it?

Mr. O'Connell—Have the goodness to let me see the affidavit.

Judge Crampton—Hand it over.

Mr. O'Connell having looked at the document. There is no declaration of ill health or incapacity even upon belief, so that he admits his capacity to serve; and this is no affidavit, it is a declaration; it is not a document for the court to entertain—'tis waste paper.

Mr. Henn—Why, any gentleman above sixty might refuse to serve after the pannel had been returned, and others who were above that age might suppress the fact if they thought proper.

Captain Roper—I have not been on a jury those six years.

Chief Justice—Why didn't you apply at the October sessions to be excused?

Captain Roper—If I thought of it I certainly would.

Mr. Henn cited the first section of the jury act to which Mr. Justice Crampton had referred, and which is to the effect, that every person between the ages of 21 and 60, and possessed of certain property and other qualifications, should be deemed competent, and should be liable to serve upon the jury. Mr. Roper had been put upon the list, and, therefore, it must be presumed he had been properly placed there, and no objection could be entertained in that court.

Mr. M'Donogh, Q.C., contended that upon the judgment delivered by Mr. Justice Crampton on the previous day, in which his lordship proceeded on the perfect finality of the Recorder's judgment, he had not the power to inquire into the point now brought before the court. The judgment of the majority of the court yesterday proceeded on the grounds of a perfect finality in the learned Recorder's judgment.

Chief Justice—There is no doubt about it.

Mr. Justice Crampton thought there was some consideration due to the causes of disqualification mentioned by Mr. Roper.

Mr. M'Donogh—Your lordship said yesterday that the Recorder had a perfect power of deciding those matters; and your lordship having pronounced that judgment in strong and emphatic language, we submit that the adjudication of the Recorder cannot now be set aside. Is that question to be disposed of on such a document as that now produced in court?

Judge Crampton—The court never meant to act upon that document. Your argument is not an *ad idem* one. I don't say there is a disqualification in the case of this gentleman, but I referred Mr. Henn to the first section of the statute, and asked his opinion upon it, without giving any opinion myself.

Mr. Close—The power of adjudication in such a case was vested in the Recorder, and that power he declined to exercise here.

Chief Justice—The gentleman is returned on "the list of jurors" to try the case, and so far the words of the act have been complied with; but it comes to be another subject of inquiry whether he has legal grounds applicable to him personally, so that he may now be excused. As far as I have yet seen, there is nothing to establish grounds for having him passed over; and I rather think, unless there be some sufficient reason shown to the contrary, the traversers are entitled to require that he should be sworn, and in my opinion he ought to be sworn.

Captain Roper was sworn accordingly.

The next name called was Stephen Parker.

Mr. Parker—My lords, it is quite impossible for me to attend to the business of this trial. I have a certificate here, sworn before the Lord Mayor.

Mr. M'Donogh—There is no affidavit here.

Chief Justice—It is not a document sworn before an officer of this court, and therefore we can't attend to it.

A medical man here came up to the table, and tendered his evidence as to the state of Mr. Parker's health.

He was sworn by the Clerk of the Crown, and asked his name. Witness—James Vance.

Clerk of the Crown—Are you a physician?

Witness—I am a licentiate apothecary.

Mr. O'Connell—Speak up, sir, and let us hear what you say.

Chief Justice—Are you in the habit of attending patients at their own houses?

Witness—I have been attending Mr. Parker for the last three or four years.

Judge Crampton—Can you tell what his state of health is?

Witness—He is labouring under great nervousness.

Chief Justice—How long have you attended Mr. Parker?

Mr. Vance—Three years, my lord.

Chief Justice—What is your opinion of his capability to serve as a juror in this case?

Mr. Vance—I think it might be fatal to him, as he has a tendency to a complaint in his head.

Mr. M'Donogh—Tell me, sir, which do you or Mr. Parker look the more sickly man?

Mr. Vance—I think you could answer that better than I.

Mr. M'Donogh—What do you say is the matter with him?

Mr. Vance—He is very nervous.

Mr. M'Donogh—What would you order for nervousness?

Mr. Vance—I'd order a sedative.

Mr. M'Donogh—Were you here yesterday?

Mr. Vance—I was.

Mr. M'Donogh—Do you go about with your patients?

Mr. Vance—No.

Mr. M'Donogh—Did you go home with, or did you dine with, Mr. Parker?

Mr. Vance—I did not.

Mr. M'Donogh—Did you see him after dinner.

Mr. Vance—I did.

Mr. M'Donogh—Was he excited then?

Mr. Vance—Very much so (laughter).

The Attorney-General—What is laughed at here is, that he has had two apoplectic attacks; and this is the subject of ridicule.

Mr. M'Donogh—Oh, there are a great many things in this court which are very fit subjects for laughter and ridicule.

Chief Justice—What is your opinion of his state of health?

Mr. Vance—I think he could not serve as a juror on the present occasion without endangering his life.

Mr. Parker was then passed over.*

Edward Clarke was then called and sworn.

The Clerk of the Crown—Benjamin Eaton, of Prince's-street.

Mr. Eaton—My lord, I am totally incapable of serving on a jury. I had a fall from a scaffolding in May last, and I have been very ill ever since. I had a struggle between life and death; I fell with my back against a granite step; I hold a medical certificate in my hand of my unfitness to serve on a jury; I was supposed by many persons to have been dead, I was so severely injured; I was in pain and anguish for three hours yesterday; I am the last man in society to shrink from my duty as a citizen, and if it was an ordinary case that would only last for three or four days, I would not shrink from discharging my duty; I hand in the certificate of the physician who attends me.

Chief Justice—Does your physician attend?

Mr. Eaton—He does not. I did not think it necessary.

Chief Justice—You might have known it would be necessary from what you saw yesterday.

Mr. Eaton—It was near nine o'clock last night when I got home, and I was so ill and fatigued I was obliged to go to my bed, but I am willing to swear to the facts.

Mr. Eaton was then sworn to make true answers as to his state of health.

Chief Justice—What profession are you of?

Mr. Eaton—I am an architect and builder, and in the exercise of my calling had the misfortune to get a fall from a scaffolding, which has injured me very much.

Chief Justice—When?

Mr. Eaton—In May last.

Chief Justice—Who is your attending physician?

Mr. Eaton—Dr. Plant.

Chief Justice—Were you confined to bed?

Mr. Eaton—I was. Mr. Eaton, then, in answer to his lordship said, that he was incompetent to fulfil the duty of a juror. He felt upon yesterday a severe pain in his back for three hours, and he was confident he could not sit out a prolonged trial such as the present was likely to be; were it likely to hold for three or four days he would not shrink from it.

Chief Justice—Are you of regular habits of business, and do you attend to your occupations daily?

Mr. Eaton—Yes; I am of industrious habits, but am frequently obliged to give up business from the pain I suffer in my back; I was obliged to do so last Friday.

Chief Justice—You say you felt pain on yesterday; was it to such an extent as would prevent you from exercising your duty as a juror?

Mr. Eaton—Yes.

Mr. Henn—Have you applied when the list was revising to be struck off?

Mr. Eaton—No, I did not apply, because I am not quite sixty years of age, and I consider that was the only exemption; I never served on a common jury; I have served twice on grand juries; I had no medical attendant the last three months; I procured the certificate now produced on last Thursday or Friday, and suppose that Mr. Ford, who is a neighbour of mine, and often kindly inquired for me during my illness, will at once admit that the state of my health is such as to render me unfit to serve.

Mr. Ford—I have seen Mr. Eaton frequently during the last three months attending regularly to his business, and he appeared in good health.

Mr. Henn—Have you done any business except what was immediately connected with your own affairs since the accident you speak of?

Mr. Eaton—I have not; I measured on the Drogheda railroad, but it was before the accident.

Mr. Henn (to the Court)—He is here upon the list, and he might have had his name struck off on the revision, but neglected to do so.

Chief Justice—He has given as his reason that he was not then sixty years of age.

Mr. Henn—He appears to be of active habits and attends regularly to his business. If such excuses are permitted a jury may not be had.

Chief Justice—We have a duty to perform, and to see that no improper excuses are allowed, but we are not to force a person to be sworn who is unfit and incapacitated from liability to illness.

Mr. Henn—If permanent infirmity or suffering existed it would be a sufficient cause of exemption, but that does not exist in the present case.

* Much laughter was invariably excited through the court as each juror offered causes why he should not be called upon to serve, and this was more particularly the case when Mr. Vance was giving his reasons for the incapacity of Mr. Parker.

Chief Justice—We cannot press Mr. Eaton further.

Mr. Eaton then stood excused.

Francis Faulkner, Grafton-street, sworn.

John Croker, North Great George's-street, sworn.

Henry Flinn, William-street, sworn.

Henry Thompson, Eustace-street, sworn.

Anson Floyd, Wellington-quay, sworn.

John Rigby was then called. He objected to himself as being improperly summoned. He was summoned as John Rigby; his name was John Jason Rigby.

Clerk of the Crown—Are you John Rigby, of 175, Great Brunswick-street?

I am John Jason Rigby of that street.

Mr. Fitzgibbon—Are not the names on your door William and John Rigby?

Mr. Rigby—Yes; these are the names upon the door in Suffolk-street.

Attorney-General—Let him be sworn as John Rigby, otherwise there would be an error on the record.

Clerk of the Crown—John Rigby, hearken to your oath.

Mr. Rigby—My lords, the same objection was held sufficient in Mr. Papworth's case yesterday. His name is James Collins Papworth, and he was summoned as Collins Papworth only. As a man of business I wish to avoid being on this jury if I can.

Chief Justice—You have a duty to perform for the public as well as for yourself, and you must be sworn.

Mr. Rigby was sworn.

Robert Hanna, Henry-street, sworn.

William Longfield, Harcourt-street, sworn.

William Ord, Cork-street, sworn.

Clerk of the Crown—Gentlemen of the jury, answer to your names.

NAMES OF THE JURY.

1 James Hamilton, Upper Ormond-quay.
2 Captain Edward Roper, Eccles-street.
3 Edward Clarke, Stephen's-green, west.
4 Francis Faulkner, Grafton-street.
5 John Croker, North Great George's-street.
6 Henry Flinn, William-street.
7 Henry Thompson, Eustace-street.
8 Anson Floyd, Wellington-quay.
9 John Rigby, Great Brunswick-street.
10 Robert Hanna, Henry-street.
11 William Longfield, Harcourt-street.
12 William Ord, Cork-street.

THE OPENING.

Clerk of the Crown—Gentlemen of the jury, the traversers, Daniel O'Connell, John O'Connell, Thomas Steele, John Gray, Richard Barrett, Rev. Thomas Tierney, Charles Gavan Duffy, and Thomas M. Ray, stand indicted for unlawful conspiracy and confederacy, as charged in the indictment. You are to inquire whether they are guilty or not.

Mr. Napier—My lords and gentlemen, this is an indictment for unlawful conspiracy and confederacy, and contains eleven counts:—

The 1st count charges the traversers with unlawfully intending to excite disaffection and ill-will among her Majesty's subjects, and to weaken their confidence in the administration of justice, and by means of such unlawful combination and confederacy to obtain changes in the constitution and government of the country, and sets forth several overt acts.

2d, Count same as the first, omitting the overt acts.

3d, Charges the attempts of the traversers to create and excite disaffection among her Majesty's soldiers and troops.

4th, Sets forth overt acts, omitting the attempts to excite disaffection in the army.

5th, Relates to attempts to procure alterations in the laws of the country.

6th, That the traversers conspired and confederated to bring about these changes by unlawful and violent measures.

7th, Same as the last, with the addition that the object of these unlawful proceedings was to effect the repeal of the legislative union between Great Britain and Ireland.

8th, 9th, and 10th, Set out the measures adopted by the traversers calculated to weaken confidence in the administration of justice.

11th, Instances how by means of vast multitudes collected together, and a display of physical force, and also by means of violent and seditious speeches and publications, attempts have been made to intimidate the houses of parliament in reference to this object, to all which the traversers have severally pleaded not guilty.

THE ATTORNEY-GENERAL'S OPENING SPEECH.

The Attorney-General—Gentlemen, you have been empannelled on the present occasion, to perform the important duty of deciding upon the innocence or the guilt of the several defendants in this case; and I am sure, it is not necessary for me to impress upon your minds the necessity of giving your anxious and your undivided attention to this momentous cause. Gentlemen, my learned friend, Mr. Napier, has already stated to you the substance of the indictment; but in order to impress it upon your minds, and that you may be able to understand the case as it proceeds, I shall take leave again to call your attention to the general nature of the charge, which is brought against the defendants. Gentlemen, they stand indicted for having conspired and confederated together, to raise and create discontent and disaffection amongst her Majesty's subjects, and to excite them to hatred and contempt of the government and constitution of this realm, as by law established; and to unlawful and to seditious opposition to the said government and constitution; and to stir up hatred, jealousy, and ill-will, between different classes of her Majesty's subjects, and especially to promote amongst her Majesty's subjects in Ireland, feelings of ill-will and hostility towards and against her Majesty's subjects in England; and to excite discontent and disaffection in the army; and to cause large numbers of persons to meet together at different times, and at different places, for the unlawful purpose of obtaining, by means of the intimidation to be thereby created, and by means of the exhibition and demonstration of great physical force at such meetings, changes and alterations in the government, laws, and constitution of this realm, as by law established; and particularly by those means to bring about and accomplish a dissolution of the legislative union between Great Britain and Ireland; and also by means of inflammatory and seditious speeches and addresses, and by seditious publications, to intimidate parliament, and thereby bring about changes and alterations in the laws and constitution of this realm, as by law established; and to bring into hatred and disrepute the tribunals established for the administration of justice, and to diminish the confidence of the Queen's subjects in the administration of the law therein, and to assume and usurp the prerogative of the Crown in the establishment of courts for the administration of the law. Now, gentlemen, having brought under your notice and consideration the charge for which the defendants stand indicted, I think it will be convenient and proper for me, before I open to you the facts of this case, that I should make some few observations relative to the law of conspiracy, which will enable you afterwards to apply those observations, as I proceed in the statement of the case. And, gentlemen, you are aware of this, that of course in stating the law to you, I state it in the presence of the court. You are nor to take the law from me conclusively, nor from the traversers' counsel conclusively, you will take it so far only as it

meets with the assent of the court. Gentlemen, with respect to the law of conspiracy, I have to state to you that conspiracy is a crime, which consists either in the combination and agreement by persons to do some illegal act, or a combination and agreement to effect a legal act by illegal means; and a confederacy to effect either an illegal object, or even a perfectly legal object by unlawful means, is in contemplation of law criminal, and amounts to the offence of conspiracy. Your lordships will find it so laid down by Lord Denman, and Judges Parke and Patteson, in the case of the King *v.* Jones, 4th Barnwall and Adolphus, pages 349 and 350. My lords, in the case of the King *v.* Forbes, in this country, the law was laid down in the same way by the late Lord Chief Justice, in giving the judgment of the court. The passage to which I refer, will be found in Mr. Green's Report, page 347, and further, that the merely confederating constitutes the crime, though the object be not effected. My lords, in a more recent case of the Queen *v.* Murphy, which your lordships will find reported in 8 Carrington and Payne's Reports, page 310, the law of conspiracy is thus laid down by Mr. Justice Coleridge, in summing up that case to the jury:. Mr. Justice Coleridge stated—"You have been properly told, that this being a charge of conspiracy, if you are of opinion that the acts, though done, were done without common concert and design between these two parties, the present charge cannot be supported. On the other hand, I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together, and actually agreed in terms to have this common design, and to pursue it by common means, and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies, there are no means of proving any such thing, and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, and the other another part of the same act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion, that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, had they this common design, and did they pursue it by these common means, the design being unlawful? I ought also to tell you, that by finding the defendants guilty you will not (as has been said) affect the right of petitioning. It is not wrongful to assemble in a public meeting to petition parliament against that which is alleged to be a public grievance. It is not necessary, that it should be proved that these defendants met to concoct this scheme, nor is it necessary that they should have originated it. If a conspiracy be already formed, and a person joins it afterwards, he is equally guilty. You are to say whether from the acts that have been proved, you are satisfied that these defendants have been acting in concert in this matter. If you are satisfied, that there was concert between them, I am bound to say, that being convinced of the conspiracy, it is not necessary that you should find both doing each particular act, as, after the fact of a conspiracy is once established in your minds, whatever is either said or done by either of the defendants in pursuance of the common design, is both in law and in common sense to be considered as the act of both." Gentlemen, I tell you confidently, that such is the law, and always has been the law. If you believe, that the several defendants have been engaged in the common design of obtaining the objects which they have in view, by the means alleged in the indictment, if they had this common design, the acts of the one, or what is said or written by the one, becomes evidence against the other, just as if it had been the act of the person who had written or done the particular thing proved in evidence. Gentlemen, I have already stated to you, that an agreement between two or more, either to effectuate an illegal object, or to effectuate an object however legal by unlawful means, amounts to the crime of conspiracy. With reference to the last proposition, stated by Mr. Justice Coleridge, that the acts of one conspirator, and what is written and done by him is evidence against the other, your lordships will find that point decided in the case of the King *v.* Stone, 6 Term Reports, 527. In Watson's case, which your lordships will find reported in the 32d volume of the State Trials, Howell's edition, page 7, Judge Bayley, in his charge to the grand jury, stated the law of conspiracy thus—"He who plans the thing, or who devises the means by which it is to be effected, or draws in others to co-operate, or does any other act preparatory to the execution of the thing proposed, is as much a principal as he who executes that thing: and provided a man once comes into the common purpose and design, every previous act with a view to that purpose and design, and every subsequent act, is as much his act, as if he had done it himself; provided you shall find that they all had the same common purpose and design, no matter when any one person entered into the common purpose or design, every one who did enter into it, is in law a party to every act which had been before done by the others, and a party to every act which might be afterwards done by any of the others; and therefore what you will have to consider with reference to each person will be this:—did such person at any period of time join in this common purpose? if he did—whether he were present at any particular meeting or not—he were a party to the common purpose, that would make him equally guilty, as if he had been actually present at every one of the acts and deliberations. I omitted to state to you, that amongst the overt acts you will probably find conspiring will be one of the subjects charged, and consulting another. In order to support these, it is not absolutely necessary that you should have positive evidence from persons who heard them consult, or from persons who heard them conspire, or even that you should have evidence of an actual meeting for that purpose, if you shall find that there was a plan, and you shall be satisfied from what was done, that there must have been previous consultation and conspiracy, either by the persons who are the objects of the charge, or by persons engaged with them in the same common purpose and design, that will justify your finding the conspiracy and consultation." The case of the Queen *v.* Vincent, Frost and Edwards, in 9th Carrington and Payne, 275, was a case of conspiracy, the indictment in some respects resembling the present. It was "a conspiracy to excite discontent and disaffection amongst the subjects of the crown, and to excite them to hatred and contempt of the government and constitution, and to unlawful opposition to such government." Upon that indictment two of the defendants were found guilty. There is another case in the State Trials, to which I shall call the attention of the court; the case of the King *v.* Redhead, otherwise Yorke. It is reported in the 25th volume of the State Trials, and the report commences at page 1004. That was an indictment for a conspiracy, by the defendants in that case, to traduce, vilify, and defame the commons' house of parliament, and the government of this realm; and in pursuance of that unlawful combination and conspiracy, the indictment stated that the defendant caused and procured divers subjects of our lord the king, to the number of four thousand and more, to meet and assemble themselves together at a certain place, for the purpose of hear-

ing divers seditious resolutions and writings of and concerning the commons' house of parliament and the government of this realm; and that the defendant did then and there publish and read several matters, set out in the indictment, of a seditious and inflammatory character at the meeting which they had then procured to be assembled, for the purpose of disseminating their sedition, and inciting the parties whom they got to meet together to discontent and disaffection towards the government and the commons' house of parliament. The defendant in that case was found guilty of the crime imputed to him; and Mr. Justice Rooke, in charging the jury, stated amongst other matters, in pages 1151 and 1153—"You are therefore to consider, supposing the inuendoes fairly stated, whether it was their intention merely to enlighten the minds of the people upon a speculative point, or to carry them a step further, and to excite a spirit of discontent, disaffection and sedition in their minds. If you be of opinion, that the defendant uttered those speeches with that view, or that they had that tendency even though he may not have had that design, yet if a man will in a public assembly utter words having a seditious tendency, he must take the consequences, and he can no more justify himself for what he has done, by saying he did not think it would have had that consequence, than a man who fired a pistol among a crowd should be allowed to say, 'I did not think my pistol would have gone so far;' or that a man shall be allowed to say, 'I only tried the effect of powder, and did not think it would have killed the man.'" And his lordship, in a subsequent part of the charge to the jury, stated, "If the conduct of the defendant here had been merely a speculation of his own, it would have been a different thing; but when those speculations are gone forth in a large assembly, it will be for you to judge whether you will give him credit for the innocence of his exertions, and whether he did not address them with a view to inflame their minds and their passions." Now, my lords, I think it advisable to call your lordships' attention particularly to a very important case, bearing upon the subject of unlawful assemblies. And I call the attention both of the jury and of your lordships to this case, because as the law is laid down here, I think it will be found to displace what I anticipate will be a portion of the defence in the present case. It is the case of Redford *v.* Birley, and is reported in the 3rd volume of Mr. Starkie's *Nisi Prius* Cases; the report commences at page 76. Your lordships are aware that that was an action of trespass, brought against some of the persons who were concerned in dispersing the Manchester meeting. Pleas of justification were put in, in that case. It came on for trial before Mr. Justice Holroyd, and there having been a verdict for the defendants justifying them for having dispersed the meeting, and establishing the illegality of that assembly, a motion was made for a new trial. The case came before the Court of King's Bench in England, before Lord Tenterden, Mr. Justice Bayley, Mr. Justice Holroyd, and the present Lord Wynford; and the court unanimously refused the motion to set aside the verdict, establishing the law as laid down by Mr. Justice Holroyd at the trial; and each of these judges, when the case came on for argument in Banco, gave his opinion with reference to unlawful assemblies of this multitudinous character.

Mr. Justice Perrin—Where is that?

The Attorney-General—The case in Banco is reported in a note to the *Nisi Prius* case in 3rd Starkie's *Nisi Prius* Cases; and your lordships will find the judgments of the several judges I have mentioned, at the close of the report. In page 99, Mr. Justice Holroyd, after referring to a plea which had let in evidence of a previous seditious conspiracy, and also of drillings, said to be clandestine, uses the following words:—"But whether they were clandestine or not, if they were done for the purpose of overawing the government, or for the purpose of exciting tumult or resistance to the civil power, they would be unlawful." In page 103, the same judge cites the opinion, and a portion of the charge given by Mr. Justice Bayley, who had tried the case of the King *v.* Hunt, and he cites and approves of what had been laid down as the law by Judge Bayley, in the case of the King *v.* Hunt. He says, "All persons assembled to sow sedition, and bring into contempt the constitution, are in an unlawful assembly; all persons assembled in furtherance of this object are unlawfully assembled." And in the next page he continues to quote from Judge Bayley, and in the following page he still continues to cite Judge Bayley's charge: "If the object of the drilling is to secure the attention of the persons drilled to disaffected speeches, and give confidence by an appearance of strength to those willing to join them, that would be illegal; or if they were to say, 'we will have what we want, whether it is agreeable to law or not,' a meeting for that purpose, however it may be masked, if it is really for a purpose of that kind, is illegal." I have already stated to your lordships, that the motion for a new trial was opposed on several grounds, independently of the objection in point of law as to what had fallen from the judge, and amongst others, that the verdict was against evidence. Lord Tenterden in giving his judgment stated amongst other matters, in page 112:—"If all that was legitimate evidence, *a fortiori* the conduct of persons, probably and apparently going towards the meeting, would undoubtedly be evidence; for it is by such evidence only, you are able to discover that which, though not the professed, was the real object of the meeting, for it is evident such a meeting could not be held at all, if they did not at least take care to hold forth a legitimate object. It was therefore of the utmost importance to show what was said by persons going or preparing to go to such a meeting. Doubtless in an assembly of this kind, many persons would go from different motives: some would go from mere curiosity; there would be others who would think there were public grievances which a meeting of this kind would prevent; others might go meditating mischief immediately; others again might go there, who meditated mischief at some future time, when those without arms might have arrived at a further stage in military discipline." You will be told, when the defence opens in this case, that the meetings dispersed peaceably. The separation of those meetings peaceably, and the intention that they should disperse peaceably, is a formidable part of this conspiracy. It was because the parties knew that "the hour of England's infirmity" had not arrived, which is to be that of "Ireland's opportunity." "Will you be ready when I want you again?" was an inquiry made by one of the defendants at some of the meetings. If the meetings had not dispersed peaceably, the conspiracy would necessarily have been broken up at a much earlier period, part of the system being to have the organization complete from north to south, and from east to west, before the signal should be given. In the following page, 113, Lord Tenterden proceeds to refer to the assembling of the people, and their marching to the meeting-ground, their bearing flags and inscriptions, being terms of defiance—and he says: "It is manifest there was an avowed intention to insult those who were entrusted with the administration of justice and the laws; and if possible, by a show of numbers, to overawe and prevent them from interfering with the object their leader might be supposed to have had." Lord Tenterden having given his judgment, Mr. Justice Bayley followed; and in page 116, Mr.

Justice Bayley stated, that persons being assembled, and a place erected from which they might be addressed, one person was there having no particular connexion with the place, but who had come a considerable distance to communicate with those persons, "he might by the intimations which he there made, give to that physical force, so assembled, a direction which might operate either in perfect innocence, or with a great degree of danger to the public peace. At that time, then, you are to judge what the language will be, which he will make use of at the place where there is that large collection of physical strength, which may receive a direction from him —what is likely to be the direction which he may be disposed to give it." Are we to be told, and is it consistent with what these learned judges lay down, that you may have hundreds of thousands of persons assembled, whose course of proceeding is to be regulated by the directions which they may receive from one individual, who may tell them to separate peaceably; who may do so for the purpose of carrying out further the designs of the conspiracy, aware that the organization is not sufficiently prepared for him to withdraw completely the mask which ill conceals his designs? But I deny that the circumstance of the meetings being peaceable, or concluding peaceably, when assembled under the control of one mind, which may give them a direction one way or the other, constitutes a defence for them—I say, such is not the law of the land, and I shall ever hold so, until I hear it authoritatively laid down from the bench to the contrary. In page 125, the present Lord Wynford, in giving his judgment, says—"It appears to me impossible to say, that this drilling was innocent." Observe, it was a drilling without arms. "If it was not innocent, what is it? We have the key to it in the evidence of the witnesses, that though nothing was to be done at this meeting, yet, when their numbers were seen, others would join them, and they would be then enabled to overturn the government." You will hear it laid down on the part of the defendants, that all these meetings were legal, and that the confederacy to hold these meetings throughout the country, for the purpose of organizing the population against the law, was legal —because they ended peaceably, although their so ending was to depend on the will of one man. In the subsequent page, 126, his lordship proceeds— "It is not necessary, for the purpose of showing it was illegal, to decide whether immediate mischief was to be then begun. I believe many went there without that intention; but I have had so much experience on subjects of this sort, that I have known this occur, that those who follow are more in a hurry for execution than those who plan. I think, therefore, that it is most probable that that which I have stated is correct; at least as far as regards the intentions of the leaders. Nothing mischievous was to be done that day; they were only to ascertain the numbers; to accustom them to meet in large parties; to inspire mutual confidence; to incite others, by the great numbers they presented, to join in the scheme of those who had embarked themselves; and at some future day, when the drilling should be more advanced, when they should have had a trifling addition made to their discipline by having arms put into their hands, then the mischief was to be finally entered upon." Thus, my lords, was the law laid down by Lord Tenterden, Mr. Justice Bayley, Mr. Justice Holroyd, and the present Lord Wynford. I shall beg permission to refer the court, before I proceed to the statement of the facts of this case, to another case—the Queen *v.* Collins, in 9th Carrington and Payne, page 460; which was a case of seditious libel with a view of inciting the subjects of the crown to resist the laws. One of the charges in the libel had regard to a certain resolution containing these words, which were the subject matter of the prosecution—"That the people of Birmingham have their own feelings to consult respecting the outrage given, and are the best judges of their own powers and resources to obtain justice." Mr. Justice Littledale, in summing up, says—"With respect to the resolution," just read, "you are to consider whether these words meant the regular mode of proceeding by presenting petitions to the crown, or either house of parliament, or by publishing a declaration of grievances, or whether they meant that the people should make use of physical force, as their own resource to obtain justice, and meant to excite the people to take the power into their own hands, and meant to excite them to tumult and disorder." The only remaining authority, with which at this part of the case I shall trouble your lordships, is the King *v.* Burdett, 4th Barnwall and Alderson, 178. Lord Tenterden, in giving judgment, says—"In the King *v.* Powis and others, the trial proceeded upon this principle; when no proof of actual conspiracy, embracing all the several conspirators, was attempted to be given in Middlesex, where the trial took place, and where the individual actings of some of the conspirators were wholly confined to other counties than Middlesex, but still the conspiracy as against all having been proved from the community of criminal purpose, and by their joint co-operation in forwarding the object of it in different places and counties, the locality required for the purpose of the trial was satisfied by overt acts done by some of them, in prosecution of the conspiracy, in the county where the trial was had." That case illustrates very strongly the principle I took the liberty of adverting to, in the early part of my statement, that the act of one conspirator engaged in the same common design is, in point of law, the act of all—because for the purpose of the venue, an overt act by one conspirator in the place where the trial takes place, is in contemplation of law the act of all, and you are at liberty to rely on it as evidence of the conspiracy by all at the place where the venue is laid. Thus, my lords, having (I fear at too much length) called attention to the law applicable to this subject, I shall now proceed to open to you, gentlemen, the facts of this momentous case. Gentlemen, I think it may be convenient in the opening to advert shortly, and very shortly it shall be, to the position in which the question of the repeal of the union stood at the time of the formation of the repeal association in Dublin. Gentlemen, shortly after the passing of the Roman Catholic Relief Bill, which you are aware received the royal assent in 1829, an association was founded in this city, which changed its name on several occasions with a view of evading the law, but having in contemplation the object of the repeal of the union. That association, or society, having such object in view, and there being at that time in force a statute which has since expired, the then government, of which Lord Grey was the head, issued a proclamation in the month of January, 1831, suppressing the association under its various names and denominations. The proclamation stated— "That an association, assembly, or body of persons, assuming various denominations, 'which are stated in the proclamation,' had, from time to time, held meetings at different places in the city of Dublin, for the purpose of promulgating seditious doctrines and sentiments, and had endeavoured, by means of inflammatory harangues and publications, to excite and keep alive in his Majesty's subjects a spirit of disaffection and hostility to the existing laws and the government;" and the proclamation further stated, "That the association, and the meetings thereof, were dangerous to the public peace and safety, and inconsistent with the due administration of the law." Gentlemen, that proclamation issued as I have already mentioned at a time when a sta-

tute, which passed in the same session as the Roman Catholic Relief Bill, was in force, giving stronger powers to the executive than it now possesses; and that proclamation was issued by the government, of which Lord Grey was the head. In the course of that same year a question was put in the house of commons to a minister of the crown, Lord Althorp, relating to this question of the repeal of the union. And Lord Althorp, in that session of parliament, namely, in 1831, made the following statement: "The case with respect to the government is this, that the honourable member for Waterford has, it is well known, been exciting so much discontent in Ireland, has been keeping up what he calls agitation in that country, that although the conclusion of every speech, however violent or inflammatory, has been an advice to his auditors to be obedient to the laws, it must be evident to every unprejudiced man, who has read those speeches, or who has marked the course which the honourable member has been pursuing, that his language and conduct have had but one tendency, namely, to incite to insurrection and rebellion throughout the country; I repeat it, their direct tendency has been as I describe it. What, I ask, has been the avowed object of the honourable member for Waterford's agitation? To obtain a repeal of the union. I would beg to ask any man, who has considered what the repeal of the union must produce, whether it does not become the duty of government, to employ every means in their power to prevent the accomplishment of an object, which must directly lead to an entire separation of the two countries? Sir, I trust, that those who seek for a repeal of the union will not succeed. If they do succeed, it must be by successful war; and from the spirit of my countrymen, I hold that to be impossible. The honourable member has made allusion to such an extremity; I tell him that no man entertains a greater horror of war than I do; and of all descriptions of war, I think a civil war is most to be dreaded. But, sir, I also tell him, that even civil war itself would be preferable to the dismemberment and destruction of the empire. I have felt it my duty to state thus fairly and boldly what are the views of his Majesty's government on this momentous subject." Such was the position in which the repeal question stood in 1831; such was the opinion entertained by the then government; and it is important, in considering the course pursued at the present day in seeking to obtain the repeal of the union, to show, that the only means by which it can be carried out, are means not consistent with the law or the constitution; and before I close my statement, I will prove out of the mouths of the defendants themselves, that their intention was to obtain the repeal of the union otherwise than by legal and constitutional efforts. The observations of Lord Althorp show that speeches might be intended to incite, not to immediate outbreak, but to ultimate insurrection, by the disaffection produced on the minds of those to whom the speeches were addressed, aided by the organization established throughout the land. It is not the first time that persons have been found to preach peace and to intend outbreak. An eminent English judge, Mr. Justice Grose, in passing judgment on Joseph Hanson, in the 31st State Trials, page 98, said, "Men with rebellion in their hearts, occasionally use words recommending peace, order, and tranquillity, and obedience to the law." And they do so for obvious purposes. If they do not continue to do so up to the point at which they may venture to throw off the mask, they would defeat their own designs; they could not carry on the organization till it was complete; and they must, for the purpose of effecting their objects, illegal as they may be, inculcate peace; they must preach tranquility until they have wound up the public mind, and have organized the country from one extremity to the other—until, in the language of one of the publications I shall read, the country is ready for liberty. The effect of that proclamation in 1831, and the strong opinions entertained by the then government of which Lord Grey and Lord Althorp were members, was to give a temporary check to repeal agitation; but as soon as the statute of the 10th of George the Fourth, giving summary powers to the executive expired, the agitation was recommenced, the repeal of the union again was brought forward; and in the commencement of the session of 1833, his late Majesty, in his address from the throne, desired to be entrusted with such additional powers, as might be found necessary in Ireland, for controlling and punishing the disturbers of the public peace, and for preserving and strengthening the legislative union between the two countries. That speech was delivered by his late Majesty in the commencement of the session of 1833; and in moving the address to the throne in reply to that speech, Lord John Russell, then a minister of the crown, asked, "Shall we now say that there ought to be a separation between England and Ireland, at a time when, as I contend, all that has lately passed in that country shows that the objects in view are neither more nor less than these—that an attempt is to be made, under the name of a repeal of the union, and under the power of a separate parliament, to disunite the two countries—to confiscate the property of all Englishmen who have property there—to overturn at once the united parliament, and to establish in the place of the King, Lords, and Commons of the United Kingdom, some parliament of which the honourable and learned gentleman (Mr. O'Connell) should be the leader and the chief?" And on the same night, in the house of commons, another minister of the crown said, "I told the honourable gentleman what I will now emphatically repeat, namely, that the question of the repeal of the union is the question of separation between England and Ireland—that the question of separation involves the question of the destruction of the British Monarchy, and the setting up, in its stead, in Ireland, a ferocious Republic of the worst kind." And the late Lord Lieutenant of Ireland, then a member of the house of commons, in the course of the same debate, said, "although he had the greatest horror of civil war, he would prefer it to a repeal of the union." The result of that debate led, as your lordships know, to the introduction of what was commonly called the coercion act; an act giving more extensive powers to the executive than had been possessed under the 10th of George the Fourth, the statute under which the proclamation of 1831 had issued. The effect and operation of the coercion act, having been necessarily to suspend the agitation of repeal in this country—because it could not have been carried on without the summary powers given by the act having been brought to bear on the individuals who thought fit to join in that agitation—one of the traversers, Mr. O'Connell, brought forward his motion in the session of 1834, in the house of commons, for a repeal of the union. On that occasion one of the ministers of the crown moved an amendment to the address to the throne, to record the fixed determination of parliament to maintain unimpaired and undisturbed the legislative union in the most solemn manner. That address was carried by a majority of 523 to 38. On that occasion it was, that Lord Monteagle made his celebrated and well known speech; and the result of that debate, and of the coercion act combined, did suspend the agitation of the repeal question for a short time. The next step, however, to keep this unhappy country in a state of agitation, was to establish another of those associations, which, whatever names they might pass under, had the same ultimate object in view. This association was formed

in the year 1836, (the coercion act having expired) and was called "The General Association," having, as part of the constitution of that association, (and which has always been found to be part of this system of agitation,) the collection of what was called "Justice Rent,"—contributions of which the poor inhabitants of this country have been from time to time defrauded, and which have been spent, nobody knows how or has ever heard. It is astonishing how the people of this country can have been deluded for such a number of years, and have had money extorted from them under one pretext and device or another from year to year, without ever having been informed in what way that money was disposed of. The General Association continued up to the year 1838. In that year the "Precursor Association" was formed, and the Precursor Association continued, until the year 1840, to collect money from the poor, and to spend it, and to carry on that system of agitation which has been so long the curse of this country. You might just as well expect the natural body to be in a state of health, operated on by incessant stimulants, as that this country could be in a state of peace, or tranquillity, or happiness, with this constant principle of agitation carried on throughout the country from year to year. I have now brought the history of the case down to the period of the institution of the present "Repeal Association." That association was formed in the early part of the month of February (I believe—but the month is not very material) of the year 1840. It changed its name twice, and it assumed the name it has at present in the month of July, 1840, of "The Loyal National Repeal Association." Gentlemen, it will be necessary for me now to bring before you the general nature of the constitution of this association. It consists of associates, members, and volunteers. The class of associates was established with this view, to have some portion of those connected with the association liable to pay but very small subscriptions, to extend the combination throughout the country, and to organize, as far as might be, all the poorer classes in the country. Accordingly, gentlemen, the associate pays only one shilling. A card is given to him (of which I hold one in my hand), which answers all the purposes without coming within the express language of the act of parliament against pass words or signs: it enables each person who has this card, to show it, and to establish to his neighbour, that he is connected with the repeal association. There is nothing very particular on this card; there is a shamrock at the head, with the words "Catholic, Dissenter, and Protestant," and "*quis separabit;*"—there is the year "1782"—lower down near the bottom, a view of the Bank of Ireland, formerly the Parliament House, with the words "It was and shall be." Gentlemen, the next class in this association are what are called members. The members were to pay twenty shillings; or if an associate who paid a shilling took the trouble of collecting twenty shillings, that also entitled him to be a member, as well as if he had paid the twenty shillings out of his own pocket; to these members a card was issued, the bond of union between the members and the association—to which card I must take leave to call your particular attention. Gentlemen, in one corner of this card you will find the words "Clontarf, 23rd of April, 1014," and in the opposite corner, "Benburb, 5th of June, 1645;" at the bottom, in one corner, an Irish name, which, translated, means "the Mouth of the Yellow Ford, 10th August, 1598;" and in the other, "Limerick, 9th to the 31st of August, 1690."

The Lord Chief Justice—What is the date of Limerick?

The Attorney-General—It was the siege of Limerick, from the 9th to the 31st of August, 1690. Now, as some of the members, to whom that card was given, might not have been perfectly aware of the object with which it was issued, a printed explanation was furnished to the members with the card; that printed explanation was adopted by the association, and that explanation points out the reason why these four names of different parts of Ireland were selected. They were the scites of battles in which the Irish were successful; where the Danes, in the one case, and the English, (or as the defendants call them "the Saxon foreigners") in the other, were defeated in battle by the Irish. This is the association, preaching peace and tranquillity; this is the association which never thought of exciting discontent between different classes of her Majesty's subjects: their card of membership being composed and engraved with the view to rake up the transactions of centuries past—with a view to incite the descendants of the Irish, in the present day, to hatred of the Saxon foreigner, whose ancestor, as we are told, "polluted this country with his accursed foot." I may as well state here, for your information, as the paper adopted by the association gives it; that at the battle of Clontarf, the illustrious Brian Boroihme, as he is called, with an Irish army inferior in number defeated the Danes. In the second, the battle of the Mouth of the Yellow Ford, the person they call the gallant Hugh Ferdinand O'Neill, appears to have commanded the Irish; at the battle of Benburb, Major Owen Rowe O'Neill, whose name you will hear of just now; and General Saarsfield commanded at the siege of Limerick. Now, gentlemen, on one of the pillars at the side of this card, there is a statement of the geographical size of Ireland, contrasting it with Portugal, Norway, Naples, Denmark, and several other states, Greece, Switzerland, Holland, and Belgium; the comparative population is also given, and the card then states that Ireland has not a parliament. It then states the yearly revenue, the exports, the sum supplied during the last great war against France; it states that the first general and two-thirds of the men and officers of the English army and navy on that occasion were Irishmen, and reiterates that Ireland has not a parliament. There are two flags on the card, the one with the shamrock containing on it the same motto that is upon the associate's card. On the other flag is a device, which is described as the sun bursting from behind a cloud, which I believe was the ancient banner of Ireland. In the middle is a small map of Ireland; and I now pray your attention to what is on the scroll upon the top of this card; it runs thus—"Resolved unanimously, that a claim of any body of men, other than the King, Lords, and Commons of Ireland, to make laws to bind this kingdom, is unconstitutional, illegal, and a grievance. Dungannon Volunteers, 15th February, 1782." Thus there is a distinct statement on the face of this bond of union between the members of this society, in which it is asserted, that a claim of any body of men, other than the King, Lords, and Commons of Ireland, to make laws to bind this kingdom is unconstitutional, illegal, and a grievance.—You will be told, however, gentlemen, just now, that that was a resolution adopted on the 15th of February, 1782, by delegates from the Irish Volunteers. Gentlemen, I shall beg leave to call to your recollection what was the question in 1782, as contrasted with the question now. By a statute of the 6th of George I., a statute of the English parliament—a parliament having no Irish representatives, this country having at the time a domestic legislature of its own—it was declared that the King's Majesty, with the consent of the Lords and Commons of Great Britain in parliament, have power to make laws to bind the people of Ireland. This claim of the British legislature led to the resolutions of the

volunteers of 1782. Keep in recollection the state in which the constitution of both countries stood at the time; Ireland had its separate parliament; the parliament of Great Britain had no Irish representatives returned to it, and the volunteers denied the power of the English parliament to bind Ireland by its laws. Subsequent to that, the act of union passed with the consent of the legislatures of both countries, the legislature of Great Britain and the legislature of Ireland, and with the assent of the crown. Articles having been agreed to and adopted by both legislatures, on which I shall have to observe more particularly in the course of my address to you. It was provided by the act of union, that each country should be represented in future for ever in a united parliament, to be summoned under the great seal of Great Britain; and is it now said, or will it be said, that because in 1782 the Irish volunteers denied the right of the English parliament, this country being unrepresented therein, to make laws to bind Ireland, which had a legislature of its own, that is to justify a statement on the card of the association—that at this time, at this present period, the legislature of the united kingdom has not authority to make laws to bind both countries? I confidently assert, that a proposition denying the authority of the legislature of the united kingdom to make laws to bind Ireland is illegal. On the scroll at the bottom of the card will be found these words—"You may make the union a law, but you cannot make it binding on conscience;" and under that are these words—"Saurin's speech." I dare say, in the course of this case, you will hear extracts not only from that speech of Mr. Saurin, but also from speeches delivered by Lord Plunket, and by the late Lord Chief Justice of this court; but the persons, who so constantly bring those opinions before their deluded followers, always omit to state this—that these were opinions delivered by those distinguished persons in their places in the Irish house of commons before the passing of the act of union, and that none such ever fell from any of them after the act of union had become the law of the land. Gentlemen, there is another class of persons in this association of a higher rank than the members. They are persons who have subscribed or collected £10—and who thereby become volunteers; and I have a card which I shall exhibit to you, which is one of the volunteers' cards, on which is engraved—"Volunteers of 1782 revived;" it is signed, "Thomas Mathew Ray, Secretary." There is at the head of this engraving a likeness of Mr. O'Connell; there is also one of Mr. Grattan, and one of Mr. Flood, and of the two O'Neills, the generals who commanded at Benburb and the Yellow Ford; of General Saarsfield, and of Brian Boroihme, who commanded at Limerick and Clontarf. These being the three classes of persons connected with the association, namely, associates, members, and volunters, it was necessary, for the organization of the people of the country, that there should be officers of the society; and accordingly there are inspectors, provincial inspectors, baronial inspectors, repeal wardens, and collectors. The repeal wardens, by the rules of the association, were to be appointed at the recommendation of the clergyman of the parish. They were to be appointed, on his recommendation, but only by the association itself; and there were issued to each of those repeal wardens a book of instructions as to their duties. This book is entitled, "Instructions for the appointment of repeal wardens and collectors of the repeal fund, and their duties." The ninth duty of the repeal wardens is, "to take care that there should be transmitted from the association to each locality a weekly newspaper for every two hundred associates, or a three-day paper for every four hundred enrolled in such locality, as the case may be. The sum of £10 collected and forwarded to the repeal association, entitles the repealers of the district whence it comes, to a weekly paper for the entire year gratis; and the sum of £20 entitles them to the *Pilot* or *Evening Freeman* newspaper for the same period, if they prefer either to two weekly papers." And the tenth duty of the repeal warden is, "to have the newspapers, to which each parish or district may be entitled, put into the hands of such persons as will give the greatest circulation to their contents, so that each paper may be read by, and its contents communicated to as many people as possible, for the purpose of circulating the proceedings of the association and other repeal news, by access to the newspapers; and for transacting general business, they would recommend that wherever there is a sufficient number of repealers enrolled the wardens and collectors should provide a convenient room to meet in." Now, gentlemen, you will thus observe, that in every district according to the instructions which the repeal wardens received, it was their duty to take care, that if a sum of £10 came from any district, that district should be supplied with a weekly newspaper by the association. If the district subscribed £20, it was to be supplied with a three-day paper, the *Pilot*, or the *Evening Freeman*; and the object of the repeal association was, that the sedition which the repeal papers traded in, and to which I shall have to call your attention in the course of this case, should be circulated amongst as many persons as possible in the district, it being made part of the duty of the officers of the association to endeavour, by the publication of the seditious articles and seditious harangues of those who were organising the country, to excite discontent and disaffection amongst the Queen's subjects, and to excite hatred between different classes of her Majesty's subjects, and to incite them to hatred of the law. I may observe, that there was nothing new in endeavouring to make the press the medium of attaining a revolution. It was by means of the French press, and the celebrated organ *L'Ami du Peuple*, that the French nation, and the minds of the people there, were poisoned against the government; and in this country, shortly previous to the rebellion of 1798, the same course was adopted by the newspaper then well known as *The Press*. I trust that the present conspiracy has been checked in sufficient time, to prevent such consequences as followed on those occasions from the licentiousness of the press. And now I shall explain to you, not in my own language, but in the language of one of the defendants, the means by which this organization was to be completed throughout the country I shall have occasion, in the course of my statement, to call more particular attention to this most important publication. I read a short extract only from it at present applicable to the part of the case I am upon, showing the objects of the association in organizing the country by the appointment of these repeal wardens. One of the defendants, Mr. Duffy, thus describes the organization:—

"If the Repeal organization by general, provincial, and baronial inspectors, by wardens and collectors, by volunteers, members, and associates, have any efficacy in it, it will now have a fair trial A far inferior machinery, though checked and hampered, carried emancipation. The present organization will be extended to every parish in Ireland, and perfected in every parish. The whole nation will be arrayed under that system. There is a full purpose in the minds of the Repeal leaders not to rest until it is carried out. The people will gradually but surely be arrayed, classed, organized, and bound together. Subordination of ranks, community of thought, obedience to orders, firm trust in those who command, constant activity in teaching and learning the means of liberation, are rapidly becoming general."

Mr. Whiteside—What is the date of that?

The Attorney-General—The 12th of August. In the same document he says—

"The organization must not only be carried every where, but it must be revised every where. If the Repeal wardens of any district do not see that the organization, division, and training of all the Repealers in their district is perfect; if they are not sure that the people are qualified by simplicity and completeness of organization, by self-denying obedience, by knowledge of a citizen's duties, by courage and habitual order, to take their place among the men of a free nation, these wardens have not finished their duty—that district is not ready for liberty."

Gentlemen, you have all heard of the Jacobin Club in France, and its affiliated societies. No person ever contemplated, when that club was first established, the consequences to which it led; but it at length succeeded in overturning one government; the government which took the place of that which was thus overturned, could not exist on the principles which gave it birth; it was followed by the establishment of a despotism, which continued, as you know, for a series of years. Recollect the injunction of Mr. Duffy to the repeal wardens, that if they have not adopted the course which he suggests, "they have not done their duty—that district is not ready for liberty." I cannot abstain, in this place, from describing the mischief arising from such an organization, in the eloquent language of that eminent man, the late Lord Chief Justice of this court; he said—"In the case of individuals, the progress from one offence to another is mostly gradual—but in the case of associated criminals, rapid. It is the nature of unlawful associations, to influence the passions of one man by the passions of another, and to bring into general action the collected vices of many. The man whose own temptation or frailty would be insufficient to urge him onward in the career of guilt, whose own reason or compunction might arrest his progress, is borne along with the torrent; bad example decides him—false shame hardens him, and he is precipitated almost necessarily into crime. It is, therefore, a humane, as well as a wise law, which denounces a severe punishment against every offence, of whatever nature, which is likely to lead to the commission of the highest crimes; and its wisdom has been exemplified in the history of all those associations. They begin by incendiaries spreading among an ignorant multitude the spirit of discontent. The inequality of human conditions is represented as a grievance; every inconvenience of which they can complain, however incident to human society in all countries, is denounced as an abuse. They are taught to combine for the purpose of rectifying all those supposed wrongs; every moral principle is rapidly extinguished; every sense of obligation is lost; that consummation of vice to which an individual slowly habituates himself, a conspirator arrives at speedily, sometimes in a single day; and it has often happened, that an unfortunate and deluded wretch has in the morning joined one of those confederacies as the champion of rights, and the redresser of wrongs, and the evening sun has set upon him covered with crimes." Such is the description of conspiracy, and the result of associations of this kind, by that gifted and that eminent judge.

The Lord Chief Justice—Where do you take that from?

The Attorney-General—From the charge at the Maryborough special commission in 1832, reported by Mr. Mongan. I now, gentlemen, come to the earliest meeting of the repeal association to which I think it necessary to advert. I shall, from the great weight and magnitude of this case, find it impossible to call your attention to every important meeting of the association, or every important meeting of the assembled thousands who have been collected in different parts of Ireland; and although I shall have necessarily to occupy much of your time, in the discharge of my public duty, I have endeavoured, by making a selection of some, to abridge this part of the case, and I therefore do not think it necessary to go to any meeting earlier than a meeting of the association on the 13th of February, 1843. Gentlemen, of this repeal association each of the defendants is a member; at least we can show that they all were in the habit of attending the association; we are not privy of course to the books of the association. But the defendants have acted as members of that association. It is perfectly immaterial whether they ever subscribed the twenty shillings or not; they have taken part in its proceedings, and are, for all the purposes of this case, whether they have subscribed or not, to be treated as members of that body. There were present on this occasion three of the defendants, Mr. O'Connell, Mr. Duffy, and Mr. Ray. Mr. Ray at that meeting read an abstract of the accounts of the repeal association, ending 26th January, 1843; and one of the items of expenditure appears to have been, "Cost of newspapers forwarded to repeal wardens, and advertisements, 365*l.* 15s. 11d." It was part of the expenditure of the association, circulating amongst the people, throughout the country, those papers which were calculated to excite in their minds feelings of hostility to the government and the constitution. At that meeting a diploma was produced, which I forgot to allude to when speaking of the appointment of repeal wardens. It is a very handsomely engraved document, it contains the name of the repeal warden, and it is signed by the defendant, Mr. Ray. You will find in the course of this case, that the duties of repeal wardens have been considered as possibly leading to their performing other duties than those stated in their instructions. You will hear that one of the defendants inquired, "why the people could not follow a repeal warden as well as if he was called a sergeant." Such is the diploma, or what I may perhaps more properly call the commission, which issued to these repeal wardens. At that meeting, Mr. O'Connell, in speaking of the relations between England and foreign countries, made those observations:—

"It must therefore be clear to all those powers," (that is, foreign powers,) "that before had been taught to dread her, that the power of England is more imaginary than real, and the giant of the imagination is little better than a pigmy in fight. England is thus externally assailed, while she is internally labouring under the greatest distress. And is not this then the time for Ireland?"

Mr. O'Connell proceeds to say:—

"The great mistake of Napoleon was, that he undervalued Ireland. If instead of taking an army to Egypt or Russia, he had sent forty-thousand men to Ireland, what would be the consequence? He would have had all the educated classes opposed to, and ready to meet, him in arms, and repel invasion; but would he have had the population opposing him? Would not the question be raised amongst them, whether they would not be better under French than under English dominion? What would be the answer to that question? It would be given in the voice of millions, and would sever the connection in less time than he had been addressing them. There was no country upon the face of the earth so strong in her natural resources as Ireland. There was a natural strength of a military nature in Ireland, such as no other country possessed. Her enclosures made every field a redoubt, where cavalry could never bear down upon her infantry. The light and hardy soldier would find a place of protection in every field

in the country. The roads were a kind of defiles; and if the congregated powers of Russia endeavoured to pour out its force upon Ireland, and if Irishmen were led by their own countrymen, they would fling the invaders from their cliffs into the sea, and thus disenthral the land from her oppressors."

Thus you have the "congregated powers of Russia" alluded to. How could Russia be the oppressor of Ireland? Is it not clear, that what was intended to be conveyed was this—"If the congregated powers of *England* endeavour to pour out its forces on Ireland, and if Irishmen were led by their own leaders, that they would fling the invaders from their cliffs into the sea, and thus disenthral the land from her oppressors?" You will find in the course of this cause, that England is the power designated as the oppressor of Ireland; and recollect, that the inflammatory language used on the different occasions I shall have to advert to, was circulated throughout the country, by the instrumentality of the repeal press, and by the repeal wardens discharging the duties prescribed to them in their instructions from the association to circulate these newspapers in every district, and take care to get them read by as many persons as possible. In this way the misguided population of the country has been incited against the English people, who, you will hereafter find, have been called "Saxon foreigners." You have the state of Ireland as a military position pointed out, "every field a redoubt, every road a defile, places where the cavalry cannot act against *her* infantry;" and the inquiry is made, why should not the Irish, led by their own countrymen, upon the next occasion, repel their oppressors and disenthral their country? I have now to bring under your notice a publication of Mr. Barrett's, one of the defendants, the editor of the *Pilot* newspaper, one who, you will find in the course of this case, has been taking a prominent part in this conspiracy, and endeavouring to aid, as far as he could, through the columns of his newspaper, and otherwise, in exciting discontent and disaffection amongst the people of this country. You will recollect, that the *Pilot* was one of the three-day papers mentioned in the instructions to repeal wardens to be circulated gratis in any district subscribing 20*l.*; it being the duty of the repeal warden to take care that this paper should be read by as many of the deluded population of this country as possible. This paper bears date on the 10th March, 1848; it purports to give an account of a repeal meeting at Washington, in the United States of America. The proceedings at that meeting are reported at length; I am not about to trouble you with the whole of them, but I shall, as a specimen, read a short extract from the speech made by Mr. Tyler, the son of the President of the United States, before I read Mr. Barrett's commentary on that speech. What I now state is an extract from Mr. Tyler's speech:—

"When we see that that people" (that is the Irish people) "amount to nine millions—and when we know they are brave in the field, eloquent in the senate, wise in the cabinet, united and determined to be free, we cannot suppose for a moment their freedom is impossible, or even difficult, the libation to freedom must sometimes be quaffed in blood. The Irish heart he looked upon as true freedom's pole, true as the magnet is to the north, and their lives are given cheaply in the purchase of liberty. Such being the character of the people, we have no fears but she will soon work out her freedom; and he, for one, wished and hoped it might be speedy and comprehensive."

I shall now call your attention to the observations in the leading article, commenting on Mr. Tyler's speech:—

"Repeal—America.—We insert below a report of a meeting held in the city of Washington, the capital and seat of the chief government of the United States. It is unnecessary to request the deepest attention of our readers to this important proceeding. The station of the parties who took a leading and prominent part in that meeting is such, that the bare announcement of their names is enough to draw the intense attention of readers to the matter, whether of Tory, Whig, or Repeal politics. It will be seen that the meeting was addressed by several members of congress, and by other men holding high office in the government of the country. But above all it will be seen, and we call the attention of her Majesty's government to the fact, that the son of the President of the United States took a leading part at that meeting. He moved the first resolution, and delivered a bold and statesman-like speech on the occasion."

"The libation to a country's freedom must sometimes be quaffed in blood." Such, according to Mr. Barrett, is a bold statesman-like declaration. The leading article proceeds:—

"We learn from our private correspondent that Robert Tyler, the gentleman we allude to, is a young man of great talent, the secretary of his father, and, of course, the representative and expounder of that father's sentiments. Very well. Now, here is the President of the United States a repealer of the unholy union: here is his son, and here are several members of congress, gathered round the green standard of Ireland. The united states is studded all over with repeal associations. These associations are about to band themselves together by means of an executive board, which shall never die till Ireland is restored to her liberties. How can repeal be refused, sustained as the demand is by the people of the United States, with their president at their head?"

After another passage, which it is unnecessary to read, the leading article proceeds:—

"America naturally calculates that Ireland can be attached to her interests. Ireland is, after all, an important section of the national family. Napoleon once said, that, had he landed his Egyptian army in Ireland, and turned it into a republic, he might have changed the destinies of Europe. Mr. Benton, the Missouri Senator, uttered a similar sentiment in the Senate House the other day. Curious coincidence!"

This is one of the publications which the members of this association, engaged in this organization of the people of the country, consider themselves justified in circulating, so that they shall be read by as many persons as possible. This is the poison infused into the minds of the Irish people, who naturally would be obedient to the laws, if they were permitted to be so, by those mischievous agitators who have been for so many years deluding the unhappy people of this country. Gentlemen, the next plan in this conspiracy to which I shall call your attention, was to accustom large bodies of persons to assemble together from great distances. These multitudinous meetings were to assemble upon orders being issued; and the people were thus to be accustomed to meet together in large numbers, and to come from great distances on command being given; not, indeed, with arms in their hands, because, as in the Manchester case, they were first to be drilled, and, until the organization was complete, everything was to be peaceable and quiet; they were to go in military organization and array to these meetings; they were to assemble from great distances, not with any intention of making immediate use of the physical force collected at these meetings, but, as Lord Tenterden and Lord Wynford pointed out in the case of Redford *v.* Birley—when the organization was complete—when the drilling was complete—when "the hour of England's infirmity" might have arrived—when, as you heard just now, every parish was "ready for liberty"—when they should have ac-

quired the habit of collecting from great distances, on orders given; of coming to these meetings in military organization and array—and when the discipline should be perfect, and the convenient time should have arrived. There was nothing new in this plan. It will be found, I believe, that every stage in this conspiracy had its precedent. The same course was adopted in 1797, previous to the rebellion. It is a matter of history. It is reported by the Committee of Secrecy, a committee appointed by the House of Commons in 1798, to inquire into the matters connected with the breaking out of that rebellion; and in that report to parliament, the committee stated, "The next measure to which your committee beg leave to point the attention of the house, is the proclamation of the Lord Lieutenant and Council, bearing date the 6th of November, 1796, issued in consequence of the disaffected having adopted a practice of marching in military array, and assembling in large bodies, in some instances to the amount of several thousands, under the pretence of saving corn and digging potatoes, but in fact to terrify the peaceable and well-disposed, and to compel them to enter into their treasonable associations. The same system has since frequently been had recourse to by the United Irishmen in other parts of the kingdom, under various pretences, such as funerals, foot-ball meetings, &c. with a view of displaying their strength, giving the people the habit of attending from great distances upon an order being issued, and making them more accustomed to show themselves in support of the cause." That was the plan of organization before the breaking out of the rebellion in 1798; and it is on that precedent that these multitudinous meetings have been assembled in this country during the course of this last year. The earliest meeting to which I shall call your attention was held at Trim. I believe it was the first meeting held in the year 1843, of those which have been since called "monster meetings;" but it was a meeting of very little importance as compared with some of those which took place, as the conspiracy became developed. There were present at that meeting, which was held on the 16th of March, three of the defendants, Mr. O'Connell, Mr. Barrett, and Mr. Steele. It is said there were about thirty thousand persons present. There was a dinner at Trim on the same day, at which some of the leaders, of those who had induced these congregrated thousands to meet in the morning, were present. The toast of "the People" having been given, Mr. Barrett, the defendant, returned thanks; and in the concluding passage of his speech he adverted to the progress which repeal had made, and the certainty of its success, situated as England was abroad and at home; and he ended by calling on the people "to be united, tranquilly resolved, and generally organized, and when they were, Ireland had but to stamp her foot, and she would repeal the union." This is the legal, constitutional, and peaceable mode, by which this great alteration in the relation between the different parts of the United Kingdom is to be effected—pretty well coinciding with what Mr. Duffy stated in his publication, which I have already adverted to. If the repeal wardens have not done all that he states, "that parish is not ready for liberty." But when every parish is "ready for liberty," then Ireland is to stamp her foot, and then you are to gain the repeal of the union. At that same dinner Mr. O'Connell said amongst other matters:—

"When I think of the multitudes that surrounded me to day, when I saw the bright eye, and the ready look, and that elasticity which belongs to Irishmen beyond all other people on the face of the earth; when I saw those by whom I was surrounded on one side, and those who bring the benediction of God upon our cause on the other; when I stand in your presence, men of Meath, and ask you, are you slaves, and will you be content to be slaves? I join in your response, and say to myself, I shall be either in my grave or a freeman."

Do you recollect the observation of Lord Tenterden in the case I read to you at the outset of this case, in which he adverted to the inscriptions on banners, as affecting the legality of the assembly—"Better to die like freemen than to be sold like slaves?" Mr. O'Connell proceeds:—

"I told you before, that I would not be a slave, and I now want to know, are you willing to follow my example? Young gentlemen, I ask you, dare you say you are not, in that presence (pointing to the ladies)? If you do, I tell you that those whom you now see here are too handsome, and too good, ever to be mothers of slaves. I had occasion latterly to be rummaging in Irish history, and I found some nice morsels in her bygone story. I found that many occasions arrived, in which the Irish were on the point of victory when they abandoned the field. At Aughrim, they had a triumph if they only had perseverance, and used it; and even at the blood-stained Boyne, they would have gained the victory if they had fought it out for another half hour. Irish history is full of such instances, but on every occasion the same confiding in their enemies, the same believing in the moderation of their foes, the same conceiving that the English were not actually as bad as was represented; and that they might safely acquiesce in their dominion, was always the cause of the overthrow of Ireland. I tell you that the country, on every occasion, lost by that; but I have this material for the leader of the Irish people in me, that I never will relax in the battle until the victory is mine, and secure to my country. I call on you, therefore, to rally for the repeal; and what brought you here if you do not? The man who thinks well, and does not act up to his thoughts, is worse than the scoundrel who openly betrays his country. There is no virtue in the half will, half no, of any individual; your country is as your religion; if the will and the heart is not engaged in the one, as well as in the other, the feeling is totally tepid, and one becomes disgusted with the spurious wretch, who is only half alive, either to virtue or his country."

In another place he says—

"We are arrived at this stage of agitation, that there is not a single human being so stultified as to think that the English parliament will do anything for Ireland. A man might expect coercion acts and tithe bills, insulting reform measures, and restricted franchise bills. There is no bill in the catalogue of oppressions, that you might not expect; but I would walk from this to Drogheda, and back again, to see the man who is blockhead enough to expect anything else except injustice from an English parliament towards Ireland."

Thus, Mr. O'Connell upon this occasion adverted to the physical force, by which he had been surrounded that morning. He recalled to those who heard him, the recollection of the battles of Aughrim and the Boyne; he called on the young men present, to say whether they would be slaves; he himself said he would be in his grave, or he would be free; that idle sentiments would not do, that they must act up to their thoughts, that they had nothing to hope from an English parliament, and they must follow his example—they must go to their graves, or they must be freemen. They were not to look to the English parliament. And it may, perhaps, not be improper for me to state, at this period of the case, a matter by no means unimportant, that during the whole of the last session of parliament, not one petition was presented to parliament from any of these multitudinous meetings. It is not surprising there was not; it would be ra-

ther singular if petitions were presented from a meeting, the leader of which stated that nothing was to be hoped for from that constitutional body, which alone could accord legally the objects of those assemblages. We all know, since these prosecutions commenced that there has been great activity in purchasing parchment, in order to get rid of the consequences arising from the notorious fact, that there was no petition during last session to parliament from any monster meeting. Gentlemen, something more than a year ago, a newspaper was established in this city, the proprietor of which is one of the defendants, Mr. Duffy; that newspaper, you are all aware, is the *Nation*. You also have it in recollection, that a principle of the association was, to circulate these papers as widely as possible. There is a saying which has almost become a proverb—"I shall leave to you the making of the laws, if you give to me the writing of the ballads;" and accordingly the writing and publishing of seditious poetry has been recently carried on in this country to a great extent. In the book to which I adverted just now, the Report of the Committee of Secrecy, in the year 1797, I find in the newspaper of the day, *The Press*, ballads and poetry of a most seditious character; and it has been thought advisable, at the present time, to follow the same course, and to spread the poison through the columns of the *Nation*, a paper widely circulated by the repeal association. The ballads have been so numerous, that they have been published in a small volume, entitled "The Spirit of the Nation." I am not about to trouble you with more than one specimen, but that specimen will lead you to understand the exertions that have been made use of, to inflame the minds of the Irish people. The earliest publication of the *Nation* to which I shall advert, contains one of those poems; it appeared in the *Nation* newspaper in April last, and is entitled,

"THE MEMORY OF THE DEAD.

I.

"Who fears to speak of Ninety-Eight?
Who blushes at the name?
When cowards mock the patriot's fate,
Who hangs his head for shame?
He's all a knave, or half a slave,
Who slights his country thus;
But a *true* man, like you, man,
Will fill your glass with us.

II.

"We'll drink the memory of the brave,
The faithful and the few—
Some lie far off beyond the wave,
Some sleep in Ireland, too;
All—all are gone—but still lives on
The fame of those who died;
All true men, like you, men,
Remember them with pride.

III.

"Some on the shores of distant lands
Their weary hearts have laid,
And by the stranger's heedless hands
Their lonely graves were made.
But though their clay be far away
Beyond the Atlantic foam—
In true men, like you, men,
Their spirit's still at home.

IV.

"The dust of some is Irish earth;
Among their own they rest;
And the same land that gave them birth
Has caught them to her breast;
And we will pray that from their clay
Full many a race may start
Of true men, like you, men,
To act as brave a part.

V.

"They rose in dark and evil days
To right their native land;
They kindled here a living blaze
That nothing shall withstand.
Alas! that Might can vanquish Right—
They fell and passed away;
But true men, like you, men,
Are plenty here to-day.

VI.

"Then here's their memory—may it be
For us a guiding light,
To cheer our strife for liberty,
And teach us to unite.
Through good and ill, be Ireland's still,
Though sad as their's your fate;
And true men, be you, men,
Like those of Ninety-Eight."

This is but a single specimen of an entire volume of exciting, inflammatory and seditious poetry published from time to time in the *Nation*, and which was intended to excite feelings of discontent and disaffection amongst the people of this country. I have looked over the publications in the Appendix to the Report of 1797, and I find nothing so inflammatory as the poem which I have just read. The next document to which I shall call your attention, is a publication in the same journal of the 29th of April last, entitled—"Something is coming. Aye, for good or ill, something is coming, some crisis, some decided swell or ebb of Ireland's fortune, is not far off. The country at length is roused. The heart of Ireland begins to beat strongly. This is a solemn time for all men who can influence the people." I think the poem which I have just read, can lead you to imagine what is the period which is referred to:—

"Of the great agitations which have taken place within the life time of our old men, how many have failed, how few succeeded? From 1779 to 1783 a series of triumphs were gained. But how were they won? England was exhausted and discouraged by the loss of her finest armies in America, a French fleet hovered on her coasts—she could not refuse—she had not military strength to resist the demand of the Volunteers for arms—for arms and for liberty. Had she refused, a Rochambeau or a Lafayette would have been welcomed on the coasts, and a half campaign would have seen an independent Irish flag flying over the Castle. England yielded. Again in 1793, the victories of the French Republic, the threatened revolts in both England and Scotland, and the Ulster alliance with France, gained toleration. And lastly, in 1829, the organization and resolve of our peasantry, the din of American armament (for the field pieces of an Irish artillery rumbled through Philadelphia), the muttered resolve of the Irish soldiery not to coerce their country, and the menace of France that she would not leave Ireland single-handed in the fray, carried Catholic emancipation. The people of Ireland are more sober and orderly, though possibly not more excited than in some of their former movements. Let them endeavour to get more order and more intelligence—let them do and prepare more than hitherto—let them be kind, conciliatory, and forgiving to such of the Protestants as have not yet joined—and above all things let them avoid any outbreak or collision with the troops or police. The police to a man, and the majority of the troops of the line, are Irishmen. Why should the people despair of their patriotism, or injure them in any way?"

I pray you to mark the words which follow:—

"Premature insurrections, and needless provocation of party, and military hostility, have before now ruined as good hopes as ours."

Premature insurrections! Wait till the organization has arrived at the point that every "parish is ready for liberty." "Rapid, uniform, and careful organization for the repeal agitation, charity, and conciliation, and a strict observance of the law, are the pressing and present duties of every Irishman." The present duty of every Irishman is the observance of the law. One of the mottoes of the association is this—"He who commits a crime gives strength to the enemy." The enemy is, "the Saxon foreigner"—the person from whose ruthless gripe you are, when the moment arrives, to extricate yourselves; but your "present duty" is "a strict observance of the law."

"Thus shall we baffle our foes! We have been led into this train of thought by Mr. O'Connell's proposal to form an association of three hundred men of trust, to consider and prepare a bill for the repeal of the union. If we disliked his present design we should at once express our dissent, for candour and fair dealing are the first of all duties in times like these. If the people, flattered at the thought of a new plan, blindly appoint as the trustees of their subscriptions, cowards, blockheads, knaves, or bigots; if these trustees are not confided in, no matter what they may will or do, and if they are not supported to the last shilling, and the last man, the attempt will only come crushing back on us in shame and ruin. But if the people go on meeting, organizing, collecting, and conciliating—if they trust their contributions to bold, faithful, educated, and tolerant men, and if they stand by those they trust, without cavil or flinching, Ireland will soon be a nation."

In the same number of that journal, there is another article, to which I must also beg your particular attention. It is entitled, "Our Nationality:"—

"The olive growth of nationality is overspreading the provinces, and taking permanent root in the heart of the land. Assured millions gather round it, watching its progress and its strength with straining eyes; and cold were his heart who sees its beauty unmoved, whose heart yearneth not for its saving shade. There is yet work to be done, danger to be dared, and difficulty to be removed. These are to be met and triumphed over. Every successive step, as it becomes more momentous, becomes more perilous, and requires corresponding caution, courage and virtue. Our enemy may be aroused, and so must Ireland. The county of Tipperary is on its peaceful parade. There are to be two meetings, one in each riding. Neither is meant for show. The multitude will not come to gaze and shout and return to a listless indifference of their country's fate. They will come pledged to purchase its redemption at whatever cost. The two meetings will come off on the 23d and 25th of May, and if we be not misinformed, these days will form a meaning era in the struggle for native liberty. Twenty thousand Tipperary men, who would as soon, if called on, pay their blood as their subscriptions, would not form a bad national guard for Ireland."

Now, gentlemen, at this stage of the proceedings it may be right, having already stated to you what the opinion of the late government was with respect to the question of the repeal of the union, to recal to your recollection what took place about this time, and before the next multitudinous meeting to which I shall have to call your attention was held. Upon the 9th of May last, the excitement which prevailed in Ireland in consequence of these meetings, gave rise to a question being put to the first minister of the crown, in the house of commons, and he, upon that occasion, made amongst others the following observations:—"I can state that her Majesty's government in this country and in Ireland, are fully alive to the evils which arise from the existing agitation in the latter country, in respect of the repeal of the union; and I further state this, that there is no influence, no power, no authority which the prerogative of the crown and the existing law give to the government, which shall not be exercised for the purpose of maintaining the union, the dissolution of which would not have been merely the repeal of an act of parliament, but the dismemberment of this great empire." A statement of a similar nature was, on the same evening, made in the house of lords by his Grace the Duke of Wellington; and thus so far as the opinion of the government was concerned, it was pronounced unequivocally on that occasion. That declaration was made upon the 9th of May; within five days after, namely, on the 14th of May the meeting at Mullingar took place. There were present at that meeting, Mr. O'Connell, Mr. Steele, Dr. Gray, and Mr. Barrett. There was an immense assemblage at that meeting. It is stated by some of the defendants, in their papers, that the numbers amounted to one hundred thousand. I believe that some of those statements as to numbers were exaggerated; but the meeting was one of many thousands. The people came to that meeting in pursuance of the orders they had received, preceded by temperance bands dressed in uniform; and you will find, gentlemen, in the course of the observations I have to make, that this is not considered by the defendants themselves an unimportant circumstance; it was part of the system of military organization; and I regret much that the temperance societies have been involved in the political question with which this country has been for so many months agitated. I cannot help saying, with respect to the reverend gentleman who first introduced to this country the observance of temperance, that my strong belief is, that he was influenced by nothing but the purest and the best motives; but although I believe such to have been the case, others have taken advantage of what was intended for no political object, and have turned it to a political purpose. It is to be observed, that in this respect also, the persons engaged in the organization of the country had in recollection what had occurred in 1797. It appears by the report I have already referred to, that advice was given by their leaders to the United Irishmen, as to the importance, towards effecting their objects, that strict sobriety should be observed. The leaders of the present movement finding the temperance societies organized throughout the country, have taken advantage of them, and these bands have been made to form part of the processions, and of the organization and array, so remarkable at the meetings. At the Mullingar meeting there were banners floating from the windows and house tops, triumphal arches were erected, bearing inscriptions—amongst others—"A population of nine millions is too great to be dragged at the tail of another nation"—"Repeal is coming," and other mottoes, which it is not necessary to advert to. On the same day there was a repeal dinner at Mullingar, at which Mr. Barrett spoke; and I shall beg your attention to some of the observations made by him. In speaking of the union, he said—

"This is the atrocious system we have met to put an end to—this the one which Wellington and Peel have fulminated their determination to perpetuate."

In alluding to the speech made five days previously, to which I lately called your attention, he said—

"How do they mean to effect their purpose? By force assailing us, for we have no notion of doing violence on them. But do they know, that force is a game that two can play at? This is a national question, and violence now against Ireland would be a war, not a battle, not a riot, but a revolution."

After some further observations, he said—

"They would be silent as gunpowder. We shall

crouch, but it will be the crouch of the tiger, ready to take the sure but terrible spring, and clutch our independence."

He proceeds then, and in another place says—

"With such a cause, such a leader, people, and clergy, who will despair? Irishmen, proceed then in the mighty work before you. To recede were ruin. Be firm and you triumph—hesitate and you fall."

At the same dinner Bishop Cantwell said—

"That they had long enough tried in vain to obtain justice from England, and that it was time they should endeavour to right themselves."

And Bishop Higgins said—

"I do not claim any distinction as standing by the Liberator on the great question of national independence. I entertain the opinion in common with all the hierarchy of Ireland. Some from delicacy of health, and some from an unwillingness to mingle in politics, may not have yet formally declared themselves—I say all are repealers. Let the foolish minister threaten—I dare, I defy him, to crush repeal agitation in the diocese of Ardagh. And if the scaffold were my lot I would bequeath my wrongs to my successor."

That, I think, is strong language to fall from two ministers of a Christian church. The next meeting to which I shall call your attention, is the meeting held at Cork, on the 21st of May. At that meeting Mr. O'Connell and Mr. Steele were present. It is said that five hundred thousand persons assembled at that meeting; the meeting assembled in the same manner as the former multitudinous meetings, with the same object, and with the same design, to accustom thousands to come from remote distances, to come at the issuing of orders given for the purpose, to accustom them to obey the command of their leaders, to get them into a state of organization, marching to meetings, headed by bands in military array, so that when the time for action should arrive, they might be "ready to come again." At the dinner, which took place after that meeting, Mr. O'Connell said—

"I have been, while addressing you, looking into your minds, exchanging that mental sympathy with you which I feel within me. Oh! to think that in the year 1843, the repeal year, the rent should have accumulated from fifty-six pounds to six hundred and ninety-four pounds per week; and I hope that on Monday next, or some succeeding day, it will close on a thousand, and perhaps more." (A voice—"More power to you.")

And in a subsequent part he said—

"Let them attack us; and if they do, and that some penniless, shoeless Irishman found his way, on the deck of a steamer, to Manchester or St. Giles's, and collected a number of Irishmen about him, and one should ask him 'what news?' to which he would reply, 'your father was cut down by a dragoon, your mother was shot by a policeman, or your sister ——; but I would not say what has happened to her; she is now a wandering maniac.' Let him say but that, and I will ask Peel how many fires would blaze out in the manufactories of England? No; they must listen to us. They shall not attempt to massacre us. No; the hangman will be disappointed. We are safe, for Ireland reposes in peace. Peaceable arms are extended to heaven, and the time is come when I am enabled to make you that offer. I offer you the Repeal of the Union."

This is the language used at the dinner, which took place on a day when, it is said, half a million of the people of Ireland were collected. Gentlemen, the next meeting which took place to which I shall advert, was the meeting at Longford. And I may, for the present, abstain from making observations on the effect, and object, and the consequences arising from these meetings, because, after I shall have called your attention to some more of them, I shall make known to you the view taken of those meetings by one of the defendants. Gentlemen, the meeting I was about to call your attention to, was the meeting at Longford, which took place on the 28th of May. At that meeting Mr. O'Connell and Mr. Steele were present. The numbers there have been represented at two hundred thousand. The meeting was, in fact, a meeting of the repealers of the diocese of Bishop Higgins. At this meeting the persons were collected together from seven counties. You have heard from the speech I read to you of Bishop Higgins, at another place, his observations with respect to repeal in his own diocese. At an early hour, parties from the different counties I have mentioned arrived at Longford, headed by bands dressed in uniform. No less than eight bands attended the meeting, and some of them had travelled distances of from eight to twenty and thirty miles. The platform, on that occasion, was surmounted by a device, which is very intelligible, and which you have often heard, "Ireland for the Irish, and the Irish for Ireland." It is quite unnecessary for me to explain the device, it explains itself; and you and all others perfectly understand its meaning. In the town there were banners, with inscriptions, and amongst them this, "A population of nine millions is too great to be dragged at the tail of another nation." At that meeting the Rev. Mr. Dawson proposed a resolution, and made the observations I shall read to you—Mr. O'Connell and Mr. Steele being present:—

"Why should Ireland be treated worse than the convicts in Australia, where representative bodies to conduct their affairs were given to them. A few days ago Lord Stanley declared, in speaking of the Canada Corn Bill, it was not safe to tamper with the feelings of a vast population; but, he asked, were not the feelings of the Irish people to be respected? (hear, hear.) But would France and America, and other great powers, sit by quietly, and see the rights of Irishmen trampled under foot?"

By such speeches it is desired to create disaffection amongst the subjects of this country—to represent her as trampled upon, not seeking that any grievances which may exist should be remedied by constitutional means, but to hold out that Ireland was to rely on the interference of foreign powers. Mr. O'Connell, at the same meeting, spoke; and said, as he had said upon various other occasions—

"We shall not be in the slighest degree in fault, for we will not violate any law whatever; and I tell you what, if they attack us, then—"

The honourable and learned gentlemen is represented by the repeal press to have here slapped his breast warmly, amidst the most enthusiastic peals of acclamation.

"Who will then be the coward? (renewed cheers.) We will put them in the wrong; and if they attack us, then in your name I set them at defiance."

There is no misunderstanding in this. "He who commits a crime gives strength to the enemy"—you must take no premature step—you must wait, if possible, until the district of each repeal warden is "ready for liberty." But if the enemy does not permit me to organize the country from north to south, and from east to west; if they do not allow me to have these multitudinous meetings in every part of the country, until the organization and discipline shall be complete; if they do not allow us to carry on our unconstitutional and illegal proceedings; if they attack us, we will put them in the wrong, and then, I set them at defiance. At the dinner which took place in Longford, Mr. O'Connell and Mr. Steele were present, and Dr. Gray also attended. I am not aware that Dr. Gray was present in the morning. Mr. O'Connell, in his speech, made the observations which I shall now

read, although in fact they were a repetition very much of what he said at Cork. He commences by an allusion to Lord Beaumont, a Roman Catholic peer of England, and thus proceeds:—

"I ask you, mongrel, heartless Beaumont, do you want it to go through the people of Ireland, that you would support the English minister, if he had been mad enough to make war upon the Catholics of Ireland? Suppose some Irish Paddy had escaped from the slaughter, and going over to London, had met some of his former neighbours, they would ask him the news; but what would be the tidings he would have to bring them? He would hear that you were one of the men who hallooed on the destroyers of the peace of his home. Oh! you would be very safe that evening—would you not, Lord Beaumont? The manufactories in your neighbourhood would be safe too; and proud London herself, in which you would flatter yourself with the hope of being secure, would be also safe, when the account of the ruin of Ireland would arrive. No; one blaze of powerful fire would reach through her vast extent, and in the destruction of England would vindicate the country of the maddened and persecuted Irishman who would have reached her shores."

Now, I would ask, did you, upon any occasion, in the course of your lives, ever hear of so inflammatory a speech—so calculated to excite the strongest feelings of an excitable population? In that speech, Mr. O'Connell is represented as calling the soldiery of England, "the ruffian soldiery of Britain." But you will find just now, that he corrected that statement, and represented it as a misapprehension, and that he had never called them "a ruffian soldiery." Why he corrected the statement as to the soldiery, you will perfectly understand before I have closed this case. Gentlemen, on the 30th of May, a meeting of the repeal association took place; there were present five of the defendants, Mr. O'Connell, Mr. Steele, Dr. Gray, Mr. Ray, and Mr. John O'Connell. It was at that meeting that Mr. O'Connell took occasion to correct the report of his having called the soldiery of Britain "a ruffian soldiery;" and I call your attention to that correction on his part, for reasons which you will understand as the case proceeds. Mr. O'Connell said:—

"He had to correct a typographical mistake which occurred in the admirable report in the *Freeman's Journal* of the proceedings in Longford. He was made to say this, 'No, your sister watched his corpse, but she is herself worse than dead—she is now a sad maniac roaming through the wilds, and, like the wretched maniac of song, warning her sex against the ruffian soldiery of Britain.' He did not call the soldiery of Britain a ruffian soldiery—he would not call them so, because it would be false. They were, on the contrary, an extremely civilized class of men, and he expressed more than once that he never now saw a soldier in the dock charged with any crime. He also spoke of the sergeants, whom he thought an exceedingly well-informed and well-conducted body of men, and to them the discipline of the entire army fell (hear). If justice were done to them, there was not a company in which one of them ought not to be raised to the rank of an officer."

It may be right to observe, gentlemen, that in the *Pilot* of the 31st of May, Mr. Barrett takes occasion to remind the repeal public, that his three-day paper, the *Pilot*, which was the oldest and most suffering repeal journal, would be sent to each locality when £20 was subscribed. I advert to this, because, as I have already said, it appears throughout this case, that Mr. Duffy, Mr. Barrett, and Dr. Gray used their newspapers, not for the legitimate purpose of circulating intelligence, but as the instruments of the repeal association in forwarding this conspiracy. Gentlemen, the next meeting which I shall lay before you took place at Drogheda on the 5th of June. There were present at that meeting Mr. O'Connell, Mr. Barrett, Dr. Gray, and Mr. Tyrrell, since dead. There was a procession through the streets. There were eight bands; and the bands were dressed as usual in uniform. The streets were decorated with green boughs. There were several thousand persons present; and there were flags with mottoes upon them. Amongst others—"A nation to be free has only to will it." On a green flag—"It is the wild shout of Ireland that calls for repeal." On a white flag—"We are Irishmen determined to be free; we are nine millions." A pretty clear exposition of the object of the assembled thousands, in making this demonstration of physical force. There was also among the flags at Drogheda this inscription—"A population of nine millions is too great to be dragged at the tail of another nation." On another flag was—"Loyal national repeal association, success crown its efforts." Mr. O'Connell, in his address at that meeting at Drogheda, said—

"I want Ireland for the Irish. I am sick of seeing this lovely land betrayed by Saxon foreigners. I want to have Irishmen, with true Irish stuff, creating laws for Ireland and the people of Ireland. Wherever he went he had heard but one cry—the thrilling, enthusiastic, all-pervading shout of repeal! How could he doubt of success? He had a nation at his back. He was the only man who, without place, title, or official rank, ever wielded such influence over the popular mind."

In another part of his address—

"He called upon the people to give three cheers for the Queen's army—the bravest army in the world."

There was a dinner on the same day at Drogheda, at which Mr. O'Connell, Mr. Steele, and Mr. Barrett were present. Mr. Barrett, at the dinner, in returning thanks for one of the toasts that were given, said:—

"But let him (the minister) be aware how he, by aggression, puts the people in the right, and cause a simultaneous and universal outbreak. The boys of Paris won the three days. Belgium threw off the yoke of Holland, through what martinets would call an undisciplined rabble. The women of Paris took the Bastile."

In another part of his address Mr. Barrett said:—

"Was there ever a country so circumstanced as Ireland for repelling aggression? With a numerous, brave, sober, and multitudinous people. Every mountain a citadel, every hill a fort, every ditch a breast work, every valley a ravine—a country in which cannon or cavalry could not act, and where all warfare must inevitably be irregular."

At the same dinner Mr. Steele addressed those who were present, and said:—

"If Ireland and Ireland's leader were compelled to resistance, that as he (Mr. Steele) had for so many years, above all others, laboured to keep the peace of Ireland, he would in that case find it a duty to his country and to his own character, to solicit from his august friend, O'Connell, that he would appoint him to the leadership of whatever enterprises were the most desperate."

The concluding toast at Drogheda was, "The Repeal Press, the most powerful auxiliary which the Liberator has in the furtherance of repeal." And to that toast Mr. Barrett returned thanks. Gentlemen, the next meeting to which I shall advert, was the meeting held at Kilkenny, on the 8th of June. At that meeting Mr. O'Connell, Mr. Steele, and Mr. John O'Connell were present. The numbers attending are represented to have been about three hundred thousand, and there were the bands, the same kind of array, and the same display of physical force. At that meeting Mr. O'Connell gave

three cheers for the Queen's army, the bravest army in the world; and stated that—

"The class of sergeants it contains is the most educated in existence; and I trust the day will arrive when the sergeants will be in a fair way of becoming commissioned officers."

Gentlemen, on the same day there was a dinner, at which Mr. O'Connell, Mr. Steele, and Mr. John O'Connell, were present. At that dinner Mr. O'Connell made the following observations with respect to the meeting which had taken place in the morning—

"What a waste of physical force have we not witnessed to-day? We stand at the head of a body of men that, if organised by military discipline, would be quite abundant for the conquest of Europe. Oh, but it will be said, they were not disciplined. Do you not think they were as well able to walk in order after a band as if they wore red coats, and that they would be as ready to obey their repeal wardens, as if they were called sergeants and captains?"

This speech of Mr. O'Connell's you will find to accord with Mr. Duffy's opinion in a publication which I shall have to advert to more fully in the course of my address, and in which he states that—

"If the repeal wardens in any district do not see that the organization, division, and training of all the repealers in their district is perfect—if they are not sure that the people are qualified by simplicity and completeness of organization—by self-denying obedience—by knowledge of all a citizen's duties—by courage and habitual order—to take their place among the men of a free nation—these wardens have not finished their duty—that district is not ready for liberty."

I now beg to call your attention to a publication which appeared a few days after this in the *Nation*, a newspaper, of which one of the defendants, Mr. Duffy, is the proprietor. The date is the 10th of June. The last meeting I spoke of was held on the 8th of June. In two days after we have this publication of Mr. Duffy; and I think you will now pretty well see the community of purpose, and the community of design, of the several parties. The article is headed "The Morality of War;" it might more properly have been headed, "The Morality of Rebellion." It begins—

"We have received through that excellent gentleman, Mr. Haughton, a letter from Mr. Ebenezer Shackleton, expostulating through him with the repeal association, for putting the glorious names of Benburb, Limerick, Beal-an-Atha-Buidh, and Clontarf on the repeal card."

These were the names of the four battles I adverted to, in calling your attention to the members' card.

"For these names he would substitute temperance, peace, and the like. Now, we have much respect for this gentleman's opinions, but we entirely dissent from them. Unjust war is, like all other unjust things, very wicked and condemnable. But a just war is as noble to him who has justice on his side, as any other just act—nay, it is more noble. But his cause must be good to justify our unqualified praise of the soldier. If he fight to rob or oppress; if he fight in the ranks of an invader or a tyrant; if he fight against the cause of liberty, and against the land that gave him birth, may his banner be trampled, and his sword broke in a disastrous battle, and may his name rot in eternal infamy! But if he fight for truth, country, and freedom, may fortune smile on his arms, may victory charge by his side, may wealth, strength, and honour, wait on him and his, if he survive his conquest; and if he fall in achieving it, may glory sit upon his tomb, and may a grateful country cherish those he loved! We are as surely bound to encounter the march, the watch, the breach, and the battle-field, for country, altars, friends, rights, and freedom, as we are to sustain our parent, defend our wives and children, and adhere to our religion and virtue, by any other less hazardous means."

I now ask you, gentlemen, having read that article, whether I was not justified in stating that it might more properly be called "The Morality of Rebellion." Gentlemen, the next meeting to which I shall call your attention was held at Mallow. I have omitted several of these "monster meetings," as they have been called, not wishing to occupy more of the public time than is absolutely necessary. At Mallow, Mr. O'Connell and Mr. Steele were present. The meeting took place on the 11th of June. There were, I believe, three or four hundred thousand persons present. There were twenty-six temperance bands, and the same organization, the same array of persons coming from different quarters as at other places. Mr. O'Connell addressed the meeting, and amongst other observations he made the following:—

"He loved and honoured the Queen's army; they were the bravest in the world. They were welcome wherever they went. The officers were gay and gallant young gentlemen. The sergeants were the first corps in the world; and he regretted that the custom did not prevail in the British army which prevailed in the French, of giving commissions to sergeants. In France no man was an officer who had not first served as a sergeant, and who had not been recommended for his good conduct."

Gentlemen, a dinner took place on the same day at Mallow, and Mr. O'Connell spoke at that dinner. He said—

"But yet do you know I never felt such a loathing for speechifying as I do at present; the time is come when we must be doing. Gentlemen, you may soon learn the alternative to live as slaves, or to die as freemen. I think I perceive a fixed disposition on the part of some of our Saxon traducers to put us to the test. Yes, I speak with the awful determination with which I commenced my address, in consequence of the news received this day. There was no house of commons on Thursday, for the cabinet were considering what they should do—not for Ireland, but against her. But, as long as they leave us a rag of the constitution, we will stand on it. We will violate no law, we will assail no enemy; but you are much mistaken if you think others will not assail you. (A voice—'We are ready to meet them.') To be sure you are. Do you think that I suppose you to be cowards or fools?"

In another part of his address he said—

"If they assailed us to-morrow, and that we conquered them, as conquer them we will one day, the first use of that victory which we would make, would be to place the sceptre in the hands of her who has ever showed us favour, and whose conduct has ever been full of sympathy and emotion for our sufferings."

The sceptre is to be placed in the hands of the sovereign of this country by those connected with and concerned in this conspiracy. It should be recollected that her Majesty, by the articles recited in, and by the terms of the act of union, is a branch of the legislature of the United Parliament. The association is first to wrest from her Majesty her power and authority, and then, at their own free will, they were to place the sceptre in her hands, and, as I may fairly add, place that sceptre in her Majesty's hands upon their own terms. These are the proceedings of the loyal national repeal association. In another part he said—

"Are we to be trampled under foot? Oh! they shall never trample me, at least; I was wrong; they may trample me under foot, but it will be my dead body they will trample on—not the living man.

Yes, Peel and Wellington may be second Cromwells; they may get his blunted truncheon, and they may, oh, sacred heaven! enact on the fair occupants of that gallery the murder of the Wexford ladies."

Was there ever such an attempt heard to create between the fellow-subjects of the same empire feelings of hatred and indignation? Is it to be tolerated, in a country where law is in force, that proceedings such as these are to be permitted?

"All that is delightful, all that the enthusiasm of romance can fling round the human heart is centered in my love for Ireland. She never has been a nation, for her own children had her split, and rent, and divided, when the Saxon first polluted her verdant soil with his accursed foot. I hope my dream of conflict will never be realized—that it is an empty vision; but let none of us be to blame—let us stand shoulder to shoulder on the constitution—and let not Ireland be abandoned to her foes, by the folly, the passions, or the treachery of her children."

Gentlemen, I shall now bring you to a most important meeting; important, because I believe it is the first meeting at which the assertion was made by Mr. O'Connell to the assembled people, of the possibility of having the union repealed without the aid of the united legislature. This he boldly and confidently laid down as the law; and I shall wait with anxious attention to hear whether, amongst his numerous counsel, he can get one man who will venture to re-affirm his proposition. And yet you have the deluded people of this country told, that they need not look to parliament for the purpose of effecting their object; that it can be legally obtained without its aid. I ask you now, gentlemen, to remember my words. I cannot say that the proposition will not be re-affirmed—but it will excite surprise in my mind, if in the face of the country, if in the face of the legal profession, if in the face of this high court, such a proposition be repeated, which I denounce as illegal, unconstitutional, and unsustainable. Gentlemen, this meeting was held at Dundalk on the 29th of June. There were seven temperance bands, all in uniform, and the same organization as at the other meetings. There were several thousand persons collected. Amongst the banners was a tri-coloured flag, with "Ireland's masses resisting her foes." On the same day a dinner took place, at which Mr. O'Connell spoke:—

"We have ascertained that the Irish nation wills the repeal of the union, but still I do not cease my exertions in calling together thousands of others. I do not cease or terminate these exertions with this day. It may be asked why I should take the superfluous trouble of attending other meetings; but I attend them, not to convince myself or you that Ireland is with me, but to convince our enemies—to convince the British statesmen—to make the Duke of Wellington aware of it, bothered as the poor old man is. I want to make all Europe and America know it—I want to make England feel her weakness if she refuses to give us the justice we require, the restoration of our domestic parliament."

In another place he says:—

"But do they imagine that I intend to stop at calling those meetings? They are satisfying both friends and foes that the nation is with me—man for man with me—aye, and ready, if it were necessary, to perish to the last man. Nothing could justify the exercise of the sentiment, thus proclaimed, but the inevitable necessity created by an attack upon us; and I have the pleasure to tell you, that we are too strong to be attacked." Again he says:—

"I am not afraid of getting a substantial portion of the people of the north with me, and then the national movement will be complete, and the next step must be taken. The next step will be to consider the plan for the new Irish parliament. Every town having nine thousand is entitled to representation, and that, with county members, will make up three hundred members. In order to carry out this plan, I will propose that each town, so entitled to representation, do lay down 100*l.*, and with the aid of the individuals whom they select, we will meet in Dublin to consider the plan I have suggested. I would thus have three hundred gentlemen assembled in Dublin by accident. A treasury will be formed by the in-pouring of the sums I have specified; and they can dissolve themselves the next day if the law requires it. And what is to prevent me asking these three hundred gentlemen to a public banquet, which nobody else shall attend but themselves and me? I do not see why we should not have our conciliation board—not sitting as deputies, but merely happening to have the confidence of localities. I have made my plan. I have examined well the act of parliament, and will drive three hundred gentlemen through every clause of it."

The statute to which Mr. O'Connell alluded was the Convention Act. Gentlemen, I think it will be found, unfortunately for the defendants, somewhat difficult to drive three hundred gentlemen through the common law. He then proceeds:—

"There is no legal objection to that plan; there will be three hundred men with a nation to their back." I pray your attention to what follows:—

"There remains only the assent of the sovereign, and I tell you distinctly, it can at once be revived legally and constitutionally, by the mere exercise of the prerogative of the crown; by the issuing of writs it can be revived without going to the British parliament at all. Let nobody dispute this with me that does not dispute the Queen's title to the throne."

Now, gentlemen, what is the assertion? The assertion made to the deluded people of this country, notwithstanding the declarations made by the late ministry and the present, that they will not sanction a measure which must inevitably end in the dismemberment of the empire is—these deluded people are told, that when this organization is complete, when the country is ready for liberty, her Majesty may issue writs for the summoning of the Irish parliament. They are told this by a gentleman standing eminent in his profession at the bar. He is now in this singular position, either he did not believe the law to be as he stated it to the assembled thousands—and then I would ask what justification can there be for his statement?—or he did believe it, and if so, will any of his counsel venture to assert it now at this bar? Gentlemen, I shall now advert to the act of union for the purpose of ascertaining whether or not that opinion is well founded. By the third article of the act of union it is provided—"That the said United Kingdom be represented in one and the same parliament, to be styled—'The Parliament of the United Kingdom of Great Britain and Ireland.'" It is to be represented in one and the same parliament, to be called—"The Parliament of the United Kingdom of Great Britain and Ireland." And in a portion of the fourth article of the act of union it is provided that the first united praliament shall be called by proclamation, and shall be returned in such manner as should be provided by law in that session, and that the Lords and Commons returned in obedience to that proclamation shall constitute the two houses of parliament together with those of England. And after several other articles, there is then this enactment and recital—"Be it enacted, That the said foregoing recited articles, each and every one of them, according to the true intent and tenor thereof, be ratified, confirmed and approved, and be, and they are hereby declared to be, the articles of the union of Great Britain and Ireland, and the same shall be

in force and have effect for ever, from the first day of January, which shall be in the year of our Lord one thousand eight hundred and one." Thus we have those articles ratified, approved, and confirmed by the parliament of Ireland—one of those articles being, as I stated to you, that the United Kingdom be represented in one and the same parliament, to be styled the "United Parliament of Great Britain and Ireland." And in direct opposition to this statute of the King, Lords, and Commons of this country, confirmed by an act of the English legislature, containing these distinct provisions uniting the parliament of both countries for ever, you are told that it is part of the prerogative of the crown, without the assent of the parliament of the United Kingdom, to summon an Irish parliament; and you are told that no person can deny this, who does not deny the Queen's title to the throne. Unless the act of union be void, this right does not exist in the crown; and I ask again, is there a gentleman amongst the numerous counsel on the other side, who will state that the act of union is void?

Mr. O'Connell—Yes, there is.

The Attorney-General—Unless they go that length, it is utterly impossible to say that the prerogative is vested in the crown of issuing writs to summon an Irish parliament. I am aware it has been stated by one of the defendants, on different occasions, that the act of union is void; but unless counsel assert that this act of parliament is absolutely and legally null and void, I reiterate the assertion that no lawyer can now say that the prerogative is vested in the crown to summon an Irish parliament. It is a wicked delusion practised on the people of this country, to tell them that the repeal of the union can be obtained without the sanction of parliament. Gentlemen, the next meeting to which I shall call your attention, is one that took place at Donnybrook on the 3rd of July. Several thousand persons assembled at that place. There were present Mr. O'Connell, Mr. John O'Connell, Mr. Steele, and Dr. Gray. At that meeting Mr. O'Connell spoke, and amongst other observations he made the following:—

"What a glorious sight is here. I have more strength, more physical force than gained the battle of Waterloo. I have more physical force than ever monarch commanded or general led. All that is requisite is to manage our strength. Let there be no riot, no violence, no tumult, no breach of the peace—(no, no.) Let us exhibit sobriety, order, tranquillity—all crowned by immortal and imperishable determination."

Upon that occasion, as upon various others, it was impressed upon the minds of the people that there should be no riot, no violence. You will find just now that the defendant, Mr. Duffy, in one of his publications, stated that the absence of riot and violence made each of the meetings a strange and formidable event. It is obvious that the conspiracy could not have been carried on for an hour, if there had been riot or violence until the period should arrive when the signal was to be given. It is for that reason, and in order to complete the organization, that every thing was to be peaceable. The maxim of the association being, that "He who commits a crime gives strength to the enemy." In another part he says—

"You know, as well as I do, there is only one way to mortify the enemies of Ireland, and that is, to continue peaceable, and remain determined. Now, I delight in the species of authority I possess; I know not how acquired. How pleased I am with the readiness with which I am obeyed. The *Times* states that Mr. O'Connell says, 'His hundreds of thousands are to meet in the Irish metropolis.' He is right. We have them here, 'to parade along the Liffey in front of the Castle.' What harm will that do to the Castle?—'and disperse again or not as Mr. O'Connell shall choose.' I choose that you shall disperse when the business is done, but not until, in my presence, you have testified that you would rather die to the last man than live to be slaves to an unjust law. Yes, we will not submit to be legislated for by such a country. The association meets to-morrow; and to-morrow I will hand in from America 1125*l.* sterling. I think Wellington will hear that with surprise, and I am sure Peel will with terror. The voice of thankfulness will re-echo from the shores of Ireland across the waves of the Atlantic, testifying the delight with which the Irish receive the sympathy of the Americans."

Recollect what was the sympathy of that nation; recollect that the son of the President had stated that "the libation to a country's freedom must sometimes be quaffed in blood." Mr. O'Connell further stated:—

"But I have the satisfaction of telling you, that in order to get repeal it is not necessary to pass a bill through the houses of the English parliament. Now, listen to me; the first law lawyers in the land, the most able men in constitutional law—Saurin, (the Orangemen will not abuse him)—Bushe, (the Whigs will not abuse him)—Plunket, (the Whigs will admit his authority)—each and every one of the three says, that the Irish parliament had no right to pass the Union Statute—that it was elected to make laws and not to unmake legislatures, and that the act of union, under the Irish constitution, did not annihilate the parliament. The Queen could issue writs, and the people would act upon them, and thus the Irish parliament would be re-created *proprio vigore*, without any reference to Saxon authority. Saxons, I tell you that the moment the Queen shall be convinced that she has the right to do that, we shall have the repeal of the union, without troubling you at all."

Now, gentlemen, what is that statement? It conveyed to the congregated and assembled thousands, that Mr. Saurin, the late Chief Justice Bushe, and Lord Plunket, had declared the act of union void. I tell you, gentlemen, they never said any such thing. They made strong observations in their places in parliament before the act of union passed—they opposed the passing of that act, as they had a perfect right to do; and observations made by them in the course of debate have been cited, for the purpose of instilling into the minds of the misguided people who heard Mr. O'Connell, that these eminent persons had, after the act of union had passed, declared its invalidity, and having declared its invalidity, had thereby pronounced that the authority of the crown existed to call together an Irish parliament. Gentlemen, at this meeting at Donnybrook, you will thus observe, that the prerogative of the crown to summon an Irish parliament in contravention to the act of union—an act passed with the assent of the legislatures of both countries, is reiterated and re-asserted—and the great names of Saurin, Plunket, and Bushe, are referred to, not one of those eminent individuals ever having suggested such a notion. Any general observations, that the act of union would not be binding on conscience, made by Mr. Saurin, prior to the passing of the act of union, or any observations made by Lord Plunket, or Mr. Bushe, were observations made in their places in parliament, for the purpose of inducing the legislature of Ireland not to pass the act of union. Those strong observations are referred to by Mr. O'Connell, for the purpose of conveying to the minds of the thousands assembled, that these great and eminent men had declared the act of union to be void, and, as a consequence, that the crown, by its prerogative, and without the sanction of the parliament of the United Empire, might summon to-

gether an Irish parliament. Now, gentlemen, I again reiterate my denial of that right. The crown has not that prerogative. The act of union is valid; and I think it is somewhat singular, that the invalidity of that act of union should be asserted by Irishmen, when, if it be invalid, the acts of the united legislature are also invalid, and amongst others the act for the relief of the Roman Catholics of Ireland. If the act of union be a nullity, every act passed by the parliament of the United Kingdom, so far at least as Ireland is concerned, is void. And, gentlemen, I ask you, if I am not justified here in complaining, that the people of this country should be deluded into the supposition, that opinions were entertained by such men as Saurin, Plunket, and Bushe, they never having, after the passing of the act of union, questioned the validity of that act. Any observations that fell from them were legitimate and fair and proper, being made in their places in parliament, when they were resisting the passing of the bill. But it is most unwarrantable to refer to those opinions as a justification for the assertion that the act of union, after it had passed is void. Gentlemen, you are aware that at the meeting which took place at Donnybrook, Mr. O'Connell adverted in the course of his observations, to a remittance which he had received from America; and accordingly on the 4th of July, in accordance with his previous statement, a meeting was held at the association, at which were present Mr. O'Connell, Mr. John O'Connell, Mr. Ray, Mr. Steele, and Dr. Gray. That day was selected for handing in 1100*l.* as the subscription from the sympathizing Americans, because it was the anniversary of American Independence. I shall now call your attention to what was stated by Mr. O'Connell at this meeting. He said—

"I shall next proceed to hand in the money from America. It is an auspicious day for the purpose—it is the anniversary of the glorious revolution in America—(here there was a cheer.) That cheer (continued Mr. O'Connell) will be wafted over the Atlantic and be heard amongst the hills of America. America did not turn violently upon England. She submitted to her grievances as long as they could be endured; and it was not till compelled by the conduct of George the Third, as great a tyrant as ever sat upon a throne—not till her domestic rights were violated by him, that she shook off the yoke of England. England has, I hope, since grown wiser—at least I know that she is weaker, and Ireland is too strong to be her slave."

He then handed in the sum of 1100*l.* which he had mentioned on the preceding day. Gentlemen, the next meeting to which I shall advert, took place at Tullamore, on the 16th of July. There were present at that meeting Mr. O'Connell, Mr. Steele, Mr. Barrett, and Dr. Gray. Twelve bands attended in uniform. They came from the King's County, and Queen's County, the counties of Westmeath and Tipperary. It is said one hundred and fifty thousand persons were present at that meeting. There were flags and banners; and amongst other inscriptions—"Ireland her parliament, or the world in a blaze." On another flag—"Ireland must not be, and ought not be, a serf nation." At this meeting the Rev. Mr. Kearney spoke, and made, amongst others, the following observations:—

"They imagine that they could put a stop to the repeal agitation—by giving up the church temporalities—by enlarging the franchise and increasing the constituency in Ireland. Most likely they would tempt the Liberator with fine promises; but he was too wise for them. We may safely leave him to take everything they give; but as soon as he gets all, never was the steam of repeal up till then."

Mr. O'Connell then addressed the meeting, and said—

"I rise to address you upon a new topic that I scarcely ever touched on before. I have a new theme now to dilate upon, and it is with infinite pleasure that I now announce to you the certainty of our carrying the Repeal of the Union. I need not now talk of hope, for I came here to-day to announce the certainty of repeal."

He then proceeds in another part of his address—

"Have I not teetotallers here? ("Yes.") I am proud of your confidence. I can collect you together at any time. If I want you I can get you any day in the week." (A voice, "The sooner you want us the better.")

The question put by Mr. O'Connell is very intelligible, and was perfectly understood by the assembled multitude. Observe their answer, "The sooner you want us the better." The meeting at Tullamore was not the only meeting at which you will find the question was put. The meeting separated peaceably, because, "to commit a crime would be to give strength to the Saxon and the enemy." The reason why the meeting separated peaceably, I should hope, is perfectly understood by you. At the close of his address, Mr. O'Connell spoke as follows;—

"Oh! little the Saxon knows that gentleness of manners that arises under religious enthusiasm. But it is that very religious forbearance that makes you kind to each other, and that enables your women to come into the greatest throngs without being injured, and certain of not being insulted. But if it should be necessary for you to remain in the field till blood shall flow, general never stood by such soldiers. Now I give command never to vote for any Tory, nor for any one else but a Repealer. A friend of mine was coming down from Dublin, and saw a man working in a kind of Botany Bay of his own; a number of men were working near him, but left him by himself, solitary and alone. My friend addressing them said, he hoped that they were not Ribbonmen, that they refused to let that poor fellow into their company; but what was their answer—'O, that fellow refused to become a Repealer.'"

Such is the system by which, I believe, many a man has been coerced into joining the repeal agitation. Such is the system of liberty and independence, which the defendants would establish in Ireland. Gentlemen, a meeting took place on the 18th of July at the repeal association. At that meeting Mr. O'Connell, Mr. John O'Connell, Dr. Gray, Mr. Steele, and Mr. Barrett were present. Mr. O'Connell moved the adoption of a resolution, recommending the appointment of arbitrators, to whom the people were to go in preference to the petty sessions' courts. On that occasion Mr. O'Connell said—

"I move the adoption of the resolution for the appointment of arbitrators in each parish, to whom the people are recommended to go in preference to the petty sessions' courts. It is a duty I owe to Doctor Gray to state that the suggestion for bringing forward that resolution first came from him, and that he had kindly given way to me, at my request, in allowing me to move its adoption. I wish Doctor Gray would now second the motion."

This was the first occasion, I believe, on which one of the prerogatives of the crown was assumed, and the plan to take away the administration of justice from the tribunals at present established by law for that purpose, was brought under consideration. Gentlemen, upon the 24th of July a meeting took place at Tuam, one of those monster meetings, at which were present Mr. O'Connell, Mr. Steele, and Mr. Barrett. There were upon that occasion twenty temperance bands. There were some hundreds of thousands of people at the meeting. There was a dinner on the same day, at which Mr. O'Connell made these observations:—

"The strength of their enemies was shattered, they were distracted, and divided in their weakness, and if the people had the grace and the skill to make their adversaries' infirmity the opportunity of their own liberty, the good fight was fought—the goal of freedom was won, and Ireland was again a nation. America sent her voice of thunder careering over the illimitable waters of the great Atlantic to tell them they were justified in all their proceedings. Admiring France looked on with breathless interest, and all Europe had her eye fixed with an intensity of vision on the magnificent demonstrations in favour of liberty whereof Ireland was now the theatre. He would be happy if he saw his country free. Oh! let them resolve as one man to achieve her freedom, and the day of her glory was assured. Oh! give a portion of your being to your country. You would give her all your blood, if it was a battle to the death. Pray for her—toil for her incessantly—she is worth your prayers, she is worth your toil,

"Oh! Ireland, Ireland, shall it be my lot,
To raise my victor head, and see
Thy hills, thy dales, thy people free.
That glance of bliss is all I crave
Between my labours and my grave."

Gentlemen, a meeting took place of the association on the 26th of July, at which were present, Mr. O'Connell, Mr. John O'Connell, Mr. Ray, Doctor Gray, and Mr. Steele. The proceedings had reference to the Irish Society, and the mode by which their property was to be in effect confiscated. I do not think at this hour of the evening I should be justified in reading the proceedings to you.

Here the court, it having reached five o'clock, adjourned to the next day.

THIRD DAY.

WEDNESDAY, JANUARY 17.

The court sat at 10 o'clock A.M., and the jury having all answered,

The Attorney-General then resumed as follows:—My lords and gentlemen of the jury—On the 6th of August last there was a meeting at Baltinglass, in the county of Wicklow. At that meeting three of the defendants were present: Mr. O'Connell, Mr. Steele, and Dr. Gray. There were many thousand persons at the meeting; some of the defendants calculated the numbers at one hundred and fifty thousand. Mr. O'Connell addressed the meeting, and said:—

"And shall they tell me, that that parliament, which by force and fraud was extorted from us, is never to revive again, and that Ireland alone is to be condemned to perpetual servitude? I deny it; I call upon you all to deny it with me; give me your universal promise that Ireland shall be a nation."

This was addressed to one hundred and fifty thousand persons! "Give me your universal promise, that Ireland shall be a nation." Cries of "we do, we do." "Yes," says Mr. O'Connell, "we shall be a nation." He afterwards said, in another part of his address:—

"If I want you again, would you not be ready at my word? Let every man who is determined to meet me again, on any future occasion, where I would require his presence for peaceable purposes, hold up his hand."

Now, gentlemen, it is by no means unimportant, in meetings of this kind, to inquire what has been the effect produced upon those who heard the inflammatory addresses delivered to them; and I am in a position to prove to you the observations of some of the assembly. One man was heard to declare—"We are determined to get repeal, as we are all sober, and shall not be put down as we were in 1798." Another observed—"Let us wait with patience for a few months; the time is nigher than you think; Ireland was trampled on, but it shall be longer so." Others exclaimed—"They would turn out to a man and fight for repeal." Others exclaimed—"That they would and should have repeal, and that this part of the country would die to a man, but that they were afraid of the sea-side fellows not standing to them; and that Father Lalor told them in the chapel it was too far gone now, and that they should get it, but not without blood being shed."* Some persons amongst the lower orders were heard to say—"That if they were not sure of getting it, there would not be a blow of work done in Ireland, and that the people would rise to a man." Others contradicted this, saying—"The people did not intend to raise disturbance, but that the only way they wanted to get their right was by peace, but on being refused that, foreign powers were to strike the blow." Recollect Mr. O'Connell's inquiry—"If I want you again, will you not be ready at my word?" How was this understood by those to whom it was addressed? Their expectation was, that on some future day they would receive orders to assemble, when the organization should be complete, when the repeal wardens had done their duty in every parish in Ireland, and when every district (in the language of Mr. Duffy) "was ready for liberty." A dinner took place on the same day at Baltinglass, at which Mr. O'Connell, Mr. Steele, and Dr. Gray were present. Mr. O'Connell, upon that occasion, stated:—

"Remember, my motto is—Whoever commits a crime gives strength to the enemy. That is the doctrine we preach every where, and we will soon have three millions of men who have preached and practised it, and I tell you that no statesman ever lived who could resist a population of that kind. But we must persevere. Those meetings I intend to go on with until such time that no part of Ireland shall have not pronounced, as they say in Spain, or shall have declared their adhesion to our cause. The revolution in Spain was brought about by the military; but it was bloodless, and the tyrant Espartero has been hurled from power by the party of the army and the nation. The sergeants even of the Spanish army are a fine class of men, and effected that revolution; but in the British service they are the finest, the most intelligent, and the most trustworthy men that ever existed. In every other service the sergeants are made officers of; but in the British service they have not yet learned to do that act of justice; but if our cause goes on, we will do them this piece of service, that the government will alter their plan, and appoint a great many of the sergeants to commissions, for fear they would pronounce; and I give them advice to do so from this spot."

Now, observe that statement. "The revolution in Spain was brought about by the military, but it was bloodless, and the tyrant Espartero has been hurled from power by the party of the army and the nation." Mr. O'Connell then makes use of language calculated to inflame the non-commissioned officers of the British army against the government—to represent them as persons treated with injustice—and that the injustice will be remedied and removed as their cause goes on—as repeal advances. You will find just now, when I call attention to some publications in the *Pilot*, of which the defendant, Mr. Barrett, is the proprietor, that it was the common design, and part of this conspiracy, to endeavour to create discontent amongst the army, and thereby render the government powerless against the organization. He further says, in another part of his address—

"I have thrown out more than once, and I now

* Father Lalor has denied this publicly. It was asserted by some policeman who went amongst Mr. Lalor's congregation in *plain clothes*—that is as a spy. Of course he could not be expected to have heard *nothing!* No man who knows the Rev. Mr. Lalor believes it for a moment.

repeat, that a preservative association should be formed to preserve every thing that is worth preserving, and to obliterate every thing that ought to be obliterated. I trust, that before Christmas comes, we will have that association sitting in Dublin, and drawing up bills which they will call on the British parliament to approve of; and if they refuse to do so, then respectfully calling on her Majesty to summon her parliament together in Ireland again."

Thus the preservative society was to draw up such bills as they might think proper, and call on the British parliament to pass those bills; and if the British parliament did not think it right to obey the dictation of the preservative society, then her Majesty was to be called on to summon a parliament in this country, and then Mr. O'Connell would hand over to her Majesty the sceptre of this country, upon such terms as he should dictate. He further said:—

"I repeat, the practical details of my plan are not yet worked out; but I wish to announce this general outline of it, that it may be fomenting in the Irish mind, and be digested by others as well as by myself; and I trust that before I have another birthday I shall see Ireland righted, and her parliament in College-green again."

Gentlemen, I think it will not be necessary for me to advert to anything that occurred between the 6th and the 12th of August. As I stated yesterday, I have abstained a good deal from commenting upon the general state of organization throughout the country, and the object of these multitudinous meetings, because it is clearly pointed out in a publication of one of the defendants. I shall now beg to call your attention to that publication, which appeared in the *Nation* of the 12th of August, six days after the meeting at Baltinglass; and I think you will find it of importance, as throwing light upon the objects of those concerned and engaged in the conspiracy charged against the defendants. It is headed—"The march of Nationality."

"How beautiful our country is! How full of cautious energy! How sure a hope lies under her anxiety! How fiercely she springs upon what it is right to strike! How temperately she avoids all needless by-battles! And 'tis beautiful—lovely, with that piercing beauty that pains the heart which worships—to see her calming down, and soothing, and repressing her hungry and bruized children, while she prepares for them retribution and relief. Her brow is pale—most pale: and well that careful mien becomes her. Oh! 'tis well to see her preparing for the strife without rude boasting or hot noise. It becomes the heiress of suffering centuries. There is nothing recorded in history like this display. The numbers of these meetings were unequalled in any population. The time, and labour, and loss suffered by the people in their long marches to them—were never before voluntarily borne, save in the excitement of war. But the order observed in coming and going—the organization necessary to produce such order—the serious, good temper—the absence of riot or vice—made each of these meetings a strange and formidable event."

Gentlemen, this is not my language—it is the language of one of the accused parties—"the absence of riot or vice made each of these meetings a strange and formidable event." Gentlemen, it is true that Mr. O'Connell enjoined peace; every person must rejoice that his injunctions were obeyed, and that we have been up to this time saved the misery which would arise from tumult or outbreak, or an attempt to carry out, by physical force, the designs of the defendants; but the absence of riot, the absence of actual violence at these meetings, does not take away from their illegality, because the intention was to organize the country, and that the meetings should be peaceable until the organization was complete; but the very "absence of riot or vice" (in the words of Mr. Duffy) "made each of these meetings a strange and formidable event." It continues:—

"There was a time when such meetings might have been plausibly resisted by our despots, and the country forced into a premature contest. Now there is no such danger. Even now a step lately taken is about to be carried into active operation. Arbitrators will be appointed in every barony. If they should, as we are sure they will, be men of education and pure character, all disputes will be referred to them, and their decisions will be obeyed more exactly than any judge's in the land. Their's will be an honourable and holy office—the unpaid and chosen dispensers of justice. The people will reap an instant benefit from this costless, simple, and kindly administration of justice. How soon the three hundred trustees of the Irish fund will come to Dublin we need not anticipate. Suffice it, they will come, and we fancy their advice will pass for law with the people."

These three hundred trustees are thus to usurp the functions of the legislature. They are to send over their bills to the British parliament for its sanction; in the meantime these bills are to pass for law with the Irish people—and if the United parliament do not give their sanction, then her Majesty is to be called upon to issue writs for the purpose of summoning an Irish parliament, which would consist of these three hundred trustees, if they discharged their duties in a satisfactory manner as members of this preservative society. The article then proceeds—

"Ireland is changing into a nation. She is obtaining all the machinery of one—public opinion, order, taxation, justice, legislation. What will be wanting when the work is done, but to call her what she then will be—a nation? When Grattan walked into the commons in his volunteer uniform, and proposed liberty, he had less power at his back than O'Connell will then have, or indeed has now. We need not again refer to the state of our foreign policy. That policy has grown up without the tricks of diplomacy from the sympathy felt for our sufferings, our virtues, and our hopes; and it has been confirmed by the obvious interest Europe and America have in the freedom of Ireland. But, again we tell Ireland she must free herself by her own might. We have much to do. The Protestants must be won. They have no interest different from that of the Catholics. The riches and glory of Ireland would be their's in perhaps a larger proportion. It is sheer folly to suppose they can continue to sacrifice interest, patriotism, charity, and happiness, to the wretched dreams of an ascendancy, which England will as little tolerate as Ireland. Bigotry, or neglect, or fretfulness, can alone prevent them from accepting the blessings offered them. If treated as they ought to be—if treated as they have a right to be—they will all take part in the ranks or the councils of the nation. Organized and united we will be free."

That is the statement by the defendant, Mr. Duffy, of the state of the country, on the 12th of August—of the effects of the organization, and of the objects of the persons engaged in arranging, and in planning, and in carrying out that organization. Gentlemen, I shall now proceed to the next meeting, which was held a few days after, on the 15th of August. On that day two meetings were held, one at Clontibret, in the county of Monaghan, and the other at Tara. The meeting at Clontibret I shall not dwell upon. The defendant, the Rev. Mr. Tierney, was present at that meeting. The other meeting was the more remarkable of the two, the great Tara demonstration. Mr. O'Connell, Mr. John O'Connell, the Rev. Mr. Tyrrell (now no more),

Mr. Barrett, Mr. Steele, and Dr. Gray were present. The locality of Tara was selected for the meeting upon two grounds; first, it was the place where the monarchs of Ireland had been elected, and secondly, it was the scene of a battle in the rebellion of 1798, where those who were engaged in the rebellion were defeated. The highest calculation that was made of the numbers at that meeting was a million; the lowest calculation was upwards of a hundred thousand. There is of course a great difference between the numbers, but a meeting of a hundred thousand men is a formidable event. Gentlemen, that spot was selected because it was the place where the monarchs of Ireland had been elected, and also, in order to excite the minds of the people, it having been the scene of a defeat of those engaged in the rebellion of 1798. Hundreds of the persons assembled at Tara were seen upon their knees, plucking a wild plant—a geranium with a red leaf—under the impression that the colour of the leaf arose from the circumstance of the slaughter which took place there in the rebellion; and these particular scenes are selected for these meetings, as you will find hereafter, in order to exasperate the people of this country by endeavouring to recal to their minds events connected with the past history of Ireland. Gentlemen, at the meeting at Tara Mr. O'Connell addressed the multitude; he said, amongst other matters:—

"Yes, the overwhelming majesty of your multitude will be taken to England, and will have its effect there. The Duke of Wellington began by threatening us. He talked of civil war, but he does not say a single word about that now. He is now getting eyelet holes made in the old barracks. And only think of an old general doing such a thing—just as if we were going to break our heads against stone walls. But the Duke of Wellington is now talking of attacking us, and I am glad of it. But I tell him this—I mean no disrespect to the brave, the gallant, and the good-conducted soldiers that compose the Queen's army—and all of them that we have in this country are exceedingly well conducted—there is not one of you that has a single complaint to make against any of them—they are the bravest army in the world, and therefore I do not mean to disparage them at all—but I feel it to be a fact that Ireland, roused as she is at the present moment, would, if they made war upon us, furnish women enough to beat the entire of the Queen's forces. Oh! English honour will never again betray our land, for the man would deserve to be betrayed who would confide again in England. I would as soon confide in the cousin-german of a certain personage having two horns and a hoof. At that last battle the Irish soldiers, after three days' fighting, being attacked by fresh troops, faltered and gave way, and one thousand five hundred of the British army entered the breach. The Irish soldiers were fainting and retiring, when the women of Limerick threw themselves between the contending forces, and actually stayed the progress of the advancing army."

In another part of his address he said:—

"See how we have accumulated the people of Ireland for this repeal year. When on the 2d of January I ventured to call it the repeal year, every person laughed at me. Are they laughing now? It is our turn to laugh at present. Before twelve months more the parliament will be in College-green. I said the union did not take away from the people of Ireland their legal rights. I told you that the union did not deprive the people of that right, or take away the authority to have self-legislation. It has not lessened the prerogatives of the crown, or taken away the rights of the Sovereign; and amongst them is the right to call her parliament wherever the people are entitled to it; and the people of Ireland are entitled to have it in Ireland, and the Queen has only to-morrow to issue her writs, and get the Chancellor to seal them—and if Sir Edward Sugden does not sign them, she will soon get an Irishman that will—to revive the Irish parliament. If at the present moment the Irish parliament was in existence, even as it were in 1800, is there a coward amongst you—is there a wretch amongst you so despicable, that would not die rather than allow the union to pass?"

In another part of the speech he said:—"Let every man who, if we had an Irish parliament, would rather die than allow the union to pass, lift up his hands. Yes, the Queen will call that parliament. The Irish parliament will then assemble; and I defy all the chivalry of the earth to take away that parliament from us again." In another part of his address he says:—

"Give me three millions of repealers—and I will soon have them. The next step is being taken, and I announce to you from this spot, that all the magistrates that have been deprived of the commission of the peace, shall be appointed by the association to settle all the disputes and differences in their neighbourhood. Keep out of the petty sessions' courts, and go not to them. We shall shortly have the preservative society, to arrange the means of procuring from her Majesty the exercise of her prerogative; and I believe I am able to announce to you, that twelve months cannot possibly elapse without having an hurra for our parliament in College-green. Remember, I pronounce the union to be null—to be obeyed as an injustice must be obeyed where it is supported by law, until we have the Royal authority to set the matter right, and substitute our own parliament."

Now, gentlemen, you will observe the statement there made by Mr. O'Connell—that the magistrates deprived of the commission of the peace, by the exercise of the authority of the crown, were to be appointed by the association to be the judges of these arbitration courts, to which the people were to be directed to go. I contend that this was a direct attempt to usurp the prerogative of the crown. The judges of these courts, so appointed by the association, are in the habit of issuing summonses, calling upon the person against whom the proceeding is taken, to appear and consent to enter into a submission to leave the matter to those persons so appointed; but that device and contrivance will not legalize this usurpation. By the law of the land the crown is the fountain of justice; and no subject has authority to establish courts of justice throughout the country. The attempt made on the part of those engaged in this conspiracy was the more illegal, because it was adopted in consequence of the exercise of the right of the crown to dismiss magistrates who had thought fit to attend these multitudinous meetings, the character of which you have had pointed out to you, not in my language, but in the language of one of the defendants, as most "formidable events." Gentlemen, there was a dinner on the same day at Tara; and at that dinner Dr. Gray, one of the defendants, spoke; and amongst other matters said:—

"In one thing only am I compelled to differ from the observation that has fallen from our respected chairman. In giving the toast he stated that the press was of no politics; and I wish to correct the error by declaring on behalf of the national press of Ireland, that the members of it were politicians in the strongest sense of the word. I had myself the honour of being among them that evening as a guest, but I feel that wherever I am I am an Irishman, and as an Irishman, I am ready to strike out boldly for the political liberty of my country. The repeal press was a political press, but its politics were the politics of Ireland; and, steadily adhering to the course it had adopted, it would never deviate to the right hand or to the left, till the people of that

country were relieved from Saxon tyranny and oligarchic dominion. I believe I would best evince the high sense I entertain of the compliment paid the 'press-gang,' by being brief, and allowing them to gang home, that they may send their broad sheets through the length and breadth of the land, and not of that land only, but to the alien isle hard by, that so jealously watched the proceedings of that day. Every eye was fixed upon the council that day at Tara, and eagerly looked to its resolves. Was it not a national council, in the most extended meaning of the phrase? Had they not at their head the monarch of the Irish heart? Had they not the spiritual peers of the realm? Did not the lay peers aid by their counsel? They had there, too, the clergy of the land, and the constitutional representatives of the people. Ay, and the people themselves, in their multitudinous thousands, had that day assembled, and within the precincts of the ancient council hall of Tara, taken counsel together, and issued their proclamation, and that proclamation was—No compromise. As I this day strayed over the ruins of our past glory, I chanced to walk over the graves of the patriots of what I might call their own day."

That is, the graves of those who fell in the battle which took place at Tara in 1798.

"I could not find words to give expression to the emotions I felt as I contemplated their sad fate. A sorrowful chill came upon me when I looked upon their resting-place, and saw in their end the dark history of the past. But that chill passed away and hope revived, when I saw that upon their graves the stone of destiny stood erect. For centuries had that mysterious relic been prostrate, as the land whose destiny its fall symbolised; but now that I see it erect again, and on Tara's hill, and over the patriots' grave, I feel that the blood of the last martyr has been shed, and that Ireland herself would soon assume the upright position, and exhibit the dignity of a nation."

Mr. O'Connell addressed the persons assembled at the dinner, and he said:—

"But he is no statesman who does not recollect the might that slumbers in a peasant's arm; and when you multiply that might by vulgar arithmetic to the extent of 600,000 or 700,000, is the man a statesman or driveller, who expects that might will always slumber amidst grievances continued and oppression endured too long, and the determination to allow them to cure themselves, and not take active measures to prevent the outbreak which sooner or later will be the consequence of the present afflicted state of Ireland? I say sooner or later, because I venture to assert while I live myself that outbreak will not take place."

In another part he says:—

"I now turn to the gentry of Ireland. Let them first answer the question I have already put to them—is it possible things can remain as they are? It is impossible. Why then do they not join us? Is it not their interest to join us? What are they afraid of? It cannot be of the people, for they are under the strictest discipline. I am even one of them myself, and no general ever had an army more submissive to his commands than the people of Ireland are to the wishes of a single individual."

Now, gentlemen, I think that submission to the will of a single individual is a very formidable circumstance; because, if that submission will enable him to direct those congregated thousands not to engage in riot or disturbance, that same person will have the power, when the time arrives, to give directions of a different nature which would be equally obeyed. "When I want you again will you come?" You remember the answer—"the sooner the better." We know very well the meaning of those words, and however peace may be enjoined at present, because it would not be safe to do otherwise—however it may have been the wish of Mr. O'Connell that there should not have been disturbance or riot at each of those meetings—however we may all rejoice that there was not riot, and that there was not disturbance, and that the awful consequences arising from such have not arisen, yet these meetings still were, to use Mr. Duffy's words, "strange and formidable events." Gentlemen, on the 20th of August a meeting took place at Roscommon. Mr. O'Connell, Mr. Steele, and Mr. Barrett went together to the meeting. Mr. O'Connell addressed the persons there assembled, and he said, amongst other matters:—

"But I tell you the Irish people are too great to be slaves any longer. The man who drinks may elevate his courage for a time, and go to the battle with a high heart, but a little time dejects him, and when an effort is to be made his courage retires. But if I had to go to the battle with the steady teetotallers—the men who would not spend the fire of their strength, or any other fire, in the flash of momentary violence—the steady slow step, and the regular march of the teetotallers, with the teetotal bands playing before them for me, and the wives and daughters of the teetotallers thanking God for their husbands' sobriety, would be praying for us, oh! I tell you what—there is not an army in the world that could fight with my Irish teetotallers. Teetotalism, is, therefore, the foundation stone of the edifice of Irish liberty."

You recollect the statement of some amongst the crowd of persons at Baltinglass—"We are determined to get repeal, as we are all sober, and shall not be put down as we were in 1798." At the dinner Mr. O'Connell said:—"I really feel inclined to think that the scene of to-day is that which ought to strike our enemies with most terror." Thus it was the opinion of Mr. O'Connell himself as to the effect of those meetings—that they were calculated to strike terror into the minds of those whom he calls enemies; calculated to strike terror, not, perhaps, from any apprehension (as I have already said) that they would end in immediate outbreak, but, from the consequences which must ultimately follow, from this constant demonstration of physical force throughout the country. There was a meeting at the association on the 22d of August. Mr. O'Connell, Mr. John O'Connell, Mr. Ray, and Doctor Gray, were present. At this meeting Mr. O'Connell submitted the plan recommended by the committee of the association, signed by himself as chairman of the committee, for the renewed action, as it is called, of the Irish parliament. I shall not trouble you by reading that document at length, but I shall state some of the most remarkable features of it. It contains, amongst others, the following statements:—

"The people of Ireland do finally insist upon the restoration of the Irish house of commons, consisting of three hundred representatives of the Irish people; and claim, in the presence of the Creator, the right of the people of Ireland to such restoration. They have submitted to the union as being binding as a law, but they declare solemnly that it is not founded on right or on constitutional principles, and that it is not obligatory upon conscience."

If it be binding as a law, I do not understand the consistency of that statement with the declaration at several other meetings, that the crown possessed the prerogative and the power of issuing writs for the summoning of an Irish parliament.

"He agreed with the Tory Attorney-General Saurin, that the only binding power of the union is the strength of the English domination. They also agree with him that resistance to the union is, in the abstract, a duty, and the exhibition of that resistance a mere question of prudence. They will, therefore, resist the union by all legal, peaceable, and constitutional means."

You are in a position to judge of what is meant by this committee "by all legal, peaceable, and constitutional means." The plan then proceeds to detail the number of representatives which each county and town is to return; and a schedule is annexed to that statement, stating the number of representatives, and the population of each county and town; and then the plan, after providing that the right of voting should be what is called household suffrage and vote by ballot, and that the Monarch or Regent, *de facto* or *de jure* in England, should be Monarch or Regent in Ireland, and that the connexion between Great Britain and Ireland, by means of the power and authority of the crown should be perpetual, concludes thus, "That the foregoing plan be carried into effect according to recognized law and strict constitutional principle." The recognized law being, that the crown was to dispense with the provisions of an act of parliament, and that the crown might, by virtue of its prerogative, direct the keeper of the great seal of Ireland to issue writs for summoning an Irish parliament, and exercise the power of dispensing with the provisions of an act of the legislature. Gentlemen, you are not to assume that a plan is to be carried into effect by strict constitutional principles, because it is asserted that such is the intention. You are to attend to the declarations of the parties themselves; and I tell you again, subject to the correction of the court, that the crown does not possess the power, since the act of union, of issuing writs for the summoning of the Irish parliament. Gentlemen, on the 23d of August a meeting took place at the association, at which were present Mr. O'Connell, Mr. Barrett, Mr. Ray, Mr. John O'Connell, Mr. Steele, and Doctor Gray. Gentlemen, you recollect the language of the publication in the *Nation* of the 12th of August which I have read to you, that "Ireland was changing into a nation; that she is obtaining all the machinery of one—public opinion, order, taxation, justice, legislation." The statement that Ireland was obtaining, as part of the machinery of a nation, "justice," had reference to the arbitration courts; and I shall now state to you an address of Dr. Gray at that meeting, submitting the plan for these arbitration courts which the repeal association are establishing throughout the country, because the crown exercised its prerogative of depriving of the commission of the peace magistrates who thought fit to attend these multitudinous meetings. Dr. Gray said—

"I do not intend to trespass on the time of the association by making any comments on the report I am about to present; I cannot, however, omit remarking, that the circumstance the Liberator has just referred to, must convince every man who has heard it, that the time was come when the appointment by the people of judges for the adjustment of their disputes was not premature. Men who, on principle, yielded obedience to those in authority in whom they could not confide, would never refuse to comply with the fair and impartial decision of judges in whom they fully trusted, whom they themselves had elected, and whose appointment had received the sanction of this association. The only other observation with which I will preface the reading of the report, has reference to the labours of the committee. The committee felt that as the government was actively engaged in removing from the justice seat every magistrate in whom the people reposed confidence—every man who dared to declare himself the friend of national liberty, it was the duty of the association to be equally active, and show the people of Ireland, who looked to it for guidance, that if the executive deprived them of judges in whom they had confidence, it would lose no time in providing them with a system of adjudication on which they might place the most entire confidence. The committee, therefore, lost no time in preparing the report he was about to read for them."

Gentlemen, I shall not trouble you at this stage of the proceedings, by reading that report as it is long; it will be offered in evidence in the course of this case; but it is perfectly clear from Dr. Gray's observations upon that report, that the course adopted was this: the association was nominally to sanction the appointment of those persons who were to be elected by the people, but the appointment of the judges of these arbitration courts was substantially exercised by the association; and I state to you, confidently, that it is an offence against the law, to establish courts for the administration of justice, and to appoint the judges of these courts in the manner adopted by the repeal association. Gentlemen, I shall now call your attention to a publication in the *Nation* of the 26th of August, a portion of that repeal press which, in the concluding toast at one of the dinners which I adverted to yesterday, is stated to be one of the most powerful engines in support of Mr. O'Connell in carrying out this object of repeal. Gentlemen, that article is entitled—

"The Crisis is upon us."—"Our union with England was not merely an unjust and iniquitous, but an illegal and invalid act. Saurin, amongst others, declared that resistance was a question of time and prudence, and would become a duty whenever strength and opportunity might concur in justifying the effort for its abrogation. A greater than Saurin has at length given forth the irrevocable voice—resistance to the union has become a duty."

I adverted yesterday to the use made by the defendants of the speeches of Bushe, Plunket, Saurin, and others, and I wish to do so again, in order that you may understand the circumstances under which those speeches were used. The observations made by Mr. Saurin, were made by him in his place in the Irish house of commons before the act of union had passed. There is no parallel whatever between opinions stated with a view of opposing an act in its progress through parliament, and observations made when that statute had become the law of the land. If it was supposed by a member of the legislature, that a measure which the government might have in contemplation would not be attended with the public advantages they anticipated, it was the undoubted right of such member to state, in his place in parliament, that he conceived it would be inconsistent with the interests of the country that that measure should become the law of the land. There was scarcely an act passed the legislature in which those, who were in opposition, did not use language in debate much stronger than that which they would have used upon cool deliberation; but although persons were justified in using strong language in parliament, it does not follow that the adoption of the same language was justifiable after the law had passed; and I am convinced that Mr. Saurin was the last man that would have used such language when the measure had become the law of the land—indeed, he never has done so; yet the defendants used the high authority of that eminent man, by telling the people, over and over again, that he entertained the opinion "that resistance to the union was a duty." The article then proceeds thus:—

"Yes—the people had sufficiently shown their willingness and worthiness to be led by a thousand proofs of devotion to the cause, and of fidelity to their leaders. Whither and when! began to be asked, ere the echoes of Tara had died upon the public ear. The leaders have answered, and the responsibility is again upon the people. The rubicon has been crossed by the promulgation of a plan for the reconstruction of an Irish legislature. For weal or for woe—for ages of bondage or centuries of independence—we stand committed. Forward and prompt action is sure of its reward in speedy and

glorious triumph—the criminal abandonment of opportunity is equally certain to be avenged in the perpetuation of misrule. Shall the nations who have given up their admiration, and sympthy, and trust, mock at us for braggarts?—our children's children curse our memories as they spit on our dishonoured clay? The world looks on our country for an example. Ireland must become a nation now, or continue a province for ever. We purposely postpone critical details of the plan submitted under the sanction of O'Connell's name, and with the authority of the association—contenting ourselves to admire, and inviting our countrymen to admire with us—the symmetry of the temple of freedom raised for their reception. The chosen trustees of the people's money now will have the first claim upon their votes hereafter. Much inconvenience will be prevented by limiting the number strictly according to the schedule submitted to the nation in the plan of the association. Constituencies—as they will be—districts as they are—having greater enthusiasm in the cause, or enabled to contribute more liberally to the qualifying fund than others, can transfer to the less fortunate localities their surplus of ability and pecuniary weight with advantage and honour to both parties."

Gentlemen, on the 4th of September, a meeting took place at the Repeal Association; there were present Mr. O'Connell, Mr. John O'Connell, Mr. Ray, Mr. Steele, and Dr. Gray. Subscriptions from abroad were acknowledged; 50*l.* from Philadelphia, from Judge Doran; from Boston 58*l.*; from Albany, New York, 22*l.*; from Bangor, one hundred dollars. These subscriptions having been acknowledged, and Mr. O'Connell having read the letter from Bangor, enclosing one hundred dollars, he proceeded to address the association, and amongst other matters he stated—"The meeting at Clontarf will take place on the 8th of October. The chair will be taken on the mound raised to cover the bodies of the Danes who fell in battle there. I have received more letters from persons desirous of joining and taking an active part in the repeal cause within the last week, than for a considerable period before." I have taken the meeting of the 4th of September a little out of its course. I forgot to mention to you, that on the 24th of August, upon the prorogation of parliament, her Majesty made a speech from the throne, which alluded, amongst other matters, to the existing state of agitation in Ireland; and it was with reference to that speech that the observations were made by Mr. O'Connell at the meeting, to which I called your attention just now. It will however be more convenient that I should go back to the month of August before I advert again to the proceedings at the meeting of the 4th of September. Her Majesty, in the speech from the throne, stated, amongst other matters—"I have observed with the deepest concern, the persevering efforts which are made to stir up discontent and disaffection among my subjects in Ireland, and to excite them to demand a repeal of the Legislative Union. It has been, and ever will be, my earnest desire to administer the government of that country in a spirit of strict justice and impartiality, and to co-operate with parliament in effecting such amendments of existing laws as may tend to improve the social condition, and to develope the natural resources of Ireland. From a sincere conviction that the legislative union is not less essential to the attainment of these objects than to the strength and stability of the empire, it is my firm determination, with your support, and under the blessing of Divine Providence, to maintain inviolate that great bond of connection between the two countries. I have foreborne from requiring any additional powers for the counteraction of designs hostile to the concord and welfare of my dominions, as well from my unwillingness to distrust the efficacy of the ordinary law, as from my reliance on the good sense and patriotism of my people, and on the solemn declarations of parliament in support of the Legislative Union. I feel assured that those of my faithful subjects who have influence and authority in Ireland will discourage to the utmost of their power a system of pernicious agitation, which disturbs the industry and retards the improvement of that country, and excites feelings of mutual distrust and animosity between different classes of my people." Gentlemen, on the 28th of August, a meeting took place at the Repeal Association, to which I should have called your attention before the meeting of the 4th of September. Her Majesty's speech had arrived in Dublin; Mr. O'Connell, Mr. John O'Connell, Mr. Steele, Mr. Ray, Dr. Gray, and Mr. Barrett were present on the 28th of August. It was stated at that meeting, that the arbitration forms, that is, the forms for carrying out the proceedings of these courts, would be ready by Wednesday; an adjourned meeting took place on the following day, the 29th of August; the same persons were present with the exception of Mr. Barrett, who, I believe, was not present; and on the 29th of August, Mr. O'Connell gave notice of a counter manifesto to the Queen's speech. This manifesto was to be an address to the subjects of the British crown throughout every part of the dominions of her Majesty. Of the nature of that manifesto you will have an opportunity of judging just now. Gentlemen, at that meeting Mr. O'Connell addressed those assembled as follows:—

"It is now my duty to bring the objects of this day's meeting under the attention of the association here present. I mean to move that it be referred to the committee to prepare the draft of an address to be laid before the association directed to our fellow-subjects in every part of the universe—those who are obedient to the British throne—stating the grievances under which the people of Ireland suffer, and the course which they deem it prudent to adopt. It is my business to vindicate the faithful people of Ireland from any guilt in the discontent that universally prevails, but which manifests itself in so peaceable and constitutional a manner. We are accused of being disaffected. I deny and spurn the accusation, and mark it with this epithet—It is as false as hell."

This, you observe, is the first speech that was made at the association, subsequent to the speech delivered by her Majesty in parliament. I shall, as I said, have, in the course of my statement to you, to call your attention to the address of which Mr. O'Connell spoke—it was presented to the Association by him, and adopted at a meeting, which took place in the month of September. Now, gentlemen, I must bring under your notice a publication in the *Pilot* newspaper of the 28th of August. Every means that could suggest themselves to the minds of the persons engaged in the conspiracy, were adopted for the purpose of creating discontent and disaffection in the minds of the people of this country, who were incited to feelings of anger against those who were called "their Saxon oppressors;" the people were taught their own strength—they were brought together from great distances in thousands, and made to know the reliance they might place upon themselves; their discipline was carried on to a certain extent; but still there was one great difficulty in the way of the accomplishment of the designs of those engaged in this conspiracy, and that was, that if the army was to be depended upon, there would be no possibility of successfully carrying out their designs. You have already heard read from several of the speeches of Mr. O'Connell, endeavours to excite disaffection amongst the non-commissioned officers of the army,

by drawing a parallel between the course adopted towards them, and towards non-commissioned officers in foreign countries. Gentlemen, there was still nothing new in this. It was taken, as many of the proceedings I have already stated to you were taken, from the precedent of 1798. In the Report of the Secret Committee of the house of commons in the year 1798, to which I referred before, it was reported by the committee—"So early as the year 1792 the seduction of the soldiery made a part of the system. Printed papers were industriously circulated amongst the privates and non-commissioned officers." "When our cause progresses," as you heard from Mr. O'Connell at Baltinglass, "this ground of discontent and dissatisfaction amongst the sergeants will be removed." Now, gentlemen, keeping in recollection this, which was a part and branch of this conspiracy, I beg your attention to a letter published in the *Pilot* newspaper of the 28th of August. It is entitled "The Duty of a Soldier." Gentlemen, the letter is long, and I shall read a portion of it only; the whole of it will be read when the document is given in evidence:—

"There are at this instant more men in Ireland—three millions of as brave men as ever trod the grass, united as one ('a sufficient number to conquer Europe') ready at a signal, and determined to die, or have full and ample justice—and yet I don't fear to assert it, there is not one man amongst them who hopes to obtain one shilling's worth of any man's property. Their animating principle is justice—peace if possible—but, peace or war, justice. There is one class of persons whom Mr. O'Connell has not taken into his school in his lectures upon political rights and duties, but who have, it seems, profited, notwithstanding, to some extent, of his peaceful doctrines—I mean the military. If he touched upon this subject he would be cried up at once as an open rebel. It would be said that he wanted to corrupt the soldiery, and withdraw them from their duty. It would be put down as an act of high treason. It was, therefore, consummate wisdom on his part never even to have alluded to it."

This letter is signed "Richard Power, P. P., Kilrosenty."

"I call upon my fellow clergymen—whose duty it is to be accurately informed on it, and to communicate that information to all whom it may concern—to set me and the public right when I may have erred. I am sure many of them will be found to do so if I go wrong. A soldier is a person who hires himself to a government for the purpose of slaying his fellow-men. He does not carry destructive weapons for hunting down wild beasts, or butchering sheep or oxen. No; expressly and distinctly, it is to kill his own fellow-creatures.—Viewed solely in this light, every feeling of our nature recoils with horror from the profession of a soldier, and yet the true soldier is a manly, generous and noble fellow. He would sooner stand to be shot at than be converted into a murdering man-butcher by any such horrible miscreant."

After some further observations, the letter thus proceeds:—

"Having said this much upon what is not, I now come to state what is the duty of a soldier. It is his duty to fight against the enemies of his country, armed for attack, or armed and forewarned for defence. This is the sum and substance of his duty; if he is ever employed for any other purpose he is not bound to obey. It is his duty to do it or die, not only as a matter of personal bravery, but as a conscientious duty before God, he is bound to give up all thought of self-preservation, all feelings of humanity towards the enemy, not, however, to the extent of unnecessary cruelty, to weaken and destroy the adversary in every way in his power, and even when he sees that his own death is inevitable, to sell his life as dear as he can. The soldier, like every other man who hires himself for any particular business, if required to go beyond it, is not bound to obey; if it ceases to be legitimate, he is bound not to obey. The soldier is bound to fight against the enemies of his country in a just war. This is his sole duty—this is his only obligation; if commanded to do any thing else, he is not bound to obey; and if he did obey with arms in his hands, when required to do anything unbecoming a soldier, I would call him not only a base slave, but an arrant coward. If the government to which he has engaged his services as a soldier should be so iniquitous as to enter upon a war of plunder or unjust oppression against an unoffending people, he should die before he would participate in such a horrible crime. Will not the brave and honest fellow who would disobey such pirates be tried by court martial and shot at the drum head? The fate of such a fine fellow would no doubt be melancholy. There is no brave or generous man living who would not shed the tear of warm sympathy over his honoured grave. He himself would be the only man who would stand unmoved when the instruments of death would be pointed at him; his very murderers would shudder at their own crime, while the blessings of all that is good and virtuous on the earth would follow his brave and manly soul before the throne of that God, whom alone he could be made to fear and obey, but whom upon that occasion, at least, he would have no cause to dread."

Now, gentlemen, I think there is no misunderstanding that publication; in the early part of it the effect of the numbers which, by this system of organization, had been brought together, is adverted to; the necessity of obtaining what is called justice—"peace, if possible, but peace or war, justice"—justice, meaning a repeal of the legislative union betwen the two countries—repeal to be obtained by peaceable means, if possible, or by the intimidation to be produced by the demonstration of physical force; but if such means did not succeed then, when the time should come—peace or war, justice, or, in other words, repeal. It is then thought advisable to endeavour to press on the mind of the soldier, that if the government—acting on the principles of the late ministers of the crown, who said that civil war would be preferable to the dismemberment of the empire—were driven to the necessity, from an outbreak of the people, to protect the loyal subjects of the crown by the aid of the military, that the soldiers were not bound to obey. Such is the mode by which you are to have what is called a bloodless revolution—the sergeants are to "pronounce," as they pronounced in Spain, and the military are to coalesce with those favourable to repeal in this country, and by that means the dismemberment of this empire is to be effected. Now, gentlemen, I return to the meeting of the 4th of September, which I adverted to just now. This was a meeting of the association. Mr. O'Connell addressed the meeting, and amongst other matters said:—

"I want no revolution, or, if any, only a return to former times; such a revolution as 1782 or 1829—a bloodless, stainless revolution—a political change for the better. But who can tell me that we have not sufficient resources remaining, even if our present plans should be defeated? The people of Ireland might increase the potato culture, and leave the entire harvest of Ireland uncut. What would be the remedy for that? Who will tell me that the repealers of every class might not totally give up the consumption of exciseable articles? I throw out these things merely to show that if the diabolical attempt to create bloodshed should succeed, still the people would not be deprived of their resources, and the means of vindicating their cause."

To leave the harvest of this country to rot in the

ground, to give up the use of all exciseable articles—that is the legal, the constitutional mode, by which Mr. O'Connell tells the association, that they are to revive the Irish parliament. Gentlemen, in the Report of the Committee of Secrecy, there is an allusion to the very same plan in the year 1797, of giving up the use of all exciseable articles for the purpose of embarrassing the government, and bringing about the objects of the conspirators of that day; and it appears as if they had been studying the history of the Irish rebellion, and endeavouring, so far as possible, to adopt all those principles, and those acts, which led to the "premature" outbreak of the patriots, as they are called, of that day. "The harvest is now cut—" He proceeds: "I speak the day after the fair—" He began to think he had gone rather too far. "The resolution for non-consumption is not proposed at present; but I am far from saying that it may not be proposed, and I will shrink from nothing." Mr. O'Connell further said—"We have at present in preparation two separate and distinct plans. The first is, to arrange the constituency in such a manner, that if the Queen be pleased in six weeks to issue writs calling a new parliament in Ireland, she might be able at once to direct them to the proper constituencies. I wish to work out this plan in all its details, before I form the council of three hundred."

The council here alluded to was the intended convention of three hundred persons from the several places which were to be represented in the Irish parliament. To get rid of the character of delegates, and with a view to escape the provisions of the convention act, the qualification for each member of the society was to be the payment of 100*l.*; and Mr. O'Connell was accidentally to ask those three hundred persons to meet him—as if it were possible, by any such contrivance, to deprive such an assemblage of its true character. It is impossible to say to what lengths the parties might have gone if the proceedings had not been checked. I have now, gentlemen, to call your attention to another publication in the *Pilot*. The former purported to be a letter from the Reverend Mr. Power; this deals with a letter upon the subject of the army, but it is not a letter simply inserted by Mr. Barrett, it is a publication of his own; it is one of the articles of the paper, and, I presume, his own composition. It is entitled—"The Irish in the English Army—Mr. O'Callaghan's Letters;" it is in the *Pilot* of the 6th of September—

"No subject in the present state of public mind in Ireland can be more interesting than the state of the army. If the press did not at length interfere, we really believe there would have been no bounds set to the persecutions of the private soldier."

In the Report of the Committee of Secrecy may be seen some publications of 1797, from the *Press* newspaper of that day, of exactly the same tendency as this—"We published no later than last Monday a letter, forbidding the soldiers of the Forty-third Light Infantry, stationed at Montreal, from reading the *Weekly Register*, although the poor fellows of that regiment had subscribed in advance for that paper. If the newspapers are not palatable to military martinets or drill-murderers, what shall they say to the writings of the author of the 'Green Book' being rendered accessible to the soldiery? This gentleman, the Irish public are aware, was the first who revealed the secret of the composition of the army in reply to that unprincipled publication, the English *Standard*. Mr. O'Callaghan silenced the *Standard* by analysing the army, and showing that above forty-one thousand Paddies served in that force! It is difficult to perceive, even independent of the circumstance of so many of the military being known repealers, how the great mass of our army can be reckoned on to uphold, at the expense of their own as well as the people's cause, the supremacy of an oligarchy, whose generosity, gratitude, and tenderness to the soldiery for so doing, consist of promotion to commissions only for the rich, the mangling lash to the bleeding back, and such merciless drillings as have caused poor Private M'Manus to drop down dead, and Private George Jubee, a soldier of acknowledged good character, to send in desperation a bullet through Adjutant Mackay's body." Mr. Barrett has, to the best of his ability, taken care that this penny publication should be brought under the notice of the army through the instrumentality of his paper; and he expresses his hopes that it should be always found in the soldier's knapsack. Gentlemen, the view taken by the government with respect to the state of agitation upon the 24th of August, appeared clearly by her Majesty's speech delivered in parliament upon that day. It, however, had no effect whatever on the members of the loyal national repeal association; and on the 10th of September another multitudinous meeting was held. It took place at Loughrea. At that meeting Mr. O'Connell, Mr. Steele, Dr. Gray, and Mr. Barrett were present. The rain, however, happened to set in in the morning, and Mr. Barrett, in his paper states, "that this had the effect of shortening the proceedings of the assembly." At the meeting in the morning, however, Mr. O'Connell addressed the multitude. He said:—

"I regret that the state of the weather will compel me to narrow the expression of my gratitude in the smallest space. I cannot, however, avoid saying that Connaught is doing well, right well—Connaught is exhibiting a right noble spirit—it is showing a glorious, a right glorious determination. Connaught is determined that Ireland shall be free. I have to-day with me a bold peasantry, and physical power sufficient to achieve the greatest revolutions, if force were to be used; but yet, this great meeting is as submissive, as gentle, and tranquil as if an assembly of the youngest persons met for merriment. A finer spectacle than I met to-day I never saw." Mr. O'Connell concluded by saying:—"The Saxon stranger shall not rule over Ireland. It shall belong to the Irish, and the Irish shall have Ireland. I will not detain you longer—may every human prosperity attend you—aye, the blessing of God light on you—my temperate, generous, affectionate friends. You shall have liberty."

At the dinner, (which Mr. Barrett stated became the more interesting from the wetness of the day,) Mr. Barrett, in answer to the toast of "The People," made, amongst others, the following observations:—"I am from long, close, and attentive observation of the Irish people convinced that were their virtuous tranquillity set at nought, there is in the organization, the numbers, the nature of the country, and the spirit of the people at this moment, a mighty power which would defeat the calculations and the manœuvring of military tactics, and that great, admired, and prominent as we are now in the arts of peace, if driven to it, this people would be found still more astonishing in military valour, and that prowess which would render their outbreak irresistible, and their country free."

Mr. O'Connell at the same dinner, amongst other things, said:—

"They" (that is, the ministers) "had but one arrow in the quiver—but one stone unflung—but one trick untried, and out they brought the Queen. All Europe was to be astonished by the splendor of her speech against Ireland—oh! what a trick it was! It was worse than a scolding match between two fisherwomen in Billingsgate. The fisherwoman gives her colleague the power of reply; and if she calls her by ugly names, she is obliged to wait to hear them retorted; but the government had all the scolding on one side. It was an unfair advantage that Judy took of us."

This is the manner in which the Queen's speech was spoken of by Mr. O'Connell: "It was an unfair advantage that Judy took of us." In a further part of his address at that dinner, he said:—"When they talked of beating us we were ready with our shillelaghs. If they will give us fair play here at scolding, I am ready for them. The meeting of to-day was one of the most magnificent and numerous that I have seen. My heart throbbed with delight, and I every now and then exclaimed to myself, this is an answer to the Queen's speech." In a further part of his address, Mr. O'Connell said:—"I am leading you—pardon the vanity, you have made me vain—in the paths of quiet, and the practical observance of the maxim, that 'he who commits a crime gives strength to the enemy.' That maxim has been the hinge of my political life. I am arranging to have my parliamentary plan complete in case of any accident that might arise. Who can calculate how soon we may have a parliament? Let England be involved in any awkward predicament with one state of Europe—let any country on the face of the earth attack her, and in twenty-four hours we shall have our own parliament. I will proceed cautiously and discreetly, with full knowledge, and with an eye to the breakers a-head, knowing well the shoal water, and steering the bark of Irish liberty through every danger, till it reaches in safety the port of repeal." Dr. Gray spoke at the same dinner in answer to the toast of "the Repeal Press," and said:—

"He could not but congratulate the men of Loughrea on the glorious demonstration he had that day witnessed. As a Connaughtman he felt proud of the bold attitude assumed by his countrymen. If, however, he felt pride in witnessing such a scene, how much greater should be the gratification he would experience at being enabled to do his duty to them and to the country, by sending to the four corners of the globe a faithful portrait of that magnificent display?"

In speaking of the numbers who attended that meeting Dr. Gray said—"There were numbers—there was order—there was precision—but, above all, determination was stamped on every brow, and was uttered by every voice; and was he to be told that such a people were to be driven from their purpose by either the seductions or the frowns of a minister, whether uttered by himself or put forth as a royal speech? They threatened before; but when the indignant people hurled defiance at them, they sneaked like cowed rats before them. Afraid again to threaten, they have the meanness to thrust an innocent and beauteous lady as a shield between themselves and the just wrath of an indignant nation, and they have forced her to proclaim slavery for the people of this land, as if they fancied that such a device could affect the great national movement. What did the men of Ireland care for the ministerial manifesto? What did the bold peasantry of Connaught care for it? No; they would not halt or hesitate even because of the personal opposition of the Sovereign. When her idiot grandfather opposed himself with all the virulence of his vicious nature to the emancipation of the Catholics, did the people fear to go on? There was that day given to the minister a substantial proof that the men of Connaught, at least, would never lower the standard of repeal." Gentlemen, upon the 12th of September a meeting took place at the association, at which were present Mr. O'Connell, Mr. John O'Connell, Mr. Ray, Mr. Steele, Mr. Barrett, and Dr. Gray. At this meeting of the association Dr. Gray said—"He had been commissioned by the committee of arbitration to report progress; that circulars had been forwarded to the repeal wardens and clergy, pursuant to the report previously adopted by the association; that deeds of submission, and all the necessary documents were procured, and ready to be sent down to the country, so that the plan was now fit to be carried into practical operation." Dr. Gray then read the correspondence, with which it is not my intention to trouble you; and Mr. O'Connell then said—"With respect to these arbitration courts, there ought to be one in every parish—or at least in every union or district there ought to be one arbitrator, that there might be a sufficient number of those officers to discharge the public business. His great object was to supersede altogether the necessity of the people appealing to the magisterial authorities constituted by law." That is the declaration made by Mr. O'Connell, that his object, and the object of the association, in whose presence he made it, was to usurp this prerogative of the crown, to endeavour to establish courts for the administration of the laws throughout the country—in fact to supersede those tribunals which, by the authority of the crown and by the law of the land, were legally constituted to administer the law in this country. Gentlemen, I have now to call your attention to an important meeting which took place at the association upon the 13th of September. There were present at that meeting Mr. O'Connell, Mr. John O'Connell, Mr. Ray, and Mr. Steele. I already stated to you, in a former part of my address, that the Queen's speech having arrived in Dublin on the 29th or 30th of August, Mr. O'Connell gave notice of a counter-manifesto—an address to the subjects of the British crown in every part of the world—containing a detail of what he calls the grievances of the people of this country, and also stating the means by which those grievances were to be redressed. Gentlemen, this is not the place, or the occasion, for entering into a discussion as to what are called grievances. It is not for you to decide, nor for the court to decide, whether grievances do, or do not, exist; it is for you to consider, whether or not the course pursued by the defendants to carry out their objects is legal. This counter-manifesto to her Majesty's speech contains upon the face of it, a statement that there was no hope from a British parliament—that there was no hope of obtaining redress by any legal or constitutional means; and the mode by which supposed grievances are to be remedied is pointed out in it in language which I think is not equivocal. I shall now read to you the concluding passages of this address:—

"Lastly, to crown all, they conclude the session with a speech which they cause the Queen to pronounce—of course the minister's speech—full of sound and fury—giving us for all relief and redress—for all conciliation and kindness—the absurdity of ministerial assertion, and the insolence of half-whipt ministerial anger. Fellow-subjects, our case is before you and before the world. Grievances, such as the Irish people endure, no other country has ever suffered. Insults, such as are offered to us, were never inflicted on any other. There is one consolation—it is admitted by all, and is as clear as the noon-day sun, that unless we redress ourselves, we can have no succour from any other quarter, but we suffice for ourselves and our country—we suffice for the repeal. We expect nothing from England or Englishmen—from Scotland or Scotchmen. In each of those countries the benevolent few are overpowered by the anti-national apathy to Ireland, and the virulent bigotry against the Catholic religion of the overwhelming majority of both England and Scotland. The present parliament has been packed with the aid of the most flagacious bribery to oppress and crush the Irish nation. From them there is neither redress, or even hope. But, Irishmen, we suffice for ourselves. Stand together—combine together in peaceful conduct—in loyal attachment to the throne—in constitutional exertion, and in none other. Stand together and persevere, and Ireland

shall have her parliament again. Such are the words we address to our fellow-subjects all over the globe. Signed by order, DANIEL O'CONNELL, Chairman of the committee."

He then moved that the address of the association should be printed on a broad sheet, and circulated through Ireland, England, and the Colonies; and his motion was carried by unanimous acclamation. By that he distinctly states, and the association who adopted that report pronounce, that they have no hope of redress from parliament—that they suffice for themselves—that unless they redress themselves they shall get redress from no other quarter; and then, when he speaks of the constitutional mode by which they are to obtain that redress, he omits to state what it is; and I ask you, after having heard that document read, can you have any difficulty in coming to the conclusion that it was by the means stated in the indictment, that the repeal of the union was to be obtained? It is for you to consider what were the intentions of those who announce that grievances, if they exist, are to be redressed—not by the parliament of the country, but by the Irish themselves. This address was circulated by means of the repeal press. But lest the repeal press might not give sufficient circulation to it, it was printed on a broad sheet, and distributed through the United Kingdom, and I believe through the Colonies. Gentlemen, the mode in which the Irish were to redress themselves, was pointed out perhaps a little more unequivocally at the next meeting which was held, because, as the conspiracy gained strength, the mask was removed by degrees; and, as the history of this conspiracy proceeds, we find the pretexts upon which these meetings were held, and the objects of them, almost cease to be concealed. The next meeting, which was one promised at an association meeting by Mr. O'Connell, took place at Clifden, in the county of Galway, on the 17th of September, four days after that meeting of the association, at which the association declared, by acclamation, that they must redress themselves, and that they had no hope from the parliament of the United Empire. Dr. Gray, who is one of the proprietors of the *Freeman's Journal*, was present at that meeting. In the account given in the *Freeman's Journal*, the horsemen who attended the meeting are described as "troops of peasant cavalry." It is stated that a large number of the horsemen wore repeal cards in their hats, bound on with green ribbons; and that the cavalry was commanded by farmers, who carried members' cards. Bands attended that meeting, as at former meetings—they were part of the pomp and circumstance attending them, and as Mr. Duffy thinks, were not unimportant ingredients. This "monster meeting" took place within a few days after the meeting of the association, at which Mr. O'Connell, as chairman of the committee, pronounced, and the association pronounced, that the Irish people were to redress themselves. Mr. O'Connell said:—

"I had no doubt at all that the women of Connemara were as handsome and modest-looking as any in the world; that opinion has been abundantly confirmed by the beauteous scene I have beheld today. But I came here to make an experiment on the men. I want to know whether you are not as brave and as Irish as the rest of the nation. I want to know whether you are not as honest, as true, as faithful, as the rest of your countrymen. I want to know whether you don't hate Saxon tyranny, as much as the natives of other parts of Ireland. I want to know whether you do not feel the evils of misgovernment as much as the people of any other part of Ireland?"

In another part of the same speech he said—"You have no commerce, and where are your manufactures? Oh! you have no manufactures. Why? Because Ireland is governed by Saxons, and not by Irishmen. Will you join me in giving Ireland to the Irish?" This was addressed to the assembled thousands, by the chairman of that committee which had framed the report, by which it was declared to be the unanimous opinion of the association, that they had no hope from parliament—that they were to redress themselves—"we suffice for ourselves—we suffice for the repeal." He did not tell the misguided people whom he addressed, that if commerce and manufactures did not flourish in this country as they did in England, it was in consequence of that pernicious and destructive system of agitation which has been the curse of this country for years. He did not tell them, it was that agitation that kept English capital out of the country; he did not tell them it was the insecurity of property, aye, of life, which prevented the English capital, the Saxon capital from flowing into Ireland; he did not tell them, that if we had not commerce, if we had not manufactures to the same extent as the sister country, there were no persons whom the Irish people had to thank for it, but those enaged in this conspiracy, and their associates. In a further part he stated, after asking—"Will you not join me to 'give Ireland to the Irish?' My experiment is satisfied, and I can now tell the rest of the three provinces, that Connemara is as determined as they are." There was an exclamation then from the people; they said—"More so." To which he replied:—"You cannot be more so, my friends. If the battle were to be fought, I know you would be in the front rank; but there would be as brave hearts and as ready hands by you. But the battle of Ireland is a peaceable battle, and there is no occasion for warfare—there is no occasion for hostility. I will keep you out of danger, and conduct you in the constitutional way of the law and national exertion." The "constitutional way" of redressing themselves without the authority of the united parliament. "Yes, if it were necessary for me to call out your force in battle, I am sure there is not a man of you who would not come again on the day I asked him. I will tell you why it is unnecessary—because your enemies know it as well as I do. If the time for using force should come, there is one here will tell you that the time has come." Gentlemen, at the dinner which took place upon the same day, Mr. O'Connell's observations were also of a very unequivocal kind. He stated amongst other things:—"I have demonstrated that I have more men of a fighting age"—this is "the constitutional way" by which they were to redress themselves—"ready to stand by their country, than ever evinced that determination before. I say to England, we will use no violence, but attack us if you dare. What is the answer? We do not intend to attack you. My reply is the schoolboy's, thank you for nothing. But then they say, how can you carry repeal? If you take a single additional step, we will go to law with you. My answer is, that I am an old lawyer, and the proverb says, you can't catch old birds with chaff, and they are not able to beat an old lawyer with chaff at all events. I set your chaff at defiance, and will take the next step in spite of you." I pray your attention to what follows in a further part of the same address:—

"You will see in the newspapers a report of the first court of arbitration, which will sit on Friday next, Dr. Gray in the chair. I am convinced that it will work well. Disputes which now fester and rankle in a village will be settled amicably. It will spread further; I will apply the principle to a higher class of cases. We will appoint arbitrators for everything the people may choose, and I trust before I am twelve months older to take half the business out of the superior courts." It was not only the intention of the association, and of Mr. O'Connell, to adopt the course of substituting courts

for the settlement of disputes disposed of at petty sessions, but actually to have ejectments, and all other cases connected with the administration of justice, decided by these arbitration courts; and well might Mr. Duffy in the publication of the 12th of August say, they had all the incidents to a nation—"they had taxation, they had justice, and they had legislation." They had not as yet legislation. But they had taxation, and justice, and organization. They were acquiring power inconsistent with the security of the country. Gentlemen, there is one passage further in the speech of Mr. O'Connell at the Clifden dinner, which is the last to which I shall call your attention. He said—"For the present year my monster meetings are nearly over; there will not be above seven or eight more of them; but before I have done with them the demonstration of moral combination, and of the mighty giant power of the people of Ireland, will be complete—their discipline will be complete. Why, you saw the cavalry fall in at the command of Tom Steele; no aide de-camp of the Lord Lieutenant was ever more cheerfully obeyed than he was." I had omitted, gentlemen, to mention, that there was a passage of Mr. O'Connell's address at the meeting upon the same subject. At the meeting he stated—"I have more cavalry than at any former meeting. Handy hacks they are too. Dillon Browne spoke of the English heavy cavalry following them through the mountains; I believe they would be going away from them rather than following them." Gentlemen, in the course of about a week afterwards a meeting was held at Lismore. At that meeting Mr. O'Connell, Mr. Steele, and Mr. Barrett were present; it was on the 24th of September. The trades attended with twenty-two banners and flags of different descriptions; there were eleven temperance bands. The men of Waterford were led by the Rev. John Sheehan; the men of Dungarvan by the Rev. Dr. Halley; and the men of Lismore by the Rev. Dr. Fogarty; and the men of other districts also were headed by their clergy. Gentlemen, at that meeting at Lismore Mr. O'Connell addressed the persons assembled, and amongst other observations he said—"If you were wanted by me to-morrow, would you not come? Let as many as would come at my call, hold up their hands." Here, it is stated in the paper of some of the defendants, "a dense forest of uplifted hands waved to and fro amid the most tremendous cheering we ever witnessed; the scene was actually indescribable." It is not very wonderful, that at Baltinglass, in the conversation amongst the people, they should have had conveyed to their minds, whatever Mr. O'Connell's view may have been, that, "the time is nigher than you think." He then stated—"Though their hands numbered thousands, they had but one heart, and that was full of life and strength and hope for Ireland." Mr O'Connell further said—"He could tell them, that the English were beginning to see and understand the Irish, and by and by they might attempt to bribe them. They might talk of compromise! Compromise to the winds. He would have no compromise. He had floated his standard, and he would stand by it through weal and woe, and on that standard was engraven, Repeal. He was persuaded he had no other way of working out his salvation than by working out good for his fellow-man. It was his vocation under heaven." At the dinner at Lismore, Mr. O'Connell stated—"Aye, in Mallow things looked more threatening; they were ready to bring their horse, foot, and artillery on us, but in that very Mallow I hurled at them my high and haughty defiance. I told them they could not conquer the Irish people. They admitted the truth of my assertion, and neither attempted to conquer or delude us. No; they left us to work out the national question of Ireland's hope and redemption. All that is required of us is to work it in such a way as that there will be no destruction of its parts, but that all may arrive securely at the point we wish." In a further part of his address he stated—"My first anxiety is to wrest from the judicial administration its unholy authority; to do away with the wrangling of the petty sessions' courts, where the magistrates preside. I want to have tribunals of reconciliation in every parish in Ireland, existing not by patent from the crown, or imbued with Saxon notions of justice, but fair, equitable, and impartial tribunals, where the people may fairly settle their differences by impartial arbitration." He wants to have "tribunals, not existing by patent from the crown." Gentlemen, on the 24th of September that meeting took place. On the following day an article appeared in the *Pilot* of the 25th of September, entitled "The Army, the People, and the Government;" a subject very important for the consideration of those who had determined to redress themselves without the aid and without the concurrence of parliament:—

"No subject can be at present more vitally interesting to the friends of constitutional freedom and Ireland, than the state of the people's army. Aye, the people's army; for we should be glad to know who pay the taxes which support the army, but the people—the poor oppressed people? Who supply the fine young recruits, but the people? And for what pretext was the army ever raised, if not for the defence of the people, or their property?" Then again—"The army—by this we mean that respectable body of men, the sergeants and privates—are all from the people. Where, we ask, must they return once more, but to the ranks of the people? But, in this, we have not alluded to those persons who are born to command the sergeants and privates. Our readers are aware, that in what's called the English army, all the situations of ease and emolument are generally filled by persons belonging to what are called noble families, or, more properly, rich families. By this scheme, boys of fifteen or sixteen, without having left their mother's apron-strings, can, on paying a certain sum of money into a certain office, procure what is called a commission—that is, power to receive a certain portion of money out of the public taxes. But it is not enough, that the boy who never earned a penny in his life should get this comparative sinecure, just because he chances to have a rich father, mother, or uncle, who can put down a certain sum of money. No, things don't stop here. The aforesaid boy (brave fellow!) can make another bounce over the heads of those veterans who have grown grey in the service of their country, by his merely paying another sum of money into the war-office. All this is certainly a d——d fine system for those who command, but not so for those who are told to obey—that is, the great body of the army, the sergeants and privates. A system precisely similar to this prevailed in France previous to what is called the Revolution."

Now observe that; here is the definition by Mr. Barrett, of the French Revolution, "a system precisely similar to this prevailed in France previous to what is called the Revolution," that is—"a change by which the people were enabled to divide the land amongst each other like brothers, and merit was permitted to rise in every branch of the public service, but particularly in the army. 'Every dog has his day,' and God knows the poor sergeants and privates deserve their days. Why not adopt the system of rising from the ranks, which the people adopted in France, when maddened by oppression, they rose up, and knocked their tyrants on the heads? Of course, we, the moral instructors of the Irish people, don't recommend the system of rising up and knocking on the head, which the French were compelled to adopt. Far from it. We are the

old friends of peaceable agitation. The Liberator has said, 'he who commits a crime gives strength to the enemy;' and, we believe, it is quite sufficient reason for the Irish not to commit a crime, when we tell them that enemy is England. We are pretty sure they are not inclined to strengthen her, at any rate." This is what is to prevent mutiny; this paper which is to be in the knapsack of every soldier. What I am now about to read is marked in italics, in order to call the attention of every person to it:

"Yes, persecute the soldier to the utmost—*over-drill him in the dog-days, withhold his furlough, deprive him of his newspaper, confine him for the slightest fault, march him to the house of God, armed and accoutered as if for battle;* but leave him the press open, *he has* STILL *some hope!* But, go farther, deprive him of an honest, uncorrupted press, and you drive him to madness, or perhaps, we should say, revenge! Let us just look to the state of the Fifth Fusileers. Our readers will, no doubt, remember the hapless fate of poor M'Manus, who was proved to have dropped down dead from over-drilling. Well, what was the consequence? A fine young man, of unimpeachable character, an Englishman and a Protestant, named George Jubee, stepped out of the ranks and drilled a hole in through the body of the adjutant, one Robertson Mackay, an infamous Scotch tyrant."

This is the "moral instructor of the people," who tells you that a young man "of unimpeachable character," "drilled a hole in through the body," that is, committed murder by shooting one of his officers; that is the "moral instruction" which Mr. Barrett thinks advisable to give the soldiers of the British army. "Thus was the driller drilled. On the inquest it came out, that the colonel of this regiment had received a letter, when the regiment was stationed at Fermoy, threatening him with 'the punishment of death,' and we suppose the maddened Jubee would have fusileered the colonel if he had not wisely left the now dangerous post of over-driller to the care of Sawney Robertson Mackay. When a detachment of the Fifth left Loughrea some weeks ago, the repealers, with their temperance bands, accompanied that detachment for above two miles out of town, and, on taking their last sorrowful farewell, the soldiers are stated to have taken off their caps and given three cheers for repeal! Thus, the country appears to have never been so safe, as the people and the army are on the best terms!" They are to "pronounce" as they did in Spain; that is the course they are to adopt, and they are to effect the revolution which this "moral instructor of the people" tells you is to lead to the people of Ireland dividing the land amongst themselves like brothers. "This is exactly what a popular government would desire. But certain spy-employing monsters would seem to wish to 'tamper with the army,' and to instigate it to fall on the unoffending people—men, women, and children. Thank God! we have, however, lived to see the army morally reformed, so far as the soldiers are concerned. We, therefore, would wish to see promotion from the ranks general, and flogging or back-mangling totally abolished! Let a soldier be shot, but not flogged. Many of them are teetotallers. They mind their religion, and if not prevented by their money-promoted commanders, would improve their minds by reading the newspapers, which we think, after fulfilling their duties, (including over-drilling,) they have just as much right to do as those parties called officers—for an officer ought properly to mean a promoted soldier, and a soldier an unpromoted officer." This is the publication which is to be circulated amongst the army; and I ask you, what object had the writer of this publication in view, when he wished it to be circulated amongst the army. "We feel it to be our duty to again direct the people, and the persons who temporarily occupy the places of profit called government, to the admirable military letters of John Cornelius O'Callaghan, author of 'The Green Book.' These letters settle for ever the question of the army, that source of England's weakness." That is the penny publication, of which you have heard in a former article in this paper. "These letters first 'let the cat out of the bag.' They reveal the astounding fact that forty-two thousand Paddies serve in the pay of England." Now, gentlemen, there is another publication in the same paper, of such a character that I feel it my duty also to call your attention to it. It is entitled, "The rumoured death of General Jackson—the battle of New Orleans." "A report, which we trust is untrue, was published in our last of the death of General Jackson, the hero of New Orleans, and by far the most eminent president the United States ever had, save the incomparable Washington. Be the report of his death true or false, the mention of his name has recalled to our mind the feat he achieved, an account of which may in these times, when so much is said about war and blood, be acceptable to our readers. The account which we allude to was written by Cobbett, and appears in his work of 'Paper against Gold,' and is as follows:—In the battle of New Orleans there were engaged from 10,000 to 12,000 British troops, sent from France under General Packenham, who had been extolled so much for his exploits in the peninsula of Europe. The American General Jackson, a lawyer by profession"—that is put in italics to call attention to it—"who had never before, I believe, seen a single regiment in the character of an enemy—with the inhabitants of New Orleans, aided by the militia of Tenesse and Kentucky, had assigned to him the task of defending the city against the army of regulars, and, as they were called, invincibles. On the eighth of January, eighteen hundred and fifteen, they advanced to that attack with rockets, bombs, an immense train of artillery, and with all the apparatus for storming, the soldiers and sailors having been previously stimulated and steeled against relaxation by assurances the most gratifying to their tastes and wishes. They finally arrived at the point of onset; the faggots, which they carried to make them a road over the works, were just tossing into a ditch, in idea the city with all its spoils were in their possession. At that moment the brave and prudent enemy, with as much coolness as if he had been aiming at harmless birds, opened his fire on them, and swept them down like grass before the scythe of the mower. He drove the survivors to their ships, and bade them to carry to England the proof of the fact that the soil of freedom was not to be invaded with impunity. There were more than half as many British soldiers and sailors killed and wounded in this battle as at Waterloo, where the British, though successful, had to help them—not only Irishmen and Scotchmen, but Belgians, Hanoverians, and Prussians." After some observations on that statement of the battle of New Orleans, where the Americans were commanded by a lawyer by profession, who had never been engaged in commanding a force prior to that day, we find the following commentary by Mr. Barrett:—"Why do we recal these things now? We confess that we have more reasons than one for doing so. The first is, that the deeds of our illustrious countryman, as in the funeral oration of Mirabeau over Franklin, should be recounted at his death. The second is a desire we have to point out to Irishmen—aye, and to Englishmen too—that although he exhibited such generalship at New Orleans, Jackson was only a lawyer, not having served his apprenticeship as a hireling to the committing of murders like Wellington; and our third reason is an anxiety on our part to cram the falsehood down the throat of the editor of the *Times*, who, for the purpose of slandering President Tyler, in conse-

quence of the part taken in behalf of Ireland by his brilliant son, eulogizes in his last publication General Jackson." That "brilliant son" is, you will remember, the gentleman I mentioned yesterday, who, in alluding to Ireland, said, that "the libation to a country's freedom must sometimes be quaffed in blood." "Jackson was only a lawyer. O'Connis one too! The former surprised the British by attacking them twice in the night. So might the latter were he driven to it, especially as darkness equalises undisciplined and disciplined men, throwing the advantage, if any, in favour of the former, the pike being, from the distinctive peculiarity of its shape, the weapon best adapted for night." Gentlemen, this publication contains various other observations which I shall not trouble you by reading; I think what I have read will be a sufficient justification to me for having called your attention to it. I shall not weaken the observations of this "moral instructor of the people," who recommends the pike as the most useful instrument for that period of the twenty-four hours which is wrapt in darkness. Gentlemen, on the 27th and 28th of September, meetings of the association took place, and there were present on each of these occasions Mr. O'Connell, Mr. John O'Connell, Mr. Ray, Dr. Gray, and Mr. Steele. On the 27th, I think it was that day, the form of appointment of arbitrators was submitted to the association, and also a form of proclamation announcing the institution of a court of arbitration. This document is headed by a harp and crown, was issued by the association, and is in the form of a proclamation. You will not now be much surprised at Mr. Duffy having said on the 12th of August, that they had assumed all the forms of a government:—

"Whereas there has been formed for the district of ——, a court of arbitration. Mr. ——, the secretary, will furnish, free of expense, the necessary forms, and give such information as may be necessary for the legal commencement of arbitration suits.—Signed, by order, T. M. Ray, Secretary."

This was the system which was not only to supersede, according to Mr. O'Connell, the proceedings of the petty sessions' courts, but those of every court in Ireland exercising jurisdiction under patent from the crown. Gentlemen, I have now arrived at an important date in these transactions, the 1st of October. It was upon that day that a meeting was held on the Rath of Mullaghmast. Mr. O'Connell stated at the dinner there, that a million were present in the morning. I believe the lowest calculation made of this multitudinous assemblage was 250,000. Of the defendants there were present Mr. O'Connell, Mr. Steele, Mr. Barrett, Mr. Ray, and Dr. Gray. The Rath of Mullaghmast was selected as the place for this multitudinous display of physical force, for reasons stated by Mr. O'Connell himself at the meeting.

"I chose it"—(said Mr. O'Connell—"for an obvious reason. We are upon the precise spot in which English treachery—aye, and false Irish treachery too, consummated a massacre unequalled in the history of the crimes of the world, until the massacre of the Mamelukes by Mehemet Ali."

I suppose it will be said that those who selected that spot had not combined to excite feelings of hostility between different classes of her Majesty's subjects. But why was this spot selected? What was the meaning of such allusions addressed to an excitable people if not to inflame the minds of those who, if let alone, and not misled, and misguided, and misinformed on every subject, would be obedient to the laws. By selecting this spot the forgotten provocations of centuries past have been raked up; the sufferings of our ancestors brought into view, and all for the wicked purpose of endeavouring at the present time to excite hostility between the fellow subjects of the British crown. Gentlemen, a document was handed about at that meeting by a person who said that it had been printed expressly for all well-wishers of their country, and at the desire of Mr. O'Connell; groups of the country people were observed in different parts of the field listening to persons reading this paper to them. Lest the language used on the platform to inflame the people should not reach the more remote limits of that vast assemblage, the course was adopted of printing and extensively circulating, and of having read for those who could not read themselves, this most inflammatory publication. It is headed "A full and true account of the dreadful slaughter and murder at Mullaghmast on the bodies of four hundred Roman Catholics." Now I am not about to trouble you with reading this document at length, but I will just read two passages from it to let you understand the nature of the document:—"The chief men of the two septs (O'Moore and O'Connor) are invited by the Earl of Sussex as to an amicable conference to the Rathmore of Mullaghmasteen to adjust all differences. Thither they unadvisedly came, all the most eminent in war, law, physic, and divinity—all the leading men of talents and authority, the stay and prop of the tribes, to the number of four hundred. They rode into the fatal Rath, confiding in the olive branch of peace held out to allure, in the character of ambassadors, sacred amongst all nations, even barbarians or heathens. They perceived too late that they had been perfidiously dealt with, when they found themselves on the sudden surrounded by a triple line of horse and foot, who on a given signal fell on those unarmed, defenceless gentlemen, and murdered them all on the spot."* It concludes, after statements of other matters:—"What disposition has she"—(that is, England)—"always displayed? Can her rapacity be stayed by anything but fear? Did she not always murder those who sued to her for mercy, and basely betrayed those who confided in her honour? Is her nature changed? No; consistent in villainy, she is doing now in India what she formerly perpetrated in this country; and may she not do the same here again, if Irishmen be cowardly or foolish enough to give her the opportunity? A picture of the slaughter at Mullaghmast should be hung up in every Irishman's room to remind him of the brutality and perfidy of England, by the latter of which, much more than by her valour, she obtained dominion in this country." Gentlemen, on the flags at that meeting there were several inscriptions. "Remember Mullaghmast," on one. That is, remember the place where, according to Mr. O'Connell's statement, a massacre worse than the massacre of the Mamelukes was perpetrated—the massacre by the Saxon foreigner of four hundred Roman Catholics—"Remember Mullaghmast." There was on another flag, "Ireland for the Irish;" on another, "Ireland must be a nation;" on another, "A population of nine millions is too great to be dragged at the tail of any other nation;" on another, "No Saxon threat, no Irish slave, no compromise, but a free repeal." There were stationed amongst the crowd men with inscriptions on their hats—(this was assuming another of the functions of the government alluded to by Mr. Duffy in his publication of the 12th of August)—with the inscription "O'Connell's Police." These persons did duty as constables at the meeting; and Mr. O'Connell, in the course of his speech, said, "he was proud to see his own police there, and he hoped he

* "Curry's Review of the Civil Wars of Ireland." A most competent authority. But the assertion that the publication was made by desire of Mr. O'Connell is totally untrue. We do not believe he ever saw the paper until it was produced upon the trial, and there is good reason to believe the document was taken to Mullaghmast, by a person who was afterwards known to have been, long previous to that day, in communication with the government!

would shortly see no other police in Ireland." Mr. O'Connell reached the platform at Mullaghmast about two o'clock. It may appear an unimportant circumstance, but I think you will find it was not so, that he came there arrayed in scarlet velvet robes.* There are many matters of a very trifling nature when stated, which, however slight the effect they would have on the higher orders, are calculated to have a deep impression on the ignorant people assembled in such multitudes. Mr. O'Connell was arrayed, gentlemen, in scarlet robes; and an incident occurred on the platform, which also might strike some as unimportant, but had a most powerful effect upon the congregated multitudes of that day. A cap—which, according to the statement of the defendants in their papers, was embroidered and ornamented with gold, after the fashion of an ancient Irish crown, (so at least said Mr. Barrett,) which is preserved in the College Museum—was presented to Mr. O'Connell, and after an address read to him, was, with an appearance of ceremony, placed upon his head. I suppose it will be attempted to attach some ridicule to this, but no idea of that kind was entertained by the people on that day, nor was such the effect intended to be produced, whatever colouring may now be given to the act—the object was to create a lively impression on the hundreds of thousands collected there; and with that view that ornament was placed on the head of Mr. O'Connell, "the monarch of their affections," amidst the cheering of the multitudes. I am satisfied it made a deep impression on the minds of the uneducated people surrounding the platform in hundreds of thousands. And remember, that although what was said on the platform could not be heard by the crowd, all that was done there could be seen by every human being present on that occasion. Gentlemen, Mr. O'Connell was in the chair, and addressed the meeting. I shall call your attention to some portions of his address. He said.

"I accept with the greatest alacrity the high honour you have done me in calling me to the chair at this majestic meeting. I feel more honour than ever I did in my life, with a single exception, and that related to an equally (if possible) majestic meeting at Tara; but I must say, that if a comparison were to be instituted between them, it would take a more discriminating eye than mine to discover any difference. There are the same incalculable numbers, there is the same firmness, there is the same distinction, the same exhibition of love to old Ireland, and the same resolution not to violate the peace, not to be guilty of the slightest outrage, not to give the enemy power by committing a crime; but peaceably and manfully to stand together in the open day to protest before many, and in the presence of God, against the iniquity of continuing the union." In another part he says:—

"At Tara I protested against the union; to-day I repeat the protest at Mullaghmast. I declare solemnly my thorough conviction, as a constitutional lawyer, that the union is totally void in point of principle and constitutional force. I tell you that no portion of the empire has the power of trampling on the rights and liberties of the Irish people. The Irish parliament was instituted to make laws and not legislatures; it was instituted under the constitution, and not to annihilate it. Their delegation from the people was confined within the limits of the constitution, and the moment parliament went beyond and destroyed the constitution, that instant it annihilated its own powers; but it could not annihilate that immortal spirit which belonged, as a rightful inheritance, to the people of Ireland. Take it from me, that the union is void." This was addressed to from two hundred and fifty thousand to a million of persons. "I admit that it has the force of law, because it is supported by the policeman's truncheon, the soldier's bayonet, and the horseman's sword; because it is supported by the courts of law. But I say solemnly it is not supported by constitutional right. The union, therefore, in my thorough conviction, is totally void."

That is in accordance, I admit, with the statement made at other meetings, that the crown, by the sole exercise of its prerogative, could issue writs for the summoning of an Irish parliament, consistent only, as I have pressed upon you several times, with the opinion that the act of union was absolutely void. In another part of his address he stated:—"I have physical force enough about me to-day to achieve anything, but you know full well it is not my plan. There is not a man of you there, if we were attacked unjustly, illegally attacked, who would not be ready to stand in the open field by my side. Let every man who concurs in that sentiment lift up his hand." An immense number of hands were displayed. "The assertion of that sentiment is our safe protection, for nobody will attack us, and we will attack nobody." In another part of his address he said:—"I thought the monster meetings had demonstrated the opinion of Ireland. I was convinced that their unanimous determination to obtain liberty was sufficiently signified by the many meetings that already took place; but when the Queen's minister's speech came out, I saw it was necessary to do something more. Accordingly I called a meeting at Loughrea—a monster meeting; we called another meeting at Clifden—a monster meeting; we called another meeting at Lismore—a monster meeting; and here we are now upon the Rath of Mullaghmast. (Cheers.) I chose it for an obvious reason. We are upon the precise spot in which English treachery—aye, and false Irish treachery too, consummated a massacre unequalled in the history of the crimes of the world, until the massacre of the Mamelukes by Mehemet Ali. It was necessary to have Turks to commit a crime in order to be equal to the crime of the English—no other people but Turks were wicked enough except the English."

That is, as I have already said, tracing back the transactions of centuries past, with a view to endeavour, by the revival of grievances which may have affected the ancestors of the Irish people, to incite them to hostility to their English fellow-subjects of the present day. In another part of his address he said:—"I thought this a fit and becoming spot to celebrate our unanimity in declaring, in the open day, our determination not to be misled by any treachery. Oh! my friends, I will keep you clear of all treachery. There shall be no bargain, no compromise, nothing but the repeal and a parliament of our own. You will never, by my advice, confide in any false hopes they hold out; you will confide in nothing until you hear me say I am satisfied; and I will tell you where I shall say that—near the statue of King William in College-green. No, we came here to express our determination to die to a man, if necessary; but we came to take the advice of each other; and, above all, you came here to take my advice. I have the game in my hands—I have the triumph secure—I have the repeal certain, if you obey my advice. I will go slow; you must allow me to do it; but I will go sure. No man shall be fined—no man shall be imprisoned—no man shall be prosecuted who takes my advice (hear, hear). I

* Those were the robes which Mr. O'Connell wore during his official year, as first Lord Mayor of the Reformed Corporation of Dublin. On this occasion he had assumed them in pursuance of a suggestion in the public journals, and a resolution of the repeal association, that in order to give eclat to the meeting, such gentlemen as were members of the Corporation should wear their robes of office. As for the "crowning" which subsequently took place, the Liberator when he came on the ground, knew no more about it than the Attorney-General. The gentlemen who invented what they were pleased to call the "national cap," took that means for securing to it public patronage.

have led you thus far in safety—I have swelled the multitude of repealers, till they are so far identified with the entire population of the soil, or nearly so. I have seven-eighths of the population of Ireland enrolling themselves as associates. (Cries of 'more power to you.') I do not want more power. I have power enough. All I ask of you is to allow me to use it. I will go on quietly and slowly. I am arranging the plan of a new Irish House of Commons. It is a theory, but it is a theory that may be realised in three weeks. The arbitrators are beginning to sit; the people are submitting their differences to men chosen by themselves. You will see by the newspapers that Dr. Gray, and my son, and other gentlemen, held a petty sessions of their own in the room of magistrates who have been unjustly deprived."

In another part of the address:—"I have but one wish for the liberty and prosperity of the people of Ireland. Let the English have England, let the *Scotch have Scotland, but we must have Ireland for the Irish.* I won't be content until I see not a single man in any office, from the lowest constable to the Lord Chancellor, but Irishmen. This is our land, and we must have it. We will be obedient to the Queen, joined to England by the golden link of the crown, but we must have our own parliament, our own bench, our own magistrates—and we will make some of the shoneens now upon it leave it."

And then he says:—"If there is any man in favour of the union let him say so. (Cries of 'not one.') I never mistook you. Are there any for continuing the union? (Cries of 'no, no.') Is there any body for repeal? (Immense cries of 'all, all.') Oh! my friends, listen to the man of peace, who will not expose you to your enemies. In 1798 there were brave men at the head of the people at large; there were some valiant men, but there were many traitors who left the people exposed to the swords of the enemy. On the Curragh of Kildare you confided your military power to your relations; they were basely betrayed and trampled under foot; it was ill-organized"—that is, the rebellion of 1798—"a premature, a foolish, and an absurd insurrection; but you have a leader now who will never allow you to be led astray." In another part of his address he says:—"Even your enemies admit that the world has not produced any man that can exceed the Irishman in activity and strength. The Scotch philosopher, and the French philosopher has confirmed it, that number one in the human race is (blessed be heaven!) the Irish. Have I any teetotallers there? (Cries of 'yes.') Yes, it is teetotalism that is repealing the union. I could not afford to bring you together, I would not dare do it, if I had not teetotallers for my police. (Cries of 'we are all police.') To be sure you are, without paying; and you will soon be the only police, by the help of God." In another part he says:—"Oh! my friends, it is a country worth fighting for—it is a country worth dying for; but above all, it is a country worth being tranquil, determined, submissive, and docile for."

Now, gentlemen, at that meeting there was proposed and carried what is called "The Leinster declaration for repeal." The Mullaghmast meeting was, in fact, the provincial meeting for Leinster; and in consequence of that, the resolutions moved and adopted there got the name of "The Leinster Declaration." It was resolved—"That this meeting hereby declares its devoted loyalty to the person and throne of her gracious Majesty Queen Victoria, Queen of Ireland, and its determination to uphold and maintain inviolate all the prerogatives of the crown as guaranteed by the constitution. Resolved —That we, the clergy, gentry, freeholders, burgesses, and other inhabitants of the province of Leinster, in public meeting assembled, declare and pronounce, in the presence of our country, before Europe and America, and in the sight of heaven, that no power on earth ought of right to make laws to bind this kingdom save the Queen, lords, and commons of Ireland; and here, standing on the graves of the martyred dead, we solemnly pledge ourselves to use every constitutional exertion to free this our native land from the tyranny of being legislated for by others than her own inhabitants." "Standing on the graves of the martyred dead," meaning the four hundred Roman Catholics massacred by the Saxon foreigner, "whose acts had not been exceeded in brutality by any but the Turks." "Resolved—That forty-four years of devoted and successful labour in the cause of his country have justly earned for O'Connell, the Liberator of Ireland, the unbounded confidence of the Irish people; and that we, relying upon his supreme wisdom, discretion, patriotism, and undaunted firmness, hereby pledge ourselves, individually and collectively, to follow his guidance under any and every circumstance that may arise; and, come weal or woe, never to desert the constitutional standard of repeal which he has raised."

There was a concluding resolution for a petition to parliament, to be entrusted for presentation to a repeal member. Gentlemen, this meeting having been held after the prorogation of parliament, I am not at liberty to apply to it, as I have to others, any observations arising from the fact that no petition was presented; but you will consider—whether—from the acts of these same parties at prior meetings, from which, although so many of them took place in the course of last session, not a single petition was presented—whether that resolution to petition was not in order to give a colour of legality to that meeting, although, by a resolution of the 13th of September, it had been resolved by the association unanimously, that there was no hope from any appeal to the imperial legislature. In one of the cases I referred to in the opening of this case, the King *v.* Redhead, there was a resolution moved to petition parliament. That resolution was moved, as appeared in the case, for the purpose of affording an opportunity for a counter resolution that nothing was to be hoped for from parliament. You are, therefore, not to conclude, because a resolution may have been carried at Mullaghmast to present a petition, that the legality of the meeting is established;* you are to judge, under all the circumstances, whether the meeting at which that resolution, which I have already read, declaring, on the graves of the martyred dead, that no power on earth ought to legislate for Ireland, but the Queen, lords, and commons of Ireland, was for the purpose of petitioning the legislature, or whether it was not intended, by the demonstration of physical force, to intimidate and overawe, and not to petition the legislature. Gentlemen, on the same day a dinner took place in a pavilion erected on the Rath of Mullaghmast; where, you will keep in mind, it was stated by the document circulated at the meeting, that the Irish Catholics had been massacred. You will thus be the better able to understand the meaning of a painting, or emblem, in the pavilion, of the Irish harp without a crown, and the Irish wolf dog, with the inscription:

"No more shall Saxon butchery give blood for a repast—
"The dog is watching, he is roused, and treachery is expelled from Mullaghmast."

There was another motto—"Remember Mullaghmast;" which, considering the circumstances, was very expressive. Remember—(it meant)—the rea-

* At Mullaghmast, however, there was no counter resolution, nor any suggestion made by any individual present, that it was not proper and profitable, as well as constitutional, to petition the legislature for repeal.

son why this Rath was chosen as the scene of this assembly. There was another, "Mullaghmast and its martyrs—a voice from the grave." At that dinner Mr. O'Connell, Mr. John O'Connell, Mr. Ray, Mr. Steele, Mr. Barrett, and Dr. Gray were present, six of the defendants. And it is my duty now, gentlemen, to call your attention to some of the speeches spoken at the dinner. Mr. John O'Connell was in the chair, and as chairman he proposed the Queen's health in the following terms:—"I do not, because I cannot anticipate that in any phase of circumstances the toast I have now to give will be received otherwise than well by Irishmen—it is the health of the Queen. Whatever may happen, her throne in Ireland is secure. When, the other day, we distinguished between the vain and babbling words that were put into her mouth, we distinguished well between the monarch and the ministers, and we would make the same distinction as clearly, and as well, were bloody deeds and hard blows to be attempted. Her ministers may fix her throne amidst bloody fields, and blazing cities, and slaughtered corpses; let them take care that the ruddiest stream flowing might not be their own blood, and the brightest and fiercest flame might not be from the strongholds from which they now insult the Irish people. Whatever they do, whatever they threaten, we will go on, and so sure as there is a heaven above us we will establish her throne here among a peaceful, a happy, and a contented people. 'The Queen, God bless her.'"

The defendant, Dr. Gray, read a letter signed "Thomas Ffrench," one passage of which I shall read to you:—"This mighty movement, unprecedented in the history of nations, has now assumed a magnitude much too immense to admit of retrograde and compromise. Some step must and will be taken. Menaces have been tried with signal discomfiture. Overtures of peace will doubtless be now experimented—promises of conciliation and pledges as to the removal of grievances. Can these be now accepted? I answer, Never! never! The hour of delusion is past. The scene upon which will be collected the flower of Lagenian patriotism—the Rath of Mullaghmast, the monument of Celtic confiding valour, and of Saxon cowardice and treachery, will not I am sure be ineffectual in imparting to the vast assemby an instructive lesson. Why should *Punica fides* so long usurp the dignity of the adage. Let it at once yield to *Britannica fides*—a more apt and pregnant designation. A cursory glance over the annals of Ireland is sufficient to demonstrate that the history of British connection with this country furnishes instances of Saxon perfidy, exceeding in numbers and magnitude any in the history of Carthage, or even in the history of the world."

Mr. Barrett made a speech, and in the course of it said:—"It has been said, that as we visited the hill of Tara to recal the virtues and glorious days of Irishmen, in order to awaken the sentiments by which we may be restored to independence, so we visit the Rath of Mullaghmast to-day to recollect the treachery by which Ireland was betrayed, and to prevent, as one of these letters said, the credulity which would again expose this oppressed country to Saxon turpitude."

Mr. O'Connell, in replying to the toast of "The repeal of the union," made some observations, and amongst others:—"At first you remember they threatened us with war. Peel was violent for his hour, and the Duke of Wellington of course—(who was caught napping at Waterloo one fine morning)—the Duke of Wellington declared there was nothing for it but war. We replied in a tone of firm defiance, and the threats of war vanished, as they say the exertions for repeal would vanish. They therefore brought out the Queen against us; dear Lady! I have the greatest respect for her, but I know the words were not her's; but I take her speech, and that very speech is the reason we are here this very evening for Ireland; we had made those demonstrations before hundreds of thousands of fighting men (loud cheers). One would think you had a taste for fighting. Yes, it would have been enough to have exhibited the national will in the meetings that preceded that speech, but it became necessary to show that there was nothing in the ministerial speech, though put into the mouth of the Sovereign, that could deter resolute and rational men from the pursuit of their liberty, and if instead of one speech she had made a hundred speeches, the effect would have been precisely the same." He further said:—"One mode of putting an end to the repeal agitation was to let it spend itself, to let it run out. We would not have met at Mullaghmast to-day, if it were not to show the futility and falsehood of the expectation that it would run out; otherwise this meeting would not have been necessary."

Now, he there stated that he had five or six or seven of these monster meetings unarranged; you will find that when a meeting, which was to take place a week after at Clontarf, was stopped by a proclamation issued by the government, it was asserted that it, Clontarf, was to be the last of the monster meetings. On the very day week preceding that on which the Clontarf meeting was proclaimed, the statement of Mr. O'Connell was, "I have five or six or seven unarranged," and by the time they had taken place, the government were to know that the do-nothing policy would not profit them much. He then in another part said—"No country ever yet prospered that was governed by other people; and our country's only prospect of prosperity is governing herself." Lord Tenterden said, in one of the passages I read yesterday, that those who attend these meetings are anxious to proceed more rapidly than those who plan. "I was afraid"—(continued Mr. O'Connell)—"that they had not yet confidence in their leader. (Cheers, and cries of 'we have'.) How my heart thanks you for that shout. It is a reply to my apprehensions—yet knowing her grievances, knowing the burning ardour of her sons, knowing their gallantry and fearless bravery, knowing how little they value the risk of life, and the certainty of death, if the liberty of Ireland were to be the prize for which they were to make that sacrifice, I did apprehend—it came over me occasionally, it was like the incubus of a sickly dream, and disordered every faculty of my mind." That was, the apprehension that the people would be impatient. "I was afraid that somewhere there would have been an out-burst to gratify the enemy." This was the apprehension of Mr. O'Connell, the result of this organization throughout the country, this organization which, you will be told, has not been brought about by any breach of the laws of the country. "I was afraid that somewhere there would have been an out-burst to gratify the enemy, that would delight Sir Henry Hardinge, and would give employment for those who eat the biscuit and drink the brandy in his barracks. Every man is as convinced as I am of two things; first, that repeal can be obtained; secondly, that the only way to obtain it is the peaceful expressing of the mass, and swelling above all their pitiful, and paltry, and minor difficulties that are in the way, and all the little oppositions, the miserable suggestions of its being a religious, whereas it is a popular and national quarrel. I am certain of it; my mind rests at ease; I can sleep to-night tranquilly, and perhaps dream of Ireland. I will awake thinking of the next step in the progress of her freedom, and those steps are not difficult. I want to show the nations of Europe that we are capable of administering our judicial business ourselves; that we do not want the Saxon and the

stranger; and above all, we do not want bigoted men to serve us or to do our business." Then in another part of the address he says—"It is not by accident that to-night we are on the Rath of Mullaghmast; it was deliberate design, and yet it is curious what a spot we are assembled on. In this very spot they fell beneath the swords of the Saxon, who used them securely and delightfully in grinding their victims to death. Here the Saxon triumphed; here he raised a shout of victory over his unarmed prey; upon this very spot four hundred able men perished, who confiding in Saxon promises came to a conference of the Queen's subjects, and in the merriment of the banquet they were slaughtered. There never returned home but one; their wives were widowed, their children were orphans—in their homesteads the shriek of despair—the father and the husband steeped in their own blood. Their wives and mothers wept over them in vain. Oh! Saxon cruelty! How it does delight my heart to think you dare not attempt such a feat again. Let every mother who hears me, only throw her recollection back to the homes of the mothers on the ensuing morning. Only let them imagine for a moment, that the father of her children was to be brought home on the morrow a bloody corpse. So it was with the mothers of these Irish chieftains. So it was with their wives. Their husbands left in the pride of manhood, in the force of strength; they left capable of defending them against every enemy. They were brought home in the inanity of death, incapable of affording any protection, or giving any other sensation but that of grief and interminable sorrow. Oh! England, England! thy crimes have filled the cup of bitterness, and the hour of the vengeance of God, I much fear, cannot be far from you. At all events, suffering Ireland, you will have your days of glory, you have suffered much, and you have committed no infliction in return. I defy Saxon ingenuity and falsehood to show me any treaty the Irish violated; to show me any one compact they ever broke; to show me any one faith they plighted, they did not redeem." This was a transaction that took place, or was alleged to have taken place in the reign of Queen Mary; and was recalled to the memory of the people for the purpose of exciting hostility between the Irish and the English subjects of our Queen. After the lapse of centuries, history is ransacked for the purpose of finding something likely to excite hatred and animosity—forgotten, or falsified atrocities are depicted in glowing colours, and the descendants of the opposing parties of former times are newly arrayed against each other. And yet you will be told, when the case comes to be stated for the defendants, that they, forsooth, are innocent of the charge of conspiring to excite hostility between her Majesty's subjects in the two countries. Gentlemen, in another part he speaks of summoning what the *Times* called, "three hundred bog-trotters." Dr. Gray also spoke at this dinner; and, gentlemen, he was the chairman of the committee, who prepared and presented the report to the association with respect to the arbitration courts; in the course of his speech he said—"I stand up to return thanks, not on behalf of this class, or of that class, but on behalf of the judges appointed by the people—for the first time the people's judges. Now we have persons as our judges, men selected among ourselves, appointed by ourselves—deriving their authority, not from any patent appointment, not from any constituted assembly, but deriving it directly and solely from ourselves. Our enemies say, the judges appointed by the people will be powerless. I tell you they will not be powerless; their powers are far more extensive than the powers my Lord Chancellor Sugden can confer. Magistrates are confined to a very few pounds in civil cases. The chairman of a county is confined to £20 in civil cases, all they can adjudicate upon is £20; and the repeal arbitrators appointed by the people can adjudicate in cases of £20, without costing the suitor one single penny. Cheap justice is obtained; they meet, you can get your summons, get your hearing, get your award, your decree, and you get all without costing you one penny. But then they tell us we cannot try cases of trespass, cases of assault, or cases of battery. I tell them we can try those. We have a criminal jurisdiction, if criminals could be found."

I do not know that there is anything further at the dinner, gentlemen, which it is necessary I should detain you by observing upon. Gentlemen, on the 2nd of October there was a meeting of the association, at which Mr. O'Connell, Mr. John O'Connell, Mr. Ray, and Mr. Steele, were present. Mr. O'Connell adverted at that meeting to his plan of the Queen issuing writs for an Irish parliament, which he had so frequently stated at former meetings, and he made some observations with respect to an advertisement connected with an intended meeting at Clontarf on the following Sunday, on which I shall address you just now. Gentlemen, on the 3rd of October another meeting of the association took place; the persons present I believe at that meeting were Mr. O'Connell, Mr. John O'Connell, Mr. Ray, Mr. Steele, Mr. Duffy, the Rev. Mr. Tierney, and Dr. Gray; all the defendants except Mr. Barrett. A letter was read at that meeting, which shows the kind of tyranny practised to force persons to join the repeal movement, something on the same principle as you heard of in the transaction (I believe it was at the Tullamore meeting) already adverted to. It is a letter signed by Patrick Skerrett, chairman of the town commissioners of Loughrea:—

"I have the honour to forward you the sum of 14*l.*, the subscription to the loyal repeal association of fourteen of the town commissioners of Loughrea. I am not aware that any Irish corporation has hitherto identified itself as a body with your glorious national movement, to rescue your country from the abject misery and degradation so long and so palpably entailed by the iniquitous and pauperising union. If not, the precedent is one which places Loughrea in a proud position. I earnestly hope it will be universally imitated. The subscribers are, Patrick Skerrett, William M'Carthy, William Joyce, Laurence Fahy, Edward Skerrett, Thomas Macklin, Samuel O'Brien, Thomas Lynch, Pat. M'Carthy, Henry J. Dolphin, John Fahy, Thomas Mulcheren, Daniel Dolan, John Lynch, Esquires. Three, namely, Rev. J. Macklin, Rev. Miles Gannon, and James O'Flynn, remitted their subscriptions through the Rev. J. Macklin—one will pay in a few days, and two or three who are recusants"—that is, those who exercised a free and unbiassed judgment as to whether they would become members of the repeal association or not—"it is determined to expel from our body, with all convenient despatch, when the proper opportunity occurs." On which Mr. O'Connell said:—"They are quite right to turn out those who will not become repealers." That is the freedom of this system. You heard that at the Tullamore meeting Mr. O'Connell, when a labourer was seen in a field working by himself, and the other workmen not associating with him, praised the conduct of the "good men" who so treated him, because this labourer had declined to become a member of the repeal association, and had exercised the right of independent judgment. Here you have a similar proceeding among a higher class—the town commissioners of Loughrea—in whom the property of that town is vested, its corporation having been dissolved by one of the schedules to the corporation act. I believe, and I am sorry to say it, that many persons have been driven to join this repeal movement by what I consider oppression and tyranny. At that meeting Mr. Steele made a speech which

will be detailed to you by the witnesses who will prove this part of the case. In an early part of this prosecution—a statement got into circulation that this speech in fact never was made by Mr. Steele. You will have an opportunity of judging how far that is true. It is somewhat singular, that if never made, yet that it is published in the newspapers of three of the defendants. They will have an opportunity, gentlemen, if they now wish to prove how that matter is—of examining the reporters for their three newspapers, the persons who reported that speech for them—whether that speech was made or not. There may be, and of course there will be, some trifling variation in language, such as must necessarily arise where different reporters publish an account of the same proceedings, yet you will find them substantially to agree. Their case will be (as I conjecture, from placards and other matters which have been circulated,) to question the accuracy of the gentleman who attended the Mullaghmast dinner; but if he shall not state the facts truly, three of the defendants, they having detailed every part of the proceedings from beginning to end in their three newspapers, will have the opportunity of putting their reporters, when they come to prove their case, in the witness box—they will have the opportunity of getting those reporters to state their version of the matters charged, or their denial of them, and say that every word published by the defendants, in their newspapers, was pure invention—that there never was a meeting at Mullaghmast, there never was a speech made there, that all was the imagination of their newspaper reporters. If they attribute error, or mistake, or corrupt swearing to our witness, they can produce their own reporters—and I should as readily take their own newspapers, and their own reporters, as I should take that note of the speeches which I have now before me, furnished by the reporter employed by the government; and, as to criminality, these proceedings will be found to be just as criminal in the reports in the defendants' newspapers, as in that furnished to me. And I ask you to put the question to yourselves, when the defendants go into their case, and press you to discredit the witness for the prosecution, why do they not venture to produce their own reporters, why do they keep back persons under their own control—persons ready, able, and willing to give evidence for them, if the evidence they can give be favourable? Gentlemen, there was another speech made at this meeting, which is one of some importance, and to which I must pray your attention. It is a speech made by the defendant, the Rev. Mr. Tierney. I may observe, with respect to this speech, it being rather strong, that it was published very shortly, both in the *Pilot*, and in (I think) the *Freeman's Journal;* but the *Nation* has given it at length, not in the very words as we shall prove them, but substantially the same:—"It is an old story,"—(says Mr. Tierney)—"but it is not the less valuable on that account, that a thing once well begun is more than half finished. Repeal has had a noble beginning this year, and from the glorious progress it is making, I ask, why do the countless multitudes who surround the Liberator wherever he goes through the provinces, numberless as the waves of the ocean, assemble; or why do so many of yourselves congregate together here around him? Is it for the purpose of looking at the illustrious individual, to do honour to his presence? Is it to gaze upon the greatest friend of the human race? Is it to feast the eye to satiety upon one who is marked out by Divine Providence as the saviour of his country? No; though that would be justifiable in you, still you come here for a better purpose—you come here to help him, to assist him in rescuing your country from a state of slavery to be a free nation—you come here to enable him to make your own Ireland—the land of your birth—the land of the happy and the free. And let me ask you, are you all prepared to do so? (Cries of 'yes, yes.') If you are, give him deeds as well as words. I can answer for the county I have the honour to belong to, Monaghan; and for the parish that I have also the honour to be the priest of, that there we are determined to give our hands as well as our hearts. We are determined to give him acts as well as deeds, and not to leave in his power, or in the power of others, to say the people of the north are cold and frozen like the region they inhabit; the iron has sunk deep into their hearts, they love not liberty, they deserve to be slaves. Oh! there was a time when the people of the north, aye, and the men of Monaghan, were found to be the first to resist, and the last to bend to, the proud Saxon; there was a time when they did not shun the battle field; there was a time when they were found to be the first to resist, and the last to bend. Bear me witness, ye different streams of the Blackwater; bear me witness, the very parish I have the honour to come from, Clontibret; bear me witness, Benburb and the battle of the Yellow Ford, in my neighbourhood." These were two of the battles upon the repeal card, at which "the Saxon foreigner" was defeated, and the Irish victorious. "These are bright spots in the history of my locality, and as I am talking of by-gone times, permit me to bring to your recollection a few facts connected with the history of my country. In the year 1587, Hugh O'Neill was created Earl of Tyrone; he was then in the fiftieth year of his age; he was one of the bravest generals that ever commanded an Irish army. In the year 1588, Sir William Fitzwilliam was Lord Deputy of Ireland; he was a bloody and inhuman monster; he was a foul murderer and robber. I shall mention to you a robbery and murder he committed in my county." This is a transaction of something more than three centuries since; and the Rev. Mr. Tierney thinks fit to bring it forward, for the purpose (I must say) of exciting hostility. "He had Red Hugh MacMahon, chieftain of Monaghan, arrested upon a false charge, and brought to Dublin; he was, however, acquitted, and the deputy engaged to have him conducted in safety to his own home. On his arrival there he was seized by the English soldiers under the command of Sir Henry Bagnall; he was executed at his own door; his head was struck off and sent to the castle of Dublin, and his lands and his estates were divided between the same Sir Henry Bagnall, a Captain Ansley, and others of his English murderers. On account of this frightful and inhuman murder, with many other murders and robberies then of daily occurrence, many of the northern chieftains confederated for their own safety. They raised an army, and gave the principal command to Hugh O'Neill, Earl of Tyrone. In the year 1595 he encamped at the town of Monaghan, with the Irish under his command; the English were commanded by Sir John Norris, and his brother, Thomas Norris. Both armies met in my parish, Clontibret; the Irish were separated from the English by marshes and surrounding bogs of certain townlands. The English were repeatedly repulsed and beaten by the bravery of the Irish, and the vigilance of their general. The general's horse was shot under him, and the general himself, Sir John Norris, and his brother, Thomas Norris, were both severely wounded and carried off the field; in the meantime the commander of a regiment of dragoons, of the name of Sedgrave, made a charge upon the Irish, and succeeded in gaining the pass. When he crossed the river he was met by Hugh O'Neill, the commander of the Irish; both rode furiously at each other; Sedgrave, after breaking his spear jumped off his horse, seized O'Neill by the neck, and dragged him

off his horse, when the noble earl drew a dagger from his belt and buried it in the bowels of his adversary, who rolled a lifeless corpse on the earth. The English fled; the Irish gave an hurrah of triumph, and dreadful slaughtering ensued upon the spot. In that castle O'Neill captured all the military stores, arms, and ammunition of the enemy, except the purse and the chest. That money was thrown into a ditch; and as a matter of history afterwards, it was believed that the English who fought had no money; but that was not really the fact, for they left it behind, and a man of the name of Logan, about fifty-five years afterwards, in making a ditch, got about 2,000*l.* which they left behind. This battle was fought in Clontibret. He was then in the fifty-eighth year of his age, and he was able, in single combat, to beat the stoutest man in England. Three years afterwards, he fought the great battle of Yellow Ford in the same locality." He then, gentlemen, states:—

"In that battle the Irish and the English lost their general—the same Sir Henry Bagnall, the murderer of MacMahon, was shot dead. All the principal officers of the army and two thousand five hundred soldiers were slain on the field of battle, while the Irish had but two hundred men killed and six hundred wounded. Why, it may be asked, when the Irish were so successful and fought such noble battles, why were they some time afterwards so unfortunate? I answer, English gold and Irish perfidy. And let me ask, in return, is there now no English gold and Irish perfidy? Where are all the emancipated Catholic nobles? Where are some ——, but thanks be to heaven, where indeed, where are some of our own prelates? Where are the hordes of place-hunters that you have here every day about the Castle? Where are the would-be aristocracy that every man will occasionally meet in his own little isolated locality? The hireling reptiles! Let me have O'Connell and we can do without them. I have said English gold and Irish perfidy: a price of two thousand pieces of gold was set upon the head of O'Neill; deserted and betrayed by many of those who should have supported him, he fled into France, and died at Rome in the year 1616, I think in the seventy-ninth year of his age. Oh! may the errors of the past be the warnings of the future. You have seen the great O'Neill, the descendant of so many kings—the hero of so many fights—the victor of so many battles, sacrificing for ever all his earthly possessions and hereditary estates for love of glory. He sunk into a grave—his ashes are at Rome—they are now in a foreign clime, almost unknown and forgotten. Oh! if they are not unknown and forgotten I hope that due honour will be paid yet in Ireland to his name and to his virtues. I have said you are always successful when you are united. Now you are united, nothing can mar your prospects—nothing can blight your success—nothing can prevent you, save either your own timidity, your own treachery, or your own wavering. Are you ready to desert your leader and sell your country? ('Never, never.') Then if you are not, and I know you are not, I shall only remark there are two ways that present themselves to you; one brings you to slavery, the other conducts you to happiness and victory. If you select the first, by cringing and flattery, and licking the hand that smites you, you may prolong a wretched existence for a few more years—

'Like the lamb that's doom'd to bleed to-day,
Had he thy reason would be frisk and play,
And skip about—enjoy his merry mood,
And lick the hand that's raised to shed his blood.'

If you prefer the latter—honour, glory, your country, your children and generations unborn will bless you. Mr. Chairman, in the name of the county I am from, and particularly of my own parish, Clontibret, where a hundred fights were fought, permit me to hand you, in the name of that parish, in the name of that people—the children of the men that fought the battle of victory, unassisted from any other locality, but being of the north, and of that country alone, permit me in their names, and in my own, to have the honour of handing to you £92."

Gentlemen, I would ask you, do you now understand what Mr. Tierney meant, in the commencement of his speech, by his inquiry:—"You come here to enable him to make your own Ireland—the land of your birth, the land of the happy and the free; and let me ask you—Are you all prepared to do so? If you are, give him deeds as well as words." I ask you to construe the meaning of Mr. Tierney when he inquired whether they were ready to give deeds as well as words, by what subsequently fell from him relative to those battles between the Irish and "the Saxon foreigner," in which the English were defeated, and the Irish victorious; when he asks them whether they are ready to give their hands, and when he says they are ready in his parish to give their hands as well as their hearts. Gentlemen, that meeting was on the 3rd of October. I shall now have to take you back for a few days, to bring before you in one view some matters connected with the preliminaries to the Clontarf meeting. Gentlemen, upon the 30th of September, there appeared the following advertisement in the repeal papers; the meeting was advertised for the 8th of October:—

"Repeal Cavalry—Clontarf Meeting.—The committee for this national demonstration being apprised of the intention of many repealers to appear mounted at Conquer Hill, Clontarf, recommend the following rules to be observed for the regulation of the cavalcade at their first muster and march of the mounted repealers. First—All mounted repealers of the city, or from the south and west side of the county, to muster on the open ground, Harcourt-street fields, on Sunday, the 8th of October, at twelve o'clock at noon, and form into troops, each troop to consist of twenty-five horsemen, to be led by one officer in front followed by six ranks, four abreast, half distance, each bearing a wand and cockade distinguishing the number of his respective troop. Second—That regulation wands and cockades will be furnished by the committee to such gentlemen of the city or county as shall apply and be approved of to lead each troop. Third—That no person shall be permitted to join the cavalcade without a cockade and wand, and that until one troop is complete no second troop be formed. N. B.—The committee will make the necessary arrangements, to prevent delay or confusion at the turnpike gates. Fourth—Each horseman to take and keep the place assigned to him on joining his troop, and remain in rank until dismissal of the parade in the meeting-field. Fifth—That such troops as shall have formed by half-past twelve o'clock do proceed in their order at slow time by the following route: Harcourt-street, Stephen's-green west, Grafton-street, Westmorland-street, Sackville-street, Britain-street, Summer-hill, Ballybough-bridge, Clontarf-road. Sixth—The mounted repealers from the northern parts of the county to muster and form as above prescribed, at the southern extremity of the Howth road, and bring up the rere of the Dublin cavalcade to the meeting-field, Conquer-Hill. Seventh—That the chairman and members of the committee bearing wands and cockades, do form the mounted staff in advance, and that the muster, march, and parade at the meeting-field shall be under their sole order and direction until dismissed after the proceedings of the meeting have commenced. Eighth—That the

horsemen on the meeting ground shall keep a proper distance from the platform, so as not to incommode those attending on foot; and it is earnestly requested, on the other hand, that no obstruction or interruption will be offered to the cavalcade by those on foot or in vehicles, so that the order and regularity of the march may be preserved. God save the Queen. Mount for Repeal. March for Clontarf. The committee will meet at the Corn Exchange each day during the ensuing week from four to five o'clock. Dated Corn Exchange, 30th September, 1843."

Now that advertisement appeared, as I have already stated to you, on the 30th of September; and I have told you, that a meeting of the association took place upon the 2nd of October, at which Mr. O'Connell was present. That was on Monday, the day after the Mullaghmast meeting; and Mr. O'Connell said at that meeting:—"I wish to say, I saw with great surprise in some of the newspapers on Saturday a paragraph headed 'Repeal Cavalry —Clontarf Meeting.' I think it was a very good quiz—but it ought not to have been printed." You will understand the meaning of that just now.—"And I need not inform the repeal association not to pay the least attention to it. We were considering it was quite likely that horsemen would be at the great meeting at Clontarf; of course every gentleman, every repealer who has a horse in Dublin is likely to ride there. They must observe the most perfect order, because if the horsemen mingled with the carriages, those on foot might be trampled on." Now certainly it was rather an indiscretion to print it. They had been talking about it at the committee, and it certainly ought not to have been printed; I quite concur in that. And now I will tell you, gentlemen, the course that was adopted. Did they insert in the papers an advertisement disavowing altogether that of the 30th of September? Was that the course adopted? No: a new advertisement was published, not altogether disclaiming and omitting this quiz, as it is called, which rather indiscreetly was printed, but some one took up a pen and turned the word "troops" into "groups," struck out the word "cavalry," the words "officer," "muster," "march," and "parade," and left the advertisement word for word as it was before, except in the particulars I have mentioned; and this document, this quiz, was just as well understood when the amended and disguised advertisement was published, as if it had remained in its original form. The populace knew that although it was more convenient to call "troops" "groups," yet that it was the same thing under a different name. And this was what was resorted to after they had "been considering" it. On the 3rd of October, the day after this quiz is spoken of, the mistake is rectified. I will read the advertisement for you now in its amended form, and you will understand, when I read it, the amendments. "The other" (say they) "it was certainly rather indiscreet to print; all these matters should have been arranged quietly within doors, without saying anything about it; the indiscretion of some one on the committee makes it necessary to amend the form." But, gentlemen, the substance of the advertisement, and the sense, and meaning of it, with all its illegality, remains as palpably on the face of the advertisement as when it was published in the *Nation* of the 30th of September. I tell you, gentlemen, that the advertisement is illegal; and I will just read one passage in order to prove it to you. That point was adverted to by one of the judges in a case I have already read to you—the case of Redford *v.* Birley. Lord Chief Justice Tenterden said, in page 328 of the report I read—"To prevent any misconception of any point that had been passed over in silence, I wish only to say this: it is by no means to be taken for granted that it is lawful for the subjects of this country to practice military manœuvres and exercise under leaders of their own without authority. It is not to be taken for granted that this is law; I believe on investigation it will be found not to be law. I pronounce no opinion upon it; I only mention it—the subject not having been particularly adverted to by any of us." But in the previous part of the judgment they pointed out the display of this military organization and array connected with the assembly and the meeting. With respect to this advertisement in the *Nation* of the 30th of September, to which I have adverted, I do not think the gentlemen on the other side will stand up and insist that it is legal. Now, gentlemen, I will read to you the amended advertisement in the *Freeman* of the 3rd of October:—

"Repealers on horseback"—that is an amendment of 'repeal cavalry.' "Clontarf meeting, Sunday, 8th of October, 1843. The committee for this great national demonstration, being apprized of the intention of many repealers to appear mounted at Clontarf, recommend the following rules to be observed for regulation of the cavalcade: First, all mounted repealers of the city, or from the south or west side of the county, to muster on the open ground, Harcourt-street fields, on Sunday, the 8th of October instant, at twelve o'clock at noon, and form into groups." That is changed—it was, as it stood before, "form into troops." "Each group to consist of twenty-five horsemen, to be kept in order by some one or two in front." They struck out the word 'officer.' "Followed by six ranks four abreast, each bearing a wand." The second regulation omits the word cockade, so does the third, but each retains the wands. Now really, gentlemen, I scarcely venture to comment upon this attempt; could they suppose that after that most improper advertisement had appeared, giving a character to the meeting of regular military organization, not ventured on or attempted at any previous meeting, could they suppose that such a proceeding would be rendered legal by the use of the word "groups," every one having previously had it intimated to him what was meant by the word group? The fourth has group for troop; the fifth remains as before. And then the advertisement gives the same route as before. The military terms are omitted in the sixth, seventh, and eighth regulations, but the same order of arrangement is observed. This is issued by the committee of the Corn Exchange on the 1st of October, 1843. Thus this same committee, who had indiscreetly printed what had been arranged on the 30th September, think it necessary to make these alterations; and they then put forth this advertisement as the authentic document by which the Clontarf meeting was to be regulated. Gentlemen, upon Friday, the 6th of October, a publication appeared in the *Pilot*, Mr. Barrett's paper, referring to this meeting, which was expected to take place at Clontarf on the following Sunday. It is headed "The battle of Clontarf." "This is the repeal year. Among the many things that have been done in it to awaken an Irish spirit amongst the inhabitants of this country, and to teach them a self-confidence and a self-respect, nothing has been more effectual than the holding of meetings on particular spots where their ancestors had suffered some great disaster, or obtained some 'signal advantage.' Mullaghmast was the scene of a 'great disaster;' Clontarf, as you know, that of a victory by the Irish —a spot where they had obtained a 'signal advantage.' It is, as it were, treading over the days that are past, or reading the history of Ireland anew. Some say our leader is too old for the camp or the field. It is false. He is of Herculean frame, buoyant in spirit, and youthful in constitution. His age is only sixty-eight years. That of Brian Boroihme, when, on Good Friday, in 1014, he fought and con-

quered the Danes at Clontarf, was eighty-eight years. This should serve to warn our rulers against wantonly attacking O'Connell. Clontarf—they should remember Clontarf!" There then follows, what I shall not trouble you by reading, a lengthened account of the battle of Clontarf. "Thus terminated the battle of Clontarf. What strikes a person most on reading the account of it is, the bravery that the Dal-Cassians, under Brian, displayed in repelling such a host of invaders from their shores, to which they had been welcomed by so many traitors among the Leinster Irish." You are aware that the Dal-Cassians was the ancient name of the Tipperary men, of whom you were told, I think it was by Mr. Barrett, that twenty thousand of them would form such a good "National Guard for Ireland." "In those days every petty chieftain was called a king, and had, no doubt, his passions and his jealousies, as well as greater monarchs. Brian, stern and vigorous, was a man of such consummate judgment and bravery, that he awed some, and conciliated others, into submission to his authority. Had Ireland been unanimous in his time, or in the subsequent time of Henry II., neither the Danes nor the Saxon serfs, headed by the Norman robbers, would have dared to set their foot on her shores; but it was the destiny of her children to be always disunited among themselves, and through that means they became a prey to the tyrants and plunderers, by whom they were attacked. From this it follows that they never were so formidable, if wantonly attacked. All that could be required of them, if they were attacked, would be to imitate the conduct of their ancestors, the Dal-Cassians, who never entered a field without being resolved 'to conquer or die!' A brief detail of the hardship experienced by this noble race, on their return to their own country, after the battle of Clontarf, may be interesting to our readers." There is then a statement connected with the Dal-Cassians after the battle of Clontarf, and then this passage in conclusion:—"May the Irish people of the present day, should they be driven to it, imitate the brave Tipperary men, or former Dal-Cassians." That is a publication upon the eve, the Friday previous to that Sunday, upon which it was intended to hold this Clontarf meeting. This meeting promised to be of a most formidable character, keeping in recollection the circumstances under which the parties were to be marshalled under the directions of the association given in that advertisement, which, however it may have been altered, yet were the directions under which the persons were to assemble, and proceed to the meeting at Clontarf. Gentlemen, on the day after, on Saturday, the 7th of October, there appeared in the *Nation* newspaper, a letter addressed "to the editor of the *Nation*," signed "A Dal-Cassian," in which, amongst other things, the writer "begged leave to offer a suggestion to his countrymen, that for the future, after the meeting at Clontarf, on the following day, the Irish should not use any Saxon or Norman names; but as they had been changed in ancient times at the conquest of Ireland, that they should, whenever it was possible, name the different counties by their original names, by the adoption of some plan by which the true Irish name could be restored." Gentlemen, it is unnecessary, of course, that I should do more than advert to the meeting on Sunday, the 1st of October, at which Mr. O'Connell said, that he had five, six, or seven more of these monster meetings. Clontarf—which was to be the first of those five, or six, or seven, which were to follow Mullaghmast—was, as you may have heard, proclaimed, and the meeting did not take place. I believe it was unattended, from a consciousness its promoters entertained of its illegality. Gentlemen, on the day after the meeting was to have been held, on the 9th of October, there was a meeting at Calvert's Theatre, in Abbey-street, the Association Hall having been (I believe) considered not large enough; it was, however, a meeting of the repeal association. There were present upon that occasion, Mr. O'Connell, Mr. John O'Connell, Mr. Ray, Mr. Steele, Dr. Gray, and the Rev. Mr. Tyrrell, now no more. I should not, of course, think it necessary to mention Mr. Tyrrell's name, or to state any thing that fell from him, if it were not that he proposed an important resolution in the presence of the other defendants, and which was adopted by them and the others at the meeting. It was the resolution that was to have been proposed at Clontarf upon the 8th of October, had that meeting been permitted to take place. The Rev. Mr. Tyrrell, in introducing the resolution, said:—"We have come here to-day to propose the resolutions to this meeting, that would have been proposed for the adoption of the meeting yesterday, if it had come off. I will read the resolutions, and then I will place them in the hands of our excellent chairman, who will propose them to you for your adoption." Accordingly the chairman, Mr. John O'Connell, read the resolutions, which were the iteration of those passed at Mullaghmast:—

"Resolved—That this meeting hereby declares its devoted loyalty to the person and throne of her gracious Majesty Queen Victoria, Queen of Ireland, and its determination to uphold and maintain inviolate all the prerogatives of the crown, as guaranteed by the constitution. Secondly: Resolved—That we, the clergy, gentry, freeholders, and other inhabitants of Fingal, in public meeting assembled, declare and pronounce, in the presence of our country, before Europe and America, and in the sight of Heaven, that no power on earth ought of right to make laws to bind this kingdom, save the Queen, lords, and commons of Ireland: and here standing on the ever memorable battle-field of Clontarf—the Marathon of Ireland—we solemnly pledge ourselves to use every constitutional exertion to free this, our native land, from the tyranny of being legislated for by others than her own inhabitants. Resolved—That forty-four years of devoted and successful labour in the cause of his country have justly earned for O'Connell, the Liberator of Ireland, the unbounded confidence of the Irish people; and that we, relying upon his supreme wisdom, discretion, patriotism, and undaunted firmness, hereby pledge ourselves, individually and collectively, to follow his guidance under any and every circumstance that may arise, and, come weal come woe, never to desert the constitutional standard of repeal which he has raised." And then came a resolution similar to that at Mullaghmast, proposing that a petition in accordance with the objects of the meeting should be proposed to parliament.

Gentlemen, at an early part of this case yesterday, I adverted to the nature of that resolution; a resolution not exactly in terms, but nearly so, to that which is on the repeal members' card; and I shall not trouble you at this period of the day by a repetition of what I then stated. I merely beg to remind you, that the resolutions of the delegates, of the Irish Volunteers of 1782, are not a justification for a repetition of those resolutions, now—that there is this great distinction between the two periods—that now Ireland is represented in the Imperial parliament—that by the law of the land the union exists and is to exist for ever between the two countries—this law having for its foundation the adoption of the articles of union by acts of parliament passed by the legislature of Great Britain and by the legislature of Ireland, affirmed and ratified by the consent of the crown. In 1782, however, when the volunteer resolutions were moved, the claim was that the English parliament, without any representatives from Ireland in that parliament, and Ireland having a parliament of her own, had power to bind Ireland by

laws passed by the English parliament. That explanation will be sufficient I think to meet the precedent of the Irish volunteers which has been sought to be relied upon, and I do impeach, as illegal, resolutions which assert that no power on earth but the Queen, lords, and commons of Ireland ought to legislate for Ireland. That resolution is against the terms of the act of union. It is a resolution that ought not to have been adopted at any meeting. I have now, gentlemen, at very considerable length, I am afraid at too great a length, gone through the statement of the several meetings to which I think it important that I should call your attention; and I shall now beg leave to remind you of the charge upon which the defendants stand indicted. They stand indicted for a combination, conspiracy, and confederacy to raise and create discontent and disaffection amongst her Majesty's subjects; to excite them to hatred and contempt of the government and constitution of the realm as by law established; and to unlawful and seditious opposition to the government and constitution. And I now ask you, whether, after the details I have laid before you, you can entertain any doubt of the guilt of the defendants, if this case be proved? Gentlemen, it is impossible to carry on the government of the country, if the inhabitants of different portions of the empire are to be excited to a state of hostility towards each other. I am satisfied that no hostility would have existed, if it were not for the course adopted by those who have been so mischievously agitating this country; and I think, gentlemen, that you will concur with me in this feeling. If we establish the case which I have stated to you upon this branch of the indictment, it is your bounden duty not to hesitate to convict; if you are satisfied by the evidence which will be detailed before you in proof, you will have no difficulty in finding the defendants guilty of this portion of the charge. Gentlemen, there is another part of the charge which is also of a very serious nature, and that is, a conspiracy to excite discontent and disaffection in the army. Gentlemen, I think you can very well understand the progress of this conspiracy; it was first necessary to excite disaffection amongst the people, and secondly, it was necessary, if possible, in order to insure success to those engaged in that conspiracy, to excite hostility towards that portion of the empire with which Ireland is united; and I am sure you must be of opinion that the most active measures were adopted for the purpose of exciting such hostility. It then became important, of course, to show the people their strength, to organize them, to accustom them to come from distances to fixed places of rendezvous, and, having taught the people their strength, to awe the government, if not by outbreak, at least by the demonstration of physical force, into granting the demands of those who advocate the repeal of the union. But, gentlemen, so long as the army remained faithful to the crown, there would have been but little expectation of any success arising from mere organization, or from the meetings of crowds of people; but, proceeding step by step, these parties, in their attempt to dismember the empire, considered, as in 1797, that it was most important to alienate the minds of the army, and to create discontent and disaffection among them, and especially among the non-commissioned officers, whose aid and assistance, as in Spain, would be so material for the purposes of revolution: revolution—which we are told by one of the defendants, and which the people are told, is the division of property amongst the people as brothers. Gentlemen, a portion of the charge is also, as you know, that the defendants conspired to cause large numbers of persons to meet together at different times and at different places, for the unlawful purpose of obtaining by means of the intimidation to be thereby created, and by means of the exhibition and demonstration of great physical force at such meetings, changes and alterations in the government, laws, and constitution, and particularly by those means to bring about and accomplish a dissolution of the legislative union, and also by means of inflammatory and seditious speeches and publications, to intimidate parliament, and bring about changes and alterations in the laws and constitution. Now, gentlemen, I think in the opening of this case I sufficiently pointed out, and I think I shall have the concurrence of the court in saying so, that, in order to render meetings of this description illegal, it is not necessary that any immediate apprehension should be entertained from them. I believe it was the object of Mr. O'Connell, that the parties at those meetings should separate peaceably—that appears, up to a late period, I believe, in most of his addresses at those meetings—he certainly so stated to those assembled—but I also am satisfied of this, that there was an ultimate object thought of, when the organization should be complete, and when every repeal warden in Ireland had brought each parish in that state of discipline, that it was "ready for liberty," as Mr. Duffy says, and had reported it to be so; and then I believe it was intended, to use the language of Mr. Barrett, that Ireland should "stamp her foot, and repeal must be granted." Whether it was the intention of the defendants by those inflammatory speeches and inflammatory publications to lead to actual outbreak hereafter or not, is not material for the purpose of the present charge against the defendants. If they actually had in contemplation the full extent of intending, at some period hereafter, that there should be outbreak, headed by any of the defendants, I have to tell you, that in point of law, that would be a higher offence even than that which the defendants are now indicted for. It is sufficient for the purpose of the present indictment, which is only for a misdemeanour, subjecting the defendants to fine and imprisonment, and to no further punishment—it is sufficient for the purpose of this case, that you should believe that those meetings were held for the purpose of overawing the legislature, and by the demonstration of physical force, and the organization throughout the entire country, to get the repeal of the union otherwise than by means of the constitutional tribunals of the country, and the houses of parliament of the united empire. If their intention was to overawe the legislature, and to obtain the repeal of the union, by the intimidation to be created by this organization, I need scarcely inform you that it is illegal; for it would be utterly impossible to carry on the government of the country, if each particular alteration that is to be made in the law of the land, is to be made, not by the representatives of the people, but by the people themselves, by the use or by the show of physical force. But, gentlemen, one mischief arising from these multitudes is this, it was one indeed which Mr. O'Connell himself adverted to in his speech at Mullaghmast, it is, that, when the people are organized to the extent they now are—even although Mr. O'Connell is anxious that there should be no outbreak—even although such be his anxious desire—he may not be able to control those lately under his command, after he has excited them to the extent to which they have been excited in this country. In his speech at Mullaghmast, he alludes to an apprehension of that kind passing over his own mind; it came across him, he says, as a sickly dream; he was apprehensive, and appealed to the assembly whether they would continue to obey him. This I will certainly admit—I do not believe it was intended that these meetings should, any of them, end in outbreak; I believe it was intended that they should disperse peaceably and quietly; I believe that was part of the very system of this conspiracy. Of course we have all reason to

rejoice, as I have already said, that such was the plan adopted, that we have not incurred the misery which would have arisen from an opposite policy; but that does not take away from the illegality of these proceedings, if the intention were, to organize the people to that extent that the government of the country could not be carried on independently, but only under the pressure and control of assembled multitudes, combined multitudes, whose leaders should dictate to the legislature the course it must pursue. Such an intention, and a combination to bring such an intention into operation, are both unlawful. As I have already said, and as was said by Mr. Justice Rooke, in one of the cases I referred to in the state trials, even although one of the defendants, or any of the defendants, may not have intended that a tumult should follow as the consequence of this act, yet they are guilty if the consequences were the effect of their acts and addresses, as much as if they actually intended such consequences to follow. Mr. Justice Rooke says, a man might as well say he did not intend an injury to a crowd among whom he fired a pistol, but he must be presumed, and ought to be presumed, to foresee the consequences of his acts. Mr. O'Connell may not have foreseen the length to which he went at Mullaghmast, when that "sickly dream" came over him; he appears at that time to have been afraid, that the people of Ireland had been wound up to so great an extent that an outbreak might take place; but whether he intended it or not, whether he intended that each particular meeting should end peaceably, and that at no later period should there be any recourse to actual physical force, or to anything beyond a demonstration of it, I again tell you confidently, subject to the court correcting me on the subject, that those meetings, and the combination and conspiracy to procure them, are equally illegal, on the present indictment for conspiring to procure alterations in the law otherwise than by constitutional means. Gentlemen, I may now tell you what I have no doubt you will also be told by the court, that it is not necessary for the purpose of a verdict of guilty, that you should come to the conclusion that the defendants were guilty of every portion of this conspiracy. It is sufficient that you should be of opinion, that they were guilty of any part of it; and on the part of the crown, although I believe we shall be able to establish every portion of our charge, it is right for me in this part of the case to say, that that is not absolutely necessary in point of law, that we should do so. Now, gentlemen, having detained you, and detained the court, at such great length, and not indeed being myself very equal to speak much longer, I shall conclude the observations which I have taken the liberty to submit to you with respect to this case, in the language of the same eminent judge, Lord Chief Justice Bushe, whom I thought it necessary to cite to you in another part of this case:—"I will conclude," says his lordship, "by recalling your attention to all that is in our power to do, and that is our duty. Let us do that firmly and temperately—I say firmly and temperately, for in agitated times it is hard to preserve an equable balance of the mind. Fear is a corrupting principle, and alarm operates in different and opposite directions. In such times the influence of panic has led men, I am sorry to say, of all classes, to truckle to the insurgents, to decline those duties which the administration of justice calls for, or, what is worse, to discharge them in a spirit of base compromise, in the silly hope of securing, what could never be more than a temporary and precarious safety, or from the abject motive of earning an ignominious popularity; on the other hand, panic is often the source of a blind, rash, indiscriminating zeal, an exasperating energy, more resembling the temper of war, than the staid step and sober-minded character of justice. We should always remember that we are engaged in a conflict of law against outrage, and not of one violence against another; and that in proportion as the enormity of the offence calls for exertion, it also calls upon us to distrust, or at least to watch ourselves, and to proceed cautiously and circumspectly, not only because the punishments to be inflicted are heavy, but because it is impossible to approach the discharge of our present duties without a deep personal interest in putting down the existing mischief—an interest which we are bound to neutralize by the coolest impartiality. Let us, therefore, co-operate, in our several departments, in carrying into execution the laws of our country; and in the grand jury-room, in the petty jury-box, and on the bench, enter into a covenant with ourselves so calmly and scrupulously to investigate every charge, as to insure the conviction of every guilty man, and the acquittal of every man whose innocence is manifested, or whose guilt is made doubtful."

The Attorney-General concluded here, having spoken eleven and a-half hours.

Solicitor-General—My lords, the examination of our first witness will occupy, I fear, a good deal of time. We wish to adopt such a course as the court will deem most convenient, apprising the court that it is not possible that his examination—even his direct examination—will be concluded at any reasonable hour this evening.

Chief Justice—Are we to understand it is the wish of the crown that this case should not proceed further to-night?

Attorney-General—I cannot say the crown have any wish on the subject, properly so called; but we thought it right to apprize the court that we cannot conclude the examination of this witness this evening, and perhaps it would be most convenient to all parties that it should not commence.

Chief Justice—The court is quite willing not to proceed further if the crown think it expedient on their part not to go farther to-night. Having apprised us that it is impossible to finish the examination of the first witness the court will not press it.

Attorney-General—Personally we have every wish to proceed, but it is an inconvenient thing to be stopping in the examination of a witness.

Chief Justice—Let the court then be adjourned to ten o'clock to-morrow morning punctually.

The court then adjourned accordingly.

FOURTH DAY.

THURSDAY, JANUARY 18.

EXAMINATION OF MR. F. BOND HUGHES.

The court sat precisely at ten o'clock. The traversers were in punctual attendance. The jury having been called over, and having answered to their names,

The Clerk of the Crown directed the crier to call Frederick Bond Hughes.

Mr. Hughes entered the court, bearing with him a large bundle of papers under his arm, and ascended the table. His appearance excited much curiosity. Having been sworn by the Clerk of the Crown, he proceeded to give his evidence as follows:—

Solicitor-General—What is your name?

Witness—Frederick Bond Hughes.

You are a short-hand writer?

Witness—Yes, I am.

You have been constantly in the habit of reporting?

Witness—Yes, I have been reporting for the last seventeen or eighteen years.

Upon different occasions?

Witness—Yes, upon different occasions.

Do you remember having come over to this country in September last?

Witness—Yes, I do.

On what day did you arrive?

Witness—On the 29th of September—on the 30th, I mean.

On what day of the week?

Witness—On Saturday. I never was in Ireland before; I recollect the following day, the 1st of October; I went to Mullaghmast on that day; I think I arrived there about half-past twelve o'clock; there were a great many persons assembled about the grounds when I got there—a large number; I should think about thirty or forty thousand persons, as near as I can guess; I could not see over the whole extent of the ground; I saw persons coming from different places with banners; if you will allow me to refer to my book I shall tell you the inscriptions. I took on that occasion a note or memorandum of what passed; that is, of the speeches; I have it here; I saw the inscriptions; "Hurrah for the Repeal!" was one of them; "A nation of nine millions is too strong to be dragged at the tail of any other country;" was another. In front of the platform was an inscription, "The man who commits a crime is an enemy to his country;" "Ireland must be a nation," was also one. "A country with nine millions of inhabitants is too great to be dragged at the tail of any nation." There were several persons in and about the platform, with papers round their hats, and staves in their hands; there was an inscription on the papers, "O'Connell's Police;" I know the traverser, Daniel O'Connell; I see him in court. [Here Mr. O'Connell, who sat at the table immediately under the witness's chair, rose and bowed to the witness.] Mr. O'Connell arrived at the place of meeting about two o'clock; I am not aware that I saw Mr. John O'Connell on that occasion; there were some of the gentlemen present, whose names I learned, Mr. Ray and Dr. Gray; I think I should recollect Mr. Ray. [The witness here turned to the traversers' box, in which Mr. Ray and Dr. Gray sat, and identified both gentlemen.] I know Mr. Thomas Steele; I saw him at that meeting; I see him now in court—[he pointed to him;] Mr. O'Connell was dressed that day in a sort of velvet robe, scarlet or claret colour; some gentleman proposed that Mr. O'Connell should take the chair; that motion was put and carried; Mr. O'Connell addressed the meeting on his taking the chair; I took notes of what Mr. O'Connell said upon that occasion to the best of my ability; I took my notes in short-hand; I have both the transcript and the original notes here.—[A large parcel which lay before the Clerk of the Crown was here opened, and several books in pliant "marble binding," were taken out, one of which was handed to the witness.]

The Solicitor-General then desired the witness to read to the jury what Mr. O'Connell said, which he proceeded to do. When he came to a particular passage, the Chief Justice desired him to read it over again, which he did as follows:—"I admit that the union has the force of law, because it is supported by the policeman's truncheon, the soldier's bayonet, and the horseman's sword; but it is not supported by constitutional law."

Chief Justice—What is the number of that paper or page from which you are reading?

Witness—Page five, my lord, from No. 1, book. The witness continued to read Mr. O'Connell's speech on taking the chair. When the witness had read as far as the passage, "and take it then from me that the union is void,"

The Solicitor-General said if the traversers wished they might examine him as to the other portions of the speech.

Mr. Hatchell, Q.C., said it would be better to read the whole of it, as there were portions of it still unread, which might be important on the cross-examination.

Witness—The whole of the speech!

Mr. Hatchell—Yes; there are passages here and there interspersed, that we think most material to the traversers.

Witness then proceeded to read the remainder of Mr. O'Connell's speech at the meeting at Mullaghmast. We give the following extracts from the speech:—"On taking the chair he said—I accept with the greatest alacrity the high honour you have done me in calling me to the chair at this majestic meeting (cheers). I feel more honoured than ever I did in my life, with one single exception, and that related to, if possible, an equally majestic meeting at Tara (cheers). . . . . America offered us her sympathy and support. We refused the support but we accepted the sympathy; and while we accepted the sympathy of the Americans, we stood upon the firm ground of the right of every human being to liberty; and I, in the name of the Irish nation, declared that no support obtained from America should be purchased by the price of abandoning principle for one moment, and that principle is, that every human being is entitled to freedom. I, therefore, denounced in the association, and before this enormous multitude again I denounce the slavery of the negro in America. I pronounce it an injustice against man, and a sin in its operations against the eternal God. It would be of little importance that I should make that announcement and protest, if I were not backed by the Irish people. But I am backed by the Irish people. What I say on this subject, you, one and all, join me in. I like to have the sympathy of every good man everywhere, but I want not armed support or physical strength for my country. The republican party in France offered me assistance—I thanked them for their sympathy, but I distinctly refused to accept any support from them. I want support neither from France or America: and if that usurper, Louis Philippe, who trampled upon the liberties of his gallant nation, thought fit to assail me in his newspaper, I returned the taunt with double vigour, and I denounced him to Europe and the world as a treacherous tyrant, who has violated the compact with his own country, and therefore is not fit to assist the liberties of another. I want not the support of America—I have physical support to-day about me to achieve any change; but you know well that is not my plan—I will not risk the safety of one of you. I could not afford the loss of one of you—I will protect you all, and it is better for you all to be merry and alive, to enjoy the repeal of the union; but there is not a man of you there that would not, if he were attacked unjustly and illegally, be ready to stand in the open field by my side. Let every man that concurs in that sentiment lift up his hand. The assertion of that sentiment is our sure protection, for nobody will attack us, and we will attack nobody. And now we are assembled on the Rath of Mullaghmast. At Mullaghmast (and I have chosen it for this obvious reason) we are on the precise spot in which English treachery—aye, and foul Irish treachery too—consummated a massacre that has been never imitated save in the massacre of the Mamelukes by Mehemet Ali. It was necessary to have Turks atrocious enough to commit a crime equal to that perpetrated by Englishmen (hear). But do not think that the massacre at Mullaghmast was a question between Protestants and Catholics—it was no such thing. The murdered persons were to be sure Catholics, but the murderers were also Catholics and many of them Irishmen, because there were then, as well as now, many Catholics who were traitors to Ireland (hear, hear). But we have now this advantage, that we have many honest Protestants joining us

—joining us, too, heartily in hand and heart for old Ireland and liberty (cheers). The repeal arbitrators are beginning to act—the people are submitting their differences to men chosen by themselves. You will see by the newspapers that Dr. Gray, and my son, and other gentlemen, have already held a petty sessions of their own, where justice will be administered free of all expense to the people. The people shall have chosen magistrates of their own in the room of the magistrates who have been removed. The people shall submit their differences to them, and shall have strict justice administered to them that shall not cost them a single farthing. I shall go on with that plan until we have all disputes settled and decided by justices appointed by the people themselves. ('Long may you live.') I wish to live long enough to have perfect justice administered in Ireland, and liberty proclaimed throughout the land (great cheers). Oh, my glorious countrymen, endowed with every virtue, the contrast between you and your oppressors is to me a subject of exultation and delight. In everything you have proved your virtue and generosity—in everything they have proved their cruelty and treachery. Who was it dared to talk of this as a religious question?—When persecution was practised in other countries, the Catholics of Ireland never persecuted; it was absurd, therefore, to dream they should do so now, when everybody admitted that persecution did not make converts. Queen Mary persecuted, and Catholicity in England perished. In Ireland there was no persecution, and it was triumphant. It was he (Mr. O'Connell) who drew up the petition for the emancipation of the Protestant Dissenters of England; and it was agreed to by the Catholic association, and proposed at an aggregate meeting of Catholics by a Carmelite friar, the Rev. Mr. L'Estrange. The grand master of the Orangemen of Ireland, Sir Abraham Bradley King, applied to me to procure him redress, when his own party forsook him, because they found that they had made a bad bargain with him, and were ashamed of their doings. I examined his papers, and found that he had justice on his side; and though he was the grand master of the Orangemen, I scorned to think of that (hear, hear); or if I did think at all of it, I did so to feel a livelier anxiety to obtain justice for him, and I succeeded. I got 2,500*l.* a year for him for life, and at the last hour of his existence, I will do him the justice to say, he told his son-in-law, who was a captain in the army, to find me out, and tell me that the grand master of the Orangemen had died in comfort, obtained for him through my means (loud cheers). I do not state this through any vain boasting, but to meet the accusations that are brought against us."

Examination resumed—I heard resolutions proposed at that meeting; the first resolution was proposed by Mr. Aylmer; I heard the second resolution which was proposed by Mr. Hacket, of Kilkenny, and seconded by Alderman Keshan; it was as follows:—"We, the gentry, clergy, freeholders, and other inhabitants of the province of Leinster, here assembled, do declare in the face of heaven and our country, that no power on earth save the Queen, lords, and commons of Ireland, can* make laws for Ireland;" that resolution was put from the chair and carried.

Solicitor-General—Who was the chairman? Mr. O'Connell was; the resolution was carried; after that I saw some gentlemen come forward and present Mr. O'Connell with a velvet cap; it was a round velvet cap; it was presented to Mr. O'Connell by Mr. O'Callaghan; Mr. O'Callaghan said he was deputed by the committee whose names were attached to the address (an address presented with the cap) to present him (Mr. O'Connell) with the national cap; Mr. O'Callaghan also presented the address to Mr. O'Connell. (Witness read the address.)

Mr. O'Connell—Who is that signed by? By Mr. White and other gentlemen.†

Solicitor-General—What was done with the cap after that? It was placed on the head of Mr. O'Connell.

Did he then say anything? Yes; he said he accepted the gift with pride and pleasure; the witness went on to read the observations of Mr. O'Connell on the occasion; there was another resolution read at that meeting; I look at page 46 of my report, and find it there.

Solicitor-General—Read the resolution which you find there?

The witness read the resolution, which was to the effect—that a petition be prepared and presented to the imperial parliament for a repeal of the union.

Solicitor-General—Was that resolution put and carried?

Witness—It was.

Solicitor-General—Look to page 49 of your report, and read the resolution contained in it?

Witness read the resolution, which was a vote of thanks to, and of confidence in, Mr. O'Connell.

Witness in continuation stated that that resolution was not put by Mr. O'Connell, but by a gentleman who took the chair after him. The meeting was held in the open air, at the Rath of Mullaghmast; I saw several gentlemen there that day; witness pointed out and identified Mr. John O'Connell Mr. O'Connell, Mr. Steele. (He looked about, apparently for Mr. Barrett, but that gentleman was not then in court.) He then identified Dr. Gray and Mr. Ray, as also present there.

Solicitor-General—Did you know the persons of the traversers before that day?

Witness—No, I did not of all. I knew the persons of Mr. Daniel O'Connell and Mr. John O'Connell. Mr. John O'Connell was in the chair at the dinner. I heard him speak after dinner when proposing the toast "The Queen." (Mr. Hughes read the speech.) I heard several letters read; there was one read from Mr. Thomas Ffrench, of Castle Ffrench. (He read the letter.) It was dated the 26th of September. There was a gentleman present at the dinner who, I was told, was Mr. Barrett. That person spoke on that occasion. (He then read a report of the speech made by Mr. Barrett on that occasion.)

To Solicitor-General—Mr. O'Connell spoke at the banquet; this followed the meeting; referred to his notes, page 27; Mr. O'Connell then said—"This was a most delightful day for him; a day full of consolation and hope. How glad he was to be at Mullaghmast."

Mr. O'Connell—Speak a little louder.

Witness continued to read from his notes the speech of Mr. O'Connell to that part, "We had not one sovereign of her family who was not a decided enemy of Ireland."

Mr. Hatchell, Q.C.—You have omitted the reference to the Queen.

Witness—"We had not a sovereign save herself who was not a decided enemy of Ireland."

Mr. O'Connell—Read correctly, Mr. Hughes.

Witness continued—"She was the first sovereign

* This was certainly a mistake of the witness, for the words used were not "can make laws," but "ought of right to make," &c., and so the Attorney-General quoted it.

† Mr. White was the manufacturer of the article called by him "the national cap;" Mr. Hogan, the distinguished sculptor, was of the committee. The national cap, we believe, is long since among the things forgotten. But the presentation of a specimen cap to Mr. O'Connell had certainly the effect intended, that is, it caused many Irishmen to purchase a very inelegant article of head-gear.

of the house of Brunswick that treated this unfortunate country with justice, and it is afflicting to think that her ministry are so base and perfidious, so paltry and selfish, as to endeavour to obtain advantages for themselves and their party at the expense of the high and chivalrous feeling of exalted allegiance which the people of Ireland bore, aye, and still bear, to their Queen." Witness read till he came to say, "a proof that each man——"

Mr. Fitzgibbon, Q.C.—That every man.

Witness—I might have misunderstood him.

[When the witness came to that portion of the speech in which Mr. O'Connell spoke of the hostility of the ministers to Ireland, considerable merriment was excited in court at the different allusions and expressions of the honourable gentleman in reference to them. The following passage respecting the Duke of Wellington was received with great laughter:—"The poor old duke! what shall I say of him? To be sure he was born in Ireland, but being born in a stable does not make a man a horse."]

The witness continued to read to the close of the speech, when the examination was resumed.

Solicitor-General—Turn to pages 6, 7, 8, of your notes; see if the name of Mr. Ray is mentioned there.

Witness—Yes, it is there; the chairman having given the toast of the repeal association, and called upon Mr. Ray to answer it, Mr. Ray rose and spoke to the toast.

[The witness here read Mr. Ray's speech, and then, at the direction of the Solicitor-General, he referred to pages 7, 8, 9, and read Dr. Gray's speech in answer to the toast—"The dismissed magistrates, and repeal arbitrators."]

Examination continued—I remember attending a meeting at the Corn-Exchange the day after the meeting at Mullaghmast; it was on the 2d of October; I got admission there by having stated that I intended to report; on the following day I obtained a ticket of admission from Mr. Ray; the words upon the ticket were "Admit the bearer, Mr. Hughes, of the press, to all our meetings.—T. M. Ray;" at the time I got that ticket, I said, you had better mention that I am the reporter for the government; Mr. Ray said, "No, that will be sufficient, it will admit you; the Conciliation Hall will be open soon, and we will have a different place then for yourself;" it was understood at Mullaghmast that I was the government reporter; at the conclusion of Mr. O'Connell's opening speech there he stated that he understood there was a gentleman present on behalf of the government; I then got up and said that I attended on behalf of the government to report the proceedings; Mr. O'Connell then said that on former occasions, when government reporters had attended, he had afforded them every facility, and furnished them with documents, &c., and that he should be happy to afford the same accommodation to me; I believe it was also through Mr. O'Connell that I received a ticket for the banquet. [Witness here identified Mr. Barrett as one of the persons who attended the meeting at Mullaghmast, on the 2nd of October.]

Did you take notes of what occurred at a meeting of the association at the Corn Exchange? I was there at the commencement.

A juryman having here withdrawn, the examination was suspended.

The Foreman having complained that they had difficulty in hearing,

The Solicitor-General desired the witness to speak louder.

Mr. O'Connell also begged the foreman of the jury to desire the witness to speak louder in giving his evidence, as he occasionally sunk his voice.

Mr. Ford said it would be well if the court would remove that body of barristers from the court who were getting phthisical and coughing (laughter).

The Solicitor-General then, the juror having returned, resumed the examination, desiring the witness to speak as loud as he could, and slowly.

Have you got the notes of the meeting at the Corn Exchange of the 2d of October? I have.

Do you find there a speech of Mr. O'Connell delivered after a letter from Limerick had been read by Mr. Ray? I do. [Witness then referred to his notes, and read the speech of Mr. O'Connell on that occasion. He referred to a paragraph that had appeared in the papers, headed "Military organization at Clontarf," and stated that though a good quiz it never ought to have been printed; he hoped the association would take no notice of it, and pointed out that some arrangement as to the horsemen and carriages was absolutely necessary to prevent confusion among so great a number.]

Now turn to the notes of what occurred at the meeting of the 3d Oct.: but before we go to that, state which of the traversers were present at the meeting of the 2d of October? Mr. O'Connell and Mr. Ray.

Was Mr. Steele there? He was.

Which of them were present at the meeting of the 3d? Mr. O'Connell, Mr. J. O'Connell, Mr. Duffy, Mr. Ray, Mr. Steele, the Rev. Mr. Tierney, and Dr. Gray.

Do you see Mr. Duffy in court? I do.

And the Rev. Mr. Tierney? I do.

Look at page 13 of your notes and state whether a letter was read from Loughrea? I must state that all the letters and papers in my notes are not copies of the originals; I had applied to Mr. Ray for them, but had been told that I could not obtain them; having also been told that the copies printed in the papers were authentic, I copied them.

Who told you they were authentic? In the first instance I applied to Mr. Ray, at Mullaghmast, for copies of the resolutions passed at the meeting. He referred me to Dr. Gray, as secretary to the meeting, and when I saw Dr. Gray he appeared to have some reluctance to give them.

Mr. Fitzgibbon—I beg your pardon, please state exactly what Dr. Gray said?

The Chief Justice—When did you say you saw him first on that subject? Several days afterwards.

Mr. Fitzgibbon—Now state exactly what Dr. Gray said? Dr. Gray told me he could not find the resolutions that were passed at the Mullaghmast meeting. I did not procure them subsequently. Doctor Gray told me expressly that he could not find them. I told him I had applied to him as secretary, because Mr. O'Connell had promised them to me, and I wished him to communicate with Mr. O'Connell on the subject. He replied he would take an hour to consider, and that he would write me a note at the end of that period stating what his determination was. I said, "Oh no; do not write to me; you had better see Mr. O'Connell." I was then leaving the room, and as we were going out of the door by the staircase of the Corn Exchange, Mr. O'Connell was coming up, and I said, "Oh, here is Mr. O'Connell; now, Doctor Gray, will you speak to him?" Mr. O'Connell addressed me, and said, "Well, Mr. Hughes, are you here for documents?" or something to that effect. I think that is nearly what he said. I answered that I had applied to Doctor Gray for the resolutions passed at Mullaghmast, and that he had told me he could not find them.

Mr. Fitzgibbon—You are quite certain that Dr. Gray used those words? If you are not certain, do not swear it.

Witness—Yes, I am pretty certain he said that.

Solicitor-General—Go on and state what next happened.

Witness—Dr. Gray then took Mr. O'Connell aside into a room; shortly afterwards Dr. Gray came out.

On his coming out I asked him "May I have the documents, or do you refuse them?" He replied, "Oh no, I do not refuse them; I do not mean any disrespect to you, but I can't lay my hands on them;" and he further added, "I do not think I should waste my time in writing them out for Sir Robert Peel." I replied that "I had nothing to do with Sir Robert Peel, and that I was applying to him in my character as a short-hand writer for those documents." He then replied, "Oh, you may take them from the newspapers; they are authentic." On the following day I was in the Corn Exchange, and Mr. O'Connell was there. I addressed him and told him that Dr. Gray had refused to give me copies of the resolutions, but told me they were authentic as they appeared in the newspapers. Mr. O'Connell replied, "Yes, yes, they are authentic." A letter from Loughrea was read at the meeting of the association on the 3d of October. I got this copy of a letter from Mr. Ray; it is dated Loughrea, October 2, 1844, and was read at the meeting of the association on the 3d of October. The witness then read the letter. [It was referred to and read in the Attorney-General's speech. It enclosed 14*l.* as the subscription of 14 of the town commissioners, and was signed Patrick Skerrett, chairman, Wm. M'Carthy, secretary. It was Mr. O'Connell read that letter.

Solicitor-General—Did Mr. O'Connell make any observation immediately after reading the concluding passage, "that they were determined to remove two or three recusants from the body with all possible despatch, when the opportunity offered?"

Witness—Yes; he said they were right to turn out those who would not become repealers.

Judge Perrin—Is that letter addressed to any one?

Witness—Mr. O'Connell said, "I received this letter this morning."

Judge Perrin—Is it addressed to anybody?

Witness (after again looking at the document)—This is a copy, and there is no address on it to anybody.

[The witness then went on reading Mr. O'Connell's observations in moving that the letter be inserted on the minutes, and that the thanks of the association be conveyed to the writer and the other gentlemen named therein.]

Witness—Mr. Steele was present at that meeting; he addressed the meeting; he said he rose to second the motion of the Liberator; that he had expressed some very strong opinions on the Loughrea meeting; that he considered that meeting more important than even that at Mullaghmast, where

> "Behemoth, biggest born of earth,
> Upheaved his vastness."*

Dr. Gray was at that meeting; he read the names of certain persons, whom he moved should be appointed arbitrators; Mr. O'Connell seconded the motion, and it was carried; Dr. Gray then said he had a short report from the arbitration committee to present, and he had to move that some gentlemen be appointed arbitrators, the first of whom was a gentleman who was recommended by no less than eight millions of people; he was known by the name of the Liberator, and he moved that he be appointed arbitrator for the city of Dublin, which motion was seconded and carried, and Mr. O'Connell said that he accepted the office, and would devote one day in the week to the duties of it, with the other gentlemen who were named; Dr. Gray, at that meeting, read a list of arbitrators that were admitted, many of whom were gentlemen who had been dismissed from the commission of the peace.

Solicitor-General—Did Mr. O'Connell make any observations respecting that document?

Witness—He said—"I hope I shall live to see the day when the hall of the Four Courts will be very empty" (laughter).

Solicitor-General—Look to page 64, and see if any observations were made by Dr. Gray.

Witness—After he had moved the admission of Mr. Balfe as an arbitrator, and the motion was carried, he said, "I wish to state, before we leave the question of arbitration, that all the necessary documents have been forwarded to the districts where the arbitrators have been appointed. I recommend the parties not to open the courts until those documents be forwarded."

Solicitor-General—Which of the other traversers was at that meeting?

Witness—The Rev. Mr. Tierney was present. In page 97 I find the speech of Mr. Tierney, delivered at that meeting of the association. [Witness then went on to read the reverend gentleman's speech, as given in the opening statement.] Mr. O'Connell spoke after the delivery of the speech by the Rev. Mr. Tierney, and said the reverend gentleman deserved the thanks of the association, and that he (Mr. O'Connell) had heard the speech with pride and pleasure. The motion was carried by acclamation, and Mr. O'Connell moved that the association should adjourn to the next Monday, when he (Mr. O'Connell) said he would revive a resolution of which he had formerly given notice, that it was useless to expect any redress from the English parliament. He (Mr. O'Connell) said he hoped the members of the corporation who attended in their robes at Mullaghmast would meet him (Mr. O'Connell) on the following Sunday at Clontarf, but at all events he (Mr. O'Connell) would be there in his robes; I attended a meeting on Monday, the 9th of October, which was held at Calvert's theatre in Abbey-street; Mr. John O'Connell was in the chair; there were present Mr. John O'Connell, Mr. Ray, Dr. Gray, Mr. Duffy, Mr. Steele, and the Rev. Mr. Tyrrell.

Solicitor-General—Oh, the Rev. Mr. Tyrrell is dead.

Witness in continuation—I see pages 43, 44, and 47 of my notes, and see the resolutions. He proceeded to read them, but was interrupted by

Mr. Hatchell, who said, let him read the report of the entire meeting, if you please.

Solicitor-General—That would occupy a considerable portion of the day, and at present I will only read the resolutions passed at the meeting.

Mr. Holmes—You have a right to any one particular speech, but not to the entire.

Mr. Hatchell—I beg your pardon. I have a right to it all.

The witness then in accordance with the directions of the Solicitor-General read the speech delivered on that occasion by the Rev. Mr. Tyrrell, and all the resolutions passed at the meeting, which were the same as those passed at Mullaghmast, and as they appear in the opening statement.

Solicitor-General—Do you find an entry at page 30 of your notes of anything that was said or done by Mr. Duffy at that meeting? Yes, he said I have to hand in money from Mr. Blank, of blank parish, and blank county; I mean by blank I could not catch the name or residence of the person.

Solicitor-General—Look at page 35, and see if Mr. Ray took any part in the proceedings at the meeting on the 3d of October? Yes, he said it was essentially necessary that every accommodation should be afforded to the press, and the passage to their table kept free; if the reporters were inconvenienced they could not perform their duty, and the public will be disappointed.

* Much sensation was caused in court by the reading of this passage. It was known that Mr. Steele, who reported his own speech for the newspapers on the occasion of that meeting, denied having spoken the quotation, though he wrote it for the reported speech; and few who know Mr. Steele will believe that he would misstate the fact. Mr. Steele persists in this assertion.

Solicitor-General—Look at page 35, and read what Mr. O'Connell said upon that occasion?

Witness read what Mr. O'Connell said, which was to the effect that the passages should be kept clear, and that Mr. Ray should have the passage clear on account of the necessity of messengers having facilities of admission with the manifold letters.

Solicitor-General—Look at page 52, and see if any money was handed in by Dr. Gray?

Witness—Yes, I have a memorandum to that effect, and there were several sums handed in by him; I was never present at any meeting of the association when applications were made for newspapers.

At this period the court and jury retired for a few minutes, and the witness being told by Mr. Hatchell that he might retire from the witness-box, did so.

The examination in chief was resumed, when the jury returned.

Solicitor-General desired witness to look to his notes, and see if he had a report of the proceedings of the 9th October—to look to page 34, and see if any thing had been said by a person named Green—Mr. Green of Liverpool—at the meeting at Calvert's theatre.

The witness read the observations of Mr. Green of Liverpool, on that occasion, as follows:—"Mr. chairman and gentlemen—I regret that a cold I got on board the steamer prevents my addressing you at much length. I regret I have not prepared an address to the Liberator, but I have in the name of 400 repealers of Liverpool, to express to you, illustrious sir, our readiness to do or die if necessary. I hand in their names, and request Volunteer cards may be prepared for us."*

Solicitor-General—That is enough.

Mr. Hughes's direct examination closed here.

CROSS-EXAMINATION OF MR. BOND HUGHES.

Mr. Hatchell, Q.C.—Mr. Hughes, you stated that the first occasion of your coming to Ireland was to attend the meeting at Mullaghmast? It was.

Mr. Hatchell—Did you come for that purpose? I did.

Mr. Hatchell (to the court)—It is suggested I should apprise the court on the part of which of the traversers I appear, so as not to interfere with the counsel who have to cross-examine the witness for the other traversers. I appear for Mr. Ray. There are pieces of the evidence given in reference to other traversers, which the counsel who appear for these gentlemen will have occasion to advert to.

Mr. Fitzgibbon said, on the part of the traversers, that it was not the intention of the different counsel for the traversers to cross-examine, except on some particular occasions. It was probable that not a single question would be asked of the present witness.

The cross-examination was then resumed.

Mr. Hatchell—Have you, Mr. Hughes, been a professional reporter for the public press? No, not for the public press.

Mr. Hatchell—What was your business, then? I am a short-hand writer.

You never were on any public journal? Never.

Have you ever attended public meetings in England to report the proceedings at them? I have.

Have you for many years, previous to last, pursued that profession, and from an early period of your life? I have.

Were you particularly employed in England for the purpose of coming here as a government reporter? I was.

Then, as I understand you, you were employed in England to report the meeting at Mullaghmast? No, I only received orders to come to Ireland.

Your orders were not to attend to any particular meeting, but to any meeting? My orders were to act according to directions.

It was for the purpose of reporting you came, subject to such regulations as you received on this side of the water? It was.

Where did you apply for orders when you arrived here? I had a letter to the Attorney-General, and on applying at his place I was told he was not at home; I was then directed to Mr. Brewster.

When did you arrive? I came late on Saturday.

What time did you come over? On the 30th of September.

At what hour did you get to Dublin? On Saturday, about ten o'clock. I came by the morning packet from Liverpool, and we had a bad passage.

The meeting at Mullaghmast was to be next day? It was.

When did you go to the Attorney-General? I went about eleven o'clock to Merrion-square.

You stopped at some hotel, I suppose? Yes, at Gresham's hotel.

How did you go to Mullaghmast? I ordered the waiter to get a fly or car.

Had you any person to assist you? Yes, an assistant came over with me.

I suppose you saw the Crown Solicitor? No, I did not.

When did you go to Mullaghmast? About 12 o'clock that night.

You had no person but your own assistant? No.

Where did you bring him from? I brought him with me from England.

When you say he was an assistant, was it for the purpose of reporting? It was to transcribe notes.

He attended the meeting, however? He did.

Is he learning the business of reporting? Oh, he is a good reporter himself.

But I suppose he did not keep his hand idle? I believe he took some notes.

Did he not assist you in taking notes as well as in transcribing? Yes.

What is his name? His name is Latham.

Where is he now? He is in Ireland.

Did he go back with you? We came from England together, and we went back together.

What brought him over the second time? I don't know.

Am I to understand, then, that Latham came over with you after you first returned? Yes.

He came over when you were sworn before the grand jury? Yes.

Did he come over on the last occasion with you? He did.

What did he come over for; was it to be examined as a witness? I have no doubt he will be examined as a witness, but I do not know it for certain.

Mr. Hatchell—Why did you not say that before? I am not certain of it.

I think you said he took a note of the proceedings? He transcribed a portion of the notes I took.

Did any other person come over with you as a witness in this case? No other.

Is that gentleman in the office of Mr. Gurney? He is not in Mr. Gurney's office at all.

I suppose you depended on the person who drove you to the meeting, because you did not know where it was yourself? Of course.

Did you stay on the road? We stopped at Naas.

You got early to the place of meeting? Yes; there were not many persons on the ground.

How long was it before Mr. O'Connell arrived? About an hour and three quarters.

Had any arrangements been made with respect to the platform? Yes; I got on the platform near the reporters.

* This Mr. Green was an office-bearer among the Liverpool repealers—recording secretary, we believe, and is the same person whose repeal card, as a member, was produced and read in court during the progress of the trial, as evidence against the traversers. Mr. Green himself came over from Liverpool on that occasion as a crown witness.

I suppose you had a good view of the assembled persons? Yes, I had.

The people came on the ground according to their parishes? Yes.

There were bands? There were.

Did you not understand them to be temperance bands? I cannot say anything about them.

Did you see anything about them with regard to their dress or instruments to inform you? I saw some bands, and all I know is that they were bands.

Did you see any banners? Yes; I saw some with mottoes.

Did you ever attend meetings in England at which there were either banners or mottoes? I have never attended meetings where they have been used except at the time of Queen Caroline.

Did you ever attend county meetings? I attended meetings of the Chartists in Manchester, and one in Carpenters' Hall.

Did you ever attend an open air meeting? No.

Did you ever report any meetings about 1831 or 1832? I was then only commencing reporting.

Have you attended any of the great reform meetings? I have no recollection of attending any of them.

Perhaps you were only an apprentice then? I was practising for myself at the time.

Were there a great number of women and children mixed with the crowd at the meeting? There were.

Was not the meeting of a perfectly peaceable character altogether? It was.

Have you, at that meeting, perceived anything in the least tending to riot or disturbance among the people themselves? Not the slightest.

In what manner was the Queen's name received? The Queen's name, when mentioned, was always received with loud applause; after Mr. O'Connell's arrival with his friends, I remember it was mentioned that I was on the platform as the government reporter; on the announcement of Mr. O'Connell that he understood there was a gentleman there representing the government, I declared I was the person, and then Mr. O'Connell offered me every possible facility and accommodation, for the purpose of reporting for the government; he shook hands with me, not upon that but upon a subsequent occasion; I afterwards got a ticket of admission to the banquet for myself, and one for my assistant, Mr. Latham; there was no secrecy at all about me and my assistant being there for the government; a great number of persons of respectable appearance were at the banquet; it commenced about five o'clock, and terminated somewhere about nine; I left a few minutes before its termination; at the banquet there was order and regularity among the persons present as well as among those at the meeting; I saw at the meeting persons who had bands around their hats, and who called themselves O'Connell's police; I think those persons preserved order, and prevented the people from getting upon the hustings, and that the persons on the platform would be very much incommoded unless there were individuals to preserve order; I did not return to Dublin that night; I only went as far as Naas; I did not transcribe any notes there; the Queen's health was given at the dinner, and received with very great applause; I marked it so in my notes; the health of Prince Albert was given after that of the Queen; it was given by the chairman, Mr. J. O'Connell; I have a particular note of the manner in which Prince Albert's health was received; it was with great applause; it was before those healths were given that different letters of excuse, for non-attendance, were read by Dr. Gray; I have a note of Dr. MacHale's letter; it was signed John Archbishop of Tuam; I did not take a short-hand note of documents when I could get copies of them; I got copies from Mr. Ray, not of all, but of some of the documents; Mr. Ray threw them on the table; that was at the banquet; Dr. MacHale's letter is dated the 29th of September, 1843.

[The witness here read Dr. MacHale's letter, apologising for non-attendance at the banquet.]

Have you notes of a letter from Mr. Talbot? I doubt whether I have it.

Have you one from the Right Rev. J. Cantwell? and if so, read it. (Witness here read it.)

Look at the notes of a letter from the Rev. J. Keating. I have not got it; I have only one more letter read at the Mullaghmast meeting; I applied for the letters after the meeting, but could not get them.

When you asked for the letters read at the meeting, as well as for the resolutions, you were referred by the parties to those in the newspapers as authentic? Yes.

Did you find them authentic? I found the dates corresponded with my notes.

Look at that letter in the *Freeman's Journal* of Monday, October 1st (handing in a copy); was that letter read? To the best of my recollection, that letter of the Rev. Mr. Keating was read.

Can you read it from your notes? I cannot.

Have you notes of Lord Ffrench's letter? I have memoranda of two letters that were read, dated Castle Ffrench.

Well, state, in a general answer, the number of persons from whom letters were read? There is one letter signed "Michael Boylan" and "Patrick Ternan." I will not undertake to say that all these letters were read. I asked if the copies in the newspapers were authentic, and being told they were, I took them in the order in which I found them there. This was immediately after the meeting.

Was it not when they were fresh in your recollection? No; it was several days afterwards, but within a week.

You looked at the letters in the newspapers—did they correspond with the facts? To the best of my recollection they were all read. There was one from Sir Colman O'Loghlen (laughter), two from Castle Ffrench, one from Mr. Campbell, one from the Archbishop of Tuam; but being promised copies, I did not pay much attention to them. I considered they would all be handed to me.

You have reported the exhibition of a certain motto, something about a nation of so many millions being too great to be dragged at the tail of another. Now, don't you remember that that motto was taken from the *Morning Chronicle*? Certainly not.

Oh! I do not mean to say that your notes are not infallible; but did you not know that the motto itself was taken from a leading article in the *Morning Chronicle*? I did not.

Do you ever read that paper? I do not (great laughter).

I suppose you only read the *Standard*? (laughter.) I read neither; having to attend committees of the house of commons, I do not read many newspapers.

Did you ever attend a trades' meeting? No.

Were you ever a member of any institution in England for the fostering and encouragement of native manufactures? No.

Have you heard of the repeal cap, manufactured by Mr. White, of Thomas-street? I have.

Did you go there to fit yourself with one? I did not.

Did you ever hear what the cost of one would be? No.

Do you understand anything of the nature of puffing? I do not.

Don't you know the distinction between the puff direct and the puff indirect? No.

Don't you think it would be a very good way to puff a cap or a coat to mention the name of the

maker at a public meeting? No doubt of it (laughter).

You would have no objection to encourage native manufactures in any way you could? Not the slightest.

You see no great harm in that? No.

If Mr. White could have made a cap to fit you, would you have worn it? I did not wear it.

Did you handle the cap at all? I did not, but I admired it (laughter).

Would it not be an excellent travelling-cap to go about with in the pocket? It would (laughter).

Do you not know that gentlemen who visit Paris often come back with the tricoloured Republican cap as a comfortable cap to sleep in? I know they bring caps home with them sometimes.

Now you, as a man of the world, did not think there was any treason in that cap? I formed no opinion.

Not whether this is a cap to fit the crown or you have a crown to fit the cap? Either way you like it.

Were you patriotic enough to buy anything to further Irish manufactures? I did (laughter.)

I suppose you bought a tabinet for your lady? I did (great laughter.)

It was a great advantage then that you were brought so far for the encouragement of Irish manufactures, and if you had been disengaged you would have no objection to have got a lady for the tabinet? Probably not (immense laughter).

Indeed you might be worse off (great laughter).

Mr. Hatchell—How long did you remain in Ireland after the meeting at Mullaghmast?

Witness—I left on the 18th of October.

Mr. Hatchell—Did you attend a meeting of the repeal association on the 2d of October?

Witness—Yes, I did.

Mr. Hatchell—How were you treated? There, as at all the other meetings, I was treated with the greatest possible civility. I received every courtesy and kindness at the association.

Mr. Hatchell—You only read such extracts from Mr. O'Connell's speeches, if I mistake not, as the Solicitor General requested you to read?

Witness—That was all.

Mr. Hatchell—Then you have notes of several other expressions which fell from Mr. O'Connell, independently of the extracts which you read in court?

Witness—Oh, yes; I have notes of very many passages from Mr. O'Connell's speeches which I did not read, but I will read any part you require.

Mr. Hatchell—Look through your notes, if you please, for some remarks of Mr. O'Connell's on Ribbonism at the meeting of October 3d; they come immediately before a letter from Tullow, signed by a person named Jackson.

The witness looked over his notes, but was unable to find the passage alluded to.

Mr. Hatchell—The passage I allude to came before the reading of a letter from Sharman Crawford; but I rather think you have it not, for I believe you did not take notes until after the reading of that letter.

Witness—The first remarks I have from Mr. O'Connell are in allusion to a meeting in Donegal.

Mr. Hatchell—Read what Mr. O'Connell said on that subject if you please?

The witness here read from his notes the following report of Mr. O'Connell's observations with respect to the Donegal meeting:—

"Mr. O'Connell said he did not know that this gentleman was not inaccurate in stating that they did not take notice of the meeting in Donegal, but in general meetings were not taken notice of except they received some letter respecting them. What could they say of the Donegal meeting but what appeared in the newspapers, for they heard of it only through the newspapers, and the public knew of it only in like manner. It was as obvious as the sun at noon-day that they must have been exceedingly gratified at that splendid meeting, and that they should feel the highest gratitude to the people of Donegal for meeting in the numbers they did, and for acting so peaceably and returning without the slightest accusation of a breach of the peace, and all this peaceable determination exhibited by them showed their firm resolve to join with the rest of Ireland in seeking for repeal. He moved a vote of thanks to the persons who called and managed that meeting, and especially the inhabitants of Innishowen, and that the letter should be inserted on the minutes. They might rely upon it that nothing would gratify them more than any repeal meeting in the north, when it was confined within the limits of the constitution, and the more numerous they were the more they would be gratified, provided they created no rancour in any party. The Donegal meeting had this advantage, that it irritated no person; on the contrary, it rather had the effect of soothing any bad feelings that were raised in the minds of the Orangemen. The anti-repealer could not retard the question except by giving it a sectarian complexion; and it should be understood that it was not a sectarian question, or a measure intended for the advantage alone of any particular persuasion, or to do mischief to the people of any particular creed. It was intended for the good of all persons of every creed, and would prove as advantageous to Presbyterians as to the Catholic, and to the Episcopalian Protestants as to either. It was intended for the good of all Irishmen (cheers). They did not mark them out in sections or divisions, and say some are Protestants, or some are Catholics, or Presbyterians. They would have no sectarian distinctions; the only mark they recognised was the name of Irishman. Their object was to give Ireland to the Irish, and the man was a bitter enemy of Ireland that attempted to create any other feeling whatever amongst them (hear, hear). They should expel from the association any man that made use of a phrase of a bigoted nature, or one reflecting on the religious profession of any class. The great evil of Ireland was its religious distinctions, for the tree of liberty could only flourish when it was watered by the grace of charity. They had opened the portals of the constitution to every class and creed, and they should dismiss for ever from amongst them the foul fiends of religious distinction that had so long desolated the land (cheers)."

Mr. Hatchell—Go down a good way farther, if you please, and read your report of the remarks which fell from Mr. O'Connell in reference to a remittance received from West Canada that day.

The witness read from his notes his version of the remarks in question. The newspaper report of same runs thus: "Mr. O'Connell said he was delighted that their fellow subjects in Canada West were advancing to their assistance. As long as the Canadians kept within the limits of the law they found him an ungifted, but a most zealous advocate. He acknowledged that he deserted them the moment they had recourse to violence, and violated his principles by breaking into rebellion. At first it caused every kind of misfortune to their native country, but Lord Stanley, who seemed to him to have the oddest idea of things in the world, was now conferring every kind of favour on those who survived the rebellion. He found that a general amnesty had been granted to those engaged in it—that the bills of indictment against Papineau and others had been quashed, and that the Attorney-General had a *nole prosequi* entered on those indictments. A former rebellion in Ireland had been attended with the worst consequences. He was convinced that a rebellion would ruin Ireland. There never would be a rebellion while he lived, but he would not carry the question of repeal less securely on that account.

He would not give one straw for repeal if it were not carried without the shedding of one drop of human blood. The people stood by him, and would obey his advice, and he never saw a readier acquiescence in it than was exhibited on the preceding day at Mullaghmast. He would tell their friends in Canada of that meeting—the most gigantic and magnificent assemblage that he had ever attended, with the single exception of Tara. Nothing could equal the beautiful scene that presented itself to the eye as they passed up the long avenue ascending the Mount of Mullaghmast—the countless thousands that lined the way—the many black-eyed women—aye, and the beautiful women, too, that were there with their husbands, and fathers, and brothers. They did not entertain the least idea that there would be the smallest encroachment on their delicacy, for there was not one man among the hundreds of thousands that were assembled who would not sooner have died than have offended one of them (cheers). They were there perfectly safe and secure in the high-souled honour and protection of their countrymen—blessings on the lovely women of Kildare. And his (Mr. O'Connell's) police were there with bands upon their hats, and signifying they had authority to keep the peace if there was a necessity for keeping it, which there was not. Nothing could be more cruel than marching the unfortunate green-coated police to these meetings; for what were they wanted there? If any of the stipendiary magistrates came to him he would tell him off as many men as would be sufficient to keep the peace (cheers). They might keep the police at home and not have them wearing their shoes traversing the country in cold weather (laughter). There were two things in the conduct of Sir Henry Hardinge and the government that he complained of, and this was marching about the police in this way (they had given up the practice of harrassing the army, and he was glad of it), and having in fortifying Athlone cut down two beautiful trees near its walls to make the fortifications more secure. A tree was a public loss to the country. He loved a fine old tree; nature never produced anything more delightful to the eye than the waving branches of an aged tree that was still green and in vigour. He would forgive Sir Henry Hardinge anything but that. To come back to Canada West. Was it not delightful to them to have their brother Irishmen chirping to them from such a distance? but he begged of them, as he did of Mr. O'Ferrall, not to abuse the Orangemen so much, and to use civil language to them. It was quite manifest they were not afraid of the Orangemen; and why then should they scold them? for persons only had recourse to scolding when they were afraid. He heartily thanked their friends in Canada West; but he was glad that they had got over their rebellion, and that their country was now a free country, and had a parliament freely elected. The English government had the good sense to let the Canadians govern Canada. All offices were filled by Canadians, or were being filled by them, and no man got into office who did not concur in opinion with the majority of the parliament. It showed how wise it was to give every dependency of England the power of self-government, with a local parliament; for Canada was now declared by the ministry themselves, to be, for the first time, in a state of unbroken quiet, except where it was interrupted by the decaying Orange faction. It was now settling down in security and quiet. How little did they know the Irish people, to make any distinction between the two countries. If they had a mind to strengthen the empire—make it invincible against the world, and make the throne stable and secure for ever, they would make no distinction between them. He moved that the letter and lists of names be inserted on the minutes—that the persons named be enrolled as associates and members, according to the amount of their subscriptions; and that Mr. Ray be directed to convey the most respectful thanks of the association to the gentlemen, individually and generally, who had subscribed."

Now, Mr. Hughes, will you be good enough to refer to the report of the meeting at the theatre in Abbey-street, and turn to Mr. O'Connell's speech there—but that reminds me to ask you a question that I intended awhile ago. You said that Mr. O'Connell was dressed in crimson or scarlet at Mullaghmast? Yes, he had a robe on.

Wasn't that the robe usually worn by the Lord Mayor of Dublin? Yes.

And were there not several other aldermen and town councillors there wearing those robes? Yes.

Read Mr. O'Connell's speech at the theatre in reply to the address of the repealers of Manchester. The witness read the reply, as previously published in the report of the proceedings at the meeting.

After reading the resolutions which were read by the crown, will you read Mr. O'Connell's speech at that same meeting in Abbey-street? Witness here read the speech at length, from his own notes; we give the following extract:—"I never, in the course of a long and eventful life, rose to address a public assembly with a stronger or more awful feeling of responsibility than I do at the present moment (cheers). At the same time, I never addressed a meeting with a more confident feeling of personal firmness—I never addressed a meeting with more triumphant feeling of the propriety of the conduct of our people, and of the iniquity of our enemies (hear). It is quite true that I passed a most tedious day yesterday; for hours upon hours I could not bring up my confidence in the people—in their tranquillity and ready obedience. I could not raise that confidence to a sufficient pitch not to apprehend that mischief might casually occur, and that the day might end in the massacre of an innocent people (hear, hear). I will say it at once—it was not the fault of the government that there was not a massacre (hear). I do not hesitate to repeat it, and if I were to go to the scaffold for it to-morrow, I would not hesitate to say, that if the government had intended to entrap the people into a massacre, they would not act otherwise than they did (hear, hear). I cannot say that it was their intention; I cannot look into the human mind and see what was their intention, there is so much folly and absurdity about them in the entire of their conduct respecting repeal. I do not accuse them of that; but in the present state of events, but for my interposition, it would certainly end in the massacre of an unarmed people (hear). I have two objects, one of which is to proclaim to Ireland that there is only one safe and certain mode of obtaining repeal, and that is by the most perfect obedience to every thing bearing the form of legal authority. Don't question it even if it be not exactly legal. I did not question the legality of the government proclamation when I called upon the people to obey it, and I call upon you again to obey every thing that has the form of legal authority, for resistance is not right until legal authority is done away with, and the iron and red hand of power is raised against the people (hear). I tell the people throughout Ireland to obey every thing that looks like legal authority; yield, give way, let the legal authority exert itself, but so long as it calls itself legal by name, so long, if the people wish for safety, and, above all, for the repeal of the union, let them obey it. (Cries of, 'we will.') Yes, you will; that is an answer to me for all Ireland. [A voice—'And for England too.'] I like the good people in England very well, but let the English take care of themselves, and leave the Irish to take care of Ireland (cheers). It is perfectly manifest that repeal is coming, we must have the repeal

(cheers). My only condition is that you will not put yourselves in the power of our enemies; and if you obey every thing that has the form of law, the shape of law, or the pretence of law—if you do that you may set them at defiance. I tell you to have confidence in me. (Cries of, 'we have.') I may be sneered at for avowing it, but I say I deserve your confidence. (Cheers, and cries of 'hear, hear).' I think of you in my waking moments, and even in my dreams there is mixed up an anxiety for your safety (cheers). I want to carry the repeal of the union without one drop of blood; without one crime; without disturbing the social state or social order. I want to carry it in such a way that I can face my Redeemer at the moment of my account, and have no sin upon me to answer for from the advice I offer in conducting the Irish people (cheers). I tell you that even were I to perish for it, obey the law, and the union will be repealed (cheers). I send that throughout Ireland. What I say here will pass through Ireland, even by this evening's newspapers, for I want in every part of Ireland to quiet the excitement, to put down the anxiety, to take away, to soothe and mitigate their feelings of just indignation at the manner in which the government desires to treat the people of Ireland at the present moment. Having enforced my obedience to the law, I next proclaim my thorough conviction that the conduct of the government was calculated in the highest degree to produce the massacre of innocent people. (The hon. and learned gentleman's observations upon the proclamation were then read by the witness, and his proofs of the claims of that document to the designation he had given it of "fudgeography," created roars of laughter in the court, as they had done in the meeting to which they were addressed). I give notice of a plan, that on a certain day yet to be appointed, every parish in Ireland shall meet to seek the restoration of their native legislature. Before the next sitting of parliament it will be necessary to hold two of these simultaneous parochial meetings of universal Ireland (cheers.) The first for the due exposition of their grievances and the drawing up of the petitions to the imperial parliament. The second to have these petitions adopted and signed man by man. These meetings will take place after mass, and the necessary business will be transacted in the little yards or enclosures attached to the chapel. I want to know how they will prevent our meeting to petition simultaneously throughout Ireland, although they may prevent our meeting in multitudes. To arrange this was one of my reasons for giving up monster meetings; but I have still something more to work out. I shall also carry into operation the plan of our arbitration courts universally. In this I believe the proclamation will give us no small help. Obey the law, and I promise you security and liberty. Europe and the world shall know our grievances and our virtues. They shall know our determination, our full and fixed resolution, never to be guilty of a crime—never to commit an offence—never to stain our cause by the shedding of one drop of human blood—and never to violate a single ordinance of God. People of Ireland, be not then hasty—be not impatient—proceed as you have hitherto done, coolly, and quietly, and cautiously. Endeavour to bring to your side everything that is good and virtuous, and allow no man to stand amongst you who violates the law of God, or who commits an offence against the laws of man. Stand together patiently, but firmly; love one another, and encourage all to entertain an ardent love of liberty, and, above all, maintain a determination never to give up your efforts until your great object is attained. I have to express my delight at the conduct of the people yesterday. They were good humoured and attentive to our instructions. I have also to express my admiration at the exemplary conduct of the soldiery—nothing could be more proper than their behaviour; but nothing would be more cruel than to keep the poor fellows standing together all day for nothing, and then there was the pride and pomp of the lord lieutenant going to review the army. Hurrah then for old Ireland and repeal."

Mr. Hatchell—Were you in Dublin any time after the Clontarf meeting? I was for four or five days.

Mr. Hatchell—Perhaps you were there? Yes, I was there.

Mr. Hatchell—What were the directions you received with respect to the attendance at these meetings—were you to attend all the meetings? I was to attend the meetings at the Corn Exchange, and the monster meetings.

Mr. Hatchell—Were you aware of the proclamation being issued to suppress the Clontarf meeting? Yes, I was aware of it.

Mr. Hatchell—Did you receive any orders to attend there? I received no particular orders to attend; I went from curiosity.

Mr. Hatchell—Did you report what occurred there? No, I had nothing to report; I saw nothing there but troops.

Mr. Hatchell—Do you recollect anything occurring at a meeting of the association, previous to the Clontarf meeting, whilst discussing the preparations for that meeting? No.

Have you any note that Mr. O'Connell mentioned an application from some Protestant clergymen in respect to the propriety of conducting the procession so as not to interrupt divine service? I do not think I have any such note.

Mr. Hatchell—I believe that took place at the corporation? I was not at the corporation.

Mr. Hatchell—You stated that when you came up to Dublin, after the meeting at Mullaghmast, you asked Mr. Ray for some documents relative to that meeting; what did Mr. Ray say to you? He said he was not the secretary to the Mullaghmast meeting, or he would give them.

Mr. Hatchell—You have stated the names of several persons who attended at the adjourned meeting at the Corn Exchange. Have you not proved a speech as delivered by Mr. Steele there? I have.

Mr. Hatchell concluded his cross-examination, and it was resumed by Mr. Moore, Q.C., for another of the traversers.

CROSS-EXAMINED BY MR. MOORE.

Direct your attention to the meeting of the Corn Exchange, on the 3d of October. Did you see Mr. Tyrrell there? I did.

Mr. Moore—Were you acquainted with his person before that? I never saw him before that day.

Mr. Moore—What time did you enter the meeting? I went there about 12 o'clock, and remained till half-past four or five.

Mr. Moore—Was it a very considerable meeting? No, it was not; the place was not very large.

Mr. Moore—Well, was not the meeting fully attended? There were 300 or 400 persons present.

Mr. Moore—Were there many speeches delivered? Not a great number.

Mr. Moore—Did not several persons speak there that day who are not now on their trial? Yes; I believe there were speeches made there by persons who are not now on trial.

Mr. Moore concluded his cross-examination, and Mr. M'Donogh resumed it on behalf of Mr. Barrett.

CROSS-EXAMINED BY MR. M'DONOGH.

Mr. M'Donogh—Inform the court and jury what

was the toast Mr. Barrett spoke to at the Mullaghmast dinner?

The witness considered for a short time, and then replied, "The People."

Mr. M'Donogh—Look to your note of the meeting held on the 9th of October in Abbey-street?

Witness—I have got it.

Mr. M'Donogh—Enumerate the names of the traversers who were present at that meeting? John O'Connell, D. O'Connell, Mr. Steele, the Rev. Mr. Tyrrell, Dr. Gray, Mr. Duffy, and Mr. Ray.

Mr. M'Donogh—You have not named Mr. Barrett—was he there? I made a mistake about him on a former occasion—he was not present.

Mr. M'Donogh—Then, I presume, he did not speak there? He did not.

Mr. M'Donogh—When you were under examination by the Solicitor-General he asked you nothing about the dinner at the Rotundo—was Mr. Barrett there? Mr. Barrett was not there either. I mistook somebody else for him.

Mr. M'Donogh—I think you stated you took the earliest opportunity of correcting your mistake? I did.

When was it? At the house of Judge Burton.

Were you at the house of Judge Burton at the time the recognizances were entered into, and did you then swear informations? I saw Mr. Barrett there; I did not swear my information on that but on a prior occasion; I swore an affidavit that day; it was an amended affidavit.

Do I understand you to say you amended the mistake with reference to Mr. Barrett by affidavit. I did not.

Were you present on the occasion when the recognizance to bail was subscribed by Mr. Barrett? Yes, I then amended the mistake; I mentioned it to Mr. Rae and Mr. Kemmis.

Were they attending for the crown? Yes, Mr. Rae is conducting clerk to Mr. Kemmis.

Did you apprise them of the mistake with respect to Mr. Barrett? I mentioned to them I had a doubt about having been correct in stating Mr. Barrett was at the meeting.

When was this? On leaving Judge Burton's house.

What did Mr. Kemmis say? I can't recollect what Mr. Kemmis said.

Where was this? In Kildare-street.

Before you reached Mr. Kemmis's house? Yes.

Can you not recollect what Mr. Kemmis said on the way? He made no observation.

Then it was left as it was? I mentioned it to Mr. Rae before leaving Judge Burton's house.

When? On leaving the room, in the passage.

Was Mr. Barrett then in the house? He was.

What did you say? "I was mistaken in regard to Mr. Barrett; I had a doubt that he was at the Rotundo, or at the meeting at Calvert's theatre."

What did Mr. Rae say? I do not recollect what he said.

Did you return to have the error corrected? I did not take any steps further; I thought it enough to inform them of it.

Then it was the mistake as to Mr. Tierney that was corrected by affidavit? Yes. I did not correct the mistake as to Mr. Barrett; I merely mentioned it.

Did you make that affidavit on the same day with your original depositions? No; I corrected the mistake as to Mr. Tierney the day the parties attended at the house of Judge Burton.

Then you called attention to the mistake with respect to Mr. Barrett on that occasion? On that occasion.

CROSS-EXAMINED BY MR. WHITESIDE, Q.C.

When did you first see the traverser, Mr. Duffy? I saw him at the meeting at Calvert's theatre.

Did he speak there? He did.

Was it there he made the eloquent speech, "I beg to hand in —— pounds for ——?" (laughter.) He handed in some money.

Had you a distant view of the meeting? The place was dusky.

A dark, dusky affair—perhaps, now, you could not distinctly see the platform? I saw Mr. Duffy.

You reported fully and faithfully the meeting at Mullaghmast? I did, to the best of my ability.

Now, you have seen large meetings before? I have.

Do you recollect the immense meeting which took place some years ago in London—I allude to that which Dr. Wade headed in his robes, and a small body of 150,000 people who paid a morning visit to Lord Melbourne in Downing-street? Did you see that meeting? I was in Parliament-street, and saw Dr. Wade in his robes. I should say there was more than a hundred thousand persons in that procession; perhaps two hundred thousand.

Then they really do these "monster" things in England as well as poor Ireland? I never saw so large a body of men as was assembled on that occasion.

Mr. Whiteside—Well, I'm glad to hear you admit this.

Do you attend the debates in the house of commons? Sometimes.

Now, whether were the Irish or English multitudes best behaved—there was no crushing, you know? The people were exceedingly well behaved at Mullaghmast.

In the house of commons there are a number of ill-mannered gentlemen, you know, who keep bad hours (loud laughter); now, as I know you are a man of candour, don't you give the preference for propriety of behaviour to the Irish people? They were very well behaved when I saw them.

Did you ever hear in the house gentlemen crowing and braying, and making other such extraordinary noises, as well as coughing? I did.

Now, did you ever hear anything like that at any meeting of Irishmen you attended? No, indeed.

Then you must give the palm of behaviour to the Irish people over the members of the legislature? (Continued laughter.) [The witness did not answer this question.]

Who did you get the letter of introduction to the Attorney-General from? Mr. Gurney.

What is the date of the meeting at Calvert's. I think 3d October—I thought it was the 9th.

RE-EXAMINED BY THE SOLICITOR-GENERAL.

I saw Mr. Ray at the meeting and asked him for the documents; he said he was not the secretary of the meeting; I applied to him in his character of secretary to the repeal association; he said he was not the secretary of the Mullaghmast meeting; I saw Mr. Barrett at the Mullaghmast meeting; I saw him afterwards when I went to Judge Burton's to swear my amended affidavit with respect to the Christian name of the Rev. Mr. Tierney; I did not expect to see Mr. Barrett there; I knew him to be the person I saw at Mullaghmast.

The Solicitor-General offered to read the address to which the speech of Mr. O'Connell at Calvert's theatre, on the 9th, was an answer.

Mr. Hatchell objected, and submitted that the crown had no right to go back to the meetings again with this witness. If it was necessary, it ought to have been produced on the direct examination.

The Chief Justice said he did not see any objection to the Solicitor-General reading the address in answer to the speech.

The witness then proceeded to read the address of

the members and wardens of the repeal association of Manchester to Mr. O'Connell, presented on the 9th of October.

After the reading of the address was concluded, the witness was permitted to retire—his examination having occupied the court from its sitting to a quarter past five o'clock.

EXAMINATION OF MR. FLEMING MATHIAS LATHAM.

Examined by Mr. Bennett, Q.C.—I know the gentleman who gave evidence last; I came over to Ireland with him for the purpose of being his assistant; I was present at the meeting at Mullaghmast; I have been engaged in taking notes for the last ten years; I transcribed Mr. Hughes's notes from his dictation; that was a very long time after the meeting at Mullaghmast; Hughes took the notes in short-hand and read them to me, and I transcribed them in long-hand; I know Mr. O'Connell; I have seen him in London; I took notes at the meeting for my own amusement, but not full notes; my sole object was to assist Mr. Hughes; he is a particular friend of mine, and I wished to come over to Ireland and see the country; I copied some resolutions at the banquet which were thrown upon the table to the best of my belief by Mr. Ray, but I am not certain that it was by Mr. Ray; I attended a meeting of the association on the Monday following the Mullaghmast meeting; that was on the 2d of October; I was not present at the association on the 3d of October; Mr. Hughes had obtained two tickets of admission, one of which I got; I saw Mr. Hughes get those tickets from a person who I think was Mr. Ray.

CROSS-EXAMINED BY MR. FITZGIBBON.

You say you copied resolutions that were thrown upon the table? I did.

Were those the resolutions or papers that had been read as resolutions at the dinner? I cannot positively swear to the exact words, but they were the same resolutions in substance.

What became of those resolutions? They went round the table amongst the reporters, and I saw no more of them.

Did you see the newspapers in which these resolutions were published? I did.

Did not those newspapers contain correct accounts——

Mr. Bennett objected to that question.

Mr. Fitzgibbon—Did you not read the newspapers afterwards?

The Attorney-General—I object to this line of examination. Mr. Fitzgibbon may identify any newspapers, and put them in in evidence.

Mr. Fitzgibbon—I think the trial, my lord, will be long enough without adopting that course. I, therefore, withdraw the question.

CROSS-EXAMINED BY MR. MOORE.

I understood you to say that it was Mr. Ray who gave the tickets of admission to the association, and Mr. Hughes knows that it was Mr. Ray? Certainly he did. He must have known him, as he had become acquainted with him at Mullaghmast.

Chief Justice—Are you going to call another witness? I am not going to interfere with you, but merely wish to ask if you are going to call another witness?

Solicitor-General—Yes, my lord.

EXAMINATION OF MR. CHARLES ROSS.

Charles Ross sworn and examined by Mr. Sergeant Warren—Of what country are you a native? Of England.

What part of England do you reside in? In London.

Judge Crampton requested witness would speak in a louder tone.

Sergeant Warren requested he would speak sufficiently loud to be heard by the jury, and then proceeded with his examination.

You reside in London; what is your occupation? I am a newspaper reporter.

Are you a short-hand writer? Yes.

How long have you been in the habit of reporting for newspapers? I cannot say exactly; but upwards of twenty years.

When did you first come to this country? At the end of August.

Were you never in this country before August last? Yes.

When did you first come? In July.

In July last? I think it was in July last, but I am not certain.

If you have any memorandum to refresh your recollection you can look at it? I have not; I think it was in June; it was the time of the Donnybrook meeting; it was the day before the Donnybrook meeting.

The Donnybrook meeting was the 3d of July; you came here the day before the meeting? Yes, the day before that meeting; I (looking at a paper) see my own handwriting; it was the 3d of July.

Did you come here of your own accord, or was it suggested to you to come? It was.

Was it suggested to you on the part of the government? It was.

And you came over here the day before the Donnybrook meeting? I did.

What was the object for which you came over here? To take notes of Mr. O'Connell's speech at that meeting.

Did you attend the meeting at Donnybrook? I did.

Have you got the notes of Mr. O'Connell's speech? No.

That is, you have not got the note you took of the speech? I have not.

What became of that note? I cannot tell what became of it. I had it about a fortnight; from it I wrote this transcript the day after the meeting.

Did you take a copy of the note or transcript from your original note? I did.

With respect to the original, state what became of it? I carried it with me to London, and kept it in a drawer about a fortnight. I then recollect taking it and putting it in a cover with other papers, but from that time I thought nothing about it. I did not think anything would arise about it. I fancy that one of the children got hold of it.

Mr. Henn—Don't *fancy* anything about it.

Sergeant Warren—Did you make a search any place for it? I did.

Where you originally placed it, did you search for it? Yes, and in other places.

Have you the transcript of the note? Yes; it was very correct—I took great pains with it.

When did you take the transcript of your original note? The next day.

You then attended the meeting, to report Mr. O'Connell's speech? I attended the meeting also for a newspaper. I would like to explain, for I was subject to some remarks, and I took no notice of them, reserving myself for this place.

Mr. Henn—Not now, sir, if you please.

Had you a connection with any other person? No.

Had you previously formed a connection with any other newspaper? I was connected with a newspaper then, and when the government applied to me to come——

Mr. Henn—Sir, this is not to be done in the direct examination.

Sergeant Warren—You were connected with a newspaper when you were applied to by government? Yes.

When you were here, did you make any report to that newspaper? I did assist——

Counsel for the traverser again objected to the witness then going into any explanation.

Sergeant Warren—Have you a copy of the notes of Mr. O'Connell's speech? Yes.

Do you recollect, or can you state whether, in the outset of that speech, he spoke of the physical force of the people surrounding him? He did.

Then state the language? Am I to read the part that relates to that, or shall I read through the speech?

Sergeant Warren—If they require it at the other side.

The witness then proceeded to read a report of the speech delivered by Mr. O'Connell at the Donnybrook meeting. There were two blanks in the speech, and he stated he left those blanks because he had not been able to hear the sentences delivered at those particular points of his address by the speaker.

Sergeant Warren—Can you form any particular idea of the numbers assembled on that occasion? I did form an opinion.

What was your estimate of the number? I thought about 40,000.

Where were you placed? On the scaffold (laughter); on the hustings.

Were you in the same place with Mr. O'Connell? Yes.

Did you see any bands accompanying the multitude there? Yes.

Was there any procession independent of the bands? The people came with the bands in procession.

Was there anything else peculiar in the procession that struck you? The great number of flags.

Do you recollect any inscriptions or mottoes on the flags? No.

Did you see Mr. O'Connell as he approached the meeting? Yes.

Was there anything remarkable carried before him?—Not that I observed; there was great confusion; I had to descend from the stool, or place on which I was standing, and those around were above me.

How long was the meeting assembled there that day? I think it was not more than two hours from the beginning of the speeching until the conclusion.

Did you remain in Ireland after that? I remained the next day, and I think I went away the day after that; I am not sure that I remained another day.

When did you return again to Ireland? At the end of August last.

Were you acquainted with any of the traversers, or did you see any of them at that meeting around Mr. O'Connell? I saw Mr. John O'Connell, but I don't recollect that I saw any other.

Did you attend any meeting of the association before you left here in the month of July? No.

What day in September did you return? It was in the latter end of August.

Did you attend any meeting of the association after your return? I did.

Do you recollect the day that you first attended a meeting of the association? I do; I think it was the 27th—it was the 28th of August. That was the first meeting I attended.

Do you recollect who was in the chair on the 28th of August? No—I have not that in my notes; there was a great crowd; I did not get in until after the chairman had been appointed.

Did you see any of the traversers there on that day? Yes.

Who were there? Mr. John O'Connell is the first name I had, and also Mr. O'Connell; but I saw most of the traversers there on every day except Mr. Barrett and the Rev. Mr. Tierney.

Name the persons you saw? I saw, every day I attended there, Mr. O'Connell, Mr. John O'Connell, Mr. Steele, and Dr. Gray; I have seen Mr. Duffy there not more than twice, I think.

Mr. Whiteside—You think; are you sure of the twice? I am sure of the twice.

Sergeant Warren—When you got in on the 28th of August, who was the secretary on that occasion? Mr. Ray.

Did you take a note of any speech of Mr. O'Connell on that occasion? Yes: I took a note of Mr. O'Connell's speech—he spoke very frequently.

Did you, at any of the meetings you attended, get any papers from Mr. Ray, as secretary? Yes.

Will you (handing witness a paper) look at that paper, and tell me when you did get it, and if you got it from Mr. Ray? does his name appear on it? On the 27th of September; there is another paper here.

I speak of the printed paper. Does any person's name appear in that printed paper? Mr. Ray's.

In what capacity did he give it to you? Mr. Ray always distributed those papers at the table.

When did you get the manifold paper from him? On the 27th of September.

On the same day. Hand them in to be marked. Look at those papers—did you ever see them before? Yes.

Was that in your possession before? It was.

From whom did you get it? From Mr. Ray.

What date was it? No, this printed one was given me by Dr. Gray; the date on which it was given is the 16th October.

Look to the other, the manifold paper? This manifold paper was given to me by Mr. Ray on the 16th October.

Sergeant Warren—Hand them in to be marked. Those are papers about the arbitration courts, arbitration notices. Look to those papers; had you them ever before? This I got from Mr. Ray.

Look at it and describe what it is; who is the writer of it? This is dated the 3rd of October. Am I to describe the paper.

State the date of it? It is a letter dated the 2nd October.

What name is subscribed to it? Patrick Skerrett, chairman of commissioners.

To whom is it directed? There is no address on it.

That is a duplicate of the paper handed in already respecting the Loughrea town commissioners. See to whom that is addressed at the bottom of the torn paper? To Mr. Ray, as secretary.

Was it he that handed you that? It was.

Now look at the other letter? The same date. This is addressed to Mr. Ray, and signed Edward Keary.

I wish to bring you to the meeting of the 4th September in the association, if you were there; look at your notes and see if you were at the meeting of the 4th September? Yes.

Have you any other document in your possession that you received from Mr. Ray at any of those meetings; we may as well dispose of them; do you recollect receiving any other document of the 13th September? I did not receive it from Mr. Ray; I did receive a document on the 13th September, but not from Mr. Ray; I received it in the copying-room from one of the clerks.

Were any of the traversers present? No, not at the time.

Did you receive any document in their presence? Yes, I got it in the room where Mr. Ray told me to go when I wanted documents; it is an address to the people of the British empire.

Chief Justice—As this is a new topic I think it is too late to go further. It is near half-past five o'clock.

Sergeant Warren—Just as the court please. We will hand in that document.

The document was accordingly handed in, and the court adjourned to ten next morning.*

FIFTH DAY.

FRIDAY, JANUARY 19.

The court sat at 10 o clock. The intense interest which prevailed on the former days was, if possible, increased. When the judges had taken their seats the case was proceeded with.

The jury having been called over, and having answered to their names,

Mr. Ross, whose evidence occupied a considerable portion of the day previous, was again called and his examination continued on the part of the crown by Sergeant Warren—He deposed that he was present at a meeting of the repeal association, which took place on the 28th of August; that meeting was attended by three of the traversers—Mr. O'Connell, Mr. John O'Connell, and Mr. Ray; witness has a note of Mr. O'Connell's speech on that occasion, in which he adverted to a plan which he had introduced at some previous meeting for the reconstruction of the Irish parliament. [He read the extract in question from Mr. O'Connell's speech.] Has not in his notes a copy of a letter read that day from Mallow, but thinks he has a detailed manuscript copy of it. This manuscript was written partly at the association, and partly from my notes.

Look and see if you have a letter dated from Mallow, and purporting to be written by Richard Barnett Barry, which was read at that meeting?

Witness (reading from his short-hand notes)—Mr. O'Connell observed, on reading a letter containing subscriptions that alluded to the Queen's speech, "that the speech from the throne was merely a ministerial production, and deserved to be characterised, as it was by the *Morning Chronicle*, as the essence of stupidity. He then adverted to the plan he proposed at the last meeting for the constitution of the Irish parliament, and he said he would take up as the basis of it the census returns of 1831, which could not be supposed to have been framed for any purpose connected with the Repeal of the Union. He was disposed to adhere to that census, except where it was mentioned that some error existed in the details. He had received a letter from Mallow——"

Mr. Sergeant Warren—That's what I want. Where is that letter? I have not a copy of it; it is not here.

Sergeant Warren—Well, we cannot help it. What did Mr. O'Connell say in reference to that letter? He said that he thought that a fair case was made out for giving Mallow two members, and he proposed that the letter should be referred to a committee, to inquire whether any change should be made in the plan with reference to that town, which was agreed to after some further observations.

Mr. Henn—Have you any notes of what you call further observations? I have read them.

Witness continued to read from his notes the speech of Mr. O'Connell, the material parts of which are as follow: "There are many candidates for the preservative association. Gentlemen of the first fortune and of the highest rank are daily proposing to me that they should be named as candidates for it; there will be no difficulty whatever in getting 100 gentlemen. I am speaking entirely by anticipation. We must keep within the letter and spirit of the law. I am not at present prepared, nor do I think it necessary, to open the scheme of the preservative association; but I am working out my plan for the constitution of the Irish House of Commons, when it shall be established by act of parliament, or by the exercise of the prerogative of the crown. I am working slowly but surely. I am working for the Irish nation, and want to satisfy them with my progress. I will give way if any body will show me that I have taken a false step—the way to avoid it is to proceed gradually, and therefore I will confine myself to the appointment of repeal wardens."

Were you present at the association on the 29th of August, the following day? Yes.

Now will you look at your notes, and say how many of the traversers were present? I have none but Mr. O'Connell on my notes.

Did Mr. O'Connell upon that occasion say anything on that part of the Queen's speech relative to her determination to maintain the union between England and Ireland? He said, "It is now my duty ——"

Mr. Henn—Is that the beginning of his speech? It is.

Mr. Henn—Did you take full notes of what occurred at that meeting, and the one before it? I took a full note of various matters that occurred, and which I thought material.

Mr. Henn—Where is that note? I have not a full note of all that occurred. If you will allow me I will explain.

Mr. Henn—I would rather you would answer me. Did you take full notes of such portions as you thought material? Yes.

Have you those notes here? Yes.

Those are the short-hand notes? Yes.

Mr. Henn (addressing the court)—I respectfully submit that he is not at liberty to use those notes.

Sergeant Warren—Mr. Henn, my lord, is under a misconception.

Mr. Henn—Pardon me, I am not.

Mr. Justice Crampton—What is the exact effect of what the witness has said?

Mr. Henn—He said he did not take full notes of all that passed at that meeting, but only such portions as appeared to him to be material. I submit that he is not to be a judge of materiality, and that he must have the whole proceedings on his notes in order to give evidence on any part.

Sergeant Warren—I will leave it to the court.

Chief Justice—If the witness swears that he gives the substance of what was so spoken, according to the best of his skill and judgment, the court will admit that evidence, otherwise no note could be admissible that the witness was not able to swear was *literatim et verbatim*.

Mr. Henn—We don't require *literatim et verbatim*; but we require the substance of all that passed, and without the whole he is not entitled to give evidence of any part.

Sergeant Warren—That is certainly the most novel position I ever heard asserted.

Mr. Justice Burton—Suppose that no note had been taken at all, but that a witness came to give evidence of certain things he heard said, would not that be admissible, although he might not recollect every word?

Mr. Justice Crampton—Aye, or every sentence.

Mr. Justice Burton—If the witness was present at a time when particular expressions were made use of by particular persons, surely that would still be evidence.

Mr. Henn—That would be a very different thing; for in that case we might examine his memory; but if a person goes deputed, as the witness announced he was, by the government, and takes notes, he ought to be able to produce them—not garbled extracts. We are entitled to the whole of what passed at that meeting, and not to part only.

* Mr. Sugden, the private secretary of the Lord Chancellor, occupied during a portion of the day a position in the passage from the judge's chamber to the bench. He was, apparently, an attentive observer of the proceedings.

Sergeant Warren—The witness has said that he took a full note.

Mr. Henn—He has said that he took notes of such portions as he thought material.

Sergeant Warren (to witness)—Have you taken a note, to the best of your skill and judgment, of Mr. O'Connell's speech on that occasion? I have; I believe I have the entire; I can always tell when I have taken a thing consecutively, and when I have taken only the heads of the subject; the government accepted my services on one condition.

Mr. Henn—Now, don't make a speech. I object, my lord, to this witness going on. He swears he did not take all of the speech.

Sergeant Warren—If I do not mistake, he swore he had taken a full note.

Mr. Henn—Pardon me——

Mr. O'Connell—Let Sergeant Warren ask the question again.

Sergeant Warren (to witness)—Have you taken the entire of that speech? I know I have, because it's all consecutive.

Mr. Henn—All consecutive!

Witness—I can always tell when I have taken only a branch of a speech.

Witness took up a bundle of notes.

Mr. Henn—Now, tell me are those full notes, or loose abstracts in them? I cannot depose to a fact of which I know nothing (roars of laughter).

The witness, in reply to Sergeant Warren, said—I have not as yet seen my notes at all, so that there may be a blank in them, or there may not be a blank in them.

Sergeant Warren—Look at your note book, and say if you have taken an entire note of Mr. O'Connell's speech on that occasion or not? (The witness looked at his note book for some time, and said)—I don't think I have a full note of all that occurred that day; but I have taken such a note as enables me to give a description of it.

Sergeant Warren—I submit, my lord, we are entitled to have this evidence, and it will be then for the jury to say how they will receive it.

Judge Perrin—Did you observe the last answer the witness has given? He says he did not take a full note of the speech, but such a note as would enable him to give a description.

Mr. Henn—And I submit that is not evidence, because he cannot say anything except what is in his notes, and he admits he did not take a full note of the speech.

Chief Justice—Let us take down his answer corrected, and see what it is. What is your answer Mr. Ross? I have taken a full note of all that I considered important and material in that speech; for instance, I will give you, my lords, an example of the sort of notes I took. When I came to a passage in the speech which I considered material I took it down; for instance, there is a passage in the speech of Mr. O'Connell, when speaking of the union, where he states that trade and manufactures had fallen off greatly in consequence of the blighting effects of the union. I considered that material and took it down.

Counsel—The falling of trade and manufacture is rather material certainly for this country.

Judge Crampton—If I understood you correctly your answer is this—you took a portion, or part, of the speech *verbatim*, and other portions of it you made a summary of? Yes, my lord, that's it exactly.

Judge Crampton—Then, you can't give the words of the portion of what I call the summary part of the speech, can you? I frankly confess I cannot; nor do I pretend to do so.

Chief Justice—In the summary which you took down, I suppose you put down a catch-word, did you? I will give an explanation of the manner in which I took the notes—when Mr. O'Connell came to particular passages I took up the words he uttered—for instance, he says here—"There is another bill of indictment against the government," and he (Mr. O'Connell) also read a letter from Smith O'Brien. He (Mr. O'Connell) said the Welch committed crimes and they were favoured with an inquiry; the Irish committed no crimes, and were, on that account, denied their rights.

Chief Justice—Well, sir? Those are what I call heads, or the summary of two or three sentences, but I did not take the precise words uttered on the occasion.

Chief Justice—Will you take on yourself to swear, to the best of your skill and judgment, that what you did take down contains the substance of what was spoken on that occasion? It contains the substance of what was spoken, certainly.

Mr. Henn—If I understand you right you have taken a *verbatim* note of what *you* thought to be material in the speech, and a summary of the remainder of the proceedings. Now, will you take on yourself to swear, that in the summary you have taken you have correctly taken the substance of what was said? Why, the topics (the end of the sentence was lost as the witness spoke so low).

Mr. O'Connell—Raise your voice, sir; the end of your sentences is always lost, for you let your voice fall so short, and so low, that no person can hear you.

Mr. Henn—I want to know from you, Mr. Ross, if you pretend to swear that you have correctly taken the substance of what Mr. O'Connell said in the discussion of the topics on which he spoke? I have not taken a full note of the substance of the comments he made, but I took down the heads.

Mr. Henn—Then, you did not take a full note of the comments he made? No, I did not.

Mr. Henn—Then, can you supply from memory the substance of the comments which he made use of? Yes, I would be enabled to do so on referring to my notes.

Mr. Henn—Did you not swear, sir, five minutes ago that you could not give the comments? No, I did not.

Mr. Henn—You swore you could not depose to the substance of the comments most assuredly? In general I can swear to the substance, but with reference to passages of the comments I do not pretend to give the precise words that were used by Mr. O'Connell.

The Solicitor-General said there was a preliminary question to be settled, and on which he was entitled to the judgment of the court, before the discussion went further. If the witness said he could give the substance of the comments, or the language of Mr. O'Connell on that occasion, they had a right to get it from him by reference to his book and memory. If the witness was not able to depose to all that was said on that occasion, from beginning to end, it ought not to be contended that he could not state such portions of the speech as he could depose to fully, and to give the portion of which he took the substance. It was a new proposition to say so, and one that he ventured to assert was not to be found in any law book. They had a right to get from Mr. Ross any portion of what Mr. O'Connell did say, and then let the gentlemen on the other side get the remainder from him if they pleased, and not presume that they (the crown) could not give what they really were entitled to, and could give in evidence.

Mr. Henn—Why, strictly speaking, you could not use the notes taken by the witness at all, except to refresh his memory; if there was a written publication given in evidence they might read a portion of it, and it would be then for us to use the remainder of it; but when a witness takes a partial note of

proceedings, he was not entitled to use it. By the strict rule the witness could examine his notes to refresh his memory, and he must rely on that then.

Judge Crampton—I think you confine your objection to the short summary taken of the speech by the witness, or do you extend it to the words that he is really able to swear to?

Mr. Henn—I object to his entire evidence, unless he has taken a full note of all that passed: and I therefore submit his evidence cannot be received.

Judge Crampton—I understand; that is quite sufficient.

Chief Justice—We will admit the evidence, considering that we are acting in conformity with the well-known principles of the law.

Mr. Warren—Proceed and state as fully as you can, from your notes, the speech of Mr. O'Connell; and when you come to the portion which you have not taken fully, or where your notes are imperfect, state so. The witness proceeded to read the speech of Mr. O'Connell for a few minutes, and then addressing the court, said, "Now, my lords, I have come to the point at which my notes are not so full—shall I read it?"

Mr. Justice Crampton—Do you object, Mr. Henn?

Mr. Henn—If the witness can give the substance and meaning we do not, my lord. We call upon him to go on.

The witness then proceeded to read—"The union was not a compact or agreement. It is not valid. But it is said that although it was carried by the foulest and most atrocious means that it has worked well for Ireland. I deny that. From the declaration of independence in the year 1782, up to the year 1799, there never was a country progressed more rapidly, and I have the authority of Lord Clare to that effect. Before emancipation no man spoke of repeal but myself; I always looked upon the relief bill only as the means to an end—but a step to repeal; and lest that should happen which has since happened, namely, that I should be accused of suppressing from the people of England my intention ultimately to seek for it, I always declared my determination. In my address to the electors of Clare, in the year 1828, a contest which was of such importance in effecting Catholic emancipation, I distinctly put it forward as an inducement to the electors to vote for me, and I promised that if I obtained a seat in parliament I would bring the measure before the house. I have now, for the last time, vindicated myself from the charge of concealing my intention, and I will read an extract from Mr. O'Driscoll's book, dedicated to the Marquis of Lansdowne." The witness then said he had not taken a note of the extract.

Mr. Henn—Are you able, from memory, to give the substance of that extract? I am not. Witness then proceeded to read the remainder of Mr. O'Connell's speech, where he stated, that from the year 1800 to 1828, the British constitution was only in existence in Ireland during the interval of five years, and stated Mr. O'Connell referred to various acts of parliament passed during that time.

Mr. Henn—Are you able, from memory, to supply the substance of what was said? No.

Mr. Henn—I understood you to say you could? Mr. O'Connell quoted several acts.

Sergeant Warren, for the crown, submitted these interruptions ought not to be allowed.

Witness proceeded to read the portion of Mr. O'Connell's speech, where he relied on the vast falling off in the trade of Ireland. "There were more cattle sold at Ballinasloe before the Union than since. There was not one head of cattle exported then for every 800 exported now. The Irish people consumed them, and did not export food. He took the trouble to look over Lord Brougham's speeches, and Mr. O'Connell referred to several passages. Also the report of the Poor Law Commissioners—number of destitute poor in Ireland—comparative number of Protestants and Roman Catholics—that the Welch, who committed crime, were much better treated than the Irish, who committed none." He proceeded to give a summary of the conduct of ministers during the last session of parliament, which closed with a speech of an extraordinary nature, and said "he was greatly pleased with the *Morning Chronicle*, which he was not generally in the habit of being from the way in which it despatched the speech. It stated the speech was the very essence of stupidity or impudence, he forgot which; for his part, he thought it contained both. He would not banish the impudence from the stupidity, or the stupidity from the impudence, but rather have both combined. He denied any intention of speaking disparagingly of the Queen. He separated her acts from those of her ministers. Kings condescended to scold and queens to speak harshly of him. He called a ministerial speech base, bloody, and brutal, and he never retracted what he had said. The present was a ministerial speech. They could not help giving it utterance. But he blamed the ministers for not having advised the speech to be given by commission, and not have compelled her Majesty to speak it. But she could have expected no better from them. At the very commencement of her reign the vilest insinuations issued from their villanous press. A dropsical complaint of one of the ladies of her court gave rise to statements which outraged every feeling dear to a child or woman, and which he would not venture to repeat in the presence he was in. Did they not inflame the mind of the English public, until a miscreant thought he would be doing a good act to shoot the Queen? He loved the Queen, the object of his kindliest affections, and, consistently with his station, felt towards her the tenderness of a parent. He thought it was cruel towards the people of Ireland to disturb the affection they entertained, by making the Queen utter this speech, and make them believe they never trusted the English, but were deceived. If they had given the speech by commission he would not have blamed them; but all should recollect this was not the speech of the Queen, but the ministers, but there was nothing in the speech to retard—on the contrary, it should rather stimulate their exertions. They had now the additional motive to rescue their beloved Queen from the hands of those ministers. He believed if it had not pleased God to give her a family, her life was not safe among them. The Queen's family had this peculiar merit, that they stopped the irregular ambition of one who it was frightful to think would come to the throne. Nature has placed their innocence as a barrier against the worst calamity that could be inflicted on the nation. Oh! thank heaven, there is that security against the worst evil that could possibly happen. We have a double motive for our exertions—to rescue the Queen from those miscreants, and our country from tyranny. We have the two highest motives that can give energy to human action, love of country and allegiance to a woman. Rally, then, with me, and hurrah for the Queen. I now come to the ministers speech, and Peel, Wellington, Stanley, and Graham. What a scene for the conqueror of Waterloo, with the Queen in his hands, to make such a speech to parliament. She is made to whine out something half-piteous and half-imploring about the zeal of her subjects. The Queen is made to say, I have done something for the good of the church, about being unable to do more, and leaving the rest to the zeal of her subjects. The Duke of Wellington, if poor Napoleon had been alive to witness his defeat (then followed some references to the church

of Scotland and the disturbances in Wales). It is my opinion that the Legislative Union is inconsistent with any good object whatever—that instead of being essential to the strength and stability of the empire, it tends to produce weakness and decay—that instead of being a bond of connection between the two countries, it is the very thing which puts the continued connection in jeopardy. Circumstanced as Ireland is, I am perfectly convinced that if the Union is not repealed by legal and constitutional means, and, above all, if it does not take place during my lifetime, the result will be a sanguinary struggle for perpetual separation, and God forbid that any unjustifiable means should be used! I do not say this is a natural or unavoidable result: all I say is, while I live I hope my countrymen will not despair. As long as I live, at least, I will struggle legitimately and constitutionally; and I bequeath to those who follow me their own course of proceeding. He concluded by a motion for a committee to prepare an address to be placed before the Queen and all her subjects."

Mr. Warren—Was the motion agreed to? Yes.

Have you taken a memorandum of any approbation or disapprobation of any part of that speech? No; I was present at a meeting of the association on the 4th of September; Mr. O'Connell, Mr. Ray, Mr. John O'Connell, and Mr. Steele, were present; Mr. O'Connell spoke at the meeting.

The witness then commenced reading his note of what Mr. O'Connell spoke on that occasion. He commenced by referring to the meeting which was to take place at Clontarf on the 8th of October, and to the prospects of success for the repeal. He then referred to the Queen's speech, and the effect which it produced on the Irish mind. "The ministers dared not to make that speech till the end of the session, when it could be exposed. A weak and miserable ministry was incapable of resorting to any other advice. He congratulated the people on the increase of the repeal feeling among them, and also on the symptoms that were apparent of a better temper among the high-flying 'Orangemen of the North.' He mentioned the surprise he felt at seeing a sensible letter with the name of Londonderry attached to it. He denied that the speech from the throne was the personal speech of the Sovereign—it was not a personal speech at all; it was no more the Queen's speech than it was his (Mr. O'C's.), and he was not very likely to pronounce a speech of that kind. The suggestion contained in that speech was grossly disloyal; it was disloyal to represent the Queen to the people of Ireland as hostile to their liberty." He then called attention to the letter in the *Morning Chronicle*, signed "One who Whistled at the Plough," from which he read extracts. He pointed out the injury done to the reform cause in England by the physical force doctrine of the Chartists, and warned the people strongly against violence of any kind. He said the resolution for the non-consumption of exciseable articles was not yet proposed; it was saved for a great emergency. He should shrink from nothing. He announced his intention of attending meetings at Loughrea and Connemara in the following week, where he would defy the spies and informers of England to produce confusion. He then proceeded to detail his plan of the management of the franchises of the Irish parliament. "He would arrange them in such a manner that if the Queen chose to issue writs for the assembling of the Irish parliament in six weeks, they might be directed at once to the respective boroughs. He had taken the population of the reform bill as the basis of his plan. He (Mr. O'Connell) was anxious that men of wealth and station should join them (the Repealers). The time was come when Ireland could no longer be governed for or by a faction. England had given them emancipation in 1829, but not equality. With respect to the law of landlord and tenant, it had been said by Chief Justice Pennefather that the nature and intent of the act of parliament were only in favour of the landlord to enforce his rights. The law never had the interest of the tenant in contemplation at all. These were the words of a Tory Lord Chief Justice" (laughter throughout the court).

Cross-examination resumed by Mr. Sergeant Warren—Did you attend the meeting at Loughrea? Yes.

State on what day that meeting took place. On September the 10th.

Who were present at that meeting? Mr. O'Connell, Mr. Steele, Dr. Gray, and Mr. Barrett.

Have you a note of Mr. O'Connell's speech at that meeting? I have.

Read it.

Mr. Henn, traverser's counsel—Is this a note you took yourself, and not a copy of another's report? Yes.

Mr. Sergeant Warren—Read it.

"Mr. O'Connell said he regretted that the state of the weather would compel him to narrow his expressions of gratitude to the smallest space. They all knew there was high authority for saying that it rained on the just as well as on the unjust. He would wish to give before them the outpourings of his heart at the splendid spectacle of that day. Connaught was doing well. He had around him that day enough of physical force to achieve the greatest revolution. But let them assemble peaceably and Ireland would be again a nation."

Sergeant Warren—Do you form an estimate of the numbers that attended the Loughrea meeting? Yes, I did.

Sergeant Warren—How many persons, or about how many were present, do you think? I would say about twelve thousand; I was present at a public dinner on the evening of the same day; if I said that Mr. Barrett was at the meeting, I said so inadvertently, and I took the first opportunity to correct my error; Mr. Barrett was at the dinner.

Sergeant Warren—State the names of such of the traversers as were at the dinner. Mr. O'Connell was there, and so too were Mr. Steele, Mr. Barrett, and Dr. Gray; I heard Mr. O'Connell speak at the dinner, and have a note of his speech on that occasion.

Sergeant Warren—Are you acquainted with the personal appearance of the traversers? Yes, I am.

Sergeant Warren—Point them out, if you please.

The witness turned round, and, after some hesitation, said, "I only see Mr. O'Connell, Dr. Gray, Mr. Ray, and Rev. Mr. Tierney."

Sergeant Warren—Look round and try if you can identify any more of them. Oh! yes, I see Mr. John O'Connell.

Sergeant Warren—The traversers ought to be together; this difficulty on the part of the witness arises, my lords, from the circumstance of the traversers not being all here.

Mr. Whiteside—I am rather inclined to think it results from the circumstance of their not having been all *there!* (laughter.) [The learned counsel alluded to Loughrea.]

Court—Do the counsel for the traversers admit that Mr. Duffy was at the Loughrea dinner?

Mr. Whiteside—I do not admit that Mr. Duffy was at any meeting, except, perhaps, an association meeting.

Mr. M'Donogh—I admit that Mr. Barrett was at the dinner, but not at the meeting.

Mr. O'Connell—The witness did not say he saw Barrett at the meeting; but he said he was at the dinner.

Mr. Fitzgibbon—Unless there be an attempt to dispute identity we will readily concede the fact of

any of the traversers having been at any meeting, which, in point of fact, they did really attend.

Sergeant Warren—You said you had a note of Mr. O'Connell's speech at the dinner at Loughrea, pray be so good as to read it.

[The witness here read from his note-book his note of Mr. O'Connell's speech on the occasion in question. The speech commenced with a denunciation of the Tories for having put into the mouth of the Sovereign a speech, in the sentiments of which she did not herself concur, for the paltry purpose of keeping themselves another year in office. He expressed a hope that what he uttered might reach the ears of her Majesty, and that she would learn that from the accession of her family to the throne, up to the present day, justice had never been done to this country.]

Witness—Then, my lords, Mr. O'Connell proceeded to denounce George the First, George the Second, George the Third, and George the Fourth; I have only a topical note of the proceedings just there, and, consequently, am unable to give his express words; I only know that he denounced them.

Sergeant Warren—Go on with the reading of your notes of Mr. O'Connell's speech.

The witness complied, and read his notes, the substance of which was, that the Irish people had ever been distinguished for their loyalty and allegiance to their Sovereign, and that they would never cease to be so distinguished, for that their loyalty was—

"True as the dial to the sun,
Although it be not shone upon."

That the government had commenced by threatening civil war upon the repealers, but that the people had not crouched to that threat, and that the menace, consequently, would not be repeated; that the government had spent a greater portion of the session in forging an arms' bill; and that he (Mr. O'Connell) would get his arms branded in perpetual proof of the insolence and tyranny of the Saxon; that the Irish people, if they were unanimous, and did not violate any law, must succeed in obtaining their liberties; and that they ought to humble themselves before Providence for the purpose of imploring that the virtue of perseverance might be vouchsafed to them, and that the wisdom might be granted to their leaders to conduct them in the paths of peace and tranquillity into the temple of genuine and rational liberty, which was founded upon religion and morality. "I tell the *Times* that those meetings are the safety-valves through which the boiling wrongs of the national soul" (witness remarks "I have lost the next word after soul, but I suppose it was evaporate") "into the certainty of success; they raise in them (the people) a divine hope that the days of the woes of Ireland will not last for ever." The witness continued at length to read the speech of Mr. O'Connell in nearly the same terms as previously published, until he came to the following passage:—"Ireland wants no monarchy."

Mr. O'Connell, who was sitting, as on the previous day, at the table, immediately under the witness's chair, here said, with the appearance of much astonishment, "No monarchy!" I would make Mr. O'Connell's meaning more clear if I were to write out another translation from my notes; but this is a literal translation of what he said. Mr. O'Connell did not mean to say that Ireland required no monarch, for he says afterwards, "To the Sovereign we are attached by the most dutiful allegiance."

This part of the witness's evidence and explanation were very confused, and rather in an under tone, so as to render it difficult in the gallery to catch his precise words.

Mr. Sergeant Warren—Turn to the meeting at the Corn Exchange on the 13th of September; look at your notes of that day's proceedings, and say which of the traversers were there? Am I to give you an answer founded on my own observation, or from what I find in my notes?

Mr. Sergeant Warren—You are not bound to omit any names, if, from your own knowledge, you can speak positively of persons having been present, although you do not find their name on your notes. Mr. O'Connell was there; his name is the only name on my notes; but I know Mr. John O'Connell and Mr. Ray were there.

Sergeant Warren—Refer to Mr. O'Connell's speech in presenting the draft of the address to the fellow-subjects of the crown in every part of the world. The witness then proceeded to read the speech, after which he said he had read several disjointed passages, among which were the following; "They say that the English judges are better than ours—I deny it." "Such a judgment as that of the English judges, respecting the Presbyterian marriages, never was given on this side of a hot place" (laughter).

When that speech was concluded what was done? Mr. O'Connell moved the adoption of an address to the inhabitants of all the countries subject to the British crown, and that that address be placarded wherever the British crown had power.

You mentioned yesterday that you had received a manifold copy of that address? I did.

Now read it.

The witness took up the manifold copy, and had read about six lines of it, when he was desired to read the printed copy of the address, as it would be more easily perused.

When the witness had read as far as the fifth article of the address, he appeared to be very weak, when

The Chief Justice said, this gentleman seems very much exhausted.

Witness—I will be better in a few moments, my lord.

Judge Crampton—Perhaps it would be better for the Clerk of the Crown to finish the reading of the address.

The address was then handed to the Clerk of the Crown, who concluded the reading of the document.

Here the court adjourned.

The direct examination of the witness was resumed after the court returned.

To Sergeant Warren—Was at the Clifden meeting; it took place on the 17th of September; some of the traversers (Mr. O'Connell and Mr. Steele) were present; does not remember any one else.

A Juror—Only the two?

Witness—Only the two; remembers Mr. Dillon Browne was there; heard him speak; reads his speech from his notes; he said the men of Connemara had acted bravely in rallying at this meeting; that if not so numerous as in other places, they were few, but brave. He wished Peel and Wellington were there to see their mountain cavalry; and he would be glad to know if the heavy dragoons could follow them through the mountains. They assembled that day to show their strength, not to violate the law; they were resolved not to sully their conscience at the will of any despot. What he had said of Mr. Darcy was wafted on the wings of the press to that gentleman.

Mr. Warren—Did you take a note of what Mr. O'Connell said on that occasion? Yes.

Mr. Warren—Will you read it? The witness then commenced reading Mr. O'Connell's speech at the meeting. He commenced by saying, that the present was the most transcendant meeting he had ever seen—that he was now making an experiment, and he wanted to know whether they were not as brave as the rest of Ireland—whether Connaught

was not as honest and as faithful as the other three provinces. (Cries of 'we are, we are.') Whether they did not hate Saxon tyranny as much as any other portion? (Cries of 'we do more so.') All he wanted was Ireland for the Irish, as France for the French, England for the English, and Scotland for the Scotch. The Irish were as brave, and more moral, than any other nation in the world. The battle of Ireland was to be a peaceable battle, and he would keep them out of danger. They should proceed in a constitutional way, but if he wanted them they would come again. He wanted that every person should pay his own clergyman; the Protestants could then pay what they liked for their own church, and the more they paid the better. The struggle for emancipation was one for the advantage of the rich, but repeal would bring physical prosperity to the people. They were to use no violence. He came to teach them another lesson from that—that peace, order, and obedience to the law, were the means by which they would wrest everything from their enemies. If they had the repeal prosperity would flow in upon them, and would they not give a shilling a-year for this object? Every sergeant paid a shilling to each recruit, to enlist and entrap him; but he did not want to entrap them, but he told them Ireland should be for the Irish. He again repeated that no violence was to be used. His motto was—"Whoever committed a crime gave strength to the enemy." He could not be doing anything that was bad when he had the support and countenance of the sainted clergy of the people, and their venerated archbishops. When they found him possessed of such support they did say that he must be doing some good. Then came the quotation—"The nations have fallen," &c.

Mr. Sergeant Warren—Were you at the dinner on that day? I was.

State to the jury who were the traversers present at that dinner. Mr. O'Connell, Mr. J. O'Connell, Dr. Gray, and Mr. Barrett.

Look at your notes? Oh, no, Mr. J. O'Connell was not present. I was thinking of Mullaghmast dinner, when Mr. J. O'Connell was in the chair.

Look to your notes of the Clifden meeting? There were present at the Clifden meeting, Mr. O'Connell, Mr. Steele, and Doctor Gray. I don't remember that there were any other of the traversers.

By a Juror—You said that Mr. Barrett was present? I was confounding this meeting with that of Mullaghmast. The only persons present at this (the Clifden) meeting were—Mr. O'Connell, Dr. Gray, and Mr. Steele. There were also present Mr. Daniel O'Connell, jun., and —— Ffrench.

Have you a note of Dr. Gray's speech on that occasion? Yes. Dr. Gray, in answer to the toast, said——

Have you a note of the toasts preceding that? No. I have no note of the loyal toasts. Dr. Gray, in answer to the toast of "The People," said:—"That formerly the aristocracy tyrannized over the people, but the people were now showing the bearing of men determined to be free—that he was much struck with the difference in the bearing of the people then, and that exhibited by them some two years before, when he had visited that place. Let their conduct be firm, and let them flinch before no tyrant landlord, and where was the man that would dare to eject them from their holdings because they were repealers. Let them observe peace, order, and tranquillity, and they would finally triumph."

Mr. Sergeant Warren—Have you a note of Mr. O'Connell's speech on that occasion? Yes.

Read it.

The witness here proceeded to read the speech, which commenced with an expression of delight on the part of Mr. O'Connell at the majestic sight which was presented on that occasion. He said that Leinster, part of Ulster, and Munster had done their duty, and now Connaught was at its post. There was then (said the witness) a sentence about virtue and religious sentiment which I was not able to catch. The speech then went on to refer to the prosperity of Ireland under a domestic legislature. He (Mr. O'Connell) might be asked why, when having so much physical force around him, he did not make use of it? He replied that he would use it, but not abuse it. Its use was legal and moral combination. These are then, said the witness, words of "poetical imagery" (laughter); but I have not the whole sentence. The words are not mine but Mr. O'Connell's. The speech went on to express Mr. O'Connell's delight at seeing the thousands and hundreds of thousands that poured out of every valley to the meeting. They would use no violence—they would reserve their strength till they were attacked. But the government would not attack them; the English government said they would not attack them. To that statement he would reply, "Thank you for nothing," says the gallipot (laughter). They could not catch an old bird with chaff (laughter). [The witness here stated that a sentence followed which he was unable to catch, and then proceeded:] Mr. O'Connell then alluded to the reports that had appeared in the newspapers of the first meeting of the arbitration court, Dr. Gray in the chair, and the announcement that they would meet every Friday after. He stated his conviction that they would work well, and hoped that hereafter he should be able to apply the principle on a more extensive scale, so that before long he should deprive the principal courts of half their business. He would play a game that should checkmate the government in time. It might be necessary to go slowly, and to ask the people of Ireland to continue their confidence in him, but it was better to go slow and sure, than fast and uncertain. In allusion to some opinions that had been expressed in the newspapers, he said he never took advice on matters of law from the newspapers; he relied on them for matters of fact only. No country in the world had an abler or more honest press than Ireland; and it was a great proof that they were in the right road, when they found so much talent in the press enlisted on their side; but he could not take the law from them. He had more projects in his head for checkmating the government, but he should not speak of them. He said further, that the English government had done nothing to conciliate Ireland. They had offered nothing as a remedy of their grievances but a miserable compromise, giving them what children called the smallest half. At present his monster meetings were almost done; there were not more than seven or eight to be held. He remarked on the conduct of the people at those meetings which had been held, and the extract concluded by an eulogium of the moral and religious character of the people of Ireland.

Solicitor-General—Did you make any calculation of the number of persons at the meeting at Clifden? I did.

What number attended? Five or six thousand.

Were you present at the meeting of the association at the Corn Exchange on the 27th September? I was.

Which of the traversers did you see there? Allow me to look at my notes; I never was a day without seeing some of them.

I only ask you as to that particular day. Dr. Gray, Mr. O'Connell, and Mr. Ray.

Did Dr. Gray make any remarks on that occasion? He did.

Have you a copy of that report read by him, or do you know what was the subject of it? It was with respect to the arbitration courts.

Is there among these documents (handing them in) a copy of the report read by Dr. Gray? I have not a copy of that report.

Were you furnished with copies of any documents on that occasion connected with the arbitration courts? Yes.

Have the goodness to read them?

Witness then read one of the documents. It was an unfilled notice to the effect that an Arbitration Court had been appointed for the district of ——, and that Mr. ——— had been appointed Secretary, and was to furnish every information that might be required. It was signed Thomas Ray, and printed by J. Brown, 36, Nassau-street.

Have you any other document connected with the arbitration courts? Yes; but not on that day.

Other documents were handed to witness, and from them he selected one which was read by the officer of the court. It was headed by a harp and crown, and ran thus:—"These presents are to testify that the Loyal National Repeal Association has perfect confidence and perfect reliance on the ability of Mr. ——, as arbitrator, to dispose of, adjudicate, and settle, any disputes that may arise in the said district of ——"

Sergeant Warren—Have you any other documents respecting arbitration courts, which you received that same day? At the meeting of the Repeal Association which was held on the 16th of October, I got a document which purports to be a copy of the rules and regulations to be observed by arbitrators, and also by persons in various districts of the country who wish to submit their disputes to arbitrators.

Sergeant Warren—Read it.

The witness, who appeared to be very much exhausted, handed the document to the Clerk of the Crown, who read it. It was as follows:—

"RULES TO BE OBSERVED BY ARBITRATORS IN DISTRICTS THE PEOPLE WHEREOF MAY CHOOSE TO SUBMIT THEIR DISPUTES TO ARBITRATION.

"POWERS OF ARBITRATORS.

"I.—Arbitrators will remember that they derive their legal power to adjudicate in any given case, *solely* from the consent of the disputing parties to submit their disputes to the arbitration and award of the arbitrators, and will THEREFORE be careful never to enter on any case until *both* parties have consented to submit the cause of dispute to their decision. This consent should in general be had in writing, and the name of the arbitrators, as well as the cause of dispute, should be stated therein. The consent (which is legally called a deed of submission) should *then* be signed by *both* parties in presence of a witness, in trivial cases a verbal consent in the presence of a witness will suffice, but as in the case of a written consent, the arbitrators should be *named* by the disputing parties.

"II.—It is *illegal* and an indictable offence for arbitrators to administer an oath. In hearing cases they will therefore not only administer no oath themselves, but they will not permit the disputing parties, or their witnesses, or any of them, to take an oath, or use such asseverations as may be deemed or construed into an oath. Neither ought the arbitrators to take any form of an oath themselves.

"III.—Arbitrators may, when duly nominated by *both* the disputing parties, decide and adjudicate in all cases *except* such as are called *felonies*, as theft, forgery, passing base coin, and such like.

"The cases that more properly belong to the province of arbitrators are such as hitherto chiefly formed the subjects of expensive litigation in the magisterial and other courts. So are WAGES, DEBTS of *all* kinds, DISPUTES BETWEEN EMPLOYERS and the EMPLOYED—including servants, labourers, and mechanics—TRESPASS, DISPUTES CONCERNING MEARINGS—CLAIMS on foot of alleged damage sustained *in any mode whatever*, whether by breach of contract, or by *assault and battery*. In cases of assault, the complainant must seek for the recovery of damage sustained as the result of the assault committed, and the arbitrators may award to the injured party any amount of pecuniary damages they may deem a just recompense.

"IV.—Arbitrators are not limited as to the extent of their jurisdiction, as are justices of the peace and assistant-barristers. They may, when duly nominated, adjudicate in cases involving *any amount of property*. In all cases, however, over 20*l*. a *stamp* will be necessary to render the consent (or deed of submission) and award legal; but in all cases under that sum, the consent and award require no stamp to render them binding in law. The ordinary schedule of stamp duties, to be had at the office of every vender of stamps, will show the amount of stamp duty required in each case, amounting to, or exceeding 20*l*., and the arbitrators should direct the disputing parties to procure same, and the cost of same should be allowed, in making up the award, to the successful party.

"ORDER OF PROCEEDINGS.

"V.—The form of notice from the plaintiff to the defendant should be signed by the plaintiff, and the notification appended thereto, signifying the willingness of the arbitrators to act, if duly nominated, should be signed by some one of the arbitrators of the district.

"VI.—After the parties have come to the place of holding the arbitration, and before the plaintiff be allowed to make his statement, the arbitrators should ascertain whether *both* parties be present. If they be not, the hearing *must* be postponed. But if both parties be present, the arbitrators will inquire if they mutually consent to submit the cause in dispute to their arbitration. Should both consent, then the arbitrators will follow the directions given in rule No. 1. Should they, however, not consent, the arbitrators will, *on no account*, proceed any further with the case.

"VII.—These parties having indifferently chosen and named the arbitrators, and consented to abide by their decision and award, the arbitrators will proceed to hear the case in manner following: The plaintiff should be called on to state his case, and having done so, he may be examined by the arbitrators, and cross-examined by the defendant. The witnesses for the plaintiff to be then called, and respectively examined by the arbitrators, and cross-examined by the defendant. The case for the plaintiff having closed, the defendant should then be called upon to make his statement, and having been examined by the arbitrators, and cross-examined by the plaintiff, his witnesses are to be called, and a similar course pursued to that directed in the case of the plaintiff's witnesses. The case on both sides having closed, the arbitrators will proceed to make their award, which must *in all cases be in writing*, and be signed by the arbitrators named by the disputing parties, and by none others, save the secretary, who must sign as a witness. When so signed, the award should be publicly read by the chairman.

"Note—In all cases of arbitration, the wife or child of either party may be examined; and a witness may be called a second time should the arbitrators think fit. It may be advisable, for the purpose of eliciting truth, that the witnesses on both sides should be sent out of the room until required for examination.

"VIII.—The disputing parties, or either of them, should be allowed to have the aid of professional men if they chose. In such case, the professional agent will state the case, and examine and cross-examine witnesses, instead of the party litigant, as stated in Rule VII.

"IX.—Should the arbitrators find a difficulty in coming to a decision in any case, a reasonable time may be taken for making the award; but it is advi-

sable that, in all cases where it is practicable, the award be made immediately after the hearing.

"GENERAL RULES.

"X.—The arbitrators should sit in a room open to the public; and it is deemed advisable, that all manifestation of approval or of disapproval by the suitors or audience be prohibited, as calculated to disturb the proceedings.

"XI.—The arbitrators will cause the secretary to make an entry in the minute book of each case that comes before them. Should there be no appearance to the notice of complaint, or should the case have been settled, he will enter it accordingly; and should the case be heard, he will enter the particulars under their respective heads.

"XII.—The original deed of submission and the award are to be carefully preserved by the secretary, as they may be necessary for the future security of the respective parties from further claims. It will be his duty, however, to supply copies of the award, free of expense, to each of the parties if applied for.

"Signed, by order,

"JOHN GRAY,

"Chairman of the Arbitration Committee,

"Loyal National Repeal Association.

"A copy of these rules should be posted in some conspicuous place in the room where the arbitrators sit."

Sergeant Warren—Look at your notes and see have you a memorandum of the appointment of any arbitrators, on the 27th of September, for the districts of Kingstown, Dundrum, or Blackrock? I remember that Dr. Gray made a speech on that occasion in reference to the appointment of arbitrators.

Sergeant Warren—Have you a note of that speech? Yes, I have.

Sergeant Warren—Read it. The witness read from his manuscripts a note of a speech delivered by Dr. Gray, on the occasion in question. The substance of the speech was that he (Dr. Gray) as chairman of the arbitration committee, was commissioned to inform the association that the committee had under their consideration the form of a testimonial in favour of such persons as they thought fit to recommend to the office of arbitrators, and he then proceeded to read the document alluded to, a copy of which the witness produced.

Did any appointment of arbitrators take place that day? I have a memorandum on my notes to the effect that several gentlemen were proposed as arbitrators and agreed to; I know that Mr. Nugent, of Kingstown, was appointed, and returned thanks, and Dr. Gray moved that the chairman should be recommended as an arbitrator for Dundrum, whereupon the chairman returned thanks; I was present at the Mullaghmast meeting; I took a note of the proceedings of that meeting, which I hold in my hand

Sergeant Warren said there were certain extracts from the speech, as reported by the witness, which he wished to have read out. He wished to know whether the counsel for the traversers had any objection to having certain extracts read from the speech, or did they mean to insist, as they had a right to do, that the entire speech should be read over again. It would be in the recollection of the court that the speech had already been read in its entirety by Mr. Hughes.

Mr. Fitzgibbon—If your two witnesses agree, Sergeant Warren, in their reports of this speech, I really cannot see the use of having it read, or any part of it, over again. But if, on the other hand, you want now to give a different account of the speech from that which has already been deposed to, I cannot see how you can do so, for surely you can have no right to pit one of your witnesses against the other. So which horn of the dilemma will you select? (laughter.)

Sergeant Warren—I don't want any horn of a dilemma. I merely wish to have certain extracts read from the witness's report of Mr. O'Connell's speech, and I ask you whether you require to have the whole speech read, as you are entitled?

Mr. Fitzgibbon—We don't require anything. Take your own course.

Mr. Henn—If the two extracts correspond *in omnibus*, there is no necessity for reading the second, but if there be any discrepancy, I think it very essential for us that the whole of the witness's notes should be read.

Sergeant Warren—I believe that the two reports do correspond, for I trust to the reporters; but I am unable to say positively, for I have not examined both reports.

Mr. Henn—We have no opportunity whatever of knowing whether the reports correspond.

Judge Crampton—You have only to state that you wish the whole speech read, Mr. Henn.

Mr. Sergeant Warren—State from your notes what Mr. O'Connell said at Mullaghmast? There was considerable confusion at that meeting, which inconvenienced me, and prevented my taking some of the first of Mr. O'Connell's observations. I had not an opportunity of taking his first words, but he was speaking of Tara; I put down the word Tara first, and then I go on. The witness here read Mr. O'Connell's speech, which agreed as nearly as possible with Mr. Hughes's version of it, and very slightly differed from the report as originally published in the *Freeman*. Whenever he missed taking down a word, he said, "I lost the next word." He read on until he came to the next passage, "Peel has 500 colours in his flag, and not one of them permanent—to-day it is orange, to-morrow green—and next day it is neither one or the other. One of the Scotch historians, Allison, says that if Wellington got well out of the battle of Waterloo, it was by the British troops, and by their unconquerable ——" I have lost the remaining words of that sentence. He then came to a quotation from a song, which he introduced—

"At famed Waterloo
Old Wellington would look blue,
Only Paddy was there too——"

And I have lost the rest (loud laughter). He said further about the Duke of Wellington—"They had no place for him in the cabinet, nor no duty for him to perform except that of a sort of inspector of anti-repeal wardens. I selected this Rath for obvious reasons to hold this meeting, for it was the spot on which English treachery, and Irish treachery too, committed a massacre unequalled in the annals of history, except by the murder of the Mamelukes."

When the witness had done reading the speech,

Sergeant Warren asked him if he was at the dinner in Mullaghmast? I was.

I suppose you took a note of Mr. O'Connell's speech at the dinner? I did.

Can you recollect how many of the traversers were present at Mullaghmast? There were present Mr. O'Connell, Mr. Ray, Mr. Steele, and Dr. Gray.

Now, at the dinner whom did you see? I saw Mr. O'Connell, Mr. John O'Connell, Dr. Gray, Mr. Steele, Mr. Ray, and Mr. Barrett.

Did you take a note of Mr. O'Connell's speech upon the latter occasion? Yes. Read it. I will. I have also notes of Mr. Barrett's speech on the same occasion, but my notes of his speech are very incomplete.

Mr. M'Donogh—Your lordships, perhaps, did not hear what the witness said to Sergeant Warren. He stated that he has a very incomplete note of Mr. Barrett's speech. Now, we had from Mr. Hughes, yesterday, a very perfect note of that speech: and I take the liberty, on the part of Mr. Barrett, to

apply to the court not to receive the incomplete note. I do not think it fair.

Sergeant Warren (to witness)—Have you a complete note of any part of Mr. Barrett's speech? If you have not, I won't ask you a word about it. Witness (having looked over his notes)—No, sir.

Sergeant Warren—I should be very sorry to ask you to give any statement on it. You said you had a complete note of Mr. O'Connell's speech at the dinner; will you read it?

The witness went on to read the speech made by Mr. O'Connell which took place at the Mullaghmast dinner. He (Mr. O'Connell) asked on that occasion was there any repealer brought before a bench charged with any crime? was there any of them brought before a magistsate for a breach of the peace? No, not one. They (the Irish people) had made a moral demonstration which no country on the face of the earth was capable of producing save Ireland. They (the Irish) had met in immense numbers without the slightest violation of the laws of God or man, and yet that country and such a people were enslaved. Mr. O'Connell then spoke something about the cold water cure, but I did not catch it (laughter). Mr. O'Connell continued, and said the only way to obtain the repeal of the union was by the peaceful workings of the Irish people themselves; they would not commit a breach of the peace; they would not commit a violation of the law. He went on to read that portion of the speech relative to the Duke of Wellington, in which it was stated that if a man happened to be born in a stable it did not make him a horse, amidst loud laughter.

Witness continued reading Mr. O'Connell's speech for some time longer, and the direct examination being concluded, he was

CROSS-EXAMINED BY J. HENN, ESQ., Q.C.

Will you state what time you came to Ireland first? The first time I came was in July, 1843; I was never here before.

Mr. Henn—Were you much frightened at the idea of coming over? Yes, I was frightened a little.

Mr. Henn—I suppose you found the alarm false? Why, yes.

Mr. Henn—I suppose you were paid fairly for coming over? Yes, I got 350*l.*

Mr. Henn—Altogether do you mean? I got 50*l.* for the Donnybrook, and 350*l.* for attending all the other meetings, and up to the next session of parliament.

Mr. Henn—You have found it a profitable speculation, then? Yes, I have.

Mr. Henn—Have you ever made as much money in as short a time before? No, I have not; I have sometimes made very well, sometimes not.

Mr. Henn—Have you ever taken the benefit of the insolvent act? I have once.

Mr. Henn—Only once! when was that? I was arrested on the 25th of June, and my petition was heard on the 25th of July, I think; it was some time before I came over.

Mr. Henn—It could have been only a *few* days, for you know you came over in the latter end of July? I suppose so.

Mr. Henn—You have stated that the employment you have undertaken was suggested to you by some person on behalf of the government—who was that person?

Mr. Warren—I object to his answering that question.

Mr. Henn—I have a right to test the accuracy of the witness in this way.

Mr. Warren—This principle was decided in Hardy's case, and Lord Erskine distinctly laid it down that a witness employed by government is not obliged to disclose the name of his employer, and Lord Chief Justice Eyre also said that though in general a witness may be asked such a question, yet the secret of the government ought not to be laid open unless in an extreme case. In Philips, on evidence, the doctrine was also stated. Mr. Philips says that though under ordinary circumstances the credit of a witness may be tested in this way, yet witnesses will not be permitted always to disclose the names of their employers, and it was not proper to inquire what officer under the government had induced a witness to come forward. He quoted this from the first volume of Philips on evidence. In another case Mr. Gibbs had asked a witness under cross-examination—How came you to go? By whom were you sent? The witness replied—"If it be a fair question I will answer." Chief Justice Eyre said—"If you choose to answer the question you may; but I will not insist upon it." The then Attorney said, I do not think the examination should be permitted to go on where the delicacy of the witness is interfered with. Mr. Gibbs—I don't see where the delicacy is. Lord Chief Justice Eyre—I don't think it proper to press this witness to answer. The nature of the connection between the parties ought not to be disclosed here; and Mr. Gibbs then added—I will not press the question. In Monaghan's case there was also an objection. Mr. Erskine's question went to test the credit of the witness, but Lord Chief Justice Eyre held it was a most important rule for the public that the names of persons were not to be disclosed, unless they were material to the case. He referred to pages 807 and 822. When Mr. Erskine wished to examine a witness as to information obtained from a particular quarter, and asked if the information came from a man or woman, the Chief Justice would not allow the disclosure to be made. The rule was clearly laid down in Philips' Law of Evidence.

Mr. Henn, Q.C.—There is a manifest distinction between the principles here, and that relied on by the crown—between questions arising out of cross-examination and from the direct. This is a question arising from the direct examination, and I was rather surprised to hear it asked in a leading form, "Was it not suggested to you on the part of the government?" and the witness answered in the affirmative. I am now testing his credit, and how can I test the accuracy of his answer unless I am allowed to ask the question?

Chief Justice Pennefather—The court are of opinion the distinction taken by you, Mr. Henn, makes no difference; the protection must be upheld.

Mr. Henn then proceeded with the cross-examination. You had a communication with a person high in office? Yes.

Shortly before you came from England, were you in connection with any newspaper? Yes, the *Morning Chronicle.*

How long were you in connection with that paper? About three years.

Does it support the present government? No.

Were you in connection with any other paper? Not at that time.

Were you at any other time? Yes; the *Times.*

When did your connection with the *Times* cease? In 1836.

When with the *Morning Chronicle?* After the last session of parliament.

Since then have you been engaged by any paper? Yes; by the *Standard.*

Then, when you came here in July were you not connected with the *Morning Chronicle?* Yes; I wish to state the reasons why I came.

Mr. Henn—You have already given 350 substantial ones for coming. (Laughter.)

Witness—If I had not come as a newspaper reporter I would not come for anything.

Would you not come forward for 100,000*l.*? Oh!

I might (laughter). Or 75,000*l.*? Witness—I don't know.

Mr. Henn—Would you come for 50,000*l.*? No, I would not.

Mr. Henn—Then this is your evidence—you might come for 100,000*l.*; you don't know whether or not you would come for 75,000*l.*? but you would not come for 50,000*l.*?

Witness—I mean that I would not be induced to come unless by something very large.

Why would it be so hard to tempt you? I was led to apprehend some damage.

Well, now that you have come over, would you entertain the same apprehension? Now that I have seen how things are carried on, I would not have the same apprehension.

Having been deputed by some one high in office, and while in the employment of the *Morning Chronicle*, you came to Ireland? Yes.

Well, to whom did you apply on your arrival? You came here to report the proceedings of the meeting held at Donnybrook—you could not report unless you had a place on the platform to hear and see, tell me to whom did you apply? I do not know.

How did you get to the meeting? I went there with a gentleman connected with the *Dublin Evening Post*; he being well known did everything for me, and got me a place on the platform.

You said when Mr. O'Connell arrived there was great confusion? Yes.

That was created by persons coming on the platform? It was.

There was no breach of the peace—no alarm on your part? No.

Mr. Henn—You would not give 50,000*l.* to get away from it? (Laughter.) I would not.

Was not all quiet and decorous? It was.

The report of what occurred at Donnybrook you transcribed from the notes you took? Yes.

Have you that paper? Yes.

Now, having come over in a double capacity, did you furnish a report to the government and to the *Morning Chronicle?* Yes.

To the Chief Justice—I assisted in preparing a report for the *Morning Chronicle*.

Mr. Henn—Was that on the same day? Yes, it was on the Monday.

Did you on that day copy the short-hand notes you took to furnish your report to the *Chronicle?* Oh, no, I sent off by post that night, and it was not more than thirty lines; I only wrote a portion of Mr. O'Connell's speech, without referring to my notes at all.

When did you write out the report for the government? On the next day.

Is it a full report? As full as possible, except in those portions to which I have referred.

I understand you took a *verbatim* report of what you considered material? Yes.

You cannot be always precisely verbal? Oh, no, and the change of a word might often make a very material difference in the sense of a sentence.

But of those parts you did not consider material you did not take a note? No.

You took what you call topical notes of what took place? Yes.

Tell me what you mean by topical notes? I mean the heads of the topics on which the speaker dwelt.

And is that what you call reporting? But you do not pretend to say that you even gave the substance of what was said in those special or topical notes? I do not understand the latter part of your question. I took notes in such a way as not to misrepresent the sense of the speaker upon those points upon which he spoke; but I do not pretend to have given the words, or anything like them.

Do you pretend to say you have given even the substance of the observations made on the various topics? I do not know, for the expression "substance" extends.

Mr. Henn—Why substance is substance, and it is so plain a word that it could not be made plainer (laughter). Did you give the substance? I gave the substance or meaning of the observations.

Of all the observations? Oh, no.

What then? The discussion of these topics might have occupied twenty sentences; but those twenty sentences might contain but one idea, and I only put down the idea (laughter).

What are topical notes—let us be precise? The substance of the observations made on the various topics alluded to.

Now, Mr. Ross, having escaped from the savages (loud laughter) and got back to London, you got courage to come back again? I did not come back again.

Why, you were only at Donnybrook first? Oh, yes, I came back.

Were you not under the same alarm then as at first? Yes, I was; I had experience of only one meeting then; but it was not of the neighbourhood of Dublin that I was at any time apprehensive; I entertained apprehensions at first, and when I again came also.

Were you then in the employment of the *Chronicle?* No.

Did you come as a reporter for government? No, I came as a reporter for the *Standard*.

Not on the part of the government? Yes, on the part of the government also.

Who recommended you to the *Standard?* Myself.

Were you known before? Every person connected with the press knew me in London.

You knew Mr. Bond Hughes, then? No, I have not the pleasure of knowing Mr. Hughes.

He knows you? Only by reputation.

Did you see him here? Yes.

Your reputation recommended you to the *Standard?* I did not say it in that way, but I believe it was my reputation that recommended me.

Having been thus recommended to the *Standard*, you came here on the part of the *Standard* and the government, and with that intention you attended several meetings of the association? I did.

Now, you will tell me how you got access to the association. Was it your reputation introduced you there? No, it was either the gentleman who went with me to Donnybrook, or another gentleman from the same establishment.

Did you tell him you were connected with the *Standard?* Yes.

And with the government? No, I did not want to tell him that I was connected with the government.

You saw Mr. Hughes; did he know you personally? Yes; he was, I am told, in my company about seven years ago at an entertainment given to a gentleman.

Did you send reports to the *Chronicle?* I sent reports of three public meetings to the *Chronicle*.

When you came here, did you come from the *Standard*, and *Chronicle*, and the government? Yes.

Did you send reports to the *Standard*, *Chronicle*, and government? I did to the *Standard* and *Chronicle*, but not to the government. I wrote the report out here.

Did you not transmit reports to London? Yes, to the *Standard* and *Chronicle*.

The *Standard* is a government paper? Yes.

Did they know you were engaged for the government? I never disclosed the fact that I was here on the part of the government until last night.

May be you stated that you had come here for the *Chronicle* alone? Oh! is it I? I never stated a falsehood in my life, and it is too late now to begin; I did not state at all that I came here on the part of the government; there is one with whom I am con-

nected—I mean my wife, whose wishes and feelings I always consult (much laughter among the ladies in the gallery, and the persons in the body of the court), and she was averse to my coming here as a government reporter. I had my own feelings, too, on the matter. A young artist who had been asked to come here to exhibit a celebrated picture, had, it was stated (about the time I first came over), refused to do so; and when a gentleman of education (such as he) entertained apprehensions on the matter, some allowance must be made for my having a reluctance to state why I came.

Well, then, I take it for granted that you would not undertake the business for 50,000*l.*? You did not communicate the matter to the *Morning Chronicle*? No.

Now, Mr. Ross, you attended the Loughrea, Clifden, and Mullaghmast meeetings. Did you send reports of the proceedings at each of these to the *Chronicle*? I did not send the report of the Mullaghmast meeting to the *Chronicle*.

You are acquainted with the person who represented the *Chronicle* there? Yes.

Had you any communication with him at that meeting? Yes, he was close to me.

Oh! then you know this gentleman? Yes.

You are quite sure you did not send that meeting to the *Chronicle*? Yes.

Did the *Chronicle* pay you for that meeting? The *Chronicle* paid me only for what I sent.

Did you charge them anything for the Mullaghmast meeting? Yes, I did. (Indications of surprise in the court.)

How much did you charge for sending them nothing? Oh, they got the Mullaghmast meeting.

That gentleman then did the whole of the meeting, but you charged for it, and got the money? No.

What! Allow me to explain (witness, turning to the bench, said)—I regret I must state those circumstances, but I am compelled to explain. This gentleman wanted some money to enable him to go to those meetings, in order to send reports to London; I advanced him money on several occasions for that purpose; on this occasion, being run a little short, I wanted some money myself, and he could get no supply of money from London, and he therefore proposed that the Mullaghmast meeting should be sent over in my name, as I should be sure to get paid for it.

Did you get the money from the *Chronicle* for that meeting? I did, but I gave it to him.

Having attended at those monster meetings here, may I ask you whether you have ever, in the course of your duties in England, attended at any of the great public meetings there? Not at many, but at some of them.

At any of the Anti-Corn-Law league meetings? No; I never reported any of them.

Don't you think it very wrong that a reporter should be called upon to give evidence? No, certainly not. I think a reporter should obey the law of a country, and I never heard that questioned until I heard it by some gentlemen here. 'Tis preposterous (laughter).

You were not always merely a reporter? No.

You were, I believe, an editor? I was.

Were you the editor of a newspaper called the *Carlisle Patriot*? I was.

About what time? In the years 1837, 1838, and 1839.

What were the politics of that paper? Conservative.

Are those your own politics? They are.

Were they always so? Not always.

For the last ten years? The title has not existed for ten years.

But the principles might? True enough.

What were you before you became a Conservative? Why, if I might define it——

I only ask you to name it? Why, I might answer that—

"In moderation placing all my glory,
Tory would call me Whig—and Whig would call me Tory!" (great laughter.)

I have been complained of (said the witness) by some of my own family, who are strong Liberals, for being a rank Tory; and I have been condemned by some of my Tory friends for being too much of a Liberal (great laughter).

And, perhaps, both were right? Perhaps so; I can only arrive at a mean by the assertion of opposites (loud laughter).

I am glad you came over to Ireland to enlighten us! When you edited the Carlisle paper you had no objection to tell me what denomination of politics you belonged to? The title existed at the time, designating a body of men who entertained opinions in reference to public affairs, in which, generally, I concurred with them. If you ask me what I was before that, I should say, a moderate Whig before the reform bill passed.

Never had a touch of the Radical about you? Never; I had the same feeling as all young men in favour of Liberal institutions, and I trust I shall always entertain it.

Mr. Henn—And I hope you may inspire the government with a similar feeling.

Witness—I don't think it is at all necessary.

Were any of the members of the present government connected with that Carlisle paper? Not that I know of.

You don't know who the proprietors were while you were editor? No, not one of them (after a pause), except from their own statements.

Do you remember a prosecution of a person named Taylor at Carlisle—Dr. Taylor—and giving evidence on that occasion? No, I do not.

You do not. Is that your answer? Why, if I gave any evidence, or answered any questions, it must have been about some very unimportant matter, for I don't recollect it.

Very likely; I suppose it was a topical note you took of it, as you didn't consider it material? I took no notes at all. It was just an examination before magistrates.

I see your recollection is reviving: now, I again ask you were you not examined before the magistrates? I don't recollect that I was.

Didn't you protest, upon the high authority of a reporter, that you should not be called upon to give evidence? Witness, apparently astonished—Oh, certainly not.

Are you sure of that? Sure of it! I never did any such thing in my life.

Did you take any active part at elections in England? No. Not at all? No.

Did you always confine yourself to the mere drudgery of reporting? When?

During the course of your connection with the press? No; I have occasionally written articles.

Did you ever write an election squib? Not that I am aware; if you will show anything of the kind I'll tell you immediately.

Do you remember an election at Carlisle? Yes.

Do you remember a Mr. Wentworth standing as a candidate? No.

You do not? I do not.

Mr. Henn (handing up an election placard to witness)—Do you remember that placard? No.

Do you remember the name of the candidate whose name is to it? No, I do not. I never saw or heard his name before.

Were you connected with the press in 1841? Yes; I was connected with the London press.

And do you tell me that you, who were connected

with a London newspaper in 1841, did not hear of a contested election in Carlisle at that period? I tell you again I never heard of the names before.

Was there a contested election in Carlisle in 1841? I really do not remember. If there was an election, it made no impression on my mind.

And you say you don't know who the candidate was? I do not.

Do you remember any election in Carlisle? Yes? there was an election in '39 or '40—it was an election for the county.

Look to this placard—it is addressed to the working classes of Carlisle? I have looked at it, but never saw it until now. I may have seen it on the walls. Let me look at the date.

(Witness then looked at the date, and said he mistook the date—he never saw that placard before.)

Mr. Henn handed him another placard—an address to the working classes of Carlisle, and he said he never saw that either.

Now, you edited the *Carlisle Patriot* in 1839? Yes.

Look at this (handing him a printed document)—Have you any recollection of that? I have not the slightest recollection of it.

Was it not published in the *Patriot* as a leading article? I do not know. I have no recollection of it.

Can you say that that did not appear in your paper? I cannot say.

But it may have appeared? It may, sir; I cannot say it did not.

The article to which I call your attention, says,—"We protest in the most ardent manner against the conduct of the magistrates in compelling us to give evidence against the prisoner." Do you remember those words? I do not.

Sergeant Warren begged to interrupt Mr. Henn.

Mr. Henn—I think I am entitled now to ask him will he swear that this was not inserted in the paper with his sanction?

Sergeant Warren—He has already stated that he has no recollection of having seen that document before, and, therefore, you have no right to read one word of it.

Mr. Justice Crampton—Certainly not.

Mr. Henn—Very well. I am entitled at all events to ask him this. Will you swear you did not, when editor of the *Patriot*, protest against reporters being examined? I said before I did not.

I know you did, but answer me again? I did not make any such protest—even in this sentence which I have used (laughter), I made no such protest.

Then you did use the sentence? You mistake me; I did not.*

Were you in the habit of reporting in the house of commons? Yes.

I suppose you often reported Mr. O'Connell's speeches? I did, very often.

Did you ever state that you found considerable difficulty in following Mr. O'Connell? Yes, I did.

And that is the fact? Yes; almost all reporters find difficulty in following Mr. O'Connell.

Now the Donnybrook meeting was perfectly quiet and peaceable? It was.

Was it not so at the Clifden meeting? It was.

Was it not so at Loughrea? It was.

Was it not so at Mullaghmast? It was.

And at Clifden you saw men coming on horses, with their wives behind them (laughter)? I did.

And numbers of the cavalry without any saddles or bridles (laughter)? Yes.

You were not frightened? No, I was not frightened at any of the meetings; I knew that near any of the traversers I was sure to be safe, and I always kept near them (laughter).

Was it wet at the Clifden meeting so as to interfere with your reporting? No, we had an umbrella over us—still it was unpleasant.

Were you able to take notes fully? Pretty fully.

But only "pretty" fully? Yes.

Did you attend the meeting of the repeal association on the 4th of September? Yes, I did.

There used to be a great number of persons besides the traversers at the meeting of the association—used there not? Yes, there used.

The room was very large in which the association had to meet? Yes, it was; I think it would probably hold as many as this room.

Used large numbers to attend the meetings and the dinners in the country? Yes, the dinners and meetings were very numerously attended.

Answer me this question, sir, if you please: Did you at any of these meetings see any of the traversers do any act inconsistent with the duty of a peaceable citizen? Do any act? Yes.

Was there any tendency to a breach of the peace at any one of these meetings? No, there was not. I attended the meeting of the 4th September at the Corn Exchange.

Mr. Henn—Would you have the goodness to turn to your notes of the report of the 4th of September; let me ask you did you attend at the whole of that meeting? Yes.

Did you take a note of the speech of Mr. O'Connell before that speech you read? I did.

Did you take a report of a speech of his in reference to a letter from Dundalk—namely, observations with respect to a person of the name of Callan? I had better refer to my note; (after referring to his note he added)—I have not.

Have you not a report of anything before that you read? Nothing about Dundalk.

It is not about Dundalk but about a letter from Dundalk. Have you any speech of his after a letter from Dundalk was read with reference to a person of the name of Callan? No.

Have you taken a full note of the proceedings at the association? No—I did not consider those parts material.

You read a speech of Dr. Gray's about the arbitration courts? Yes.

Have you any report of a speech of Mr. O'Connell before that with respect to Ribbonism?

The witness did not answer.

Have you any recollection of Mr. O'Connell alluding to and deprecating Ribbonism? I would like to see if you have a note of it. I would like to know what you think material in these cases? I have got the report of Mr. O'Connell's speech about Ribbonism. Mr. O'Connell observed, "that efforts were making to extend the Ribbon system amongst the people. It was the duty of the Repeal Wardens to watch all proceedings of that nature, and give information respecting them to the magistrates. The names of several persons in Dundalk had been sent up to London as members of a Ribbon lodge." That is all I thought material.

Now turn to your note. Did Mr. O'Connell state the name of any person, or can you say if he did, from your recollection? I think he read a list of names from my recollection.

Did you hear Mr. O'Connell make a speech? I did.

Is this a transcript from your note? This is an exact transcript from my note.

A complete one? Yes, a complete one. Mr. Ray read a letter from Mr. Napier in reply to a vote of the association,

A Juror—When was this?

Mr. Henn—At the meeting of the 24th of September.

* The article to which the counsel here referred appeared as a "leading" article in the *Carlisle Patriot*, during the time in which the witness acknowledged he was editor of that paper. It is not easy, therefore, to understand how this very strange protest could have appeared without the knowledge of Mr. Ross.

Witness read the report of Mr. O'Connell's speech, which was to the following effect:—Mr. O'Connell said—"He is a respectable gentleman, and we cannot hesitate for a moment to insert his letter on the minutes. Mr. Napier insinuates that we commenced the attack on the Saxons; he seems to forget that the severance of the two nations emanated from the highest quarter. I heard the Lord Chancellor of England state that the Irish were aliens in blood, in language, and in religion. Mr. O'Connor is no longer a member of the association, and though I approve of the resolution condemnatory of his notice, I regret he was treated with so much courtesy—I regret that he was not taken by the shoulder and put out of the room. If he were honest, he would wait until I was present before he brought forward such a proposition."

Mr. Henn—Was not this O'Connor a man who proposed interfering with property? He was a man who proposed a resolution as to the non-payment of rent.

Mr. Henn—Go on; his name was Connor, and not O'Connor.

The witness then proceeded to read the remainder of Mr. O'Connell's speech, which was to the following effect:—"He should wait until I was in the room before he brought forward such a proposition. This was due to me as I am responsible for the legal formation of the association. But he took advantage of my absence to hold out a topic that would attract attention for a moment from persons who do not consider what would be the result, and by throwing out a political clap-trap try to make an impression that might be destructive of the association. I was cautioned against him. He wrote a letter to the *Freeman* yesterday, in which he assumed a look of injured innocence. The question of fixity of tenure is one of great importance. No country was ever prosperous in which it is not the object of men to acquire landed property, and we must not do anything that would make the landlord's situation cease to be a desirable one. I am ready to do all that the landlord ought to desire, but I am convinced that there must be an end to the present relation between landlord and tenant. The power of exterminating must be taken away, and the sacredness of possession must be established." After referring to an account in the *Morning Chronicle* of meetings held in Wales on the subject of tenure, and to a speech made by Lord Londonderry, the speech proceeded to the following effect:—"I now come back to Mr. Connor. Mr. Connor knew that a declaration not to pay rent charge is against an act of parliament, and that a combination not to pay rent is a direct infringement of the law; and it is the conviction of my mind that to a certain extent the safety of the association depends upon you all declaring with me, that the name of Mr. Connor should not remain on our books. If he wanted to do us mischief is not that the course he would take? And shall I be told that he did not intend to do us an injury when he took that step? I declare him a political enemy to the people of Ireland. I will not mince the matter at all."

Mr. Henn—Have you a note of a resolution with respect to Mr. Connor?

Witness—I have; it is here, immediately after he moves——

Mr. Henn—Who moves? Mr. O'Connell. He moves that the letter of Mr. Napier, and an extract from the speech of Lord Londonderry, be inserted on the minutes, and that the name of Mr. Connor be expunged. This motion was carried. Mr. Steele suggested that Mr. Connor's money should be returned.

Mr. Henn—Have you any report of Mr. Steele's speech? No, but I think he said he had done so on a former occasion.

Did it appear what offence Mr. Connor had committed? Yes; it was a proposition by him as described here that the association should agree to a resolution declaring that rent should not be paid.

Until when? I don't recollect.

Have you a report of Mr. John O'Connell's speech at that meeting? No.

After that? No, nothing after that.

Did you attend the former meeting when the same question was brought forward? No, I was not at that meeting.

Mr. Henn—I have no more questions to trouble you with.

Judge Perrin—Did you send a report of the speeches at the Donnybrook meeting to any newspaper? No, my lord, with the exception of a few sentences of Mr. O'Connell's speeches, which I wrote from memory.

Judge Perrin—You said you made a copy of it; did you send it to any newspaper? No, my lord, it was too late.

CROSS-EXAMINED BY J. HATCHELL, ESQ., Q.C.

Did I understand you right when you said you saw Mr. Ray at Mullaghmast? Yes, I think I saw Mr. Ray on the scaffold (laughter).

On the platform? Yes, on the platform; I also stated that I saw him at the banquet.

Of course you have some note of that? Yes; Mr. Ray made a speech at the banquet, and I spoke to him continually.

When did you arrive here? The day before the Donnybrook meeting.

How long were you on the way? I came direct by railway.

Did you take any part in the Cumberland election of '37, '38, or '40? I took, of course, a warm interest in it. I supported the Conservative candidates; there was no opponent on the occasion; a brother of Lord Morpeth's was returned.

Did you take part at the election at which Sir James Graham was a candidate? I was not then connected with Carlisle.

But are you known to Sir James Graham? I have the honour to be known to him.

Mr. Hatchell—Did you see him in June last?

Attorney-General—I must say, after the decision of the court, that I am surprised at the learned gentleman putting that question.

Mr. Hatchell—It is quite impossible the Attorney-General can know the object of asking that question.

The Attorney-General observed that cases had been cited by Sergeant Warren, to show that such a question could not be put.

Mr. Henn—Mr. Hatchell was not in court at the time, my lords.

Solicitor-General—That is quite sufficient justification for his asking the question.

The counsel for the traversers then intimated that the cross-examination of the witness had closed, and the court adjourned to ten o'clock next morning.

SIXTH DAY.

SATURDAY, JANUARY 20.

The judges sat at ten o'clock precisely, at which hour the traversers were in attendance.

The jury having been called over, the evidence for the crown was resumed.

The first witness called was Mr. John Jackson, the Irish correspondent of the *Morning Herald*, who, having been sworn, was examined by Mr. Brewster, Q.C., and deposed as follows:—I am connected with the London *Morning Herald;* I am the Irish correspondent of that paper, and was so in the course of

last summer and last autumn; I attended at the meetings of the repeal association; I was in the habit of transmitting regularly to London by the post, reports of what took place at those meetings.

Mr. Brewster—My lords, I wish to apprise you that it is not my intention to make this gentleman go over all the speeches which the court has already heard. I will confine myself almost exclusively to asking him who took part at the meetings. Take these documents in your hand, Mr. Jackson, and see whether they are the original notes which you sent to London? Yes, they are.

Is this paper which I now hand you your report of the meeting that was held on the 30th of May last? It is.

I wish you to look to page 3 of that report. I see it.

Do you see in these notes a report of a speech made upon that occasion by Mr. O'Connell? Yes, I do.

Read the first few lines.

The witness proceeded to read the report, which commenced by noticing the fact of Mr. O'Connell's having directed the attention of the association to an error which appeared in the report of the proceedings of the Longford repeal meeting, which had been published in the *Freeman's Journal* of the same date. In that report he was made to apply the phrase "ruffian soldiery" to the army of Great Britain; but he begged leave to state that he never used any such expression. The circumstance to which he had alluded in his Longford speech had reference to the pathetic ballad of "Aileen Aroon." He (Mr. O'C.) then proceeded in his customary strain to—— (laughter).

Mr. Brewster—That will do.

Go to page 6 now and read from that; I believe you have not seen those manuscripts since you sent them to London? I only got them from Mr. Kemmis to initial.

Take that document and refer to the meeting of June 6, at the association. I should observe, my lords, that this gentleman's evidence applies only to the meetings of the association at the Corn Exchange, and nothing else.

Look to page 1 and see which of the traversers were at that meeting? Daniel O'Connell.

Look to page 6 and see if there were any others of them there? Yes, the member for Kilkenny, Mr. John O'Connell, Mr. Barrett of the *Pilot*, and Mr. Steele.

Now, go back to page 6, and read a portion of Mr. O'Connell's speech. Witness reading, "He (Mr. O'C.) passed yesterday amid the scenes of Saxon cruelty, and the sanguinary Cromwellian, cold-blooded butcheries, commencing with the murder of Sir Charles Astley. (Mr. O'Connell, correcting the witness, 'Askell,') Sir Charles Askell, and ending with the little drum-boy."

Now turn to where he announces the meetings he has fixed to come off, and read—"I will be at Kilkenny, on the 8th of June; at Mallow, on the 11th; at Murroe or Abingdon, on the 13th; at Ennis, on the 15th; at Athlone, on the 18th; at Enniskillen, on the 21st. (Mr. O'Connell, oh, oh, and laughter.) The witness again corrected himself, Enistymon; at Galway, on the 25th; at Dunkalk, on the 29th.

Did Mr. Steele make a speech at that meeting? Yes, Mr. Steele came forward amidst great cheering, and said that he had received a letter stating that the Glasgow repealers were to hold a banquet on the 29th, and Mr. O'Connell handed in a sovereign from an Englishman, who blushed for the treatment, by his countrymen, of the noblest race in the world.

Mr. Hatchell asked if this meeting was set forth in the bill of particulars?

Mr. Brewster said all the meetings were set forth in it, but he would now turn to that of the 4th of July.

Mr. Ford made an observation which was inaudible in the gallery.

Mr. Brewster should not tell the jury that, because there was no such meeting; it was struck out. (Handing witness another document)—Look to page 1, and tell me which of the traversers you find attending that meeting? Mr. Daniel and Mr. John O'Connell, Mr. Steele, and Mr. Ray.

Go to page 7, and say if there was any money received there from America? Yes, several sums were handed in from America; Mr. Duffy and Mr. John O'Connell were present at the meeting, which took place on the 5th of July; I see page 1 of my notes of that meeting; Mr. O'Connell said he wished to call the attention of the meeting to two points; he had received a letter from a person in Sligo, which enclosed another letter from a discharged soldier, who stated that he was employed by O'Connell to drill the peasantry. He (Mr. O'Connell) then called the attention of the meeting to the Ribbon conspiracy, which existed in the north, and said it was originated by the Chartists in Scotland. He (Mr. O'Connell) spoke about Lord Clancarty, who attempted to prevent his tenantry from going to a repeal meeting.

Was Mr. Ray, the secretary, at that meeting? I don't remember that. [The witness proceeded to read an abstract of Mr. O'Connell's speech in which he alluded to the Marquis of Downshire, who endeavoured to prevent his tenants of going to a repeal meeting, or joining the repeal association.] He (Mr. O'Connell) also read a letter from America on that occasion; I see page 4 of my notes where Mr. O'Connell moved that the letter be inserted on the minutes, and that the thanks of the association be conveyed to the writers. He (Mr. O'Connell) said there were allusions in the letter which came well from America, as the tone of it was responsive to liberty. [The witness continued to read a portion of the speech made by Mr. O'Connell.] He (Mr. O'Connell) concluded by moving "that the thanks of the meeting be sent to the subscribers in America." The motion was seconded by Mr. Steele, and passed unanimously. I see page 10 of my notes, and observe a portion of Mr. O'Connell's speech; the notes are not in short-hand; Mr. John O'Connell read a letter on that day from Wilmington, Delaware, which letter contained subscriptions; a vote of thanks was passed to the subscribers. [The witness went on to read a portion of Mr. O'Connell's speech.] Mr. O'Connell said the people ought to avoid the example of 1798, and anything like it, as it was by such means the union was carried; he did not forget the language used by members of the cabinet; Wellington, in the house of lords, and Sir Robert Peel in the house of commons, had the audacity to speak of civil war, but that would check the march of repeal; when they spoke of civil war, let them look beyond the Atlantic, and if the people were attacked they had the consolation to feel they would not stand alone; but the people of Ireland looked to him, and under his advice they would never commence, but wait till they were attacked.

Mr. Brewster—Look at your notes of the meeting of the 18th of July.

Mr. O'Connell—It would be well if the officer of the court marked these notes. Let them be handed in for the purpose.

Mr. Brewster—Look to page 1 of that date; do you see the names of any of the traversers entered there as being present? I see the names of Mr. John O'Connell, and Mr. Daniel O'Connell; I see the name of Mr. Barrett in page 4.

At this period of the proceedings there was some little noise at the table, caused by the govern-

ment reporter speaking across the table to Mr. Brewster.

The Chief Justice pointed down to where Mr. Edwards was sitting, and said the disturbance came from that place.

Mr. O'Connell, who was sitting next to Mr. Edwards, got up and denied that it came from him.

Mr. Fitzgibbon said that many persons came there from curiosity, and if they could not hold their tongues they ought to remain at home.

Mr. Brewster—Look to page 12; do you find that Mr. Ray did anything at that meeting? Yes, he handed in several sums of money; I find in page 13, that Dr. Gray gave in contributions.

Mr. Brewster—Look to page 3, read the contents, and read slowly *if you can*.

A Juror—Hold up your head, sir, and raise your voice.

The witness then proceeded to read an extract from a speech of Mr. O'Connell's, in which he eulogised Mr. Murtagh, and promised to attend the meeting at Baltinglass on the 6th of August, which was his own birth-day. He then read a letter from the Right Rev. Dr. Coen, Roman Catholic Bishop of Cloufert, enclosing his subscription to the association. On the same day Mr. Barrett handed in money from a Protestant gentleman of the north of Ireland.

The witness then read another extract from a speech of Mr. O'Connell's at the same meeting. In that speech Mr. O'Connell alluded to the necessity of attending to the municipal elections, and said that the Tories had refused to pay the borough rate. He also said that Lord Brougham had been inquiring how the money received at the association was disposed of; but if Lord Brougham chose to subscribe his pound he would be enlightened on that point—that is, if they would receive the subscription of such a man. They had invested 6000*l.* in the funds already: they intended to invest 4000*l.* more, and 1000*l.* had been advanced for the building of the Conciliation Hall.

Mr. Brewster—Look to page 12; do you see an entry of any money handed in by Mr. Ray? Yes; Mr. Ray handed in subscriptions from different parts of England and Scotland (the witness enumerated them); Dr. Gray handed in money on the same day, and stated that the Marquis of Downshire had interfered to prevent his tenantry becoming repealers.

Look to your notes of the meeting on the 25th of July, page 2. I have them before me; the secretary handed in money on that day; in page 6, I see that Mr. O'Connell handed in money on the same day; in page 8, I find that Mr. Duffy, of the *Nation*, handed in his subscription? in page 9, I find that Mr. Steele and Mr. John O'Connell handed in money.

Look to page 6, and read the statement of Mr. O'Connell with regard to the finance details? Mr. O'Connell stated that the amount received from the 4th of July, 1842, to the corresponding quarter in 1843, was 15,000*l.*

We will now go to the 14th day of August, as set out in the indictment; look at page 2 of your manuscript; who appeared to have been at that meeting of the association? Mr. Ray, Dr. Gray, and Mr. O'Connell.

Go to page 4, and tell me who were present at that meeting? Mr. Steele was present.

Go to page 12? I don't see any names there.

Look again? Oh, yes, I see there the name of Mr. Duffy, of the *Nation*.

Mr. Whiteside—We do not find any mention of the 14th of August in our copy of the indictment.

Mr. Brewster—It is a misprint.

Mr. Whiteside—My lord, be good enough to strike out that evidence against Mr. Duffy.

Mr. Brewster—Just alter the date, my lord, because Mr. Duffy's name comes in the next meeting.

Go to page 3, 22d August, and say who were present at that meeting? Mr. Duffy, Mr. O'Connell, Mr. Steele.

Go to page 5, and say whose name do you find there? Mr. John O'Connell's.

Go back to page 3, and tell me did Mr. O'Connell do or say anything that day? It states that Mr. O'Connell arrived shortly after two o'clock, accompanied by Mr. Steele. He read several letters, enclosing contributions from repeal wardens, Roman Catholic clergymen, and others.

Go to page 7, and tell me what do you find there? Mr. O'Connell read a letter from Philadelphia, containing remittances and resolutions read at the association of the friends of Ireland and repeal, and he moved that the letter from Judge Doran be inserted upon the minutes.

Go to page 9. Did he read any document of the association that day? Yes, he read his plan for the renewed action of the Irish parliament; I got a copy of it at the association.

The deputy-clerk then read the plan for the renewed action of the Irish parliament. He continued to read the manner in which members were to be given to the various cities and towns, and considered the basis of representation should be the amount of population. This was taken from the census of 1831, which was prepared for a different purpose, and without reference to the repeal of the union. Household suffrage, after a certain period of occupancy, to give the right of voting, and votes to be taken by ballot.

Turn to page 11 of that day? Finds no notes referring to arbitrators at that page.

Look at the last four lines? I see it there; the meeting then adjourned to the next day, when they were to report on the mode of appointing arbitrators and the abolition of the Catholic oath.

Judge Crampton—Abolition of what?

Witness—The Catholic oath; looks to page 4, finds Mr. Barrett's name and Mr. Daniel O'Connell; at page 5, Mr. John O'Connell; at page 8, Dr. Gray; reads page 4; Mr. O'Connell handed in several sums of money from various parts of America, and read letters from New York and Utica accompanying the respective sums, which he moved might be inserted on the minutes. Witness was proceeding to read "there were high sounding ——"

Mr. Fitzgibbon, Q.C.—Is this your comment on the proceedings? Yes (laughter).

Mr. Whiteside desired him not to trouble them with referring to anything of his own.

Witness proceeded—Mr. O'Connell said it was prudent to advise with the proprietors of the several newspapers as to the propriety of printing supplements that all the letters should be published. At page 8 reads the speech of Doctor Gray of the *Freeman's Journal*, proposing the adoption of the report furnished by the committee as to the mode of selecting and carrying into operation the appointment of arbitrators throughout Ireland; got a document that day at the association; has it in court. [Hands it to officer to read; the Clerk of the Crown was then proceeding to read from manuscript on very slight paper.]

Judge Crampton—Perhaps you have it in print; it is easier to read.

Mr. Brewster—We have it printed.

[The officer then read the report of the sub-committee, August, 1843, on the system and appointment of arbitrators in Ireland, signed by Dr. Gray, August 21, 1843.]

Mr. Brewster—Look to the meeting of the 28th of August, and say who were present? Mr. Steele, Mr. John O'Connell, Mr. Ray, Mr. O'Connell, and Dr. Gray.

Look to page 7, and see if Mr. Ray did anything? He read a letter enclosing a bill on Mr. Rothschild for 126*l.*

Did Mr. J. O'Connell read a letter? Yes; he read a letter from Cincinnati, enclosing 113*l.*

Did Mr. O'Connell say anything at that meeting? Yes.

[The witness then read some observations made by Mr. O'Connell with respect to the order on Rothschild, the arbitration courts, and a letter received from Mr. Barry, of Mallow.]

Look to the meeting of the 29th of August, at page 3 and 5, and say who were present at it? Mr. O'Connell, Mr. Ray, and Mr. J. O'Connell.

Read the observations of Mr. O'Connell at that meeting.

The witness commenced to read an abstract of the speech read by Mr. Ross yesterday, when

Mr. Justice Crampton asked whether it was necessary to read the speech over again?

Mr. Brewster said that he only wanted to have the last page read; but the other side might require to have the entire read.

The witness then read some observations made by Mr. O'Connell, to the effect that Ireland had many grievances to complain of. She was accused of being discontented, and she was so. It was said she was disaffected; but he flung back the accusation by saying it was as false as hell. She was not disaffected, but discontented. There should be no outbreak in his life-time; but when he was dead it would not be an unnatural or unadvisable result.

The expression "unadvisable result" seemed to come with surprise upon counsel for the crown, the Solicitor-General, and Mr. Brewster again asking him what result? To which the witness still replied an unadvisable result.

Mr. O'Connell—I never said anything of the kind. [In the report read by Mr. Ross yesterday, the words were, we believe, "unavoidable result."]

Mr. Brewster—Can you say how any of those observations were received? No.

Look to page 1 of the report of the meeting of the 4th of September, and which of the traversers were there? Mr. Ray, Mr. Steele, and John O'Connell.

Go to page 7, and see if Mr. O'Connell did anything? He handed in sums of money from Roscommon, Swanlinbar, Belfast, Adelaide, New York, Boston, and other places.

Did Mr. Ray make any observations? He recommended the "Spirit of the *Nation*" to be circulated amongst the people, instead of the trash they were in the habit of reading.

As the witness read the passage very indistinctly, he was ordered to read it over again.

Now go to page 16, and see if Mr. O'Connell said anything about another meeting to be held? Mr. O'Connell said that there would be a meeting in Loughrea, where three or four hundred thousand people would be gathered together, and where there would be no breach of the peace if the sub-inspector of police would only allow him to have 200 men, hardy repealers, to act as policemen, under the command of the sub-inspector.

Now go to the 10th September, and look at page 1. Which of the traversers were present? Mr. O'Connell, Mr. Barrett, and Mr. Steele.

Go to page 10, for the meeting of the 12th of September, and say if Mr. Barrett did anything? He handed in a subscription of 21*l.*

Did Mr. O'Connell do anything after that? He addressed the meeting, and handed in 500*l.* from America. He also pointed out that the Orangemen were trying to give the repeal movement a religious character, but that it would fail, as their object was to benefit Irishmen of all classes.

Now go to the meeting of the 13th of September, and say who appeared at that meeting? Mr. O'Connell, Mr. Steele, and Mr. Ray.

What did Mr. O'Connell first do? He read a letter from Washington, United States, and described it as a document characterized by good sense, practical information, and containing expressions of sympathy to Ireland.

What did Mr. Ray do? He read a communication on the subject of the enumerators appointed to take the numbers of the constituency.

Mr. Brewster then handed in a manifold copy of the address to all British subjects which Mr. O'Connell, at this meeting, said should be circulated through the three kingdoms, and placarded on the walls of Liverpool, London, and Bristol. As this document was read yesterday, he would not occupy the time of the court with it, but simply put it in. He continued the examination of the witness by telling him to go to page 1 of the notes of the meeting of the 21st of September, and to state which of the traversers were present? Mr. Ray, Mr. J. O'Connell, and Mr. Duffy.

Did Mr. Duffy do anything? He handed in subscriptions.

Look at the meeting of the 27th of September, and tell me who you find were at that meeting? Mr. O'Connell and Mr. J. O'Connell.

Witness, in answer to another question, was reading part of a speech of Mr. O'Connell, but was stopped by Mr. Brewster, who said he did not want to hear what Mr. O'Connell said; he only wanted to prove that he was present at the meeting.

Was any other person there? Dr. Gray.

Mr. Brewster—The subject matter of this meeting was fully stated yesterday; he should not, therefore, occupy the time of the court with going over it again; he only wanted to prove the presence of the traversers.

Mr. Whiteside—But you are not to assume that this man saw them?

Mr. Brewster—I am not assuming anything. Look at page 2, and say who was at the meeting of the 28th? Mr. J. O'Connell and Mr. Ray.

Did Mr. O'Connell state at that meeting anything relating to another meeting? He made some observations in reference to a meeting at Mullaghmast.

Witness was reading the observations, when

Mr. Moore said the course Mr. Brewster had to pursue was to corroborate the evidence of Mr. Ross; he ought, therefore, to read everything of which the witness had taken notes, and not such extracts only as were deemed material.

Mr. Brewster said in some instances he had certainly called on the witness to read the speeches; in a majority of cases these speeches had been already read by Mr. Ross, but where he thought it desirable he had called on this witness to read them a second time. In some instances this was not at all necessary. All he wanted to prove at present was whether Mr. O'Connell announced the meeting at Mullaghmast.

Mr. Moore—If the witness came forward to give evidence as to any of the traversers being at the meeting, he submitted that he ought to give an account of *all* that was done. He would not go the length of saying that a reporter ought not to give evidence as to what Mr. A or Mr. B said, or what every individual said; but if Mr. O'Connell or any of the other traversers made speeches on that occasion, he had no right to make extracts from those speeches, or read only those portions which he thought material.

The Chief Justice thought Mr. Moore had misunderstood Mr. Brewster. What he had stated had not been done; the witness was stopped in his reading by Mr. Brewster.

Mr. Moore—In one instance the witness begun in the middle of a speech.

Mr. Brewster—It was the middle of a page, not the middle of a speech. The passage was the reference made to the distribution of the "Spirit of the *Nation*" by Mr. Ray.

Mr. Moore—On this occasion Mr. O'Connell appears to have made several speeches, and when he called for any of them to be read, he called for the whole. In this particular case nothing had been heard of the speech beyond the announcement of the speech at Mullaghmast.

The Chief Justice—You have misunderstood Mr. Brewster, Mr. Moore.

Mr. Whiteside said if they had half the sentence read they must have the whole.

The Chief Justice—I shall not consider a single sentence of that speech as having been read; it was not wanted, and the reading of it was merely a mistake. He would agree that it would be quite unfair for the crown to give a garbled extract from a speech, and not give it entire.

Mr. Whiteside—What your lordship has said is quite enough. Mr. Brewster asked a question about a speech of Mr. O'Connell's; if he asked more than that, and wished to have any of it read, he must read the whole.

Was there any body else present at the meeting of the 28th of September? Look to the last page and tell me. Mr. Steele was there also.

Mr. Brewster (to the Clerk of the Crown)—Hand me the witness's notes of the 3rd of October.

The Clerk of the Crown handed over the document.

Mr. Brewster (to witness)—Look to page 1, and try do you find there any other of the traversers? Yes; Mr. O'Connell.

Look at page 4? Mr. Steele.

Look at page 5? Mr. Duffy, of the *Nation*.

Look to page 6? Mr. Ray and Mr. J. O'Connell.

Look to page 7? Dr. Gray and the Rev. Mr. Tierney.

Mr. Brewster—Then it appears that all the traversers were present except Mr. Barrett? My lords, as Mr. Hughes has already read out his entire report of the proceedings of that meeting, I do not think it necessary to trouble the court by a further reference to the witness's report of Mr. O'Connell's speech.

Mr. Fitzgibbon begged leave most emphatically to protest against the learned counsel indulging in any such remarks as those which had now fallen from him. If Mr. Brewster intended not to ask his witness any further questions, he might rest satisfied with his own determination to that effect, without troubling their lordships with what he did not purpose doing. Such a course was wholly unnecessary.

Chief Justice—But, Mr. Fitzgibbon, the court has a right to receive for their own satisfaction, if they think fit, such information as has been offered by Mr. Brewster.

Mr. Fitzgibbon—My lords, I most respectfully maintain, that Mr. Brewster has no right whatever to state to the court in the hearing of the jury the reasons which have induced him to adopt such or such a course.

Mr. Moore, Q.C.—Besides, such a proceeding leads to the inference that the present witness may be in a position to corroborate Mr. Hughes's notes, whereas, there is no direct evidence whatever to prove anything of the kind.

Mr. Brewster—I only wanted to avoid the imputation of leading the witness. (To witness)—At the several meetings in respect of which you have given evidence, did a great number of persons attend in the room? Sometimes, and sometimes less (laughter).

Were they generally well attended? Yes; the meetings were usually well attended.

At any of the meetings, in respect of which I have been examining you, are you able to call to mind whether you heard any of the traversers say anything about newspapers?

Judge Perrin—To which of the meetings do you allude?

Mr. Brewster—My question has reference to any of the meetings in allusion to which he has given evidence.

Mr. Fitzgibbon objected to the generality of the question.

Judge Perrin—The witness you know, Mr. Fitzgibbon, must specify a date otherwise his evidence is of little value.

Mr. Brewster—I merely wanted not to lead the witness.

Witness—I have nothing on my notes in reference to newspapers beyond what I have already read from my reports.

Mr. Brewster—I meant something additional, my lords. I have done with the witness.

CROSS-EXAMINED BY MR. FITZGIBBON.

May I take the liberty of asking you, sir, what countryman you are? I am a Clare man.

You are an Irishman at all events? Yes, I am.

How long have you been a reporter? I have been for two years in the capacity of Irish correspondent to the *Morning Herald*.

I did not ask you, Mr. Jackson, how long you had been a correspondent. That was not my question; what I asked you was how long you had been a reporter? I can't say I am a reporter, that is to say, I am not a short-hand writer.

I did not ask you were you a short-hand writer; I asked you how long you had been a reporter; do you mean to say you are not, and never were a reporter? I am not a reporter, and never was in that sense of the word.

In what sense of the word? I mean in the sense of a short-hand writer, for the term "reporter" is usually applied to a short-hand writer.

Then, by a "reporter" you mean a short-hand writer, or stenographer? Yes, I do.

Were you ever in the habit of reporting proceedings of meetings or courts for the purpose of such reports being published in the newspapers? Yes, after a manner (laughter).

Then you were, in point of fact, a reporter of public proceedings with a view to having them published in the newspapers? Yes.

That is just what I mean. When did you begin to practice in that capacity? Three or four years ago.

With what newspaper did you begin? I had been in the habit of contributing to provincial papers before I was connected with the *Herald*.

By reports I do not mean contributions; but to what provincial papers used you to send your reports? Principally to the *Limerick Star* and the *Limerick Chronicle*.

What were the politics of the *Limerick Star*? It was a Liberal paper.

And so, too, is the *Limerick Chronicle*? No, it is not; it is Conservative.

Did you send reports to both of these journals at the same time? No, I did not; I used to send reports from my own place, and not from Limerick.

And of all this side creation, Mr. Jackson, pray what place belongs to *you* (laughter)? Kilrush.

That is your place? Yes, it is my native place; my contributions had no reference to politics.

I did not ask you anything about politics, sir; your reports had reference to public proceedings, had they not—had they not reference to matters of public interest? They were principally sketches of the petty sessions of Kilrush.

Illustrated sketches? A little embellished occasionally (laughter).

By being "a little embellished" do you mean to convey that there were pictures in them for the purpose of embellishment? No; they were pen and ink embellishments (laughter).

Then, I suppose, that by embellishments you mean something in the report which, in point of fact, did not occur? Decidedly.

Something in fact that was not true? Yes.

I may go the length of saying, I suppose, that half of them were fictions? There were many fictions in my sketches.

And that, I suppose, is what you call reporting after a manner (laughter)? Yes, precisely so (laughter).

Then you commenced your career as a reporter by vending falsehoods (laughter)? No, not exactly that; I wrote on the same principle and in the same style as a reporter to a magazine.

Have you contributed to magazines? I have done so a little.

And your magazine articles are embellished after the same fashion? My magazine articles were tales of imagination (laughter.)

Are you a bit of a poet? Indeed a very large *bit* of a poet. (The witness was remarkably tall.)

Are you what is called in the county Clare a *poet-asther* (laughter)? You may, if you like, apply that appellation to me, for I do not mean to say I am a poet.

Have you contributed articles in verse to any publication? Yes, I have.

Did you ever contribute to the *Nation*? Never.

To what papers were you in the habit of sending verses? To the Limerick papers I have named.

And your poetry, I am to suppose, bore some conformity to the principles of the paper to which you sent it? In nine cases out of ten such was not the fact.

But you admit that in the 10th case it might, perhaps, be the fact? It might, perhaps.

Were the reports you sent to the newspapers similar to your contributions to the magazines? No, they were not.

To what magazines do you contribute? There was a sketch of mine some time since in the *University Magazine*. It was a tale of fiction.

Yes, but was it not intended to pass for true? Yes, with those who would be fools enough to believe it true (loud laughter).

Was it not intended by those reports to convey an accurate account of what passed at the Kilrush petty sessions? Some of what was published did occur there.

You intended they should all appear in the newspapers as true? Yes.

And yet they were not true? Some of them were.

When did you cease reporting at Kilrush? This month two years I came up here.

How did you propose to live in Dublin? I got a letter from the proprietors of the *Morning Herald*, asking me to come up here as their Irish correspondent.

Who was at Kilrush that introduced you to the notice of the proprietor of the *Morning Herald*? I met a relation of the proprietor of the *Limerick Star*, in Kilrush, Mr. Griffin; he asked me if I was not the author of those sketches in the newspapers of the Kilrush petty sessions, and I said I was, and then he said that the proprietor of the *Morning Herald* expressed a wish that I should send some of them to that paper, which I did, and then I came to Dublin to be their correspondent.

Dublin is a place where a man must have a little income to make himself smooth. Pray how do you support yourself here? I have a hundred and fifty guineas a-year from the *Morning Herald* as their correspondent.

A fixed salary? Yes.

What were you to do for that? To send a letter every day, having reference to the leading topics of political interest, and whatever the local papers adverted to.

That is, you were daily to read the morning papers in Dublin, and to make a summary of that which you thought would be agreeable to the *Morning Herald* editor? Yes.

Had you the privilege of embellishing those before you sent them up? I had.

And of course you exercised it? No, I didn't, beyond the truth.

There was no truth in those petty sessions' sketches you sent? Only in some of them.

Well, I now speak of those from Dublin? They were always true, to the best of my ability. I gave the news of the day as I found it.

That is, you gave whatever you found in the morning papers, whether 'twas true or not? I gave what I thought was probable; if I saw any absurd statement, I would be slow in adopting it until I ascertained by inquiry whether it was true or not.

Tell me now, by way of sample, what mode you took of ascertaining the truth or falsehood of any one of those statements? General inquiry.

From anybody you happened to meet? Wherever they were the subject of conversation, I endeavoured to find out whether they were true or false.

Can you describe how you proceeded on any one occasion? I don't understand you.

You don't? I cannot charge my memory as to any particular occasion. If you were to ask the editor or correspondent to vouch for the accuracy of every thing he writes you would find it very hard to get him to do it (laughter).

Would you be good enough to take up the first of those papers produced, that of the 30th of May. Did I understand you to say this was the note you took for the *Morning Herald*? That was my daily letter.

But was it not the note you took?

Mr. Brewster—Sure it's a letter.

Mr. Fitzgibbon (turning to Mr. Brewster)—I beg of you not to assume that I don't understand what I'm examining the witness about, and it is not upon this occasion alone, but for the future. I am pretty nearly a Clare man myself, and I can understand the Clare brogue well enough.

To the witness—Now, mind, I don't ask you about the substance of what is written in those scraps of paper, but I ask you are those the identical scraps of paper you forwarded to the *Morning Herald*? The very identical papers.

Now show them to me (witness handed them to the counsel—the manuscript was written on both sides of the sheet)—Did you send these identical papers for the purpose of being set up in the office of the *Morning Herald*? I did.

I suppose you know enough of reporting to know that it is necessary in sending manuscript to a printing-office that it should be written only on one side? Yes.

That is a part of the instructions of every reporter? It is.

So that it may be set up at once without being copied? Yes.

Was the paper you sent as it is now, in scraps of this kind? No, they were in full length scraps.

After having sent these slips to the *Morning Herald*, when did you see them again? I received a letter from the proprietor about two months ago.

Don't tell us about his letter now. I ask you only for a date? I never saw them until about two months ago.

In whose hands did you see them on that occasion? The Crown Solicitor handed me a letter from the proprietor.

Now don't tell us about your letters.

Witness—My lords, in justice to myself——

Chief Justice—You're not asked about that now.

How did you come into communication with Mr. Kemmis? He sent for me and I went to his office.

Was that the first time you were in his office? It was the first time I ever saw him to my knowledge.

Whose initials are those on that paper? Mine.

When and where did you write them? In Mr. Kemmis's office a few days after I was called on by the proprietor to do so.

But were you in communication with Mr. Kemmis before that? No.

Did you expect that communication from Mr. Kemmis to attend at his office? Upon my oath I did not.

When did you begin to attend the association meetings? About eight or nine months ago.

For the first time? I was off and on there before.

Were you a Repealer? No.

Did you pay a shilling going in at the door? I did the first time I went in.

Afterwards you went in free—you went in as a reporter? I did.

Were the accounts of the proceedings you sent over from your own notes? Sometimes they were, and sometimes borrowed from the notes of the man near me, perhaps.

Were they borrowed from the notes of the man near you? Very frequently they were; I copied them from the slips of the man next me.

Was that a short-hand writer? Sometimes he was, and sometimes not; I gave the substance of what he had written out of course; I could not copy short-hand notes, not being a short-hand writer myself.

Used you ever to vary the language when you copied from the manuscript of the man next you? I used.

In order that it should not have the appearance of being a copy of what he transcribed? Precisely.

And am I to understand that that was done to prevent the appearance, to your own proprietors, that you had merely copied what another man had transcribed? Exactly.

And those are the notes you have been reading here to-day? Yes.

Look to those notes that you have read, and select out of them any one piece of paper which you will swear upon solemn oath contains what was taken down by you from the lips of the man represented in it to have spoken? Upon my solemn oath this paper (holding up one of his sheets of manuscript) contains the substance of what Mr. O'Connell said.

Will you swear those were his words? To the best of my belief it is the substance of what he said. I never attempted to give his exact words.

Now, attend to me. On your oath did you write what is upon that slip of paper while Mr. O'Connell was speaking? Yes.

Upon your oath was that written down upon that piece of paper from the lips of Mr. O'Connell while he was speaking it? Yes, occasionally taking a note, and catching the leading topics in his discourse.

I ask you to fix upon any one of the pieces of paper you have in your hand, that you will positively swear, not that you believe, was written while the speaker was speaking? To the best of my recollection this (meaning one of his slips) was; but I cannot be positive.

Then you are not positive? No.

What is the date of that slip? The 30th of May.

Then you are not positive as to that? Not very.

Are you positive at all that that piece of paper was written from his lips while he was speaking? It is in substance what he said, to the best of my recollection.

Is that an answer? I think it is.

On your oath was it written while he was speaking, and not from a paper? I cannot swear that, certainly.

Then you won't swear that it may have been taken from a paper? A certain portion of it may or may not.

Might not any person in the court give me that answer—that "portions of it may or may not?" Must it not be either of the two things? I do not recollect any particular case.

Could you fix upon any one of all the slips? I could not.

Take up your paper of the 5th of July. Was that little bundle made up in the same way as the others? Yes.

Was it written whilst you were in the association? It was.

Was it written while the people were speaking? Yes.

Do you swear that? I do.

The whole of it? Yes.

While the meeting was going on, and in the association-room? Every one that refers to the meeting of the day was written in the room.

And while each particular speaker was speaking? It was.

Do you swear that positively—that every one of those slips were written in the association, and while each speaker, whose language they purport to give, was speaking? Certainly not.

Did you tell me a moment ago they were? I did not.

Did you tell me in any sense they were? I said they were (sensation).

And you say now they were not? While the money was handing in I wrote out what previously occurred.

Will you now turn to the speech put into the mouth of Mr. O'Connell on the 15th of July? He said he wished to call attention to two letters he had received that morning from Sligo. One was written by a discharged soldier, stating "he was employed by Mr. O'Connell."

Well now, have you the speech of Mr. O'Connell in moving the insertion in the American book of a a letter received from America? I have; "Mr. O'Connell moved that the letter be inserted in the American book, and not on the regular minutes, and that thanks be conveyed to the two office-bearers named in the letter, as subscribed to their fund."

Do you swear that sentence was written by yourself, when the speaker was speaking? To the best of my opinion it was.

Was it or not? I can't be certain.

Now, listen to me while I read from this paper (*Freeman's Journal*) a report of the same speech you have been reading to us—"Mr. O'Connell said it was better take up each of the American letters by itself, and therefore moved that the letter should be inserted in the American book, but not on the regular minutes of the association, and that the thanks of the association be conveyed through the two office-bearers that were named in the letter to the subscribers to that fund." Now, is not that almost *verbatim* with what you have read from your slips?

Mr. Brewster—I beg your pardon, and I will take the opinion of the court whether I am right or not. I have no objection if Mr. Fitzgibbon puts this newspaper in evidence, but I object to his reading any quantity out of a newspaper he pleases, and then asking the witness does that correspond with something he has in his hands.

Mr. Fitzgibbon—I am not at present asking Mr. Brewster to look at what I am doing at all. (Laughter.) I am at present testing the credit of this witness; and I contend for my right to show the jury that by any human means I cannot, without having that paper before my eyes, repeat one word or syllable that is in that paper.

Mr. Brewster—It is not to the newspaper I object, but to the mode of examination adopted by Mr. Fitzgibbon. I object to the mode of his examination, because he reads from a newspaper the exact words of the witness's notes which he sent over in his correspondence.

Mr. Fitzgibbon—I don't read from the paper at all. I'll read from my brief now, I tell you. (Loud laughter.)

Mr. Brewster—If you offer the newspaper in evidence I will not object to it, and then you may examine him as to it.

Mr. Fitzgibbon—Here is my brief, will you have it in evidence? (Great laughter.)

Mr. Brewster—It is not competent for you to read from your brief or any other document, and then ask the witness if what is read agrees with notes he has taken. I say it is not competent to do so unless you put the document in evidence.

Mr. Fitzgibbon—I will take up this paper, and see if I don't read a report of every word the witness says he sent to the paper.

Mr. Brewster—But that is what I object to.

Judge Burton—Why go on to prove what you have such a perfect transcript of?

Mr. Fitzgibbon—The course I am taking is infinitely more fair to the witness than the course alluded to on the other side; it is the only fair and legal course which I am at present adopting; if I did not take this course, I would be stopped from reading the document if I did not examine the witness as to the fact before he left the table. In the paper of the next morning, I find a *verbatim* report of what the witness says he sent to London, and if I did not ask him about that I would have been stopped from reading it, unless I asked the man about it when I had him on the table. Here is a man who comes on the table to tell the jury that he is a reporter for a newspaper, and as such attended the meetings of the association, where Mr. O'Connell spoke. I will show he is not a reporter, and that he was incapable of taking reports where he says he did, and that what he asserts is false. I want to show what he says is absolutely and morally false, and a fabrication from beginning to end, and that he is now speaking to the jury what is false, when he tells them that the documents which he holds in his hand were written by him at the meetings. He came here falsely representing to the jury that fact. He did not take a note at those meetings, nor had he the ability of taking notes, and, therefore, I want to show that what he did do was copied *verbatim* from the morning papers of the next day, and sent off by him, although he tells the jury he wrote the pieces of paper at the meetings.

Judge Burton—I see your object is very clear.

Judge Crampton—Mr. Fitzgibbon, am I to understand that you intend to give the paper in evidence?

Mr. Fitzgibbon—No, I do not.

Judge Crampton—Then I feel great difficulty in that case of letting in this sort of examination.

Mr. Brewster—If he puts in the newspaper as evidence I will withdraw my objection, but unless he does so I must press it. Mr. Fitzgibbon may tell me he will not read from the paper but from his brief, and I object to that also, for how am I to know but that brief might be a copy of what this gentleman sent to the *Morning Herald*. (Laughter.) Let him put in the newspaper as evidence, and I will withdraw the objection.

Mr. Fitzgibbon—I am here at present to—— but no, I will get it in another form. Come, sir, turn round and answer me? Yes, I will.

Will you now, sir, take on yourself to swear, on your solemn oath, that you did not copy these slips of paper from the morning paper of the next day, and then send them off as your own report? To the best of my recollection—— I can't say, I might have copied them either from the paper or a note-taker's slips.

Hah! hah! Take that down. I will repeat the question, sir. (Question repeated.) I might have copied them either from the paper or another note-taker's slips.

Well! Did you do that while Mr. O'Connell was speaking? I can't say that.

One way or other? No, one way or other.

Did you do that on the same day of the meetings or the day after? I can't be positive as to that.

Not positive? No, not positive.

Did you see the report in the morning papers of the next day? I might have seen it.

Then, you might have copied your report from the papers? Some of it I might have copied.

You might have copied it all; eh? It is possible.

Did you ever copy from the morning papers at all? Yes, I used to copy some, and cut more out from it; I sent the slips which I cut from the papers over whenever I adopted them.

And you sent them to London? I did, positively.

On your solemn oath will you venture to swear you did not take all these papers from the newspapers, or from another note-taker's slips?

Judge Perrin—Come, sir, speak up, and let us hear you, as it will save a great deal of time to do so.

Witness—For all I can tell, I might have copied them from the newspaper or the note-taker's slips.

Mr. Fitzgibbon—Can you tell from which you copied them? I cannot tell which.

A Juror—Mr. Jackson, did you not swear a while ago that all you wrote was done during the time of the meetings in the Exchange, and no place else? The majority of them were written there.

Juror—Oh, but you certainly swore they were *all* written there, and nowhere else.

Chief Justice—Let Mr. Fitzgibbon close his examination of the witness, and then, gentlemen, you can examine him.

Mr. Fitzgibbon—I will repeat the question of the juror, and ask did you not swear a while ago that you wrote all these slips at the meeting and in no other place? To the best of my recollection the majority of them were written there.

Were *all* of them written there? Not all, perhaps; some of them were written after the meeting was over; some of them were written next day.

Did you do any of them from the newspapers? Some of them.

I ask you again did you not swear that they were all written at the meetings? The majority of them were written there, or at least generally speaking they were.

While the meetings were going on, were you always employed writing? Not always—only sometimes.

That is, you were sometimes only listening? Yes.

Do you recollect Mr. O'Connell having made a speech upon negro slavery? I do—he spoke several times on that subject.

Turn to your note of the speech he made on that subject on the 5th July. Were you present on that occasion? Yes.

Was not the speech a long one? Yes, to the best of my recollection.

I want a positive answer; were you present the whole time of the meeting? I rather think I was.

Is that a positive answer? Were you present the whole time of the meeting? I will not swear positively.

Will you swear you were there for an hour? Yes.

For two hours? To the best of my recollection.

Is that the only answer you will give? Will you swear positively to one hour? Yes.

That hour may have been made up of different periods; were you there more than once that day? I won't swear I was there more than once.

Will you swear positively you were there more than an hour? I think I was, but I did not time myself.

Will you swear positively to half an hour? No.

Will you be positive to one quarter of an hour? Yes, and more.

What hour of the day did you go to the meeting? I don't know exactly.

Who was on his legs when you entered the room? I don't know.

Did you not offer awhile ago to tell me? Was any one in the room when you went in? Of course there were.

When you entered the room was it empty or full? I never went into the room but people were in it.

Can you tell me whether it was morning, noon, or night when you entered it? It was about midday.

Did you hear the whole of Mr. O'Connell's speech? I did not hear the whole of it.

You say you went there about twelve or one o'clock? Yes, to the best of my recollection.

And you swear you heard Mr. O'Connell speak there? Yes.

Will you swear that Mr. O'Connell was at the meeting at two o'clock? He came in whilst I was there according to my note.

Do you mean according to your note *verbatim*, or do you swear from your memory? I either saw him enter while I was there, or he was there before me.

Is that your answer, Mr. Reporter from Clare, with your face hardened by the Atlantic breeze? I am not ashamed of the place I came from—the breeze has not hardened my face.

Well, sir, with your face hardened by the Atlantic breeze——

Mr. Brewster—It is not material, but he did not say so.

Mr. Fitzgibbon—He has sworn it.

Mr. Brewster—What he said was it had not.

Mr. Fitzgibbon—Do you swear that the Atlantic breeze or something else has not hardened your face? I told you it had not, and I'll prove before I leave the table, if allowed to explain, that nothing has hardened me.

Turn to your notes of the 4th of September, and now mind not to lose sight of the question between us, which is, that you are to prove that you are not a hardened man. Find for me the passage in Mr. O'Connell's speech in which, according to your report, he said that no tumult would take place in his time?

Mr. Brewster—Mr. Fitzgibbon is assuming that the witness said O'Connell said so.

Mr. Fitzgibbon—I am interrogating him generally, and I have a right to put the question in my own shape.

Mr. Fitzgibbon referred the witness to his notes of proceedings on 4th September, to read Mr. O'Connell's speech, with the word "unadvisable."

Mr. Brewster—It is not 4th September, but 29th August.

Witness then read Mr. O'Connell's speech of the 29th August, with reference to the proceedings in parliament during the session then closed (already given). The repeal of the union should be carried; the union was brought about by force, fraud, and perjury; here the honourable gentleman went into a detail of all the advantages to Ireland——

Mr. Fitzgibbon—This is your own commentary?

Witness—It is; he went on to state the prosperity of the country before the union—referred to the work published by Mr. Driscoll, and read various extracts from Lord Brougham's speeches, which were spoken on the 26th July and 25th February, 1825, on the state of Ireland, in which Lord Brougham admitted the grievances that existed in this country, and on the right of the Irish people to redress. Mr. O'Connell contrasted the conduct of Lord Brougham and his sentiments then with those he holds now, and mentioned several acts of parliament which deprived the Irish people of the protection of the British constitution, the suspension of the *habeas corpus* act, the enactment of insurrection acts—that for 26 years there was perpetual despotism inflicted on Ireland; this was in consequence of the union. He referred the state of the poor to the union and the harsh measures of the landlords—that the speech delivered from the throne was the essence of stupidity and impudence. This was not to be taken to apply to the Queen, but to the ministers. He loved the Queen with the affection of a parent, as far as was consistent with her high dignity. The monster grievance of Ireland was the church. There was now a thorough feeling on the subject of remedy for all the grievances throughout the entire country. While he (Mr. O'Connell) lived there would be no attempt at bloodshed, but he left it for those who came after him to consider how far this would be an unnatural and unadvisable result.

Were you present at that speech? I was.

Heard Mr. O'Connell speak it? Yes.

Is that the note you took when Mr. O'Connell spoke? It is.

On the same pieces of paper? Yes, the very pieces.

Is it word for word as he spoke it? I give the substance as it fell from Mr. O'Connell's lips.

Did you take it from any other reporter, or paper? I did not.

Will you swear Mr. O'Connell, on that day, used the word unnatural and unadvisable result, or unavoidable? On my oath I think, to the best of my belief, he used the word unadvisable.

Will you swear positively he used the word? I took it down at the time.

Perhaps you might have varied the passage? I did not—I wrote it at the time.

Who was sitting next you when you wrote it? I can't recollect.

Do you not remember who were near you? Several reporters for the *Freeman's Journal* and *Saunders*, and other papers.

Will you name any of the gentlemen? That gentleman (pointing to Mr. Edwards, who sat at the table), to the best of my recollection, was there.

You will not undertake to swear to any particular person? No, but I have no doubt the usual corps of reporters was there.

Can you name any single man who saw you on that day in the association room? Any one who was there might have seen me.

Mr. Fitzgibbon—And that is an answer to my question.

Witness—I suppose Mr. O'Connell and Mr. Ray saw me there.

You did not speak to Mr. O'Connell? No, I had not that honour.

Did you speak to Mr. Ray? I cannot remember that I did.

You know Mr. O'Connell is one of the parties accused here, and that Mr. Ray is another? Yes.

And that they cannot be examined? I know that.

Name another individual who you saw in the room? I cannot say, but I was amongst the reporters.

Cannot you name any one person to whom you spoke? I cannot at this distance of time.

What, sir, since the 29th of August last? Possibly I did speak to some person, but I cannot remember.

Mr. Fitzgibbon—In Italian, *non mi recordo*.

What other persons were at the association that day? I cannot remember.

Was John O'Connell there? I cannot say without referring to my notes.

Now, refer to your notes. Witness (looking to his notes)—Yes, he was there.

Why did you take a note of Mr. O'Connell, Mr. John O'Connell, and Mr. Ray being there? Why,

as in battle the Duke of Wellington and Napoleon would be mentioned (a laugh). They were the leaders, otherwise it would be *Hamlet* with the part of *Hamlet* left out (laughter).

Mr. Fitzgibbon—Oh, I see you know how to play your part (laughter),

Why take a note of those three persons being there on that day? Because they were the principal persons.

Did Mr. John O'Connell make use of any observations? Yes.

How long did Mr. O'Connell speak? I cannot remember. It might be an hour or half an hour. It was rather a long speech.

Was it the only speech made? It was the only speech made. If there were any others I did not give them.

Casual observations might have been made? I do not think there was any speech but Mr. O'Connell's that day. All the others were only short observations.

And you read the speech of the day in three or four minutes? Yes; I never took a *verbatim* report.

Then this was not a *verbatim* report? No, it was not.

Then you cannot swear to the words, "This would not be an unnatural or unadvisable result?" To the best of my belief these were the words. I can only say to the best of my belief they were the words.

How far were you from Mr. O'Connell? As far as from here to the corner of the court. I was so near him all the time, and I never left the room.

How did you enter? Did you pay a shilling at the door? No; the porters recognised me as a reporter.

Did you look at any gentleman's slip that day? I cannot say whether I did or not.

Were there any short-hand reporters there that day? I imagine they wrote short-hand.

And is that an answer to my question? I believe I saw persons who wrote short-hand there.

Which do you think the practical short-hand reporters or you gave the most faithful report of what Mr. O'Connell said that day? The short-hand writers, certainly. I never undertook to give a *verbatim* report of what Mr. O'Connell said.

Mr. Fitzgibbon—Now, sir, you may retire, as far as I am concerned.

CROSS-EXAMINED BY MR. WHITESIDE, ON THE PART OF MR. DUFFY.

Mr. Whiteside—Now, Mr. Jackson, draw upon your memory and not upon your imagination for your facts. Was Mr. Duffy at the association on the 6th of July? I cannot say without referring to my notes.

Can you swear you saw him on the 25th of July? I cannot without referring to my notes.

You sometimes copied from the slips of some other reporter, and sometimes from the morning journals of next day? I did.

The materials of your knowledge were sometimes taken from the morning journals and from the slips of others then? Yes.

You have a taste for eloquence? Not the slightest (laughter).

Don't you deal in "thunderbolts" and "tarnation fine things?" It is my own thunder (laughter).

Oh! yes, you contribute to the magazines, that is obvious. Not to the powder magazines (great laughter).

These things suit the London market? They go down with the Londoners; they are very gullible (laughter.)

You could not remember anything particular of what Mr. Duffy said? No.

You do not take down the names of all persons who are at the association? No.

Only the Wellingtons and Napoleons? Yes.

Did you give an account of all you saw to Mr. Kemmis? No.

Did Mr. Kemmis tell you how to take down the report? No. I got a letter from him, desiring me to call upon him. He told me he had got my copy from the *Morning Herald* office, and that I would be required to verify them.

Did he produce all the letters to you? I suppose not.

On your oath don't you know all your letters have not been produced? They have not.

Some of the jurors here retired, and the court adjourned for a short time.

The court having resumed, the cross-examination was continued by Mr. Whiteside.

Now, Mr. Jackson, have you been refreshing your memory as to your poetical allusion to the "Songs of the *Nation?*" Turn to the date of the meeting Mr. Brewster asked about, and read the musical allusion you say was made by Mr. Ray. Did you not state to the court on the direct examination that Mr. Ray made a speech in which he said so and so upon that occasion? Did you not intend to convey that Mr. Ray made his observations in the nature of a speech? It was not a speech.

Then what was it? A casual observation.

Then it was not a speech—is that settled? It was a casual observation.

Tell us how long it was? It occupies here four lines.

Give it me as you swear he spoke it? Mr. Ray suggested that the singers and venders of ballads should adopt the songs in the "Spirit of the *Nation*," and abandon the trash that had been in circulation.

Will you swear that you were present when it occurred? I cannot positively.

Will you swear that it was not given you by somebody else, or copied from another paper? I will not swear it was not.

Will you swear that Mr. Ray did not say this—that he had got a letter, in communication, addressed to him, stating that certain ballad singers had been taken up for singing improper songs, and that Mr. O'Connell then applauded the arresting such persons, and said he would move a vote of thanks to those who did it; will you swear that this did not occur? Allow me to explain. My notes were only a general summary for reference.

I understand. They were meant to meet the taste of the English readers of the *Morning Herald*, and you will not undertake for their accuracy? I will not (considerable sensation).

Then we quite agree, Mr. Jackson, as to the value of your reports. Now, you have given half a sentence of a speech of Mr. O'Connell's, but the matter was checked. It was about an address published by the Irish representatives, or a section of them, to the English people; do you remember that? Yes.

Did not Mr. O'Connell state that it was a public document, and commented upon it on that occasion? He did.

Do you recollect the substance of that address: was it not a statement from some of the Irish representatives—the member for Belfast among others—of the grievances of the Irish people? It certainly was.

Then on that occasion Mr. O'Connell stated the substance of that address and commented on it? He did.

This document stated the grievances of the Irish people, political and religious? It did.

Did you ever consider those political and religious questions, as they affect the people? I never went deep enough for that.

On that occasion did not Mr. O'Connell say that

the people were discontented, but not disaffected? Yes.

And that the people were loyally disposed to the Queen? He said so.

And that they were loyal to her person? He did.

Did he not also speak of the French constitution and of Louis Philippe? He did—more than once.

He spoke sharply I believe of the French and their systems of government and education? He did so.

And very right. He spoke too of other things; did he not? He spoke strongly of their constitution because their house of lords was a mockery? He did so speak of it on those grounds.

Did he not say that their university taught infidelity? He did.

Well, there was no harm in that. One thing more about the *Nation*. Do you not remember Mr. O'Connell distinctly saying that he repudiated any newspaper being the organ of the association, and that he particularly repudiated the *Nation*? I heard him say so; I am almost certain of it.

Do you recollect the day when the plan for the renewed action of the Irish parliament was proposed; did he not say this on that occasion? I have heard those sentiments uttered by him.

I suppose in sending your sketches to the *Herald* you seasoned them (laughter) according to the palate—the literary palate of the readers of that journal? I may have thrown in a little fun to make them amusing (laughter).

Oh! I understand. You made them spicy (great laughter) to make them go down? Yes.

The *Herald* has changed hands lately; has it not? It has.

Was it since it changed hands that you received directions to verify your writing at the Crown Solicitor's? It was a few days before.

Did you not hear Mr. O'Connell say that he would not be held responsible, or the association either, for anything that might appear in the papers? I heard him say that. Witness then said he wished to make an explanation, and was proceeding to address the court, when

Mr. Fitzgibbon said he objected to the witness making any explanation.

Mr. Jackson, however, was allowed to explain, and said that he wished it to go forth to the world that these letters and documents were procured from the proprietors of the *Morning Herald*, and placed in the hands of the crown solicitors unknown to him. The first information he got of it was a communication that he was required to attend at the solicitors' office, to verify his manuscript.

Mr. Whiteside—Well, only take care what you write in future to the *Morning Herald*.

CROSS-EXAMINED BY MR. MOORE.

Look to your notes of the 3d of October. I have them here.

Did you take these notes on the day of the meeting, and at the meeting? Yes, I did.

Do you know the Rev. Mr. Tierney? I do not know his person.

If I mistake not you expressly mentioned his name amongst the names of the persons who you swore were present at the meeting that day—did you not? Look to page 14 of your notes. By a reference to my notes, at the page you state, I find that he is here stated to have been present.

You do not know his person you admit? No, I do not.

How then does it come that you put down his name in your note-book as one of those who were present? How could you swear he was there if you do not know his personal appearance? From the position in which the reporters sat it was quite impossible for us to see Mr. Tierney when he was addressing the meeting; I could not see him, but I heard some gentleman making a long speech; I inquired who was speaking, and I was told it was the Rev. Mr. Tierney; that is all I know; I never saw him before or since to my knowledge, and I could not now swear to his person; I merely heard him speaking.

Did I not understand you, in your direct examination, to swear distinctly that the Rev. Mr. Tierney was present at the meeting? I may have sworn so; but I have explained to you the reasons I had for arriving at such a conclusion. I heard him make a long speech, and I was told the speaker was the Rev. Mr. Tierney. Therefore it was that I put down his name as one who was present.

You swore distinctly that the Rev. Mr. Tierney, of Clontibret, was present, and yet you now tell us that you neither know nor knew his personal appearance. Let me ask you, sir, will you take upon yourself *now* positively to swear that the Rev. Mr. Tierney, of Clontibret, was there at all? To the best of my belief he was there.

I don't want your belief. Can you swear positively he was there? No, I cannot swear positively; but to the best of my belief he was; but somebody made a long speech, and Mr. Tierney's name was put down as the name of the speaker by all the reporters.

Mr. Moore, Q.C., said that he wished to submit to the consideration of the court an application which he had made to the counsel at the other side, and which, he was sure, was one which would meet the sanction and approval of the court. The crown witnesses which had been examined on yesterday and the day before had read a variety of very lengthy documents, which, they said, were reports of what had taken place at several repeal meetings. It was utterly impossible for the traversers' counsel to take any thing like an ample and faithful and connected note of those documents; but he applied to the gentlemen at the other side to give copies of what their own witnesses had read in the course of giving evidence, and he thought this was a very reasonable request and should be acceded to, for assuredly the traversers ought to clearly understand what was to be used against them. He did not see how there could be any objection to such a concession, for the documents were supposed to be in the recollection of the jury, and were now public property.

The Chief Justice—I do not know that it is in the power of the court to make any order in your favour, Mr. Moore.

Mr. Moore—But even though it be not in your lordship's power to make an order, still it is open to the court to state what view they take of the application; for thus perhaps any objection which exists on the part of the crown to the granting of our request may be removed. I wish that this application should receive the sanction and approval of the court, for it seems to me a very fair one.

Judge Crampton—I really think that the application is a fair one, and might be granted, in case you have no means of knowing the precise contents of the documents that have been read. But have you not a short-hand writer of your own who could have taken a full and accurate note of the documents?

Mr. Moore—No short-hand writer that ever lived could take a full and accurate note of the documents as they were read.

Judge Burton—Is it only one document that you require?

Mr. Moore—What we want is copies of the reports that were read yesterday by the witnesses, for which we are ready to pay. The documents are public property, and we are willing to defray the expense of copying them out of our own pockets.

Mr. Fitzgibbon said it was most essential that the traversers should have copies of these documents, for the crown would have the final reply in this case,

and they would have full copies of the reports read by their witnesses, from which they could cull and gather such extracts as suited their own purposes, whereas the counsel for the traversers would only have their recollection to depend upon for such passages as they deemed favourable to their clients.

The Attorney-General said that the crown could not think of granting the application, and the grounds on which they refused it were, that such a course had never been before adopted, and was utterly without precedent. Besides, he objected to such a proceeding, because he could not but remember the course that had been already pursued with respect to one or two of the crown witnesses by the traversers; and, although he did not anticipate the repetition of such a course, he thought that the manner in which the witnesses had been treated furnished, in itself, sufficient reason why the request should not be complied with. All the meetings with respect to which evidence had been given by the crown witnesses had been reported in the newspapers, and nothing was easier than for such of the traversers as were connected with the press to have produced their own reporters, to test the accuracy of any documents that had been read in court. Under all the circumstances of the case, it was impossible for the crown to deviate from the ordinary course by giving copies of the documents.

Mr. Moore—I feel I cannot call upon your lordships to make an order. I must rest satisfied with what has been said by the crown.

Mr. Fitzgibbon then rose and submitted that the whole of Mr. Jackson's evidence ought to be struck out. Mr. Jackson had been brought here as a witness by the crown, but his reports were made up in a particular manner; and, even on his own showing, he had no means on earth for testing their accuracy.

Chief Justice—But, Mr. Fitzgibbon, surely this is not the proper time for making such an application?

Mr. Fitzgibbon—What time can be better than the moment when the witness leaves the table?

Chief Justice—Why, the witness has already been cross-examined by three gentlemen.

Mr. Fitzgibbon—Yes, and my grounds for making this application are based upon that very cross-examination.

Chief Justice—I do not think we can now accede to that proposition. The matter is well worthy of consideration, but not at present.

Judge Perrin—I do not think it is in our power to strike out any witness's evidence.

MR. JOHN BROWNE CALLED AND EXAMINED BY MR. HOLMES.

He said he was a printer and stationer, residing at 36, Nassau-street, and did printing work for the loyal national repeal association; he was employed by the association generally through Mr. Ray.

Did you receive much money from time to time? I did.

Mention how much, and be under the sum?

Mr. Fitzgibbon objected to the question, and submitted it would not be evidence against the traversers.

The Chief Justice—Would it not be evidence against Mr. Ray?

Mr. Fitzgibbon—Let him be asked what sum Mr. Ray paid him.

Mr. Holmes—I'll ask my own questions. What amount did you receive? I could not say.

Havn't you kept account-books? I might have got sometimes 20*l*.

Mr. Fitzgibbon—I object to any evidence of payment without the production of those account-books.

Mr. Holmes—Were you not served with a *subpœna duces tecum* to produce your account-books? They are in court.

What sum did you receive within the last two years?

Mr. Fitzgibbon again submitted that would not be evidence. The indictment begins in March, and the proceedings of two years past are not embraced in any of the counts.

Judge Perrin—I don't see the relevancy of the inquiry.

Mr. Holmes—Look at that document (handing witness a printed paper), and say if you printed it for the association? I did.

When? I could not say exactly, but it was within this year—that is in 1843. It is headed, "Irish Parliament. Report of the proceedings of the Loyal National Repeal Association of Ireland." The witness then proved that he printed the following documents for the association, which he identified as they were handed to him:—"Instructions for the appointment of Repeal Wardens, and Collectors of the Repeal fund—their duties. Circular relating to the appointment of Repeal Wardens. Description explanatory of the new members' card. Address to the inhabitants of those countries subject to the British Crown. Rules to be observed by arbitrators in districts the people whereof may choose to submit their differences to arbitration. Arbitration notice—surmounted by a harp."

Now turn to the first document you proved and tell the court about how many copies of that you printed? About 2,000.

To whom were they delivered?

Mr. Fitzgibbon—Did you deliver them yourself? No.

Judge Perrin—Surely if he was paid for them its sufficient.

Mr. Holmes—Well, were you paid for printing them? I was. I printed about four or five thousand copies of the instructions to the repeal wardens; I printed about two thousand copies of Mr. O'Callaghan's letter.

The Attorney-General—That's what's called the description of the card to which I adverted in my opening statement.

Witness—I printed about one hundred copies of the notice respecting the arbitration courts; about two hundred copies of the arbitration rules, and was paid for them; between two and three thousand copies of the address to the people subject to the British crown, and I was paid for them; between two and three thousand copies of the arbitration summonses.

Mr. Holmes—With respect to those different documents, did you print them from manuscripts furnished to you? Some of them were and some of them were not—generally not.

Have you any of the manuscript from which you printed any of them? No, I don't think I have.

You were subpœnaed to produce all the documents? I was.

Did you make search to get any? I did; the only manuscript I can find is this (producing a written paper headed "Leinster for Repeal").

Did you print any placard from that? I think I did; I could not swear positively, perhaps I did.

Have you any doubt that you printed from that?

Mr. Whiteside objected to that question.

Mr. Holmes—Where did you get that written document? In the office.

How did it come there?

Mr. Whiteside—I also object to that question being put, unless he was present when it came; you can ask him when he got it.

Mr. Holmes—Do you know how you came by it? I cannot exactly tell; I found it on the file where the men usually put such things; I have my books here.

See do you find any entry of that document in your account-book?

Mr. Fitzgibbon—My lord, I object to that question.

Chief Justice—Hear that question again.

Mr. Fitzgibbon—I am here for Dr. Gray, and I insist on my right to be heard. Mr. Holmes has asked the question, "Have you an entry there of that document?" Now, I object to that.

Mr. Justice Crampton—You have mistaken the question.

Mr. Fitzgibbon—I do not mistake the terms of the question.

Mr. Holmes—These young men think I am not able to stand out, and I am (laughter). See if you find any entry there (meaning in the account-book) of work, and payment for it?

Mr. Justice Perrin—Ask him if he has anything relative to that document?

Mr. Holmes—In his own handwriting?

Mr. Justice Perrin—In any handwriting.

Witness—I see an entry in my own handwriting.

Does that entry relate to the document in your hand? Both the entry and the document relate to Mullaghmast, but that is the only relation between them.

You say you did print a document for Mullaghmast? Yes.

For this association? Yes, I was paid for it. (A document handed witness.) This is the document I printed for Mullaghmast; I was paid for it; I suppose I printed 2,000 of them; Mullaghmast was what the newspapers called a "monster meeting;" I printed some documents for the intended Clontarf meeting.

Mr. Whiteside—I object to this. If there are any documents let them be produced. Have you any documents here? Yes, I have.

Mr. Holmes—Did you bring a document here that you printed relative to the Clontarf meeting? The witness, after searching a bundle of papers, said—No; I find I have not the document alluded to; I think I printed some documents for the Donnybrook meeting; I have brought all the documents I have here in accordance with the subpœna served on me; some of them were printed for the association; all I have here were printed for the association; I was paid for them.

Mr. Holmes—It was rather a good job—wasn't it?

Mr. Whiteside—I object to this (loud laughter). It is not a fit question at all. It's a mighty witty observation, though, but has nothing to say to the case at all.

Judge Perrin—It is not a question at all—it is merely an observation.

Mr. Holmes—Well, Mr. Whiteside, if I stopped you in asking questions that are not relevant to the case, I would never have done. You ask questions which have nothing to do with the case at all.

Mr. Whiteside—True; but that is on cross-examination; and you seem to forget that you are now on the direct examination for the crown (laughter).

A document handed witness, headed the "Revision of the jury list." I printed this, not for the association, but for Mr. Mahony; I don't know if I was paid for it yet.

Mr. Holmes—Then hand it back to me.

Mr. Whiteside—Aye, that's the place it ought to be (laughter).

WITNESS CROSS-EXAMINED BY MR. WHITESIDE.

Look at these (11 books and pamphlets). I see them.

Mr. Whiteside—Did you print these for the association? Yes, I did; I printed them in the same way as I did the other documents of the association; these (three addresses to the people of Ireland) were printed by me also.

Mr. Whiteside—I now hand in these documents, and you may go down, Mr. Browne.

Mr. Holmes—I wish to ask you a question. Mr. Browne, did ——

Mr. Whiteside—I object to you asking him any questions—it does not arise out of the cross-examination.

Mr. Holmes—Very well; that is the only legal objection you made yet (laughter).

READING OF THE REPEAL DOCUMENTS.

Mr. Whiteside—I hand in these documents, and enter them as read.

Mr. Holmes—Let them be read *seriatim* then. We hand in the other documents read previously.

Mr. Whiteside—We object to any documents being given in evidence, or made use of against any of the defendants, as they cannot be read in evidence against them.

Judge Crampton—The greater portion of these documents were read before.

Mr. Holmes—All the traversers are members of the association, and the documents we have read have been issued by the association. The traversers attended at the association and made speeches there, and it is as clear as light that these documents are evidence against them; and, in addition to that, one of them is secretary of the association. The documents are all printed for the association, and paid for by that body.

Mr. Whiteside—The only evidence against Mr. Duffy is, that he was observed at the meeting in Abbey-street theatre.

Chief Justice—How often did he attend at the meetings, and hand in money?

Mr. Whiteside—I don't care about that, my lord; it is not worth a rush (laughter).

Attorney-General—This is not the time to argue this question.

Mr. Whiteside—As the matter at present stands, your documents are not evidence against the traversers.

Judge Crampton—If any of these papers were handed in and read at the meeting they may be admitted here.

Mr. Whiteside—A question was raised yesterday, but the witness proved that he got certain documents from the association, and therefore it was made evidence, but in this case it is different, and the documents cannot be received.

Judge Burton—All the traversers are members of the association, and the papers are issued by the association.

Mr. Whiteside—Oh, but when there are a large mass of papers.

Judge Perrin—Your objection is, that the papers were not published; but I think they may be given in evidence. Here is a certain number of persons charged for meeting for a particular purpose, and they write and print these documents, but do not publish them. I think, notwithstanding, that they may be handed in as evidence.

Mr. Whiteside—I am not at all satisfied on that point, my lord.

Mr. Fitzgibbon—The overt acts relied upon to support the charge of conspiracy arose in March, 1843, and surely acts done by the association three or four years ago should not be given in evidence against the traversers, with the view of supporting charges which are laid in the indictment as done subsequently. He knew that the overt acts were laid in the indictment under a *videlicet;* but the traversers had been furnished with a bill of particulars, with dates annexed, and the crown should be bound by it.

Chief Justice—What do you say to the document printed in October, 1843?

Mr. Fitzgibbon—It's being under the date of October, 1843, was not proof that it was then printed. It may have been post-dated.

Mr. Justice Perrin—The Mullaghmast placard was printed last year.

The court then said the documents might be read.

Attorney-General—Any document already read we don't want to read again.

Mr. Justice Perrin—Hand up a list of the papers you mean to read.

The papers were then handed to the Clerk of the Crown, and he commenced reading a small pamphlet, entitled "Instructions for the Appointment of Repeal Wardens." After a few moments,

Mr. M'Donogh interrupted him, and addressed the court on behalf of Mr. Barrett. He said that the document then offered to be read was not proved to have been an act emanating from the association. It had not been proved that the act was moved at the association, or at any of the public meetings or banquets; it was not adopted; it had not been read at any of the meetings; and it was then attempted to give it in evidence, merely because the secretary for the association had ordered it to be printed. The indictment, after charging the traversers generally, in the first count, with certain overt acts, afterwards enumerates them. The traversers had called upon the crown-solicitor for a bill of particulars which had been furnished, and it was a very full one. This bill of particulars, in addition to the overt acts charged in the first count of the indictment, stated that in support of the prosecution evidence would be given of the speeches made, the resolutions moved and adopted, the meetings and dinners which took place, and also entries of proceedings made by the defendants, or by their direction, and the manner and order in which the persons comprising these proceedings went there. It was clear, then, that the overt acts relied upon were the meetings and banquets, the speeches delivered at them, and the reports of the proceedings and resolutions of these meetings which were published in the newspapers. The book offered in evidence did not fall within the full and comprehensive words of the indictment, or of the bill of particulars. That book was not adopted at any meeting, nor was it read at any meeting, and therefore could not be given in evidence. The bill of particulars was very fair and full, and showed that the overt acts intended to be relied on were the dinners and meetings, also the speeches delivered at, the resolutions adopted at, the acts done, and the documents read at each meeting and dinner—that was to say, at the meetings of the Loyal National Repeal Association

The counsel for the crown objected to going through the meetings again at length.

Mr. M'Donogh, Q.C.—I do so in order to make no omission, and to show the wide range which the crown have taken; they referred to an infinite variety of meetings. There is now produced in evidence a book which, on the part of my client, Mr. Barrett, I object to. The evidence can only be such as consists of overt acts, or acts done by the traversers. This does not come within the range of any of the classes of evidence which can be produced to sustain the prosecution. It does not come within the latitude of even the wide net spread by the indictment and the bill of particulars. The crown cannot travel out of the bill of particulars and the overt acts stated. In the case of the King *v.* Hamilton, Carrington and Payne, 454, the indictment was for conspiracy, and the court, on motion, held the traversers entitled to specific charges in writing to enable them to be prepared to meet them.

Justice Burton inquired what the traversers required to have stated in the bill of particulars?

Mr. M'Donogh—We do not complain of the bill of particulars. The crown took care in their bill to include every particle of evidence which should be capable of being offered. In the case referred to a bill of particulars was given, and Justice Littledale, in making the order after conference with the judges, said, "I think you should show the goods were obtained by the means stated in the first count of the indictment, or by what pretences." Here the crown amplified the first count, and by the bill of particulars added the several publications and speeches they would give in evidence. The grounds on which a party is entitled to a bill of particulars is, that they may be prepared to defend themselves. Justice Littledale considered that when a party in furnishing a bill of particulars stated he would not be bound by them, and went into other evidence, that the court should give their opinion as to the admissibility of such other evidence. Whereas here the crown have given a bill of particulars of such magnitude and amplitude that it would amount to a violation of the first principle of justice to permit other evidence being given. In the case cited the court ordered the attorney for the prosecution to amend the bill of particulars. This is according to the first principle of law. The particulars ought to be full and distinct, and it ought not to be merely a blind general charge, but should particularise the several acts for which these gentlemen were to be tried, and I hold, until your lordships decide the contrary, it would be contrary to justice to permit the crown to travel out of their bill of particulars, and offer evidence against Mr. Barrett, who is not a member of the association, having only attended a dinner, by means of a multitude of reports of proceedings in various parts of the country. I contend the evidence ought not to be received. On the part of Mr. Barrett I protest there is no principle on which it ought to be admitted. There is no difference between this and any other case. Though the bill of particulars is minute, and at the same time most comprehensive, it does not comprise this class of evidence. If permitted, every book, every document connected with this association would be evidence against Mr. Barrett.

Attorney-General—There is one observation which has fallen from Mr. M'Donogh in which I entirely concur. It is, that there is no distinction between this case and any other; and I shall proceed to satisfy the court that on abundance of principle this evidence is admissible. I deny the principle for which Mr. M'Donogh contends, that in cases of conspiracy you are to state in the bill of particulars the evidence you are to rely on. The rule is, you are to set out the overt acts so as to furnish the party with the facts charged against him. This did not rest on his assertion alone, but was grounded on the decision of cases of high treason, where things were more strict than in cases of conspiracy. The learned gentleman then quoted from Mr. Philips' Book on Evidence, page 492 of the last edition, which said that such overt acts could not be given in evidence unless expressly laid in the indictment, but still if conducive to the truth of any of the overt acts, it may be admitted in proof of such overt acts. With this view the declarations of prisoners and their seditious language were admissible as showing the nature and object of the conspiracy.

Mr. Justice Burton—The bill of particulars does not propose to state any evidence.

The Attorney-General—It was in fact a substitution of the overt acts as laid down in Russell's Criminal Law. It was now the custom to furnish a bill of particulars of the charges. It was the custom of the Queen's Bench in England to give a bill of particulars of the charges. It was a substitution for the overt acts, which went to prove the conspiracy, and if the overt acts were on the face of the indictment, or if the indictment was an overt act in itself, they were at liberty to prove it, if conducive to prove another overt act laid in the indictment, as in the cases of the King *v.* Watson. What was the nature of the bill of particulars in this case? There were not only monster meetings set forth on the face of the indictment, but also meetings of the repeal association, and other acts. After the indictment had been framed it was thought advisable to give

evidence of those acts, and a bill of particulars was framed with a view of enabling them to prove other specific facts not in the indictment. They did not set forth in the face of the bill of particulars the issuing of repeal cards to members and diplomas to repeal wardens. These related to the general plan of the association, and it was never thought of to set forth those acts. The learned Attorney quoted Starkie, p. 1097, in proof of his allegation, that there was no necessity to describe this document in the bill of particulars. By this evidence they wanted to show the general features of the association—to show the bond by which the members of the society were bound together—what instructions the officers received, and acts connected with the constitution of the society, not contained in the bill of particulars. He apprehended the law on the subject was quite settled, and that it was unnecessary to set out the evidence from beginning to end. They had given that general information which was necessary to prevent surprise, and this was a document relating to the general constitution of the association, and was not an overt act at all. He hoped, therefore, the court would not judge differently in this case from any other, and would not allow the objection.

Mr. Moore said he appeared on the same side as Mr. M'Donogh, and he would offer very few observations, indeed, upon the point of law. What was the nature of the evidence offered and objected to? The evidence was that Browne printed these documents, and that he was paid for them by the secretary of the association. He was not aware that Browne knew anything farther than that. There was no evidence of the time or circumstances attending the publication of them.

Attorney-General—They were printed during 1843.

Mr. Moore knew that, but it was begging the question to refer to the document itself for that fact.

Mr. Justice Burton—I think the question to be argued is whether the document is good in evidence, not being contained in the bill of particulars.

Mr. Moore, Q.C., said it was so; but he thought it right to explain the nature of the evidence. They were left in doubt as to the time of printing those documents, except in so far as they related to the year 1843—but if admitted, they might affect the traversers for something done antecedently, which would be unjust to them. In the first place, what was it proposed by the bill of particulars to do? In addition to several other matters and things set forth in the first part of the indictment, it was intended to do so-and-so. In the first count of the indictment there were a great many overt acts alleged, consisting of meetings, speeches, and publications, as set out in detail most specifically as overt acts; then in the bill of particulars furnished by the crown, they intended (it was stated) to give other matter as evidence. It was not pretended that any mention was made in any one of the overt acts set out in the first count of the indictment, or any other of the counts of the publication of the several documents proposed to be read in evidence. There were three distinct grounds on which evidence was to be given. The dates, times, and matters relating to various proceedings. The evidence now proposed did not come within any of them, and unless the bill of particulars was to be treated as nought, he contended with great respect to the court that the crown was not entitled to give this evidence. Supposing, as suggested by his friend, Mr. M'Donogh, that they had another newspaper, or another meeting, or anything else, of which no notice had been given, he submitted that the crown could not put that in evidence.

The Solicitor-General said the question was whether or not certain documentary evidence would be admitted for the crown. The objection to its being admitted was, that it was not specified in the bill of particulars as one of the overt acts. He denied the right of the traversers to be made acquainted with the line of evidence to be given on the part of the crown.

Judge Burton—What was the nature of the objection?

Solicitor-General—I am coming to that, my lord.

Judge Perrin—The objection is, that by the bill of particulars you have confined yourselves to evidence of certain descriptions, and that this document does not fall within that description.

The Solicitor-General said the appointment of the repeal wardens was one of the proceedings of the meetings, and this was evidence of such appointment.

Judge Perrin—That is just the point. The evidence is to consist of all letters, documents, correspondence, &c., adopted at the different meetings. If you show that this was countenanced or adopted at any of the meetings, it is clear that it must be admitted as evidence.

The Solicitor-General said the bill of particulars set forth all the resolutions, speeches, letters, and proceedings of these meetings, as the grounds of the indictment, and this document was produced in support of the indictment. One of the charges was, raising certain sums of money throughout Ireland for the purposes of the association, and this book was public evidence of the fact.

The Chief Justice said that he did not say but the point had been argued very ingeniously and learnedly, and at one time he was somewhat taken by the argument, but then he did not thoroughly understand what was the nature of the indictment. Any one who looked at that indictment would see that a particular overt act was charged, and the count specifies, as part of the overt act of the conspiracy so charged, the levying of money throughout the country for the purposes of that illegal association. Now, surely, it required no specification in support of that charge, as it could not be said that the parties charged with the appointment of the repeal wardens for the purpose of collecting this money could not be subjected to this indictment. It could not be said that the traversers had been taken by surprise, so as to be unable to prepare for their trial on the allegation. They had had abundant notice, and he could not see any pretence for the assertion that they were taken by surprise.

Judge Burton concurred with the Chief Justice that the putting in of this evidence could have been no surprise to the traversers.

Mr. Henn begged, before judgment was finally pronounced, to be allowed to call the attention of the court to the overt acts.

Chief Justice—Why did you not speak before two judges of the court had given their judgment?

The Attorney-General hoped that Mr. Henn would observe what Mr. M'Donogh had said, that this case was not to differ from other cases.

Mr. Martley—Particularly when Mr. M'Donogh said the case was not at all argued.

Judge Crampton then proceeded to deliver his judgment. He said the objection appeared to him to arise altogether from confounding the charge in the indictment with the evidence to be given in support of the indictment. He did not think the crown was called upon to show that the specific matter was to be found within the body of the bill of particulars. The bill of particulars was to show the nature of the charge the accused was to meet, but not any portion of the evidence. That was the principle observed, and that principle was sufficient to rule this case. Mr. M'Donogh had cited an important case, which, in some of the language of it, tended to support the argument that he forcibly and properly addressed to the court; but he (Judge Crampton) had looked to that case, or rather to the deci-

sion made by Mr. Justice Littledale in that case, which showed the distinction taken by the Attorney-General to be the distinction always applicable to such cases, and the distinction which ought to rule the present case. What was the nature of the order made by Mr. Justice Littledale? The party in that case was ordered to deliver a particular statement of the specified charge in writing, but not a particle of evidence was he called upon to give, but he was merely called upon to state the particulars of the charge. Again, he recollected the case of the King *v.* Hamilton. That was a charge of obtaining goods under false pretences, and the party applied for liberty to give evidence of a false pretence different from any of the false pretences set out in the indictment. In this case there was a general count, and he would suppose that this particular document was intended to be used in support of the general count. They had evidence of repeal wardens being appointed on a particular day in this association. They had no evidence of any instructions given to those persons, and the question was, whether the instructions emanating, he took it for granted, from the association—whether the instructions here in print, and printed by order of the association, and paid for by the association, through their secretary, whether these instructions were admissible in evidence, in order to support the general count, making it the act of the association to which he adverted, namely the appointment of repeal wardens. Now, this document which he held in his hand contained no new charge. If it did, and if the traversers had been able to establish that by the introduction of this document, a charge different from any stated on the face of this indictment, coupled with the bill of particulars, had been introduced, then he thought the objection ought to prevail; but the question was, if this document opened a different charge, or whether it was merely evidence in support of one of the charges already opened. It appeared to him to be quite germain to the matter here. Evidence had been given of the appointment of repeal wardens. It was important to show the nature and constitution of that body. If the appointment of repeal wardens be an act material for the consideration of the jury in this case, it was also material to know the duties of those repeal wardens; not for the purpose of making a new charge, but to sustain the charge that was on the face of the indictment. This was signed by one of the traversers; it was an act of one of the traversers; it was signed by Daniel O'Connell, chairman of the committee, and printed by the association, of which he is a leading member, through the secretary, and paid for by the association, through the same secretary. Now, suppose there was no printed document before them, but that witnesses were brought up to prove that the gentleman, whose name was at the foot of it, had given parol instructions outside the Corn Exchange to the repeal wardens, with reference to the duties they had to perform, would any person tell him that those instructions would not be evidence against the person who gave them? It manifestly would be evidence, and if, as parol testimony, it would be evidence, then it would be evidence when given *in scriptis*. It appeared to him to be clear evidence, unless the party had undertaken to limit himself, in his bill of particulars, not to give evidence except of what was in the bill of particulars. In conclusion he declared it to be his opinion that the document was admissible in evidence.

Judge Perrin said the difficulty in this matter appeared to arise from the manner in which the bill of particulars was framed, and there was no question that if there was no bill of particulars, this would be clearly evidence to support the counts. An authority was cited by the Attorney, to show that it would be evidence in the general counts in the indictment, if not on the special count. The object of the bill of particulars was to narrow the field of evidence, and confine the parties to what is there stated; but from the way in which the bill of particulars was framed, they were under the disadtage of not knowing to what the parties were to be confined, or what the parties were to go to. [After referring to the arguments on each side, and the peculiar frame of the bill of indictment, he continued]—This was a printed document, proved to have been printed at the instance of one of the traversers, who was proved to have been the secretary of the association, and to have paid for it out of the funds of the association, and therefore applying that to the overt act to which they had been referred, as the other members of the court were of opinion to rest it on that overt act, it should be admitted.

Mr. M'Donogh said it had been doubted by some persons whether a bill of exceptions lay in a case of misdemeanour, and he wished to inform the court it was the intention of the counsel for the traversers to take a bill of exception in this case.

Mr. Martley—You can do that without telling us.

Mr. M'Donogh—I never knew a bill of exceptions to be taken yet without telling it.

Mr. Bourne, jun., then read the document to which this argument applied, namely—"Instructions for the appointment of repeal wardens and collectors of the repeal fund, their duties," &c. [This document it is not at all necessary to set forth here, for the material contents are in the knowledge of every man in the community.]

The document having been read,

Mr. Ford begged that Mr. Bourne would mark the documents given in and hand them back.

Mr. Bourne said he could apply to the court on the subject.

Mr. Ford said he did not wish to disturb the court by applying to it, and the officer ought to know his own business.

Mr. Bourne, jun., was then proceeding to read the description of the repeal card, but was interrupted by

Mr. M'Donogh, who said they objected to the reading of this document, and they did so on infinitely stronger grounds than in the former case, for there was no overt act to which this referred, not a word which required explanation from it, nor did it relate to the collection of money; and he submitted to their lordships that it ought not to be received. In the present singular case of conspiracy the crown had declared their intention not to push the charge farther than at common law it ought to go, and their lordships must know that the rule of law in such cases was, that the act of one defendant was not to be construed as the act of all, unless it was an act that had been performed to attain the common end of the alleged conspiracy. The act of one defendant in a conspiracy case was, beyond doubt, evidence, against himself, but it could not be regarded in point of law as the act of all his associates, unless it had been expressly designed and executed for the furtherance of the common object. No evidence had been adduced to show that the document now under discussion had been agreed to at any meeting of the repeal association; it was no transaction of the association, and merely purported to be an explanation of some other document which was not as yet in evidence before the court. It was merely a piece of printed paper, which appeared to have been printed by Mr. Browne, the stationer of the association, in compliance, as was stated, with Mr. Ray's direction; and therefore it was to be produced in evidence against his client, Mr. Barrett, or any other respectable gentleman who might happen to be member of the repeal association! The question at issue was one which affected all associations, no matter whether political or otherwise; for if the

secretary of any society were to go to a printer and direct him to print a letter explanatory of a certain document, could it be held that such act of the secretary was to be evidence *per se* against all the members of the society? If evidence had been adduced to show that the association ordered the card to be issued, and with it the letter of explanation, then indeed it might perhaps be contended that the document fell within the bill of particulars; but no such evidence had been adduced, and he accordingly protested against the document being received. It was not now receivable in evidence, and on the first ground of objection it should be excluded; and he further submitted that because it was not specially adverted to in the bill of particulars, or in the overt acts stated in the declaration, it should not be received. They should enter into a wide sea of evidence indeed if every printed paper which one man issued or caused to be issued were admitted.

The Attorney-General said that he submitted that in this case the document in question should be read and received in evidence. It was quite unnecessary to repeat the arguments he used with respect to the former document, and the members of the court were of opinion that those arguments were well founded. This document was not of itself relied upon as an overt act.

Judge Crampton—Is there any evidence of speeches or resolutions passed at the association in reference to this document or letter of Mr. O'Callaghan's?

The Attorney-General said that there was in the bill of particulars reference made to one of the newspapers, the *Nation*, in which that document was printed word for word and letter for letter.

Mr. M'Donogh—The publications in the *Nation* are not yet before the court.

The Attorney-General said if reference was made to the bill of particulars, the *Nation* of a particular date would be found embraced, and every thing that was contained in it from beginning to end was of course part of the indictment, and therefore he relied on the former decision. That authority could not be controverted, and he would respectfully deny that on such a charge of conspiracy as the present it ever yet was heard of to require of the crown to furnish a list of their documents. According to the law of conspiracy they might be called upon, if there were general grounds in their indictment, to furnish a bill of particulars, but it was never heard of that they were obliged to furnish a list of their documents or of their evidence; moreover where the document was not to be relied on as an overt act in itself. The learned gentleman then cited the case of the King *v.* Watson, from the State Trials, in support of his argument.

Judge Perrin—What is the meaning of this reference to the bill of particulars?

Attorney-General—The meaning of it is, that the first count in the indictment contains an allegation of the publication of a certain newspaper in which the document is printed.

Mr. Justice Perrin—The indictment states that "in addition to several matters and things set out in the first count, it is intended to give evidence of resolutions passed, speeches made, acts done, and letters and other documents read at the meeting."

Attorney-General—Precisely. What are the "matters and things?" The overt acts; but, independent of that, he (the Attorney-General) relied on the ground that the document existed as regarded the association, and has reference to the members' cards, and it was the intention of the crown to give evidence of that card. The documents and cards were presented by the last witness examined, he being the accredited agent of the association, and this was done under the direction of Mr. Ray, one of the traversers, and secretary to the association, and the cards and documents were paid for by him to the last witness. They offered the document in evidence against all the traversers, as it was paid for by Mr. Ray, the secretary of the association, of which they were all members. And further, the fifth article set down in the document for the duty of a repeal warden, stated when a warden was admitted his card would be at once duly forwarded to him. Beside this, the document referred to the members' cards, which was connected with the receipt of money, and this was set out in the last overt act in the first count of the indictment, and on these grounds he submitted they were entitled to have the document received in evidence against all the traversers.

Mr. Henn would offer a few remarks in support of the objection to the document being given in evidence. He did not think it necessary to discuss the point whether it was admissible against this individual or against that individual, for if it were admissible against one it would be evidence against all the traversers. But he would submit that as regarded the present document, so far as the evidence went as yet, the document was inadmissible. There was a document referred to in the bill of particulars, but that had no connection whatever with the present document, and as far as the newspapers were referred to in the indictment, it would be time enough to argue that question when the newspapers were offered in evidence, and then the question would arise whether such documents were admissible or not. What the Attorney-General has said is only a repetition of his former argument—that was, that one overt act may be given in proof of another. He would not controvert the general principle; but in the present case the crown was bound by the particulars which were furnished, and the argument of the Attorney-General amounts to the proposition that a bill of particulars has no effect at all. He had not in argument shown what overt act the document was intended to prove. He (Mr. Henn) said there was no overt act charged which the document proved. He admitted that the crown need not have furnished the bill of particulars, but it had been furnished by the order of the court, and they must not travel out of it. He did not know where the Attorney-General found the precedent for it. The speeches, documents, acts, and letters, the several meetings, and the manner of proceeding to and from them, were enumerated in it. It said in plain terms evidence will be given of these proceedings and acts only. The object of a bill of particulars is to apprise the parties of the evidence they have to meet, yet we are told the crown ought not to be called on to state the evidence on which they are to sustain their case. How are these overt acts stated in the indictment? (Counsel here read the portion of the indictment with reference to the receipt of divers sums of money from her Majesty's subjects, and also persons dwelling in other countries, and the inflammatory addresses and divers seditious and inflammatory speeches.) How can it be contended this mode of stating in the indictment enables them to give such evidence as this? How can they give in evidence receipts of sums of money in this way? As well might it be contended that the mode of charging the traversers with uttering seditious speeches at certain places would enable the crown to give evidence of speeches generally. If so what was the use of a bill of particulars? How then can they give evidence of receipt of money generally?

Solicitor-General—This is the same objection as before, only put forward with more ingenuity. It is confounding matter of charge with the evidence in support of the charge. The test of Mr. Justice Crampton is a good one. Is this material and applicable to the matter charged in the indictment? We allege that here are several traversers charged with being members of an unlawful confederacy, having a special object in view. They cannot say they are taken by surprise by being called on to meet this charge. Here is a

count charging them as members of a confederacy with unlawful objects. I establish an act committed by one of these co-conspirators in furtherance of their common object. It was an act of Mr. Ray, the secretary of the association, which act was in itself evidence of the objects which the indictment said the confederates had in view, and was he to be told that this evidence, which was traced to one of the traversers, he was not at liberty to offer to the jury? It was, in fact, the same question which had been argued a while ago.

Mr. Justice Perrin—Did you give the card in evidence?

The Solicitor-General—No, he did not, but he proposed to do so. He alleged the document was evidence of the objects of the association, and that if there had never been a card in existence, nevertheless it was evidence *per se*. The learned gentleman then referred to the passage quoted from Mr. Philips' book by the Attorney-General, respecting the rule of law on the subject, and also to the case of the King *v.* Watson, also referred to by the learned Attorney-General. He cited the case of the prosecution of Thelwall, in which a document read by Thelwall was admitted as evidence of an overt act. If the name of Ray were substituted for Thelwall the cases were precisely the same.

The Chief Justice said that when analysed the present question resolved itself into the same as that on which they had just decided. He did not see any ground of difference between the two cases. If there had been no bill of particulars furnished, could it have been alleged that the evidence in question could have been sustained in support of the special count of the indictment? No man could for a moment question but that it would have been admissible evidence under those circumstanees, and inasmuch as the bill of particulars had been given only in respect of the general counts, he could not see why the present document should not be admitted as evidence in respect of the special count, which was in nowise affected by the bill of particulars. He was in favour, therefore, of receiving the document; for without meaning to conjecture what might be the tendency of the evidence, whether for or against the traversers, he held that the right of the crown in this respect was quite independent of the bill of particulars. It could not be said that the evidence was a surprise on the traversers, for it came under the special count.

Judge Burton and Judge Crampton signified their concurrence in the judgment of the Lord Chief Justice.

Judge Perrin also expressed his concurrence in the judgment. He was of opinion that on the indictment, as originally framed, this document was clearly admissible evidence. He admitted, however, that it did not come within the particulars specified in the bill of particulars, but it being understood that that bill related only to other counts in the declaration, it could not affect the rule with respect to the first count. The rule for granting a bill of particulars was this, that it was to be given in cases where the necessity for such a document arose out of want of definitiveness in the record, and the party had only himself to blame for not making the rule specify in the first instance to what extent the particulars were to go. It was upon those general grounds, and more specifically upon the ground that the bill of particulars did not affect this case, that he concurred in the opinion that the document ought to be admitted; but it should only come in under the first count, which was the only count in which overt acts were laid.

The Clerk of the Crown then read the documents which was descriptive of the battles named, and the incidents referred to on the member's card, namely, Clontarf, Benburb, Beal-an-Atha-Buidh, and the Siege of Limerick; after which, at half-past six o'clock in the afternoon, the court adjourned until next morning.

SEVENTH DAY.

MONDAY, JANUARY 22.

Shortly after ten o'clock, the Chief Justice, accompanied by Mr. Justice Crampton and Mr. Justice Perrin, took their seats upon the bench.

The jury and traversers having answered to their names,

The Chief Justice observed that Mr. Justice Burton was prevented by a severe cold from coming down to court.

Mr. Hatchell, Q.C., said, in consequence of what had fallen from his lordship, he had to state, on behalf of the traversers, that he and the counsel engaged with him objected to the case being proceeded with in the absence of Mr. Justice Burton.

Chief Justice—I shall take a note of the objection.

Attorney-General—My lord, in the case of the King *v.* Finney, the case of the Bristol riots, the very same circumstance took place. The judges of England considered the point, and determined that if one of the judges were ill a case of trial at bar might be tried by the rest. There was a document given in evidence on Saturday by the printer, Mr. Browne; we wish to enter it as read. It is the plan for the renewed action of the Irish parliament. The entire of it need not be read.

Mr. Hatchell—Read the whole of it.

Mr. Justice Crampton—Why need the whole of it be read, when we have it already on our notes?

Mr. O'Connell—Only part of it has been read already. The first part has not been read. It is an important document.

The Deputy Clerk of the Crown then proceeded to read the following document:—

"PLAN FOR THE RENEWED ACTION OF THE IRISH PARLIAMENT, ADOPTED AT A MEETING OF THE LOYAL NATIONAL REPEAL ASSOCIATION, ON THE 27TH DAY OF AUGUST, 1843.

"FIRSTLY—The Irish people recognise, acknowledge, maintain, and will continually uphold, and preserve upon the throne of Ireland,

HER MAJESTY QUEEN VICTORIA,
(WHOM GOD PROTECT,)

Queen, by undoubted right and by hereditary descent, of Ireland; and her heirs and successors for ever.

"The people of Ireland recognise, acknowledge, and maintain, and will continually preserve and uphold, all the prerogatives of her Majesty, and of her heirs and successors, belonging to, and inherent in, the imperial crown of Ireland; and they will true allegiance bear, pure, undivided, and indivisible, to her Majesty, her heirs and successors for ever.

"SECONDLY—The people of Ireland acknowledge, and will maintain and preserve for ever, the privileges, hereditary and personal, of the peers of Ireland, together with the legislative and judicial authority of the Irish house of lords, and the exercise of the prerogative in augmenting and limiting the peerage, as the same did of right and before the year 1800.

"THIRDLY—The people of Ireland do firmly insist upon the restoration of the Irish house of commons, consisting of three hundred representatives of the Irish people—and claim in the presence of their Creator, the right of the people of Ireland to such restoration.

"They have submitted to the union as being binding as a law; but they declare solemnly that it is not founded on right or on constitutional principles; and that it is not obligatory upon conscience. They agree with the Tory Attorney-General Saurin, that the only binding power of the union is the strength of the English domination. They also agree with him that 'resistance to the union is in the abstract a duty; and the exhibition of that resistance a mere

question of prudence.' They will, therefore, resist the union by all legal, peaceful, and constitutional means.

"FOURTHLY—The plan for the restoration of the Irish parliament is as follows:—Firstly—That county members should be increased to 173 in the manner herein-after specified. Secondly—That there should be 127 members returned from cities and towns in the manner herein-after mentioned. Thirdly—That the county of Carlow, being the only county in Ireland with less than 100,000 inhabitants should get an increase of one member, so as to have three representatives; that every other county having above 100,000 inhabitants, should get an increase of two members; that every county ranging above 150,000 inhabitants should get an increase of three members.

"That every county ranging above 250,000 inhabitants should get an increase of four members.

"That the county Tipperary, having more than 400,000 inhabitants, but less than 500,000, should get an increase of eight members.

"That the county Cork having more than 700,000 inhabitants, should get an increase of ten members.

"FIFTHLY—With respect to the towns and cities it is proposed that the city of Dublin, having more than 200,000 inhabitants, should have eight representatives—four for the parts north of the Liffey, and four for the parts south of the Liffey.

"That the University of Dublin should continue on the basis of its present constituency, to send two members.

"It is proposed that the city of Cork, having more than 100,000 inhabitants, should have five members.

"That the city of Limerick and town of Belfast, having respectively more than 50,000 inhabitants, should send four members each.

"It is proposed that the town of Galway, and the cities of Waterford and Kilkenny, having respectively more than 20,000 inhabitants, should send each three members to parliament.

"That other towns having about 7,000 inhabitants should each send two members to parliament; and that forty-nine other towns next highest in the ratio of the population should send one member each.

"For schedule of places to return members—their relative population—and the number of members to be assigned to each—the reader is referred to preceding report, pp. 4 and 5.

"The population is taken from the returns of 1831, which having been made for a different purpose, and without any reference whatever to the repeal of the union, furnish a scale of unquestionable impartiality.

"SIXTHLY—It is proposed that the right of voting should be what is called 'household suffrage,' requiring six months' residence in the counties, with the additions in the towns of married men resident for twelve months, whether householders or not.

"SEVENTHLY—It is proposed that the mode of voting for members of parliament should certainly be by ballot.

"EIGHTHLY—The monarch *de facto* of England at all times hereafter, whoever he may be, shall be the monarch *de jure* in Ireland. And so in case of a future regency, the regent *de facto* in England to be regent *de jure* in Ireland.

"NINTHLY—The connection between Great Britain and Ireland, by means of the power, authority, and prerogatives of the crown, to be perpetual and incapable of change or any severance or separation.

"The foregoing plan to be carried into effect according to the recognised law and strict constitutional principle.

"Signed by order,

"DANIEL O'CONNELL,

"Chairman of the Committee."

Attorney-General—Now read this (handing up a document), headed "Rules to be observed by arbitrators."

The Deputy Clerk of the Crown then read the rules.

Chief Justice—Have you any other rules to prove?

Mr. Kemmis—There is the arbitration summons, my lord.

Chief Justice—What I was alluding to was a rule which I am pretty sure was read in court, but I cannot recollect exactly upon what occasion. It was to this effect—That if, after a man had submitted to the jurisdiction of the arbitrators, he refused to obey the award, then he was to be expelled from the association.

Solicitor-General—That was contained in a report from the committee.

Mr. O'Connell—It was a proposal in the shape of a report to the association. The reason I wished, my lord, to have the last document read distinctly and throughout, was with the view of showing your lordship that the ultimate result and plan adopted omitted any such resolution.

Chief Justice—Let us see what it is.

Mr. Brewster—Mr. Ross proved it, but had not a copy of it. Mr. Jackson proved it, and produced a manifold copy of it.

Mr. O'Connell—It was a report only of a sub-committee, and if the document itself be produced, it will show that what you have heard read just now was the final adoption of the plan.

Mr. Brewster—Here is the manifold copy of it. I will give you the date of it, in order that you, my lord, may recollect it better. It is a report from the sub-committee appointed some day in August, 1843, to consider and report upon a general system of arbitration throughout the country. That is the description of it.

Mr. O'Connell—Was that document read by the officer?

Mr. Brewster—It was.

Mr. O'Connell—All I want is that the document should be fairly before the court. We had better have it read again.

Chief Justice—I think so.

Mr. O'Connell—Here it is in print; it will be more easily read.

Mr. Brewster—They are different documents.

Chief Justice—The document which Mr. O'Connell speaks of is the same as you have in manifold.

Mr. O'Connell—I will read the heading for you—it is the "Report of the sub-committee appointed on the 17th of August, 1843, to consider and report upon a plan for the adoption of a general system of arbitration."

Mr. Brewster—That is the heading of the manifold document certainly.

Mr. O'Connell—And that report was received on the 21st of August, 1843.

Mr. Brewster—Certainly.

Mr. M'Donogh—You don't mean received?

Mr. O'Connell—No, no, no; by "received" I mean only the date of the report coming in.

Mr. Brewster—It was read fully on Saturday, but your lordships can read this (offering the manifold copy to the bench).

Chief Justice—I wish you would let me see a copy which I can read. I cannot read the manifold, and I cannot read the short-hand notes. There are a great many things I require aid and assistance in.

Mr. Justice Crampton—Give a printed copy to the Chief Justice.

Mr. Henn—Let Mr. Bourne read it.

Mr. Brewster—I have no objection.

The Clerk of the Crown then proceeded to read the document headed "Report of the sub-committee appointed to consider and report upon a general system of arbitration throughout the country." Mr.

O'Connell held a printed copy in his hand, and corrected the officer when he mistook a word.

The Attorney-General begged to remind the court that the printed paper by Browne, which contained this document, was also given in evidence as well as the manuscript copy.

The Chief Justice asked how it was signed.

Clerk of the Crown—It is signed "John Gray, Chairman."

Mr. O'Connell—Chairman of the committee.

The officer next read the printed form of the appointment of Repeal Wardens, and also the form of notice for parties to attend at the Arbitration Courts, and submit their differences for adjudication.

The next document read was the notice calling the meeting for Mullaghmast, and headed "Leinster for Repeal."

The following witness was then put on the table. He is a pale-looking young man, and seemed somewhat agitated.

THOMAS PACKER EXAMINED BY MR. FREEMAN, Q.C.

I am a lithographic artist, and came to this country last March; I lived in London before that; I know Mr. Holbrooke, and was employed by him as a lithographic artist immediately after I came to this country; I was employed in drawing sketches from the scenery, and afterwards lithographing them on stone, and was occupied in other business also; I see these (two small cards handed to the witness) two cards; they were printed from stone, but the original was engraved on copper by a person named James; I can't say who struck these two cards off; saw several of these cards printed; there was a vast quantity of them printed in Mr. Holbrooke's place.

Mr. Freeman (repeating the answers)—There was a vast quantity of these printed in Mr. Holbrooke's place?

Mr. Fitzgibbon—Don't repeat the witness's answer, let him reply for himself.

Mr. Freeman—Where does Mr. Holbrooke live? At No. 4, Crow-street; I saw several thousands of these cards printed, but I can't say the exact number; (another card handed to witness) this is a similar card to the other two cards; it is printed from stone; it is the same description of card that I saw in Holbrooke's place; I see this card (a large card handed to witness).

Mr. Freeman—The two first small cards which I handed the witness have been proved already, and the second one is of the same description.

Chief Justice—Yes, yes, they were originally engraven on copper and struck off from stone.

Mr. Freeman—Look at the large card I have handed you, is it called a member's card? Yes, it is; I saw similar cards to this before.

Mr. Freeman (repeating the answer)—He saw similar cards to that before.

Mr. Fitzgibbon—The answer was heard all over the court. I request you will not repeat the answers.

Mr. Freeman—What sort of a card is this (the large card handed to witness)? It is a member's card.

Mr. Freeman (repeating the answer)—It is a member's card.

Mr. Fitzgibbon—I tell you we all heard the answer. You *must* not repeat his answers.

Mr. Freeman—Oh, it's not important.

Mr. Fitzgibbon—Then, that's an additional reason why you shall not repeat his replies. I submit, my lord, that Mr. Freeman is not to echo the answers of this witness.

Mr. Freeman—I hope you have no cold.

Mr. Fitzgibbon—Don't mind my cold; don't repeat the answers.

Mr. Freeman—Very well.

Witness, in continuation—I see this card: it is printed in the same manner as the others; it was originally engraved on steel, and then the impression was transferred to stone; the colouring was a second printing; I got the colours I put on (but I don't know how to express it rightly)—I put it on the stone to enable the printer to print from it; it was done for Holbrooke in the same place as the others; there was a great quantity of these cards struck off; the colour I put on the stone was black; the printers put on the green colour which is on the card by direction of Holbroke; I saw the design of the card, which was partly designed by myself; I designed the decorations on the flags; they are shamrocks and sun-bursts; Holbrooke brought me a rough sketch of the card; there was no person with him when he brought me the sketch; Mr. O'Callaghan used to come up while I was working on the cards; his Christian name is John Cornelius O'Callaghan; I heard that from Mr. Holbrooke; he told me so.

Mr. M'Donogh—Don't mind what he told you; it is not evidence.

Mr. Freeman—Do you know Mr. Ray? Yes, I do (he identified Mr. Ray); I saw him at Mr. Holbrooke's; I don't remember if he was at Holbrooke's with Mr. O'Callaghan; I heard Mr. Ray speak about the cards; he inspected and looked over them while they were in progress; he suggested improvements in the cards; there were improvements made at his suggestion in the form of the cards; I don't recollect any alterations being made in the members' cards, in accordance with the suggestions of Mr. Ray.

Look at that card—what is it? That is a volunteer's card.

Were there any alterations suggested in it by Mr. Ray? Yes, the improvement in the likeness of Mr. O'Connell.

Look at the letters T. M. Ray; do you know who lithographed them? Mr. Gardiner engraved the *fac simile* from Mr. Ray's handwriting.

Did you ever see Mr. Ray write? Yes, I saw him write a little on the edge of the stone.

Can you form an opinion of Mr. Ray's handwriting? I cannot.

Did you see Mr. Ray after the words were lithographed? If the green cards were done before the black ones, I did.

Mr. M'Donogh—The black were done first.

Chief Justice—I understood you to say "as."

Witness—I said "if."

Mr. Freeman—Having now taxed your memory, can you swear positively whether you saw him before or after the words were lithographed? I saw Mr. Ray after; I did not see him inspecting the cards after the words T. M. Ray were written; the improvements in O'Connell's likeness were in the green card; I made the sketch of Mr. O'Connell myself; I had something to do with the volunteer card; I see the likeness on it; that at the head is Mr. O'Connell's; the one next the court at the right is Flood's; I sketched it from a painting in the college; Mr. Davis brought me there; the next is the likeness of Owen Roe O'Neill; I copied it partly from a manuscript, and from one of the old engravings of the O'Neills; it was brought to me by Mr. Holbrooke and Mr. O'Callaghan's brother; I saw Mr. Davis at Mr. Holbrooke's when original sketches were given; Mr. Davis saw the originals; the next likeness on the same side is Brian Boroihme; I copied it from the frontispiece to Keating's History of Ireland; it was brought to me by Mr. Holbrooke; I cannot say whether any of the traversers were present at the time or not; the next is Ollam Fodhla; I got the original of that in my imagination; the idea of introducing it was suggested by Mr. Holbrooke; Mr. O'Callaghan, Mr. Holbrooke, and Mr. Davis discussed the designs on the card in my presence; I don't know that Mr. Ray was present; the next likeness is one of Sarsfield; I copied it from

an old French engraving, which I got from Mr. Geraghty, the bookseller; Mr. Holbrooke brought him to me; Mr. Holbrooke suggested the introduction of Sarsfield; I cannot say that Mr. Ray did; the next likeness is one of Hugh O'Neill; it was drawn by me, I almost forget from what I copied it; I think I composed it myself; the next likeness is that of Dathy; I have been in the association; I have seen Mr. Ray there.

Mr. Freeman—Had you any conversation with him there about the alterations?

Chief Justice—He has already said that suggestions were given him by Mr. Ray.

Witness—Not at the association, but, as I said before, he made suggestions; I cannot charge my memory with the exact words he used.

Mr. Freeman—Look at the harp and shield. Were there any alterations suggested there? Not in this card (the black one), but on the other; there were not many of these cards lithographed, for they separated by over etching; an attempt was made to repair them; I do not recollect which of the association cards was first given; recollects the time of designing the volunteers' card, it was about the beginning of 1843; the members' and the associates' card was about the same time; the volunteer card was engraved some time later; that was about March; holds in his hand the repeal wardens' diploma; it was designed by witness from materials furnished by Mr. Holbrooke; the design commenced before the beginning of 1843; it was not completed until after the beginning of that year; it was completed before the volunteer card; during the design witness saw Mr. Ray; will not undertake to say he heard any observations from Mr. Ray with respect to the diploma; while it was in progress of engraving Mr. Holbrooke brought several gentlemen to see it—Mr. Davis, Mr. O'Callaghan, and Mr. Ray; knows Mr. Steele; he used to come and see the cards; cannot charge his memory which of them; no one accompanied him; on the occasions of his visits he principally directed his conversation to Mr. Holbrooke; witness heard it; it was quite irrelevant to the diploma.

Mr. M'Donogh—If so say nothing about it.

Mr. Freeman—It might be relevant to something else.

Witness knows Mr. Duffy, of the *Nation;* saw him in company with Mr. Davis at Mr. Holbroke's; does not recollect seeing him with any one else; saw them in the studio; Mr. Duffy sat in a chair, and looked at the work in progress; does not recollect him making any observation; the time Mr. Steele came alone was about the middle of March, as witness best recollects; witness sketched Mr. O'Connell's head on the volunteer card at the repeal association; that is the head of Mr. Daniel O'Connell; this was when the repeal volunteer card was in progress; saw Mr. John O'Connell; he was at the repeal association near the table at which the chairman sits; did not see Mr. Ray there; had seen him before; thinks he saw Mr. O'Connell and Mr. Ray together; could not say if Mr. John O'Connell was with them; was at the repeal association very rarely, except on business; his business was sketching; went five or six times on that business; don't remember seeing Mr. Duffy there; did not see Dr. Gray there; thinks he would know him if he saw him.

Mr. Freeman—That young gentleman there—look at him.

The witness in continuation—Recollects the alterations suggested in the diploma; there was also an alteration in the harp suggested by Mr. Ray, and in the cap of the chief by Mr. O'Callaghan. When the witness went to the repeal association to sketch he was accompanied by Mr. Holbrooke; won't undertake to swear Mr. Holbrooke was a member; the alteration pointed out in the harp by Mr. Ray was in the formation of the top and strings; it was originally an English harp, not an Irish one; the alteration in the cap was, that he (witness) put a spike in it like a Chinese cap; this was not correct; Mr. O'Callaghan said so.

Mr. M'Donogh—This is not evidence.

Witness had nothing to do with the striking of the diploma; cannot say if many were struck off; a great number of the associate cards were; when the cards were struck off they were sent to the repeal association; I know two persons of the name of Tom and Joseph Ansley; they printed the cards; when the cards were struck off they were taken out by boys in the service of Mr. Holbrooke; I was enrolled a member of the association; it was without my consent; I was handed a card by Mr. Holbrooke.

Mr. M'Donogh—This is not evidence.

To Mr. Freeman—I took a sketch of Mr. John O'Connell; I believe it was in the committee room of the association; I was there once besides to take a sketch of Mr. O'Connell's bust.

Mr. M'Donogh—I do not see what that has to do with the case.

To Mr. Freeman—I *were* paid (laughter); I *was* paid (continued laughter); I was paid by Mr. Holbrooke.

CROSS-EXAMINED BY MR. M'DONOGH.

I have been long practising as an artist.

I presume your studio was open to the public? It was.

I dare say that clever gentleman, Mr. Stuart Blacker, was there? I do not remember that clever gentleman there.

You think him a clever gentlemen then? What I have seen of him I think he is.

You have seen many of the legal artists around there (laughter)? You have seen Mr. Tomb there (laughter)? I cannot say. There were a great many persons there; they inspected my performances; I do not know if they admired them.

Mr. M'Donogh—I presume if any of us went to inspect your likeness of Ollam Fodhla, or Dathy, you would show it? Yes.

Do you know them (laughter)? I had not the pleasure of their acquaintance (laughter); I believe they are long known to the Irish people (great laughter).

Mr. M'Donogh—I suppose it is only in your imagination their likenesses existed? I believe so.

Mr. Justice Crampton—Mr. Freeman, pass him over (laughter).*

Mr. Freeman—I did not know him.

To Mr. M'Donogh—The public had admission to where these portraits were; I was in the employment of Mr. Holbrooke since my arrival in this country; I left it last August; I knew that Holbrooke was engaged in the Board of Works; he was engaged to do government business; I believe Mr. Holbrooke was engaged by the government when I came to this country; I know he was subsequently engaged by government; I believe Mr Holbrooke was very well known as being engaged by the government; it was advertised on his glass that he was a lithographer to the Queen; it was visible to the whole world; he was employed at the same time for the repeal association and the government; I did the lithograph printing business for the Queen; the printing presses were going for the government at the same time that I was printing Ollam Fodhla.

Mr. M'Donogh—Look at the green ticket? Did you design it from your own imagination? Partly.

Look at the "Sun-burst," and say if it is the re-

* There is no doubt that the court must, in a majority of instances, have felt itself embarrassed by any reference to Ollam Fodhla; for he was a very just judge. He was never charged with having exhibited the slightest indication of partizanship.

sult of your own fancy exclusively? It is partly mine and partly Mr. Holbrooke's; I am a loyal subject of her Majesty.

Mr. M'Donogh—You would not engrave anything injurious to her Majesty? Not knowingly.

Did you go to the Dining-room or Examination Hall to take a likeness of Flood? I did.

In taking a likeness of Flood in the Examination or Dining-hall, you did not think you were doing anything inconsistent with your duty as a loyal subject? No.

Have you any idea of whom Flood was? Yes, he was the cotemporary of Grattan.

You saw, I think, Mr. Steele at Holbrooke's once and once only? Yes; I am not, however, aware whether or not it was on business wholly irrelevant to the present inquiry as to those cards; I am not aware whether he came there about arranging a lithograph drawing to be placed at the title page of some book of his; I remember to have seen Dr. Gray there; I remember his looking over the premises, but I know not whether he came to visit certain machinery; he viewed the premises, and and that is all I remember about his visit; I am unacquainted with Mr. Barrett; I never saw him that I remember; my interview with Mr. J. O'Connell had reference only to taking his likeness; I have not seen Mr. Holbrooke since my return to Dublin; came here from London on Wednesday evening; up to that time I was in London, since August last; I believe Mr. Holbrooke to be in Dublin at present; I went to London to carry on my profession.

The witness retired.

ISAAC GARDINER EXAMINED BY MR. MARTLEY.

Mr. Martley—What is your profession? I am a writing engraver.

What countryman are you? I am an Englishman; I came to this country last January; I was in the employment of Mr. Holbrooke, as an engraver, for nearly four months, from the middle of February to the end of June, 1843; it is my business to draw letters on stone.

[Here cards of the association were handed to the witness. The associates' card, which is a small one; the members' card, somewhat larger; and the volunteers' card, the largest of the three.]

Do you know any thing about those cards? I engraved the lettering upon those (the members' and associates' cards) somewhere about March last; I engraved the plate for the members' card first; when it was brought to me it had the banners upon it; my work upon the plate was the last that was done upon it; Mr. Holbrooke gave it to do; I do not know Mr. Ray, nor (looking round to identify the traversers) any of the traversers; engraved the small card; the name "Ray" engraved upon it is supposed to be a *fac simile* of his autograph; (handed the volunteers' card) I designed the writing of that card; I cannot say who engraved it; I engraved the members' card first, then the associates', and next the diploma (the repeal wardens'); I executed the writing on the centre of this diploma; I see a stamp on the members' card; it was not engrossed when these cards were originally printed; I cannot say what quantity of them were struck off.

[Here a coloured and uncoloured members' card were handed to the witness, and he identified the uncoloured card as a member's card, and stated that he had no share in arranging the process for producing the colour.]

CROSS-EXAMINED BY MR. MOORE.

When did you first come to Ireland? In February of last year.

Did you, on coming to Ireland, immediately enter the employment of Mr. Holbrooke? I did.

Mr. Martley requested to be allowed one other question of the witness. Were any persons named Hennessy and Ansley in Mr. Holbrooke's employment? Yes.

Did you see them take away any portion of the documents printed? I did not.

Cross-examination by Mr. Moore resumed—Mr. Holbrooke had a considerable deal of business, had he not? He had.

He worked for every one who employed him, I believe? He did.

Among the rest, for the government? He did.

You know that? I do.

How many persons were in his employment during the time you were there? Four; in the printing and engraving.

Do you say that you received your directions from Mr. Holbrooke in the ordinary course of business? I did.

And you executed his directions according to the ordinary course of business? I did.

And every thing was perfectly open; there was no concealment? None whatever.

The designing of these cards was as public as if they had been designed for the government? Yes.

That will do.

JOHN ANSLEY SWORN, AND EXAMINED BY MR. SMILEY.

Do you follow the business of a printer? Yes.

Have you been in the employment of Mr. Holbrooke? I have.

Look at these documents; did you print any of these? I will not swear.

Have you printed any similar to them? Yes.

Were they printed in green colour? They were.

Who put the colour on? I did.

Have you ever taken any of these cards for Mr. Holbrooke to any place? I did once to the Corn Exchange; they were small cards.

Who did you deliver them to? I cannot say.

Had you any parcel-book with you? Yes.

When you delivered the cards was any receipt given for them? Yes, some initials were signed in the parcel-book.

Look at these documents (handing some papers to witness). About what number of them were printed off? I cannot give a guess.

Were there several thousands of them? Yes, thousands of them.

Look at that document (handing witness a form of an arbitration award); was that stamp on it when it was printed? No.

Do you know where the paper came from? I do not.

Have you (handing in the documents) printed such papers as those? Yes.

What are they? Deeds of submission to an award of arbitrators.

Were many of them done? There were a good number.

Did you ever carry any of these papers to the association? No, I did not.

CROSS-EXAMINED BY MR. CLOSE.

How long had you been in the employment of Mr. Holbrooke? About eleven years.

Have you been a lithographer during part of that period? Yes.

Where is the original copy of that document? I don't know.

How long is it since you saw it? I could not say.

Have you seen that stamp affixed to other matters which were printed by Mr. Holbrooke? No.

Have you printed matters for the government for Mr. Holbrooke? I have.

How long—for the last nine years? Yes.

During the whole of that period? Yes.

Have you never seen that stamp affixed to papers printed for the government? I have not.

When did you first see that stamp? I cannot say.

Will you venture to say that you did not see it five years ago? Yes.

Six years ago? Yes.

Will you swear you did not see it three years ago? No.

Chief Justice—Is it the die you are speaking of?

Mr. Close—The die, my lord.

You will not swear that you saw it as long ago as two years? No.

Does any thing enable you to fix the time. No.

Will you venture to say that you did not see it before the year 1843? I will not.

How long is it since you say these papers were printed—within the last three or four months? About that time.

Upon your oath, did you not see that die and stamp before that? I have never seen it.

Did you ever see it affixed to any other paper? No.

To none whatever? Not to my knowledge.

Will you swear that you have not? I will.

JOSEPH ANSLEY SWORN, AND EXAMINED BY MR. BAKER.

I know Mr. Holbrooke, the engraver; I have been in his employment for a year and six months, in the capacity of printer; I have assisted in printing cards of that description (meaning the associates' cards).

Look to the other cards, and tell me have you ever assisted in printing those? No, sir.

Have you seen such cards? I have, sir.

Have you ever carried parcels of such cards from Mr. Holbrooke, to any place? I have.

Were they made up in parcels? Yes.

Do you know how many each parcel contained? I do not.

Where did you bring them to? I brought them to the Corn Exchange.

Where did you leave them? I left them in the top of the house; I don't know in whose office it was I left them; I delivered them to two of the clerks; I don't know their names.

Do you know a person of the name of Quigly? I have heard tell of him.

Have you ever seen him? Yes, I have seen him at the Corn Exchange, and have given some of those cards to him.

Do you know Mr. Ray? I do not; I do not even know his appearance.

Look to the other documents and tell me have you carried any of them to the Corn Exchange? I might in parcels; I never assisted in making them up in parcels.

(The volunteer and members' cards were here handed up to witness.) I have seen such cards as those taken out of Mr. Holbrooke's to the Corn Exchange. (The repeal wardens' diploma was here handed to witness.) I have seen documents such as that taken out of Mr. Holbrooke's and delivered at the Corn Exchange.

CROSS-EXAMINED BY MR. ALEXANDER M'CARTHY.

It was no part of my duty to make up the parcels; I may have made up small parcels.

Were you in the habit of delivering parcels in other places? No, sir, not many.

Occasionally? Yes.

Those parcels you did not make up either? No.

Then you were told to take out parcels, and you took them? Yes.

Covered with brown paper? Yes.

Is Mr. Holbrooke in town at present? He is.

Are you still in the employment of Mr. Holbrooke? Yes, sir.

The Attorney-General desired the Deputy Clerk of the Crown to read the associates', members', and volunteers' cards.

The Deputy Clerk of the Crown then read the cards. The members' card was numbered 31,006; the volunteers' card, and the repeal wardens' card, had the name "George J. Green," upon them.

Mr. Fitzgibbon—Go back to the members' card, and read the words upon the leaves of the shamrock. You have omitted them.

Deputy Clerk of the Crown—The words are, Catholic, Protestant, and Dissenter.

Attorney-General—Now read the arbitration award and deed of submission.

The Deputy Clerk of the Crown was about reading those documents when—

Mr. Fitzgibbon said—My lord, on these documents there is a stamp, and you will recollect that it has not been proved that any document having a stamp was ever received at the association, or by any member of it. How those documents came into the possession of the crown we know not; but this we know, that it has not been proved that such documents were delivered to the association, and they clearly cannot put such documents in evidence.

Chief Justice—I don't understand your objection.

Mr. Fitzgibbon—It is this: they seek to give in evidence copies of a printed document, and to make them evidence against the association, by showing that copies of that document—with some impression upon them about which we know nothing—were delivered to the association from the same types. They endeavoured to put in evidence a copy which has something upon it that never was on any paper delivered by the association, or recognised by its members. They seek to put in a paper which has something upon it which for aught we know, may have been fabricated by themselves, the meaning of which we cannot tell—and of which, for anything we know, would be made the subject of observations that it is utterly impossible for us to anticipate. We do not understand that stamp, or whatever other device it is; we do not know the meaning of it at all. How is it possible that such a paper as that could be read in evidence against us?

Chief Justice—They don't read it against you.

Mr. Fitzgibbon—I object to their reading any part of that paper at all, unless they show that we were in some way connected with the device which is upon it. Let them cut it off; but I object to such paper going to the jury.

Mr. O'Connell (to the Solicitor-General)—That stamp will do you for stamping the arms. If you apply to Mr. Holbrooke he will let you have it.

Chief Justice—It is not going to be read. The document, so far as what is printed on it, has been proved.

Mr. Fitzgibbon—With great respect, I beg pardon, it has not by any means; that particular document has not been proved.

Chief Justice—I did not say any such thing; but what I said was, that what was printed upon it was proved.

Mr. Fitzgibbon—What is printed on it may have been shown to be printed upon a thousand papers delivered by the association; but that would not make the document, as it is now before the court, admissible in evidence.

Judge Perrin—That stamp, or whatever is its character, cannot affect the meaning or import of the rest.

Mr. Fitzgibbon—They will be entitled by-and-by to send it to the jury if it is now read.

Judge Perrin—But without your consent they may be read now, but the jury cannot get the document unless you consent.

Mr. Fitzgibbon—Well, subject to that, of course we may go on.

Solicitor-General—Oh, we don't lay any stress upon it.*

The next witness for the crown then came upon the table.

MR. JOHN ULICK M'NAMARA, SWORN AND EXAMINED BY MR. TOMB.

I am a short-hand writer; I attended a meeting that took place at Tullamore on the 16th of July last; I arrived there the evening before; the meeting commenced some time before two o'clock; I saw a great many people there; as far as I saw they came there the same way as they would come to town on any other occasion, say on a market day; there were great crowds at that meeting; I took notes of what passed there, short-hand notes; I transcribed these notes after with the exception of some few sentences; my short-hand notes have been destroyed; I have the transcript here; I know two of the traversers, Mr. Daniel O'Connell and Mr. Steele; I saw them there; the Rev. Dr. O'Rafferty was chairman of that meeting.

Mr. Hatchell—Do you mean to state that your transcript of the speeches, or whatever it was, is a correct and *verbatim* translation of what was on your notes? Yes, with the exception I stated. I took notes of some few sentences which in transcribing I omitted.

Mr. Hatchell—Then your short-hand notes would show certain portions of a speech taken down but not transcribed? Yes.

Mr. Hatchell—Is any portion of that which you call the transcript of your short-hand notes supplied from your memory? No, except such words as are usually omitted by short-hand writers, the connecting parts.

Then you mean to represent that there is no substantive word in that report which was not taken down in your short-hand note? I do; and that the sentences are completed from my short-hand notes, with the exception of the connecting words; perhaps it is right I should mention that I did not take down all that passed at that meeting.

Mr. Tomb—State what the Rev. Mr. O'Rafferty said on that occasion?

Witness proceeded to read the speech, the following being extracts from it:—Dr. O'Rafferty said—"Fellow-countrymen and brother repealers, the regenerator and liberator of his country had arrived amongst them for the purpose of paying them a visit. The Liberator had come amongst them for the first time. It would not be saying too much for the people of that part of the country, when he stated that they would support that great man (O'Connell) in the struggle he was making for the regeneration of his native land; they were too long trodden under foot by the Saxon. The great man who had come amongst them would address the meeting, and would tell them of the blessings that would result from the repeal of the union. It would bring blessings on the country, which Mr. O'Connell himself only could tell them of." That is all I took of the speech. The Rev. Mr. Flanagan addressed the meeting also, but very shortly. The Rev. Mr. Spain spoke at that meeting. He said, "It was a glorious day for the King's County. They had, a few short months ago, another meeting in another part of the country, at Birr, when Ireland showed her moral strength, and she should again be a nation." The speaker then moved a resolution which he said was put into his hand. The reverend gentleman continued to say that "he did not wonder why English gentlemen of liberal minds were for continuing the union, because it benefited England, but it was an injury to Ireland." The Rev. Mr. Nolan, of Dunkerrin, also spoke at the meeting, and begged leave to move a petition for a repeal of the union. The Rev. Mr. Kearney spoke at the meeting, and said, "I hold in my hand a resolution." He then read the resolution, and continued—"They should persevere in the agitation set on foot by the great Liberator of his country—they had only to persevere in the struggle to make the country prosperous and happy, for—

'Freedom's battle once begun,
Though baffled oft is ever won.'

Mr. O'Connell called for three cheers for the Queen. The reverend gentleman said he was sure the Queen would be delighted to kick Peel out of office some fine morning; the Liberator was the advocate of his country's wrongs."

Mr. Tomb—What took place after that? The people shouted out, "Repeal, repeal, repeal."

Mr. Tomb—Come to the speech of Mr. O'Connell. [The witness turned to his notes.] Mr. O'Connell said "he rose to address them on a new topic, which he had scarcely touched on before. He announced to them the certainty of carrying the repeal, and that nothing could benefit Ireland except the restoration of her own parliament. They had only to persevere in their peaceful struggle, and they would carry it as sure as the sun that shone over them. When he (Mr. O'Connell) was a counsel practising at the bar, he always liked to prove his own case out of the witnesses' mouths who were produced against them."

ATTENDANCE OF THE TRAVERSERS.

The Attorney-General here rose and said he had no wish, nor did he express such a wish as to compel the traversers to remain in court each day during the trials. He had not the least objection to their leaving court, provided it was understood that they remained in the precincts of the court; but he was just informed that two of the traversers had left the court in order to attend a meeting elsewhere, and this was what he could not consent to. Unless they were at once sent for, and remained in the precincts of the court, he would feel it to be his duty to have them called on their recognizances.†

Mr. Moore—They shall be sent for immediately.

The witness then proceeded with Mr. O'Connell's speech: "The present administration have proved by their conduct that repeal is inevitable. They have threatened to put us down by force; but they had not the power to carry their unconstitutional threats into execution. When three millions of people demanded repeal, up starts the Iron Duke and threatens a civil war. He threatened to unloose the dogs of war to put down repeal. (A voice, 'Never.') Never before were a ministry so bewildered. Peel went into the house of commons and took the Queen's name in vain. He said the Queen had pledged herself to preserve the union inviolate; but I told him, in the strongest language I could with propriety use, that he lied—that the words were his own and not the Queen's. I stated that we had broken no law, and that we stood upon

* This stamp was an ingenious device of Mr. Holbrooke, but was not approved or accepted by the association.

† The traversers to whom the Attorney-General more particularly alluded were Mr. O'Connell, Mr. John O'Connell, and Dr. Gray, who had left the court, it was supposed by the learned Attorney-General, to attend a meeting of the repeal association. Mr. O'Connell, however, had only retired to the library, and when he was informed of the application of the crown prosecutor, laughed very heartily at the misapprehension of his proceedings, which provoked such an ebullition of temper on the part of the first law officer of the crown. Mr. John O'Connell and Dr. Gray were, we believe, in the hall of the courts; and at all events all those gentlemen very speedily appeared in court after the application of Mr. Smith.

our constitutional rights, that we would break no law, but we would persevere, despite of threats, in our peaceable struggle. This declaration had its effect, and the idea of coercion was given up. The *Times* newspaper announced the other day that the ministry had spent a whole ten hours deliberating upon the state of Ireland, that they had come to no conclusions with regard to her grievances, but that the Irish should be cut down! But I announce my defiance: the people have broken no law, they have offended no man; but if they are attacked they will defend themselves. No breach of the peace shall be committed by the people of Ireland. They will give no excuse for the use of force against them, and thus they will embarrass their enemies. If the government attempts to bring in a coercion bill, I will take my place in the house of commons, though much I dislike it, I will move amendment after amendment upon every clause of the bill, and I will keep them two years before they can pass it. This is my answer to their threat of a gagging bill. We only looked for equality when we sought for emancipation, and Peel said it should never be granted, yet he was the first to concede it. Emancipation only served the rich, but repeal will serve the poor, it will bring 300,000*l.* a year into this country alone. I call upon the Irish landlords to unite with me; they will be benefited by repeal; it will put an end to the unhousing of the poor. In these results her affections were centered, yet her tears were disregarded, and despite her remonstrances the ruthless fiat went forth to pull down the house. There were wholesale murders on the one side, and assassinations on the other, both disastrous on the persons against whom they were perpetrated. All persons agree that something must be done. Why not do it at once? I propose doing it by the repeal. Mr. Robinson has a plan of his own. I am for mine. My plan is that no landlord should receive rent unless he gives a lease. Like the payment of the clergy, no penny no paternoster, no lease no rent. Property has its rights, and shall continue to have them; it has also its duties, and must perform them. He cautioned the people against Ribbonism, and begged if any one sought to induce them to become Ribbonmen, to deliver him up to justice. Let any one who will do so hold up his hand."

Mr. M'Donogh—State what was done then? I have a mark here that every one did so.

Witness in continuation—Mr. O'Connell proceeded: "I now have your pledge. Have I not teetotallers here? If I want you I know I can get you. [A voice, 'the sooner the better.'] Once repeal was carried, all the roads would be repaired, all the court houses and bridewells—if there was any occasion for such places—would be built out of the consolidated fund. What was taxed as exciseable would be bought at one-fourth its present price. Repeal is the hope of Ireland. He alluded to the gentleness which springs from religious feelings. This enabled the women to mingle among them without fear. If it was necessary for them to remain in the field until blood should flow, no general would remain more readily than he. He warned the meeting not to vote for a Tory, and related an anecdote told him by a friend, of people refusing to work with a man who would not be a repealer. The shout of repeal would be heard. The Saxon would be aroused from his slumbers—the echo would be borne across the waves—the union must be repealed.

Mr. Tomb, Q.C.—On what day of the week was this spoken? On Sunday.

Here the court and jury retired.

When the court and jury returned the examination was continued by Mr. Tomb—The meeting was on a Sunday. I cannot estimate the number of persons present; I am no judge of numbers; the meeting was held in the market-place of Tullamore; I saw many banners and flags; I do not recollect any of the inscriptions on the banners which were carried; I recollect some of the inscriptions posted in the town: "See the conquering hero comes," was one; another was,

> "Lives there a man with soul so dead,
> Who never to himself hath said,
> This is my own, my native land."

Mr. Hatchell—The ghost of Sir Walter Scott.

To Mr. Tomb—Another inscription was, "Ireland her own parliament, or the world in a blaze." Another was, "Cead mile failte."

Mr. Rigby (one of the jury)—Was the inscription, "Ireland her own parliament, or the world in a blaze," at the meeting, or was it posted in the town? It was posted in the town and not at the meeting. It was previous to the meeting taking place, and, I believe, in a street running parallel to the place of meeting; there were a great many bands of music; I think the meeting was over before five o'clock.

CROSS-EXAMINED BY MR. HATCHELL.

Were you there pretty early in the day? I was there the day before the meeting took place; on the day of meeting I was at the place of meeting before the crowd assembled.

Was there a platform? There was; I was on it.

Were there any other reporters there? I saw one, and I understand there were others there.

Was there any obstruction to your taking notes? Not the least.

I believe you described the people coming to the meeting as if they were coming to a market or fair? I did; that is what I saw.

There were a great many females and children there, I believe? Yes; there were females mixed among the men; I have no doubt there were children there.

Was the meeting peaceable? Yes, perfectly peaceable.

I understand you do not belong to that part of the country? No; I never was in Tullamore before.

By whom were you employed? By Captain Despard.

Mr. Tomb—I object to that question.

Judge Crampton—The answer is given now (a laugh).

Mr. Hatchell—You were not there at all events on the part of any newspaper? I was not.

Were you there on the part of the government?

Mr. Holmes objected to that question.

The Chief Justice said the court had already decided that the question should not be asked.

Mr. Hatchell—You were not there for any Liberal paper? No; I did not go there on the part of any newspaper at all.

Were you paid for your reports? I was not (laughter).

As yet you are not paid for your services on that occasion? I am not, and I am very much afraid I shall not (laughter).

Mr. Hatchell—I do not participate in your terror. Will you be good enough to tell me when you transcribed your short-hand notes? Not for several days after the meeting. That was the reason I was not paid; I did not send them in time.

Were there many days elapsed before you made out your report? About six days.

Why did you make it out then? After the meeting I went to Trim; I understand an application was made at my house for the report, but I was not at home; that was the reason the report was not made out sooner; I went home when the meeting broke up, and remained there for two days.

Where were your short-hand notes taken? Was it in a book or in slips? In slips.

Were they tied with thread or pinned? No; they were on scattered slips of paper.

Did you understand when you went to the meeting that you were to be paid? Certainly.

Had the price been agreed upon? No.

It was to be a *quantum meruit*. Do you understand that? There was nothing at all said about it; but I understood I was to be paid.

Have you been in the habit of reporting for any paper? I reported for a Drogheda paper.

When? Something about a year before.

Were you connected with any paper as a reporter in the intermediate time? I was not.

Then you were out of practice for twelve months? I was; I was very much so, but not altogether.

Did you not say that you were not reporting for twelve months? I used to take notes at the assizes sometimes.

Did you transcribe them? I did not.

Persons are not likely to go through the labour of transcribing notes unless paid for them? No; it is not usual.

You were absent at Trim four days out of the six. Now, will you swear that you transcribed your notes in the other two? I cannot exactly say.

Did you in three days? I think I did.

Will you swear you did? I cannot say.

Were you to be paid by the job? Yes.

Not by the time? No, I was never paid by the time. I was always paid by the year.

Whether there was anything to be reported or not? Yes.

Now I should like to know how long you were in transcribing your notes? I cannot say.

Were the notes applied for? They were during my absence applied for at my house.

Was the message in writing? I was told the day after if they were not sent that evening it would be too late.

Of course you had not got them to send, and conceiving it was too late why did you set about it? I thought it might not be too late; I thought it was said to hasten me (laughter).

Then you did not believe it was too late? I did not swear I believed it was too late; I only swore that I was told it was too late.

And under that probability you sat down to do the work? I did.

When you took the notes you did not know they were to be used as notes of what passed at the meeting? Certainly not.

You had no idea on your mind at that time that you might be examined as a witness as to what passed at the meetings? I had not; I had seen so many meetings passed over in the records of the proceedings of which I had read language ——

Mr. Hatchell—Never mind that (great laughter). Well, having seen so much passed over, and having some idea that it was too late, you, notwithstanding, took the notes and sent them in? I did.

You never suspected that you might be examined as a witness? I thought it very improbable.

And though you thought it very improbable, you sat to this hard work for a couple of days at least, and sent the notes? I did not send them.

Well, then, how did they get out of your possession? I gave them to my brother-in-law to read, and he gave them to another person (I do not know that I am bound to give his name) to read for his amusement.

And to return to them? Yes.

And did he return them? He did.

Are you yourself the secret and mysterious person that you hesitate to say who got them? No.

Having got them into your possession again, how did they again get out of it? My brother-in-law called for them a second time to give them to a person who was to show them to a second person (immense laughter).

Then how many *dramatis personæ* are there in this farce altogether? You are the principal performer, your brother-in-law is the second, and there are two other persons, in the language of the indictment, unknown? I do not know whether I am at liberty to mention names or not, but the notes got out of my possession, and I never saw them since.

How many days were you occupied in the transmission of these notes in this family way between your brother-in-law and yourself? I cannot say.

Did you get them back again? I never saw them.

Was your brother-in-law the person through whom they were sent to the others? He was.

I ask you, on your oath, what interval of time passed between the finishing of your transcript and the time it left your possession? I do not know.

Was it one day or two days? I do not know.

Had you them in your possession a considerable time after the report left your possession? I had.

Was it more than a week? I cannot say.

Can you tell the jury, upon your oath, that you never again saw the transcript of your notes? Not till I saw it here.

Was this the first draft from your notes, or only a copy? I just made a draft from my notes, and then took a fair copy.

Are the original notes destroyed? They are.

Which was destroyed first—the draft or the notes? They were destroyed the same day.

What day was that? I am sure I do not know.

I think you stated in taking your report you were not able to take every sentence that was uttered? I did not take every sentence.

But according to the method of short-hand writing when you could not complete one sentence you let it drop, and took up the rest? Yes.

Have not whole sentences been omitted? Yes.

In some part of this report you say something was spoken about a Spanish professor declaring that the Irish people were the finest in the world? No.

Well, then, read the passage and see.

Whose system of short-hand do you write—Mr. Taylor's? No.

Very well, read the passage.

Witness then read the passage, "because a distinguished professor of Spain said there is not such a people as the Irish on the face of the earth."

Now, on your oath, either from your notes or memory, can you swear that anything was said about a professor of Spain? Are you ready to swear that it was not a Scotch professor who was mentioned? I swear that I took it down as a professor of Spain.

But you don't mean to swear that you are infallible? No; nor will I swear that I might not have mistaken the word in taking it down.

Are not the words very much like each other in short-hand? Not in the system I write.

Not in your system of making mistakes, perhaps. Now, write both words in short-hand.

Judge Crampton—Write them so as the jury may understand them (laughter).

Witness then wrote the two words, and handed them to Mr. Hatchell, who, having looked at them, said—Certainly there is no great similitude between them; yours is the shortest "philosopher," and the longest "professor," I ever saw in short-hand* (laughter).

* The authority quoted by Mr. O'Connell was professor Forbes, who we need not say was not a Spaniard. He is at present a professor in the University of Glasgow, and his testimony was founded upon experiments made upon equal numbers of Englishmen, Scotchmen, and Irishmen, testing their muscular powers. The results of these experiments are given in "Chambers Edinburgh Journal, or Information for the People for 1842," but we do not precisely know the number.

You saw the placard on which you say there were the words—"Ireland, her own parliament, or the world in a blaze," the day of the meeting? I did.

At what time? A considerable time before the meeting—hours before the meeting.

Did you hear Mr. Steele direct it to be taken down? No; but he might have given directions.

Mr. O'Connell—It was I gave directions.

Mr. Hatchell—You mentioned a Mr. Robinson as having suggested some plan at that meeting? I did.

It was some plan as to the landlord and tenant question? It was.

Let us hear what Mr. Robinson said.

[The witness took up his manuscript.]

Allow me to ask you, in the first place, is not Mr. Robinson one of the people they call Quakers? So it was stated.

And he appeared to be so? I did not see him at all.

But what did he say? He moved a resolution, and said, "When Ireland asked bread, what did you get but a stone? and when you asked for amelioration of your sad condition you got an arms' bill. We want no arms but our own two arms, and a head to guide us; and while we move under the counsel of our Liberator, we will be sure not to make bad use of them." And in another page he said, "Instead of arms' bill they ought to give us fixity of tenure, to better the condition of the poor landholders. We do not want to do any harm to the landholders."

Mr. Hatchell—My lord, we wish to have a copy of this gentleman's report, otherwise we will require him to repeat it so as that it can be taken down by our own short-hand writer. We cannot see any objection to that.

Mr. Tomb—It never yet was done.

Mr. Hatchell—All we want is a copy of his report.

Chief Justice—I cannot see how we can grant it.

Mr. Hatchell (to witness)—Have you read the whole of this report? No.

I think you stated that it was moved that a petition to parliament be presented? It was.

Look to your note and say who moved that, and read out anything you read so slowly that we may be enabled to understand your evidence and take a note of it. Look to the Rev. Mr. Nolan's speech. I will.

I suppose, Mr. M'Namara, you have no objection that that note of your testimony should be made perfectly public, swearing as you did to the truth of it? As far as I am concerned I have no objection.

You are not paid for your report? No.

Whose property is it? I do not know whose property it is.

Did you make it out? Yes.

Is it not the produce of your own labour? Yes.

And is it not your own property unless you were paid for parting with it? Yes.

And now, sir, will you tell us what Mr. Nolan said? He said "I beg leave to move the adoption of a petition to parliament praying for a repeal of that fatal measure—the Union."

Was that seconded? Yes.

Who seconded it? Dr. Walsh seconded it. Perhaps I ought to observe that the names were very few of them announced, and it was only from hearing inquiries made as to who the speakers were that I could catch the names.

Mr. Hatchell—We are not going to make the slightest objection to the names. The petition was moved and it was seconded by some person, was it not? It was.

Was the petition to be presented to parliament? It was.

Did you take down a note that that petition was read. It was read.

Did you take a note of the petition as it was read? I did not.

[Here the witness put his hand into his coat pocket.]

What are you searching in your pocket for? A pocket handkerchief (roars of laughter).

Mr. Hatchell—I am sorry the question had such an effect upon you. But, now, have you got a note of that petition at all? I have not.

You never had? I never had; I did not get it to take a note of it.

Was it not read? It was; but I thought the papers would have been given.

Did you apply for it? I did not.

Was it to drop along with your handkerchief into your pocket without being asked for (laughter)? No.

Did you ever read it? I never did.

Upon your oath had you ever the curiosity to look at a newspaper? Oh, I read it in the newspaper.

Did you ever see it in more newspapers than one? Yes, in two.

And you examined these reports in two newspapers? I did.

And only in two? That is all.

And you have no copy of that petition? I have not.

What is the next note of any transaction you have upon your paper? I have the moving of a resolution.

Did you take a copy of it? No.

Then there was some resolution moved of which you know nothing? Precisely.

Who moved the resolution? I think it was the Rev. Mr. Kearney.

And who seconded it? Mr. Clarke.

There was another resolution—have you got it? I have not.

Go to the next transaction of this meeting. That was the reading of the petition to parliament, and then followed Mr. O'Connell's speech. You told me you were taking notes at the table? I was.

How was it that you destroyed these notes? I threw some of them into the fire, and my child cut some of them up.

You say your child cut up your notes? Yes, I gave them to her for that purpose.

For the purpose of cutting them up? Yes, and I threw the rest into the fire.

And the draft along with them? Yes.

The witness then left the table.

JOHN SIMPSON STEWART SWORN AND EXAMINED BY THE ATTORNEY-GENERAL.

I am sub-inspector of constabulary; was stationed at Tullamore in July last; I remember the great meeting there; I was about the town on the morning of that meeting; I saw mottoes and banners in my progress through the town; I have a note of them in my hand-writing taken on the spot.

Mr. Henn objected to this course of examination. He submitted that, whatever the witness might have seen in the streets of Tullamore could not be evidence in this case.

Chief Justice—Why not?

Mr. Henn—Because it does not appear when or by whom those banners were put up; they appear to have been seen by him before the actual meeting took place. There should some further information be given with respect to the circumstances which led to their having been put up, as it would appear they were erected in the course of the night, when scarcely any one was in town.

Chief Justice—It is unnecessary to answer that, Mr. Henn. All the particulars of what took place that day cannot be given in evidence all at one time; in the natural and ordinary course of evidence they must succeed each other. The witness

swears that he, in the exercise of his duty, went round the town making his observations, and he says he saw great numbers collected and collecting in different parts of the town with different mottoes and banners.

Mr. Henn—No, my lord, with great respect, that is not exactly said, and that is the foundation of my objection.

Chief Justice—I didn't say it was what he said; but you interrupted me too soon. He said that he saw crowds of persons assembled, over and above those belonging to the town, and that he further observed, when he went about, sundry banners and sundry mottoes. I know he did not say they were brought in by the people, but he states what is a matter of fact, that while the preparations were going on he saw those things—'tis clearly evidence.

Mr. Henn—He does not state where.

Chief Justice—I know he doesn't, because you haven't allowed him.

Mr. Henn—Don't say, my lord, that I haven't allowed him because I objected to his reading what he was about to read.

Judge Crampton—He says it was in High-street.

Mr. Henn—I submit that a placard being posted in High-street cannot be evidence to affect parties on their trial here.

Judge Crampton—If you look into the case, cited here the other day, before Mr. Justice Holroyd, you will find this evidence was allowed.

Mr. Henn—Suppose it would turn out that the persons attending this assemblage intended themselves to take down the placard.

Examination resumed—There were several thousand persons assembled; large numbers of men passed through High-street from the Birr road; there was an arch running across the whole street.

Mr. Henn again submitted that his objection was strengthened by the evidence; the erection of that arch did not appear to be the act of any of the persons attending that meeting.

Judge Crampton—The same objection would apply to the erection of the platform.

The Attorney-General cited the case of the King *v.* Hunt, in support of the admissibility of the evidence.

Mr. Fitzgibbon denied the analogy of the King *v.* Hunt with the present case. In that case there were four counts in the indictment, three for a conspiracy, and one for an unlawful assembly; the jury acquitted the defendant on the three first counts, and found him guilty on the last only. What evidence was a placard on the walls of Tullamore, on the sixteenth of July last, against Daniel O'Connell and the other traversers, that they had been guilty of a conspiracy on that day, or at any other time. Why not give in evidence the placards which were posted on the walls of Dublin about tea-shops and the like? The case of the King and Hunt, cited on the other side, was not like the present case at all. This was a case where it was alleged that the conspiracy constituted the crime, whereas it was in the case of the King and Hunt alleged that the crime was created by an unlawful meeting. In the present case it was not dared to be asserted that any of the meetings were illegal. In the case of the King and Hunt, the crime was an illegal meeting; and it was not offered in evidence as to a conspiracy, nor was the court so absurd as to admit such. There was nothing about conspiracy in that indictment, and in the present case there was no count whatever that the meetings were illegal. He submitted that the evidence sought to be put in must be rejected, on the grounds as stated by him, and on the same authority also.

The Attorney-General did not think it necessary to argue the question. He read the case alluded to, and said the indictment was for exciting hatred and discontent, &c., the same as in the present case, which did not vary in any instance, as it was a case of conspiracy to do what was actually done in the case of the King *v.* Hunt. It was not necessary to show that the party actually carried the placard or banner himself, as in the case of Redford *v.* Birney; it was quite competent for him to show that flags and banners were there; and in the last case cited by him such was admitted in evidence—the same as in the case of the King *v.* Hunt. It was the first time he heard, and was he to be told that Justices Bailey, Holroyd, Best, and others, submitted evidence that was absurd?

Mr. Fitzgibbon—I did not say they admitted what was absurd in itself as evidence, but I said they rejected absurd evidence.

Mr. Whiteside said it was laid down that inscriptions and banners bore the sentiments of the people who came there. In this case it was totally different, as the placards were put up by some persons not connected with the traversers at all, and before they came into the town at all. Why, if such evidence as that was admitted by the court, it would come to this, that if persons going from Donnybrook to Clontarf passed under an arch that might happen to be erected on the road, they were liable to indictment.

Chief Justice—Unless we overruled a settled case, we must admit the evidence. Suppose the placards were called by some innocent name, but that a hostile meaning was intended, would it be contended that such evidence could not be resorted to to show the real character of the intended meeting that was to take place, or that had taken place? Let the evidence be admitted.

Judge Perrin—We have it in evidence that there was an arch across the street, which arch was not there before that day. The case of Donnybrook and Clontarf, as stated by Mr. Whiteside, was remote from the present. The arch in Tullamore was put up in a passage from the Birr road, and it was left there during the assembly; and the placard was, therefore, evidence of the expression of the opinions of the people who had assembled. The cases, as cited, might not be the same exactly, but the principle was the same; and he was of opiniou that the evidence should be admitted.*

Attorney-General to witness—State what was on the placard you saw in High-street, Tullamore? On one side was an inscription as follows: "The slave-master may brandish his whip, but we are determined to be free;" and on the other side was, "Beware—physical force is a dangerous experiment to try on the Irish people—Repeal cannot be put down by the bayonet;" I saw the Roman Catholic chapel that day.

Attorney-General—Were there any placards or banners on the chapel? None.

A Voice—That's a dead blank.

The witness in continuation—The Roman Catholic chapel is opposite the Corn Market, where the meeting was held; it was in view of the platform; the placards and banners were opposite the chapel gate; there was an arch from the opposite side of the street to the other side; I saw on a placard the following words:—"Ireland, her parliament, or the world in a blaze;" the meeting was held on Sunday, opposite the chapel, where the people were entering; the platform was in the Corn Market, opposite the chapel gate, up against the wall of the meal market; it was from this place the speakers addressed the meeting; there were several banners on and about the platform; the motto opposite the platform was, "Ireland

* The learned Judge's decision was formed on a misconception, for the traversers caused the arch to be taken down as soon as it was seen. Mr. O'Connell, the instant he saw the inscription, sent Mr. Steele to take it down. It is only just to say, however, that the inscription, such as it was, was copied *verbatim et literatim* from a motto which has been, from time to time, extensively used in England, but never prosecuted.

must not be, Ireland ought not be, Ireland shall not be. a serf nation." There were several mottoes on the platform—one was, "9,000,000 of people are too great to be dragged at the tail of any nation;" another, "He who commits a crime strengthens the enemy." There were eight mottoes taken down by me, but I think there were many more. I took "The Liberator, God bless him; men of the Border Counties, hail him!" Another was—

"Breathes there a man with soul so dead,
Who never to himself has said,
This is my own, my native land."

Another motto was "Repeal," and under it was written, "Justice and prosperity to all classes and creeds." The crowds began to enter early, but the immense masses entered from 10 to 12 o'clock. The greater number came by the Birr road. A great number of bands came into town; there were more than nine, exclusive of the Tullamore bands; they were all temperance bands; they did not come together, but at different times; there were great numbers with each band; a great number of persons came on horseback; the horsemen who entered by the road advanced in sections of four.

Mr. Justice Perrin—What do you mean by sections of four?

Witness—I mean four rode together, and then four followed, and so on; I observed one person on horseback in particular; a horseman wanted to leave his place, and this person said, "Damn you, keep your ranks." The horseman, I believe, wanted to speak to a friend; I counted between seventy and eighty sections of horsemen; there were about 300 altogether, but I cannot say exactly; the persons on foot endeavoured to keep some kind of order, but they did not keep it so well; the infantry, or foot, kept round the temperance bands, but they did not keep such good order, as they were pressed by the crowd.

Attorney-General—Did you hear anything in particular said?

Witness—I heard people giving directions, but I could not hear the exact words; they were putting them in order; halting them.

Attorney-General—Marshalling them! (sensation in court and cries of "oh! oh!")

Witness, in continuation—Mr. O'Connell came the night before; I think he slept in Tullamore; I saw the arch I first mentioned in the morning; the one opposite the chapel was not up the night before; it must have been put up after ten o'clock, for I was not there sooner; I went through the town at from nine to half-past ten o'clock; it is impossible for me to be quite accurate as to the time; Mr. O'Connell and others ascended the platform about two o'clock.

Attorney-General—Did you see any other person there that you know besides Mr. O'Connell? I saw that gentleman (pointing to Mr. Steele); I saw others also; I think I'd know Mr. O'Connell.

Mr. O'Connell—Here I am (laughter).

Witness in continuation—Oh! I have no doubt of Mr. O'Connell. I heard part of Mr. O'Connell's speech; I was in the store over the platform; I was about twelve or fourteen yards from it; I never measured it; I heard Mr. O'Connell say, "I came here to the centre of Ireland to meet you, and I can prove from the words of Peel and Wellington that repeal is now certain." He likened Sir Robert Peel to the fool that came to the river's side to wait till it flowed by. He made some allusions to Lord Beaumont, and called him a despicable miscreant, as well as I could hear; he also said that Peel had spoken of civil war, but he (Mr. O'Connell) said "the better day the better deed, I hurl haughty defiance at him." I do not pretend to give his exact words. He said—the people should not pay for churches for others; and that if offered a part he would take it as an instalment. He also said—"Are there any teetotallers here; if there be let them hold up their hands?" A great multitude then held up their hands. Mr. O'Connell then said—"If I want you, can't I get you any day?" and he then said—"I know I want you." He also charged them never to vote for a Tory or anti-repealer. In my opinion there were 60 or 70,000 people, reckoning men, women, and children. The meeting broke up about four. The people then dispersed; the bands had fancy dresses—some white, others green and white.

CROSS-EXAMINED BY MR. HENN, Q.C.

You are not a short-hand writer I think? No, I am not.

How long have you been quartered at Tullamore? Something better than two years; attended the meeting to report to his commanding officer.

What distance were you from Mr. O'Connell while he was speaking? About ten or twelve yards.

He has a good loud voice? Yes.

Were you desired to report favourable or unfavourable? I was not.

Did you hear him make any reference to Ribbonism? Just at that time I quite lost the thread of his discourse.

Mr. Henn—I thought so; just the time when a policeman would be likely to lose the thread of his discourse. Recollect yourself. I heard something about advising the people against joining ribbon societies.

The meeting was crowded? Yes, it was a great meeting.

Numbers of men, women, and children? Yes.

It passed off very peaceably though? It did.

Was there any violence or disturbance of any kind? Not in the least; nor the slightest tendency to it.

Where crowds were pouring into the town was not that order of which you speak necessary to prevent confusion? Certainly, order in a crowd prevents confusion.

You were at large meetings before this? This was the largest meeting I ever saw.

I did not ask you that question, sir. I was at large meetings—fairs, markets, and funerals.

And you give us the analogy between repeal meetings and funerals. You went through the town the night before? I did. Did you then see the arch in High-street? I can't say.

When did you see the motto—"Ireland her own, or the world in a blaze?" At ten o'clock on Sunday morning, the 16th June.

Did you interfere to take it down? No.

Will you swear it was not taken down that day? I will not. I did not see it taken down.

Did you see it after the meeting commenced? I did not.

Will you swear it was not taken down at twelve? I will not. I went round the town and took down the mottoes.

What do you mean by "took down?" Taking a note of them.

Did you see these mottoes—"Patience and perseverance?" I did not observe.

Did you see added—"Obedience to the laws?" No.

Why, your vision appears as oblivious as your memory.

The Attorney-General interposed, and objected to Mr. Henn making these remarks.

Mr. Henn—Is your vision as perfect as your memory? Both are very good.

Did you observe the motto—"Repeal, and no separation?" I did not take notice of it.

Was there not a great number of ladies and gen-

tlemen in the town on that day? There was a great number of women in the town at the meeting.

Did you see the people coming from church? No; I could not see the church from the platform.

Did you observe a banner with "God save the Queen" on it? I did; I repeated that motto before.

Do you recollect a motto—"The Queen, God bless her?" I did not take any minor mottoes.

I see—only the principal ones? I took all that were legible—those that were across the street and upon the platform.

Do you recollect any with "Repeal and no separation," and "God bless the Queen?" I do not. I did not take them down.

When did you write out those mottoes you took from the platform? I wrote them out that evening and on Monday morning following.

When did you attend? I attended on the morning of Sunday, and on the day previous; I sent a report next day.

Mr. Henn—That's all.

The witness then withdrew.

NEAL BROWN, STIPENDIARY MAGISTRATE, OF TULLAMORE, WAS NEXT CALLED AND EXAMINED BY MR. NAPIER.

I am resident magistrate of Tullamore; I am resident there since July last; I was there on Sunday, the 16th of July; my house is in the main-street of Tullamore, that is High-street; I saw persons coming from the west on the morning of that day, that is from the Frankford side; that was about one o'clock; there were persons in the town before that time; I saw several bands of music, and saw some coming in with the procession; some came in before one o'clock, and some came in at that hour and after; they came up the street, turned to the left, to the left again, and passed near the church; the procession came up about half-past two o'clock; I saw Mr. O'Connell in the procession, and Mr. Sheil with him I think; (witness correcting himself) it was Mr. Steele I believe, but I am not positive; I was at the rere of my house when I heard the sound of music; in about five minutes after the carriage of Mr. O'Connell, preceded by a part of the procession, came on and passed before I came up; there were horsemen at it; the people walked about fifteen abreast, with regularity and order; music was playing all along; I saw persons coming from church; a good many walked through my own fields; that was not the usual way for them to go; a great many of those who lived at the top of the town, to the number of thirty-five or forty, walked through my fields; the usual way was by the back road; three of the bands had military uniforms, and one of them, I believe the Roscrea band, had shoulder-scales, like what the cavalry wear in undress; another band wore an uniform cap, with a band and some device at the bottom; the horsemen came from the west; they came five abreast in a column, to use a military term; I dare say there were about 240 horsemen there; except in one or two places, they generally kept order.

CROSS-EXAMINED BY MR. MOORE.

I am the stipendiary magistrate of Tullamore; I have been there since the 26th or 27th of September, 1829.

Now, you spoke of the bands. Do you not know there are many temperance bands in that part of the country? Yes, they were all temperance bands—at least, I understood them to be so.

It is usual for them to have a particular kind of dress—is it not? I never heard of it till within the last two years.

But that was long antecedent to the meeting? Yes, but not long antecedent to similar ones.

Mr. Brown, now answer the question—was it not long antecedent to the meeting of the 16th of July? Yes.

You know the last witness, Mr. Stewart? Yes.

Did you give him any directions to attend? I sent directions to the county inspectors, Messrs. Stewart and Patton, and previously I spoke to the county inspector on the subject.

When did you give directions? On the 15th I first gave verbal directions, and afterwards in writing.

Had you directions yourself on the subject? I had.

From whom did you get your instructions?

The Attorney-General objected to the question. It had been decided over and over again that it could not be asked.

Mr. Moore—Well, in pursuance of directions you received you gave directions yourself. Yes, because if I did not I conceive I would be responsible myself.

Did you hear anything that occurred at the meeting? No.

Was there any disturbance at the meeting? No, not till eleven o'clock at night. There was no report made to me till eleven o'clock at night.

But none at the meeting. There was no report made to you of any disturbance? No, not even of that which took place at eleven o'clock at night.

Was there any report made to you of any disturbance at the meeting? Not any.

You have no doubt there was none there? I don't think there can be any doubt.

Mr. Napier—How far is Roscrea from Tullamore?

Mr. Whiteside—That does not arise out of the cross-examination.

Witness—About thirty Irish miles, that is by Birr; and I think by Kinity it would be twenty-six miles.

JAMES JOHNSTON EXAMINED BY MR. SERGEANT WARREN.

I believe you are in the constabulary?

Witness—I am head constable in the constabulary.

Where are your quarters at present? I belong to the Sligo establishment, and did belong to it on the 29th of May last.

Were you in Longford on the 29th of May last? I was in Longford on the 28th of May last, and on the 29th.

Was there a great meeting there on the 29th? There was a large repeal meeting there.

Did you make any estimate of the number of persons you saw there? I think it would be impossible to form an accurate estimate.

Could you form an estimate? I did form an estimate, and would say the numbers were forty or fifty thousand.

Were all there on foot? No; several of them were on horseback, and those on horseback were arranged across the street in front of the platform, something about sixty yards away from the platform.

And what number do you suppose? I would say about one hundred; there may be more; but I do not think there was less.

Did you see any persons on foot coming to that meeting, or any body of them? I saw large bodies of persons coming in from about ten o'clock to two o'clock, and led by persons on horseback, apparently priests.

Were they accompanied by bands? They were, in many instances; but in some instances they were not accompanied by bands.

Were any of the bands in uniform? Yes, sir; I observed two bands in uniform. It was a sort of semi-uniform; uniform caps and uniform frocks of the same colour and appearance.

Did you see banners displayed on that occasion at that meeting? Yes.

Did you take a memorandum of any of the mottoes you saw? I did.

State to the jury the mottoes you saw, and where you saw them. Witness (referring to a paper)—One of the mottoes I observed was "Cead mile failte," on a large piece of calico, with a green border; "Ireland for the Irish, and the Irish for Ireland;" "Every man who commits a crime gives strength to the enemy;"

"Breathes there a man with soul so dead,
Who never to himself hath said——"

(loud laughter).

Mr. Fitzgibbon—Say that again.

Witness—

"Breathes there a man with soul so dead,
Who never to himself hath said,
This is my own, my native land"

(laughter).

"Welcome Erin's brightest star;" "REPEAL AND NO SEPARATION;" "A population of nine millions is too great to be dragged at the tail of any other nation." Those are all I took down.

Were you near the platform during the meeting, or when the chair was taken? I was in or about fifteen yards distant.

Were you sufficiently near to hear the speeches? Yes, sir, I heard almost all the speeches; at times with distinctness, at other times I did not.

Did you at the time take a note of any thing you heard? I did not.

Tell me the first person of whose speech you have a note? The first person that addressed the meeting I did not know his name.

Which of the traversers did you see there? I saw Mr. O'Connell, Mr. John O'Connell, and Mr. Thomas Steele.

Were they accompanied by any other persons? By several persons I did not know.

Were they accompanied by any persons that you did know? No, sir.

Did you hear Mr. O'Beirne speak? Yes, sir; the first speaker was the chairman; he said they would get all they wanted if they attended to their priests.

Do you know who was the chairman? I heard the chairman was a gentleman commonly called Count Nugent.

Did you take any further note of what the chairman said? He talked of landlords and property. I could hear distinctly what he stated—"Ireland would be able to supply herself, and it was the duty of every Irishman to rally round the standard of repeal."

Have you any further note of this speech?

Judge Crampton—What speech is that?

Sergeant Warren—The speech of the chairman, Count Nugent.

Who was the next speaker? A gentleman that I heard was Priest O'Beirne; he said, "This is not the time to give a silent vote; every Irishman should rally round repeal. The loyalty of the Irish is not the loyalty of expediency; Ireland will be raised again to the dignity of a nation, and cease to be legislated for by those who are ignorant of her condition and hostile to her prosperity." He then inquired, have we a voice in the legislature? and several cries from the multitude and persons on the platform, no, no. At the conclusion of his speech, THREE CHEERS WERE GIVEN FOR THE QUEEN, and three hearty cheers for the repeal of the union.

Who was the next speaker? I have no note of the name.

Have you a note of the speech of Mr. Carberry? Yes, sir. A person named Carberry said they ought to join to crush England. This year will close with your parliament in College-green. Your Liberator's prophecy will be fulfilled; we will have a legislature of our own that will make our people happy and contented.

Who was the next speaker? I don't know; he said personal sacrifices ought to be made; the man offered the highest office in the gift of the government would not deserve their esteem if he deserted the cause of the people.

Have you the name of the person who spoke next? Yes, a gentleman who I was told was the Rev. Mr. M'Gaver; he said Longford was a speck, and was coerced some twenty years ago; this is the observation I took down of his; I was told that Bishop Higgins was the gentleman that addressed the meeting next, but I could not hear any thing of what he said.

Who followed Bishop Higgins? I have no note of any other speaker until I come to Mr. O'Connell. He said—"I can tell you ours is no vain cause; let there not be any ribbon societies in this country. We are peaceable. Let them but attack us." Then there was a pause. "We stand at their defiance. Let Peel and Wellington get their act of parliament, we will find a way to drive a coach-and-six through it."

Was Mr. O'Connell's speech about Ribbonism, and the other part you read, spoke in the same tone of voice? Yes; I should think it was; but the pause was made in such a way as to convey a meaning which I cannot describe, but which may be understood by the speaker, and those who were listening to him. "I will tell you what they will do (I understood he meant the government). They will take the commission of the peace from your respectable supporters; but an Irish parliament will help me one of those days to punish them in an exemplary manner." Mr. O'Connell then talked of the linen trade in Ireland, and he said that 1000*l.* was paid for marking the linens exported to England, and the fields were decked with white, but I will not give that note as an accurate one. "We shall see that the temporalities of Ireland are not allocated to the church of the minority. It was a preposterous thing for one man to ask another to pay for his education. Talking of repeal, I will tell you what it will give you—fixity of tenure. I will explain what that is—it will prevent you from having any landlord that would not give a lease for 21 years (several shouts of hear, and bravo—a voice in the crowd, you had better make up to Ballinamuck)—to give the landlord his right, but make him perform his duty."

That's the entire of what you have taken of Mr. O'Connell's speech? No, sir; he then said—"I will tell you what the union has done for us; it has carried away nine millions from the country that otherwise would be spent in it; we will not continue under the dominion of the Saxon to submit to the Saxon and oppressor, and to be ground to dust; but we were (a pause) we were never conquered—you will be liberated—you are too good not to have the majesty of your nation raised; you will fight for repeal and liberty; go home quietly, tell your friends of this day's news, and when I want you again, I will let you know the day."

Did you hear Mr. Steele speak at the meeting? He spoke, but I took no note of his speech; he came forward with a large roll of paper, something about the size of this roll of paper (pointing to the briefs on the table), and announced to the multitude that he had several hundreds, or thousands of copies of a speech made by the Liberator, as he said, in reference to some measure of Sir Robert Peel's, to distribute them; I saw none of them distribnted.

Have you any other memorandum of anything connected with that meeting? Nothing further than the character of the meeting itself.

CROSS-EXAMINED BY MR. FITZGIBBON.

Do you know the gentleman that you designated by the name of Priest O'Beirne? No, sir.

Did you recollect to see him previously? No.

Then he was a stranger to you? He was; I

neither knew him then, or know him now; I was standing about fifteen yards behind the platform.

The speaker's back was to you? Yes, and I felt difficulty in taking down what was said.

Did you write this paper there? I did.

Had you a table to write upon? I had the windowstool.

Then you were in a house? I was in a house.

Was it your own house? No, sir, I don't reside in Longford; I was sent there on duty.

Was there any one with you? Another, Head-constable Maguire.

Did he take notes? No; we were sent there to observe the meeting, and to take such notes as we might be able to take at the time.

That is, what you considered it material to take notes of? Yes, so I understood.

Yes, that is the way you understood your instructions—so Mr. O'Connell made a speech? Yes.

And you say that he made a very significant pause in it? Yes, he made a very significant pause.

What did it mean? It was such a language as was intended to convey something not expressed (laughter).

And to convey that to 40,000 persons? It was impossible for Mr. O'Connell to be heard by 40,000 persons; only a few hundreds could hear him.

Could not the pause have been conceived by the 40,000 persons? I cannot say so.

Were you behind him when he made this mighty pause? Yes, I occupied the position I have stated.

Turn your back to the jury, and show them what kind of pause Mr. O'Connell made with his back to you? Really, I don't know where the jury are.

There they are—and be good enough to express the pause to the jury? I don't think I could so successfully express the pause in the same form that Mr. O'Connell did (laughter).

You did not see his face while he was making the pause? It was Mr. O'Connell's form of language.

But I am not talking of language, but the pause. Did you see his face while he was making the pause? I may not have seen his face—I cannot recollect that I saw his face.

You don't recollect whether it was his face or his back you saw? Did he turn his face to you? Not to me.

How long was that pause—that significant pause? It may be three, or four, or five seconds; it was not a minute certainly.

Did he make any pause but the one in his whole speech? He did; but not such pauses as that.

The pause of three seconds was then the very longest? I don't say three seconds; it may have been three seconds.

What was he saying while he was making that pause? He was saying nothing of course (laughter).

Will you tell me what he was saying before he paused? Can you tell me from your memory? Your questions are so rapid that my memory will not allow me to tell you without reference to the manuscript.

Tell us now what he was saying before he made the pause? One of the pauses was in this sentence, "To submit to the Saxon and oppressor, and to be ground to the dust, but —— we were never conquered," that is the best description of the pause I can give you.

Oh, I see. We were ground to the dust and then he made the pause? "To submit to the Saxon and oppressor, to be ground to the dust, but ——" (loud laughter).

I am afraid I am putting you in a false position to ask you to imitate Mr. O'Connell? Indeed, sir, I don't desire to imitate him.

How long were you in Longford? We arrived there on the night of the 28th, and left it on the Tuesday following; the meeting was held on Sunday.

Had you any riots there? No; the people took Mr. O'Connell's advice.

And you were very sorry for that, of course? No; I was very glad of it. They had no person to quarrel with—they would not quarrel with each other.

Were there any riots in Longford that day? There were not.

Was there any breach of the peace? There was not.

Was there any tendency to a breach of the peace? The people came in in a disorderly manner, leaping and shouting, and brandishing their sticks; but they had no person to quarrel with.

Did you hear the testimony of the last witness? No.

At what hour did you see them coming in that way? From about ten o'clock till two o'clock.

Were they all at that time leaping and shouting, and brandishing their sticks? While they were coming in, indeed they were in a sweating rage of excitement (laughter). I could pity them very much at the time.

I thought you told me a moment ago that they took Mr. O'Connell's advice and were very quiet? Mr. O'Connell had not addressed them at that time; besides, I did not say they committed any breach of the peace.

Mr. Fitzgibbon—No, but you told us they were sweating with rage.

Mr. Brewster—I beg pardon, those were not his words.

Mr. Fitzgibbon—Well, "in a sweating rage of excitement." Was Mr. O'Connell there at the time you say the people were in that state? No, he was not. They were led on in that state by persons I believe to be priests.

Had the priests sticks? They might—I cannot say exactly.

Did you see any priests having sticks? I am not able to say whether I saw any sticks with the gentlemen.

Are you able now to recollect if you saw any sticks with them? They may have had sticks, and they may not.

Is that any answer? My recollection at present does not enable me to state that they had sticks.

Are you able to swear on your oath that they had or had not? Indeed I would do no such thing.

How did you know they were priests? There were several on horseback who, from their dresses, I believed to be priests.

On your oath did you see a stick in the hand of any of the priests? I cannot say.

Did you know them to be priests? I did not, sir.

Did you see any man that day give any offence to any other man? I did not, I believe.

Is that your answer, sir? If such offence were given I did not note it.

Note it. Did you see it? I saw persons pulling each other off the platform with a desire to get upon it themselves; I may have seen a momentary anger arise.

Did you see a "momentary anger arise?" I will not swear that I did.

Then why did you tell me you "may have seen it?" I may have seen it but I will not swear to it.

We know you "may have seen" half a dozen elephants there (laughter), but tell me this, did you see any "anger arise?" I will not swear that I did; the people all appeared to be of one temper as to the advice given them by Mr. O'Connell, and every other speaker.

And they were obedient? They were.

At what hour did you see the sticks and the leaping, and hear the shouting? While the large bodies were coming in; they were led away to such places as the priests thought fit to locate them.

Were they there before Mr. O'Connell arrived? Before ten o'clock there were a great number of persons assembled in Longford.

Were they coming in from that hour up to two o'clock shouting and leaping, and wheeling sticks all the time? As they came into town I observed those bodies.

But tell me were all those bodies shouting? I should say not.

Were any on your oath? Oh, yes, I should say so.

Where were the police? Police! I suppose at such a meeting as that they dare not show their faces (laughter).

Did you show your face? I was in plain clothes.

Did you mean to disguise yourself? I was on duty in plain clothes.

Had you any police under your control? No: there was only another and myself from Sligo.

Upon your oath at what part of the town did you hear the shouting, and see the wheeling of sticks? Something about the centre of the street, opposite the house where I was.

Whose house were you in?

Witness (to the Chief Justice)—Shall I answer that, my lord.

Chief Justice—Yes.

Witness—The house belonged to a person of the name of Needham.

What is he? A person in business.

What business? I believe he is a chandler.

Have you a nose? I have.

Then, is he a chandler? I believe he is.

What street is his house in? I cannot say the name of the street.

Is it in the main street? I cannot say.

Did you see any policemen there that day? Not one.

No policemen walking up and down? There were no policemen there on duty.

Now, I ask you on your oath, did you see any policemen walking up and down the streets of Longford that day? Not from the time the meeting gathered, but in the early part of the day I did see them.

Every one at that meeting must have heard this shouting as well as you? Every one who was near enough might have heard it. I might have heard the shouting farther off than where I was.

Wasn't the wheeling of sticks equally visible to every body else as well as you? Yes.

It was a very remarkable thing, wasn't it? Decidedly.

You saw no police there except between eight and ten o'clock in the morning? I might have seen them up to twelve o'clock. I may have seen an odd policeman about.

I know you might—was he armed? He may have had arms.

Mr. Fitzgibbon—My lords, these are the only answers I can get from the witness.

Witness—Indeed, sir, I am disposed to answer you fairly.

Mr. Fitzgibbon—Your disposition, sir, is a matter for the consideration of the jury. Now, tell me, did you see police in the street that day, and don't give me a maybe answer to it? I can only give you the same answer I gave to you before: I may have seen them.

Mr. Fitzgibbon—You *may* go down, sir (laughter).

To Sergeant Warren—The police had orders to remain in their barracks that day.

Mr. Sergeant Warren—You spoke of Mr. O'Connell having made a pause. Did you ever hear of cat's paws? I did, and I heard of people being made cat's paws of also (great laughter).

Mr. Fitzgibbon—And that arose out of my cross-examination! Well, I heard an exclamation, a few days ago, from the other side, "And that was said by one of her Majesty's counsel." I think I may well say now, "And that was said by one of her Majesty's sergeants, as arising out of my cross-examination in a criminal case."*

The witness having left the table a few minutes after half-past four o'clock, the Chief Justice directed that the court should be adjourned to ten o'clock next morning.

EIGHTH DAY.

TUESDAY, JANUARY 23.

The court sat at ten o'clock. The traversers were in punctual attendance.

JOHN MAGUIRE, HEAD-CONSTABLE OF POLICE, EXAMINED BY MR. BENNETT, Q. C.

I am a head-constable of police; in the month of May last I was stationed in the town of Sligo; I remember having attended the Longford repeal meeting, which was held last May on a Sunday; I saw the people coming into the town that day; they came flocking into the town between eight and nine o'clock with musical bands playing before them; they walked down the street playing "St. Patrick's Day," "Garryowen," and "The Irishman." The bandsmen had peculiar dresses upon them; they wore military caps, some of which had red bands and some gold bands.

There was here some trifling noise in the court which appeared to annoy

Mr. Bennett, who requested that Mr. Hatchell would use his influence with the gentlemen around him to preserve order, as it would be otherwise very difficult to conduct the examination.

Mr. Fitzgibbon (who was sitting next to Mr. Hatchell) said—I can assure you, Mr. Bennett, that no one is making a noise in the vicinity of Mr. Hatchell.

Mr. Bennett—But I can assure you, Mr. Fitzgibbon, that there is, for I can hear him speaking at this distance (laughter).

Mr. Fitzgibbon—I'm sitting nearer to Mr. Hatchell than you are, and if there was any noise I'd hear it (laughter).

Mr. Bennett—I assert there is noise, and I would not say so were it not that I know it to be true (laughter).

Mr. Fitzgibbon—This interruption is quite uncalled for.

Mr. Bennett—I'm not alluding to you at all now, so keep yourself quiet (laughter).

Mr. Fitzgibbon—Yes, but you said there was noise in my vicinity, and there is nothing of the kind (laughter).

Mr. Bennett—I repeat what I said before; some gentlemen around Mr. Hatchell are speaking so loudly that I am interrupted in my examination of the witness.

Mr. Fitzgibbon—If there is noise in court it does not come from this side of the court (a laugh); I'm right.

Mr. Bennett—So am I (laughter).

Mr. Ford—My lords, I was only making a suggestion to my counsel, Mr. Hatchell, and this I submit I had every right to do.

The Chief Justice—You ought not to be interrupting the court, Mr. Ford.

Mr. Ford—Nor was I, my lord. I merely leant over the bar to make a suggestion to Mr. Hatchell relative to the cross-examination.

Mr. Fitzgibbon—I don't think Mr. Ford's voice could have interrupted anybody.

* The learned Sergeant has since this time been honoured with the *soubriquet* of "Sergeant Catspaw!"

Mr. Bennett—Ah, Mr. Fitzgibbon, do permit me to go on (laughter).

Mr. Fitzgibbon—I have not the slightest objection (laughter).

Mr. Bennett—Well now, witness, you were proceeding to describe the bands; they wore military caps, you say?

Witness—Yes, with red or gold bands; some of the bands were preceded by a man dressed like a drum-major, who held a large stick in his hand; the people followed the bands; I formed an estimate of the numbers who were present; I should think from 40 to 50,000 people were met together on the occasion; I observed a person leading the crowds; the person in question I believe to be a Catholic priest; the people came on in military order; I mean by military array a kind of rank and file order of marching; there were several persons on horseback; about 100 of them came into town with Mr. O'Connell; he sat on the front box or seat of his carriage; there was a gentleman sitting with him whom I understood to be Bishop Higgins; Mr. Steele was inside, and another person, who seemed to be a clerical gentleman; I did not know who he was; Mr. O'Connell arrived about two o'clock; he was preceded by three or four bands playing; the houses in the town were decorated with green boughs, and some of the people carried boughs in their hands, waving them; some of the people had sticks, and on approaching the platform way was made for them, and some of them had sticks and were brandishing them; the meeting broke up between four and five o'clock; I was near the platform, which was very large, and a number of persons were on it; I did not see any of the traversers present except Mr. O'Connell and Mr. Steele; I took notes of the mottoes that day; but Mr. Johnston took notes of the speeches from a window, under my observation, as we could not both conveniently take them; the motto over the platform was, "Ireland for the Irish, and the Irish for Ireland;" that was very conspicuous; in another part of the town was "A population of nine millions is too great to be dragged at the tail of another nation;" it was on a large piece of white calico or linen, and was fastened to the wall on the Dublin road; it was after the meeting I saw it there; another motto was, "He that commits a crime strengthens the enemy!" I am quite sure the word enemy was there; another motto was "Repeal and no separation"—"*Cead mile failte;*" I heard Mr. O'Connell speak that day in the early part of his speech; he said theirs was no vain cause; I cannot charge my memory with having heard him make any allusion to trial by jury, or the administration of justice.

Did you hear him make any allusion to judges or courts of justice? He said, "they took the commission of the peace from your respected supporters;" he also said to the people, "Go home quietly, and tell your friends what you have heard, and when I want you again won't you be ready?" that sentence was impressed on my memory, as it was the conclusion of his speech; after that Mr. Steele came forward with a parcel of papers; he said they were speeches of the Liberator's, made about some measure of Sir Robert Peel's.

After Mr. O'Connell made his speech did you see any brandishing of sticks? No.

Mr. Fitzgibbon—Having regard to the testimony of the last witness yesterday, I would ask is that question put in a fair or legal shape?

Judge Perrin—Sure it has been answered.

Chief Justice—What harm is the answer?*

* No, there was no harm in the answer, because there could not be, but that did not render the question legal nor make it unnecessary to have the court pronounce an opinion upon it.

Mr. Bennett—I would be exceedingly obliged to Mr. Fitzgibbon if he finds me putting an illegal question to make an objection to it at the time, and I shall either sustain it or give it up.

Mr. Fitzgibbon—"After Mr. O'Connell's speech did you see any brandishing of sticks?"

Mr. Bennett—Yes; I had a right to put that question, and you are not to judge of its legality, sir; it is for the court.

Chief Justice—Oh! go on with the examination.

Witness—The people all dispersed after the meeting.

Chief Justice—Can you state about how many persons you suppose were there? I think between forty and fifty thousand.

CROSS-EXAMINED BY MR. HATCHELL, Q.C.

I am in the constabulary, and a first class head constable; I am not a sub-inspector, but it is the next step to my office; Johnston was the head constable there on the occasion; there are two degrees in the class of head constables; there is one chief head constable in each county.

Mr. O'Connell—Speak up, sir; let us hear what you say.

I came to Longford on the 27th of May, the night before the meeting; I came with Johnston, who was examined here yesterday.

Did you read any report of his evidence in the papers this morning? Not this morning.

Did you last night, sir? Yes, I did.

Mr. Hatchell—So I thought.

Were you ever in the army? No.

Where did you stop in Longford? We got into a house convenient to the platform.

And you saw it of course? Yes, certainly.

Did you see any breach of the peace committed? None whatever.

Or any tendency to a breach of the peace? There was no breach of the peace committed.

Why do you evade giving me a direct answer? I will tell you all I know about the subject.

Was there any tendency to a breach of the peace? I did not see any breach of the peace committed.

Give me a direct answer, sir. Was there any tendency to a breach of the peace? None that I saw.

I take it for granted you are not a repealer (laughter)? No, nor do I belong to any other party.

Don't you belong to the party of —— police (laughter)?

You saw a great deal of people there? Yes, after Mr. O'Connell arrived.

But there was no breach of the peace, and having gone there to preserve the peace, and finding the peace was not broken—

"Alas, Othello's occupation was gone,"

and Mr. Head-constable Maguire had nothing at all to do (great laughter); is not that so? I did not go there to preserve the peace at all.

Didn't you, though? Ah, me! Well, and what brought you there, Mr. Head-constable Maguire? I went there to make observations.

Mr. Hatchell—Hah! That was the tactic of a good general to see how the land lay in the first instance (loud laughter). When we are assembled for preserving the peace, we act under the command of the sub-inspector.

The people were coming in merrily? Yes, they were.

The same as to a country fair? Eh?

Did you ever see the people coming into an Irish country fair merrily? Yes, very often.

Kicking up their heels and dancing a little bit (loud laughter)? Yes, something after that fashion.

You said the people were brandishing their sticks? Yes.

Was it in anger or disorder, or had it a tendency to anger or quarrel amongst themselves? Not the least anger.

They were coming in parties, you said? Yes, they were coming in military array.

Oh, dear me, in military array. Now, had they their sticks on their shoulders this way? [Here the learned gentleman shouldered a large pen amid great laughter.] Was that the way, eh? No, they had not.

Do you understand me? I suppose I do.

Did they carry arms (great laughter)? No.

Did they come to the post? No (renewed laughter).

Did they present arms when the general came up (roars of laughter)? No.

Did they charge (peals of laughter)? No.

They did not? No.

They did not? No.

And yet they came in military array. Wonderful Captain Maguire (immense laughter). They came in military array and did not carry arms, did not come to the post, did not present arms to the general, did not charge (laughter), and yet they came in military array? Yes, they did.

Did they halt? Some of them might have halted.

Do you mean that some of them were lame (shouts of laughter)? There might be some of them lame, and in that sense they might halt (laughter).

Where did they halt? Near the platform.

That was when they could not go further? Yes (immense laughter).

Did they stand at ease? I suppose they did, for some of them must have come a good distance, and therefore they must have been tired (laughter).

Oh, they wanted rest, and then they stood at ease? Just so (laughter).

They marched, and halted, and stood at ease because they were tired? Yes.

Do you know anything about marching? Yes, something.

Were you ever drilled? I was.

Do you know the first movement? When a person is desired to march he is to put his left leg foremost (shouts of laughter).

And let your right leg follow it? Yes, that's it.

Well, now, were the people coming in military array, with their left legs foremost (renewed laughter)? I do not know which of their legs were foremost (great laughter).

Did you see them all march? I don't know.

Did you ever hear "Come, brave boys, we're on for marching" (great laughter)? Can you explain the difference between the right and left legs (shouts of laughter)? Not exactly.

Which of your legs is foremost now? I cannot say.

Mr. Bennett—What has the difference of legs to do in this case?

Mr. Hatchell—Do not be angry because I am pleased. Come, Captain Maguire—general, I think, I ought to call you—did you ever read Dundass on Manœuvring? Yes, a little?

What part of it? Cannot say.

Then, you have forgotten your lesson? So it appears (laughter).

Well, now, having gotten so far with your left leg foremost, what do you mean by rank and file? Two deep.

Ah hah! you are *too deep* for me. On your oath, does it mean two deep or a single file? Cannot tell exactly.

Oh, there you are, Mr. Captain Maguire, on Dundass's tactics (laughter). Do you mean to tell that jury that the people all came in, marching two deep? I do not.

They did not march two and two, rank and file? They did not march two deep, but some of them did.

How many of them did so? Some more and some less.

Were they short or long? Don't know.

Well, take the largest party and say how many came two deep? (The witness made a very long pause.)

Mr. Hatchell—Well?

Witness—Well, sir?

Mr. Hatchell—I say ill, sir; go on (laughter). (Another pause.)

Well? go on. The largest number of a party might exceed one hundred.

Did they come in two deep? Some of them did.

Did they come in two deep? Some of them did.

Will you swear that any one body of them came two deep? Some of them came two deep in a *kind* of military order.

Oh! a kind of military order, was it? Yes.

By virtue of your oath, sir, did you not swear a moment ago that they came in rank and file? It was a kind of rank and file.

Like mounting the Castle guard? Exactly so.

By virtue of your solemn oath will you swear that any one of the parties you saw came in order such as the guard goes in when relieving the other guard at the Castle? Some of them did.

Was there any entire party who came two and two? Some of them did.

On your oath were there not a great many women and children there? Yes; the women and children came after Mr. O'Connell (laughter). I mean after he came into town.

Did they not come in with the men? They might have come in after the men.

Were they not with the men? Some of the parties I described had no women.

Was there any party with women and children? Yes.

Were they with all the parties? They might have come after the parties.

Were there not lots of women and children in the military array? They might have followed the men (laughter).

The women and children followed in the rear? On the sides.

Then the women were beside the men? In some cases.

Were they mixed with them? Not with those men who came in as I described to you before.

[Counsel for the Crown here interfered.]

Mr. Hatchell—I do not want to entrap the witness, but I want him to give us a fair and honest statement of what took place, according to what he saw.

Witness—I am disposed to do so.

Now, you talked of a drum-major? I did.

Do you know what a drum-major is? I do.

Had he a silver-headed cane in his hand? He had a stick in his hand, the top of which was either silver or something representing silver.

It was the band-master had that? No; the drum-major.

Is that the band-master? No, it is not.

You knew them to be temperance bands, did you? No; they were all strangers to me.

I know you did not know them personally, but did you know them to be temperance bands? I was informed that some of them were.

And when the meeting was determined, and the speeches were over, all the people returned quietly home? They did.

And their wives and children with them? They all went away.

At what hour? Between four and five o'clock.

You may go away now.

JOHN JOLLY WAS CALLED, AND BEING SWORN, WAS EXAMINED BY MR. BREWSTER, Q.C.

I am head-constable of Cork, East Riding; I remember a meeting at Mallow on the 11th of last June; I was there; it was on Sunday; I went in uniform to Mallow, but I changed my clothes before the meeting took place; before the meeting commenced I saw a procession; I saw it pass through Mallow in the direction from which I was told Mr. O'Connell was to come; I cannot recollect the place where it passed; I was a stranger there; the procession was a very numerous one; there were several bands; there were persons on horseback; the procession marched in regular order with bands and banners; the bands playing and the colours flying; several of them had cards attached to their buttonholes to distinguish them from others; more had papers round their hats with the words "O'Connell's Police" written upon them.

Describe what order they went in? They marched four or five deep. The horsemen went much in the same way, apparently in regular order.

Did you see persons taking more particular command than others? I did.

Describe in what positions in the procession they were? They were outside the body or the ranks as I may call it, and appeared to give directions to the others. Some of the horsemen who did take this command had wands with something like ribbon tied on the top. It was late in the evening when the procession returned; Mr. O'Connell and Mr. Steele returned with it; I do not remember ever to have seen so large a meeting.

How many think you were there? I think there were some hundreds of thousands; I have never seen such a crowd before.

In what part of the procession were Mr. O'Connell and Mr. Steele? I did not see them in the procession, but I saw them on the platform.

Where was the platform erected? It was erected near the shambles in Mallow.

Was it a large place? It was a very large open space, and it was very nearly full; I went near to the platform; I was about ten yards from it; sometimes nearer, but the place where I stopped at last was about ten yards from the platform.

Did you take a note of the proceedings? I did not.

Did you hear Mr. O'Connell's speech? I heard part of it.

Are you able to state the substance of any part or parts of it? I am. The first thing that was done was to present an address to Mr. O'Connell; so at least I was told, for at that time I could not get near enough to the platform

What did you hear Mr. O'Connell say? He first said that he came to tell them a secret, and thought there were enough of them to keep it (laughter). He told them too that the union should be repealed by some time that I cannot exactly remember (laughter).

Did he mention any time? He did. He also said that they should have "Ireland for the Irish. They might have England for the English, and Scotland for the Scotch, but Ireland should be for the Irish; and that he defied them to keep it from them, for they were too numerous, too determined, and too temperate." He said that on the face of the earth there were not a greater pack of bribers than the British House of Commons, and that was admitted by some authority he then gave. He then asked the crowd did they ever hear talk of the man with the ugly name? Sugden (laughter). He said a friend of his in Kilkenny told him he would not call his pig "Sugden" (laughter); and as for the Lord Lieutenant, he was so ignorant that he heard he sent a commissioner to see was Kilkenny a seaport (laughter). He then alluded to the police. There were some members of the police there, and he spoke of them. He said that if they had made application to him, he would have appointed several of his own police to keep the peace, and save the police the trouble of coming there. He said they sent the soldiers to shoot them, but said he, "they know a trick worth two of that" (laughter). He said, "If we are attacked we will defend yourselves. The sergeants of the English army are the finest body of men in the world, but the worst treated. The French sergeants were generally raised to the rank of officers; they were a great deal better treated than the English by being promoted to the rank of officers." He also began telling the crowd the effects of repeal. He said, "the labourers would be farmers, the farmers gentlemen, and the gentlemen members of parliament" (loud laughter, in which the court and jury joined)—no, not members of parliament, but lords (repeated laughter). He asked the crowd would they be ready to come again if he wanted them, and desired as many as would to hold up their hands. The crowd held up a wood of hands. He said when they came again he would require them to come armed, but the arms would be repeal cards.

Mr. Brewster—Did you observe anything particular—I mean in his tone and gesture, when he was then speaking? Yes, he paused when he said "armed," before he said "with repeal cards;" the meeting lasted about two hours; I saw something occur on the platform before the meeting commenced, which attracted my attention; some one on the platform, it was before Mr. O'Connell came, pointed out a person in the crowd, and desired him to leave the meeting; he said he should be put out by force if he did not leave it; he said to the crowd, "cut his reins, drive him out, he is an enemy;" I did not see this person, but I think he was on horseback, as the other said "cut his reins."

CROSS-EXAMINED BY MR. WHITESIDE.

Are you acquainted with Mr. Johnston? I saw him.

When did you see him last? I saw him in the court to-day.

Did you see him last night? Yes.

Did you then know he was examined yesterday? I did.

Did you talk about the trial with him? No—he ran away from me.

Have you not seen him frequently before the trials commenced? Yes, I have.

Did not he tell you he came here to be examined? He did.

When did you see Maguire last? I saw him last night.

May I ask your rank in the constabulary? Head constable.

You are not an officer then? No.

Pray, where are you stationed? In Ballincollig, about six miles from Cork.

May I ask what newspaper you take in? I take in no newspaper.

Well, then, what newspapers do you read? I am glad to see any of them.

I suppose you read the *Cork Constitution*? Yes.

Did you read an account of the Mallow meeting in any of the newspapers? I will answer candidly; I did not read any account of the meeting. I have no recollection that I did.

Try and remember? I cannot recollect; upon my oath I do not.

Will you tell me to-morrow if I meet you? I cannot recollect that I did.

Will you swear that you read no account of the meeting in a newspaper? I will not.

Were you ordered to go to Mallow? I was.

How were you dressed? I went in regular uniform.

Were you in Mallow the night before? I was not; I went there in the morning.

Did you meet other policemen there? Yes.

Were the policemen dressed in uniform? They were.

Was Mr. Anderson, the sub-inspector, there? He was.

Was Mr. Anderson out at the meeting? He was.

Does not he know Mallow better than you do? He does.

What time did you undress? I can't say exactly. The procession was going through the town at the time.

Do you swear the full procession was going through? I say a part of it was going through; the last part of it.

What time did you leave the street to undress? I was not in the street then; I undressed in the barrack.

What time of the day did you undress? I should think (hesitating) about——I cannot exactly say.

You are very precise about the words Mr. O'Connell used. What time did you put on the disguise—was it one o'clock? It might be about one o'clock.

Was it one o'clock? It might be more; I think it was between one and two.

Did you see the whole of the procession? I don't know that I saw the whole of it; I saw half of it.

What half did you see? The last half.

Where did you see it? I saw it going out of Mallow.

Are you a constabulary man? I am.

You have fought no battles? No.

Oh! then you are not a military, you are a civil man. Now you have said the procession marched in military order, with bands playing, colours flying—are these words your own? Are they your own spontaneous effusion? Yes.

Were you not frightened by this military array, close columns and marching order? No.

What tunes did the bands play—did they play "Paddy Carey," or "Paddy from Cork," or "God save the Queen?" I took no notice.

This was not a military procession? No, a civil one.

There were bands of music and banners? I saw a great many banners.

What do you mean by the horses being in apparently particular good order—were they fat? That would be good order.

Now, what became of the guns and muskets, the cannon, the dead and wounded of this battle? There were none at all. The horsemen were mounted five or six a-breast, and more after them.

I see. You are sure the horses' tails were not tied together. Were there real living men on them? There were, and women behind the men.

Yes, on pillions. Now tell us, did they charge you or you charge them? I did neither.

Had the women their arms about the men. They were holding on.

Now, I have to ask a question suggested by Mr. Hatchell. Do you conceive that an offence against the arms' act (great laughter).

So, with music playing and banners flying, and women with arms round the men, they marched out of Mallow? Yes.

Were there no children there? It would not be a place for them in the crowd.

Were the bands temperance bands or *tim*perance? I do not understand *timperance*.

I beg your pardon. I assure you I mean no impeachment on your moral character. I wish to know do you think it better that the people should amuse themselves playing music or drinking whiskey? Indeed, sir, I prefer the former.

Why, you know in either case they are prosecuted, *qua cunque via*, as we lawyers say (laughter).

Did you make any report of this battle? I made no report—I took no note.

How, then, do you recollect Mr. O'Connell's speech? Because I took a great interest in hearing Mr. O'Connell speak.

Are you a repealer—you took a great interest in Mr. O'Connell's speech you say? I was glad to listen to a good speaker.

You had better wait a little, then, and hear Mr. Hatchell and the rest here? I would be glad to hear gentlemen of eminence.

How did you take a note of the pause? Are you not to allow a pause in speaking? Certainly, sir.

I wish to know now, because it is odd a witness yesterday said Mr. O'Connell paused? I took no note at all.

Mr. O'Connell told the people to come armed with the repeal card? Yes.

Now, when you heard the word armed did not you nudge the man next you? I was nudging him to get on as quick as I could.

He said the sergeants in France got promotion—you cocked your ears at that? Now, do you not expect to be promoted to the office of head-constable when the trial is over. I hope you may, for I have a great respect for the constabulary, and like them in any character save witnesses? That is for the inspector-general (laughter).

Well, the inspector-general is a reasonable man, and don't you think it reasonable that a useful active man like you should be promoted. It is reasonable (laughter).

So Mr. O'Connell said when we got it (repeal) the labourers will be farmers, the farmers gentlemen, and the gentlemen all lords? There will be no commoners then (laughter).

You will be a lord yourself (laughter). Lord Ballincollig (great laughter, in which the whole court save the Attorney-General joined)? He said so.

Tell me now which is all this treason, conspiracy, sedition, or flat burglary (continued laughter)? I never joke when I am on my oath.

There was a country fellow on the platform who told a person in the crowd whom you did not see to be gone, and not creating a disturbance? I did not know what he might be doing.

You have idle times in the north, I think? It is very singular the less I have to do the better I like it (laughter).

Now did you not say you never joked when on your oath? That is really no joke, sir (loud laughter).

You were not much pressed on that day? Indeed I was by the crowd (continued laughter).

Why you are joking again; but there was nothing more to incommode you—your whiskers were not pulled? The crowd was very great.

Were there ladies and gentlemen among them? Neither.

Did you dine comfortably that day, and had you a good bed? It was pretty hard (laughter).

When did you leave Mallow? That evening.

When did they ferret you out as a witness? About the month of December.

Are there any respectable people in Mallow—any proprietors in the town—shopkeepers or landholders near it? Plenty.

Why, then, have they pitched on you—a policeman who escaped to tell of your imminent hair-breadth escape from the scene of slaughter (laughter)? I was sent here.

Now, sir, (here counsel addressed the witness in a tone of the most dramatic gravity, amid the roars of the whole court,) sincerely trusting you may speedily obtain that promotion which you so richly

deserve, I have the honour to wish you a very good morning!

Re-examined by Mr. Brewster—Mr. Anderson was near the place of meeting; he was in the court-house, and could not hear what was said.

The witness then withdrew.

The next witness called was

HENRY GODFREY, POLICE CONSTABLE, EXAMINED BY MR. FREEMAN.

I was a constable in August; I remember the 6th of August; I was in Baltinglass on that day; I was stationed at Donard; it is about eight miles distant from Baltinglass: I was ordered to Baltinglass the evening before the meeting; the meeting took place on Sunday; I saw a great number of persons there between twelve and one o'clock; I observed persons coming in on large waggons from the Rathvilly side; they had a band with them; I saw banners; I did not observe any inscriptions; the meeting was held a little outside the town; I saw the Rev. Mr. Nolan before the meeting took place; I heard him desire the people to go and meet Mr. O'Connell; I heard a man say the shouting will frighten the pidgeons; another said "yes, and the Protestants too;" this was before the Rev. Mr. Nolan desired the people to go to meet Mr. O'Connell; I was dressed in plain dress; Mr. O'Connell came in about one o'clock; I heard a man say "this is the day that will frighten Saunders;" a gentleman named Mr. Robert Saunders lives about two English miles from the town; the expression was before Mr. O'Connell came up.*

Mr. Fitzgibbon—When did you make the memorandum out of which you are reading? On the day of the meeting, after the meeting was over.

To Mr. Freeman—I attended the place of meeting; I saw Mr. O'Connell there, and Mr. Nolan, Mr. Farrell, and Mr. Copeland; I saw the two Metcalfs there, and a person who was pointed out to be Mr. Steele; I would know Mr. Steele's person (the witness here identified Mr. Steele, who was sitting near him in court); Mr. O'Connell was there also; he recollected him saying that he did not despair of getting the repeal, for he had the people to back him; he also said there were some millions of money sent out of the country; he did not say how much; he stated that the taxes were to be paid out of some fund; he heard him say something about Lord Wicklow; he heard him call Mr. Felton a "bog-trotting agent;" does not recollect that he heard him say anything more.

Did you hear Mr. O'Connell say anything about meeting the people again?

Mr. Fitzgibbon objected to the question. Mr. Freeman had no right to be leading the witness this way.

Mr. Freeman—Did you hear him say anything about tithes?

Mr. Cantwell said—Really in justice to my client I must interfere; this is not fair.

Chief Justice—You must not interrupt the court, Mr. Cantwell.

Mr. Cantwell—I must, and hope I shall do my duty, my lord, and I hope your lordship will do yours.

Chief Justice—The court will do its duty, and if you interrupt it again you will be removed forthwith.

Mr. Cantwell—I am satisfied that the court will do its duty, but I must bring under its notice an illegal objection.

Chief Justice—It is not your duty to address the court when you have counsel to do so.†

Mr. Freeman—Do you recollect that Mr. O'Connell said anything more? He said when he came again he hoped all the people would be there to meet him; he heard the people also say that they would get the repeal now; they were all sober and determined men; he saw Mr. Lawless, a Roman Catholic clergyman, there; he heard him say that tithes would be done away with; he talked about going to Dublin, and said if the Protestant clergymen were civil and would join him they would get the tithes during their lives; he could not say how many people were there; he was in the crowd and there were a great number of people around him; he was not alone; there was sometimes another man with him and sometimes not.

CROSS-EXAMINED BY MR. FITZGIBBON.

Were you a stranger in Baltinglass? No; I had known it ten or eleven years.

You were very well known there as a policeman then? Yes.

How long have you been a policeman? Twelve years.

Were you all that time in Baltinglass? I was not; I was stationed eight miles from it.

At this meeting you were not molested? No.

No expression was used painful to your feelings? One person said, "This is the day that will frighten the pidgeons" (in Baltinglass dialect, policemen).

There was no attempt to remove you from the crowd? No.

No attempt to do you any injury? No.

You might have got up to the front of the platform if you had liked? Yes.

Like any other person in the meeting? The same.

Can you tell us the name of any other person that was with you? No.

When the observation was made about the "pidgeons," was there not some one who replied, "and frighten the Protestants too? Yes.

You plainly heard him? Yes.

Were you within a yard of him? Yes.

Did you do anything? No.

Did you know the person, or ever see him before? No.

What sort of man was he? He appeared to be a countryman.

Then you cannot name any person who had heard that expression besides yourself? No.

You cannot name any person who was about you at the time? I cannot. There were millions of people about me (laughter). I made it my business to keep out of the way of all people who I thought would know me.

* This Mr. Saunders is a gentleman resident in the county of Wicklow, about the distance stated from Baltinglass, and who had given directions to his tenantry, on pain of displeasure to some, and on pain of ejectment to others, not on any pretext to join the meeting at Baltinglass. An anecdote of much point was told upon the day of the meeting with considerable gusto by the country people. Mr. Saunders summoned, through his bailiffs, all his tenantry together. They attended. Amongst them was an old man named Byrne, comfortable in circumstances, a peasant in station, but independent in mind and principle. Old Byrne, on entering the presence chamber of his landlord, inquired why he had been sent for. Mr. Saunders replied, that he was anxious to *warn* all his tenants not to join the procession of Mr. O'Connell on the ensuing Sunday, or to take any steps to swell the numbers of the repealers of the country. The old man bluntly replied that he was a repealer, and that he had already promised to join the procession, where he was determined to be, and he made an *argumentum ad hominem* which his landlord was unable to resist. To a repeated warning his reply was very plain: "Very well, sir, I will go notwithstanding your displeasure; and, as we are to be unfriendly, I request that you will begin by paying me my 800*l*." Mr. Saunders who has, like many others of the Irish landlords, more pride than ready money, exhibited that littleness which in such cases is equally characteristic of the class. He said, that "he did not by any means intend to include Mr. Byrne in the prohibition against appearing at the meeting, for he wished to give persons *such as he* the most perfect facilities for expressing their sentiments upon any public question." We need not add another word as to the reasons which induced the people to speak of Mr. Saunders in the way mentioned in the text.

† As there cannot be any doubt as to the illegality of the question, so there cannot be any as to the character of the threat which was used by the Chief Justice.

Then you mean to say that during that day you endeavoured to avoid the eyes and notice of those who knew you? I did.

What did you do to avoid the eyes of those who knew you? I would shift from any place when I saw them unto another part of the crowd.

Lest they should see you? Yes.

Did you expect that shuffling forward to another place in the crowd would prevent your being seen by those who knew you? I did.

Did you dip your head? No.

Did you hide your head? No.

Then, what you did when you saw an acquaintance was to shift your way through the crowd? I worked my way through the crowd with my face up. I endeavoured to make my way through them.

Did you find any place in the crowd, when looking around you, you could not see any men who knew you? I did.

Where was that? In front of the platform; I cannot say how far that was from the platform; perhaps twenty yards, sometimes it might be ten yards; I was in front of Mew's hotel, which is about a mile from Baltinglass, when I heard the words, "This is the day when we'll frighten Saunders;" I cannot tell the name of man, woman, or child, that heard that phrase; I was close to the man who said these words; I might have seized him; I cannot tell you who he was; I did not ask his name; I recorded the phrase on paper the same day; I took a note of it before the meeting was held by Mr. O'Connell; I did so on one side of the road.

Show me your note? I haven't it here.

Did you not to the jury a while ago look at your notes and pretend to read it from your book? I did, and I have it here (handing a paper to counsel).

Mr. Fitzgibbon (looking at the paper)—Did you not a while ago tell the jury that you made this note the day of meeting? I did not tell them that note.

Did you believe I was speaking of anything else than that paper? Did you believe my question was about the paper in your hand, or any other paper? I cannot answer that question.

Now answer this simple question—Where is the original note from which you say you wrote this book? I think it is burnt.

Dead men tell no tales: when did you burn it? When I went home after sending in my report.

Were you ordered to take notes? I was ordered to take notice of particular words.

Do you mistake my words? I do not remember that I was ordered to take notes. It was with a pencil I took notes; I went prepared with paper to take notes.

Report the expression again respecting Saunders. I will. It was, "This is the day that will frighten Saunders."

This is what you have written? Something to that effect. I heard words to that effect from several persons; some said, "Saunders will be frightened to-day;" another said, "Devil's cure to him, he would not come down and join the people for repeal."

Did you not tell me this minute that you made a note of the phrase? I made a note of it upon the paper that was burnt. I took notes that I did not mention in my report. The book in my hands is nearly the same as my report. I cannot say that it is so exactly.

Mr. Freeman—Let the report be put into the witness's hands.

Mr. Fitzgibbon objected to such a course.

Chief Justice—Wait until the cross-examination is over, and it will then be time enough to put the report in his hand.

Mr. Freeman contended that the document ought to be placed at once in the witness's hand, or else that Mr. Fitzgibbon should forego the intention of asking the witness any question respecting it, for it was a fixed rule of law that no witness could be interrogated respecting the contents of any document which was not in the first instance laid before him.

Mr. Fitzgibbon maintained that the document ought not to be placed in the witness's hand, and assured the court that Mr. Freeman had totally misconceived the drift of his question. He had asked him if the report he had sent into his superior officer was the same as the book in his hand, thereby plainly asking him whether he had taken the book from the report, or the report from the book? But he did not put any question to him as to what was or was not in his report. He merely asked him how his report had been framed. He wished to know whether the book was formed from the report or the report from the book; and he was at a loss to think how that could be construed into a question respecting the contents of the report.

The Attorney-General contended that according to the rule of law, it was absolutely necessary that the document should be placed in the witness's hand. This point was decisively settled in Ewen's case. Mr. Fitzgibbon's question was this: does the book in your hand correspond with the report now furnished? and surely this question was, in point of fact, tantamount to an inquiry as to the contents of the report.

Mr. Justice Crampton (to Mr. Fitzgibbon)—Put your question again, Mr. Fitzgibbon, if you please, and that may decide the controversy.

Mr. Fitzgibbon (to witness)—Now, sir, tell me this, did you copy your report from that book in your hand?

Witness—The way of it was this (laughter). In the first instance I made out my report from the notes which I took on the day of meeting, and then I copied what I have in my book from my report. I copied the report which is in this book from the report which I sent into my officer.

Did you copy the book from the report before you sent in the report? Yes.

Are you sure now? Indeed I think I am; I have explained to you how it was. I took a report from my original notes, and sent it off, and a copy of that report I brought to my station.

What became of that copy? I don't know what has become of it; I dare say it is at home, I'm sure I don't know: stay, stay, I believe I have it here. Yes, here it is. This is the report which I took from my original notes.

Well, read it through, and tell me do you find in it anything about "Devil's cure to Saunders?" Witness (giving a very cursory glance over his report)—No, there is nothing about it here.

Mr. Fitzgibbon—Why, sir, you don't think it worth your while to look through your notes for it. Witness (carelessly)—Oh, I know it is not in it.

Where were you when you made out your report? In a house in Baltinglass.

Who owns that house? I forget the man's name.

You forget his name? Yes, I do: all I know is that he is a carpenter.

He keeps a lodging-house—does he not? Yes, he does.

And you lodged in his house, and have been for ten or eleven years in Baltinglass, and yet, notwithstanding all this, you forget his name? I do not remember it. I never lodged in his house but once.

Your memory must, indeed, be very treacherous; and yet you can remember what Mr. O'Connell said that day! Passing strange that! I think I may let you go down, sir.

Witness—My lords, I never was stationed at Baltinglass for more than a fortnight, and there are numbers of people there whom I don't know.

Mr. Fitzgibbon—Go down, sir.

The witness left the table.

The next witness called was

HENRY TWISS, EXAMINED BY MR. MARTLEY, Q.C.

I am a sub-constable, and was so in the month of August last; I was stationed at the time at Redcross, in the county Wicklow, which is thirty miles distant from Baltinglass; I was at Baltinglass on the 6th of August last; there was a repeal meeting there that day; I arrived at Baltinglass the evening before; I went there on duty; I made a report to my officer of what I saw there; I sent in my report on the morning of the next day; this document now handed to me is the report, and was written by me; there was a great crowd at the meeting; I am not at all in the habit of estimating numbers, but I am sure there were, at all events, 5000 persons at the Baltinglass meeting; I am confident that I am greatly under the mark; I saw Mr. O'Connell there, and others whom I don't know; the chair was at one time occupied by a gentleman named Copeland, from near Dunlavin; another gentleman was subsequently called to the chair; the second chairman was some person from Kilcullen-bridge; I was at the meeting about one o'clock; I mixed in the crowd; I was ordered to attend the meeting in plain clothes, and I did so; I saw people coming from various directions, some came from Carlow, others from Tullow; I was on the platform at one time, at another time I was within five yards of it; I heard people in the crowd make various political observations; I heard some people saying, "Ireland was trampled on, but she shall be so no longer;" "the time is nearer than you think: let us wait patiently for some months. Ireland was trampled on long enough, but she shall be so no longer;" the meeting lasted, as well as I remember, from about half-past two to six o'clock; I was shown Mr. Steele there that day; I saw the Rev. Mr. Murtagh there; he made a speech; I cannot state what he said, as I made no report of it.

CROSS-EXAMINED BY MR. M'DONOGH.

I took no notes of what was said by the speakers.

I presume that when you heard the people say, "the time is nearer than you think," they were speaking of the repeal of the union? I could not say; but you may suppose so if you like.

You are not able to ascribe any other meaning to it; but the repeal of the union was the subject they were discussing? It was.

Did you see all the people retire? I can't say I saw them all retire, but I saw them going away in every direction.

There was no breach of the peace at that meeting? Not that I could see.

And no tendency to a breach of the peace? No; not the slightest.

Everything went off very peaceable? It did.

I am exceedingly sorry that you did not take notes of everything that occurred there. You may go down.

PATRICK LENEHAN EXAMINED BY MR. TOMB.

I am a police-constable; I was at Baltinglass on the 6th of August last; I saw the people coming into the town to meet Mr. O'Connell; I cannot say how many, but there were some thousands there; I saw them going over the bridge of Baltinglass on the Dublin road; I was at the meeting when Mr. O'Connell came there; I was in plain clothes; I was about thirty yards from the platform; I saw Father Lalor of Baltinglass there, and Mr. Steele, and the Rev. Mr. Murtagh, of Kilcullen; I heard Mr. O'Connell tell the people that he was glad to see them there, and that he hoped they would be there when he came again (great laughter); they all shouted at that; after the meeting was over I went across the bridge towards Baltinglass, in the direction of the barracks; the place was very much thronged; I heard some of the people saying——

Mr. Moore—Does your lordship think this is evidence to affect the traversers—what was said or done by the people after the meeting had taken place, and whether that can give a character to the meeting?

Mr. Tomb submitted that the effect produced by the meeting was evidence.

Chief Justice—The objection may be premature; but I think we cannot exclude the evidence.

Witness—I was obliged to stop on the bridge it was so crammed, and there was such a lot of people there; one of them said, "The repeal is certain now—we must get it;" another said, "If we do not get it quietly we will fight for it;" another said, "We will turn out to a man and fight for repeal."

Mr. Moore again begged to know whether their lordships would consider the traversers affected by expressions that any individuals might think fit to use after the meeting had separated. Their lordships would see how dangerous the effect of such a line of examination might be; they had lately ruled that if persons in coming to a meeting conducted themselves in a particular way, and thereby gave a character to the meeting, it would be admissible; but it struck his mind that it would be going a very dangerous length to allow of the traversers being affected by conversation between individuals, when going home from a meeting. No man could possibly be safe if such a doctrine as that was held.

Mr. Hatchell followed on the same side. A party might be affected by what took place at a meeting where he was present, and from which he had the option of withdrawing, if he pleased, and not affirming by his presence his sanction to the proceedings. But suppose everything to have been fair, legal, and tranquil at a meeting, when it separated his connection with it ceased; when it was impossible for him to set matters right, or to be answerable for the conduct or misconduct, the language or declarations of those parties, or of parties who may not have been at that meeting at all, although coming from the direction of it, it would be surely inconsistent that a man should be affected in his character, property, liberty, or perhaps his life, by the conversations of persons over whom he had no control.

Mr. Tomb—Perhaps I might be permitted to ask the witness a question or two as to the distance of the place where he heard these expressions from the place of meeting.

How far is the bridge of Baltinglass from the place where the meeting was? I think it was about half-a-mile.

How long after the proceedings at the meeting was it you heard these expressions? It was not an hour.

Were the people going home from the meeting at the time? They were going off in every direction at the time.

Mr. Tomb respectfully submitted that this was a proper question to be asked, and that the evidence as to what the witness heard the people say on the bridge was admissible on the grounds that it tended to show what the nature of the meeting was, and the effect likely to be produced by the language used. The people who used the expressions swore to by the witness appeared to be part of the crowd that met at that meeting and listened to what was said.

Mr. Justice Crampton (to witness)—Was it in a house you heard those words?

Witness—No, on the bridge.

Mr. Justice Crampton—I thought you went into a house.

Mr. Tomb—No, my lord, he said the bridge. The learned counsel again submitted that the evidence of the witness was admissible, inasmuch as it

characterised that meeting. He was not aware that there was any express or direct authority upon this point; but in the case of the Manchester riots it was ruled that the persons who seemed to have attended a meeting showed the nature of that meeting.

Mr. Justice Perrin—In that case it was what they said when they compelled others to go with them and to form part of the meeting.

Mr. Moore thought that in the absence of authority the court had only to look to common sense and common justice, and he would ask them if, after a meeting was over, men thought proper to act illegally, that every individual who attended that meeting one hour before was to be made responsible for that? Such a thing was inconsistent with common sense and justice.

The Attorney-General submitted that the evidence of the witness was admissible. In the case of Bedford against Burley, the circumstance arose from expressions used by the party going to the meeting, and Mr. Justice Holroyd decided (and the decision was affirmed by the full court on the motion for a new trial) that the evidence was admissible, inasmuch as it was calculated to show the character of the intended meeting. In the present case the evidence of the witness now under examination went to prove that statements were made by persons coming from the meeting at Baltinglass in reference to the question asked at that meeting, whether, when Mr. O'Connell came again, they would be there to meet him, or expressions to that effect. It was a question for the jury as to the way that language was understood. Then they had the people leaving that meeting declaring that they were ready to turn out and fight for repeal if it became necessary. Common sense told them that what was understood by that meeting was more calculated to be proved by what they said after the meeting was over than before they came there. He contended that the meeting was not over because the people might be dispersing. In the 15th volume of the State Trials, page 553, they would find it so laid down, and suppose that some of the parties who attended the meeting at Baltinglass went off to Mr. Saunders's house and committed an act of violence, on it going from the meeting, he insisted that would be evidence against every person that spoke at that meeting. The Attorney-General proceeded to read the case which he relied on, and contended that the people alluded to were coming from the meeting, and that the actions and expressions of such people could be given in evidence as the acts of the party who attended the meeting. They had it in evidence already that the people were heard to say that we must have repeal, as we are sober and determined men, and could it be said that they could not give such declarations in evidence after the meeting, when declarations before the meeting were admissible?

Mr. Whiteside sustained the objection, and said the case cited by the Attorney-General made entirely for his (Mr. W.'s) clients; he read from page 111 of Philips on evidence, and said it was ruled that the conduct of persons going to a meeting could be received in evidence, because it was a declaration of the thing done before the meeting, but anything said or done after was not evidence, and of course could not be received. (Mr. Whiteside read from page 201 of Philips, and contended that it was in his favour.)

Judge Crampton—This is a very important matter; it is stated that in the case of Dr. Sacheverell, the declarations were made by the mob after the meeting.

Mr. Hatchell—It says mob, but it does not state that the matter took place after the meeting, but merely in a mob that accompanied him to the Temple.

Judge Crampton—That is very important; if it was made before the meeting the case is settled, but if after it does not exactly apply to this case, and therefore I think we ought to investigate the matter.

Mr. Whiteside—Here are two men who are met, half a mile from the place of meeting, shouting, and that an hour after the meeting. If such things could be given in evidence, the acts of the parties next day might be admitted. The case of Lord George Gordon was where the expressions were used by the mob while they were pulling down a house.

The Attorney-General—In page 553 of the State Trials you will find it was the mob who accompanied Doctor Sacheverell after the meeting was over.

Judge Crampton—The evidence was that a mob accompanied him to the Temple; but it does not say they did so from the meeting; and that is the important fact to be understood.

Attorney-General—What we rely on is this, that the declaration of those persons is part of the *res gestæ* of the case.

Judge Perrin—If it was proved that a shouting and expressions were used by the body of the meeting it would be a different thing; but here are two men not apparently connected with the meeting and away from it using certain expressions.

Mr. Moore—And there is no evidence that they were even at the meeting.

Chief Justice—Let that fact be ascertained.

Mr. Tomb (to witness)—Where were the men? On the bridge when I came up; I can't swear that they formed a portion of the people who were at the meeting.

Judge Crampton—The crown in this case had better not press the evidence.

Mr. Moore—If the jury have taken any notes of this evidence the court will please order it to be struck out.

The Chief Justice told the jury to strike out the evidence.*

CROSS-EXAMINED BY MR. MOORE, Q.C.

Witness—I came from Hollywood, about fourteen miles from Baltinglass, the night before; Captain Drought is the stipendiary magistrate of that district; he was at Baltinglass the day before; I knew of the meeting before, as it was quite notorious; heard of it for about three weeks before that time; it was quite notorious in all the district, and we all knew it was a meeting for the repeal of the union; all was quiet at the meeting; there was perfect peace, no acts of violence were committed; I did not see anything like the least breach of the peace.

To Mr. Tomb—Captain Drought was very unwell that day, and could not attend the meeting.

The court and jury retired for a quarter of an hour.

MANUS HUGHES SWORN AND EXAMINED BY MR. HOLMES.

Is in the police, acting constable; was stationed in August within twenty-one miles of Baltinglass; was at Baltinglass on the 6th August last; there was a great assemblage of people there on that day; thinks he knows Mr. O'Connell; he (Mr. O'Connell) was pointed out to witness at the meeting; never saw him before; witness went to Baltinglass the day before the meeting; he went to the meeting in plain clothes; people were coming into the town all the morning; saw Mr. O'Connell about two o'clock; he came in by the turnpike road, the Dublin one;

* There were few questions which could have been more sternly argued by the bench in favour of the crown than these. And they were with difficulty defeated. But they were defeated after all—both the crown counsel and the majority of the bench.

there were a great many people with him; when witness saw him it was when he was coming near the platform; did not see him until he was near the platform; heard people speak of Mr. Saunders before Mr. O'Connell came in; witness took notes of what passed that day; he wrote them next morning; will swear to their correctness; refers to what he heard respecting Mr. Saunders; heard three or four people say that Mr. Saunders' house ought to be attacked, because it was once the seat of blood; this was said before Mr. O'Connell came in; heard them say nothing more, except that Mr. O'Connell ordered the procession to pull up opposite Mr. Saunders' house until he had him cheered;* this is what caused the conversation about the attack; a man came up who said he saw Mr. O'Connell at Mr. Saunders'; I heard a part of Mr. O'Connell's speech; I heard him say he would do away with the poor laws and taxes, and that the poor would be supported from the consolidated fund; Mr. O'Connell ordered the carriage to stop to have Mr. Saunders cheered; I heard some person say he gave those orders; I heard the crowd say they would and should have the repeal; that was before the crowd dispersed; I heard no other expression; the expression I have just mentioned was used after the people left the field where the meeting was held; I heard no other expressions used but those I have mentioned before.

CROSS-EXAMINED BY MR. O'HAGAN.

You say you came from Lara? Yes; I came in the evening before.

When did the people come into town? I do not know exactly.

You had no work as a policeman there? No, I had not.

There was no breach of the peace? There was not, or any appearance of one.

You heard some person say Mr. O'Connell desired to have a cheer for Mr. Saunders? I did.

Where were you then? I was in the crowd at the same time.

Was there any other policeman near you? No.

Was there any inspector at the meeting? No.

Were there any superiors to you there? Yes, Mr. Godfrey and Mr. Hawkshaw were there.

Where was Mr. Hawkshaw? He was in the town; I was speaking to him there.

And when one person said there should be a cheer at Mr. Saunders's another said the house might be attacked? Yes.

Did the people go away peaceably after the meeting? Yes.

To Mr. Holmes—I saw Mr. Hawkshaw in the town and not at the meeting?

The witness withdrew.

JOHN TAYLOR WAS NEXT EXAMINED BY THE ATTORNEY-GENERAL.

I am a police-constable; I was in Baltinglass on the 6th of August; I am not stationed there; I came in there on Saturday; I saw the meeting collecting; there were bands at it; the people came from different parts; there were great numbers at the meeting.

The Attorney-General—What do you mean by great numbers—How many, in your opinion, were there? About a couple of thousands (laughter); I was some times within about nine or ten yards of the platform; I saw a gentleman who was called Mr. O'Connell there (laughter); he made a speech; I took no note of it at the time or afterwards; I heard Mr. O'Connell say he would get the repeal if the people stood to him; he was able to get it; I heard him say what a blessed thing it would be to have the repeal; there was the Earl of Wicklow, a member of parliament, and what did he do for Ireland? He (Mr. O'Connell) was happy to see them there, and if he wanted them again he asked them would they not come, and they all shouted that they would come, and they held up their hands; when he said he would get the repeal of the union if they would stand to him, they said they would stand to him, and fight for it if necessary. Witness went on to say that he heard nothing else from any of the crowd assembled there; he heard another gentleman speak, whom he heard the people call Mr. O'Reilly; he (Mr. O'R.) spoke of the villainous government who put Irishmen in the way of having their bones perishing in foreign lands—perishing at Cabul—devil's cure to them, why did they go there? he also said he hoped they (the people) would never put themselves in such a way, and they said not; I remember nothing further.

CROSS-EXAMINED BY MR. M'CARTHY.

I am a policeman of the lowest grade; I saw Captain Conway, the county inspector, at the meeting; I am not in the habit of reporting speeches at meetings; on the 6th of August I had occasion to refresh my notes of what took place, and having allowed six months to pass I now come to give evidence without a note of what took place; Mr. O'Connell did use the words—we will have a repeal of the union if you stand to me; I did not see Mr. Hawkshaw at the meeting nor Mr. Drought.

JOHN M'CANN WAS HERE CALLED AND SWORN.

A Juror (Mr. J. J. Rigby) expressed a wish to have the last witness recalled.

The witness having returned to the table,

The Juror—Repeat what Mr. O'Reilly said in his speech respecting the emigration of the people by the villanous government.

Witness—He said—see how that villanous government has treated Irishmen, leaving their bones to perish in a foreign land, in Cabul.

JOHN M'CANN EXAMINED BY MR. SMYLY.

I am a constable stationed in the county Monaghan; I was at Clontibret on the 15th of August; the Rev. Mr. Tierney was there (witness here identified Mr. Tierney in court). It was a large meeting; I took a few notes; the Rev. Mr. Tierney spoke briefly; he was followed by Mr. M'Mahon; the next speaker was Mr. O'Neill Daunt; the chairman, Captain Seaver, was speaking when I went on the platform; there was also a Mr. Jackson, who spoke there, and a Mr. Conway, the editor of the *Newry Examiner;* the Rev. Mr. Tierney also spoke;† he said the union was carried by every species of fraud and corruption.

Do you recollect seeing Mr. Tierney some time before the meeting? I do.

Where? Upon his own premises.

Had you any conversation with him? I had.

* It may not be unnecessary here to say that there is no truth in the story that Mr. O'Connell caused the procession to stop, that the crowd might cheer opposite the house of Mr. Saunders. It is totally untrue—untrue to the knowledge of the compiler of these reports, who accompanied Mr. O'Connell's procession on that occasion, and was never more than a few yards from his carriage during his progress to Baltinglass, from a distance of seven miles at the Dublin side of that town. And it is very certain that nothing could have occurred more at variance with the wishes of Mr. O'Connell, than that any such demonstration should have taken place before the house of any anti-repealer. This, too, is certain, that Mr. Saunders' house is at such a distance from the high road, along which the procession passed, that the people should have cheered very lustily, indeed, ere they could have been heard there. It is very possible that the threat was easily suggested to those who framed it.

† It is a curious fact, that the Rev. Mr. Tierney, though this meeting was called under his auspices, did not speak on this occasion. The witness mistook that fact.

Was it about the meeting? It was; I was instructed to inquire of the Rev. Mr. Tierney, in consequence of many reports that were in circulation, when the meeting was to take place; I went to him in consequence, and spoke to him; I asked him if he would have the kindness to let me know when it would take place.

Detail the conversation that passed between you? When I asked him, he replied that the day of the meeting was not fixed, as it depended on the convenience of some barristers to whom he had written to attend; he on that occasion said the union was not binding on conscience, and that is was a nullity.

Do you remember anything else he said? I do; he talked with regard to the feeling for repeal having become general, and had extended itself (or words to that effect) to the army; I recollect his saying that it would not now be so easy to spill the blood of their fellow-men who were seeking their rights peaceably.

Repeat, and repeat slowly what Mr. Tierney said about the army? I cannot speak as to the precise words, but I will take care not to exaggerate them. He said the army was now in favour of repeal, and that it partook of the enthusiasm of the people, and that they could not be led to bayonet their fellow-men who were seeking to redress their grievances peaceably.

Do you remember anything else that passed between you? I do. I recollect his saying on that occasion—"See what the army has done in Spain." This was on the 16th of June.

A Juror—Was this a private conversation with Mr. Tierney? I do not know what you may esteem it. I was there on duty to inquire about the meeting.

Was nobody present but Mr. Tierney? There was a person with him who retired as I came; but there was nobody within hearing at the time the conversation passed.

This, you say, was on the 16th of June? Yes.

What brought you to Mr. Tierney's?

Chief Justice—He has stated that already.

That was on the 16th of June, and the meeting was on the 15th of August? It was.

Had you known Mr. Tierney before? Yes.

Were you in police uniform? I was.

How far does Mr. Tierney live from you? About a quarter of a mile.

Mr. Tierney had frequent opportunities of seeing you? Yes.

Mr. Moore objected to the witness being examined as to a private conversation occurring so long before the meeting. They came there prepared to meet certain overt acts stated in the indictment. One of those overt acts was the meeting of the 15th of August, but they were not in any manner apprised either by the bill of particulars or by the indictment of a conversation alleged to have taken place two months before the meeting. If the crown was at liberty to give evidence of a conversation two months before the meeting, it might go back ten years before it; he did not know anything that would make any difference with regard to time. It was hard to be prepared to repel anything this witness said, being apprised that such evidence was to be given.

The Chief Justice said the conversation was a declaration by one of the parties himself respecting the preparation for a meeting that had been spoken of as known, and that was to take place. The witness desiring to attend, asked to be informed at what time it was to take place. He went to Mr. Tierney himself for the purpose of inquiring, and he was told that he could not say exactly, but that it would be held shortly, for he had written to certain barristers who were to attend, but there was some uncertainty as to when they could come. Surely this had some reference to the part Mr. Tierney took at Clontibret, which was one of the overt acts alleged against Mr. Tierney.

Mr. Smyly—You just began to say something about what Mr. Tierney said respecting the soldiers in Spain.

Did Mr. Tierney say anything more? He did; the conversation might have lasted about a quarter of an hour, but I cannot charge my memory with everything that occurred.

Do you recollect anything more? He spoke about the association; he said if it did not ultimately attain its object, it would at least have done thus much—that the country would get something else besides bayonets.

Judge Perrin—Repeat that—repeat what he did say? He said that the association, even if it should not finally or ultimately succeed in its object, it had done so much at least that the country would get other measures than the bayonet, or words to that effect.

By Mr. Smyly—About what number attended the meeting of the 15th of August? It is very difficult to form an estimate.

Can you make a guess at the number? I mentioned before that I did not see all the people there as my attention was directed off from them; I heard persons say there were 30,000.

CROSS-EXAMINED BY MR. MOORE.

You need not say what you heard. How far is it from where the police is quartered to Clontibret? It is in the parish of Clontibret.

How long have you been quartered there? Since the 26th of April, 1841.

Mr. Tierney, I believe, is the Roman Catholic clergyman of Clontibret? He is.

And has been so a great many years? I cannot say.

Was he so when you went there? He was.

And continued so during the time you were there? He was.

You spoke of a conversation with him on the 16th of June? I did.

You said there was nobody with you but yourselves? Not any person.

Was there any third person present when you had the conversation on 16th June with Mr. Tierney? When I first went up to Mr. Tierney he was in conversation with another man, who walked away as soon as he saw me approaching. I do not think he could have heard anything that subsequently occurred. There were some persons working in an adjoining field a few perches off, but it is my impression that they did not hear anything that we said; I rather think they did not hear us, for Mr. Tierney did not speak in a very loud voice; I cannot speak for certain on the matter, but I have no doubt upon my own mind but that the people in the field did not hear us.

How far were they off? I cannot exactly say.

Make a guess—were they ten yards off? Oh, more, I think.

Were they fifty? I will not say they were fifty; I don't know the exact distance.

Do you write? Yes, I know how to write.

You were at the meeting? Yes.

Were you attired in your police uniform? Yes, I was, for I was walked out of the ranks; I was on the platform a part of the time.

Did you take notes of what passed at the meeting? Yes, I took some notes; here they are, but I fear you will not be able to read them, for I was greatly crushed at the time in the crowd.

Did you take any notes of the conversation which you had with Mr. Tierney, on the 16th of June? I made a short entry of the substance of some of it; I made an entry of that portion of it having reference to the period at which the meeting was to be held.

Have you these notes with you at present? I have an extract of them; here is the note which I took of one passage of the conversation (and that the only passage), immediately after the conversation.

When did you take that note? That is part of a note which I took on the very day of the conversation on the 17th of June; I entered that in my diary.

Come, come, sir, I am not asking you anything about your diary. Take that piece of paper in your hand, sir, and tell me is that the note you took of the conversation of June 16? That is a copy of the note which I entered in my diary on the occasion in question.

What has become of your diary? I suppose it is at the station in the county.

Who has the care of it there? The senior constable; I saw it last on the day I was coming up to town, namely, on the 10th of this month; I made the entry on the very day of the conversation, but as I have already told you it only refers to that portion of the dialogue which alluded to the time of holding the meeting; there is no other remark upon the same subject except that of which this document is a copy.

Read out your note—[Witness here read his note, which was somewhat to the following effect:—] "16th of June. Saw Priest Tierney upon the subject of the contemplated meeting. He said that the time was not as yet fixed for the meeting, that it depended on the convenience of some barristers who were to attend, but that he would give due and proper notice to the authorities when the day was settled, &c. &c. &c." (laughter).

Have you in your diary any note of Mr. Tierney's expressions relative to repeal, Spain, and the army? No, I have not; I did not think it necessary to make any note of them.

I did not ask you what might or might not appear necessary to your sublime judgment; I merely asked you had you any note of those expressions? No, I have not a word on the subject in my diary.

Have you a note anywhere of the expressions relative to Spain, the army, and repeal? When I understood that I was to be examined on these trials I took a short sort of a memorandum-like of those expressions; it was some time in October last when I was informed that I would be examined; I do not attend the chapel of Clontibret, for I am not a Roman Catholic; I have known Mr. Tierney for some years.

Did he ever assist you in keeping the peace? If it be Mr. Tierney's wish that I should advert to any aid which he may have given me in the discharge of our duties I have no objection to speak out. If the court are of opinion that there would be no impropriety in giving the information, I will give it; but there is a general understanding in the force that the police are rather to view as a secret the assistance they get from any one in their duties.

Chief Justice—There is no objection.

Witness—He has given me assistance, so far as sending for me and making me acquainted with some circumstances, such as concealing the birth —— (laughter).

Mr. Moore—Well, I don't want all those particulars, but you'd better go on. I also recollect his sending for me in respect of another girl that was about deserting her child (renewed laughter).

Wasn't that to prevent her doing so. It was.

And do you think there was anything wrong in that? I don't.

Were there any magistrates at that meeting? There were.

Do you know their names? I recollect having seen Mr. Plunket at that meeting.

How far was he from the platform? About half a quarter of a mile.

Did you see any other magistrates there? I saw Mr. Gould about the same distance from it that the police and army were.

Oh! then there was army, and police, and magistrates there? Yes.

Who had the army brought there? Why, I made a report of the meeting as soon as I heard it was to take place, and I can't say who brought them there after that.

Do you mean to say that it was in consequence of your report the army were brought there? It was in consequence of the meeting they were brought there.

Tell us your opinion as to what caused them to be brought there? My opinion is that when the report was made to the officer of the district he made a report, and upon that they were brought there.

Did you ever hear it was at the request of Mr. Tierney the magistrates and military were brought there? I do not to my recollection.

Is your recollection a good one? It is, and I have no recollection of having heard it.

Then you might have heard it though you don't recollect it? I might have heard it if it were gossiped about.

Was that meeting a very peaceable one? It was, sir.

You saw no breach of the peace there? No, sir.

No violence of any kind? I saw no violence or breach of the peace, nothing but crushing or the pressure of people.

Do you call that violence? No, sir, I do not.

How long did the meeting last? I think about two or three hours,

Did you remain there the whole time? I remained until the meeting dispersed.

Have you any note of any resolutions being moved? Only that Captain Seaver read something, which I suppose to have been a resolution.

Did you see a petition to parliament for the repeal of the union moved and carried? I did not.

Will you show me the note you have of what occurred at that meeting? The witness handed it to counsel.

Is this the note you took on the spot? I think it bears testimony on the face of it.

Was that the question I asked you? That's the note I took at the meeting.

How many magistrates were there altogether? I think four—Mr. Plunket, Mr. Gould, Mr. Hamilton, and I believe Captain Wilcocks.

Do you know Captain Seaver? Only by character.

Does he live in that part of the country? No, he does not.

WILLIAM THOMPSON SWORN, AND EXAMINED BY MR. BAKER.

I am a head-constable of police; I was stationed at Castleblayney, in the county Monaghan, in the month of August last; I remember the meeting at Clontibret on the 15th of August; I was there on duty; I was in uniform; I remember seeing gentlemen come on the platform; I was close to it, so that I could hear part of the speeches delivered; I saw the chair taken by a gentleman whom I understood to be Captain Seaver; I heard him say something which I took a note of on the platform; I have that note by me; I took notes of what was said by others, besides Captain Seaver.

What did you hear Captain Seaver say? I heard him ask the meeting if they had all got repeal cards; a voice cried out that they would; he said, "Lose no time in getting them; I have a reason for saying so. Other associations have signs and pass-words by which they might know each other; I know no better way for you to know each other than by producing your repeal card."

Have you anything more that fell from the chairman? I have.

Proceed then? The chairman afterwards desired the people when the meeting terminated to depart to their homes peaceably, and to insult no person.

Is that the whole of which you have notes of the chairman's speech? Yes.

Do you recollect anything the chairman said, that you have not on your notes? I do not recollect anything else.

You said you heard other speeches, and took notes of them? Yes.

Do you recollect a gentleman of the name of Daunt at that meeting? Yes.

Have you any note of the speech made by him? I have.

Did you hear him deliver it? I did.

State what he said? Mr. O'Neill Daunt said, "I bless God that I belong to this land—I bless God that I belong to this people. This people shall have this land if they are worthy, and who dare say that you are not worthy? The repeal movement now or never, now and for ever. If Peel and Wellington came and said we will give you everything you want, only give up repeal, we would not—never. Before God, we swear they shall never bully us out of it. The Irish parliament would afford us the power of our keeping it if we had it, still we will stand to our colours, and proceed in the way O'Connell marked out for us." The speaker, after enumerating the different grievances he said the people of Ireland laboured under, said "in place of six struggles, one struggle will do for all."

Mr. Baker—Read that again.

Mr. Henn—If the court or jury require it I have no objection; but I do object to counsel requiring a witness to repeat a thing over and over again.

Mr. Baker—I thought the words might not have been distinctly heard.

Mr. Justice Crampton—The way in which I understood the witness was this—that the speaker, after enumerating what he called grievances, said, "in place of having separate battles for each of these, one battle, or one struggle would do for all."

Did he say anything more? Yes, he said, "are we not as good as the English?" A voice said, "better" (a laugh). "We are here to-day, to tell John Bull that we shall have it. Ireland shall be free, for Ireland deserves her liberty. The Clontibret boys will fight the repeal battle to the last, with God's blessing, to stand to our colours for repeal, and nothing but repeal."

Is that the whole of it? It is.

Did you hear other speakers address the assembly? I did.

Who did you hear? I heard a Mr. M'Mahon; he was introduced as a Counsellor M'Mahon; he spoke to a resolution which was moved by the Rev. Thomas Tierney.

Do you know any of the gentlemen who are traversers here? Yes.

Did you see any of them at that meeting? I saw the Rev. Mr. Tierney, but none other of the traversers.

CROSS-EXAMINED BY MR. HENN, Q.C.

Show me that note? The witness handed counsel the book, which contained the passages alleged to have been spoken by Mr. Daunt.

Were you on the platform when you took this? I was when I took part of it.

But not when you took the whole? No.

Where was it then you took the part you did not take on the platform? I was on the ground when I took the part relating to Mr. O'Neill Daunt.

But you took Captain Seaver's on the platform? I did.

Did he speak loud? He did.

Did Mr. Daunt? He did.

Were you in uniform when you were taking notes? I was.

Were there many police there in uniform? There were but three; there were others at a distance from the platform.

Did you see any magistrates there? I saw no magistrates immediately at the platform; they were at some distance.

How far from the platform were you when you heard Mr. Daunt speak? At the end of the platform; it might have been two or three yards from it.

Did you take down these words, "the people shall have this land if they are worthy, and who dare say that you are not worthy," while he was speaking? No, I did not; I repeated a part of it now from memory.

Mr. Henn—You say you took that passage down at the time—where were you then? On the ground near the platform, and perhaps four or five yards from the speaker.

There were a great many people on the platform? Yes, a great many indeed.

Take these notes in your hand. I see them.

You said he spoke for several minutes and on several subjects? Yes.

You said he spoke of several struggles? I have not taken that down.

You said he would have several struggles—did you not? I did not take that down.

You assert the speaker said in place of six struggles one would do for all, and that was one for the repeal, as it would do for all? He said one struggle would do for all.

He said in place of six struggles, one would do for all? Yes, he did.

Why did you say he said battles when he did not use that expression according to your notes? I wish to explain that. When enumerating the different grievances under which Ireland laboured, he said there should be a struggle for each of them, but that one struggle would do for all, and that struggle was for the repeal of the union.

Is that *your* explanation? Yes, it is.

Did you not swear a moment since that the speaker said they should have six battles, but that one battle would do for all; now, did the speaker use the word "battles" at all? It was struggles and not battles he said.

You swore on your direct examination that he used the word battles? It was struggles I took down.

And that was what he said of course? It was the substance of what he spoke; he was speaking of the union at the time, and said they would repeal it if they persevered in the way O'Connell marked out to them.

Did you take a note of the resolutions? I took a short note of the first resolution.

Did you take any note of any other resolution moved? I did not take a note of any other resolution then.

You took notes closely, did you? I took them according to the best of my ability.

Did you attempt to take a close note of O'Neill Daunt's speech? I did.

Do you write short-hand? No, I do not.

Could you take a full note of any speech? Not if it was a long speech.

On your oath could you even take a full note of a long sentence? No, I could not.

Was not the meeting perfectly quiet? Perfectly quiet.

And most peaceable? It was most peaceable indeed; I should say there was some disorder in getting on the platform.

That was in consequence of the pressure, was it not? It was.

Was there any tendency to a breach of the peace?

Not the least tendency to it. The platform was crowded, and there was a person whose duty it was to preserve order, and to prevent too many persons from going up there or crowding it too much.

Was there any objection to your taking notes there? Not the least objection.

All was done openly, and without the least appearance of concealment? Yes, certainly; everything was done openly.

Were you on the platform? Yes.

In uniform? Yes, in uniform. I was driven back on the platform by the pressure of the crowd, and was obliged to go to the end of it; I was driven back in the same manner as any one else; I spoke to a person who was pushing up to the top, and said to him—"Perhaps you will see the account of it all in the newspapers in a day or two?" and he replied—"No doubt about that; but we don't want to see the notes you take of it" (laughter). My brother policeman, M'Mahon, was then taking notes also.

But all was perfectly quiet and tranquil? Perfectly so indeed.

I am done with you—you may go down.

JAMES WALKER, SWORN.

[Mr. Napier was proceeding to examine this witness, when he was interrupted by the court, who then consulted together for a few minutes. A directory was handed up to the bench, and after looking into it, the Chief Justice desired the tipstaff to inquire if Samuel Maunsell, of 52, Leeson-street, was in court.

He was then called and did not appear.

The Chief Justice then said—I am very sorry that the progress of this important trial, and the business of the court, should be interrupted by a letter, which has been presented to us, very properly, by the high sheriff; and unless the gentleman who has written this paper, the contents of which I will not now explain, can very satisfactorily account for it, I must apprise him, or any friend of his who may be present, that I consider it a most improper attempt to interfere with the high sheriff in the discharge of the duties of his office. He must attend the court at its sitting in the morning, and let him be now called again.

He was again called, but did not answer.

Mr. Justice Crampton—The high sheriff has most properly handed up this paper to us—in fact he would act very wrong if he did not.

Mr. Justice Perrin—If any friend of that gentleman be in court, he should apprise him of the necessity of attending here in the morning, and to be very cautious how he conducts himself in the meantime.*]

Mr. Napier then proceeded with the examination. Do you belong to the constabulary? Yes—I am a sub-inspector; I am stationed at Trim in the county of Meath; I remember the 15th of August, the day of the meeting at Tara; I was there that day; there were two other officers of the constabulary with me; I was there under the command of Captain Despard, stipendiary magistrate; Capt. Despard was there; I was on the ground before the meeting commenced; when on the ground I saw part of the people coming; they approached to the meeting from all directions; there were probably 100,000 persons present; I observed music and banners; there were also bands; the bands generally had certain uniforms; I saw a harp but did not hear it; I know Mr. O'Connell and he was there; I did not see any other of the traversers there; (witness here looked round, and pointed to Mr. Steele, and said) I know this gentleman's person, but I did not see him there; I was there I suppose nearly an hour before Mr. O'Connell arrived; the people were coming during that time from all sides; the hustings were down from the church; I suppose about 60 perches from it; Mr. Despard was there at the time.

CROSS-EXAMINED BY MR. CLOSE.

Was there a great crowd there? Yes.

Was that large crowd together for some hours? Yes.

I am right in saying that the people were perfectly peaceable? Yes.

Was their anything in their conduct to create alarm? I saw nothing to do so.

Amongst this large number of persons were there not many women and children? Yes, there were women.

Were there children and ladies there? Yes, ladies in carriages.

Were there not temperance bands in the country long before this meeting? Yes.

And had not these bands fancy costumes? Yes, but not from their first commencement.

GEORGE DESPARD, ESQ., SWORN AND EXAMINED BY SERGEANT WARREN.

Was in the constabulary; is resident magistrate in the county Meath; recollects the 15th August last; was in Trim on that day; saw the assemblage of people in Trim on that day; they marched through the town to Tara; Tara is distant from Trim about six Irish miles; the people formed in the green in Trim, and marched through the town, formed in ranks of four deep; they had bands in carriages and vehicles preceding them; there were also men on horseback; persons had wands, who assumed command over the others; witness understood they were repeal wardens; does not recollect if there were banners or flags; went to the end of the town of Trim; saw the people march out; heard the men with wands say, "Keep your step;" went to Tara by a different road from the rest; the persons who came from Trim were not the twentieth part of those who composed the Tara meeting; there were men from Tipperary, Wexford, Dublin, and Westmeath; one man said he came from Nenagh, another from Wexford; witness only knew where they came from as the men told him; arrived at Tara before Mr. O'Connell; saw various processions with bands and flags march up the hill; it would be impossible to form an accurate estimate of the numbers; there were at least 100,000 present; an experienced officer who accompanied witness thought so; there were about 7,000 horsemen; witness counted nineteen temperance bands; did not observe any person on the hill of Tara assuming any command; Mr. O'Connell's procession arrived about two o'clock; when he got on the platform a great number of people crowded round it; and in an hour and a half a sudden movement took place, when crowds went away in bodies of 20,000, as if on some preconcerted plan (sensation); they broke up as large meetings do, and went away in large bodies about four o'clock; witness was standing on a ditch watching Mr. O'Connell's carriage coming; a respectable-looking man near him said aloud to those near him: "It is not gentlemen whom Mr. O'Connell wants here to-day;" witness asked, "Whom does he want?" He replied: "Men with bone and sinew, who are able to do the work when it comes;" Mr. Walker, the sub-inspector, and Major Westenra, were standing near him; witness said, "I suppose it was fine frieze-coated men like these he wants;" the other replied: "Just so;" witness asked,

* Mr. Maunsell had made application to the High Sheriff for a card or cards of admission to the court, to witness the proceedings. Mr. Latouche (high sheriff) replied in terms which Mr. Maunsell considered uncourteous, and in consequence he penned a note to the former gentleman, which he, certainly with great propriety, laid before the court. But it is not unimportant to observe the eagerness of all the judges to lecture Mr. Maunsell, with the silence of all of them upon an occasion much more important and much more deserving of rebuke.

"Where are you from?" He replied: "The barony of Shilmalier, in the county of Wexford; I asked him, "Did many come with you?" He said, "Yes, 2,000 from Wexford, and we were joined by 3,000 from Kildare;" when Mr. O'Connell's carriage had passed, he said to witness: "You did not take off your hat to Mr. O'Connell;" witness replied, "Certainly not;" he said, "You don't belong to our party;" witness replied, "I do not belong to any party here:" he then said, "I knew by the curl of your lip you did not belong to us" (laughter in court); witness said, "I am glad your eyes told you so much truth, I am amusing myself here;" he said, "We will let you into the field for all that;" some clergymen ran up and desired the person to leave witness alone; on going down the hill witness heard some one crying out, "Long life to the furriners," (witness thinks the country people mistook Major Westenra for a foreigner, by reason of his mustachoes); "we can't get repeal without them, long life to Leathu Roland;" witness thinks this meant Ledru Rollin (loud laughter).

CROSS-EXAMINED BY MR. HATCHELL.

Did you receive orders to attend the meeting? Yes, I was desired to attend it; it is my duty to attend all public meetings of this kind.

You saw persons moving from Trim in the morning? I did.

How long have you been in that district? For twenty years.

Is it your duty to attend to fairs? Yes, and to petty sessions and assizes.

You are very well known then to the people? Yes. Both to men, women, and children? Yes (laughter).

Now, did any of the persons who passed know you? I am sure they did; they all knew me except those who came from Westmeath.

Did they salute you as they were passing in review? No.

They did not give you a cheer? Not at all.

That was not very respectful towards the general (laughter)? I am afraid they did not think me their general (laughter).

Did the people see you? They saw me very well. I live at a country place; Rathline is the nearest village. Trim, I believe, has the nearest temperance band. The band was dressed in a new uniform on that occasion.

How long before this occasion had you seen them? I saw them on different occasions. I saw them on Patrick's Day.

The bands celebrate Patrick's Day by drinking water? I believe so.

Did you ever see a uniform on them before? No, it was made for that occasion.

How do you know? Because I saw them making in a tailor's shop.

Oh, then, they were exposed to view? No; I went into a tailor's shop on business, and I saw them there.

Did you never see them in uniform before? Never.

Well, then, in a fancy dress? Yes, but it approached nearer to uniform on that occasion.

It was very like the uniform of the 54th? Exactly like.

You heard one person say, "Keep the step," and another said, "Keep the rank?" I did.

On your oath were they keeping the step? They were not.

Were they walking like soldiers? They were not.

And did not know how to keep the step? No.

Mr. Hatchell—How silly it was then to desire them to keep it.

Where did you first go to? I first went to Dunsany and then to Tara; I walked over the hill; I heard there were twenty-one bands there; Mr. Walker was there in coloured clothes; there was no constable there in his uniform; Major Westenra was with me all the time; he came from Trim for curiosity; I have seen the Hon. and Rev. Mr. Taylor; I did not see him there; there were a great many carriages there; there were several ladies; Major Westenra is not here that I know of; I have not seen him since except at Kingstown; I do not know that he is dead; I never heard it, and I suppose he is alive.

Mr. Hatchell—Now, was not the Shilmalier man humbugging you when he asked you if you would not take off your hat for Mr. O'Connell? I don't know, I told him I would not take off my hat.

Mr. Hatchell—Then you are not particularly fond of him (laughter). Well, now, I will ask you one particular question, and I don't care how you answer it. Are you a repealer (great laughter)? And I will answer you as seriously, sir, I am not (increased laughter).

Did you see a person named Furlong, or Walsh, near you? I did not.

Was the Shilmalier man humbugging you now? If he was he met with the wrong man.

Were you surprised when he told you about the 2,000 men from Shilmalier? Indeed I was.

Do you know Shilmalier? I do not.

Do you know how many it would hold? I do not.

Do you know whether it would contain 2,000 men at all? I don't know.

Did you look into the population? I did not.

How far is Shilmalier from Tara? About forty miles.

Mr. Hatchell—Oh, indeed, it is double. I go it at least ten times a year. It is at least fifty-five miles from Dublin, and is something beyond at the other side. Come, now, I put you to your multiplication. Multiplication is vexatious (laughter), addition is as bad (laughter), tot up and carry one (laughter), I won't add fractions, they might set you mad (laughter)? I can't exactly say the distance.

Did he say they came through Dublin (laughter)? He said they came through Kildare.

You did not ask him where they all slept? No.

Now, did you really believe him? Indeed, I had only his word for it (laughter).

And did you believe it? I declare I believed it at the time, and I still believe he brought up a very large body; I have no doubt of it; I was on the ditch.

Did Major Westenra get pale? Pale (laughter)! No.

Nor yourself? No.

The man did not whisper those stories in your ear? No.

Was Walker with you? Yes, we were all together.

And he made no secret of it? No.

Was there a platform appropriated for the ladies? I cannot exactly say.

Was not your attention drawn to the ladies (laughter)? Not particularly.

There was no tendency towards disturbance? Not the least.

The people were laughing, talking, and amusing themselves? They were.

The witness went on to state that the interview with the men on the ditch took place about the time the procession entered the field, that was about one o'clock. I made a report to the government of the proceedings. Mr. Walker, the sub-inspector, was near me at the time; I am sure he heard what took place; I did not understand that there were any Chartists present at that meeting I did not hear Mr. O'Connell that day; I did not hear anything that was said from the platform; I did not desire the sub-inspector to take notice of the man who spoke as I have stated; the ditch was a considerable

distance from the platform; several hundred yards, perhaps a quarter of an English mile; I know that several districts of that part of the country are marked by the different description of friezes worn by the people; the Cavan people have a different frieze from those of Meath; Kildare and Westmeath have likewise different sorts of frieze from either of the former; I saw all those different descriptions of frieze there; I saw county Meath people there; they knew me.

JOHN ROBINSON EXAMINED BY MR. BENNETT.

What are you? I belong to the constabulary; I am a constable.

Were you at a meeting at a place called Clifden? I was.

When was it? On the 17th of September.

What day of the week was it? On Sunday, the 17th of September.

Is it in Connemara? Yes, sir.

Did you see the meeting assemble? How many persons were there? I should think at least between four and five thousand.

Did you see any person pass by the barrack going to the meeting? I did.

How far was the barrack from the place of meeting? About one hundred yards; the meeting was rather in a flat, but there was elevated land over it; it was in a field.

Describe to the jury the character and nature of the persons you saw pass by, and the number? I saw first the Rev. Mr. M'Namara mounted on horseback, and a hundred persons or better mounted, and he at their head.

In what order did they move? They were about four or five deep, to the best of my recollection.

And you say Mr. M'Namara was at their head? Yes.

Did you take notice of anything in their hats? I saw repeal cards.

How do you know they were repeal cards? I saw some of them afterwards, and some of them were convenient to me at the time; they were stuck in the bands of their hats in front.

Did you hear that body get any name? I heard a person term them the Ballinakill repeal cavalry.

How many horsemen, in all, were there? On the lowest calculation, one hundred.

Were there many on foot? There were a good many.

Did you see any other persons pass by? I saw Mr. Murray, of Galway, pawnbroker.

How was he going? Sitting in a gig dressed in a green frock made either of calico or silk, I don't know which, and a large badge or scarf of the same colour, embroidered with gold leaf or something similar to it, and with a large repeal card much larger than any one of the remainder that wore them; he had a green ribbon round his hat; it was a straw hat he wore.

About how many men were following him? I should think about a hundred or more mounted, and three or four hundred walking.

In what order were they moving? They went similar to the men that were with Mr. M'Namara, and apparently they regularly fell in.

Did you observe any order amongst the footmen? No, not at that time.

Did you at any time? When the procession was going to the platform they were marching in much better order.

Describe the manner or what you mean by better order? They were more abreast and more regular than when they were going to meet the procession.

Had that last party—the one hundred that were following the gig, and the three hundred that were walking, any cards in their hats? They had repeal cards.

How large was Mr. Murray's card that he had in his hat? I should think it was about three times as large as the others.

Did you perceive whether there was any colour on the card? I could not be perfectly certain, but I saw it was much larger than any of the others.

Could you ascertain what was on it? To the best of my recollection a shamrock.

What colour do you say it was? I should think it was green.

Mr. Bennett—Mr. Ross gave a note of this, and I will not ask him anything that passed. Did you see any other party of horsemen than those? Several, but I cannot say who they were headed by, but when they were passing the barrack they shouted for repeal and groaned.

Did they say anything with respect to the barrack? No, but they groaned in a *degrading* manner, and then shouted for repeal.

How many mounted men do you calculate were there that day? I should think about one thousand, or very close upon it.

Do you know what parish Mr. M'Namara, the Catholic curate you speak of, is from? I think Ballinakill.

Did you hear Mr. O'Connell speak that day? No, sir, I did not.

Did you see him that day? I did, sir, I saw him in the carriage, and Mr. Steele was on the rear of it; and when Mr. O'Connell was passing the barrack there was shouting from the people, and Mr. O'Connell took off his cap and waved it; he was on the front of the carriage; Mr. Steele was in it.

CROSS-EXAMINED BY MR. FITZGIBBON.

Is that Mr. Murray you speak of Mr. Thomas Murray? Yes, sir.

Of Abbeygate-street? I don't know.

Do you know the man? Yes, sir.

Is he not the man? I believe so.

Is he not a wealthy man? I don't know.

Is he not considered a wealthy man? He is considered a wealthy man.

Were those Connemara ponies the people rode? I believe the entire were.

Were all the horses? Not all the horses; there were people from other parts of the country.

But the people that were with Mr. Murray? I believe in general they were all Connemara ponies.

Did many of them carry double? Not those that were with Mr. M'Namara.

But with Mr. Murray? Yes, some of the horses had a man and women on them (laughter).

Were there a man and women on many of them? There were on some of them.

On many? There were not on many.

Were there on fifty? I think not.

You would not go so far as that? No.

Had they saddles? Some of them.

Or pillions? No.

Where were they from? To the best of my knowledge they were all Connemara people.

Were not the people quiet on that occasion? They were very quiet indeed.

Did you leave your barrack? Not from the door; I was in and out from the barrack door.

Was that open? It was, sir.

Were the police all inside? They were inside, and out occasionally.

They were walking in and ont as they pleased? Yes, but not away from the precints of the barracks.

Was Captain Ireland in the barrack that day? He was on several occasions.

Was he your commander? He was.

Did he keep to the barrack with the rest? He went to his own house.

Did he spend his time between his own house and the barrack? I cannot say—I heard——

You need not mind what you heard.

Were there many women there? There were a great many.

Were there many small persons? I did not perceive many children.

I did not confine myself to children, but what I would call *garsoons*? There were.

Were there a great many barefooted people there? There were.

Was the majority of them barefooted? No.

Was there a vast number of barefooted people there? There was.

Men or women? I did not see any of the women barefooted.

But were the men? Not the men, but the boys.

Where were you when some persons called out those are the Ballinakill cavalry? In the street.

Did you know the person that called out the Ballinakill cavalry? No.

Was it a man or a woman? A man.

Was it a countryman? It was a countryman.

Did you not know him? No.

Was he standing quietly in the street when he said it? No, he was in a kind of trot.

Was he walking? Yes.

Walking in a trot (laughter). Did any person hear him but you? There is a good deal of fun in that country? Yes.

Do you think he was jeering them when he said it? No.

Do you think he was serious? I do.

Had they carbines? No.

Had they weapons? No.

Had they bridles? They had.

Had they bridles with bits? I cannot say that.

Were any of them made of *suggauns*? I did not remark any of them with *suggauns*.

Were there any of them made of twisted whithies? I do not know what you mean.

Ropes made of the bog wood? They generally had.

Had any of them straw saddles? They had.

Had all that were after Mr. M'Namara saddles? They all had saddles.

Had they leather saddles? They had all leather saddles to the best of my knowledge.

Mr. Bennett—Where was it you said you saw the people having the bridles made of twisted whithies—do you mean to say one of those parties, the one that followed Mr. M'Namara, had not them, and that the other party, the one that followed Mr. Murray, had them? Those who followed Mr. M'Namara had not them; those who were with Mr. Murray had them.

The court then adjourned to ten o'clock next morning.

NINTH DAY.

WEDNESDAY, JANUARY 24.

The Lord Chief Justice, Mr. Justice Crampton, and Mr. Justice Perrin, took their seats upon the bench at ten o'clock precisely.

The traversers and jurors answered to their names.

The Clerk of the Crown—Direct the crier to call Samuel Maunsell, of 42, Leeson-street.

The crier called Mr. Maunsell three times consecutively, but there was no reply.

Mr. Henn, Q. C., rose and informed the court that he appeared on the part of Mr. Maunsell, and stated that that gentleman had expressed a wish that he might be permitted to make an affidavit explanatory of the circumstances under which the letter had been penned, and was anxious to know whether, after the making of such an affidavit, the court would be satisfied with the expression of his regret for what had occurred.

Chief Justice—I am very happy to find that he has had the good sense to place himself under Mr. Henn's directions. I trust that he now sees the impropriety of his conduct, and understands the predicament in which he has placed himself by writing a very improper letter to the high sheriff in the execution of his duty, thereby offering an affront to a public officer, and committing at the same time a very gross contempt of court.

Mr. Henn—I do not intend to make any excuse for Mr. Maunsell's conduct, my lords. Your lordships are aware that the letter had no connection whatever with the present trials.

Chief Justice—Oh, none whatever.

JAMES HEALY, A POLICE-CONSTABLE, EXAMINED BY THE ATTORNEY-GENERAL.

Was at the meeting which took place at Mullaghmast on the 1st of October last; came from Cork there; can calculate on the numbers that were at the meeting, and thinks there were about 250,000 persons there in my opinion.

Chief Justice—How much? About 250,000; was in several parts of the field, and along the road; there were several bands came before Mr. O'Connell arrived; they came in a boisterous manner, and were screeching, and driving all before them; the bands which immediately preceded Mr. O'Connell were in the greatest order and regularity; the bands came from the Carlow and Kilkenny side, and from every direction; the principal portion of the people came through the long avenue; can positively say there were about thirty bands there; some of them were dressed in military uniform; some of them had caps like hussars, at least they resembled them very much; saw documents handed about amongst the people; saw this (a document) handed about; it was purchased by a constable; purchased one himself for a penny, though the price was only a halfpenny (laughter).

Mr. O'Connell—That was very generous of you.

Witness—Saw thousands of such documents distributed about the field, but the people were more attentive to Mr. O'Connell's speech than they were to the papers at the time; tore up the paper which he bought; saw this one purchased by John Dennehy, a sub-inspector of police; thinks the papers he saw distributed were the same as this one; he read it twice; they were distributed about from early on the morning till night-fall; saw Mr. O'Connell and Mr. Steele there; they arrived about three o'clock; saw a great many persons with labels on their hats, they wore cards with the words O'Connell's police; they had pieces of timber five or six feet long in their hands; those pieces were not thick, they were like wands, and were quite small; saw flags and banners there; one of the banners had the words "No Saxon threats" (the manner in which the witness uttered the word Saxon elicited a shout of laughter as he pronounced it *Sock-son*)—another had the words, "No Irish slave—No compromise but Repeal;" it was a large flag; I think it was the Castlecomer file that had it; I was informed that the Castlecomer colliers were there; heard persons say so at least.

Mr. M'Donogh—Don't mind what you heard any one say.

The witness, in continuation to the Attorney-General, said—There was another flag on which was written, "The men of the border counties greet O'Connell with a *Cead mile failte*;" saw several flags with the word repeal on them; one had, "We tread the land that bore us;" does not remember anything else on that flag; saw another with "The Queen, O'Connell, and Repeal" on it; there was another flag on which was, "Ireland dragged at the tail of another nation" (laughter).

Attorney-General—What?

Witness— Ireland dragged at the tail of another nation (loud laughter).

A Juror—Say that again, sir (laughter).

Witness—Ireland dragged at the tail of another nation (laughter).

Attorney-General (looking very sharply at the witness)—Are you sure that was it? Yes, sir, Ireland dragged at the tail of another nation; observed one flag attached to a private carriage with the words Repeal and no separation; there was another motto, "Mullaghmast and its martyrs—a *voice* from the grave" (laughter); there was another representing a dog with a harp, and something I cannot well describe before him, like a tree without branches, and lions or dogs looking up, and underneath it was written—

"No Saxon butchery shall give blood-*gouts* for a repast;
The dog is roused and treachery expelled from Mullaghmast."

There were some other mottoes in the pavilion, but did not think it necessary to take them, as they were of no consequence; the words, "God save the Queen, or the Queen, God bless her," were there also; Mr. O'Connell arrived about three o'clock; the platform was occupied for about two hours; the people did not all go away after the meeting broke up; some of them staid there until near morning; heard no observations among the people except shouting for Repeal and Old Ireland, or words to that effect.

CROSS-EXAMINED BY MR. M'DONOGH.

You heard no expression among the people except those you stated? No.

You mixed among the crowd very much that day in the discharge of your duty? Very much.

And very minutely and attentively observed what was going on? Very much so.

You listened attentively to what was said? I did.

You mingled with the groups of people and attended to what they were saying? Anything I could see or hear I noticed it.

And all you did see or hear them say or do was to shout for Repeal and Old Ireland? That's all.

Although you were there from eight o'clock in the morning until next morning? Yes; I was there the evening before, and all that day, and up to eleven o'clock at night.

And you were sent specially from Cork for that purpose; I presume it was because you were a stranger that you were selected? That may have been the reason, but I cannot say.

Now, as we have what you heard, I want what you saw. Was not that a very peaceable assembly? Indeed, it was very much so as far as I saw.

No riot or breach of the peace? All was very quiet in that respect? There was nothing wrong that I could either see or ascertain.

When you told the Attorney-General that parties remained there at night, did you mean to convey that they remained for the banquet? Persons remained in tents and places enjoying themselves.

In peace and quiet? Yes, in peace and quiet as far as I could see.

You stated that you saw bands coming from the direction of Carlow and Kilkenny. Do you know if these were temperance bands? I think they were.

Now, as you are from the south of Ireland, you must have seen several of Father Mathew's processions? I did, a great many of them.

There were temperance bands at those processions? There were.

How many bands have you seen at one of them? More than there were at Mullaghmast; a good many more.

How many? I counted forty-five bands at one time at the great temperance procession in Cork on Easter Monday.

And about how many persons do you suppose were there? I suppose about 300,000.

Were the temperance bands who were with that meeting of 300,000 persons in uniform? Yes, some of them.

Had they flags or banners? A very few, and they were small ones.

I presume they bore inscriptions? They did, but they were all connected with the temperance movement.

Those processions are, I believe, common in the south of Ireland? Very common.

Have you been long in the constabulary? Nearly twelve years.

Have the people improved in their habits in consequence of the temperance movement? I should say they have.

Very much so? (After a pause)—In point of drunkenness there is a great improvement among the the people (laughter).

Were you at the great procession at Nenagh? I was not.

When the bands were coming to the ground from the direction of Carlow and Kilkenny, how did they come? They appeared to be very wild, and tossed all before them.

Were you one of the people that they tossed before them? I was.

But was not all that from high fun? It was.

Mr. O'Connell (to Mr. M'Donogh)—Ask him did they injure anybody.

Did they injure anybody? Not that I could see, except to knock down a couple of gingerbread stalls.

Were there many persons there disposing of these things? Several were there.

Many people selling gingerbread? Yes, and grog, and coffee, and other eatables of that sort (laughter).

Did you know any of the people who sold these papers that you bought one of? No, I did not.

They were sold, and not circulated gratuitously among the people? Yes.

You did not perceive any one giving them away for nothing? I did not.

I suppose in these large assemblages in the south of Ireland you have frequently seen persons hawking about ballads, and selling them? Yes.

Do not they usually take advantage of these large meetings, and hover about the precincts of them, to sell these ballads? I should think so.

They hover about the outskirts of a meeting, and endeavour to retail these things for profit? Every place where they think they can make sale of them.

And I believe at assizes, while the judges are sitting in the criminal courts, those ballads singers are generally to be found in the vicinity of the courts? I have seen them there.

With respect to the persons that had on their hats the words "O'Connell's police," I ask you as a fair and honest man upon your oath, did not those people contribute to the preservation of the peace and order? I saw them exert themselves.

That is no answer—Did they clear the platform? They may have intended to keep the platform clear, and to keep order about it. Heard a man, named Walsh, give instructions to the people to keep order and quietness about the platform and pavilion.

Were they peeled wands they had in their hands? The sticks they had were smooth, and very slight.

They were not pieces of timber? They were pieces of timber.

Oh! they were of course made of timber, but they were not what you called on your direct examination pieces of timber.

Attorney-General—That was not what he said.

Mr. M'Donogh—I beg your pardon, I insist I am

right; he called them pieces of timber, and then went on; but it is of no consequence.

Were you here on the entry of George the Fourth into Dublin? I was not.

You were at Mullaghmast dinner? I was, but not all the time.

One of the mottos, you say, was, "No *Soxon* (laughter) butchery shall give blood-*gout* for a repast" (loud laughter)? Yes.

There was something better for repast on that occasion, I believe? Some appeared not to be satisfied; the dinner appeared to be rather short.

You say another motto was—Ireland dragged to the tail of another nation. That was the purport.

Mr. M'Donogh—A good heavy load she would have, would she not?

Mr. O'Connell—And a strong tail (laughter).

Witness—There were private carriages in the procession.

Did you take down all the mottoes? I did not.

Why did you not take them down? Because I thought it was no consequence.

Perfectly harmless? Quite so.

Not material? Just so.

Therefore you did not take them? Just so.

The witness then left the table.

READING OF REPEAL BALLADS.

The Attorney-General called on the Clerk of the Crown to read the ballad, which the last witness proved to have been circulated at Mullaghmast.

Mr. Moore said the evidence of the last witness, as he understood it, was this, that there were papers distributed or sold in the course of the meeting, that he himself purchased one which he had lost; but he got the document in question from another policeman, with a mark upon it. Under those circumstances he did not consider that document admissible.

The Solicitor-General said the witness saw the other policeman put a mark upon it.

The Chief Justice said Mr. Moore was not acquainted with the entire of the witness's evidence.

Mr. Moore said he had been out of court during a part of it.

Mr. M'Donogh said they had an additional objection. They contended upon the evidence that that document was not receivable. Very great latitude has been allowed in cases of conspiracy where it was fair to be inferred that the distribution of the document was in furtherance of the common object, and by some of the conspirators; but he (Mr. M'Donogh) had never heard, and he apprehended there was no authority to show, that where it was proved, as in this case, that in this vast and peaceable assemblage persons either hovered about the skirts of the meeting or mingled with the crowd for the purpose of selling ballads—persons who were proved to be in the habit of watching large meetings to get an opportunity of selling their ballads or songs—it would be unjust in the last degree to inculpate those who took no part in their sale, and never sanctioned their being sold or distributed. There was not the remotest connection between any of the traversers, or the parties who convened that meeting, or who held that meeting, and the ballad-sellers. Those ballads were distributed by sale amongst the people, not as the act of the persons connected with that meeting, and he would submit that, under the circumstances, the document in question was not admissible.

The Attorney-General said that there was no proof that ballads of that description were in the habit of being sold at large assemblies.

Mr. M'Donogh contended that the witness on cross-examination alluded to a temperance meeting consisting of 300,000 persons, and admitted that ballad-singers were there distributing their ballads.

The Attorney-General said there was no evidence of ballads, such as the one in question, being sold at the temperance meeting.

Mr. M'Donogh admitted that that portion of the evidence did not include this particular document. It was not for him to say what evidence would be adduced by the traversers, in reference to that ballad; but they had the evidence of Mr. Browne, the printer, the authorised printer of the association, to show that he never printed anything of the kind, and that such a document was never put into his hands. Besides, they had in evidence that those ballads were sold; and, was it not in accordance with their knowledge of probabilities that, if those ballads were sanctioned by the traversers, they would have been distributed gratuitously? How monstrous would it be if, at the vast temperance assemblies sworn to by the witness, some person in that crowd sold ballads, and that Father Mathew was to be put on his trial for those ballads, and tales of ancient history were to be given in evidence against him. If such a doctrine were admitted it would be in the power of any designing persons to convert a perfectly legal assembly into an illegal one.

The Attorney-General quoted the King *v.* Hardy to show that the ballad was admissible in evidence. What was the evidence at present before the court? They had it proved by Mr. Hughes that Mr. O'Connell at that very meeting at Mullaghmast said that "he had chosen it (meaning the Rath of Mullaghmast) for an obvious reason—they were upon the precise spot on which English treachery, and false Irish treachery, too, consummated a massacre unequalled in the crimes of the world." He said that was a fit place, in the open air, to assert their determination not to be destroyed by treachery; and that while he lived they never should. That the meeting was not held there by accident but by design, and that where his voice was then raised, the yell of despair was once heard from the victims who had fallen beneath the swords of the Saxons, who delightedly ground their victims to death. That three hundred unarmed men were slaughtered in the merriment of the banquet, leaving their wives and children to drop useless tears over them. This (continued the Attorney-General) is the contents of the old Irish history, which was printed and circulated at Mullaghmast. Mr. O'Connell could not be heard by 300,000 men; but it was proved that the contents were spoken at the dinner in the pavilion. He (the Attorney-General) for that reason proposed reading it. It had been circulated amongst the hundreds of thousands who could not hear Mr. O'Connell, but could read it. The "Voice from the Grave" was also used at the pavilion, and it was clearly admissible in evidence. A distinction had been taken that it was inadmissible because it had been sold; but surely it was not because a penny and a halfpenny might have been got for it that it was to be rejected. There never was a case where the admission of such papers was of more importance. It was circulated at a meeting assembled for the purpose of creating discontent and disaffection amongst her Majesty's subjects. The slaughter committed 300 years ago was, for this purpose, revived in the minds of the people by this "Voice from the Grave." Combining all these circumstances together, the documents were clearly fit to be given in evidence. He put it as evidence to show the mode adopted of circulating such sentiments among the people, and relied as an authority upon the case of the King *v.* Hunt. He concluded by saying, that it was for the jury to consider how far Mr. O'Connell and the other traversers were connected with its distribution.

Mr. Monahan (for Mr. John O'Connell) said that the doctrine advanced by the Attorney-General was unsupported by authority. If he recollected the

opening statement of the Attorney-General, he said that he knew the printer of these documents, and named, as such, a person called Hanvey, who lived in Fishamble-street. He has not, as he did in the case of other documents, produced the printer to prove that they were got out by the directions of any particular person, or the objects for which they were printed. There was no evidence that they were published by any one charged with the conspiracy. The Attorney-General had not, as in the case of Browne, produced any person to prove that they emanated from Mr. O'Connell or the repeal association. On the contrary, it was likely that the document was published by this man (Hanvey) for profit; that it was his own act, and not that of any one charged with the conspiracy. He did not object to the placards being given in evidence, because they were openly and publicly exhibited at the meetings; but there was no proof to show that these papers were exposed in the presence of Mr. O'Connell or his friends, or that they had any knowledge of their contents. He did not say that it was necessary to prove that the circulation was the act of Mr. O'Connell or any of the traversers, but it should be proved that it was done with the knowledge of, or at least adopted by some one of them. No doubt but formerly evidence in cases of this sort was permitted to an extreme length; yet they had not on the other hand, cited any case similar to the one before the court. If the circulation was an object with the association, they would not have charged for it; a few pence was of no value to them. It had not been proved that the publication was with the knowledge or sanction of the association, or in furtherance of its objects. The Attorney-General, when commenting upon it in the presence of the jury, ought not to have stated that it was a slaughter committed by Catholics.

Mr. O'Connell—I said a slaughter of Catholics by Catholics.

Solicitor-General—The question for the court was, should those documents be admitted or rejected. If admitted it was open to the traversers to give any explanation about them which they could. He thought they ought to be admitted upon two distinct grounds. First, they were part of the *res gestæ*—the character of the meeting, the transactions there, the circulation of such matter as was contained in the documents, he would assume bore directly upon the charge in the indictment. That charge was for entering into a conspiracy to excite animosity amongst her Majesty's subjects; and the proper means to be used for the supporting of that charge was to prove the large numbers at these meetings, the notices which convened them, the harangues which were made, and they (the crown) were then proving what occurred at one of these meetings. Mullaghmast meeting, it should be observed, had been called by advertisement, and it was proved that Mr. Browne, the printer of the association, printed that placard or advertisement, calling the meeting. He did not care whether the placard calling that meeting was circulated gratuitously or sold for money, as it did not make any material difference for his purpose; the advertisement calling that meeting was part and parcel of the meeting itself. He differed widely with Mr. Monahan, for it was not necessary for the crown to show any authority from the association calling that meeting, as the advertisement was sufficient for the crown in that case, and it did not lie in the mouth of the association to say they are not responsible for the consequences when the meeting did take place. Had he not *prima facie* evidence there that several documents were circulated at the meeting stating the professed objects of that meeting? Such documents might be circulated by O'Connell's police, or by repeal wardens, for all he knew, before the meeting; and was it to be said that the thousands of those documents which were circulated at the meeting were circulated without the knowledge of the traversers? Was he to be told that there was not a case of *prima facie* evidence to go to the jury, and let them take it as they might. Mr. Monahan asked, why not prove that the document was printed by the wish or authority of the association; but he did not want to prove that, as it was given as part of the *res gestæ* of the case; suppose the association had circulated their private cards——

Mr. Whiteside—I beg your pardon, there is nothing private about the association; all is done publicly.

The Solicitor-General said he would use that expression at present to distinguish the cards distributed at the association from those distributed at the meeting. Suppose the documents were not printed by the order, or with the knowledge of the association, then it was capable for the traversers to rebut the evidence, and produce the printer who did print them, and let him say for whom they were executed. He contended that the evidence could not be refused as it was given as part of the *res gestæ* of the case, and that the documents were circulated by the association. The documents were circulated by the association at the meeting, because the two hundred and fifty thousand persons who composed it could not hear all that was said by the speakers. He, therefore, under all the circumstances, submitted that the document must be used in evidence, and let the jury set what value they might on it afterwards.

The Chief Justice was of opinion that the document should be admitted in evidence, but he did not say what effect it would have in evidence. At the same time he thought it ought to be laid before the jury, and let it form a part of the case on which they were ultimately to give their judgment. Mr. Moore and Mr. Monahan objected to the admissibility of the document on different grounds; but he would not say they did not agree on both grounds of objection. However it was to Mr. Monahan's argument he would at present direct his observations and consideration. Mr. Monahan said it could not be proved that the document was circulated with the consent of the parties, or with the views of those who called the meeting, and, therefore, it could not be admitted as evidence. Let him see how the case stands: he supposed that nobody would deny that evidence was already before the court and jury of the existence of the repeal association, which consisted of a great body of persons, who had assembled from time to time, and held large meetings; nobody would deny that. It could not be denied that the leaders of that association were in the habit of knowing where such meetings were held, and that they were called by the authority of the association, of which the several traversers were proven to be members. In furtherance of the objects of the association, and for the purposes of those meetings, the practice was, for some time before the meetings to publish the fact. It was deemed advisable before the meeting at Mullaghmast to have a great monster meeting, or, as it was called, the Leinster Declaration for repeal, announced, and this was done, and the meeting was called by placard to assemble on the 1st of October, at Mullaghmast, and that place was accordingly appointed as the scene of that great monster meeting, and it should be recollected the place was so appointed before the 1st of October the day on which the meeting was held. It was in evidence that instructions were given to Mr. Browne, the printer of the association, by the secretary of the association, to print and publish a number of advertisements calling that meeting, and that such instructions were complied with, and the advertisement was circulated. That placard called a meeting of the province of Leinster to assemble at Mul-

laghmast, on the 1st of October, and Mullaghmast was the place named by the parties calling the meeting. The people called on to attend that meeting got a very significant hint of what they were called together for, as it was stated at the foot of the advertisement, "Remember Mullaghmast." That was to bring the matter to their recollection. They had it in evidence that Mr. O'Connell attended at the meeting, and explained very fully why the scene of the meeting was chosen at Mullaghmast. Mr. O'Connell made two speeches—one in the morning, and one in the evening, at the banquet. Mr. Barrett, another of the traversers, was there, and also made a speech, and both the traversers stated that Mullaghmast was chosen for the meeting for a particular purpose, and that it was done firmly and deliberately, and chosen beforehand. It should not be forgotten again that the people were called on to remember Mullaghmast. What was Mr. O'Connell's object in fixing on Mullaghmast as the place of meeting but to bring to the remembrance, and perhaps to the feelings of those assembled, the scenes alleged to have taken place there in former times. Whether that was likely to produce excitement or not he did not say; but one of the reasons given by Mr. O'Connell himself for assembling there was to bring to the recollection of the meeting the treachery and cruelty of the Saxon race, and the want of safety there was in dealing with them. The people then were invited to come to Mullaghmast as a provincial meeting, and consequently a very great one, and the invitation or summons to them was given expressly by the association through their officer and secretary, Mr. Ray, and the cards were printed by Mr. Browne, the printer to the association. Now, when Mr. O'Connell and the association took upon themselves to collect the people together, in such crowds, to the amount of 250,000, it was worthy of consideration to say whether it was not an illegal act. He would not say whether it was or was not, but he said that those who ventured to collect the meeting, must abide the consequences of their own act as to what was done connected with the meeting. There being 250,000 persons assembled together at Mullaghmast, the first thing done was the handing about a paper purporting to be a full and true account of the dreadful slaughter or murder at Mullaghmast on the bodies of 400 Roman Catholics. Whether this was given away as a donation, or whether it was sold, did not appear to him to be of much consequence. Their being circulated and distributed over the field was a necessary consequence of the assembling of the people at the place to hear and receive a history of what had occurred before Mr. O'Connell addressed them on the same subject. He could not pass over the fact that Mr. O'Connell, in the two speeches which he made, and Mr. Barrett, in the one which he made, drew a picture of what had occurred at Mullaghmast similar to the one presented for sale to the people. They all concurred in their representations of what took place three hundred years before, by those who were of Saxon connection—the treachery and cruelty they practised, and that they could never be trusted again. So far, therefore, from being unconnected with the professed object of the meeting, it seemed to him to be intimately connected with it; and it would be impossible to call the attention of the jury from the fact that 250,000 persons were assembled together by advertisement, and it would be for them to say whether the history of the slaughter or murder said to have taken place was not connected with that meeting. He had not, therefore, the slightest doubt that the objection to the evidence ought not to be allowed, and that the document was admissible in evidence.

Mr. Justice Crampton said he was of the same opinion that the evidence was admissible, his reasons for which he should state very briefly. It was admitted on both sides that the document was one of importance, but whatever the nature or character of the paper was, it appeared to him it could not be rejected as evidence. With regard to the objection urged against it, it must be that the meeting at Mullaghmast was one of the overt acts in the indictment and the acts and declarations of all persons who formed that assembly became therefore of importance to consider; *prima facie* all persons there belonged to the meeting, though every person might disconnect himself from it by evidence. The acts and declarations of one became the acts and declarations of all, if they were considered to act in concert, and therefore it was that what was said by one in one part of the field, though it might be a quarter of a mile off, became evidence against the other who might be on the platform. Here was an assembly for the purpose of discussing a particular thing, and a paper was distributed by thousands amongst the assembly, and what upon the face of it did it purport to be? It drew particular attention to the place of meeting. Now let him suppose that some person in a different part of the field read out this paper aloud, would any one contend that it could not be received in evidence? No doubt it would be so received. Then let him suppose further that the paper was circulated pretty generally through the meeting would any person contend it could not be received in evidence? Then what difference was there in the case he put, and in the case before the court, for this was not an isolated fact, observe—not the act of an individual, but according to the statements there were many persons distributing those papers to thousands. If circulated as stated no lawyer could doubt for a single moment that the document was not admissible against all persons at the meeting, because all were *prima facie* members of the assembly. Well, but it was said the sale of this paper made a difference; for it appears they were circulated at one half-penny apiece. Now, he did not see any difference in the fact of their having been sold, or their being distributed gratis. If it was an offence of the balladmonger who sold them on his own private account, and having no further connection with the meeting, he would not say it was admissible; but this was proved, that it was sold by persons who belonged to the meeting. He reasoned upon general principles, and he did not think the sale or purchase made any difference. Therefore, he was of opinion from the beginning that that objection was perfectly untenable. There was another objection made by Mr. Moore, which his lordship owned was more tenable; and if any two or three of those papers had been sold—and it appears they had been purchased by a particular individual—and that it was attempted to prove those papers by one purchased by another individual, he should yield to that objection. But what was the evidence which was the direct answer to that objection which was immediately given to one argument by Mr. Moore. That answer was, that thousands of those papers were sold. On those grounds his lordship was of opinion that the evidence was clearly admissible.

Mr. Justice Perrin said that it appeared in evidence that from morning till night (these were the words of the witness) several persons were engaged in circulating and crying about through the meeting, those documents—that was publicly stating the substance of them, and no person interfered to prevent, or repress, or stop them. He did not say to what effect the evidence would be; all he said was, that under those circumstances it was impossible to exclude that evidence. He did not mean to say that it would go to affect the association, or to connect it with them directly, but that was a matter for the jury to decide upon, ultimately considering the evidence for and against the prosecution.

The document was then handed in and read.

[It purported to give "a full, true, and accurate account" of the terrible massacre of four hundred Irish at the Rath-more of Mullaghmast. The first paragraph contained a statement of the cruelty committed on the occasion referred to, and proceeded to give an extract from Taaffe's History of Ireland, wherein the massacre was described as occurring during the reign of Queen Mary. Some comments followed, wherein Mary was designated as a bloody queen. The document concluded by giving a summary of different authorities as to the date of the massacre; and the author, having satisfied himself that it occurred during Mary's reign, proceeded to show that whether Catholicism or Protestantism were triumphant in England, Ireland was always treated by English rulers with equal barbarity and treachery.]

Mr. Whiteside applied to have a copy of this document furnished him. They wished to have the name of the printer.

The paper was handed to the learned gentleman.

The Attorney-General then put in a copy of her Majesty's speech as evidence, requiring as much of it as related to Ireland to be read.

Mr. Moore objected to its being produced.

The Attorney-General was very much surprised at the objection, There had been in the course of these trials several speeches of Mr. O'Connell's proved, in which he commented on the speech of her Majesty at the prorogation of parliament, taking it sentence by sentence, and he apprehended a document so commented on might be taken in evidence. It was alleged that it was not the speech of her Majesty, but the speech of her ministers—that it contained language only fit for a fishwoman—that it was a Billingsgate speech, and other observations of an extraordinary character were made respecting it. He therefore asked, quite as a matter of course, that the portion of the speech so commented on by Mr. O'Connell should be put in, it being clearly a matter of evidence.

The *London Gazette* of August 25th, and the *Dublin Gazette* of August 29th, were then put in, and the portion of her Majesty's speech referring to Ireland, and expressing her determination to maintain the legislative union between the countries, was read.

JAMES IRWIN, STATION-HOUSE CLERK OF THE LIVERPOOL CONSTABULARY, SWORN.

He said he was at Liverpool on the 13th of October; he saw placards of a particular description posted in various parts of the town of Liverpool; he took down one of the placards which he now produced; it was a copy of the address to all the subjects of the British crown, containing a statement of the grievances of Ireland, and which Mr. O'Connell had wished to have in circulation in all the towns of the empire; the name of Mr. Browne was attached to it as printer.

MR. CHARLES VERNON CALLED AND EXAMINED.

Held the situation of registrar of newspapers in the Stamp-office; it was in his office that the declarations made by the proprietors and publishers of newspapers were lodged; the newspapers themselves are also lodged there as published; he had here the declaration of Mr. Barrett, as proprietor of the *Pilot* (declaration produced); he had seen Mr. Barrett write on that paper, and that was his hand; had also the declaration of Charles Gavan Duffy, as proprietor of the *Nation;* he was not acquainted with Mr. Duffy; the declaration was lodged at his office in the regular way of business (declaration produced); had the declaration of George Atkinson and John Gray, as proprietors of the *Freeman's Journal;* Edward Duffy was the printer; he was not acquainted with Dr. Gray's writing, but he had seen Mr. Duffy write; it was the practice of papers to be sent to his office signed by the publisher, as required by the act of parliament; the documents which are now handed to me are accurate and authentic copies of the original declarations; the original declarations were signed by Mr. Cooper, the Comptroller and Accountant-General of the Stamp Department; they bear the signatures respectively of Richard Barrett, John Gray, George Atkinson, Edward Duffy, and Charles Gavan Duffy; the latter gentleman is registered as the sole proprietor, printer, and publisher of the *Nation* newspaper.

Mr. Smyly—Have you with you at present any copies of the *Nation*, *Freeman's Journal*, and the *Pilot* newspapers which were left in your office? Yes, I have—here they are (witness produced a file of newspapers).

Have you got the *Nation* of the 10th of June? Yes, I have. Here it is. It has the signature of Charles Gavan Duffy.

Mr. Smyly—Turn to the leading article of that paper.

Mr. Whiteside objected to the copy of the newspaper being put into the witness's hands at the present stage of the proceedings. He (counsel) had not the opportunity of examining the certified copies of documents which had been handed in. They had not as yet been read, nor had the handwriting been proved, and, under these circumstances, it was manifestly premature to ask any questions relative to the newspaper.

The Attorney-General—You may have the original documents to examine, if you wish, Mr. Whiteside.

The documents were handed to Mr. Whiteside, who, having examined them, said that he considered the evidence on this branch of the case wholly defective. The declarations purported to have been signed in the presence of a Mr. Cooper, the accountant-general, but not a tittle of evidence had been adduced, as required by the act, to show that Mr. Cooper was a person having full and competent authority, in point of law, to take such declaration. The learned counsel referred to the case of the King *v.* White, in support of his position, that it was necessary to prove the competency of that officer.

Attorney-General—If I mistake not the witness was asked whether Mr. Cooper was not the proper officer to take these affidavits, and he answered distinctly in the affirmative.

Mr. Whiteside—Oh, you are labouring under a sad misapprehension. No such question was asked him at all.

Witness—Mr. Cooper is the proper officer to take in such declarations.

Mr. Whitesde—Now, how do you know that, sir? I never saw his commission; but I have no doubt of the fact, for I have been acting under him for several years.

Mr. Whiteside—In what capacity? As register of newspapers. I presume that Mr. Cooper has a commission, but I never saw it.

Mr. Whiteside—My lords, it is absolutely incumbent on them to adduce proper evidence to prove the authority of Mr. Cooper to take the declarations.

Attorney-General—I do not take the same legal view of this point as my learned friend; but Mr. Cooper is in court, and, for Mr. Whiteside's gratification, we will have him examined.

JONATHAN SISSON COOPER SWORN AND EXAMINED BY MR. SMYLY.

I am comptroller and accountant-general in the stamp department; I have held my office for twenty years; it is one of the duties of my office to take newspaper declarations; the declaration now handed me was made by Charles Gavan Duffy, and was

sworn before me on the 18th of November, 1842; saw it signed by Mr. Duffy; the declaration now handed to me is that of the *Freeman's Journal*, and was signed by Dr. Gray, Dr. Atkinson, and Edward Duffy, on the 8th of February, 1841; Mr. Barrett's declaration was signed in my presence on the 8th of December, 1837.

CROSS-EXAMINED BY MR. WHITESIDE.

I have a commission, but it is not here; can't say that I know Mr. Duffy.

Ah! why did you not tell me that before? How, then, can you swear to his handwriting? I know that the party whose signature is affixed to that declaration signed it before me; he was present when he signed it (laughter).

I am obliged to you for that information, sir. You don't know Mr. Duffy? No, sir.

Thank you, sir, that will do (laughter).

Do you read the repeal debates in the *Evening Mail?* Sometimes, perhaps, I do, but very seldom.

Do you read the *Nation* or the *Freeman's Journal?* No, the only paper I read is *Saunders*, in the mornings.

Ha! you patronize frigid *Saunders*, do you (laughter)? Sometimes I do.

The repeal debates appeared in that paper as in every other paper, and yet you see they have selected some other journals for a conspiracy (laughter).

Mr. Whiteside submitted that there was no particular evidence of the publication, and in criminal cases the rules of evidence should be strictly observed. The signature should be proved by some one who knew Mr. Duffy.

The Attorney-General—The newspaper was published in Dublin under the terms of the act of parliament, and there is a heavy penalty imposed on any person publishing a newspaper, without lodging the proper certificate that certified his bail, produced from the Stamp-office, the place where it ought to be. Under these circumstances, the question for the consideration of the court was—whether the certificate signed by this gentleman in the presence of the proper officer, and who represented himself as Charles Gavan Duffy, and by whom the paper was since regularly published, was not *prima facie* evidence; and some of the witnesses for the crown proved that Mr. Duffy, as editor and proprietor of that paper, attended at the meetings. The Attorney-General then read the 8th section of the newspaper act, 6th and 7th William the Fourth, and submitted that, under its terms, the evidence offered was admissible.

Judge Perrin—Can't you prove the hand-writing, and get rid of the argument.

Chief Justice—The rule of law is the same in civil and criminal cases.

Judge Perrin—Sure Mr. Cooper said that Mr. Duffy signed the declaration.

Mr. Whiteside—My lords, the first newspaper published by the proprietor of the *Nation* is dated the 8th of October, and the document Mr. Cooper proved is dated the 18th of November, so that it cannot be the right document.

Mr. Brewster cited the case of Mayne *v.* Fletcher, in 9th Barnwell and Cresswell, page 382, and contended that, inasmuch as the title of the newspaper corresponded with that set forth in the declaration produced out of the custody of the proper officer, it was evidence of its publication by the party charged. The paper was entitled "The *Nation*, published every Saturday, at No. 12, Trinity-street, where all communications were to be addressed," and the matters set out in the declaration corresponded with that, and he now submitted, on the authority of the case quoted, that the crown were not bound to go farther.

Mr. Whiteside—That is a different view to that taken by the Attorney-General and Mr. Smyly.

To the witness—Hand me the first copy of the *Nation* newspaper.

Mr. Brewster—No question can arise except as to the paper we offer in evidence.

Judge Crampton—Does not this plainly appear, that one Charles Gavan Duffy is the proprietor, editor, and printer of this newspaper called the *Nation*, and the only difficulty that suggests itself is the identification of the particular individual, as there may be two or three Charles Gavan Duffys. We have evidence on our notes that the traverser here is the editor of the *Nation*.

Mr. Whiteside—Your lordship will excuse me for saying that there is no legal evidence yet to that effect.

Judge Crampton—That is not exactly what I have, but that the traverser is editor of a newspaper, and was recognised as such at meetings of the association.

Mr. Whiteside—With the greatest respect I think your lordship is confounding two distinct things.

Mr. Brewster cited another case in which Mr. Justice Bayley delivered a judgment in England, on which they also relied in support of their argument.

Judge Crampton—Here is the evidence I alluded to. In the evidence of a witness named John Jackson, he says that Mr. Duffy of the *Nation* attended at a meeting and handed in so and so.

Mr. Whiteside—I thought your lordship had struck out his evidence from your notes altogether. That's the man from Kilrush who reported *after a manner*, or took them from the notes of whoever happened to be next him.

Chief Justice—What do you say to Mr. Brewster's case?

Mr. Whiteside—Why, that it puts it better for the crown than it was put originally; but I think they must give some evidence to identify the person on trial with the person who signed the declaration. The slightest evidence in a legal form to identify those parties will make out their case, but without it I rely on my objection.

Mr. Tomb called their lordships' attention to the 8th section of the newspaper act, 6th and 7th William IV., which enacted that every such copy, so produced and certified, is to have the same effect, for the purposes of evidence, against every such person named as aforesaid, to all intents and purposes whatever, as if the original declaration had been produced in evidence, and then proved to have been duly signed by the persons appearing by such copy to have signed it.

Mr. Bennett—He is described in the indictment as Mr. Duffy, of Rathmines, and the description in the declaration is the same.

Mr. Whiteside—I admit all that, but suppose the declaration was produced you must give some evidence of identity. The cases in England are express upon that point.

Mr. Brewster said, that in the case of the King against Hutton, in the State Trials, page, 307, the court ruled that they were only required to produce the declaration.

Mr. Whiteside could not see what that case decided. In the present case it had not been proved that Mr. Duffy the traverser, ever delivered the paper to the Stamp-office, nor that he was the person who published that paper. He contended that his objection was unanswered, for they must give some affirmative evidence to identify Mr. Duffy.

The Attorney-General said in his opinion the case cited by Mr. Tomb was quite applicable.

Mr. Justice Crampton—Suppose there were two persons of the same name on trial on the same charge, and evidence exactly like the present was brought forward, which of the two is the person that

is conclusively bound by the act of parliament—which of the two is the evidence against?

Solicitor-General—Against either.

Mr. Justice Crampton—If it be evidence against either, you might have the two men convicted on the two indictments, upon the same paper, on which it was alleged only one was the proprietor. In my opinion very slight evidence, in addition to the statutable evidence, is required. For my own part, I have no difficulty in point of fact, for I find on my notes, in the first instance, Mr. Duffy described by a witness, who was very fully and very ably cross-examined, as being the editor of the *Nation*. I think that Mr. Whiteside is right on the ground he takes—that something in addition to the statutable evidence is required.

Attorney-General—The court is not to infer that a person has been carrying on the *Nation* as Charles Gavan Duffy, the person being actually another person.

Mr. Justice Perrin—The question is, whether this is that Charles Gavan Duffy. It is not denied that some Charles Gavan Duffy is publishing the *Nation*, but the question is, whether the traverser here is he.

Mr. Justice Crampton—I think you will find that Jackson, in his evidence, said "Mr. Duffy of the *Nation*."

Mr. Whiteside—We understood that to be proof that Mr. Duffy was a member of the association, and nothing more.

Mr. Justice Crampton thought that was a scintillo of evidence that he was the editor of the *Nation*.

Mr. O'Hagan said he would suppose that there were two Mr. Duffys at the bar, and then should it not be proved which of them was the proprietor? Mr. Jackson, the reporter, had not stated that Mr. Duffy was the proprietor of the *Nation*, but that Mr. Duffy had handed in money. He would not say that the traverser was not identified, but he was not identified as having signed the certificate. If two Duffys were at the bar, clearly one should be identified; and that has applied equally in this case, where the witness had not identified Duffy as the proprietor.

The Chief Justice said he was not satisfied that the crown had given sufficient evidence of identity in the case. At that stage the evidence was imperfect.

Mr. Bennett said he thought the act of parliament was sufficiently plain to render discussion unnecessary.

The Chief Justice said the point did not come within the meaning of the act. In the case before the court proof was required that Mr. Duffy was the proprietor. The act requires that he and his publisher should sign a declaration. They had signed it, and, if nothing more was required by the act, that declaration would be evidence against any person signing it as proprietor or publisher. That was a document by which the party was bound. But, to prevent any difficulty, the 8th section contained another provision—enabling evidence to be given against the proprietor or publisher in a summary way; and that evidence was the certificate signed by the proper officer of the Stamp-office, and if he had been there to give evidence in place of Mr. Cooper, all might be right. The act provided, that upon producing a copy of that document, certified under the hand of one of the commissioners, and upon proof of its being signed in his handwriting, it should be received in evidence against any person named in the certificate. Oh (continued the Chief Justice), on again reading the act, I am now of opinion that the statutable proof offered is sufficient.

The Attorney-General said he could give other proof of proprietorship, but that he would not, except the court decided the point against him.

Mr. Justice Perrin said that the declaration of the Attorney-General was rather inconsistent with the course he had previously pursued. He had given proof of the hand-writing of Mr. Barrett, and he had done so of Mr. Duffy's hand-writing, too, by Mr. Cooper, until Mr. Cooper failed upon cross-examination.

The Solicitor-General said if the court required proof of the hand-writing of Mr. Duffy, the act of parliament would be declared nugatory. The act guarded against the difficulty of proving hand-writing by compelling the proprietor to go before the officer; and as his person may not be known, and his writing not capable of proof, the policy of the act only requires——

Mr. Whiteside—The title of the act of parliament is wrong.

Mr. Justice Crampton—Mr. Whiteside, surely you are not going to amend the title?

Mr. Whiteside—Oh, yes. The act ought to be entitled thus—"Whereas the crown ought to be able to prosecute any person in the community, and whereas the crown cannot always do so if proof of identity be required; be it enacted that no such proof shall be required."

Mr. Justice Crampton said he had some difficulty in coming to the same conclusion as my Lord Chief Justice; but he abstained from pressing his own opinion because he considered there was abundant *prima facie* proof of the proprietorship being in Mr. Duffy. Mr. Jackson, the reporter, proved he had attended a meeting at which Mr. Duffy was present, and at which he handed in money, and he described him as the proprietor of the *Nation*. If that was not evidence of proprietorship he did not know what was. He describes, him, in fact, as present at three or four meetings, and calls him the proprietor of the *Nation* all through. Counsel for the traversers had not cross-examined him upon that point.

Mr. Justice Perrin said he was not satisfied with the proof offered. The spirit of the act was certainly to remove the difficulties of proof—formerly it was necessary to prove publication by the purchase of the paper or otherwise. But the act of parliament said that a certified copy of the declaration should be produced against the persons who had signed it.

The Attorney-General said there was another clause in the act, and

Mr. Tomb handed it up to the bench, observing that the material portion was underlined.

Mr. Justice Perrin read the act again as far as the words, "and shall have signed the same." He was not disposed to make a precedent, especially in a case where there was abundant evidence, in order to govern future cases.

Chief Justice—The court has admitted the evidence.

Mr. Whiteside—Save the point.

The court then adjourned for some time.

The court and jury having returned,

MR. VERNON, OF THE STAMP-OFFICE, WAS RECALLED AND EXAMIED BY MR. SMYLY.

Have you got a *Nation* newspaper of the 10th of June? I have; it was the paper lodged at the Stamp-office, pursuant to the act of parliament; it purports to be printed by C. G. Duffy, proprietor and editor, Trinity-street, Dublin.

Witness was then directed to turn to the leading article of the paper, page 552, and to read it. It was written in consequence of a correspondent having condemned the placing the names of Clontarf and other Irish battles on the repeal card, as he believed it would have been better to have substituted such words as—"Temperance," &c. The article dissented from this principle, and at some length the writer argued that war sometimes elicited great virtues, particularly in a just war. The article

concluded with a quotation from Dr. Arnold's "Lectures on History."

Mr. Whiteside asked the witness to turn also to the report of the proceedings of the association in the same paper, and to read them.

Witness did so—The speech of Mr. O'Connell was in support of a resolution for inserting on the minutes the letter of Mr. Smith O'Brien containing the resignation of his commission of the peace for the county Limerick. He spoke in high terms of Mr. O'Brien, who he stated was the most independent member of parliament, while his arguments in favour of repeal were unanswerable. The speech also contained a strong expression by Mr. O'Connell of his wish that in all regulations between landlord and tenant the rights of property, &c., should be respected. As the witness lowered his voice during the reading, Mr. Whiteside directed him to read the speech as well as he had read the leading article (laughter). Mr. Steele's speech on this occasion was omitted for want of space, and the resolution as to Mr. O'Brien's letter was carried. Mr. O'Connell then addressed the meeting, condemning the conduct of the Chartists in England, and advising the repealers of Ireland to expel them from their associations, and have nothing whatever to do with them. The speech then proceeded to allude to the unequal state of the parliamentary franchise in both countries, and expressed an apprehension that in a few years there would be no such thing as a liberal constituency in Ireland. It then alluded in denunciatory terms to the poor law amendment bill, and called upon the people to unite peacefully and constitutionally to obtain redress for their grievances.

The Chief Justice—I don't know how you propose making that evidence?

Mr. Vernon continued to read to the conclusion of Mr. O'Connell's speech, and then stopped short, as he expected to be asked to read no farther, but Mr. Whiteside told him to read the address to the people of Ireland.

The Chief Justice (with a wearied air)—Wasn't this read already?

Mr. Whiteside—No, my lord, it was not; and this is the document which explains all the objects of the association.

The witness then read the address at length, and having come to that portion of the report which stated that Mr. O'Connell moved the adoption of the report,

Mr. Henn respectfully submitted that if the crown gave in evidence any document, and read only part of it, they had a right to have it all used as evidence for the crown. This was laid down in Philips upon Evidence, 5th Carrington and Payne, page 238; and in 7th Carrington and Payne, page 386, the very point was decided. These authorities, he contended, established that the whole of the document was clearly made evidence—it was made evidence for the party who produced it.

Judge Perrin asked Mr. Henn if he recollected the case of the King *v.* Perry? He knew it was decided in that case that the advertisement in a remote part of the paper could be read in evidence.

Mr. Henn—I do not know if that case had reference to the other party or not.

Judge Perrin—It is reported at all events.

Mr. Henn—When the party on the other side calls for a document and looks at a portion of it, we are entitled to have it all in evidence.

Chief Justice—Yes, but the crown does not call for it here.

Mr. Henn—That is an *a fortiori* case. The party call for it here, and, when they look at it, we are entitled to have any portion of it read.

Chief Justice—That may be very good law in a particular case, but it is no general rule. Hand me up the book.

Mr. Henn handed up the book from which he had quoted, and the Chief Justice read it for some time.

The Attorney-General referred the court to the last edition of Carrington and Payne, p. 341, and said it was laid down that such a proposition as the other side contended for could not be maintained. If he were to admit that any doubt arose about the matter, it was not at all applicable to the present state of facts if it were to give a meaning on the part of the plaintiff. When a document was given in evidence by one party, and a portion of the document read, then the first party were entitled to have the subsequent portion of it read in evidence. When the other side commenced reading the present document they were not, strictly speaking, entitled to read one line of them; but he did not wish to exclude them from anything that might make in their favour; but if they insisted on it, he must object to it altogether. He then read another portion out of Carrington and Payne, and said if a plaintiff read a portion of a document in evidence, he could make that portion evidence; but he would submit that the other side was not at liberty to commence reading at the first advertisement in the *Vation*, and go down to the end of the same paper.

Mr. Henn—Now, that it is not the fact that we rely on. We want the portions relevant to the matter, and it is monstrous to say we are not entitled to them.

Attorney-General—If the article in the *Vation*, headed "The morality of rebellion," made reference to any portion of a speech of Mr. O'Connell, published in the same paper, which speech had reference to the grievances of Ireland, I then admit you would be at liberty to go over to that portion of the speech; but there is no reference to any speech of the sort, nor was there any allusion to the people in the speech of Mr. O'Connell. He then read another portion of Carrington and Payne's book.

Mr. Fitzgibbon said that his intellect was too obtuse to comprehend how an argument upon a point of law could be affected by translating, as the Attorney-General had done, the sentence, "the morality of war," into "the morality of rebellion." He could not comprehend it—he would not reply to it, except by deprecating it as an unjustifiable attempt to bias the jury—for the address was to the jury although his face was to the court. He would not answer it otherwise than as he had always answered, and ever would, such attempts, by denouncing it as grossly unfair and improper conduct. The question before the court was, whether the notice in the bill of particulars that the crown would use certain newspapers in evidence, and every part thereof, entitled the crown to stop short in reading one of those papers when they pleased, and it was contended that they need only give in evidence certain portions of the newspaper of the 10th of June. Unless he established the liberty of translating as freely and improperly as the Attorney-General had done, he could not understand this doctrine. Perhaps when the Attorney-General came to translate the words, "and every part of the contents of the said papers," he would make it appear that they meant "the part of a paper is the whole of a paper," and that he had a right to stop the clerk of the crown at any portion he pleased. The publication was offered to prove an overt act against the traversers as members of the association, as Mr. Duffy, the proprietor of the paper, was one of the members also; and it was sought by it to show that the association was an illegal one, that its objects were illegal, and still the counsel for the crown put their hands upon the paper, give certain portions of it in evidence, and cover from the jury other parts which more clearly show, and state, the objects of the association. They say, get the rest on cross-examination. He (Mr. F.) said no. The

traversers are entitled to have the document read over from the first to the last syllable, as far as it bore upon the subject at issue. This conduct was like putting a question to a witness, and because the answer happened to be a long one, stopping him before he told all. This was not done for any good purpose. If it could be read in full upon cross-examination was it not evidence then: and what did they contend about the time of reading for? Certainly for the purpose of making an unfair impression on the jury, by directing their minds to particular portions of it, and then leaving it to counsel for the traversers to obliterate it if they could. This was their plain object, but he would strip off the covering and exhibit it in all its stark rank deformity. There was a strict analogy between that newspaper and a witness. He had a right to all in that paper, as he would have a right to every fact within the knowledge of a witness. What he could get out from a witness upon cross-examination was the testimony of the crown, not of the traversers; and when they placed a witness in the chair he was there to depose to all he knew. They should read the whole of that document, that its contents might be put fairly, and not in a garbled form before the jury. Why did they stop short when they came to the portions favourable to the traversers? He did not contend that he had a right to call for the advertisements to be read. The examination of a witness ought to be confined to the issuse, and if departed from, it should only be to try the credit of a witness. They had no right to stop short when they pleased. It was for the crown to interpose when anything was offered to be read which was not pertinent to the issue.

Mr. Monahan said that the case cited by the Attorney-General from Adolphus and Ellis had nothing to do with the present one. In that instance a book was offered in evidence which contained a number of letters written at different times. One party wanted to read one letter from that book, and it was contended on the other side that the whole series should be read, and the decision was against reading the whole, upon the grounds that the letters were written upon different days. If Mr. Vernon had brought a whole volume of the *Nation* newspaper, they could not call for the reading of every paper.

Mr. Justice Crampton—Do you contend that all contained in the newspapers is evidence?

Mr. Monahan—I contend that everything bearing upon the question at issue should be read. This was decided in the *Morning Chronicle*, the King *v.* Perry. In that case, which was one of libel, contained in an article, a different paragraph was allowed to be read, explaining and modifying the matter contained in the article. As far as appeared from the report of the case, it seems the evidence was given on the part of the crown. The case was reported in the 2d Campbell, page 398.

Mr. Justice Crampton—Was the paragraph admitted to be read relevant to the offence with which the individual is charged?

Mr. Monahan—It was relevant to the offence charged. The offence there was a libel, and the paragraph allowed to be read was in different type from the article containing the libel.

Judge Crampton—The question is, whether one article explains or modifies the other, or whether it can be made applicable to the offence charged?

Mr. Monahan—There was no explanation in the case. The articles were evidently written by different persons, and they were in different type.

Mr. Justice Crampton—Will you allow me to look at the case of the Queen *v.* Perry?

The Solicitor-General said the question here was, whether the crown having read from the *Nation* of the 10th June the whole of an article published by the editor of the paper, called "The morality of war," the defendant had a right to insist on reading another part of the papers upon a different subject matter, that being a part of a speech made by Mr. O'Connell, not on the same day, but three or four days before the publication in question. Mr. Fitzgibbon, who argued this case with his usual earnestness, said he would expose the stark and naked deformity of the case. He (the Solicitor-General) had no objection to its being exhibited to the world. The argument of Mr. Fitzgibbon was this, that the crown having offered a certain article in evidence, they thereby pledged and bound themselves in law to give every word from beginning to end which appeared in that publication.

Mr. Fitzgibbon—I said no such thing.

The Solicitor-General knew he did not say so in terms, but that was the argument made use of. The question was, whether the crown, relying on so much of a publication as they considered pertinent to the case, and giving it in evidence, were bound to read another portion of the same publication, which, it was said, qualified the portion the crown offered. He contended they were not bound to do so. The case of the King and Perry, in 2d Campbell, was referred to, but in the article or advertisement read in explanation there was a part of the same publication, and modified the article containing the libel. He apprehended———

Mr. Justice Crampton said the only suggestion was whether this which had been read was part of the prosecutor's evidence or of the defendant's evidence. They need not enter into the question whether it ought to be read, for that was passed by.

The Solicitor-General said that justice required to have any part of the publication read which qualified the sense of another; but he did not admit that because the same publication contained language material for the defendants, as bearing on the general nature of the charge, it was admissible.

Mr. Justice Crampton said the question was, whose the evidence was, whether the defendants or the crown's?

The Solicitor-General would say no more if it was considered the evidence of the defendants.

The court consulted for some time, and the Chief Justice said the court did not want to stop the Solicitor-General.

Mr. Hatchell said, that in the case of the King *v.* Hardy, Mr. Erskine called on the Attorney-General to have a quotation from Thompson's Seasons read, and no objection was made.

Mr. Whiteside—Nothing so pleasant here.

The Solicitor-General said, that to make the passage admissible at all, it must be something bearing on the article given in evidence. It appeared that the authorities were so; and, in the case of the King *v.* Perry, the reason for allowing the defendant to have the article there read in evidence, was that it related to the subject matter. The charge there was for libel, and the article admitted as evidence explained its tendency and character. If there was anything in the paper of the 10th of June, explaining or modifying the article on "The morality of war," it would be taken in evidence; but when both articles were distinct, and were only connected by being contained in the same newspaper it was not admissible. It was totally contrary to the rules of law. The learned gentleman quoted in support of his view, 1st Starkie, page 6; the case of Edie and Brydges in 2d Starkie, and the 10th Adolphus and Ellis. On the whole those extracts were not part of the case relied on by the crown, and it was not at liberty to use them as such.

The Lord Chief Justice said the case had been so much discussed that he would be brief in assigning his reasons for the decision he meant to give. An article published in the *Nation* newspaper, entitled "The morality of war," was given in evidence by

the crown. The article in itself was perfectly complete and distinct, and the whole of it was read by the crown. On another occasion, after an interval of some days, at a meeting of the association, a speech was made by one of the traversers and reported in another part of that same *Nation* newspaper, apparently having no connection with, or requiring no qualification of, the opinions published in the *Nation* on the subject of "The morality of war." Now, let it be supposed that speech, instead of having been made by Mr. O'Connell, was spoken by Mr. Duffy himself, at that meeting of the association, could it be said that he would have been entitled to have the whole of it read, though he was unable to show its connection with the publication of an article entitled "The morality of war?" There appeared, as his lordship conceived, no case bearing in support of the proposition now advanced by the traversers; and if he had been called upon to decide, he should have great doubts as to whether the traversers, without the consent of the crown, would have a right to have a distinct independent publication read at all. However, the crown made no objection to the speech being read, as well as the publication "The morality of war." It was, therefore, not necessary at all for the court to decide, whether if the objection had been made the court would or would not have yielded. It had been said the question was, by whom the speech was read. The court were of opinion that it had been read by the traversers.

Mr. Justice Crampton concurred with the Lord Chief Justice, and in support of his opinion cited the case of the King *v.* Perry, in which Lord Ellenborough had laid down that although in a newspaper which had an article the subject of a prosecution, there was a second article having no reference to the former, yet there were cases in which that second article might be read. But supposing such a case to be well founded it would be a case in which a question would arise as to the intention of the writer to be decided from the article the subject of the prosecution. The second article might then be introduced for the purpose of having the jury understand what were the motives and intentions of the writer in the article the subject of the prosecution. Supposing that doctrine to be well founded, then arose an important question—which was the only question on which they had to give any opinion—whose evidence was that speech to be considered? He (Judge Crampton) was of opinion that the traverser had made it his in evidence on this trial.

Judge Perrin said that in this case the question, as it appeared to him, was simply this:—A printed newspaper had been given in evidence on part of the prosecution, from which an article was read for the purpose of showing that the traverser who published that paper entertained the intention and object of the conspiracy charged in the indictment, and it was offered as evidence of such intention having been held by him. In no other point of view could it be looked upon as evidence; and having been introduced in this case by the crown, the traverser then called upon the officer of the court to read another portion of the same publication—a distinct article, not referring to the former—but which he maintained, being portion of the same publication, having been in fact published, *uno flatu*, with the former, and being moreover indicative of a different object altogether from that originally attributed to the traverser, ought to be read at the same time, in order to show that he (the traverser) had really no such intention as that which had been drawn and charged from the first article. The traversers offered it in explanation of the former article, and it appeared to him that the inference to be drawn from the decision in the case of the King *v.* Perry was, that either of the two such articles as the present might be received in evidence, as being part of the same publication. The prosecutor was not bound to read the entire of a paper. He might only select such portions of it as went to prove his own case, but the traverser called for another portion of it as evidence on his own behalf, and it was for the jury that the duty was reserved of deciding what the tendency of such evidence might be, whether favourable to the traverser or otherwise. The case of the King *v.* Perry proved that the article was very properly admissible as evidence. If the second article was quite on a different subject from the first, and having no possible reference to it, it would not be receivable; but if, although not being exactly connected with the precise matter of the first article, it related, notwithstanding, to the object and intention of the traversers, as they were sought to be demonstrated in the first article: then, indeed, the case was different, and the second ought to be evidence, but, on the contrary, that it was an article praising George the Third, inculcating loyalty, and exhibiting in several instances matters highly favourable and praiseworthy in his Majesty. Therefore I do not think it necessary that one should, in the ordinary sense, relate to the other. They were all part of the same publication; each denoted the same intention, feeling, and motive, and each was properly subject matters for the consideration of the jury on the one side and on the other. In the case of the King *v.* Stockdale, which they would recollect was a prosecution at the instance of the house of commons, in respect to some publications about the impeachment of Warren Hastings, the same doctrine was held, for a large portion of the publication was read by the crown; and Mr. Erskine, who was counsel for the defendant, had another portion read; but there was this distinction, that all those passages were contained in the same publication and proved out of the same book.

The witness was then directed to refer to the *Nation* of the 12th of August, 1843, and having identified and proved the publication therein of an article headed "The March of Nationality," Mr. Bourne read it at length. (This document was published at length in the opening statement of the Attorney-General.)

Mr. Smyly—Have the goodnees to read the first column of the same page—page 696.

Deputy Clerk of the Crown—Is it "the Repealers' march to Tara?"

Mr. Smyly—No, before that.

Mr. Bourne—"Ourselves alone."

Mr. Smyly—No, no.

Deputy Clerk of the Crown—I perceive it now; it begins thus—"In the report of the association it is omitted to be stated that the Rev. Mr. Haire handed in 10*l.*, and was admitted a volunteer on the motion of Mr. Duffy, seconded by Mr. O'Connell." In another paragraph it is said—"We have received a letter from a military correspondent, in which we have much statistical information regarding the absurd provisioning and preparing of barracks."

Mr. Whiteside—I have a copy of the *Nation* of that date, and I find no such thing in it.

Mr. Brewster—It is a *Second Edition*.

Deputy Clerk of the Crown—It is marked "C. G. Duffy."

Mr. Smyly—Turn to the last page, if you please; to page 704.

Mr. Bourne—I have it, sir.

Read the heading of it? "Repeal Association, return of the Repeal rent for the week ending 8th August, 1843."

Look to the following sums per Charles G. Duffy?

Mr. Bourne read a list of several sums handed in by Mr. Duffy.

Mr. Smyly—What was the total sum handed in by Mr. Duffy?

Mr. Bourne—62*l.* 0*s.* 6*d.*

Mr. Smyly—Look to page 696 again, if you please.

Mr. Bourne—I have it. "We have referred the letter from the neighbourhood of Ardee, to Mr. Ray who will have it attended to. The prevention of such mistakes is simple enough. Every locality paying repeal rent should name the paper it requires," &c.

Mr. Whiteside—I must ask you to read a passage for me, which, according to the decision of the court, will be part of my evidence. If you allow me the paper I will get it for you in a moment; page 692, look at it.

Mr. Bourne—I have got it.

Mr. Brewster—Stop for a moment, Mr. Bourne.

Mr. Whiteside—It is quite the same to me whether you will read it now or hereafter.

The Attorney-General concurred it was better for the crown read all the paragraphs which they required to have read in the first instance, and then the defendants would be at liberty to read such paragraphs as they thought it necessary to have read.

Mr. Whiteside—Just as you please, Mr. Attorney.

The Attorney-General said that if any particular part was proposed to be read by the defendants, in qualification of what was read by the crown, they were entitled to read it at present, but if it be substantive matter the regular course was to have their case stated in the first instance, and then let those passages be read as part of their evidence. However, they would now go on, and when the time came the court would decide as to the period to read it.

Mr. Whiteside—We will insist on the principle so clearly laid down by Judge Perrin when you have finished reading.

Mr. Henn—Would it not be more convenient to read the entire before you go to another paper. It was the course adopted in all the cases referred to.

Judge Crampton—It certainly would be more convenient to dispose of each paper at once.

Mr. Whiteside—Go to page 692, Mr. Bourne, beginning with the words—"there was another subject relating to the north."

Mr. Bourne then read from the paper as follows:—

"Mr. O'Connell said, there was another subject relating to the north which he was anxious to have canvassed there. He found a disposition there amongst the repealers to accept battle from the Orangemen; they thought it was shrinking on their part to avoid the challenges that were thrown out to them, and he thought that even in Belfast there was too much readiness on the part of the Catholics there to join in a contest with the Orangemen. The Orangemen certainly commenced it, but that was not a justification at all for the repealers in the north, who should avoid any contest or collision with their opponents. He warned them against retaliating, even when attacked, except in the necessary defence of life. Let them recollect the association would give them an opportunity of legal vindication; and every person must be satisfied with the way Judge Perrin and the jury tried the cases at Carrickfergus. The verdict was proper against both Orangemen and Catholics; and the law that protected the Catholics when they were wrong, would doubly protect them when they were right; and from that spot he promised legal protection to every repealer in the north who did not retaliate when attacked, but quietly put up with the injury sooner than do so (cheers). His friend, the editor of the *Vindicator*, was angry on the subject; but what they wanted was conciliation; they wanted to be in the right, and to put their enemies in the wrong, and he implored those who were concerned in the management of that excellent and patriotic paper—and there was not a more patriotic paper in the empire—to throw oil on the troubled waters (cheers). He perceived that Lords Downshire and Donegal had called an anti-repeal meeting for the 7th of September. They had a right to do so, and he regretted that it was announced in the *Vindicator* that there was to be a repeal meeting on the same day. He (Mr. O'Connell) emphatically condemned holding such a meeting on that day, for there was a danger of collision taking place between the two parties. Let the repealers meet on the 8th, 9th, or 20th of September: he would rather say the 20th than any other of the days; but let them not hold their meeting on the 7th, as it would look like an intention on their part to provoke a collision, if they chose the day on which the anti-repeal meeting was to be held. He would go further, and say, that if any riot or tumult took place in consequence of the meeting being held on the 7th, contrary to his advice, they would neither get lawyer or attorney from the repeal association to take part in their defence (hear, hear). And much as he would regret parting with the excellent repealers of Belfast, and they were coming forward nobly, he would move that no Belfast man shall continue a member of the association if they held a meeting on the 7th; and if in consequence of that meeting any riot took place (loud cries of, 'hear,' and great cheering). He moved that Mr. Ray should write to them in terms of the utmost respect and kindness, requesting them not to hold their meeting on the same day as the anti-repeal meeting, and thanking them for their efforts hitherto in the cause of repeal.

"Mr. John O'Connell seconded the motion.

"The resolution was put and carried."

Mr. Whiteside—There is another small paragraph relating to Mr. Sharman Crawford.

Mr. Bourne read as follows:—"Mr. O'Connell said, the next subject was one of exceeding importance. It was the correspondence that had taken place through the newspapers between Mr. Sharman Crawford and himself. As far as he was personally concerned, nothing could be more pleasing and flattering to him than the language made use of towards him by Mr. Crawford, and he wished he could return him thanks in terms that could describe the sincerity of his gratitude. He begged of Mr. Sharman Crawford to be convinced that there were few incidents of his life that gave him more satisfaction than the manner in which he addressed him on that occasion. His pleasure was, however, mingled with some regret. He could not but regret that Mr. Crawford did not think it right to join that association. It would be of the utmost importance if that gentleman would condescend to mingle amongst them. There were, however, some circumstances connected with his refusal that made his letter of importance to the people of Ireland (hear, hear). He frankly admitted the justice of seeking for a repeal of the union, and he showed that grievances exist in this country that are unredressed and unredressable by an English parliament. He spoke of the want of attention to the affairs of Ireland manifested by the imperial legislature; and in particular to that marked insult, the denial of the use of arms to Irishmen—a right so prized by freemen. He admitted also that if the connection continued much longer as it at present existed, the alteration must be one that every one must regard with horror; namely, not a modification of the connection between the two countries, but a total disruption and separation between Great Britain and Ireland (hear, hear). That was the substance of Mr. Sharman Crawford's powerful and candid statement. He showed the grievances that exist—the little disposition that existed in the English parliament to remedy them—that they were aggravated from day to day—that they had proceeded from injury to insult—and that they were no longer endurable, without the prospect of some salutary alteration (hear). He thanked him heartily, on the part of the people of Ireland, for his manly avowal, and for

the power of intellect that he had brought to bear in making that avowal efficacious (hear and cheers). Mr. Crawford could not stand higher in any man's estimation than he did in his; but still he thought it was somewhat a lame and impotent conclusion that he had come to in not joining them (hear). He admitted that they had opened the door to receive him and men of his opinion; but he alleged what he (Mr. O'Connell) thought a strange reason, at the same time that he respected the man and anything coming from him, that there may be formed a party in Ireland for a federal union, and that as that association was decidedly for a complete repeal and a complete restoration of an independent parliament in Ireland (hear, hear, hear); the time might come when he would arbitrate between the two parties, and conciliate both. That appeared to be worse than waiting until the stream would flow by, for the stream was not yet even in existence at all. There must be first established some association for a federal union, and he did not know how it was to be called into existence; and when it was to be drawn up to something like manhood, then Mr. Sharman Crawford was to stand by and unite it in holy wedlock with the repeal association. He respected him even in his mistake; but he still more respected him for the rest of his letter, which related to the question of fixity of tenure; or, as he preferred to call it 'equitable tenure,' for he thought it was a better phrase than fixity of tenure. Equitable tenure implied that they regarded the rights of the landlord as well as of the tenant (hear). Mr. Sharman Crawford was the first person to come forward to protect the tenantry, and to bring their case before parliament; and he was the first to propose any rational scheme for the alleviation of the misery which they now suffered (hear). The present law between landlord and tenant could not continue to exist; it was impossible it could exist, for it would become insufferable. It would create a sanguinary outbreak, and end in the destruction of property at every side (hear). Even in England the conduct of the landlords was felt, and had attracted attention, and Lord Portman had brought in a bill to give the tenant compensation for improvements. It was accompanied by details to which he need not now refer, which rendered it valueless if those details were not ameliorated, and he mentioned it now merely to show that the subject had had made an impression on the public mind. The Irish landlords, besides, had advantages over their tenants that the English landlords had not. There were more acts of parliament made to facilitate the landlords in Ireland in exacting the highest rent from the tenant, than in England and Scotland (hear). Mr. Sharman Crawford had brought forward his bill, and he (Mr. O'Connell) would lay before the committee the copy he did him the honour to send him. He (Mr. O'C.) had received another copy himself, and the merits of the bill would be distinctly compared by them. Mr. Sharman Crawford had proposed that the tenant should receive a recompense for all his outlay, whether of money, or labour, or the land; that is, that the improvements made by the tenant should be for the benefit of the tenant (hear, hear). He proposed a way to ascertain the value of the improvement, and that was by a reference, in the first place, to the county engineer. If that did not prove satifactory, there was an appeal given to the assistant-barrister, and if his decision did not prove satisfactory there was a further appeal given to the Court of Chancery (hear, hear). The machinery of the bill had the disadvantage of being too expensive, but it was well to bring before the legislature, in a tangible shape, a measure that would give the tenant a right to all his improvements, while it gave the landlord a right to his land, because his labour was as much the property of the tenant as his land was the property of the landlord (hear, hear). They should treat the landlord with justice, and give him his land; but they should treat the tenant with justice, and give him the value of his labour (hear, hear). Mr. Sharman Crawford said this was but the first step in the plan he had devised for ameliorating the condition of the tenant, and he (Mr. O'C.) was delighted to hear it. He deserved the gratitude of the people of Ireland for keeping in his mind those plans for their alleviation. He did not think his plan would operate so well, at least this much of it, except there was some certain period less than which the landlord could not let his land (hear). He (Mr. O'C.) was for having the period twenty-one years, and that no rent should be recoverable except the term in the lease was twenty-one years (hear). That would give so far fixity of tenure to the tenant, mixed up with an equitable interest for the landlord, and would tend to diffuse quiet through the country (hear, hear). It would be a source of tranquility that could not be effected by any other means than by doing justice to the occupying tenant (hear). Mr. Crawford was, therefore, deserving of their ardent gratitude, and he moved that his letter be inserted on the minutes, and the thanks of the association conveyed to him through the secretary.

"The resolution was put and carried."

Mr. Whiteside—Be so good now as to read Mr. Sharman Crawford's letter.

Mr. Bourne read the following document:—

"REPEAL—FEDERALISM.

"TO DANIEL O'CONNELL, ESQ., M.P.

"London, August 1, 1843.

"SIR—In the *Freeman's Journal*, which came to my hand this day, I have read the letter you have done me the honour of addressing to me.

"There are periods in the history of every country when it is something approaching to a crime to assume the position of neutrality. I think the present is one of those periods with reference to Ireland. I think Ireland, and England too, have a right to expect that every man will do his duty, and I cannot understand how any person can have the smallest claim on the affections or respect of his countrymen, who stands neuter, and who holds back at such a crisis from declaring the opinions which he entertains, and from taking that course—whatever it may be—which his judgment points out to him as proper to be adopted. Under these views I addressed the letter to the *Monitor* which you have been pleased to notice, in consequence of an article published in that paper which contended for the same principles I support.

"I have always been of opinion that the connection between Great Britain and Ireland, if founded and sustained *on just and equal principles*, was the surest basis of prosperity and happiness for both countries. I am still of that opinion. I have supported imperial legislation for imperial purposes, as the best system to ensure the stability of that connection; but the legislation towards Ireland has been such as to violate all the principles on which imperial legislation can be sustained, accompanied by the continual enactment of measures injurious and unsuitable to the wants and circumstances of the country, and by the refusal of other measures which her interests require; and this system has now been brought to a new climax by the arms' bill, which by its provisions violates every principle freemen hold dear—makes an insulting distinction between Irishmen and Britons—and gives absolute power in the application of its provisions to a magistracy hostile in feelings to the great body of the people, whilst those magistrates who enjoy their confidence have been superseded for the mere exercise of that free expression of opinion on a great public question, which every freeman is entitled to claim the right of declaring.

"By such conduct as this, the demand made by Irishmen for the repeal of the union is justified. I feel that the connection of the two countries is thus endangered by the continuance of bad and unjust legislation. I feel that some security must be given against such a system, or else the connection cannot last longer than till the opportunity shall arrive of breaking it; or that, so long as it does last, if upheld by the physical power of England against the will of the people of Ireland, it can only tend to the weakness of Britain, and the wretchedness of Ireland. I therefore desire to establish the permanence of the connection, by seeking for Ireland the security for her particular interests and her rights which she would derive from self-government by a representative body of her own; whilst, at the same time, she would have her due weight in the concerns of the empire by a representation in the imperial legislature, and the connection sustained by that central authority. I think this would provide that security which Ireland demands for her local interests, whilst the connection with Britain would not be endangered by such an arrangement, and by relieving England from the responsibility which the local legislation for Ireland imposes, the causes of discontent would be removed, and thus the obstacles which at present exist to the creation of a kind feeling between the two countries would cease to operate. I think, then, this is a proposition which ought to be supported by Englishmen as well as Irishmen, as tending to promote the happiness, prosperity, and power of the united kingdom. I think that a bond of united action on this basis might be formed, which would include the friends of freedom of all parts of the empire. Englishmen and Irishmen might then pull together in the common cause of the rights of the people, on the grand principle that no laws should be made to bind the people of any part of the united kingdom, which were not made by the will of the people who were to obey them, as expressed by their real representatives. Now, it is perfectly clear that if a law be made for any separate portion of the united kingdom, by the power of an imperial majority in the legislature, that law is not made by the representatives of that portion of the people who are to obey it—and this principle is applicable to Scotland as well as to Ireland, and every portion of the empire which requires separate legislation to any extent, should have a local body for that separate legislation. The principle of self-government by representation should be carried out through every institution of the state; and local taxation, whether in a parish, a county, or a town, should be imposed and managed, and the bye-laws affecting that locality enacted by a body representing the locality which that taxation or these laws affect, and the whole kept under control and regulation by the central power of the imperial representation. This, in my judgment, is the principle of the British constitution—it is the principle of the corporate system. It is the only true foundation of all representative government. It is this legitimate principle which I desire to see extended to Ireland.

Without entering into the causes of the interior condition of Ireland, when compared with England, as to wealth and improvement, it will not be denied that the fact is so, and that in almost every circumstance which requires legislation, causes exist which produce a difference in the details of that legislation; and under the circumstances of her inferiority in wealth, commerce, or manufactures, it cannot be asserted that Ireland is capable of bearing the same weight, or being subjected to the same principles of taxation with England. From want of a due attention to her capabilities, she suffered an enormous grievance by the financial arrangements at the time of the union, with reference to the debts of the two countries. I am of opinion this subject ought to be revised. A just quota to the expenses of the empire should be arranged for Ireland, and a local body should have the power of determining, under certain limitations, the mode of taxation most expedient for raising that quota. Under an equitable arrangement of this kind, the money required for all the local purposes of her public institutions or works of improvement would be raised from her own resources, and Ireland would cease to be a drain for these purposes on the resources of England.

"It would be well for the landlords and monied men of Ireland to recollect that, if some arrangement for local legislation and taxation be not adopted, and the income tax should become (as I think it will) a permanent system of taxation in England, they will not long continue exempted from the infliction of that tax.

"You will excuse my trespassing on your time with this statement of my opinions; but as any communication addressed to you on a subject of such importance may possibly attract some share of public attention, even out of Ireland, I am anxious to show (more particularly as being an English representative) that the principle I advocate is not one of hostility either to the British people or to British connection, but one of common application and impartial justice to all portions of the empire; and unless justice be done there can be no contentment; and without contentment a connection cannot be stable, but is actually more injurious than separation, by forcing the expenditure of the resources of the greater country to compel the unwilling subjection of the smaller one. I am anxious that such a proposition should be brought forward as would connect with it the greatest weight of moral power, not only in Ireland, but in England. You say that physical power shall not be used to enforce your demands; the moral power of Ireland, opposed by the moral power of England, can hardly be expected to carry a measure in the imperial parliament; and I doubt much that Englishmen can ever be induced to consent to the total extinction of imperial representation. But this I am bound in truth to say, that every Englishman or Scotchman with whom I have ever communicated, either in parliament or out of parliament, who is a supporter of the principles of liberty in Britain, is desirous that impartial justice and equal rights should be extended to Ireland.

"My object in writing the letter which I addressed to the *Monitor* was the hope that it might be the forerunner of a similar expression of the opinions of others who agree in these views; and that if such opinions were expressed by a sufficient number of influential individuals, an attempt might be made to form some basis of united action—the letter you have been pleased to address to me indicates that you would not be hostile to such an attempt; but I feel at the same time that you cannot be called on to depart from your more extended views, unless to connect in the sphere of action a sufficient body of influential persons worthy to claim that sacrifice. I should be anxious to promote the rallying of such a body. You propose to me to join the repeal association; but I feel that my junction with any association for the purpose of repealing the union would place it out of my power to do that service. I am aware you do not exclude those who entertain my opinions. I have no doubt I should be kindly received by that body; but a man cannot be of use to any cause if he so far sacrifices his consistency as to become a member of a body whose leading principles are not in accordance with his own. The repeal association desires to abolish altogether imperial representation. I do not wish to destroy that system, but to add to it the principle of local legislation. This is always what I have contended for, and although I do not say that the wrongs of my country may not amount to that point which would compel

me to seek the more extended measure, I nevertheless still cling to the hope that what I consider the more beneficial arrangement may be effected. You refer to my words, and call upon me to join in the struggle of Ireland against insult and oppression. I am ready to do so in every constitutional form which shall not appear to commit me beyond the principle I have stated.

"Under the circumstances which at present exist in Ireland, and the great movement which you, sir, have under your control, it would be impolitic and presumptuous to attempt to press any proposition connected with local legislation which did not meet *your* concurrence. I shall not make such an attempt; but if I can be the medium of harmonizing conflicting opinions, my best endeavours shall be directed to that purpose.

"I have thought it necessary to enter so much at length into the repeal question. I cannot in this letter refer, as I should wish, to that other important subject noticed in yours—namely, the landlord and tenant question. I have introduced a bill, a copy of which, when printed, I shall take leave to forward to you; but I wish it to be understood that I only consider this bill as an incipient step for one particular object, viz., *the obtaining compensation for improvements.* I wish, in the first instance, to test the house on this *one principle alone.* There are other steps with regard to tenure, and the limitation of the powers of recovering rent, which I would desire to effect, but I think these matters should be attempted by separate bills. The principle of compensation for improvements is so manifestly just that there can be no motive for the refusing it, unless the desire to continue the perpetration of injustice. If I can, I shall bring the bill to a discussion on the occasion of the second reading on the 9th of August (the day fixed for it, not the 20th, as erroneously stated in the newspaper reports), after which it will probably lie over till the next session; and in the meantime, during the recess, I shall be exceedingly desirous to communicate with you, and receive your advice and assistance with reference to the improvements of which, I have no doubt, it may be susceptible.

"I have the honour, to be, sir, with respect, yours obediently,

"WILLIAM SHARMAN CRAWFORD."

Mr. Whiteside—There is another short letter that I wish to have read. It is the letter of the Irish representatives, that was commented upon in one or two of the speeches made by Mr. O'Connell. Shall he read it now, or shall it be read in the morning.

Judge Crampton—As it is short you may as well read it now.

Mr. Whiteside—It is tolerably short, about three quarters of a column.

Chief Justice—It is better wait until morning.

[Mr. Henn stated that Mr. Maunsell was in attendance, and would, if necessary, be in attendance in the morning. What occurred arose, he was sure, from misunderstanding. Mr. Maunsell felt hurt at the harsh language that he conceived had been used to him. He was quite ready to make an affidavit that he had not the least intention of interfering with the high sheriff in the discharge of his duty, or to provoke him to a breach of the peace, or the most remote idea of treating the court with contempt. He regretted what had taken place, and he was ready to detail the facts to the court, if such were necessary, and adopt such measures as the court might think right, under the circumstances. He was ready to state the facts, and, of course, the court would not punish him until they had the facts before them.

Chief Justice—We had hoped that there would be no necessity for anything of that kind taking place, and we hope there will be no necessity for the court to adopt any measures in the case. We have taken all you have mentioned into our consideration, and you have stated on behalf of Mr. M. that personally he did not intend to insult the high sheriff, and that he (Mr. M.) was desirous of making an apology to Mr. Latouche for having taken the unadvised course which he had taken. The sheriff is one of the highest officers connected with the administration of justice in the country, and should not be insulted or annoyed while in the discharge of the important duties he had to perform in that court. He (the sheriff) had received the insulting letter already mentioned, and he very properly brought it before the court, as he was bound not to allow it to pass without calling the immediate attention of the court to it, which he did very properly in the first instance. Mr. Latouche had no object in laying the letter before the court but the protection of himself in his office for the better discharge of the administration of justice, and he (the sheriff) should be protected by the court in the execution of his duty. Mr. Latouche, I am sure, was not actuated by any vindictive or unworthy motive in reference to Mr. Maunsell, and I hope Mr. Maunsell will satisfy him on the present occasion that he acted, to say the least of it, very unguarded and giddily in the rash course which he pursued.

Mr. Henn—He had not the least intention of either insulting Mr. Latouche personally or otherwise, and he was ready to acknowledge it; he laboured under some excitement at the time, but he regretted it very much, and was prepared to do whatever the court might think right under all the circumstances.

Mr. Latouche said he thought it right to state that he had no acquaintance with the gentleman, and, therefore, he could not injure him, nor could the gentleman do him (Mr. L.) any injury. It seemed, however, that the gentleman had taken umbrage because he did not send him some tickets which he sent for, and which at that moment he could not send. He (Mr. Maunsell) then wrote the letter to him, and from its nature and character there was but one course left, and that was to hand the letter to the court. So far as he was concerned he did not value the matter much, but he thought it a subject for the court alone, and he would leave the matter in the hands of the court, at the same time saying that he had no ill feeling towards Mr. Maunsell, but he would beg leave respectfully to say, that in his opinion the whole business was now in the hands and discretion of the court.

Chief Justice—The court requires that Mr. Maunsell should act on the suggestion of Mr. Henn. What has Mr. Maunsell to say on this subject? We suppose he is in court.

Mr. Maunsell—Yes, my lords, and I have no hesitation in saying that I am very sorry for what has taken place, and that I did not intend anything offensive to Mr. Latouche; I wrote the letter under feelings of great excitement, and if I have done anything offensive or annoying either to this court or to Mr. Latouche, as an officer of the court and a gentleman, I regret it very much, and am ready as a gentleman to make an apology for it.

Chief Justice—Very well, Mr. Maunsell, that will do; let there be no more about it.]

The court then, at a quarter past five, adjourned to ten o'clock next morning.

TENTH DAY.

THURSDAY, JANUARY 25.

The Lord Chief Justice, Mr. Justice Crampton, and Mr. Justice Perrin, took their seats upon the bench at ten o'clock precisely.

The jurors and traversers having answered punctually to their names,

Mr. M'Evoy Gartlan (agent for Mr. Duffy) applied to the court to grant his client permission to retire until two o'clock. The application was made on the grounds of Mr. Duffy's illness.

The Chief Justice said it was not in the power of the court to make any order upon the subject; but it was for the Attorney-General to say whether he had any objection to such a course, and whether he would insist on having Mr. Duffy called upon his recognizance.

The Attorney-General intimated that it was not his intention so to do. He would not take any notice of Mr. Duffy's absence from court.

Mr. O'Hagan called upon the Clerk of the Crown to read from the *Nation* of August 12, page 691, a letter addressed by the Irish members of parliament to the people of Great Britain.

The Clerk of the Crown complied, and read the following address:—

"TO THE PEOPLE OF GREAT BRITAIN.

"We, the undersigned representatives of Irish constituencies, impressed with earnest solicitude respecting the present state and future destiny of our country, and deeply sensible of its wrongs, and resolved to leave no effort untried to obtain their redress, feel it our duty, before we separate, to place upon record our solemn remonstrance against the fatal policy which has alienated from your government and institutions the minds of a large portion of our fellow-countrymen.

"Deep-rooted and increasing discontent pervades the nation whose interests are entrusted to our charge. Feelings of estrangement are rapidly supplanting those affections which kindness and justice would have placed at our command. Despairing of redress from the legislature, the people of Ireland now rely upon their own strength and resolution for the attainment of those rights which they have sought from parliament in vain.

"The voice of the civilised world lays to your charge the guilt of having produced this exasperation of national feeling. For centuries our legislation and government have been subject to your control: on you, therefore, lie the responsibility of having failed to secure the welfare and contentment of the Irish people.

"Our social condition is replete with elements of disorder. The connection between landlord and tenant, deranged as it has been by a long course of vicious legislature, hurts that mutual confidence which is essential to the development of productive industry. The labouring population, unable to obtain employment, live habitually on the verge of extreme destitution. Notwithstanding our connection with a nation which boasts to be the wealthiest, the most enlightened, and the most powerful in the world, our commerce, our manufactures, our fisheries, our mines, our agriculture, attest, by their languishing and neglected condition, the baneful effects of your misgovernment.

"A church establishment is maintained for the exclusive benefit of one-tenth of the nation.

"Our representation in the legislature is unjustly disproportionate to the population and resources of Ireland.

"Our parliamentary franchises are wholly inadequate to secure a true refection of the opinion of the mass of the nation.

"Our municipal rights are abridged in comparison with yours. Our corporation franchises are limited by needless and harrassing restrictions.

"The pecuniary exhaustion occasioned by absenteeism is aggravated by the mode in which the proceeds of taxation are applied.

"An anti-Catholic and anti-Irish spirit of exclusion governs the distribution of official appointments.

"Our local wants are not duly considered in the imperial parliament, yet adequate powers of self-government for local purposes are not afforded in the constitution of our fiscal and administrative constitutions.

"We have applied in vain to the legislature for redress. Our complaints are unheeded—our remonstrances are unavailing. We now appeal to that higher tribunal of public opinion, which creates and deposes parliaments and ministers, and we ask your intervention to enforce our claims.

"We demand, on behalf of our country, the adoption of measures calculated to improve the condition of the industrious classes, and to develop the resources of Ireland.

"We demand the recognition of perfect equality, in regard to ecclesiastical and educational arrangements, between the several religious communities into which the population of Ireland is divided.

"We demand a more ample representation in the legislature.

"We demand the assimilation of municipal rights in both kingdoms.

"We demand that Ireland shall participate more largely in the benefits of the public expenditure.

"We demand, in regard to administrative government, that the profession of the Roman Catholic faith shall no longer be made a ground of virtual, as it has ceased to be one of legal exclusion from official station; that in the general administration of the affairs of the empire, Irishmen shall be called to take part in a proportion commensurate with the extent to which Ireland contributes to its greatness; and that the management of our local affairs shall be confided, as much as possible, to those who are identified and acquainted with the interests of our country.

"We demand that the principle of self-government, subject to popular control, shall be applied, wherever practicable, in the organization of our local institutions.

"We recognise in you no superior title to political rights. We demand perfect equality as the only secure and legitimate foundation upon which the union can permanently rest. So long as these claims are denied, so long will continue the struggle of the Irish nation against injustice and misrule.

"Should this remonstrance be successful, we cannot, indeed, promise the immediate restoration of those feelings of attachment which, a few years since, had began to expel from the national breast sentiments engendered by centuries of oppression. We can only express our conviction that those who confide in the influence of justice will not have misplaced their trust. It may still be in the power of a government which may merit the confidence of the Irish people to win back their forfeited affections; but we warn you that every day's delay increases the difficulty of the task, and gives additional strength to those who maintain that there is no hope of good government for Ireland except in the restoration of her national parliament.

"Should this warning be neglected, on you, not on us, be the responsibility of future events.

T. Wyse, Waterford city,
D. R. Ross, Belfast,
T. Esmonde, Wexford,
T. V. Stuart, Waterford county,
R. S. Carew, Waterford county,
D. J. Norreys, Mallow,
W. E. Corbally, Meath county,
J. O'Brien, Limerick city,
M. J. O'Connell, Kerry county,
R. Archbold, Kildare county,
R. Gore, New Ross,
H. M. Tuite, Westmeath county,
J. Power, Wexford county,
W. S. O'Brien, Limerick county."

The Clerk of the Crown continued to read the document to its conclusion.

Mr Smyly then handed Mr. Vernon the *Nation* of the 26th of August, which he identified as having been lodged in his office, and which purported to be printed and published by Charles Gavan Duffy, at No. 12, Trinity-street.

The Clerk of the Crown having been handed the paper, read from it the article entitled, "The Crisis is upon us," at page 728, and in the same number of the paper the article headed "The Irish Congress." When he had concluded the articles he asked if they required anything further to be read from that paper.

Mr. Smyly—No more from that paper.

Mr. O'Hagan—Read page 726, in the third column of that paper.

The Attorney-General said he wished to interpose. On the preceding day he felt disinclined to object to the reading of certain passages at that stage of the proceedings by the traversers, but in consequence of the course adopted in the reading of Mr. Sharman Crawford's letter, and the resolutions of the members of parliament, and other matter which had no bearing on the documents read by the crown, he wished the case should take the ordinary course. The crown wished to close within a reasonable time, and would be enabled to do so by being permitted to read the important parts for the prosecution, and when the traversers came to make their case they could offer such evidence as they would consider bearing on the issue.

Mr. Hatchell, Q C., said on the part of his client, and indeed he might say on the part of the other traversers, in consequence of what had taken place the day before, and fully acquiesced in by the crown, they were certainly extremely surprised that there should be any departure from what they considered the fixed arrangement respecting the reading of the papers. The counsel for the traversers had made their arrangements under the impression that that would be the course acted upon. If the objection was to have been taken at all, it ought to have been taken when Mr. Whiteside called for the reading of the letter of Mr. Sharman Crawford. The traversers' counsel considered that the matter had been sufficiently discussed, and that the opinion of the court, acquiesced in by the Attorney-General, was that the most convenient way for all parties, and particularly the court, to take the evidence on that part of the case, was that each of those newspapers should be read on the part of the crown—that then the portions which the traversers deemed necessary for their case should be read, and thus the court and jury would derive information relative to each publication, so that the matter would not be forgotten by them when it was taken up on a future occasion. He did not mean to say that the Attorney-General intended to depart from his arrangement, but certainly it would embarrass the course to be taken by the traversers, and be unfair and unjust towards them in the conduct of their case hereafter.

The Chief Justice said the court did not conceive that an arrangement of the nature mentioned by Mr. Hatchell had been entered into by both parties. He believed that arrangement was entered into on the day before, and it was considered at that time that that would be the most convenient way to have the documents for the crown and traversers disposed of on the same occasion. At the time probably that arrangement was agreed upon, it was not anticipated that readings to the length, and of the unconnected nature and quality they had heard, would have been resorted to by the traversers. The court did not see any great inconvenience in continuing the plan that had been entered into, and it was to be hoped no unnecessary advantage would be taken.

The Solicitor-General said the strict rule was certainly with the crown, and if it were necessary he would show that they were not bound by any undertaking, but, of course, they would adopt the suggestion thrown out by the court.

Mr. Justice Crampton had no doubt that the strict rule was with the crown, at the same time it certainly was suggested by the court, and he remembered he stated that the most convenient course would be to dispose of each paper in the order in which it was given in evidence. He did not anticipate, nor would he now anticipate, that that suggestion, which was acquiesced in by the counsel for the crown, would be abused by reading matters that were not relevant to the issue laid between the parties. It was an indulgence given the traversers, and he was sure, in the hands of the learned counsel, it would not be abused.

Mr. O'Hagan (to the Clerk of the Crown)—Now read page 726, in the third column of the *Nation* you have been reading.

The Clerk of the Crown then read the article headed "Superseding Magistrates," including a letter from Valentine O'C. Blake, announcing his being a member of the repeal association.

Mr. Smyly—Now read page 2 in the first column of the *Pilot* of the 7th of June.

The Clerk of the Crown read the article. It was a description of the "great repeal demonstration in Drogheda." The article described the procession, and concluded by stating that the Liberator's carriage was surrounded by a body of horse.

Mr. Smyly—Very well, that will do for the present; go on to the speech of Mr. O'Connell.

The officer then proceeded to read the speech of Mr. O'Connell, which was spoken at Drogheda on the occasion alluded to. He, Mr. O'Connell, impressed on the people the necessity of preserving the peace, and not to outrage the law in the most minute respect. He told them not to groan any person or party. He cautioned the people against secret socities, illegal oaths, &c.

When the Clerk of the Crown had concluded the reading of Mr. O'Connell's speech, Mr. Smyly called upon him to read the names given in the same paper of those who attended the dinner at the Linen Hall. Mr. O'Connell, Mr. Steele, and Mr. Barrett were present.

Mr. Smyly then called for the speech of Mr. Barrett at the same dinner to be read. He spoke to the toast of "The People."

The clerk read the following:—

"Mr. Barrett—The people—yes, the people—the great and moving principle of all great movements—the end and object of all just and durable institutions. Who would not respond with his heart, at least to the toast, even though his tongue, like mine, were inadequate to do it justice! . . . . . Yet, for such a struggle, such a people are denounced, and civil war—the worst evil which the most depraved mind can imagine as a remote contingency of repeal—is sought to be made a terrible reality, by the impotent onslaught to arrest its progress (cheering). This insolent and profligate threat has been treated as it deserved. Far more eloquent tongues than mine have painted its atrocious and silly profligacy; yet no tongue has, for none could, come up to the wanton wickedness of the threat, much less of its execution—a deed on which the more one dwells, the more he is filled with disgust, resentment, and horror (cheers). When men talk of treason and dismemberment as the things we are guilty of who demand a repeal of the union, let them, in decency, recollect the solemn guarantee we have had for that which we seek, and the broken vows and wicked machinations upon which is founded that which they would seek at the risk of civil war, and under threats of vengeance and punishment to perpetuate. First of all Ireland had a

parliament, coeval with any in England. There is no record of a parliament in England in which there is not a parallel record of a parliament having been held in Ireland. The original right to possess a parliament is equal for Ireland as England; and there is no fundamental principle of right which could warrant England taking away our parliament which would not equally warrant us in taking away the English parliament. . . . . I say Peel is the most disastrous minister, and possesses the most inferior capacity of any man that within the memory of this generation was permitted to hold the helm of state. He will long be recollected, to be sure, but it is not for any burst of eloquence, any noble, wise, or generous thought. He never made a speech that would be read twice; he never used a sentiment worthy of being recollected; a man essentially of mediocrity; it is from his mischiefs alone he would derive immortality (cheers). What! such a being to threaten Ireland, and Ireland peaceful, constitutional, but aggrieved (hear, hear). A man who never anticipated a real danger, never admitted an evil until it grew too strong for him, and never volunteered a benefit—having no principle of political action, but the chapter of accidents—no guide but overwhelming necessity—his life a history of criminal resistance to right, and weak concession to necessity—concession always too late, when it lost all its grace and most of its efficacy. For this man to threaten men—an injured public—for agitating redress, who never yielded to anything else but agitation—it is, indeed, a piece of effrontery and folly which scarcely has a parallel in human insolence (cheers). Then, there is his worthy fellow-despot—Wellington. He a great man? There has been some silly chiding because he was called a corporal, by those who call him a great general. His iron heart was, in sooth, fit to enforce what is called military discipline—the talent of the cane, the lash, and the rope, were his, and he was a good drill-sergeant or corporal; but how can he be a great general who never made a manœuvre in battle in his life? or a great man who never entertained or uttered one generous or ennobling sentiment (hear)? He an Irishman, forsooth! he is destitute of country as of heart—without a head to comprehend the wants of the Irish people—without a soul capable of commiserating their sufferings."

Mr. Smyly—Look to the second column, and read the speech of Mr. Steele, which you will find there.

The Clerk of the Crown accordingly referred to the speech of Mr. Steele, which he read.

Now read the chairman's speech.

The Clerk of the Crown read the speech.

Mr. M'Donogh—Refer to the commencement of the meeting "taken from the *Freeman's Journal* and *Drogheda Argus*," and read the names of the persons who were there.

The Clerk of the Crown read the names of those who were present, B. B. Stafford, N. Boylan, Messrs. Gernon, Mathews, Smith, Jones, &c.

Mr. M'Donogh—Refer to the second column, and read the passage with address commencing with "We are not those slaves."

The Clerk of the Crown then read:—

"WE ARE NOT THOSE SLAVES.

"There are but two modes by which redress can be hoped for—physical force—moral power. The first we reject: you, sagacious leader, have taught us the superior efficacy of the latter. . . . . We solemnly pledge ourselves to co-operate with you to the fullest extent of our powers, in every constitutional means, which in your wisdom you may deem necessary for the attainment of our just and rightful demand for self-government.

"Mr. Boylan, T.C., moved that the address just read be adopted as conveying the sentiments of the meeting.

"The motion was seconded by Mr. Bernard Finegan, and carried unanimously."

Refer to the fifth column and read the commencement of Mr. Campbell's speech.

The Clerk of the Crown read the following:—

"—— Campbell, Esq., T.C., moved that a petition be presented to the Imperial House of Parliament, praying for a repeal of the act of legislative union.

"P. Gernon, Esq., T.C, seconded the motion, which was carried in the affirmative.

"The Secretary read the following petition, which, upon the motion of Mr. Brady, seconded by Mr. Daly, was adopted as the petition of the meeting:—

"'To the Knights, Citizens, and Burgesses in Parliament assembled. The petition of the inhabitants of Drogheda—

"'RESPECTFULLY SHOWETH—That, in common with their fellow-countrymen throughout Ireland, they feel the poverty arising from the general depression of trade, commerce, and manufactures, consequent upon the want of a domestic legislature.

"'They believe that a parliament, composed of Irishmen, legislating in Ireland, would be able to watch over the improvement of their country, so that the poverty now so widely spread would be removed.

. . . . . .

"'And while they declare their unaltered allegiance to the British Crown, they believe it is the right of every people to manage their own affairs.

"'This right they were deprived of by an act of Parliament, commonly called the Act of Legislative Union, and they humbly and respectfully beseech your honourable house to repeal that act.

"'And your petitioners will ever pray.'"

The Clerk of the Crown also read the motion of Mr. Brady, for the adoption of the petition as the petition of the inhabitants of Drogheda.

Read the names of the persons who sent letters of apology.

The Clerk of the Crown read the names of the Right Rev. Dr. Coen, the Most Rev. Dr. MacHale, Right Rev. Dr. Cantwell, Right Rev. Dr. Denvir, Sir William Somerville, M.P., Maurice O'Connell, &c.

Read the speech of the chairman in proposing the first toast.

The Clerk of the Crown read the speech prefacing the toast of the Queen. He dwelt on the invariable loyalty of the people of Ireland, and proposed—

"'The health of the Queen—God bless her!' (loud cheers—nine times nine, with all the honours). Air—'National Anthem.'

"The chairman said, that the next toast was the health of an illustrious prince, whose name was popular in these kingdoms, and who enjoyed the distinction of being her Majesty's consort. He would give them—

"'The health of Prince Albert;' and to the toast he would append the names of the 'Prince of Wales and the Princesses Royal.' (Nine times nine, and loud cheers). Air—'The Land of the West.'

"The chairman then said, he had much pleasure in proposing the health of the Queen's illustrious mother—

"'The Duchess of Kent.' (Drank with enthusiasm.) Air—'Here's a health to all good lasses.'

"The chairman said that the next toast he had to propose was one which he had no doubt would be received with cordiality of feeling at all such meetings as the present. The people's voice could not be hushed when raised in a righteous cause—the people's power could not be resisted when engaged in a holy struggle, nor could their legal and constitutional claims be safely disregarded (vehement applause). He would give them— . . .

"'The People.' (Drank with great enthusiasm.) Air—Garryowen.'"

Mr. Smyly—Now refer to the *Pilot* of the 12th of June; turn to the third column of the last page, relating to the Kilkenny banquet.

The Clerk of the Crown read that E. Smithwick acted as president, and that Mr. O'Connell, the Rev. Mr. Carroll, Mr. Maxwell, Mr. P. S. Butler, Mr. J. O'Connell, and Mr. Steele were present.

Turn to the fifth page, and read Mr. O'Connell's speech to the toast of "the Repeal of the Union."

The Clerk of the Crown accordingly read over the speech.

Mr. M'Donogh—Turn to the third page, and read the commencement of the proceedings at the repeal demonstration of Kilkenny.

The Clerk of the Crown then read from the *Pilot* an account taken from the *Kilkenny Journal* and Morning *Freeman*.

The Clerk also read the speech of the chairman, Pierce Somerset Butler, Esq., M.P. for Kilkenny county, recommending peace, order, and the observance of the laws.

The speech of Mr. O'Connell at the same meeting was also entered as read; after the perusal of a passage in which Mr. O'Connell called on the band to play the national anthem, the account stated that upwards of a dozen bands immediately struck up "God save the Queen," the multitude remaining uncovered to the close, when they gave three most deafening cheers for the Queen.

The Clerk of the Crown went on to read to this effect: "That a splendid banquet was given in the evening to 'the Liberator,' and that the banquet-room was hung around with such inscriptions as 'Ireland for the Irish, and the Irish for Ireland,' 'No foreign parliament or domestic slaves,' 'Erin Mavourneen, Erin go Bragh,' 'Irishmen, be loyal to the Queen, and obedient to the law,' 'Fear not the Saxon,' 'Never despair of liberty for Ireland,' &c."

Mr. M'Donogh—Read the toast respecting the Queen and the short speech of the chairman introducing it.

The Clerk then read the speech; the following is an extract:—"Was it probable that the Irish people, after enduring centuries of persecution without being shaken in their loyalty, would now become disloyal towards the best Sovereign that ever filled the throne?" The health of his Royal Highness Prince Albert, the Prince of Wales, and the Princess Royal, were also given amid loud applause. Certain portions of an article from the *Times* newspaper on the state and condition of Ireland, and copied into the *Pilot*, were then read, together with the comments of the *Pilot* thereon. The *Pilot* of Wednesday, the 14th of June, was then put in, and that portion of it read describing the Liberator's entrance into Mallow, with music, banners, &c., together with lengthened quotations from his speeches at the meeting and the dinner.

Mr. Smyly—Now, read the report of the dinner at Mallow.

The Clerk of the Crown read the portion of the report referred to.

Mr. Smyly—Now, be so good as to read Mr. O'Connell's speech at Mallow.

The Clerk of the Crown complied, and read the report of Mr. O'Connell's speech in reply to the toast of "The People." In the course of his address he said:—"My friend, Counsellor Maguire, made an excellent speech (hear). I think one of the most effective I ever heard (cheers). But yet do you know I never felt such a loathing for speechifying as I do at present (laughter, and cheers). The time is come when we must be doing (cheers). Gentlemen, you may soon learn the alternative to live as slaves, or to die as freemen (hear, and tremendous cries of 'We'll die freemen,' mingled with cheers). No, you will not be freemen if you be not perfectly in the right and your enemies in the wrong (cries of 'So they are'). I think I perceive a fixed disposition on the part of some of our Saxon traducers to put us to the test (cheers). There was no house of commons on Thursday, for the cabinet was considering what they should do—not for Ireland, but against her (cheers). But, gentlemen, as long as they leave us a rag of the constitution, we will stand on it (tremendous cheering). We will violate no law—we will assail no enemy, but you are much mistaken if you think others will not assail you. (A Voice—'We are ready to meet them.') To be sure you are (cheers). Do you think I suppose you to be cowards or fools (loud cheers)? I am speaking of our being assailed (hear, hear). Thursday was spent in an endeavour to discover whether or not they should use coercive measures (hear, and hisses). Yes, coercive measures—and on what pretext? Was Ireland ever in such a state of profound tranquillity (cries of 'Never')? They sent their armed steamers to Waterford the other day, and when the army arrived they found the key of the gaol missing, because the door was not locked, there not being a single prisoner for trial within it (laughter). They spent Thursday in consulting whether they should deprive us of our rights, and I know not what the result of that council may be; but this I know there was not an Irishman in the council. I may be told that the Duke of Wellington was there ('oh, oh,' and groans)? Who calls him an Irishman (hisses and groans)? If a tiger's cub were dropped in a fold would it be a lamb (hear and cheers)? What had they to deliberate about? The repealers were peaceable, loyal, and affectionately attached to the Queen, and determined to stand between her and her enemies. If they assailed us to-morrow, and that we conquered them—as conquer them we will one day—(cheers)—the first use of that victory which we would make would be to place the sceptre in the hands of her who has ever showed us favour, and whose conduct has ever been full of sympathy and emotion for our sufferings. Suppose, then, for a moment, that England found the act of Union to operate not for her benefit—if, instead of decreasing her debt, it added to her taxation and liabilities, and made her burthens more onerous—and if she felt herself entitled to call for a repeal of that act, I ask Peel and Wellington, and let them deny it if they dare, and if they did they would be the scorn and the bye-word of the world, would she not have a right to call for repeal of that act (cheers)? And what are Irishmen that they should be denied an equal privilege? Have we not the ordinary courage of Englishmen? Are we to be called slaves (no, no)? Are we to be trampled under foot (no, no)? Oh, they never shall trample me at least (tremendous cheering, that lasted for several minutes). I was wrong; they may trample me under foot (shouts of 'No, no, they never shall')—I say they may trample me, but it will be my dead body they will trample on—not the living man (great cheering). They have taken one step of coercion, and may I not ask what is to prevent them from taking another? If they take this step without pretext before man, and, oh! certainly without one before the Almighty—if, I say, they take this step of coercion to deprive us of our liberties for asking for a repeal of an act, ought they not at once make us their serfs? (hear, hear.) May they not send us to the West Indies, as they have lately emancipated the negroes, to fill up their places? (hear.) Oh! it is not an imaginary case at all; for the only Englishman that ever possessed Ireland sent 80,000 Irishmen to work as slaves, every one of whom perished in the short space of twelve years beneath the ungenial sun of the Indies (oh, oh, and cheers). Yes, Peel and Wellington may be second Cromwells (loud hisses); they may get his blunted truncheon, and they may, oh! sacred heaven! enact on the fair occupants of that gallery (pointing to

the ladies' gallery) the murder of the Wexford ladies (oh, oh, and hisses). But I am wrong; they never shall (tremendous cheering). What alarms me is the progress of injustice. That ruffianly Saxon paper, the *Times*, in the number received by me this day, presumes to threaten us with such a fate (oh, oh)! but let it not be supposed that I made that appeal to the ladies as a flight of my imagination. No, the number of 300 ladies, the beauty and loveliness of Wexford—the young and old—the maid and matron—when Cromwell entered the town by treachery, 300 inoffensive women of all ages and classes were collected round the cross of Christ, erected in a part of the town called the "Bull Ring;" they prayed to heaven for mercy, and I hope they found it; they prayed to the English for humanity, and Cromwell slaughtered them (oh, oh, and great sensation). I tell you this—300 of the grace, and beauty, and virtue of Wexford were slaughtered by the English ruffians—sacred heaven! (tremendous sensation and cries of 'oh, oh'). I am not at all imaginative when I talk of the possibility of such occurrences anew (hear); but yet I assert there is no danger of the women, for the men of Ireland would die to the last in their defence. [Here the entire company rose and cheered for several minutes.] We were a paltry remnant then; we are millions now (renewed cheering). I heard a story in 1823, that when the police went at night in search of the Whiteboys, the village curs barked at them, though they did not mind the Whiteboys themselves (laughter and cheers). You see there is even tact in an animal. In that spirit I warn you, keep yourselves free from the enemy (hear); let not their curs lap their tongues in your blood (cheers, and cries of 'never fear'). Be prudent (hear); let there be no crime, no violation of the law (no, no); and let Peel, the Cromwell of the present day, commence his murder if he dare (hear, hear, and vigorous cheering). I have been called in the house of commons 'a coward;' it is a hard name to bear with.

"Mr. Barnett Barry—Mr. Roche cowed them in return (cheers).

"Mr. O'Connell—It is a hard name, but they were safe in calling it to me, for it was a punishment that I deserved (no, no). Oh, fie! say not so; do not stand between me and my punishment—would to God that it may be in this world and not after death, for then I should tremble to meet it (no, no). Oh, yes, for I violated the law of the great God, and I do deserve punishment; but the enemies of Ireland are mistaken if they imagine that I would tremble before my Creator when yielding up my life in so righteous a cause as that of my country (prolonged cheering). Perhaps the Saxon consultation will break up without daring to attack us (cries of 'Never fear they will'). I hope they will (hear), for if they be not mad they will (hear). . . . I have thrown my whole heart and soul before you, and I wish you all to understand your state, that I might frighten Wellington and Peel from their attempt to trample on the liberties of Ireland (cheers). I tell them we will keep within the law and commit no crime—that we will stand within the constitution, and let them not dare attempt to try our patience beyond what it will endure, for it is not safe to drive even cowards to madness; and oh, it is much less safe to drive those who are not cowards (tremendous cheering). Our course is now to continue within the strict bounds of the law with the strictest propriety (hear, and cries of 'Never fear us'), to inform every man that what Peel desires is the commission of crime (hear, hear). You do not mean to think that you should submit to illegal violence (tremendous cries of 'No, no,' and cheering). Perhaps in the history of my life—and what is life to me?—that consideration, as regards myself, is the least material; their violence is nothing to me, for my heart is widowed and I am a solitary being in this world (no). Oh, I am—she for whom I would have feared, though she had courage herself, has parted from me. [Here the illustrious gentleman seemed deeply affected, as did the entire company.] We have parted, and perhaps the approach to another, and I hope a better world, would not be the more painful to me in the hope that we are there to meet again (a tremendous burst of cheering followed which lasted some minutes). What is the position in which I stand? What are the enjoyments of life to me if I cannot vindicate my fame and free my country? All that is delightful, all that the enthusiasm of romance can fling round the human heart is centred in my love for Ireland (tremendous and prolonged cheering). She never has been a nation, for her own children had her split and rent and divided when the Saxon first polluted her verdant soil with his accursed foot. From that day to this dissensions and divisions, together with a false confidence in the honour of the enemy, and penal laws, all, have contributed to keep her in peril and degradation; but the hour is come when her people can be a nation, and if they follow the counsel that they get, their country will be free, and will be their own (cheers). Be prepared, I tell you, for the worst (hear and cheers). Take care of all things, to listen to the communications that will be made to you—for if they do not gag the mouth and manacle my hands you will hear me pointing out the course of conduct most wise to be adopted (cheers), and though that course may not strike you as being the most wise, yet, I hope you will give me credit for my intention (tremendous and prolonged cheering). I hope my dream of conflict will never be realized; let us stand shoulder to shoulder on the constitution, and let not Ireland be abandoned to her foes, by the folly, the passions, or the treachery of her children."

Mr. Smyly next directed the officer to read the toast which was given by the chairman—"The Protestant repealers of Ireland, with which he coupled the name of Mr. Steele."

Mr. Bourne, reading—"Mr. Steele rose amid loud cheering, and returned thanks" (great laughter).

Mr. M'Donogh—Read the speech of Mr. Edmond Burke Roche at the meeting.

The officer proceeded to read Mr. Roche's speech to the concluding passage, where the honourable member declared that they had met in peace, and there could be no sedition in that.

An extract from the *Pilot* of the 7th June was then read, being a portion of the speech delivered by Mr. O'Connell on the occasion of the meeting at Drogheda:—

"He had observed that on one or two occasions during the progress of the procession they had the foolish and inexcusable rashness to utter a few groans in front of the houses occupied by persons of whose political doctrines they did not approve (hear, hear). Such a proceeding, even though it might not have anything of premeditated malice in it, and was but the result of a momentary ebullition of hostile feeling, was however exceedingly reprehensible, nay, he would even say that it was extremely disgraceful, and he trusted that they would never again be so far forgetful of what they owed to themselves and their country as to repeat such a demonstration (cries of 'No, no'). He wanted Ireland for the Irish. He was sick of seeing this lovely land misgoverned by Saxon foreigners. He wanted to see Irishmen—men born and reared in Ireland, and who had the true Irish stuff in them—making laws for the Irish people; and as this project was one which would benefit all Irishmen they ought to solicit the countenance and co-operation of every class of their fellow-countrymen. He had recently received a present of a pair of silk stockings from

an Orangeman, an extensive manufacturer, who heretofore had been strongly opposed to the repeal question, but he saw that under a foreign parliament our trade and manufactures were hourly wasting to decay. He (Mr. O'Connell) had told that gentleman that if he had the repeal the people would become so rich and comfortable that they would be able to buy his stockings in much greater quantities than they could now afford, for that every man in the community would have two pair of stockings for every pair of legs he had (laughter, and cheers). And now he had something more to say to them in the way of caution and advice, and he was sure that they treasured up his words carefully, for the Irish people had always regarded his counsel as a command. One of the ingenious expedients to which the Orangemen of the north had recourse in the hope of damaging the repeal cause, was to employ miscreants going around through certain districts of the country, for the purpose of enticing the unsuspecting peasantry to get themselves sworn in as Ribbonmen. [A Voice—'I'll watch them the villains.'] Yes, watch them for me. Give all such scoundrels into the hands of the police, and you will be surprised to find how chagrined some of the police sergeants will be, when they find their own friends in a hobble. All illegal oaths—nay, all secret and unnecessary oaths, were crimes; and ruin, disgrace, exile, or death itself, might be the consequence of their becoming connected with a secret society. He was tremblingly alive to the vital importance of directing the attention of the people to this admonition, for he saw that victory was certain, if no unfortunate fatuity fell upon them, to lure them into the traps which had been laid for them by their wily and designing enemies."

From the same journal of the 14th was read the subjoined report of Mr. John O'Connell's speech at the Corn Exchange on the 12th June:—

"He also wished to announce from Mr. O'Connell, that a precious panic appeared to have seized all the old women who constituted their opponents to such an extent, that it was desirable the repealers should not carry so much as green boughs in their hands. Of course they would, in every instance, leave their sticks at home. His father's wish was, that in every instance the repealers would follow the example of the fine people of Kilkenny, who yielded at once to the request made of them—that they would not bring even a green branch in their hands to the meeting. There was also another subject to which he wished to allude, and though he had received no instructions from his father respecting it, still he knew he would but speak the sentiments which his father would use if he were present. It was with reference to the anti-repeal meeting that was to be held at the Rotundo, on Wednesday.* The repealers should show them that they were anxious to give every person, no matter what his sentiments might be, the fullest scope to speak his opinions openly, and above all, they were determined not to give the slightest pretence to any of their enemies for saying that they would, in the remotest degree, act in any manner that could lead to a breach of the peace. He would earnestly implore of the repealers of Dublin, not only not to interrupt the proceedings at the Rotundo, but not to be present there at all, for the simple reason, that if they were present, and remained silent, they would give an importance to the meeting that it would not otherwise deserve, and if they caused any interruption they would be materially injuring their own cause (hear, hear)."

Mr. M'Donogh—That's all I shall trouble you to read.

* This was a meeting of anti-repealers, called under the auspices of the Conservative Association in Dawson-street, at which Lord Rathdowne presided, and at which the managers refused to permit the Rev. Mr. Gregg to address the meeting.

The court then adjourned for ten minutes for refreshment.

The court then resumed their seats, when

Mr. M'Donogh said there was a passage in the last paper which he wished to have read, and, in the absence of the officer, he would read it. It was in the fourth page of the paper—the *Pilot* of the 14th of June, 1843. The learned gentleman then proceeded to read the following extract from a speech made by Dr. Gray:—

"Dr. Gray fully concurred in what had fallen from Mr. John O'Connell with respect to the meeting advertised to be held at the Rotundo on Wednesday next. The first announcement which had been issued by the gentlemen who were the promoters of this project, was to the effect that a great Protestant meeting was to be convened for the purpose of expressing the opinions of Protestants in reference to the repeal question. He believed, however, that in looking over the reports of the proceedings of that association, and on discovering that Protestants had joined the repeal ranks in large numbers, these gentlemen had thought it better to change the name of their contemplated demonstration, and they accordingly styled it an anti-repeal meeting (hear, hear). He (Dr. Gray) was one of a number of Protestants, who, upon the appearance of the original announcement, had resolved upon going to the meeting, and declaring their sentiments, as Protestants, upon the question; but the assembly was now, it appeared, changed to an anti-repeal meeting—it was no longer to be regarded as a meeting of Protestants assembled together for the purpose of discussing repeal, and under these circumstances he thought that, as a member of that association, he had no right whatever to attend a meeting to be composed solely and exclusively of anti-repealers (hear, hear). No man who was not an anti-repealer had no right to go there, or to be heard there."

Mr. Smyly—Mr. Vernon, now produce the *Freeman's Journal*, of the 7th of August last. I have it here; it was lodged in my office, and bears the name of Edward Duffy, as publisher.

I see the third page—read the portion commencing "Great demonstration in Wicklow." The witness then proceeded to read an account of the Baltinglass meeting. He continued to read at great length the description of the scenery in the neighbourhood of Baltinglass, the enthusiasm of the people, and the progress to the place of meeting. After some time he was told by Mr. Smyly not to read further.

Mr. Fitzgibbon said he required the whole of the description to be read.

He then proceeded to read it to the end. It went on to describe the enthusiasm of the people, old and young, upon the appearance of Mr. O'Connell, estimated the number of horsemen at 1,000, and stated that they advanced with almost military dignity; that the temperance bands from Athy, Naas, Newbridge, and the Liberties, were in attendance, and that at least 150,000 persons were congregated at the place of meeting.

When the reading of the descriptive part was concluded,

Mr. Smyly said—Read the speech of Mr. O'Connell.

The speech, which has appeared before, was then read. It was to the following effect:—"He (Mr. O'Connell) was delighted at the merry sound and the loud cheers that came upon his ears from the mountain valleys. He called upon the meeting to promise that Ireland should not be a province. He asked did they know Lord Wicklow, and desired them not to groan him, as he supposed the poor man was then saying his prayers. He said there was nothing for Ireland but repeal, and continued to animadvert upon the conduct of Lord Wicklow—Lord Wicklow

had no body to praise him, and therefore he praised himself. Neither he nor any of his class had done anything for Ireland. It may be asked what good he (Mr. O'Connell) had done. He put down Protestant ascendancy—he took away the inferiority of the Catholics in point of law; but Lord Wicklow had done nothing—he got rid of the old rotten corporation, and he was now struggling for repeal, which was really the poor man's question."

Mr. Vernon having concluded the speech,

Mr. Smyly—Do you see the name of Mr. Rielly there? Yes; Mr. Reilly seconded the resolution, which was put and carried.

Now turn to the report of the dinner—to the toast of "The People."

Mr. Vernon—"The People, the source of all legitimate power."

Dr. Gray spoke to the toast.

Read Mr. O'Connell's speech at the dinner.

Mr. Vernon then proceeded to read the speech of Mr. O'Connell. One part of the speech referred to the often-discussed passage on the sergeants of the British army.

Mr. Smyly told the witness to turn to the report of the dinner, and see if Mr. Steele was present.

Mr. Whiteside said that the paper could be no evidence as to whether Mr. Steele was present or not.

The Clerk of the Crown said that Mr. Steele was mentioned in the report as having replied.

The Attorney-General rose to reply to what he understood was the objection, when

Mr. Whiteside said he did not make any objection, he merely made the remark. He was not counsel for Mr. Steele.

The Attorney-General was not going to enter into the argument. All he wished was to be distinctly understood as not acquiescing in the objection.

Mr. Smyly called on the Clerk of the Crown to read a descriptive article on the Tara repeal demonstration, which appeared in the *Pilot* of August 16.

The Clerk of the Crown read the article in question.

Mr. Smyly—Now read the report of Mr. O'Connell's speech at the Tara meeting.

Mr. Smyly requested the officer to read the names of the company? I have them here.

Do you see the name of John O'Connell, M.P., amongst them? I do.

Mr. Fitzgibbon—If you read any of the names read them all.

The officer proceeded to comply with the request of the learned counsel, when

Mr. M'Donogh said, I do not require this, my lords.

Mr. Smyly—But Mr. Fitzgibbon does.

Mr. Fitzgibbon—Not particularly; but if one name be read all should be read.

The officer, in reply to Mr. Smyly said he saw the name of Mr. O'Connell, Mr. Barrett, and Dr. Gray there.

Will you turn to the proceedings which took place at the banquet in page 3 of the paper? I have it here.

Read it. "On the right of the chairman sat the Right Rev. Dr. Cantwell, the Liberator, John O'Connell, M. P., Dr. Gray, Richard Barrett, Thomas Steele, &c."

Look to the speech made by Mr. O'Connell on that occasion? I have it here before me.

Read it. Is it where the toast of O'Connell and the Repeal of the Legislative Union was given?

Yes; read that.

The officer then went on to read the speech of Mr. O'Connell at the Tara banquet. This speech has been several times before the public since the opening of the trials.

When Mr. O'Connell's speech was read,

Mr. Smyly referred the Clerk of the Crown to Dr. Gray's speech. It was read at full length.

Mr. Smyly read the article in the fifth column of the same paper, entitled "The *Pilot*—Repeal." The article was then read. It stated that all contributors of 20*l.* were entitled to a copy of the *Pilot* newspaper instead of a weekly paper. Mr. Smyly here concluded his references.

Mr. M'Donogh—Turn to the second page of that paper—fourth column, and read the portion commencing "it was not the least interesting feature of the meeting."

It was read accordingly.

Mr. M'Donogh—I wish to enter as read a long list of names of persons who attended the meeting.

The names were entered as read.

Mr. M'Donogh—Turn to the passage in the report of the proceedings in second column, third page, where Mr. Grattan came forward amidst loud cheers.

It was read, and was to the following effect:—"He, Mr. Grattan, had been at all times a friend to repeal, and his father had been so. He came to the county with the motto, 'Down with the Tories.'"

Mr. M'Donogh—That will do; I don't want the rest. There are several letters in the fifth column which I will enter as read. The first is from Dr. M'Hale. (They were entered as required.)

Mr. M'Donogh called for the letters of Mr. Smith O'Brien, Mr. Sharman Crawford, and Mr. Somers, M. P., and they were read.

Mr. M'Donogh—Read the passages towards the close. It is the chairman's speech proposing the toast of the "Duchess of Kent."

The Clerk of the Crown commenced reading, but was reminded by Mr. M'Donogh that he omitted reading "hear, hear."

Mr. M'Donogh—That is all with regard to the banquet. Turn now to the 5th column and read "The Great Tara Repeal demonstration."

The Clerk of the Crown read the article.

Mr. Smyly—Mr. Vernon, produce the *Nation* of of the 19th of August. The paper was produced and handed to the Clerk of the Crown.

Mr. Smyly—Turn to the 4th column, at page 706, and refer to "The Great Monster Repeal Meeting on the Hill of Tara."

Mr. Whiteside—Is it in the bill of particulars?

Mr. Smyly—It is.

The report was not read.

Mr. Smyly—Now turn to page 702 and read the article relating to the Tara meeting.

The article was here read.

Mr. Smyly—Produce the *Pilot* of the 15th of May.

Mr. Vernon produced the paper, which was given to the Clerk of the Crown.

Mr. Smyly—Turn to the 5th column, page 2, and read the "Great Repeal Demonstration at Westmeath, Mullingar meeting."

The Clerk of the Crown read the description of the meeting. Mr. Barrett, of the *Pilot*, Mr. Steele, and Dr. Gray were present.

Turn now to the banquet. The description of the banquet, and the persons present were here read.

Now pass on to the speech of Mr. Barrett to the toast of "The People."

The Clerk of the Crown here read the speech of Mr. Barrett. One passage in it was that he denied the pursuit of the repeal endangered the public peace.

The Clerk of the Crown next read the speeches of Dr. Cantwell, Bishop of Meath, and Dr. Higgins, Bishop of Ardagh, at the dinner, and then, by the direction of Mr. M'Donogh for the traversers, read the speech of Mr. O'Connell at the same dinner repudiating the idea of separation from England, and inculcating loyalty to the crown.

Mr. Smyly—Now, take the *Freeman's Journal* of the 30th of May, and read Mr. O'Connell's speech there at the Longford dinner.

The Clerk read the following :—

"Mr. O'Connell rose, when the same unbounded scene of enthusiasm was repeated. When silence was at length restored, the hon. and learned gentleman proceeded as follows :—I need not say your kindness is delightful to me. Your enthusiasm pleases me beyond the powers of expression, and the earnestness of your sympathy, not with my name but with my cause, for it is your cause, gives me the most exquisite delight. I saw the glorious scene of to-day, and it is strange. I am beginning to fear that those majestic meetings pall upon my sense by reason of their frequency. I have seen within the last ten days multitudes of my fellow-countrymen beyond the power of enumeration, all concurring in one object, and all expressing one determination, and it is time that determination should be expressed (cheers)—it is a determination that Ireland shall no longer be a pitiful province, but that she must be a nation (cheers). She possesses all the features of a nation. Nature and nature's God intended her for one, and with the assistance of that God, a nation she shall be (cheers). What have we to impede us? It will be said that we have a party in Ireland opposed to us, but what is that party?—the mere hangers on at the Castle—the paltry lookers for place and pensions—those who look for their little emoluments by the joy that they have a country to sell (hear and laughter). The barrister that expects to be made a county judge, the attorney that hopes to be made a crown prosecutor, the shoneen justice of the peace that hopes he may become a stipendiary magistrate, and the rich grazier who thinks his second son would make a good police-sergeant (loud cheers, and laughter). We have two-legged animals of that kind opposed to us, and I am glad of it, for I would not have my cause encumbered with any brutes of that sort (cheers and laughter). Yes, we have all those against us; we have expectants of every kind opposed to us, and of course the poor creatures that have got a taste of the honey spoon are naturally opposed to us (loud laughter). Now I rely on universal Ireland, on the other side. I have enumerated the only class that I could reckon on as being against us. I do not think that the Orange party are opposed to us, save a few from their prejudices may be kept aloof for the present; but let it be recollected that we are working for them as well as for ourselves, and that we cannot get one advantage that they will not share in as much as we can. No, I am not afraid of any opposition from the Orange party. It is said, to be sure, that we are looking for a Catholic ascendancy, but a little reflection will convince them that we hated the ascendancy of their church too much to tarnish our own clergy by seeking the same ascendancy for them. I am an old lawyer, and I have still the habits of my profession about me, and am glad to have here in your two bishops, two witnesses to prove my case. I will not say gentlemen of the jury, but I think I will get a fair verdict here (Mr. O'Connell here pointed to one of the galleries). To be sure the Castle is against us, and the Lord Lieutenant is fortifying himself in it (laughter). Why, over the entrance there is a statute of Justice, and the scales fell down from it the other day, while the sword is still remaining (laughter). Would you believe it, they are afraid we are going to lay seige to the Castle, and I have a notion when I return to town to do something of the kind. I will get the basket-women of Ormond market to gather rotten eggs and cabbage stumps for the purpose, and then I will send them to march against the Castle and attack it (laughter). Sir R. Peel has asserted that the Queen supported him, and that the declaration he made is hers. Now, I will tell you a secret—and I think there is enough of you here to help me to keep it—the assertion, saving your presence, is a lie (laughter and cheers). Their threat came to me at the Corn Exchange, and I there took the trouble in your name of setting them at defiance (tremendous cheers). Why, you seem to enjoy that shout (renewed cheers); but I heard a better shout to-day. I heard the shout of 200,000 Longford men echoing in the same cause. Yes, it was an arrant lie; but when they found the lie was not to frighten us (laughter), they immediately pulled in their horns, and said—'Heaven forbid that we should have a civil war in Ireland.' Heaven forbid, too, says I; but eternal infamy to him, who, being in the right, having the shield of the law to protect him, violating no law, but confining himself within the precincts of the ordinances of man and of God—confusion, I say to him who, in such a case will shrink from the contest. [The entire assembly here rose, and continued cheering for several minutes.] To be sure, others have come out against us in England, and the first and foremost of these was a Lord Beaumont, I think they call him (groans). Oh, I am ashamed of you for groaning him; but I will tell you a story about him. The man's name, I have found out, is nothing more or less than Martin Bree (loud laughter). I have it from the best authority his grandfather was a successful quack in England, whose name was Martin Bree, but being married into the family of Stapleton, his children thought proper to change their names to Stapleton, and I think they were very right, for it is much more euphonious than the name of Bree. He was a Stapleton at the time of emancipation—and I here beg your pardon for having emancipated him (laughter). There are three classes of Catholics in England. Some of those, belonging to the ancient Catholic families of the land, are persons whose merits cannot be described with accuracy they are so transcendently exalted—for example, there are the Stourtons, the hon. Mr. Langdale—and if ever there was a man deserving the name of a Catholic, and possessed of every Christian charity and virtue, it is Charles Langdale (cheers). The English Catholics were anxious to have him in parliament—they subscribed a large sum—a great deal more than was necessary—to secure his return, but he found he could not be returned in any of the English boroughs without bribing a number of the voters; and though the money was not coming out of his own pocket, still let it be spoken to his honour, as a gentleman and a Christian, he did not bribe. Lord Camoys is another of this class of Catholics. He may be led into a mistake, but his soul is one of pure honour (hear, hear). For all of this class I have the highest respect; but for the second class I have no respect at all, for they are only mongrel Catholics. Lord Beaumont could not be a lord if I had not emancipated him; and at the time I was looking for it, how often did I think that it was a cruel pity to have the measure granted when we were obliged through it to emancipate those English mongrels (hear). I knew that many of these were Catholics, because they thought it highly creditable to belong to the most ancient families, which the Catholic families were admitted to be. They liked the name of being a Catholic, but its practices were troublesome things, especially on a Friday (laughter). Lord Stanley, to be sure, spoke of a conscientious Catholic who went to hear worship with him to a Presbyterian church. Now, I have the greatest respect for the Presbyterians, but I consider that no sincere Catholic could go to their worship, or to the worship of any other sect. The doctrine of Catholics is this—we pray for everybody—we pray with none but Catholics (loud cheers, which lasted for several minutes).

"Chairman—Your definition is quite right. We pray even for the Jews.

"Mr. O'Connell—We pray, of course, for all. Lord Beamont comes out and assails my right reverend friend beside me. How dare I talk of the two as human beings on any ground of equality. Pardon me, my dear lord, I am not comparing you with him. The growling of a cur dog might as well be compared to the magic music of a female voice as the tongue of the creature to the power of your lordship's mind (cheers). The mongrel (cheers)! and then he went on and assailed the Catholic priesthood, and said your were all liars. There's a Catholic for you (loud groans). He is just such a Catholic as Henry Alexander was an Irishman. He had been chairman of ways and means in the Irish house of commons—all his friends voted against the Union, but he refused to go with them. They argued with him, but they could not convince him. At last one of them took him by the hand and said, 'Dear Harry, will you sell your country?' 'Sell my country!' says he; 'yes, and damned glad I am to have a country to sell!' (loud laughter). He is d—d glad to have a religion to sell; for nobody would have minded him at all if he had not the chance of being a Catholic, and the supposition that because he abused the Catholics of Ireland, the barking of the cur dog would be respected. I would remind him of this, that it was a Catholic Saxon lord, who, when a great victory was gained in Ireland by the English, with the assistance, unhappily, of Irishmen themselves, cried out: 'The job is not yet half done; we have slaughtered the enemy, let us now complete the good work by cutting the throats of the Irish of our own party' (oh, oh)! It was matter of history, and could not be denied; and the occasion at which it took place was the great battle of Knocktua, in the county of Galway. Lord Clifden, himself a Catholic, published a pamphlet, abusing the Irish bishops, as if he were their very fellow well met. There is no Irishman would act in such a manner. The priests here live in the hearts of the people; and how many of them who are now listening to me know the truth of what I say? Even when an Irish priest has the misfortune to fall from his high state, the people still acknowledge him not less than an archangel ruined; they remember that he is the anointed priest of God; and, like the children of Noah, they take care to turn away their looks, as they cover the misery he has created (hear, and cheers). Yes; we have the universal Irish nation swelling around us—we have the repeal wardens established in every parish throughout the land; and how delighted was I to-day at the pledge which you gave to my right reverend friend, that there would not be a parish in your diocese that would not have repeal wardens also.

"The bishop of Ardagh—Is that true? (Loud cries of 'It is,' and cheers)

"Mr. O'Connell—'To-morrow I shall be in the association, where my first business will be to hand in 1,300*l.* that I received in Tipperary (cheers). And shall such a country as ours, then, be enslaved any longer? No; I protest against it. Your children, lovely little ones that I see before me, shall not be slaves. I have such pledges gathering around myself. I have a quarter of a hundred of grand children myself (loud cheering). I have the lovely young women just springing into life. The boys rising into youth, but full of the quiet, tranquil, generous, and brave sentiment of love of fatherland; and I have the little chirping little babes, who learn as their first temporal word to lisp, 'repeal.' Their doating mothers, doating over them, surround me, and make me the more fondly cherish the broken strings of that old affection that tied me with more than earthly happiness to this world, in that period before I was left to stand desolate and alone. Oh, in her grave she does know that the counsel she gave me when my happiness depended upon her, and when my love to my country burned only next to my love for her. Both are now blended in that one sentiment—that one sentiment that makes it imperative on me to have no passion upon earth but that of the liberty of my country. The honourable and learned gentleman sat down amidst the most enthusiastic and deafening applause."

Mr. Fitzgibbon—Read the chairman's speech at the meeting on taking the chair.

Mr. Bourne read the following speech:—

"Count Nugent came forward amidst loud cheering, and said—I thank you, my lords and gentlemen, for the honour you have conferred on me to-day in electing me the chairman of this vast and most important meeting. We are assembled here to meet our illustrious countryman, the Liberator, and to join with him in the great national movement to petition for the repeal of the legislative union (hear, hear, and cheers). What are the grievances of which we complain, and which remain unredressed by the English parliament? In the first place we complain that we are obliged to support a church to which the majority of the nation does not belong. Our Protestant brethren are our fellow-countrymen, and as such we love them; but at the same time we consider it an injustice to be compelled to support their clergy (hear, hear). The next grievance which we have to complain of is the present law of tenure (loud cheers). We want a law enacted that will oblige the landlord, at the termination of the tenant's lease, to remunerate him for his improvements. Under such a law the tenant, from being a serf, would become an independent yeoman, while no man would be deprived of his own (cheers). Why are we, Irish, so anxious for the restoration of our native parliament? It is because that parliament would bring back to us that trade and prosperity which we lost at the union (hear, hear). It is then the bounden duty of every Irishman to rally round the cause of his country, to stand by repeal, and to aid by every legal and constitutional means in his power in restoring to Ireland the blessings of an independent legislature (great cheers). I shall conclude by observing that Mr. O'Connell has done us a great honour in coming amongst us; but I am sure that he feels the immense assemblage before him deserves that honour, for there are few counties in Ireland that have so hardly contested the fight of constitutional liberty as has the fine county of Longford. The chairman resumed his seat amidst loud and continued applause."

Mr. Fitzgibbon—Now read the Rev. Mr. O'Beirne's speech.

Mr. Bourne read the speech:—

"The Rev. Mr. O'Beirne, P.P., Newtownforbes, moved the first resolution. That Irishmen had ever been loyal to the throne of England was a historical fact, to which their traducers could not entertain a shadow of doubt. The loyalty of Ireland was not the loyalty of expediency. The loyalty of Ireland was a loyalty grounded on duty, on principle, and on conscience. Their bishop, and his predecessors, and their clergy, had instilled the principle in the mind of every Irishman, that kings reigned by the ordinances of God—that they had no power which was not derived from God—and that to resist that power would be to resist the ordinance of God (hear, hear, hear). Whether a Tudor, a Plantagenet, or a Stuart wielded the sceptre of England, it was always a sceptre of iron for unfortunate Ireland. It was a maxim of the English constitution that the monarch could do no wrong, and it would appear to be a maxim with the party that now surrounded the throne that the monarch could or should do no right to Ireland; but he was confident that this country

was dear to the heart of the Queen, and that she felt convinced of the truth that she could repose as much faith in Irish loyalty as the world reposes in Irish bravery (loud cheers). If an Oxford, or any English assassin, were to raise his murderous weapon against her Majesty while among the Irish nation, there was not an Irishman living who would not be rejoiced to lay down his life in her protection (cheers), and he would not give a moment's purchase for the life of the wretch who should attempt her existence. Of the two hundred thousand men then before him there was not one who would not be ambitious to offer his body as a shield to protect her life. And if the Irish people, while they entertained such feelings of affectionate loyalty, now demand a repeal of an act, which is the child of corruption, bribery, and intimidation, and which brought ruin and poverty on their country, were they, he asked, to be met by the cry of civil war (hear, hear)? He said deliberately in the presence of two bishops, of that vast congregation, and in the sight of God, that if the greatest champion they ever saw entertained views hostile to the throne of England, though they should depart from his standard with heavy hearts, the bishops and priests of Ireland would depart from his cause, even if he were the great Liberator himself (hear, hear). After proceeding at considerable length, the rev. gentleman concluded amidst loud cheers, by moving the resolution."

The court then adjourned to ten o'clock next morning.

ELEVENTH DAY.

FRIDAY, JANUARY 26.

The court sat at ten o'clock. The jury and traversers were in attendance, and Mr. Vernon's evidence was again resumed.

Mr. Smyly handed in the *Freeman's Journal* of the 4th of April, which was proved by Mr. Vernon.

Turn to the first column, third page at the top.

Mr. Bourne then read the proceedings at the weekly meeting of the association, at which John Kelch, Esq., took the chair.

Mr. Smyly—Go to the second column and read what Mr. Steele said.

Clerk of the Crown—"Mr. Steele, immediately after Mr. O'Connell sat down, came forward, and, as a repeal warden of London, presented him with an address from the repeal wardens of London on the occasion of the triumphal result of the debate in the corporation on the repeal question, and concluded amid loud applause by moving that the address be inserted on the minutes. Town Councillor White seconded the motion, which was carried amidst acclamation. Mr. O'Connell then moved that his son Maurice, having declared himself ready to accept the office of inspector of repeal wardens for Munster, be appointed to that office, which motion was put and carried. Mr. Duffy handed in 2*l.* from Newtownlimivady, and moved the admission of Messrs. Coghlan and men as members."

Mr. Smyly—Now go to the fifth column, and you'll see a letter, read it.

The Clerk of the Crown—"Mr. Ray read a letter from General Clooney. The letter contained a remittance of 6*l.*; 5*l.* of which was the subscription of one hundred associates, and 1*l.* the personal subscription of General Clooney. Mr. O'Connell moved that the general's letter be inserted on the minutes, and that the thanks of the association be given to the esteemed veteran and patriotic friend of his country, which motion was put and carried."

Mr. O'Hagan—Refer to the fourth column of the same page, and read the passage commencing with Councillor Duffy.

Clerk of the Crown (reading)—"Councillor Duffy handed in 3*l.* 2*s.*, and moved the admission of Peter C. Roche, Esq."

Mr. Smyly handed in the *Freeman's Journal* of the 31st of May, which having been proved by Mr. Vernon, was given to the Clerk of the Crown, who read from it the report of the proceedings of the repeal association on the previous day, at which Patrick Hayes, Esq., was called to the chair. Several members were admitted. Mr. O'Connell handed in 31*l.* 10*s.* from Youghal, and moved the admission of the Rev. Richard Smithy and Mr. John O'Lomasney, and having passed a high encomium on the patriotism of both gentlemen, moved their admission, which was seconded by Mr. John O'Connell, and passed unanimously. Mr. O'Connell next said that he had to correct a typographical error in the admirable report of the proceedings at Longford which appeared in the *Freeman's Journal*. He was reported to have called the soldiery of Britain 'a ruffian soldiery,' but he did no such thing; they were an exceeding well behaved set of men. He seldom or ever saw a soldier in the dock. He also spoke of the sergeants as an exceeding, and well-informed, and well-behaved body of men, and said if justice was done them one should be promoted to the rank of an officer in each company. What he said was in the words of the beautiful ballad—

'And now a sad maniac, she roams the wild common,
Against minions of Britain she warns each woman,
And sings of her father in strains more than human,
While the tear drops do fall from poor Eileen O'Moore.'"

Mr. Close requested of the Clerk of the Crown to read Mr. O'Connell's speech at the loyal national repeal association, on the 30th of May, 1843.

The Clerk of the Crown complied, and read the speech in question, which opened with an expression of Mr. O'Connell's regret that it would not be in his power to attend a repeal meeting which it was intended to hold at Glendalough, in the county Wicklow. When he called that the repeal year in January last, who could have thought that they would be able to bully Wellington and Peel, for they had bullied them out of the coercion bill—that they would laugh to scorn the unconstitutional attacks of a Lord Chancellor, or that the repeal rent would amount to 2,000*l.* a week. The speech then proceeded to allude to the state of the Irish people, and also referred to the fact of there being a larger number of children under education, taking the relative state of the population of the countries into account, in Ireland than in England. The speech then proceeded to state "That he (Mr. O'Connell) when he saw the young mind of the Irish bar coming forward to join the repeal ranks, he had every hope for Ireland. He trusted that the gentry who had hitherto kept aloof would be ashamed to remain neutral any longer; that they would enter into their natural element, and join the people as their natural leaders. He appealed to the Conservative intellect of the country—he appealed to the Conservative bar—and asked would they consent to a violation of constitutional liberty which might be afterwards used against themselves upon some future occasion, if they presumed to look for the repeal of any act of parliament which they might consider objectionable. He candidly admitted that a repeal of the union would be followed by a separation between church and state; but vested interests should be respected; the ecclesiastical revenues should be devoted to the good of all the people. They would not be appropriated to the use of the Catholic clergy, who were too pure and virtuous to endure the contact of state emoluments. The Ca-

tholics were three times in power since the Reformation, but he defied the most inveterate Orangeman to show an instance in which the Catholics passed a law for the persecution of Protestants. He begged the Protestants of Ireland to recollect that the majority of the Irish house of lords would be Protestant; out of 120 peers there would be scarcely 20 Catholics, and how could they fear any persecuting law against them could pass in such a house. The house of commons would take care of Catholic rights—the house of lords of Protestant rights. He threw out these hints to the Protestant nobility and gentry—for in the moment of triumph he did what he would not do, when the repealers were weak. He implored of them to listen to him. The repealers were strong now, and they were inclined to be humble towards their countrymen who differed from them, and to implore their assistance, which they did not do while they were weak, that they might take part in the agitation, and see it in all its details; and regulate it in such a manner that it could not possibly infringe on the right of any Protestant, Presbyterian, or Dissenter in the kingdom. Let them come to him, so help him God, he would assist them. The present Lord Chancellor, in the interim of making out the writs of *supersedeas* for the repeal magistrates, was very fond of investigating into the management of lunatic asylums, and made an agreement with the Surgeon-General to visit, without any previous intimation, a lunatic asylum kept by Dr. Duncan, in this city. Some person sent word to the asylum that a patient was to be sent there in a carriage that day, who was a smart little man, that thought himself one of the judges, or some great person of that sort, and who was to be detained there (laughter). Doctor Duncan was out, when Sir Edward Sugden came there in half an hour afterwards, and on knocking at the door he was admitted and received by the keeper. He appeared to be very talkative, but the attendants humoured him, and answered all his questions. He asked if the Surgeon-General had arrived, and the keeper answered him that he was not yet come, but that he would be there immediately. 'Well,' said he, 'I will inspect some of the rooms until he arrives.' 'Oh, no, sir,' said the keeper, 'we could not permit that at all.' 'Then, I will walk for a while in the garden,' said his lordship, 'while I am waiting for him.' 'We cannot let you go there either,' said the keeper (laughter). 'But,' said he, 'don't you know that I am the Lord Chancellor?' 'Sir,' said the keeper, 'we have four more Lord Chancellors here already' (laughter). He (Mr. O'C.) verily believed that the Chancellor caught the fury of superseding the magistrates while he was in Dr. Duncan's asylum, and it would be exceedingly fortunate if the rest of the ministry were there with him (laughter)."

Mr. Close—Go to the report of the Longford meeting.

The Clerk of the Crown then read the speech of Mr. O'Connell proposing the health of the Bishop of Ardagh, and the speech of the bishop in returning thanks. The next health proposed was that of the Bishop of Meath, and the right rev. prelate in returning thanks said he cordially concurred in every expression used by the Bishop of Ardagh.

Mr. Smyly—Produce the *Pilot* of the 5th of July.

The paper was produced.

Mr. Smyly—Did it come from your office? It did.

Turn to page 2 and read the article in the fifth column, headed "Repeal is Coming—The Affairs of Spain."

The article was read, and after alluding to what had taken place in Spain, it concluded with the words "Repeal will not then be coming but be at hand."

Refer now to the next column, and read the opening of the proceedings of the Repeal Association.

Mr. Vernon read accordingly, also the speech of Mr. O'Connell at the same meeting, with regard to some American correspondence.

A letter from James Tobyn, dated Halifax, and addressed to Mr. Ray, was also read, and handed in.

Mr. Smyly—Read the speech of Mr. Steele upon the resolution of St. Andrew's ward, appointing Dr. Murphy Repeal Warden.

Mr. Vernon read the speech, and also Mr. O'Connell's speech on proposing Dr. Murphy.

A speech of Mr. John O'Connell on handing in money from Kilgibbin and Kilbride was read—also a speech of Doctor Gray, handing in money from Castlepollock.

Mr. Smyly—Produce the *Freeman's Journal* of the 23d of August.

The paper was produced.

Mr. Smyly—Refer to the second page, and read under the heading of the "Loyal National Repeal Association."

Mr. Vernon—Read the opening of the proceedings of the association.

Mr. Smyly—Read the speech of Mr. John O'Connell at the end of the last column.

The speech of Mr. John O'Connell handing in some money from the Rev. Mr. Wynne was read, also the speech of Doctor Gray, handing in 31*l.* from Fermanagh.

Mr. Smyly—Turn to the next page, third column, and read the speech of Mr. O'Connell.

Mr. Vernon accordingly read the speech of Mr. O'Connell. The honorable gentleman commenced by referring to the meeting of Tara, which he described as most peaceful. The following leading article was also read from the same paper:—

"NATIONAL MANIFESTO.

"The meeting of the repeal association yesterday was characterised by the publication of the most important manifesto that has yet issued from that body. A perilous crisis in our history has arrived, but there are men equal to the time, and superior to the perils. The fate of Ireland for generations to come is in the hands of the men of the present age. It is with them to say shall she be again a nation, or shall she continue to be a degraded province—her sons the slaves—herself the draw-farm—of another kingdom. For months past has the leader of the Irish people been engaged in taking counsel by the hill side—on the mountain top with thousands, and tens of thousands of his countrymen. He has met the people in the majesty of their numbers—he has met their friends and advisers—their local leaders. Already have our SIX millions of people answered to his call and declared to him their will. He knows then he has the best, the most satisfactory means of accurately ascertaining the will of the Irish people, and that will as their recognised leader—he yesterday authoritatively declared to be—that the Union though binding as a law 'is not obligatory on conscience.'

"The time has arrived—and we say it emphatically—when our rulers should know our determination. The kingdom is now thoroughly organised through its length and breadth. The people meet in tens, in twenties, or in thousands. Repeal is their rallying cry—their watchword—their end. The manifesto of yesterday is but the echo of the people's voice; and it should go to our rulers and be spreading among the nations of the earth in a form that will at once give it the character of an enduring vitality, and the solemnity of a national declaration.

"[We will not to-day do more than refer to the document which will be accompanying our report of the other proceedings. It will be found that it

bears the impress of the cool and reflecting statesman. The calm tone, the solemnity of the declaration, and the moderation that is manifested throughout, entitle it to be ranked among the first and most important state papers of our age.]"

Mr. Close—Turn to the speech of Mr. O'Connell in reference to the letter of Mr. M'Kenna.

Mr. Vernon then read the passage:—"Mr. O'Connell was anxious to correct an error into which the writer seemed to have fallen. He supposed that the *Nation* was the organ of the association. There were many liberal newspapers that published their proceedings, which the association respected; but no paper was the organ of the association, nor was it to be held responsible for anything which appeared in any newspaper. He should be happy if he could prevail on the gentlemen of the press to publish Mr. M'Kenna's letter."

The *Freeman's Journal*, of the 24th of August, was then put in, and the proceedings of the repeal association of the preceding day were read. Jeremiah Dunn, Esq., was in the chair. At this meeting Dr. Gray brought forward a report of the sub-committee of the appointment of the arbitrators. The report was read, and also Mr. O'Connell's address, expressing his high approbation of the clear and able report; it concluded with the names of the arbitrators appointed. The *Pilot*, of March 10th, was then put in, and the leading article, called "Repeal—America," read.

The Clerk of the Crown then read from the *Pilot* of the 10th of March, 1843, an article on repeal in America.

Mr. Smyly—Now turn, if you please, to the report of Mr. Tyler's speech at the repeal meeting at Washington.

The Clerk of the Crown read several extracts from the speech referred to.

Mr. M'Donogh—Turn, if you please, to the 1st column of the fourth page of the same paper, and read the seventh resolution agreed to at a meeting of the house-painters.

The Clerk of the Crown—The report is headed "Repeal Board of Trade." Is it not?

Mr. M'Donogh—Yes, it is. Read the seventh resolution, if you please.

The Clerk of the Crown read the resolution referred to. The resolution alluded in the first instance to the injury which the trade had sustained in consequence of the union; and they proceeded to observe, that previous to the year 1800 there were in Dublin 436 house-painters, who were kept in regular employment, and received excellent wages, whereas there were at present but 60, of whom a mere fractional number were able to procure employment, and even these were compelled to work for any wages they could get.

Mr. Smyly then requested of Mr. Vernon to read from the *Nation* of April the 1st, the lines entitled—"The Memory of the Dead."

Mr. Vernon read the poem in question.

[Mr. Vernon read those verses with great effect, and when he had concluded a universal murmur of approbation pervaded the court. The reader will find the verses in the opening statement of the Attorney-General].

The Clerk of the Crown continued to read "Mr. Charles Gavan Duffy said he had the pleasure of handing in 5*l.* from Castleblayney."

Mr. Smyly—Go to page 388 in the third column.

Clerk of the Crown—I have a letter here directed to Mr. Duffy.

Mr. Smyly—Read it.

The Clerk of the Crown read the letter, which was signed James Lowrey, and he subsequently read in the acknowledgment of the sums received at the association the following—"Castleblayney, per Mr. Duffy, *Nation*, 5*l.*," and subsequently a passage in reference to it, "Mr. O'Connell—When the northerns go about doing a thing they do it properly (cheers)." (Laughter in court.)

Mr. Smyly—Now read the article in the *Nation* of the 29th of April, headed, "Something is Coming."

This Mr. Bourne proceeded to do.

When the officer concluded the reading of the article, Mr. Smyly desired him to read the article in the *Nation*, headed "Our Nationality," which he did. [Extracts from both articles appear in the opening statement.]

The next article read by the officer was a letter dated Donegal, 21st April, 1843, which was addressed to Mr. Duffy, and signed George O'Flaherty. The letter contained subscriptions, and a list of names to be proposed as members of the association. He then read a report of the repeal association.

Mr. Whiteside—Mr. Vernon, will you have the goodness to turn to page 256 of that paper, and read the poetry headed, "To my Beautiful, my Own," by Ulick O'Shane.

Mr. Vernon then read the poetry, and read it well, amidst great laughter. It had nothing whatever to do with the trial, and would appear to have been called for by counsel to season the sonorousness which had somehow crept upon the court by this long series of readings.

At the termination, Mr. Whiteside, addressing Mr. Vernon with a peculiar and happy theatrical gesture, said—I thank you.

After the laughter had subsided, Mr. Smyly called for the *Pilot* of the 28th of August, and the Clerk of the Crown read from it an article headed "The Battle of Tara." It was to the effect that at that battle the insurgents were intoxicated, and that if they had been sober they would have kept possession of the two pieces of cannon, and beaten the king's troops; and, in the opinion of Sir Richard Musgrave, success at Tara would have insured a general insurrection.

The proceedings of the association, as given in the same paper, were then referred to; and also a resolution, which was proposed by Mr. O'Connell, to the effect, that "the committee be empowered to enter into arrangements with the proprietors of the *Pilot* and *Evening Freeman* for the publication of supplements to these papers."

Mr. Smyly next called for an article to be read contained in the same paper, entitled "The Duties of Soldiers." It was a letter from the Rev. Mr. Power to the editor of the *Pilot*, and will be found referred to, and extracts quoted in the opening statement.

The court having resumed,

Mr. Smyly directed the officer to read the article from the *Pilot* of the 6th of September, called the "Irish in the English army." It alluded to the prohibition against the soldiery in Montreal reading the *Weekly Register*, admitting that its articles might be unpalateable to "military martinets and drill-murderers," and citing the cases of M'Manus and George Jubee; the first of whom died from the effects of excessive drill; and the latter shot his adjutant.

Mr. M'Donogh—Turn to the 3d page, 4th column. The passage was read, consisting of Mr. O'Connell's animadversions on a circumstance that occurred at a short distance from Dundalk, on Thursday, the 17th of August, when a person named Callaghan, accompanied by others, compelled nineteen persons to pay a shilling each to the repeal fund. Mr. O'Connell animadverted in strong language on the impropriety of Callaghan's conduct; he had gone round collecting repeal rent, under intimidation. The persons so intimidated might enter a prosecution at law against him, and ought to have done so. The association ought not to keep a shilling of this money;

it ought to be returned, and the names of the persons giving it struck off the list. He moved that Mr. Callaghan be dismissed, and that he be no longer regarded as a member of the association. He also moved that the money be returned to those nineteen persons, and that their names be taken off the list of repealers. This motion was seconded and carried.

Mr. M'Donogh requested the officer to turn to the first column of the first page.

This was done, and the requisition to Mr. O'Connell read to attend a meeting and dinner at Loughrea, for the purpose of discussing the question of the repeal of the legislative union. The advertisement was signed by the Archbishop of Tuam, Lord Ffrench, Sir Valentine Blake, Bart. M.P., M. Blake, Esq. M.P., R. D. Browne, &c.

The *Pilot* of the 25th of September was then put in, and the following leader read from it, entitled—"The Army, the People, and the Government."

Mr. Smyly—Turn to the next column, if you please, and read the article headed "Rumoured death of General Jackson."

Mr. Vernon read from the *Pilot* of the 25th September, 1842, the article in question.

Mr. Smyly—Have you got the *Pilot* of the 6th of October? Yes. Newspaper handed in.

Mr. Smyly—Turn to the leading article in the second page, headed "The Battle of Clontarf."

The witness then read the article which described and commented on the battle.

Mr. Smyly—Read the last sentence, and you may pass over the description of the battle.

Witness (reading)—And the Irish people of the present day, should they be driven to it, will imitate the conduct of the brave Tipperary men, the former Dalcassians.

Mr. Smyly—That'll do.

Now take the *Nation* of September 30, 1843, and read the advertisement headed "Repeal Cavalry."

Mr. Vernon read the advertisement at length, as read in the opening statement of the Attorney-General.

Mr. Smyly—Look to an entry in the list of repeal subscriptions in the *Nation* of that date, in which Mr. Duffy's name is mentioned.

The Clerk of the Crown read the entry, which was a remittance of 45*l.* 16s. per Charles G. Duffy, editor of the *Nation*.

Mr. Whiteside requested him to look to page 10 in the *Nation* of the 3d of September.

The Clerk of the Crown referred to the page. It contained a letter, copied from the *Warder*, signed by a gentleman, who said "he declined signing the Protestant Declaration, from the conviction that those who signed it were not the real friends of the country. The distress of Ireland was such that repeal or something of the kind was necessary to alleviate her condition."

[At this moment Mr. William Smith O'Brien, M.P., came into court, and sat at the traversers' bar.]

Mr. Smyly read the advertisement in the *Freeman* of October 3, 1843, headed "Repealers on Horseback—Clontarf Meeting, Sunday, 8th October."

Mr. Vernon then read a report of the repeal association out of the *Freeman's Journal* of the 29th September, and also a list of subscriptions handed in on that occasion by Mr. Duffy; and out of the *Pilot* of the same date; he also read a list of subscriptions and names as handed in by Mr. Duffy.

The Attorney-General said there were some documents read before, and he would enter them as read, lest there might be any mistake about the matter. Let the officer read the names of the documents, and he would enter them as read.

Mr. Bourne said the first document was a letter from Tuam, dated 29th September, 1843.

Judge Crampton—It is published in the paper of the 29th September.

Mr. M'Donogh said he would enter a short article, or rather a passage of a speech from Mr. O'Connell on ribbonism, as read by him.

Mr. Bourne—Very well; the first document is a letter from Tuam, dated 29th of August, and signed John, Archbishop of Tuam.

Attorney-General—We will not read that; hand it back to Mr. Kemmis.

Mr. Bourne then read the heads of letters from the following places—one from Loughrea, dated 2d October, 1843, signed Patrick Skerrett; from Mountrath, with the names of arbitrators. Letter from Collinstown to Mr. Ray, and signed Edward Kearney; another letter signed H. Daly, from Wicklow.

A letter from Mullingar of the 21st September, 1843, signed John Cantwell, a certificate of the character of an arbitrator, and a copy of the form of an award and deed of submission to arbitration, were handed in and read. Also the new form of a members' card, a letter from the author of the "Green Book," and the printed paper relating to the dreadful slaughter at Mullaghmast.

CHARLES OVENDEN SWORN AND EXAMINED BY MR. BREWSTER.

Is an inspector of the Dublin police; knows Dr. Gray and Mr. John O'Connell; saw Mr. John O'Connell in court; saw both acting as arbitrators; saw Dr. Gray act but once as arbitrator; has seen Mr. John O'Connell several times in court; saw him first on the 17th of October; saw him subsequently several times; I took no notes of what occurred when I was there, as I never thought it would be necessary; I had no instructions to do so; the first time I attended there was one case gone into; there was no case subsequently.

CROSS-EXAMINED BY MR. HATCHELL.

Were you there at the commencement on the first day? No, not exactly,

What hour were you there? On the first day about a quarter before eleven.

Was there any obstruction given to you? Quite the reverse.

What do you mean by the "reverse?" There was the greatest kindness shown to me.

Who were present upon that occasion? Mr. John O'Connell, Dr. Gray, and several other gentlemen.

Was it not a public reading-room? Yes.

Those gentlemen then were sitting in a public reading-room? Yes, but I never saw them there before.

Before anything was said or done did they not state that they had no power to make any decision except the parties consented? Yes, they did.

Did you see any fees paid? I did not.

No fees? No.

No professional dress worn? No.

These persons who wanted to have their differences settled did they consent? They did.

What was done in this case? There was nothing done—the case was adjourned to Kingstown.

Then you did not see any case decided? I did not.

How did you go there? How were you dressed? In my uniform.

Did you go there by the direction of the arbitrators? No.

Did you go there, then, as a tipstaff, a crier, or inspector of police? I went in my own uniform as a police officer.

Had you previously said you would attend? No.

Did you say what brought you there? No, I merely walked in and sat down.

Did you see any oaths administered? I did not.

The case was adjourned to Kingstown? It was.

Did you go there? I did not.

The witness then withdrew.

The Inspector of the Metropolitan Police at Kingstown had just come on the table after the last witness had retired, when

The Attorney-General immediately rose and said that the case for the crown had closed. It was then exactly half-past three o'clock.

Mr. Moore, after a short pause, rose and said that Mr. Sheil, who was to open the case on the part of the traversers, had been unwell for the last two or three days. He had been sent for to-day, and he stated that he had a slight attack of gout which confined him to his bed, but he would be able to attend to-morrow. Under these circumstances, and considering that it now approached four o'clock, and also considering the magnitude of the case, he trusted the court would wait and not press the case. It had been arranged amongst the counsel for the traversers that Mr. Sheil would open the case on the part of Mr. John O'Connell, and it would disturb the arrangements if Mr. Sheil was not waited for.

The Chief Justice said he thought the application was a very reasonable one.

The trial was accordingly postponed, and the court rose.

TWELFTH DAY.

SATURDAY, JANUARY 27.

The full court sat this morning precisely at ten o'clock. It being publicly known that the case for the crown had terminated, and that the Right Hon. R. L. Sheil, Q.C. and M.P., was to open the case for the defence, the greatest anxiety was manifested to secure places in the court. The hall of the courts and the adjoining avenues were thronged to excess at an early hour. The interior presented a very striking appearance, and every part of it was crowded almost to inconvenience. Never on any occasion were there observed, at least in the metropolis, so many elegantly-attired females in a court of justice. Many of the nobility, with their families then in town, who could procure admission, were present. Amongst the personages in court were the Countess of Donoughmore, Lady Sugden, Mrs. J. Gray, Mrs. Fitzgibbon, the Archbishop of Tuam, the Bishop of Ardagh, Mr. William Smith O'Brien, M.P., Robert D. Browne, M.P., and several other influential and popular gentlemen. When the judges had taken their seats the most death-like silence prevailed, and every eye was turned in the direction of the great orator and advocate who was to open the case, and when he rose to address the jury we have never witnessed a more impressive or solemn scene, and never was expectancy so well sustained.

MR. SHEIL, Q.C., IN DEFENCE OF MR. JOHN O'CONNELL.

The Right Hon. gentleman spoke as follows:—May it please your lordships and gentlemen of the jury, I am counsel for Mr. John O'Connell. The importance of this case is not susceptible of exaggeration, and I do not speak in the language of hyperbole when I say that the attention of the empire is directed to the spot in which we are assembled. How great is the trust reposed in you—how great is the task which I have undertaken to perform? Conscious of its magnitude, I have risen to address you, not unmoved, but undismayed; no—not unmoved—for at this moment how many incidents of my own political life come back upon me, when I look upon my great political benefactor, my deliverer, and my friend; but of the emotion by which I acknowledge myself to be profoundly stirred, although I will not permit myself to be subdued by it, solicitude forms no part. I have great reliance upon you—upon the ascendancy of principle over prejudice in your minds; and I am not entirely without reliance upon myself. I do not speak in the language of vain-glorious self-complacency when I say this. I know that I am surrounded by men infinitely superior to me in every forensic, and in almost every intellectual qualification. My confidence is derived, not from any overweening estimate of my own faculties, but from a thorough conviction of the innocence of my client. I know, and I appear in some sort not only as an advocate but a witness before you, I know him to be innocent of the misdeeds laid to his charge. The same blood flows through their veins—the same feelings circulate through their hearts:—the son and the father are in all political regards the same, and with the father I have toiled in no dishonourable companionship for more than half my life in that great work, which it is his chief praise that it was conceived in the spirit of peace—that in the spirit of peace it was carried out—and that in the spirit of peace it was brought by him to its glorious consummation. I am acquainted with every feature of his character, with his thoughts, hopes, fears, aspirations. I have—if I may venture to say—a full cognizance of every pulsation of his heart. I know—I am sure as that I am a living man—that from the sanguinary misdeeds imputed to him, he shrinks with abhorrence. It is this persuasion—profound, impassioned—and I trust that it will prove contagious—which will sustain me in the midst of the exhaustion incidental to this lengthened trial; will enable me to overcome the illness under which I am at this moment labouring; will raise me to the height of this great argument, and lift me to a level with the lofty topics which I shall have occasion to treat in resisting a prosecution, to which in the annals of criminal jurisprudence in this country no parallel can be found. Gentlemen, the Attorney-General, in a statement of eleven or twelve hours' duration, read a long series of extracts from speeches and publications, extending over a period of nearly nine months. At the termination of every passage which was cited by him, he gave utterance to expressions of strong resentment against the men by whom sentiments so noxious were circulated, in language most envenomed. If, gentlemen of the jury, his anger was not stimulated; if his indignation was not merely official; if he spoke as he felt, how does it come to pass that no single step was ever taken by him for the purpose of arresting the progress of an evil represented by him to be so calamitous? He told you that the country was traversed by incendiaries who set fire to the passions of the people; the whole fabric of society, according to the Attorney-General, for the last nine months has been in a blaze; wherefore then did he stand with folded arms to gaze at the conflagration? Where were the castle fire-engines—where was the indictment—and of *ex officio* information, what had become? Is there not too much reason to think that a project was formed, or rather that a plot was concocted, to decoy and ensnare the traversers, and that a connivance, amounting almost to sanction, was deliberately adopted as a part of the policy of the government, in order to betray the traversers into indiscretions of which advantage was, in due time, to be taken? I have heard it said that it was criminal to tell the people to "bide their time;" but is the government to "bide its time," in order to turn popular excitement to a useful official account? The public prosecutor who gives an indirect encouragement to agitation, in order that he may afterwards more effectually fall upon it, bears some moral affinity to the informer, who provokes the crime from whose denunciation his ignominious livelihood is derived. Has the Attorney-General adopted a course worthy of his great office—worthy of the ostensible head of the Irish bar, and the representative of its intellect in the house of commons? (a laugh.) Is it befitting that the successor of Saurin, and of Plunket, who should "keep watch and ward" from his high station over the public

safety, should descend to the performance of functions worthy only of a commissary of the French police; and in place of being the sentinel, should become the "Artful Dodger" of the state? But what, you may ask, could be the motive of the right hon. gentleman for pursuing the course he has adopted, and for which no explanation has been attempted by him? He could not have obtained any advantage signally serviceable to his party by prosecuting Mr. Barrett, or Mr. Duffy, or Dr. Gray, for strong articles in their newspapers; or by prosecuting Mr. Steele or Mr. Tierney, for attending unlawful assemblies. He did not fish with lines—if I may avail myself of an illustration derived from the habits of my constituents at Dungarvan—but cast a wide and nicely constructed trammel-net, in order that by a kind of miraculous catch he might take the great agitator-leviathan himself—a member of parliament, Tom Steele, three editors of newspapers, and a pair of priests in one stupendous haul together. But there was another object still more important to be gained. Had the Attorney-General prosecuted individuals for the use of violent language, or for attending unlawful meetings, each individual would have been held responsible for his own acts; but in a prosecution for conspiracy, which is open to every one of the objections applicable to constructive treason, the acts and the speeches of one man are given in evidence against another, although the latter may have been at the distance of a hundred miles when the circumstances used against him as evidence, and of which he had no sort of cognizance, took place. By prosecuting Mr. O'Connell for a conspiracy, the Attorney-General treats him exactly as if he were the editor of the *Freeman*, the editor of the *Nation*, and the editor of the *Pilot* newspapers. Indeed, if five or six other editors of newspapers in the country had been joined as traversers, for every line in their newspapers Mr. O'Connell would be held responsible. There is one English gentleman, I believe, upon that jury. If a prosecution for a conspiracy were instituted against the anti-corn law league in England, would he not think it very hard indeed that Mr. Cobden and Mr. Bright should be held answerable for every article in the *Chronicle*, in the *Globe*, and in the *Sun*? How large a portion of the case of the crown depends upon this implication of Mr. O'Connell with three Dublin newspapers? He is accused of conspiring with men who certainly never conspired with each other. For those who know anything of newspapers are aware that they are mercantile speculations—the property in them is held by shares—and that the very circumstance of their being engaged in the same politics alienates the proprietors from each other. They pay their addresses to the same mistress, and cordially detest each other. I remember to have heard Mr. Barnes, the celebrated editor of the *Times* newspaper, once ask Mr. Rogers what manner of man was a Mr. Tomkins? to which Mr. Rogers replied, "he was a dull dog, who read the *Morning Herald*." Let us turn for a moment from the repeal to the anti-repeal party. You would smile, I think, at the suggestion that Mr. Murray Mansfield and Mr. Remmy Sheehan should enter into a conspiracy together. Those gentlemen would be themselves astonished at the imputation. Suppose them to be both members of the Conservative association: would that circumstance be sufficient to sustain, in the judgment of men of plain sense, the charge of conspiracy upon them? Gentlemen, the relation in which Mr. Duffy, Mr. Barrett, and Dr. Gray stood to the repeal association, is exactly the same as that in which Mr. Staunton, the proprietor of the *Weekly Register*, stood towards the Catholic association. He was paid for his advertisements, and his newspaper contained emancipation news, and was sent to those who desired to receive it. Mr. Staunton is now a member of the repeal association; he will tell you that his connection with that body is precisely of the same character as that which existed with the celebrated body to which I have referred; he will prove to you, that over his paper Mr. O'Connell exercises no sort of control, and that all that is done by him in reference to his paper, is the result of his own free and unbiassed will. The speeches made at the association and public meetings were reported by him in the same manner as in the other public journals; he is not a conspirator; the government have not treated him as such. Why? Because there were no poems in his paper like "The Memory of the Dead," which, although in direct opposition to the feelings of Mr. O'Connell, and which he had frequently expressed, is now used in evidence against him. Gentlemen, I have said enough to you to show how formidable is this doctrine of conspiracy—of legal conspiracy—which is so far removed from all notions of actual conspiracy, to show you further how cautious you ought to be in finding eight of your fellow-citizens guilty of that charge. The defendants are indicted for conspiracy, and for nothing else. No counts are inserted for attending unlawful assemblies. The Attorney-General wants a conviction for conspiracy, and nothing else. He has deviated in these particulars from English usage—in indictments for a conspiracy, counts for attending unlawful assemblies are in England uniformly introduced. English juries have almost uniformly manifested an aversion to find men guilty of a conspiracy. Take Henry Hunt's case as an example. When that case was tried England was in a perilous condition. It had been proved before a secret committee of the house of commons, of which the present Earl of Derby, the father of Lord Stanley, was the chairman, that large bodies of men were disciplined at night in the neighbourhood of Manchester, and made familiar with the use of arms. An extensive organization existed. Vast public assemblies were held, accompanied with every revolutionary incident in furtherance of a revolutionary object—yet, an English jury would not find Henry Hunt guilty of a conspiracy, but found him guilty, on the fourth count of the indictment, for attending an unlawful assembly. Some of the Chartists were not found guilty of a conspiracy, but were found guilty upon counts from which the word "conspiracy" is left out. Gentlemen, the promises of Mr. Pitt, when the union was carried, have not been fulfilled—the prospects presented by him in his magnificent declamation have not been realised; but, if in so many other regards we have sustained a most grievous disappointment—if English capital has not adventured here—if Englishmen have preferred sinking their fortunes in the rocks of Mexico rather than embark them in speculations connected with this fine but unfortunate country—yet, from the union let one advantage be at all events derived: Let English feelings—let English principles—let English love of justice—let English horror of oppression—let English detestation of foul play—let English loathing of constructive crime, find its way amongst us! but, thank God, it is not to England that I am driven exclusively to refer for a salutary example of the aversion of twelve honest men to prosecutions for conspiracy. You remember the prosecution of Forbes, and of Handwich, and other Orangemen of an inferior class, under Lord Wellesley's administration; they were guilty of a riot in the theatre, but they were charged with having entered into a great political confederacy to upset Lord Wellesley's government, and to associate him with the "exports of Ireland." The Protestant feeling of Ireland rose—addresses were poured in from almost every district in the country, remonstrating against a proceeding which was represented as hostile to the

liberties of the country, and as a great stretch of the prerogative of the crown. The jury did their duty, and refused to convict the traversers. The Irish Catholics at that time, heated by feelings of partizanship, were rash enough to wish for a conviction. Fatal mistake! A precedent would have been created, which would soon have been converted into practice against themselves. Gentlemen, we are living in times of strange political vicissitude. God forbid that I should ever live to see the time—(for I hate to see ascendancy of every kind)—God forbid that I should ever live to see the time, or that our children should ever live to see the time, when there shall be arrayed four Catholic judges at a trial at bar upon that bench, when the entire of the government bar who shall be engaged in a public prosecution shall be Roman Catholic; and when a Catholic crown solicitor shall strike eleven Protestants from the special jury list, and leave twelve Roman Catholics in that box. I reassert it, and exclaim again, in all the sincerity of my heart, that I pray that such a spectacle never shall be exhibited in this the first criminal court in the land. I know full well the irrepressible tendency of power to abuse. We have witnessed strange things, and strange things we may yet behold. It is the duty, the solemn duty—it is the interest, the paramount interest—of every one of us, before and above everything else, to secure the great foundations of liberty—in which we all have an equal concern—from invasion, and to guard against the creation of a precedent which may enable some future attorney-general to convert the Queen's Bench into a star-chamber, and commit a further inroad upon the principles of the constitution. Gentlemen, it is my intention to show you that my client is not guilty of any of the conspiracies charged in the indictment; and in doing so I shall have occasion to advert to the several proceedings that have been adopted by the government, and to the evidence that has been laid before you. But before I proceed to that head of the division which I have traced out for myself, I shall show you what the object of my client really was; I shall show you that that object was a legal one, and that it was by legal means that he endeavoured to attain it. The Attorney-General, in a speech of considerable length—but not longer than the greatness of the occasion amply justified—adverted to a great number of diversified topics, quoted the speeches of Sir Robert Peel and of Lord John Russell—adverted to the report of the secret committee of the house of lords in 1797, and referred to the great era of Irish parliamentary independence, 1782. That he should have been so multifarious and discursive, I do not complain. In a case of this incalculable importance we should look for light wherever it can be found. I shall go somewhat farther than the year 1782; but do not imagine that I mean to enter into any lengthened narrative or elaborate expatiation. Long tracts of time may be swiftly traversed. I do not think that any writer has given a more accurate or more interesting account of the first struggle of Ireland for the assertion of her rights than Sir Walter Scott. He was a Tory. He was bred and born, perhaps, in some disrelish for Ireland; but when he came amongst us, his opinions underwent a material alteration. The man who could speak of Scotland in those noble lines which were cited in the course of this trial, with so much passionate attachment, made a just allowance for those who felt for the land of their birth the same just emotion. In his life of Swift, he says, Molyneux, the friend of Locke and of liberty, published in 1698, "The case of Ireland being bound by acts of parliament in England, stated," in which he showed with great force, "that the right of legislation, of which England "made so oppressive a use, was neither justifiable by "the plea of conquest, purchase, or precedent, and "was only submitted to from incapacity of effectual "resistance. The temper of the English House of "Commons did not brook these remonstrances. It "was unanimously voted that these bold and pernicious assertions were calculated to shake the "subordination and dependence of Ireland, as united "and annexed for ever to the crown of England, and "the vote of the house was followed by an address "to the Queen, complaining that although the woollen trade was the staple manufacture of England, "over which her legislation was accustomed to watch "with the utmost care, yet Ireland, which was dependent upon and protected by England, not contented with the linen manufacture, the liberty "whereof was indulged to her, presumed also to "apply her credit and capital to the weaving of her "own wool and woollen cloths, to the great detriment of England. Not a voice was raised in the "British House of Commons to contradict maxims "equally impolitic and tyrannical. In acting upon "these commercial restrictions, wrong was heaped "upon wrong, and insult was added to injury—with "this advantage on the side of the aggressors, "that they could intimidate the people of Ireland "into silence by raising, to drown every complaint, "the cry of 'rebel' and 'Jacobite.'" When Swift came to Ireland in 1714 he at first devoted himself to literary occupations; but at length his indignation was aroused by the monstrous wrongs which were inflicted upon his country. He was so excited by the injustice which he abhorred, that he could not forbear exclaiming to his friend Delany, "Do not the villanies of men eat into your flesh?" In 1790 he published a proposal for the use of Irish manufacture, and was charged with having endeavoured to create hostility between different classes of his Majesty's subjects, one of the charges preferred in this very indictment. At that time the judges were dependent upon the crown. They did not possess that "fixity of tenure" which is a security for their public virtue. They are now no longer, thank God, "tenants at will." They may be mistaken—they may be blinded by strong emotions—but corrupt they cannot be. The circumstances detailed in the following passage in the life of Swift could not by possibility occur in modern times. "The storm which Swift had driven was not long in bursting. It was intimated to Lord Chief Justice Whitshed by a person in great office" (this, if I remember right, was the expression used by Mr. Ross, in reference to a great unknown, who sent him here) "that Swift's pamphlet was published for the purpose of setting the two kingdoms at variance; and it was recommended that the printer should be prosecuted with the uttermost rigour. Whitshed was not a person to neglect such a hint, and the arguments of government were so successful that the grand juries of the county and city presented the dean's pamphlet as a seditious, factious, and virulent libel. Waters, the printer, was seized and forced to give great bail; but, upon his trial, the jury, though some pains had been bestowed in selecting them, brought him in not guilty; and it was not until they were worn out by the Lord Chief Justice, who detained them eleven hours, and sent them nine times to reconsider their verdict, that they, at length, reluctantly left the matter in his hands, by a special verdict; but the measures of Whitshed were too violent to be of service to the government; men's minds revolted against his iniquitous conduct." Sir Walter Scott then proceeds to give an account of the famous Draper's letters. After speaking of the first three Sir Walter Scott says, "It was now obvious, from the temper of Ireland, that the true point of difference between the two countries might safely be brought before the public." In the Draper's fourth letter, accordingly, Swift boldly treated of the royal prerogative, of the almost exclusive employment of

natives of England in places of trust and emolument in Ireland; of the dependence of that kingdom upon England, and the power assumed, contrary to truth, reason, and justice, of binding her by the laws of a parliament in which she had no representation." And, gentlemen, is it a question too bold of me to ask, whether if Ireland have no effective representation—if the wishes and feelings of the representatives of Ireland upon Irish questions are held to be of no account—if the Irish representation is utterly merged in the English, and the minister does not, by a judicious policy, endeavour to counteract it—as he might, in the opinion of many men, effectually do—is not the practical result exactly the same as if Ireland had not a single representative in parliament? Gentlemen, Swift addressed the people of Ireland upon this great topic, in language as strong as any that Daniel O'Connell has employed. "The remedy," he says, "is wholly in your own hands. * * * By the laws of God, of nations, and of your country, you are, and ought to be, as free a people as your brethren in England." "This tract," says Sir Walter Scott, "pressed at once upon the real merits of the question at issue, and the alarm was instantly taken by the English government, the necessity of supporting whose domination devolved upon Carteret, who was just landed, and accordingly a proclamation was issued offering 300*l.* reward for the discovery of the author of the Draper's fourth letter, described as a wicked and malicious pamphlet, containing several seditious and scandalous passages, highly reflecting upon his Majesty and his ministers, and tending to alienate the affections of his good subjects in England and Ireland from each other." Sir Walter, after mentioning one or two interesting anecdotes, says—"When the bill against the printer of the Draper's letters was about to be presented to the grand jury, Swift addressed to that body a paper entitled 'Seasonable Advice,' exhorting them to remember the story of the Leyone mode by which the wolves were placed with the sheep on condition of parting with their shepherds and mastiffs, after which they ravaged the flock at pleasure." A few spirited verses, addressed to the citizens at large, and enforcing similar topics, are subscribed by the Draper's initials, and are doubtless Swift's own composition, alluding to the charge that he had gone too far in leaving the discussion of Wood's project to treat of the alleged dependence of Ireland. He concludes in these lines—

If then, oppression has not quite subdued
At once your prudence and your gratitude—
If you yourselves conspire not your undoing—
And don't deserve, and won't bring down your ruin—
If yet to virtue you have some pretence—
If yet you are not lost to common sense,
Assist your patriots in your own defence;
That stupid cant, "he went too far," despise,
And know that to be brave is to be wise;
Think how he struggled for your liberty,
And give him freedom while yourselves are free.

At the same time was circulated the memorable and apt quotation from scripture, by a Quaker (I don't know, gentlemen, whether his name was Robinson, but it ought to have been)—"And the people said unto Saul, shall Jonathan die who hath wrought thy great salvation in Israel? God forbid! As the Lord liveth there shall not one hair of his head fall to the ground, for he hath wrought with God this day; so the people rescued Jonathan, and he died not." Thus admonished by verse, law, and scripture, the grand jury assembled. It was in vain that the Lord Chief Justice Whitshed, who had denounced the dean's former tract as seditious, and procured a verdict against the prisoner, exerted himself upon a similar occasion. The hour for intimidation was passed. Sir Walter Scott, after detailing instances of the violence of Whitshed, and describing the rest of the dean's letters, says—"Thus victoriously terminated the first grand struggle for the independence of Ireland. The eyes of the kingdom were now moved with one consent upon the man by whose unbending fortitude and pre-eminent talent this triumph was accomplished. The Draper's head became a sign; his portrait was engraved, worn upon handkerchiefs, struck upon medals, and displayed in every possible manner as the *Liberator* of Ireland." Well might that epithet "grand," be applied to the first great struggle of the people of Ireland by that immortal Scotchman, who was himself so "grand of soul," and who of mental loftiness, as well as of the magnificence of external nature, had a perception so fine, and well might our own Grattan, who so great and so good, in referring to his own achievement in 1782, address to the spirit of Swift and to the spirit of Molyneux his enthusiastic invocation,—and may not I, in such a cause as this, without irreverence, offer up my prayer, that of the spirit by which the soul of Henry Grattan was itself inflamed, every remnant in the bosoms of my countrymen may not be extinguished. A prosecution was not instituted against the great conspirators of 1782. The English minister had been taught in the struggles between England and her colonies a lesson from adversity, that school-mistress, the only one from whom ministers ever learn anything—who charges so much blood, so much gold, and such torrents of tears, for her instructions. In reading the history of that time, and in tracing the gradual descent of England from the tone of despotic dictation to the reluctant acknowledgment of disaster, and to the ignominious confession of defeat, how many painful considerations are presented to us! If in time—if the English minister in time had listened to the eloquent warnings of Chatham, or to the still more oracular admonitions of Edmund Burke, what a world of woe would have been avoided! By some fatality, England was first demented, and then was lost. Her repentance followed her perdition. The colonies were lost; but Ireland was saved by the timely recognition of the great principle on which her independence was founded. No attorney-general was found bold enough to prosecute Flood and Grattan for a conspiracy. With what scorn would twelve Irishmen have repudiated the presumptuous functionary by whom such an enterprise should have been attempted. Irishmen then felt that they had a country; they acted under the influence of that instinct of nationality, which, for his providential purposes, the author of nature has implanted in us. We were then a nation—we were not broken into fragments by those dissensions by which we are at once enfeebled and degraded. If we were eight millions of Protestants (and, heaven forgive me, there are moments when, looking at the wrongs done to my country, I have been betrayed into the guilty desire that we all were); but, if we were eight millions of Protestants, should we be used as we are? Should we see every office of dignity and emolument in this country filled by the natives of the sister island? Should we see the just expenditure requisite for the improvement of our country denied? Should we see the quit and crown rents of Ireland applied to the improvement of Charing-Cross or of Windsor Castle? Should we submit to the odious distinctions between Englishmen and Irishmen introduced into almost every act of legislation? Should we bear with an arms' bill, by which the bill of rights is set at nought? Should we brook the misapplication of a poor law? Should we allow the parliament to proceed as if we had not a voice in the legislature? Should we submit to our present inadequate representation? Should we allow a new tariff to be introduced, without giving us the slightest equivalent for the manifest loss we have

sustained? And should we not peremptorily require that the imperial parliament should hold a periodical sessions for the transaction of Irish business in the metropolis of a powerful, and, as it then would be, an undivided country? But we are prevented by our wretched religious distinctions from co-operating for a single object, by which the honour and substantial interests of our country can be promoted. Fatal, disastrous, detestable distinctions! Detestable, because they are not only repugnant to the genuine spirit of Christianity, and substitute for the charities of religion the rancorous antipathies of sect; but because they practically reduce us to a colonial dependency, make the union a name, substitute for a real union a tie of parchment which an event might sunder—convert a nation into an appurtenance, make us the footstool of the minister, the scorn of England, and the commiseration of the world. Ireland is the only country in Europe in which abominable distinctions between Protestant and Catholic are permitted to continue. In Germany, where Luther translated the Scriptures; in France, where Calvin wrote the Institutes; aye, in the land of the Dragonados and the St. Bartholomews; in the land from whence the forefathers of one of the judicial functionaries of this court, and the first ministerial officer of the court, were barbarously driven—the mutual wrongs done by Catholic and Protestant are forgiven and forgotten, while we, madmen that we are, arrayed by that fell fanaticism which, driven from every other country in Europe, has found a refuge here, precipitate ourselves upon each other in those encounters of sectarian ferocity in which our country, bleeding and lacerated, is trodden under foot. We convert the island that ought to be one of the most fortunate in the sea into a receptacle of degradation and of suffering; counteract the designs of Providence, and enter into a conspiracy for the frustration of the beneficent designs of God (great applause and clapping of hands in court.)

Chief Justice—If public feeling is exhibited again in this manner, or if the proceedings of the court are again interrupted, I must order the galleries to be cleared. (Addressing Mr. Sheil)—I am sure, Mr. Sheil, you do not wish it yourself.

Mr. Sheil—There is nothing I deprecate more, my lord; for it is not by such means that the minds of the jury are to be convinced.

The Chief Justice—Certainly not.

Mr. Sheil—I am much obliged to your lordship for interrupting me, as it has given me a few moments' rest.

The Chief Justice—Whenever you feel exhausted, sit down and rest.

The right honourable gentleman thanked his lordship and resumed his address. It is indisputable that Ireland made a progress marvellously rapid in the career of improvement which freedom had thrown open to her; she ran so fast that England was afraid of being overtaken. Mr. Pitt and Mr. Dundas concurred in stating that no country had ever advanced with more rapidity than Ireland. Her commerce and manufactures doubled; the plough climbed to the top of the mountain, and found its way into the centre of the morass. This city grew into one of the noblest capitals of the world—wealth, and rank, and genius, and eloquence, and every intellectual accomplishment, and all the attributes by which men's minds are exalted, refined, and embellished, were gathered here. The memorials of our prosperity remain. Of that prosperity architecture has left us its magnificent attestation. This temple, dedicated to justice, stands among the witnesses, silent and solemn, of the glory of Ireland, to which I may appeal. It is seen from afar off. It rises high above the smoke and din of this populous city; be it the type of that moral elevation, over every contaminating influence, to which every man who is engaged in the sacred administration of justice ought to ascend. The penal laws were enacted by slaves and relaxed by freemen. The Protestants of Ireland had been contented to kneel to England upon the Catholic's neck. They rose to a nobler attitude, and we were permitted to get up. In 1782, the Protestants of Ireland who had acquired political rights, communicated civil privileges to their fellow-subjects. In 1793 they granted us the elective franchise—a word of illustrious etymology. There can be no doubt that the final adjustment of the Catholic question upon terms satisfactory to both parties would have been effected, and without putting the country to that process of fearful agitation through which it has passed, if the rebellion of 1798, so repeatedly, and with a sincerity so unaffected, denounced by Mr. O'Connell, had not marred the hopes of the country and essentially contributed to the union. Mr. Pitt borrowed his plan of the union from that great soldier to whom the gentry of this country are under obligations so essential. It must be acknowledged, however, that they make up by the fervour of their loyalty for the republican origin of their estates. Oliver Cromwell first devised the union. He returned 400 members for England, 30 for Scotland, and as many for this country; a report of the debates in that singular assembly was preserved by Thomas Burton, who kept a diary, and is stated in that book which I hold in my hand to have been a member in the parliaments of Oliver and Richard Cromwell, from 1656 to 1659. It was published a few years ago from a MS. in the British Museum. The members from Ireland were English soldiers, who had acquired estates in Ireland. You would suppose that they were cordially welcomed by their English associates, for they were Englishmen, bred and born; and they had very materially contributed to the tranquillization of Ireland. I hope I use the most delicate and least offensive term. I acknowledge that I had anticipated as much before I read the book. What was my surprise when I found that these deputies from Ireland were considered to be in some sort contaminated by the air which they had breathed in this country, and that they were most uncourteously treated by the English members. A gentleman whose name ought to have been Copley, says, "These men are foreigners." The following is the speech:—"Mr. Gewen said, it is not for the honour of the English nation for foreigners to come and have power in this nation. They are but provinces at best." Doctor Clarges says, on behalf of Ireland, page 114, "They (the Irish) were united with you, and have always had an equal right with you. He that was king of England was king of Ireland or lord. If you give not a right to sit here, you must in justice let them have a parliament at home. How safe that will be, I question. Those that sit for them are not Irish teagues; but faithful persons." Mr. Gewen again observes—"It were better both for England and for Ireland that they had parliaments of their own. It is neither safe, just, nor honourable to admit them. Let them rather have a parliament of their own." Mr. Antie observes—"If you speak as to the convenience in relation to England, much more is to be said why those who serve for Scotland should sit here. It is one continent, and elections are easier determined; but Ireland differs. It is much fitter for them to have parliaments of their own. That was the old constitution. It will be difficult to change it, and dangerous for Ireland. They are under an impossibility of redress. . . . . Their grievances can never be redressed. Elections can never be intermixed. Though they were but a province, there were courts of justice and parliaments as free as here. . . . . I pray that they may have soon to hear their grievances in

their own nation, seeing that they cannot have them heard here." Sir Thomas Stanley observes:—"I am not to speak for Ireland, but for the English in Ireland. . . . The members for Ireland and the electors are all Englishmen, who naturally claim to have votes in making laws by which they must be governed; they have fought your battles, obtained and preserved your interests, designed by the famous long parliament, obtained by blood, and sought for by prayer solemnly." You may ask of me, wherefore is it I make these references? I answer, because the institutions of a country may change; the government may, in its form, undergo essential modifications; but the basis of the national character, like its language, remains the same, and to this very day there prevails in the feelings of Englishmen towards this country what I have ventured to call elsewhere—the instinct of domination. Towards the Protestants of Ireland, when the Papists were ground to powder, the very same feeling prevailed, of which we see manifestations to this hour. The question is not one between Catholic and Protestant; but the question is between the greater country and the smaller, which the greater country endeavours to keep under an ignominious control. The union was carried by corruption and by fear. The shrieks of the rebellion still echoed in the nation's ear. The *habeas corpus* act was suspended, and martial law had been proclaimed. The country was in a state of siege—the minister had a rod of steel for the people, and a purse of countless gold for the senator. But in the midst of that parliamentary profligacy, at which even Sir Robert Walpole would have been astonished, the genius of the country remained incorruptible—Grattan, Curran, and the rest of those famous men, whose names cast so bright a light upon this, the brightest part of our history, never for a moment yielded to a sordid or ignoble impulse. All the distinguished men of the bar were faithful to their country. Sir Jonah Barrington, in his history of the rise and fall of the Irish nation, has quoted the speeches of the most eminent men of our profession; amongst which those of Mr. Goold, who argued the question of right with equal eloquence and subtlety, Mr. Joy, Mr. Plunket, Mr. Bushe, and Mr. Saurin, are conspicuous. Lord Plunket denied the right of parliament to destroy itself. Mr. Saurin appealed to the authority of Mr. Locke. The same course was taken by Mr. Bushe, whom we have lost so lately—Bushe, whom it was impossible for those by whom the noblest eloquence was justly prized not to admire—whom it was impossible for those by whom the purest worth was justly estimated not to reverence; and whom it was impossible for those by whom a most generous and exalted nature could be appreciated, not to love. The Attorney-General has stated that the opinions of these eminent persons, delivered at the time of the Union, ought to be held in no account. What reason did he give for not attaching any value to the authority of Mr. Saurin? He said Mr. Saurin expressed his opinions in mere debate. So that the most important principles solemnly laid down in parliamentary debate are to be regarded as little better than mere forensic asseveration. I can now account for some speeches which I heard in the house of commons regarding the education question. I think, however, that if such doctrines be propounded in the house of commons itself, they would be listened to with surprise. You have heard, gentlemen, in the course of this trial, something of the morality of war, and also something of the morality of rebellion, which the right honourable gentleman was pleased to substitute as a synonyme for war; but of the morality of parliament, I trust you will not form an estimate from the specimen presented to you by her Majesty's Attorney-General. But these opinions, Mr. Attorney-General observed, were expressed before the act of parliament was passed. Surely the truth of great principles does not depend upon an act of parliament. They are not for an age, but for all time. They are immutable and imperishable. They are immortal as the mind of man, incapable of decomposition or decay. The question before you is not whether these principles are well or ill founded, but you must take the fact of their having been inculcated into your consideration, where you have to determine the intent of the men upon whose motives you have to adjudicate. The great authority to which the traversers appeal gives them a right to a political toleration upon your part, and should induce you to think that even if they were led astray, they were led astray by the authority of men with whom surely it is no discredit to coincide. But whatever we may think of the abstract validity of the union, you must bear in mind that Mr. O'Connell has again and again stated that the union being law, must, as long as it remains law, be submitted to; and all his positions regarding the validity of the union have no other object than the constitutional incitement of the people to adopt the most effectual means through which the law itself may be repealed or modified. The union was a bargain and sale—as a sale it was profligate, and the bargain was a bad one—for better terms might have been obtained, and may be still obtained, if you do not become the auxiliaries of the Attorney-General. Two-thirds of the Irish parliament were suppressed. Not a single English member was abstracted, and there can be no doubt we stood immediately after the union in such a relation towards the English members, that we became completely nullified in the house of commons. But, gentlemen, one could, perhaps, be reconciled to the terms of the union, bad as they were, if the results of the union had been beneficial to this country. We are told by some that our manufactures and our agricultural produce has greatly augmented; but what is the condition of the great bulk of the people of the country, which is, after all, the considerations which, with Christian statemen, ought to weigh the most. The greater happiness of the greater number is a Benthamite antithesis; but there is a great deal of Christianity condensed in it. When travellers from France, from Germany, from America, arrive in this country, and contemplate the frightful spectacle presented by the misery of the people, although previously prepared by descriptions of the national misery, they stand aghast at what they see, but what they could not have imagined. Why is this? If we look at other countries, and find the people in a miserable condition, we attribute the fault to the government. Are we in Ireland to attribute it to the soil, to the climate, or to some evil genius who exercises a sinister influence over our destinies? The fault, as it appears to me, is entirely in that system of policy which has been pursued by the imperial parliament, and for which the union is to be condemned. Let me see, gentlemen, whether I can make out my case. I shall go through the leading facts with great celerity; but in such a case as this I should not apprehend the imputation of being wantonly prolix. Your time is, indeed, most valuable, but the interests at stake are inestimably precious; and time will be scarce noted by you when you bear in mind that the effects of your verdict will be felt when generations have passed away—when every heart that now throbs in this great assembly shall have ceased to palpitate—when the contentions by which we were once agitated shall touch us no further; and all of us, Catholic and Protestant, Whig and Tory, Radical, and Repealer, and Conservative, shall have been gathered where all at last lie down in peace together. The first measures adopted in the imperial parliament

were a continuation of martial law, and an extended suspension of the *habeas corpus* act. Mr. Pitt was honestly anxious to carry Catholic emancipation, and to make at the same time a provision for the Roman Catholic clergy. You may—some of you may—perhaps, think that Catholic emancipation ought never to have been carried; but if it was to be carried, how much wiser would it have been to have settled it forty-four years ago, and without putting the country through that ordeal of excitement through which the imperial parliament, by the procrastination of justice, forced it to pass. Mr. Pitt, by transferring the Catholic question from the Irish to the imperial parliament, destroyed his own administration, and furnished a proof that, in place of being able to place Ireland under the protection of his great genius, he placed her under the control of the strong religious prejudices of the English people. Mr. Pitt returned to the first place in the ministry without, however, being able to make any stipulations for the fulfilment of his own engagements, or the realization of the policy which he felt to be indispensable for the peace of Ireland. The Roman Catholic question was brought forward in 1805, and was lost in an imperial house of commons. Mr. Pitt died of the battle of Austerlitz, and was succeeded by the Whigs. They proposed a measure, which the Tories, who drove them out on the "No Popery" cry, carried in 1816, and then introduced the new doctrine, that the usefulness of public measures is to be tried far less by the principles on which they were founded, than by the parties by which they were accomplished. The expulsion of the Whigs from office in 1806, may, in your judgment, have been a fortunate proceeding; but fortunate or unfortunate, it furnishes another proof that the government of Ireland had been made over, not so much to the parliament as to the great mass of the people by whom that parliament is held under control. The Tories found in the portfolio of the Whigs two measures: a draft-bill for Catholic emancipation, which the Duke of Wellington, then Sir Arthur Wellesley, the Secretary for Ireland, flung into the fire; and an arms' bill, to which clauses have been recently added, which even Mr. Shaw declared were "wantonly severe." You may conceive that an arms' bill, with all its molestations, may be required; but it is beyond question that, in the year 1819, when England was on the verge of a rebellion, no such bill was ever propounded by the British ministry; and granting, for a moment, for the sake of argument, that some such bill is requisite, how scandalously must a country have been governed for almost half a century, if this outrage upon the bill of rights be required! Having passed the arms' bill and the insurrection act, its appropriate adjunct, the imperial parliament proceeded to reduce the allowance to Maynooth. There is but one opinion regarding Maynooth, that it should be totally suppressed, or largely and munificently endowed, and that an education should be given to the Roman Catholic clergy such as a body exercising such vast influence ought to receive: there are some who think that it were better that the Catholic clergy were educated in France. I do not wish to see a Gallo-Hibernian church in Ireland. Parisian manners may be acquired at the cost of Irish morality, and I own that I am too much attached to my sovereign, and to the connection of my country with England, to desire that conductors of French ambition, that instruments of French enterprise, that agents of French intrigue, should be located in every parochial subdivision of the country. State to an English Conservative the importance of opening a career for intellectual exertion, by holding out prizes to genius at Maynooth, and he will say, it is all true. But the English government are unable to carry the measure. Why? Because the religious objections of the people of England are in the way. Another of the results of the legislative union, in 1810, a decade since the union had elapsed, the country was in a miserable condition—its destitution, its degradation, were universally felt, and by none more than the Protestants of Dublin. A requisition was addressed to the high sheriff of the city, signed by men of the greatest weight and consideration amongst us. A meeting was called; Sir James Riddle was in the chair. At that meeting Mr. O'Connell attended. He had in 1800 made his first speech against the union, and in 1810 he came forward to denounce that measure. The speech delivered by him on that occasion was precisely similar to those numerous and most powerful harangues which have been read to you. He is represented in 1844 by her Majesty's Attorney-General as influenced by the most guilty and the most unworthy motives. The people are to be arrayed, in order that at a signal they may rise, and that a sanguinary republic should be established, of which Daniel O'Connell is to be the head. If these are the objects in 1844, what were the objects in 1810? The same arguments, the same topics of declamation, the same vehement adjurations, are employed. Gentlemen of the jury, that speech will be read to you; I entreat of you to take it into your box—to compare it with the speeches read on behalf of the crown, and by that comparison to determine the course which you ought to take when the liberty of your fellow-subject is to depend upon your judgment. I am too wearied at present to read that speech, but with the permission of the court I will call on Mr. Ford to read it.

Chief Justice—Certainly.

Judge Perrin—Where did the meeting at which that speech was spoken take place?

Mr. Sheil—At the Royal Exchange.

Mr. Ford then read the following speech:—

"Mr. O'Connell declared that he offered himself to the meeting with unfeigned diffidence. He was unable to do justice to his feelings, on the great national subject on which they had met. He felt too much of personal anxiety to allow him to arrange in anything like order, the many topics which rushed upon his mind, now, that after ten years of silence and torpor, Irishmen again began to recollect their enslaved country. It was a melancholy period, those ten years, a period in which Ireland saw her artificers starved—her tradesmen begging—her merchants become bankrupts—her gentry banished—her nobility degraded. Within that period domestic turbulence broke from day to day into open violence and murder. Religious dissensions were aggravated and embittered. Credit and commerce were annihilated—taxation augmented in amount and in vexation. Besides the 'hangings off' of the ordinary assizes, we had been disgraced by the necessity that existed for holding two special commissions of death, and had been degraded by one rebellion—and to crown all, we were at length insulted by being told of our growing prosperity. This was not the painting of imagination—it borrowed nothing from fancy. It was, alas! the plain representation of the facts that had occurred. The picture in sober colours of the real state of his ill-fated country. There was not a man present but must be convinced that he did not exaggerate a single fact. There was not a man present but must know that more misery existed than he had described. Such being the history of the first ten years of the union, it would not be difficult to convince any unprejudiced man that all those calamities had sprung from that measure; Ireland was favoured by Providence with a fertile soil, an excellent situation for commerce, intersected by navigable rivers, indented at every side with safe and commodious harbours, blessed with a fruitful soil, and with a vigorous, hardy, generous, and brave

population; how did it happen, then, that the noble qualities of the Irish people were perverted? that the order of Providence was disturbed, and its blessings worse than neglected? The fatal cause was obvious—it was the union. That those deplorable effects would follow from that accursed measure was prophesied. Before the act of union passed, it had been already proved that the trade of the country and its credit must fail as capital was drawn from it—that turbulence and violence would increase when the gentry were removed to reside in another country—that the taxes should increase in the same proportion as the people became unable to pay them! But neither the arguments nor the prophetic fears have ended with our present evils. It has also been demonstrated, that as long as the union continues so long must our evils accumulate. The nature of that measure, and the experience of facts which we have now had, leave no doubt of the truth of what has been asserted respecting the future; but, if there be any still uncredulous, he can only be of those who will not submit their reason to authority. To such persons the authority of Mr. Foster, his Majesty's Chancellor of the Exchequer for Ireland, would probably be conclusive, and Mr. Foster has assured us that final ruin to our country must be the consequence of the union. I will not dwell, Mr. Sheriff, on the miseries of my country; I am disgusted with the wretchedness the union has produced, and I do not dare to trust myself with the contemplation of the accumulation of sorrow that must overwhelm the land if the union be not repealed. I beg to call the attention of the meeting to another part of the subject. The union, sir, was a violation of our national and inherent rights: a flagrant injustice. The representatives who we had elected for the short period of eight years had no authority to dispose of their country for ever. It cannot be pretended that any direct or express authority to that effect was given to them, and the nature of their delegation excludes all idea of their having any such by implication. They were the servants of the nation, empowered to consult for its good; not its masters to traffic and dispose of it at their fantasy or for their profit. I deny that the nation itself had a right to barter its independence, or to commit political suicide; but when our servants destroyed our existence as a nation, they added to the baseness of assassination all the guilt of high treason. The reasoning upon which those opinions are founded is sufficiently obvious. They require no sanction from the authority of any name; neither do I pretend to give them any weight by declaring them to be conscientiously my own; but if you want authority to induce the conviction that the union had injustice for its principle, and a crime for its basis, I appeal to that of his Majesty's present Attorney-General, Mr. Saurin, who in his place in the Irish parliament pledged his character as a lawyer and a statesman, that the union must be a violation of every moral principle, and that it was a mere question of prudence whether it should not be resisted by force. I also appeal to the opinions of the late Lord High Chancellor of Ireland, Mr. George Ponsonby, of the present Solicitor-General, Mr. Bushe, and of that splendid lawyer, Mr. Plunket. The union was therefore a manifest injustice; and it continues to be unjust at this day; it was a crime, and must be still criminal, unless it shall be ludicrously stated, that crime, like wine, improves by old age, and that time mollifies injustice into innocence. You may smile at the supposition, but in sober sadness you must be convinced that we daily suffer injustice; that every succeeding day adds only another sin to the catalogue of British vice; and that if the union continues it will only make the crime hereditary and injustice perpetual. We have been robbed, my countrymen, most foully robbed, of our birthbright, of our independence; may it not be permitted us mournfully to ask how this consummation of evil was perfected? for it was not in any disastrous battle that our liberties were struck down; no foreign invader had despoiled the land; we have not forfeited our country by any crimes; neither did we lose it by any domestic insurrection; no, the rebellion was completely put down before the union was accomplished; the Irish militia and the Irish yeomanry had put it down. How, then, have we become enslaved? Alas! England, that ought to have been to us a sister and a friend—England, whom we had loved, and fought and bled for—England, whom we have protected, and whom we do protect—England, at a period when, out of 100,000 of the seamen in her service, and 70,000 were Irish, England stole upon us like a thief in the night, and robbed us of the precious gem of our liberty, she stole from us 'that which in nought enriched her, but made us poor indeed.' Reflect, then, my friends, on the means employed to effect this disastrous measure. I do not speak of the meaner instruments of bribery and corruption. We all know that everything was put to sale—nothing profane or sacred was omitted in the union mart. Offices in the revenue, commands in the army and navy, the sacred ermine of justice, and the holy altars of God, were all profaned and polluted as the rewards of union services. By a vote in favour of the union, ignorance, incapacity, and profligacy obtained certain promotion; and our ill-fated, but beloved country was degraded to her utmost limits before she was transfixed in slavery. But I do not intend to detain you in the contemplation of those vulgar means of parliamentary success—they are within the daily routine of official management; neither will I direct your attention to the frightful recollection of that avowed fact, which is now part of history, that the rebellion itself was fomented and encouraged in order to facilitate the union. Even the rebellion was an accidental and a secondary cause—the real cause of the union lay deeper, but is quite obvious—it is to be found at once in the religious dissensions which the enemies of Ireland have created, and continued, and seek to perpetuate amongst themselves, by telling us off, and separating us into wretched sections and miserable subdivisions; they separated the Protestant from the Catholic, and the Presbyterian from both; they revived every antiquated cause of domestic animosity, and invented new pretexts of rancour; but, above all, my countrymen, they belied and calumniated us to each other, they falsely declared that we hated each other; and they continued to repeat that assertion until we came to believe it; they succeeded in producing all the madness of party and religious distinctions; and whilst we were lost in the stupor of insanity, they plundered us of our country, and left us to recover at our leisure from the horrid delusion into which we had been so artfully conducted. Such then were the means by which the union was effectuated. It has stripped us of commerce and wealth—it has degraded us, and deprived us not only of our station as a nation, but even of the name of our country—we are governed by foreigners—foreigners make our laws—for were the hundred members who nominally represent Ireland in what is called the imperial parliament—were they really our representatives, what influence could they, although unbought and unanimous, have over the 558 English and Scotch members? But what is the fact? Why, that out of the hundred, such as they are, that sit for this country, more than one-fifth know nothing of us, and are unknown to us. What, for example, do we know of Andrew Strahan, printer to the king? What can Henry Martin, barrister-at-law, care for the rights and liberties of Irishmen? Some of us may, perhaps, for our misfortunes, have been compelled to

read a verbose pamphlet of James Stevens, but who knows anything of one Crile, one Hughan, one Cackin, or of a dozen more whose names I could mention, only because I have discovered them for the purpose of speaking to you about them? what sympathy can we, in our sufferings, expect from those men? what solicitude for our interests? what are they to Ireland, or Ireland to them? No, Mr. Sheriff, we are not represented; we have no effectual share in the legislation; the thing is a mere mockery; neither is the imperial parliament competent to legislate for us: it is too unwieldy a machine to legislate with discernment for England alone; but with respect to Ireland, it has all the additional inconveniences that arise from want of interest and total ignorance. Sir, when I talk of the utter ignorance in Irish affairs of the members of the Irish parliament, I do not exaggerate or misstate; the ministers themselves are in absolute darkness with respect to this country. I undertake to demonstrate it. Sir, they have presumed to speak of the growing prosperity of Ireland; I know them to be vile and profligate; I cannot be suspected of flattering them; yet, vile as they are, I do not believe that they could have had the audacity to insert in the speech, supposed to be spoken by his Majesty, that expression, had they known that, in fact, Ireland was in abject and increasing poverty. Sir, they were content to take their information from a pensioned Frenchman, a being styled Sir Francis D'Ivernois, who, in one of the pamphlets which it is his trade to write, has proved by excellent samples of vulgar arithmetic, that manufactures are flourishing, our commerce extending, and our felicity consummate. When you detect the ministers themselves in such gross innorance as, upon such authority, to place an insulting falsehood as it were in the mouth of our revered sovereign, what think you can be the fitness of nine minor imps of legislation to make laws for Ireland? Indeed, the recent plans of taxation sufficiently evince how incompetent the present scheme of parliament is to legislate for Ireland. Had we an Irish parliament, it is impossible to conceive that they would have adopted taxes at once oppressive and unproductive; ruinous to the country, and useless to the crown. No, sir, an Irish parliament, acquainted with the state of the country, and individually interested to tax proper objects, would have, even in this season of distress, no difficulty in raising the necessary supplies. The loyalty and good sense of the Irish nation would aid them; and we should not, as now, perceive taxation unproductive of money, but abundantly fertile in discontent. There is another subject that peculiarly requires the attention of the legislature; but it is one which can be managed only by a resident and domestic parliament—it includes everything that relates to those strange and portentous disturbances which, from time to time, affright and desolate the fairest districts of the island. It is a delicate difficult subject, and one that would require the most minute knowledge of the causes that produce those disturbances, and would demand all the attention and care of men, whose individual safety was connected with the discovery of a proper remedy. I do not wish to calculate the extent of evil that may be dreaded from the outrages I allude to, if our country shall continue in the hands of foreign empirics and pretenders; but it is clear to a demonstration that no man can be attached to his king and country who does not avow the necessity of submitting the control of this political evil to the only competent tribunal—an Irish parliament. The ills of this awful moment are confined to our domestic complaints and calamities. The great enemy of the liberty of the world extends his influence and his power from the Frozen Ocean to the Straits of Gibraltar. He threatens us with invasion from the thousand ports of his vast empire; how is it possible to resist him with an impoverished, divided, and dispirited empire? If then you are loyal to your excellent monarch—if you are attached to the last relic of political freedom, can you hesitate to join in endeavouring to procure the remedy for all your calamities—the sure protection against all the threats of your enemy—the repeal of the union. Yes, restore to Irishmen their country, and you may defy the invader's force; give back to Ireland her hardy and brave population, and you have nothing to dread from foreign power. It is useless to detain the meeting longer, in detailing the miseries that the union has produced, or in pointing out the necessity that exists for its repeal. I have never met any man who did not deplore this fatal measure which had despoiled his country; nor do I believe there is a single individual in the island who could be found even to pretend approbation of that measure. I would be glad to see the face of the man, or rather of the beast, who could dare to say he thought the union wise or good—for the being who could say so must be devoid of all the feelings that distinguish humanity. With the knowledge that such were the sentiments of the universal Irish nation, how does it happen that the union has lasted for ten years? The solution of the question is easy—the union continued only because we despaired of its repeal. Upon this despair alone has it continued—yet what could be more absurd than such despair? If the Irish sentiment be but once known—if the voice of six millions be raised from Cape Clear to the Giant's Causeway—if the men most remarkable for their loyalty to their king and attachment to constitutional liberty, will come forward as the leaders of the public voice, the nation would, in an hour, grow too great for the chains that now shackle you, and the union must be repealed without commotion and without difficulty. Let the most timid amongst us compare the present probability of repealing the union with the prospect that in the year 1795 existed of that measure being ever brought about. Who in 1795 thought an union possible? Pitt dared to attempt it, and he succeeded; it only requires the resolution to attempt its repeal; in fact, it requires only to entertain the hope of repealing it, to make it impossible that the union should continue; but that pleasing hope could never exist, whilst the infernal dissensions on the score of religion were kept up. The Protestant alone could not expect to liberate his country—the Roman Catholic alone could not do it—neither could the Presbyterians—but amalgamate the three into the Irishman, and the union is repealed. Learn discretion from your enemies—they have crushed your country by fomenting religious discord, serve her by abandoning it for ever. Let each man give up his share of the mischief; let each man forsake every feeling of rancour; let, I say, not this to barter with you, my countrymen, I require no equivalent from you, whatever course you shall take, my mind is fixed; I trample under foot the Catholic claims, if they can interfere with the repeal; I abandon all wish for emancipation, if it delays the repeal. Nay, were Mr. Percival to-morrow to offer me the repeal of the union, upon the terms of re-enacting the penal code, I declare from my heart, and in the presence of my God, that I would most cheerfully embrace his offer. Let us then, my beloved countrymen, sacrifice our wicked and groundless animosities on the altar of our country; let that spirit which heretofore emanating from Dungannon spread all over the island, and gave light and liberty to the land, be again cherished amongst us—let us rally round the standard of old Ireland, and we shall easily procure that greatest of political blessings, an Irish king, an Irish house of lords, and an Irish house of commons."

Mr. Sheil then continued—Gentlemen, you have

heard that speech read from beginning to end, because that speech conveys the same sentiments, the same feelings, and inculcates the same great principles, almost in the very same language, as we find employed by Mr. O'Connell in 1843 and 1844. That long series of speeches and of writings produced by Mr. O'Connell within the last nine months, are no more than an expansion of the speech of 1810. Was he a conspirator in 1810? If so, he was engaged in a conspiracy with Sir Robert Shaw, who took the chair when the high sheriff left it, and declared that it was the boast of his life that he had opposed the union, and that he persevered in the same sentiments; and will a man in 1844 be accounted guilty of a crime verging on treason, because he has repeated the opinions which he entertained when the shade of an imputation did not rest upon him? This is a consideration to which, I am sure, that you will think that too much importance cannot be attached. At that aggregate meeting, including so large a portion of the Protestant inhabitants of this town, with the high sheriff of the Dublin corporation in the chair, a series of resolutions were passed against the union. It was determined that petitions should be presented to parliament, and that they should be entrusted to Sir Robert Shaw and to Mr. Grattan. Sir Robert Shaw, in his answer, stated that he had opposed the union in parliament, and that his opinions were unaltered. The following is the answer of Mr. Grattan, and that answer affords a proof of the falsehood of an allegation often made, that a great change of opinion had taken place in the mind of that illustrious man with respect to the legislative union:—

"Gentlemen—I have the honour to receive an address presented by your committee, and an expression of their wishes that I should present certain petitions and support the repeal of an act entitled the Act of Union; and your committee adds, that it speaks with the authority of my constituency, the freemen and freeholders of the city of Dublin. I beg to assure your committee, and through them my much-beloved und much-respected constiuents, that I shall accede to their proposition. I shall present their petitions, and shall support the repeal of the act of union with that decided attachment to our connection with Great Britain, and to that harmony between the two countries, without which the connection cannot last. I do not impair either, as I apprehend, when I assure you I shall support the repeal of the act of union. You will please to observe, that a proposition of that sort, in parliament, to be either prudent or possible, must wait till it is called for and backed by the nation. When proposed I shall then—as at all times I hope I shall—prove myself an Irishman, and that Irishman whose first and last passion was his native country.

"Henry Grattan."

"Backed by the nation." Mark that phrase. It occurs again and again in the speeches of Mr. O'Connell. Mr. O'Connell again and again declares that unless backed by the nation nothing can be accomplished by him. And if it be a crime to apply all the resources of his intellect, with an indefatigable energy, and an indomitable perseverance to the attainment of that object by the means described by Mr. Grattan in the phrase, "backed by the nation," then is the son of Daniel O'Connell guilty. It will be strange, indeed, if in the opinion of twelve men of plain sense and of sound feeling, it should be deemed a crime to seek the attainment of repeal by the only instrumentality by which Mr. Grattan said it could be effected. What is the meaning of "backed by the nation?" What is the nation? We say, the Irish Catholics, the enormous majority of the people, are the nation. You say the Irish Protestants, who have the property of the country, who are in the exclusive enjoyment of great intellectual advantages, and who are united, organised, and determined, are the Irish nation. The Irish Catholics and the Irish Protestants are both in the wrong. Neither constitute the Irish nation. Both do; and it was the sustainment of both that Mr. Grattan considered to be indispensable to make the proposition in parliament either prudent or possible. That just object—the combination of all classes and of all parties in this country—Mr. O'Connell has laboured to attain. You may think that he has laboured, and will labour in vain, to attain it; but you cannot consider it criminal to toil for its accomplishment; and if you conceive that that was his object and the object of his son—or if you have a reasonable doubt upon the subject, you are bound to acquit him. In 1812 Mr. Percival lost his life, and efforts were made to construct a cabinet favourable to emancipation; the project failed, and a state prosecution against the Catholic board was resolved on. Mr. Burrowes was the counsel for the defendants, and at the outset of his speech he boldly adverted to the fact that not a single Roman Catholic was upon the jury. He said—"I confess, gentlemen, I was astonished to find that no Roman Catholic was suffered to enter the box, when it is well known that they equal, if not exceed, Protestant persons upon other occasions; and when the question relates to privileges of which they claim a participation, and you possess a monopoly. I was astonished to see twenty-two Protestant persons, of the highest respectability, set aside by the arbitrary veto of the crown, without any alleged insufficiency, upon the sole demerit of suspected liberality. I was astonished to find a juror pressed into that box who did not deny that he was a sworn Orangeman, and another who was about to admit, until he was silenced, that he had prejudged the cause. Those occurrences, at the first aspect of them, filled me with unqualified despair. I do not say that the crown lawyers have had any concern in this revolting process, but I will say that they ought to have interfered in counteracting a selection which has insulted some of the most loyal men of this city, and must disparage any verdict which may be thus procured. But, gentlemen, upon a nearer view of the subject, I relinquish the despair by which I was actuated. I rest my hopes upon your known integrity, your deep interest in the welfare of the country, and the very disgust which yourselves must feel at the manner and motive of your array. You did not press forward into that jury box—you did not seek the exclusion, the total exclusion of any Roman Catholic—you, no doubt, would anxiously desire an intermixture of some of those enlightened Roman Catholics whom the Attorney-General declared he was certain he could convince, but whom he has not ventured to address in that box. The painful responsibility cast upon you is not of your own wishing, and I persuade myself you will, on due reflection, feel more indisposed to those who court and influence your prejudices, and would involve you in an act of deep responsibility, without that fair intermixture of opposite feelings and interest, which, by inviting discussion, and balancing affections, would promise a moderate and respected decision, than towards me, who openly attack your prejudices, and strive to arm your consciences against them. You know as well as I do that prejudice is a deadly enemy to fair investigation—that it has neither eyes nor ears for justice—that it hears and sees everything on one side—that to refute it is to exasperate it; and that, when it predominates, accusation is received as evidence, and calumny produces conviction." It might at first appear likely that a Protestant jury would take an address so bold in bad part; but they gave Mr. Burrowes credit for his manly frankness, and they acquitted the traversers. The crown resorted to a second prosecution; means

more effectual were adopted, and a conviction was obtained.. Mr. Saurin did not deny that the Roman Catholics had been excluded. He was of opinion that Protestant ascendancy should everywhere prevail, and not least in those public tribunals which are armed with so much authority, and exercise so much influence over the fortunes of the state. I did not blame Mr. Saurin. He acted, in all likelihood, conscientiously, and whatever were his faults, duplicity was certainly not amongst the number. I saw him in the height of his power and in his fall; he was meek in his prosperity, and in his adverse fortune he was serene. The lustre of adversity shone in his smile; for his faults, such as they were, his name, in an almost inevitable inheritance of antipathy, furnishes an excuse. How much more commendable was his conduct and the conduct of the government of the day, than if they had been profuse of professions they never meant to realise, and had offered an insult to the understanding as well as a gross wrong to the rights of the Irish people; and yet I shall not be surprised if, notwithstanding all that has happened, the same cant of impartiality shall be persevered in, and that we shall hear the same protestations of solicitude to make no distinction between Catholics and Protestants in all departments, but more especially in the administration of the law. The screen falls—"the little French milliner" is disclosed—"by all that is horrible, Lady Teazle;" yet Joseph preserves his self-possession, and deals in sentiment to the last. But if, after all that has befallen, my Lord Eliot shall continue to deal in sentimentality in the house of commons, the exclamation of Sir Peter Teazle, "Oh, damn your sentiment!" will break in upon him on every side. The government, as I told you, in 1812, succeeded in their state prosecution. What good for the country was effected by it? Was the Catholic question put down, or did a verdict facilitate the government of Mr. Peel, who was soon after appointed secretary for Ireland? He was an Irish member. You are surprised at the intimation. He was returned for the borough of Cashel, where a very small, but a very discriminating constituency, were made sensible of his surpassing merits. It has been remarked that young statesmen who are destined to operate upon England, are first sent to dissect in this country. Mr. Peel had a fine hand and admirable instruments, and he certainly gave proof that he would give the least possible pain in any amputations which he might afterwards have to perform. He was decorous—he avoided the language of wanton insult—endeavoured to give us the advantages of a mild despotism, and "dwelt in decencies for ever." Yet, was his Irish government, and he must have felt it, an utter failure—he must have seen, even then, the irresistible arguments in favour of Catholic emancipation; but he had not the moral intrepidity to break from his party, and to do at once what he was compelled to do afterwards. The insurrection act was renewed, the disturbances of the country were not diminished, and Ireland continued to reap the bitter fruits of imperial legislation. A new policy was tried after Mr. Peel had proceeded to England, and the notable expedient was adopted of counteracting the secretary with the lord lieutenant, and the lord lieutenant with the secretary. We had Grant against Talbot, and Wellesley against Goulburn. It is almost unnecessary to say, that a government carried on upon such a principle was incapable of good. The Roman Catholics of Ireland had been led from time to time to entertain the hope that something would be done for their relief. Their eyes were opened at last by the disingenuous dealing of George IV., who only smothered his laughter with the handkerchief with which he affected to dry his eyes; and Daniel O'Connell, feeling that liberty could never be achieved by going through the miserable routine of supplication, founded the celebrated society, by which results so great were almost immediately produced—the Catholic Association was created by him. He constructed a gigantic engine by which public opinion was to be worked—he formed with singular skill the smallest wheels of his complicated machinery, and he put it into motion by that continuous current of eloquence which gushed with an abundance so astonishing as if from a hot well from his soul. A vast organisation of the Catholic millions was accomplished; the Catholic aristocracy—the middle classes—the entire of the clergy were enrolled in this celebrated confederacy. The government became alarmed, and in 1825 a bill was brought in for the suppression of this famous league. Mr. O'Connell proceeded to London and tendered the most extensive concessions to the government. An offer was made to associate the Catholic church with the state. If the Catholic question had been adjusted in 1825, and upon the terms proposed, it is obvious that the fearful agitation that disturbed the country during the four succeeding years would have been avoided. Not only were the offers rejected, but the bill for the suppression of the Catholic association was carried. It was, however, laughed to scorn, and proved utterly inoperative. The energy of Mr. O'Connell now redoubled. The peasantry were taught to feel that the elective franchise was not a trust vested in the tenant for the benefit of the landlord. A great agrarian revolt took place, accompanied, beyond all doubt, with great evils, for which, however, those by whom justice was so long delayed, are to be held responsible; the Beresfords were overthrown in Waterford, in Louth the Foresters received a mortal blow, and at length the great Clare election gave demonstration of a moral power, whose existence had scarcely been conjectured. I remember to have seen the late Lord Fitzgerald—an accomplished and enlightened man—looking with astonishment at the vast and living mass which he beheld from a window of a room in the court-house where that extraordinary contest was carried on. There were sixty thousand men beneath him—sober, silent, fierce. He saw that something far more important than his return to parliament was at stake. Catholic emancipation was accomplished; and here I shall put two questions. The first is this—Do you think that up to the 13th of April, 1829, the day on which the royal assent was given to the Catholic relief bill, the system of government instituted and carried on, under the auspices of an imperial parliament, was so wise, so just, so salutary, so fraught with advantages to this country—so conducive to its tranquillization and to the development of its vast resources—that for nine-and-twenty years the union ought to have been regarded as a great legislative blessing to this country? The second question I shall put to you is this—Does it not occur to you that if the present indictment for a conspiracy can be sustained an indictment for a conspiracy might have been just as reasonably preferred against the men who had associated themselves for the attainment of Catholic emancipation? There is not a count in this indictment which, by the substitution of "Catholic emancipation" for "Repeal" might not have been made applicable to the great struggle of the Irish Catholics in 1828 and 1829. Money was collected by the Catholic association. In America, and more especially in Canada, strong sympathy for Catholic Ireland was expressed. In the Chamber of Deputies, M. Chateaubriand adverted to the state of Ireland in the language of minacious intimation. Enormous assemblages were held in the south of Ireland, but more especially in the county of Kilkenny. Speeches were delivered by Mr. O'Connell and by others fully as inflammatory as any which

have been read to you. What would have been thought of an indictment for a conspiracy against Mr. O'Connell, against the *Evening Post*, the *Freeman's Journal*, the *Morning Register*, Dr. Doyle, and my friend, Tom Steele, who was at that time, as he is now, a knight-errant animated by a noble chivalry against oppression in every form? Would it not have been deemed a monstrous thing to have read a very exciting article in three Roman Catholic newspapers, against the men by whom perhaps they never had been perused? Such a thing was never thought of. There were, indeed, prosecutions. The individual who now addresses you was prosecuted for a speech on the expedition of Wolfe Tone. The bills were found; but Mr. Canning declared in the cabinet that there was not a single line in the speech, which, if spoken in the house of commons, would have justified a call for order, and he denounced the prosecution as utterly unjust. The prosecution was accordingly abandoned. But, gentlemen, if I had been prosecuted for a conspiracy, and held responsible, not for my own speeches, but for those of others, in how different and how helpless a position should I have been placed? Have a care how you make a precedent in favour of such an indictment. During the last nine months, the Attorney-General had ample opportunities, if his own statement be well founded, of instituting prosecutions against individuals for what they themselves had written or done. In this proceeding, whose tardiness indicates its intent, you will not, I feel confident, become his auxiliaries. A coercion bill, if the repeal of the union is to be put down, would be preferable, for it operates as a temporary suspension of liberty, but the effects of a verdict are permanently deleterious. The doctrine of conspiracy may be applied to every combination of every kind. It is directed against the repeal association today; it may be levelled against the corn-law league to-morrow. In one word, every political society, no matter how diversified their objects, or how different their constitution, is within its reach. The Catholic question having been considered, the Tories were put out by a conspiracy formed amongst themselves. The Whigs come in and the reform bill is carried—how? A hundred and fifty thousand men assemble at Birmingham, and threaten to advance on London; a resolution not to pay taxes is passed and applauded by Lord Fitzwilliam. Lord John Russell and Lord Althorpe became the correspondents of the Birmingham union. Cumber is reduced to ashes; Bristol is on fire; the peers resist, and the Whig cabinet with one voice exclaims, "Swamp the house of lords!" And who are the men—the bold, audacious men—conspirators, indeed!—who embarked in an enterprise so fearful, and which could be only accomplished by such fearful means? You will answer, Lord Grey. Yes, Lord John Russell? To be sure. Lord Althorpe? No doubt about it. But is our list exhausted? Do you remember Mr. Hatchell asking Mr. Ross, "Pray, Mr. Ross, have you any acquaintance with Sir James Graham?" It is not wonderful that the Attorney-General should have started up and thrown his buckler over the Secretary of the Home Department. Sir James Graham has Ireland under his control. From the Home Office this prosecution directly emanates. Gamblers denounce dice—drunkards denounce debauch—against immoralities let wenchers rail. When Graham indicts for agitation his change of opinion may, for aught I know, be serious, nor have I from motives of partisanship the slightest desire, especially behind his back, to assail him; I will even go so far as to admit that his conversion may have been disinterested; but I do say that he is, of all men, the last under whose auspices a prosecution of this character ought to be carried on. The reform bill becomes the law of the land—the parliament is dissolved, and a new parliament is summoned and called together under the reform bill—and the very first measure adopted in that reformed parliament is a coercion bill for Ireland. The Attorney-General read a speech of Lord John Russell's in favour of coercion. He omitted to read the numerous speeches subsequently made by that noble person, in which his mistake with respect to Ireland is honourably confessed. Gentlemen, I shall not go through the events of the last ten years in detail. It is sufficient to point out to you the various questions by which this unfortunate country has been successively convulsed. The church question. The tithe question. The municipal bill. The registration bill. These questions, with their diversified ramifications, have not left us one moment's rest. Cabinets have been destroyed by them. The great parties in the state have fought for them. Ireland has supplied the fatal field for the encounter of contending parties. No single measure for the substantial and permanent amelioration of the country has been adopted; and here we are, at the opening of a new session of parliament, with a poor-rate on our estates, a depreciating tariff in our markets, and a state prosecution in her Majesty's Court of Queen's Bench. Such, gentlemen, are the results of the system of policy adopted in that imperial parliament whose wisdom and whose beneficence have been made the theme for such lavish panegyric. Gentlemen, I do not know your political opinions. I do not know that there is any one man among you favourable to the repeal of the union; but if every one of you are fearful of that measure becoming ultimately the occasion of a dismemberment of the empire, still its discussion may not be useless. If the councils of the state were governed by no other considerations than those which are founded upon obvious justice; or if measures were to be carried by syllogisms, and government was a mere matter of dialectics, then all great assemblages of the people should, of course, be deprecated, and every exciting adjuration addressed to the passions of the people should be strenuously reproved. But it is not by ratiocination that a redress of grievances can be obtained. The agitator must sometimes follow the example of the diplomatist, who asks for what is impossible, in order that what is possible may be obtained. It must strike the least observant that when the government complains most vehemently of demagogue audacity, their resentment is the precursor of their concessions. Take, as an example, the landlord and tenant commission, which there are some Conservatives who think will disturb the foundations of property, and against which Lord Brougham addressed his admonitory deprecation to Sir Robert Peel. For my own part, I think it may lead to results greater than were contemplated; for it appears to me to have been chiefly intended as a means of diverting public attention from the consideration of the other great grievances of the country. The main source of all these grievances, I am convinced, is to be found in the colonial policy pursued with regard to this country. The union never has been carried into effect. If it had, Ireland would not be a miserable dependant in the great imperial family. The Attorney-General expressed great indignation at the motto at Mullaghmast—"Nine millions of people cannot be dragged at the tail of any nation on earth." That sentiment is taken from a paragraph in the *Morning Chronicle* newspaper, and I have no hesitation in saying that I at once adopt it. To mere numbers, without intelligence, organization, or public spirit, I for one attach no value. But a great development of the moral prowess of Ireland has taken place. Instruction is universally diffused. The elements of literature, through which political sentiment is indirectly circulated, are taught by the state. Ireland has, if

I may so speak, undergone a species of transformation. By one who had seen her half a century ago, she would be scarcely recognised. The simultaneous, the miraculous abandonment of those habits to which Irishmen were once fatally addicted at the exhortation of an humble friar, is a strong indication of what might be done by a good government with so fine a people. Without saying that the temperance movement affords a proof of the facility with which the national enthusiasm can be organised and directed, I think it is one among the many circumstances which should induce us to think that we have come to such a pass in this country that some great measures for its security and for its happiness are required. I perceive the great literary organ of the Whig party has recently suggested many bold measures, which it represents as necessary for Ireland. There are numerous difficulties connected with some of the propositions to which I refer; but there is one which I consider to be as practicable as it is plain and just. It is recommended that the imperial parliament should sit at certain intervals in this great city. I cannot see any sound objection in the imperial parliament assembling in the month of October, for the discharge of Irish business alone, and that all imperial questions should be reserved until the London session commenced, as it now does, in the month of February. The public departments, it is true, are all located in London; but during the Irish session a reference to those departments would not be required. Such a session might be inconvenient to English members; but the repeal agitation and a state prosecution, like the present, are attended with inconveniences far greater than any which English members in crossing the Irish channel would encounter. The advantages which would accrue from the realisation of this project are of no ordinary kind. The intercourse of the two countries would be augmented to a great extent—their feelings would be identified—national prejudices would be reciprocally laid aside. An English domestication would take place. Instead of lending money upon Irish mortgages, Englishmen would buy lands in Ireland, and live upon them. The absentee drain would be diminished. The value of property would be very nearly doubled. Great public works would be undertaken, and the great natural endowments of the country would be turned to account. This city would appear in renovated splendour. Your streets would be shaken by the roll of the gorgeous equipages in which the first nobles of the country would be borne to the senate house, from which the money changers should be driven. The mansions of the aristocracy would blaze with that useful luxury which ministers to the gratification of the affluent, and to the employment and the comforts of the poor. The sovereign herself would not deem the seat of her parliament unworthy of her residence. The frippery of the viceregal court would be swept away. We should look upon royalty itself, and not upon the tinsel image; we should behold the Queen of England, of Ireland, and of Scotland in all the pomp of her imperial regality, with a diadem—the finest diadem in the world—glittering upon her brow, while her countenance beamed with the expression of that sentiment which becomes the throned monarch better than the crown. We should see her accompanied by the prince of whom it is the highest praise to say that he has proved himself to be not unworthy of her. We should see her encompassed by all the circumstances that associate endearment with respect. We should not only behold the queen, but the mother and the wife, and see her from the highest station on which a human being could be placed, presenting to her subjects the finest model of every conjugal and maternal virtue. I am not speaking in the language of a factitious enthusiasm when I speak thus. I am sure that this project is not only feasible, but easy. If the people of this country were to combine in demanding it, a demand so just and reasonable could not be long refused. It is not subject to any one of the objections which attach to the repeal question. No rupture of the two parliaments—no dismemberment of the empire is to be apprehended. Let Irishmen unite in putting forth a requisition for a purpose which the minister would not only find expedient, but inevitable. But if you, gentlemen, shall not only not assist in an undertaking so reasonable and so safe, but shall assist the Attorney-General in crushing the men who have had the boldness to complain of the grievances of their country, you will lay Ireland prostrate. Every effort for her amelioration will be idle. Every remonstrance will not only be treated with disregard, but with disdain; and for the next twenty years, we may as well relinquish every hope for our country. Gentlemen, you may strike agitation dumb—you may make millions of mutes; but beware of that dreary silence, whose gloomy taciturnity is only significant of the determination of its fearful purpose. Beware of producing a state of things which may eventuate in those incidents of horror which every good man will pray God to avert, and which will be lamented by those who contribute to their occurrence, when repentance, like that of those who are for ever doomed, shall be unavailing, and contrition shall be in vain. Gentlemen of the jury, I do not deny that strong speeches have been made by my client, and by the rest of the traversers; but I deny that those speeches, when taken altogether, bear the interpretation put upon them. To this subject I shall revert. At present I entreat you to consider whether the speeches of Mr. John O'Connell are of a more exciting and inflammatory character than those which are spoken in almost every popular assembly, whether it be Whig, Radical, or Conservative. Mr. John O'Connell proposed the health of the Queen in language of enthusiastic loyalty at Mullaghmast, and added that the speech delivered by the Queen was the speech of the ministers, and could not be justly considered as the emanation of her own unbiassed mind. This is beyond all question constitutional doctrine; although the Attorney-General took a most especial care not to mention this; indeed he made an ultra-forensic endeavour to convey to you the impresion that the traversers had spoken of her Majesty in the language of personal disrespect. He was hurried away so far by an unfortunate impetuosity as to start up during the trial and say that her Majesty had been spoken of as a fishwoman. For this most gross misrepresentation there is not the slightest shadow of foundation. In every speech in which any allusion to the Queen was made, the most profound deference was expressed for the Sovereign, who enjoys the unaltered and unalterable confidence of her Irish people. Mr. John O'Connell may have used strong expressions, but he is not indicted for them. He is indicted for a conspiracy, and for nothing else. And even if he were indicted for these strong expressions, in the uniform habit of Englishmen in their public discussions, he would find a justification. You probably have read some of the speeches made at the meetings of the Anti-Corn Law League. They were fully as violent as the repeal harangues. The aristocracy is denounced as "selfish," "sordid," and "base-hearted." A total overthrow of the existing order of society is foretold; references are made to the French Revolution, and the great proprietors of the country are warned to beware. But the Anti-Corn Law League, it may be said, is a Radical institution. How is it? The Tories themselves, when under the influence of partizanship, expressed themselves in reference to the Sovereign herself. You cannot have forgotten the contumelies heaped upon

the head of the Queen upon the resignation in 1839 of Sir Robert Peel. I will not, gentlemen, disgust you by a more distinct reference to those traitorous diatribes, in which even clergymen took part. It is better we should inquire how it is that gentlemen connected with these very prosecutions have thought it decorous to comport themselves when their own passions were excited. The name of the Right Hon. Frederick Shaw is attached to the proclamation. I hold in my hand the peroration of a speech delivered by that gentleman, and reported in the *Evening Mail*:—"The government might make what regulation it pleased; but he trusted the people knew their duty too well to submit to its enactments. We might degrade our mitres; it might deprive us of our properties; but if the government dared to lay its hand on the Bible, then we must come to an issue. We will cover it with our bodies. My friends, will you permit your brethren to call out to you in vain? In the name of my country and my country's God, I will appeal from a British house of commons to a British people. My countrymen would obey the laws so long as they were properly administered; but if it were sought to lay sacrilegious hands on the Bible, to tear the standard of the living God, and to raise a mutilated one in its stead, then it would be no time to halt between two opinions—then, in every hill and every valley would resound the rallying cry of 'To your tents, O Israel!'" I won't ask the Attorney-General of Ireland what he thinks of this, because this speech refers to a subject somewhat embarrassing to him; and what his opinions are, upon the Education Board, it is not very easy to conjecture; but I may venture to ask the Solicitor-General, who is himself a commissioner of the Education Board, whether Daniel O'Connell, in his whole course of agitation, ever uttered a speech half so inflammatory as this? With respect to Mr. Sergeant Warren, he, I suppose, agrees in every word of it, and only laments that after so much sound and fury the Recorder of Dublin is the steadfast supporter of the government, by whom all the misdeeds thus eloquently denounced have been subsequently committed. Gentlemen, I find in the *Evening Packet* of the 24th of January, 1837, an account of a great Protestant meeting which took place at the Mansion House, where all the great representatives of the Conservative interest in this country were assembled. Some very strong speeches, indeed, were made at that meeting. The Earl of Charleville said, "Well, gentlemen, you have a rebellious parliament; you have a Lord Lieutenant, the slave and minion of a rebellious parliament." That speech was heard by the Right Hon. Thomas Berry Cusack Smith. Did he remonstrate against the use of language so unqualified? Not at all. He got up and made a speech, in which he stated that "he was sorry to find that Roman Catholic members of parliament paid so little regard to their oaths." When the right honourable gentleman had such impressions, I cannot feel surprised that care should have been taken to exclude every Roman Catholic from the jury-box. Let him not misapprehend me. I do not refer to his language in the spirit of resentment. Resentment is not the feeling which the conduct of the right honourable gentleman is calculated to produce. The right honourable gentleman has expressed great indignation at the references made at Mullaghmast to transactions from which the veil of oblivion ought not to be withdrawn. He said, and justly enough, that men should not grope in the annals of their country for the purpose of disinterring those events whose resuscitation can but appal and scare us. But how does the right hon. gentleman reconcile that position with his having been himself a party to a resolution passed at the meeting of which I am speaking, in which it is stated that the condition of the Protestants of Ireland is almost as alarming as it was in the year 1641, when events took place from whose recollection we ought to turn with horror and dismay. I referred you, gentlemen, to speeches. Permit me now to refer you to the great monster meetings which have taken place in assertion of the rights of the Protestants of Ireland. Mark, I do not complain of those meetings. I do not complain that 75,000 men should have assembled and moved in order of battle; but I do complain that the men who look upon those assemblages with so much indulgence, when the purposes of their own party were to be promoted, denounce as treasonable assemblies in which no such demonstration of organised and perfectly disciplined physical force was made. The first meeting of the monster character to which I shall refer is the great Cavan meeting, where twenty thousand men assembled under such circumstances of such deep impressiveness, as to render them equivalent in practical effect to five times that number of such a peasantry as attended the repeal demonstration. The following incident is illustrative:—The Rev. Marcus Beresford stood up, and, after a speech in his accustomed vein, said—"I see amongst us a good and honest man, from the county Monaghan, who rendered considerable service, by routing Mr. John Lawless from Ballibay—I mean Mr. Samuel Gray—(cheers)—and were I a poet I should introduce him to you in a couplet—

Here is Mr. Samuel Gray,
The Protestant hero of Ballibay.
(Cheers and laughter.)

He is a good, honest, straightforward Protestant—as glad to see the Protestants of Cavan as they are to see him." Mr. Samuel Gray, who appears to have been transported by the reception given him by his Protestant brethren—(roars of laughter)—then came forward, and was received with loud cheers. He said "he was a very humble individual, and could only claim the merit of being a sincere and consistent Protestant. He knew the Orangemen of Monaghan well—they were all prepared, and in the hour of danger would be ready to assist their brethren (cheers). As long as the spiri of the Protestants of Ulster remained unbroken—as long as they stuck together heart and hand—so long may they defy Mr. O'Connell, aided by a Whig government, to put them down (cheers). Should the storm arise a signal would be sufficient to bring him and the Orangemen of Monaghan to the assistance of their brethren." But let us now proceed to the picturesque account given of the Hillsborough meeting, celebrated in the annals of Protestant agitation, by the *Evening Mail*:—"At an early hour of the morning (some of them, indeed, over night) the great landed proprietors of the county repaired to the different points on their respective estates at which it had been previously agreed they should meet their tenants, and march then at their head to the general place of assemblage, so that the area in front of the hustings did not present a very crowded appearance, until the men arrived in large masses, each having the pride of marching, border fashion, shoulder by shoulder, beside his neighbour and brother, with whom he was ready to sacrifice life in defence of his country and religion. Shortly after eleven o'clock, a tremendous shout from the town announced the approach of the first party. They were from Moira, and were headed by the Reverend Holt Waring, who was drawn by the people. A flag, the union-jack, was hoisted at Mr. E. Reilly's, as the signal of their arrival. In a few moments they were seen descending the steep hill from the town, and approaching the place of meeting in a close, dark, and dense mass, comprising certainly not less than twenty thousand persons. Having escorted Mr. Waring to the foot of the platform they received his thanks,

expressed in warm and energetic language, and having given three cheers, deployed round and took the position assigned them. . . . Amongst those who marched at the head of the largest battalion, if we may use the expression, were the Marquisses of Londonderry and Downshire; Lord Clanwilliam, Sir Robert Bateson, Colonel Forde, Colonel Blacker, Lord Castlereagh, and Lord Roden. The latter had fifteen thousand men in his followers. They marched from Dromore. At twelve o'clock the scene was the most imposing that fancy could conceive, or that language possesses the power of depicting. The spectacle was grand, unique, sublime. There certainly could not have been, upon the most moderate computation, less than seventy-five thousand persons present, exclusive of the thousands who filled the town, or thronged to absolute impediment all the adjacent roads and avenues." From that description, gentlemen, I turn to a resolution passed by the Irish Orangemen on the 12th November, 1834, and which I find in the appendix to the report from the select committee on Orange lodges :—" And, lastly, we would beg to call the attention of the grand lodge, and through them return our heartfelt thanks and congratulations to our brethren through the various parts of Ireland, who, in the meetings of three thousand in Dublin, four thousand at Bandon, thirty thousand in Cavan, and seventy-five thousand at Hillsborough, by their strength of numbers, the rank, the respectability, and orderly conduct of their attendance—the manly and eloquent expression of every Christian and loyal sentiment, vindicated so nobly the character of our institution against the aspersion thrown on it, as the 'paltry remnant of a faction.'" That phrase, gentlemen, is one which Lord Stanley, in one of his wayward moods, was pleased to apply to the Orangemen of Ireland. Gentlemen, in the part of the report, which I have read to you, there are some remarkable entries relating to a subject of which you have heard a good deal from the Attorney-General; and although I deviate, I am aware, from the order of topics, which I had prescribed to myself, yet, finding in the book before me matter which seems to me to be exceedingly pertinent to that topic, I shall now advert to it. Gentlemen, the entries to which I am alluding are these: "15th February, 1833, William Scott, 16th company Royal Sappers and Miners. That the committee would most willingly forward all documents connected with the Orange system to any confidential persons in Ballymona, as prudence would not permit the printed documents should be forwarded direct to our military brethren." "1st January, 1834.—Resolved, that warrant 1592 be granted to Joseph Mins, of the 1st Royals." "17th December, 1829, moved by the Rev. Charles Boyton, seconded by Edward Cottingham, that the next warrant number be issued to the 66th regiment, and that the Quebec brethren be directed to send in a correct return, in order that new warrants may be issued." Gentlemen, I refer you to these resolutions with no other view than to show you what proceedings men who conspire to establish an influence over the army naturally adopt. If it was the object of the traversers to seduce the army from their allegiance, would not expedients have been adopted very different from those imputed to the defendants? Would not repeal societies have been formed? Would not a clandestine correspondence have taken place with the "military brethren?" Would not money have been distributed to the soldiery? Would not the propagators of mutiny have been located in the public-houses frequented by soldiery? Would not Roman Catholic priests who attend at the military hospitals have been charged to instil repeal principles into the soldier's ear? Does anything of this kind appear to have been done? A letter written by the Rev. Mr. Power—a Waterford priest, who is not made a defendant—who is not to be punished for his letter—is given in evidence against my client, although he is as innocent of its composition as the foreman of your jury. When that letter appeared in the *Nation* newspaper, why was not an *ex officio* information filed against the Rev. Mr. Power, whose manuscript would most certainly have been given up? But that would not have answered the purpose of the Attorney-General, whose object it was to ensnare. The Attorney-General has not suggested a reason, or glanced at a pretence for not having indicted Father Power. He read his letter from the beginning to the termination. He told you that it was written by a priest—that his name was to it. He does not prosecute the priest—he does not prosecute the paper, but reserves it for the conspiracy on which his official renown is to be founded. What, gentlemen, has been the course adopted by the government in those prosecutions? Sir Edward Sugden begins by dismissing some of the most respectable magistrates of the country, on account of something or other that was said in the house of commons, and because "the meetings gave a tendency to outrage." The direct contrary has been proved by every one of the witnesses for the crown, and Mr. Ross, the clandestine sub-inspector of the home-office, in the very last words of his examination, stated that he saw no tendency to outrage whatsoever. Lord Cottenham declared in the house of lords that the proceeding of the Lord Chancellor was utterly unconstitutional. Let me be permitted, gentlemen, to contrast the proceedings adopted by the Lord Chancellor of Ireland with the doctrines laid down in the charge of Mr. Baron Alderson, in his charge to the grand jury, delivered at the Monmouth summer assizes, 1839. It is reported in 9th Carrington and Payne, page 95 :—" There is no doubt that the people of this country have a perfect right to meet for the purpose of stating what one, or even what they, consider to be their grievances; but in order to transmit that right unimpaired to posterity, it is necessary that it should be regulated by law and restrained by reason. Therefore, let them meet if they will in open day, peaceably and quietly; and they would do wisely, when they meet, to do so under the sanction of the constituted authorities of the country. To meet under irresponsible presidency is a dangerous thing. Nevertheless, if when they do meet under that irresponsible presidency they conduct themselves with peace, tranquillity, and order, they will, perhaps, lose their time, but nothing else. They will not put other people into alarm, terror, and consternation. They will probably in the end come to the conclusion, that they have acted foolishly; but the constitution of this country did not, God be thanked, punish persons who mean to do that which was right, in a peaceable and orderly manner, and who are only in error in the views which they have taken on some subject of political interest." Has a single respectable gentleman of station, and rank, and living in the vicinity of the place where any of those meetings were held, been produced to state to you that they were they source of apprehension in the neighbourhood? Has any man been produced to you who stated that they had even a tendency to outrage? Not one.

Mr. Sheil was interrupted at this period of his address by an intimation that the jury wished to retire for refreshment.

Mr. Sheil, when their lordships returned into court, resumed as follows:—I have already called attention to the fact that none of the gentry of the country were brought forward to state what the character of these meetings was. All the official persons examined—among whom were several of the high constables of the various districts—concurred in stating that there was no violation of the peace at any of them. Indeed, the assertion of the

Attorney-General was, that the peace was kept—kept with the malevolent intention of enabling the whole population to rise at a given time, and establish a republic, of which Mr. O'Connell was to be the head. Forty-one of these meetings were held—all of the same character—and at length a proclamation was determined on and issued for the purpose of putting a stop to the Clontarf meeting. You have heard the remarks of Mr. O'Connell, in reference to the course adopted towards that meeting, and to me they appear extremely reasonable. Notice of that meeting had been given for three weeks, yet the proclamation was not published until the day before that on which it was to have taken place. Mr. O'Connell did not charge the government, when acting in this way, and delaying its measures till the last moment, with being capable of such an atrocious and destructive attempt on the lives of the people, as might have been perpetrated by sending the army amongst an unarmed populace, if the meeting had taken place. Such an event might have taken place; and it is to be regretted that a more timely warning, one that would have removed all doubt and uncertainty, was not given. I pass this consideration by, and come to another point. It is a usual practice—a rule, in fact—that when a privy counsel is to assemble, summonses are directed to be issued to all privy councillors being within the vicinity of the city of Dublin. On this occasion such summonses were not issued. I am given to understand that Chief Baron Brady, who is in the habit of attending at councils, was not summoned. The Right Hon. Anthony Richard Blake, a Roman Catholic gentleman, who was appointed chief remembrancer of the exchequer under a Tory administration—the intimate friend of the Marquis Wellesley—a man who had never appeared in public assemblies, or interfered in the proceedings of public meetings—a man who had never uttered an inflammatory harangue in his life—that gentleman did not receive a summons. I will make no comment on this omission of the government on this occasion, but such undoubtedly is the fact. I have told you who did not receive summonses, and I shall proceed to state who did receive them. The Recorder of the city of Dublin—by whom the jury list was to be revised—he received a summons. In his department it was that an event most untoward, as respects the traversers, befel. It was suggested in this court that the jury list possibly might have been mutilated or decimated—for decimation it was—by an accident—perhaps by a rat, as was sugguested by one of the court. I am far from suggesting that there was any intentional foul play in this decimation. but that a large portion of the list was omitted is beyond a doubt. I state the fact and make no comment on it. Well, an application was made for the names of the witnesses on the back of the document, on behalf of the traversers. One of the judges declared he thought it matter of right; another of the judges intimated his opinion that it would be advisable for the crown to furnish the list within a reasonable time. From that day to this the list has never been given. The list of jurors is drawn by ballot: there are eleven Catholics upon it. They are struck off. The trial comes on. A challenge is put in to the array, upon the ground that one-tenth, or very nearly one-tenth, of the jury list was suppressed. One of the court expresses an opinion that the challenge is a good one. His brethren differ from him; but when in a trial at bar, at the instance of the crown, one of the judges gives an intimation so unequivocal as to the construction of the jury list, perhaps it would have been more advisable for the crown to have discharged the order for a special jury, and to have directed the high sheriff of the city to have returned a pannel. I mention these incidents, gentlemen, in order that your feeling that the traversers have been deprived of some of those contingent benefits given them by the law, should give them an equivalent for any loss which they may have sustained in your anxious performance of your sacred duty. At length, in the midst of profound silence, the Attorney-General states the case for the crown, and consumes eleven hours in doing so. I was astonished at his brevity, for the pleading on which his speech was founded is the very Behemoth of indictments, which, as you see, "upheaves its vastness" on that table. Nothing comparable in the bigness of its gigantic dimensions has ever yet been seen. The indictment in Hardy's case, whose trial lasted ten or eleven days, does not exceed three or four pages; but this indictment requires an effort of physical force to lift it up. Combined with this indictment was a tremendous bill of particulars in keeping with it. Gentlemen, the Attorney-General, as I have already observed to you at the outset of these observations, denounced the traversers at the close of almost every sentence that was uttered by him; but it struck me that it was only in reference to two of these charges that he broke forth in a burst of genuine and truly impassioned indignation. The first of those charges was—a conspiracy to diminish the business of a court of law. How well the great Lord Chatham exclaimed—I remember to have read it somewhere but I forget where—"Shake the whole constitution to the centre, and the lawyer will sit tranquil in his cabinet; but touch a single thread in the cobwebs of Westminster-hall, and the exasperated spider crawls out in its defence." The second great hit of the right hon. gentleman was made when he charged Mr. O'Connell with a deplorable ignorance of law, in stating certain prerogatives of the crown. With respect, gentlemen, to the arbitration courts, the Society of Friends are as liable to an indictment for conspiracy as the defendants. The regulations under which the Quaker arbitration system is carried on will be laid before you; and the opinions of Lord Brougham, who has always been the strenuous advocate of the arbitration system, will, I am sure, have their due weight upon you. With regard to Mr. O'Connell's alleged mistake respecting the power of the crown to issue writs—what is it, after all, but a project for swamping the house of commons, analogous to that of Sir James Graham and my Lord Stanley for swamping the house of lords? The plain truth is this—the sovereign has the abstract right to create new boroughs. But the exercise of that right might be regarded as inconsistent with the principles of the constitution. Lord Denman and one of his late Majesty's law advisers in the house of commons distinctly asserted the right to issue writs; and although that opinion was reprehended by Sir Charles Wetherell, I believe that of its being strict law there can be little doubt. But the real question between the Attorney-General and the traversers, and the only one to which you will be disposed to pay much regard, was raised by the Attorney-General when he said that there existed a dangerous conspiracy, of which the object was to prepare the great body of the people to rise at a signal and to erect a sanguinary republic, of which Daniel O'Connell should be the head. Gentlemen, how do men proceed who engage in a guilty enterprise of this kind? They bind each other by solemn oaths. They are sworn to secrecy, to silence, to deeds, or to death. They associate superstition with atrocity, and heaven is invoked by them to ratify the covenants of hell. They fix a day, an hour, and hold their assemblages in the midst of darkness and of solitude, and verify the exclamation of the conspirator, in the language of the great observer of our nature—

"Oh, Conspiracy,
Where wilt thou find a cavern dark enough
To hide thy monstrous visage?"

How have the repeal conspirators proceeded? Every one of their assemblages have been open to the public. For a shilling, all they said, or did, or thought, were known to the government. Everything was laid bare and naked to the public eye; they stripped their minds in the public gaze. No oaths, no declaration, no initiation, no form of any kind was resorted to. They did not even act together. Mr. Duffy, proprietor of the *Nation*, did not attend a single meeting in the country. My client attended only three; Mr. Tierney, the priest, attended no more than one. It would have been more manly on the part of the Attorney-General to have indicted Dr. Higgins or Dr. Cantwell, or, as he was pleased to designate them, Bishop Higgins and Bishop Cantwell. Well, why did he not catch a bishop—if not Cantwell, at all events Higgins? For three months we heard nothing but "Higgins, Higgins, Higgins." The *Times* was redolent of Higgins; sometimes he was Lord Higgins, then he was Priest Higgins, afterwards Mr. Higgins. But wherefore is not this redoubted Higgins indicted, or why did you not assail the great John of Tuam himself? He would not have shrunk from your persecution, but, with his mitre on his head and his crozier in his hand, he would have walked in his pontifical vestments into gaol, and smiled disdainfully upon you. But you did not dare to attack him, but fell on a poor Monaghan priest, who only attended one meeting, and only made one speech about the "Yellow Ford," for which you should not include him in a conspiracy, but should make him professor of rhetoric at Maynooth. Gentlemen, an enormous mass of speeches delivered by Mr. O'Connell within the last nine months has been laid before you. I think, however, you will come to the conclusion that they are nothing more than a repetition of the opinions which he expressed in 1810; and when you come to consider them in detail, you will, I am sure, be convinced that these speeches were not merely interspersed with references to peace and order, with a view to escape from the law, but that there runs, through the entire mass of thought that came from the mind of Mr. O'Connell a pervading love of order, and an unaffected sentiment of abhorrence for the employment of any other than loyal, constitutional, and pacific means for the attainment of his object. He attaches fully as much importance to the means as to the end. He declares that he would not purchase the repeal of the union at the cost of one drop of blood. He announces that the moment the government calls upon him to disperse his meetings, these meetings shall be dispersed. He does but ask "the Irish nation to back him;" for from that backing he anticipates the only success to which, as a good subject, as a good citizen, and as a good Christian, he could aspire. But if, gentlemen, it be suggested that in popular harangues obedience to the laws and submission to authority are easily simulated, I think I may fearlessly assert that of the charges preferred against him his life affords the refutation. A man cannot wear the mask of loyalty for forty-four years; however skilfully constructed, the vizor will sometimes drop off, and the natural truculence of the conspirator must be disclosed. You may have heard many references made to the year 1798, and several stanzas of a long poem have been read to you, in order to fasten them on Mr. O'Connell. It was in 1798 that the celebrated man was called to the bar, who was destined to play a part so conspicuous on the theatre of the world. He was in the bloom of youth—in the full flush of life—the blood bounded in his veins, and in frame full of vigour was embodied an equally elastic and athletic mind. He was in that season of life, when men are most disposed to high and daring adventure. He had come from those rocks and mountains of which a description so striking has appeared in the reports of the speeches which have been read to you. He had listened, as he says, to the great Atlantic, whose surge rolls unbroken from the coast of Labrador. He carried enthusiasm to romance; and of the impressions which great events are calculated to make upon minds like his, he was peculiarly susceptible. He was unwedded. He had given no hostages to the state. The conservative affections had not tied their ligaments, tender, but indissoluble about his heart. There was at that time an enterprise on foot; guilty, and deeply guilty, indeed, but not wholly hopeless. The peaks that overhung the Bay of Bantry were visible from Iveragh. What part was taken in that dark adventure by this conspirator of sixty-nine? Curran was suspected—Grattan was suspected. Both were designated as traitors unimpeached; but on the name of Daniel O'Connell a conjecture never lighted. And can you bring yourselves to believe that the man who turned with abhorrence from the conjuration of 1798 would now, in an old age, which he himself has called not premature, engage in an insane undertaking, in which his own life, and the lives of those who are dearer to him than himself, and the lives of hundreds of thousands of his countrymen, would, beyond all doubt be sacrificed? Can you bring yourselves to believe that he would blast all the laurels, which it is his boast that he has won without the effusion of a single drop of blood—that he would drench the land of his birth, of his affections, and of his redemption in a deluge of profitless blood, and that he would lay prostrate that great moral monument, which he has raised so high that it is visible from the remotest region of the world? What he was in 1798 he is in 1844. Do you believe that the man who aimed at a revolution would repudiate French assistance, and denounce the present dynasty of France? Do you think that the man who aimed at revolution, would hold forth to the detestation of the world, the infamous slavery by which the great transatlantic republic, to her everlasting shame, permits herself to be degraded? or, to come nearer home, do you think that the man who aimed at revolution, would have indignantly repudiated the proffered junction with the English Chartists? Had a combination been effected between the Chartists and the repealers it would have been more than formidable. At the head of that combination in England was Mr. Feargus O'Connor, once the associate and friend of Daniel O'Connell. The entire of the lower orders in the North of England were enrolled in a powerful organization. A league between the repealers and the Chartists might have been at once effected. Chartism uses its utmost and most clandestine efforts to find its way into this country. O'Connell detects and crushes it. Of the charges preferred against him, am I not right when I exclaim that his life contains the refutation? To the charge that Mr. O'Connell and his son conspired to excite animosity amongst her Majesty's subjects, the last observation that I have made to you is more peculiarly applicable. Gentlemen, Mr. O'Connell and his co-religionists have been made the objects of the fiercest and the coarsest vituperation; and yet I defy the most acute and diligent scrutiny of the entire of the speeches put before you, to detect a single expression—one solitary phrase—which reflects in the remotest degree upon the Protestant religion. He has left all the contumely heaped upon the form of Christianity which he professes utterly unheeded, and the Protestant Operative Society has not provoked a retort; and every angry disputant has, without any interposition on his part, been permitted to rush in "where angels fear to tread." Gentlemen, the religion of Mr. O'Connell teaches him two things—charity towards those who dissent from him in doctrine, and forgiveness of those who do him wrong.

You recollect (it is from such incidents that we are enabled to judge of the characters and feelings of men)—you remember to have heard in the course of the evidence frequent reference made to poor old Sir Bradley King. The unfortunate man had been deprived of his office, and all compensation was denied him. He used to stand in the lobby of the House of Commons, the most desolate and hopeless looking man I ever saw. The only one of his old friends that stuck to him almost was Baron Lefroy. But Baron Lefroy had no interest with the government. Mr. O'Connell saw Bradley King, and took pity on him. Bradley King had been his fierce political, almost his personal antagonist. Mr. O'Connell went to Lord Althorpe, and obtained for Bradley King the compensation which had been refused him. I remember having read a most striking letter addressed by Sir Abraham Bradley King to Mr. O'Connell, and asked him for it. He could not at first put his hand upon it; but, while looking for it, he told me that soon after the death of the old Dublin alderman an officer entered his study, and told him that he was the son-in-law of Sir Abraham, who had, a short time before his death, called him to his bedside and said—"When I shall have been buried, go to Daniel O'Connell, and tell him that the last prayer of a grateful man was offered up for him, and that I implored heaven to avert every peril from his head." Mr. O'Connell found the letter—you will allow me to read it:—

"Barrett's Hotel, Spring Gardens, 4th Aug., 1832.

"My Dear Sir—The anxious wish for a satisfactory termination of my cause, which your continued and unwearied efforts for it have ever indicated, is at length accomplished; the vote of compensation passed last night.

"To Mr. Lefroy and yourself am I indebted for putting the case in the right light to my Lord Althorpe, and for his lordship's consequent candid and straightforward act, in giving me my just dues, and thus restoring myself and family to competence, ease, and happiness.

"To you, sir, to whom I was early and long politically opposed—to you, who nobly forgetting this continued difference of opinion, and who, rejecting every idea of party feeling or party spirit, thought only of my distress, and sped to succour and support me, how can I express my gratitude? I cannot attempt it. The reward, I feel, is to be found only in your own breast, and I assure myself that the generous feelings of a noble mind will cheer you on to that prosperity and happiness which a discriminating Providence holds out to those who protect the helpless, and sustain the falling.

"For such reward and happiness to you and yours my prayers shall be offered fervently, while the remainder of my days, passing, I trust, in tranquillity, by a complete retirement from public life, and in the bosom of my family, will constantly present to me the grateful recollection of one to whom I am mainly indebted for so desirable a closing of my life. Believe me, my dear sir, with the greatest respect and truth, your faithful servant,

"Abraham Bradley King.

"To Daniel O'Connell, Esq., M.P."

You may deprive him of liberty—you may shut him out from the face of nature—you may inter him in a dungeon, to which a ray of the sun never yet descended; but you never will take away from him the consciousness of having done a good and a noble action, and of being entitled to kneel down every night he sleeps, and to address to his Creator the divinest portion of our Redeemer's prayer. The man to whom that letter was addressed, and the son of the man to whom that letter was addressed, are not guilty of the sanguinary intents which have been ascribed to them, and of this they put themselves upon their country. Rescue that phrase from its technicalities—let it no longer be a fictitious one; if we have lost our representation in the parliament, let us behold it in the jury box; and that you participate in the feelings of millions of your countrymen let your verdict afford a proof. But it is not to Ireland that the aching solicitude with which the result of this trial is intently watched will be confined. There is not a great city in Europe in which, upon the day when the great intelligence shall be expected to arrive, men will not stop each other in the public way, and inquire whether twelve men upon their oaths have doomed to incarceration the man who gave liberty to Ireland? Whatever may be your adjudication he is prepared to meet it. He knows that the eyes of the world are upon him, and that posterity—whether in a gaol or out of it—will look back to him with admiration; he is almost indifferent to what may befal him, and is far more solicitous for others at this moment than for himself. But I—at the commencement of what I have said to you—I told you that I was not unmoved, and that many incidents of my political life, the strange alternations of fortune through which I have passed, came back upon me. But now the bare possibility at which I have glanced, has, I acknowledge, almost unmanned me. Shall I, who stretch out to you in behalf of the son the hand whose fetters the father had struck off, live to cast my eyes upon that domicile of sorrow, in the vicinity of this great metropolis, and say, "'Tis there they have immured the Liberator of Ireland with his fondest and best beloved child?" No! it shall never be! You will not consign him to the spot to which the Attorney-General invites you to surrender him. No. When the spring shall have come again, and the winter shall have passed—when the spring shall have come again, it is not through the windows of a prison-house that the father of such a son, and the son of such a father, shall look upon those green hills on which the eyes of many a captive have gazed so wistfully in vain; but in their own mountain home again they shall listen to the murmurs of the great Atlantic; they shall go forth and inhale the freshness of the morning air together; "they shall be free of mountain solitudes;" they will be encompassed with the loftiest images of liberty upon every side; and if time shall have stolen its suppleness from the father's knee, or impaired the firmness of his tread, he shall lean on the child of her that watches over him from heaven, and shall look out from some high place far and wide into the island whose greatness and whose glory shall be for ever associated with his name. In your love of justice—in your love of Ireland—in your love of honesty and fair play—I place my confidence. I ask you for an acquittal, not only for the sake of your country, but for your own. Upon the day when this trial shall have been brought to a termination, when, amidst the hush of public expectancy, in answer to the solemn interrogatory which shall be put to you by the officer of the court, you shall answer, "Not guilty," with what a transport will that glorious negative be welcomed! How will you be blest, adored, worshipped; and when retiring from this scene of excitement and of passion, you shall return to your own tranquil homes, how pleasurably will you look upon your children, in the consciousness that you will have left them a patrimony of peace by impressing upon the British cabinet, that some other measure besides a state prosecution is necessary for the pacification of your country!

At the conclusion of the right honourable and learned gentleman's speech,

The court suggested that, it being then so late (three o'clock) it might be as well not to hear fresh counsel that day.

Mr. Moore, who was to address the court next in

order of the traverser's counsel, said he felt very grateful for the kindness thus accorded him by the court; if it was not trespassing too much on the public time and that of the court, he would feel it a respite not to be called on till Monday. If his lordship had not thrown out the suggestion he had been kind enough to make, he should have thought himself justified in asking such a favour. If their lordships thought they could consistently, with the discharge of their public duty, postpone the further hearing of the case till Monday, he should be most happy to avail himself of the indulgence.

The Lord Chief Justice said it was now three o'clock, and, without infringing unnecessarily on the public time, it would be the desire of the court to give Mr. Moore every indulgence in their power; and as he (Mr. Moore) felt he would rather not go on at present, but prefer waiting till Monday, as his speech, his lordship presumed, would not be finished that evening, the court, if the Attorney-General had no objection, would let the case be postponed till Monday at ten o'clock.

The Attorney-General having intimated his acquiescence in the course thus suggested, the court rose at a few minutes after three o'clock, having adjourned till this morning at ten.

THIRTEENTH DAY.

MONDAY, JANUARY 29.

The court sat at ten o'clock. The jury were called and took their places.

MR. MOORE, Q.C., IN DEFENCE OF REV. THOMAS TIERNEY.

Mr. Moore in addressing the court said:—My lords and gentlemen of the jury, in this case I am counsel on behalf of one of the traversers, the Rev. Thomas Tierney, and it now becomes my duty, as the next counsel in seniority to my friend Mr. Sheil, and in that right, and in that character alone, to lay before you the facts and circumstances of my client's case; and I do, with very respectful confidence, anticipate your verdict of acquittal in his favour. Gentlemen, I very unfeignedly feel the great disadvantage I labour under in having to address you after the able, brilliant, and eloquent display of my friend Mr. Sheil. If that disadvantage was to be merely personal, if it could not in the slightest degree affect my client, it would not be worthy of one moment's consideration; and although I acknowledge my perfect inability either to amuse you by wit, or delight you by eloquence—and although I profess not the power of addressing to you any of those affecting appeals which he made—yet I indulge the hope that you will extend to me, while I am laying my client's case before you, the same patience and the same attention which I have observed you invariably to bestow upon every branch and every feature of this important case. Gentlemen, there is one observation which was made by the Attorney-General in his opening statement, in which I fully concur, and from which no man can dissent. He told you that this was a momentous case, and he might have added, that it comes before you under momentous circumstances and in momentous times. When we consider the great and important question—I mean the repeal of the union—out of which this prosecution has undeniably arisen; when we consider the deep and all-pervading interest which that question has excited through every part of Ireland; when we consider that hundreds of thousands, I may say millions, of our countrymen, have unequivocably, but peaceably, expressed their opinion in favour of that measure; and when we consider that one of the traversers at the bar is a gentleman possessing the unlimited confidence of those millions, and exercising a greater degree of moral influence over their minds than any individual ever before possessed over the minds of a free people in a free country; when we find that man brought to the bar of this court, and branded, or sought to be branded, with the crime of conspiracy; and that in every part of this country the result of your verdict is waited for with the most feverish and restless anxiety, the Attorney-General may well say that this is a momentous case. Gentlemen, I cannot concur with the Attorney-General in thinking, that the prosecution which he has instituted is one that either in its circumstances, its nature, or its conduct, is calculated for this momentous case. The Attorney-General has not condescended to tell you what were his motives for instituting this prosecution; he has not explained to you the benefits which he expected to result from it. He would, perhaps, have told you his object was to bring to justice the persons who had violated the law. If that be his motive I will be able to show him, and I hope you too, that there never was a course less adapted to that purpose than the present prosecution. If he expected that the effect of this prosecution would be to allay the feeling of irritation and animosity at present existing in this country, never was a more unfortunate expedient resorted to than this prosecution. No man can shut his eyes to this fact, that from first to last of this prosecution—from its original institution down to the moment I am addressing you—the conduct of the prosecutor was such as to create a greater degree of bitterness and animosity than ever existed in this country before. Gentlemen, is it the expectation of the Attorney-General that the effect of this prosecution will be to put down the discussion of the question of the repeal of the union? Is that the hope of the government which he serves? If that be what he expects to result from it, I must confess it appears to me that a more idle or empty chimera never crossed the mind of an Attorney-General. He has entered into an argument on the question of the repeal of the union; I do not mean to follow his example. He has held out to you what he considered to be strong grounds to make you believe that it was impracticable and unattainable. If the repeal of the union—that important question which now pervades every portion of the land—be so destitute of merits, as the Attorney-General wishes to represent to you; if it be impracticable and unattainable, it does not want the aid of a prosecution to put it down; it must fall by its own weakness. But if on the other hand that question has those merits which hundreds of thousands of your countrymen think it possesses, how idle is the hope or expectation to crush it by a prosecution? On this great question I do not mean to intimate or express any opinion of my own; but let its merits or demerits be what they may, I trust that the time will never arrive when it will be in the power of any Attorney-General, or in the power of any government, to crush or stifle the discussion of it, or the free discussion of any great public question. Gentlemen, it is not my intention to enter into a discussion of the mass of evidence which has been laid before you, because I am unable to see how my client is connected with it. But it appears to me to be of the utmost importance in this case, that you should very distinctly carry in your minds the nature of the charge that is preferred against him and the traversers at the bar; that charge is confined to a single one—the charge of conspiracy. I beg of you to carry in your recollection, that there is no indictment against Mr. Tierney, or any one of the traversers, for having attended an unlawful meeting—there is no indictment against any one of the traversers for uttering seditious speeches—there is no indictment against any one of the traversers

for having sent forward to the world a seditious publication; but the single charge preferred against the traversers at the bar is, that they are guilty of conspiracy. How is that charge sought to be made out? By the allegation that there were meetings that were unlawful, and that those meetings were attended by some of the traversers—by the allegation that seditious speeches were spoken at those meetings by some of the traversers. But does it not occur to you, that if the object of the Attorney-General was to bring to justice those who, in his opinion, had violated the law, that there was the most easy, simple, and obvious course for him to take? If the meetings, of which you have heard so much in detail, were unlawful—if they are unlawful now they must have been unlawful at the time they were held—if those speeches are seditious now they must have been seditious at the time they were uttered—and yet how does it happen that although those meetings have been held almost weekly for a period of nine months—although the speeches now complained of have been made almost from day to day during that period—how does it happen that the Attorney-General never yet ventured to prefer an indictment against any one of the individuals that attended those assemblies, that he seeks now to designate as unlawful? or to institute a prosecution against any one of those individuals that uttered those speeches, that he now tells you are seditious? If those meetings were illegal, or the speeches seditious, what was more easy for him than to indict any one that attended those meetings, or uttered those speeches? Let me take, for instance, Mr. O'Connell, who attended at almost all the meetings. Suppose he was indicted for having attended an illegal meeting, could anything be more simple than the proceeding on the part of the Attorney-General? That the meetings took place, and that Mr. O'Connell attended them, is undeniable. The material facts of the case were established to the hand of the Attorney-General; and if the meetings were unlawful he had nothing to do but satisfy the court and jury that they were so, and then bring the matter to issue at a single point. But have I not reason to complain, on the part of my client, of the course which has been adopted. If my client has attended an illegal meeting, or uttered a seditious speech, why not indict him for it? the charge against him would be simple, and his defence, if he had any, would be easy. The Attorney-General has abandoned the easy, unembarassed course which it was open to him to take, and he adopts a course which appears to me to be in violation of every principle of justice. He seeks to make one man responsible for the acts and language of others. He flings all the traversers into one indictment—he entangles them, one and all, within the meshes of a prosecution for conspiracy. And although it is not even alleged that my client ever was in connection with any of the traversers until the 3d of October, after all the monster meetings had ceased, he endeavours, notwithstanding, to make him responsible for all the antecedent acts of others, and he is thus sought to be visited with the consequences of speeches he never heard—meetings he never attended—and publications which he never read. Is this fair? Is this candid? Is this ingenuous? The principles of justice declare that each man is only to be made responsible for his own conduct. Yet the Attorney-General seeks, through the medium of this doctrine of conspiracy, to make my client answerable for the words and actions of other men, in which he never participated, and of which he had no knowledge. My lords, and gentlemen of the jury, in my humble judgment, a public prosecutor has no right to abandon the direct and obvious path which lies before him, and to adopt the tortuous and complicated course of a prosecution for conspiracy, with a view to implicate one man in the acts and designs of others, and in adopting such a course of proceeding, I have no hesitation in characterising his conduct as equally unfair, oppressive, and unjust. Gentlemen, the Attorney-General in his speech took up all the meetings *seriatim*; he began with the earliest, and went down to the latest; and he told you emphatically that they were all illegal. He read for you a number of speeches, which he told you were seditious. He also called your attention to certain extracts from articles, which appeared in different newspapers, which he also characterised as being in violation of the law. Gentlemen, it certainly did appear to me that the Attorney-General when he made those statements was pronouncing a bitter phillippic upon himself and the government which he served. Am I not entitled to ask a question, which presses itself irresistably on the mind of every man? How has it happened that if those meetings which occurred so frequently during a period of nine months, were illegal—if the language used at them was seditious, no prosecution was ever instituted until now? How does the Attorney-General reconcile it to his own conscience, or to the duty which he owes to the country, and the government, whose servant he is—that for such a length of time he has never, until now, taken a step to repress those meetings? And why has he neglected the important duty of bringing to justice those who, as he now alleges, had so repeatedly violated the law? Did he designedly lie by, in order that crime might accumulate, and that he might be able to encompass whole masses of criminals within the meshes of the law, to enable him to select his victims at his pleasure? Was this the object of the Attorney-General? Was this the object of the government he serves? Gentlemen, it is the duty of the government to bring to punishment those who violate the law; but a government has a greater and more important duty to perform—a duty with the due performance of which the best interests of the commonweal are yet more indispensably identified; and that duty consists in preventing the commission of crime. If it was the deliberate opinion of the Attorney-General—if he expressed that opinion to government—if the government were under the conviction that those meetings were all illegal, and the speeches seditious;—if, I say, they knew all this, and yet designedly lay by while they saw crime committed—while they saw the infatuated people hurrying in masses into a violation of the law—I would unhesitatingly brand such an act as an act of the greatest and most unparalleled baseness of which a government could be guilty. What? a government to look calmly on, while they saw the people rushing by thousands into the commission of crime, and yet not a finger raised, nor a word uttered to warn them of their folly? Was it their plan to wait until they had a whole nation within their meshes, in order that they might select such victims as they would wish to immolate upon the altar of the law. But, my lords and gentlemen, let me not be misunderstood. I make no such charge against the Attorney-General. I impute no such design to him, or to the government. I do not seek to bring a charge of such a nefarious intention against them; for nefarious I believe it would be. I never will believe that any government in those countries, whether composed of men who are, politically speaking, my friends or my antagonists, could be guilty of such unparalleled baseness. No, I impute no such crime to them. I know that there are members of that government who would be utterly incapable of such conduct. I have the honour of a slight acquaintance with two of them. I know their sense of honour and of justice, and I know they would fling to the winds the high station which they occupy, rather than be participators in such a design. I therefore do not impute to the

government such an object; nor do I charge them even with negligence. I attribute their conduct to another source. It strikes me as a fair principle of charity, that where you can find a good and proper motive to refer the conduct of another to, it is to that pure motive, not to any sinister designs, his actions ought to be attributed. I willingly grant the benefit of this maxim to the government, and I shall hereafter respectfully ask for the application of the same principle to the case of my client. Gentlemen, the conviction in my mind is this, that though the Attorney-General has screwed his courage to the sticking place, and though he is now prepared to come into court and brand all those meetings with a charge of illegality, yet he never felt himself so strong in that position, as to venture to bring any single case under the consideration of a court or jury. Let the result of the present prosecutions be what it may, it is still open to him to adopt that course—let him select all or any of the meetings he pleases—let him bring into this court any or all of the persons who attended those meetings—and let him try the question fairly. But that has not been done. The cause was obvious. The Attorney-General is an able lawyer, and if he could have told the government that those meetings were illegal, if his mind were made up on that point, I have no doubt he would at once have said to the government, that he could not look on and see the law violated, and would have told them that he felt it his duty to institute the necessary prosecutions against the persons who had done those criminal acts. But it is my firm conviction, that the Attorney-General was not prepared to go such lengths as to sanction any prosecution by his authority, and the meetings were, therefore, allowed to go on for a period of nine months, because no lawyer was bold enough to say they ought to be put down by a prosecution. What is the use I make of this? If the Attorney-General was doubtful in his own mind that any breach of the law had been committed—if he could not during nine months be able to bring himself to the conclusion that the meetings were illegal, is he now to be allowed, when thousands have attended those meetings with a full conviction on their minds that they were not violating the law, to brand them with illegality and sedition? Whenever you find an attorney-general abandoning the direct and obvious course which was before him and adopting a tortuous and complicated one, tacitly permitting the assemblages of the people, no jury should aid or assist him in a proceeding to bring to punishment those who so attended, and I take the liberty of saying, that if the Attorney-General be right in his law, thousands upon thousands have been lured into the commission of crime. The Attorney-General having gone *seriatim* through all those meetings, he came to a meeting which was to have been held at Clontarf on the 8th of October, and I must confess, I never experienced a greater degree of surprise and astonishment, than when I heard him tell you that that meeting was abandoned from a conviction of its illegality. I am sure the Attorney-General entertained that opinion or he would not have expressed it; but I am sure there is no other individual in the community who would for a moment think that the cause of its abandonment was a conviction of its illegality. Does the Attorney-General forget, or does he expect the people of this country will forget the extraordinary circumstances which occurred with regard to that meeting? Does he forget the almost breathless haste with which the Lord Lieutenant came to this country on the day or day but one before that meeting? Does he forget the far famed proclamation that issued the evening preceding the day on which the meeting was to have been held? Does he forget that the garrison of Dublin was poured forth to the place where the meeting was to have been held? or does he forget that every preparation was made by force of the bayonet, the sword, and artillery, to put down that meeting? and does he after this say it was abandoned from a conviction of its illegality? No, gentlemen, that was not the cause of its abandonment. I do not blame the government for its interference with those proceedings. I do not even find fault with them for their almost unaccountable delay. I will impute no blame when I am unacquainted with the facts, but this I will say, the abandonment was owing not to a conviction of its illegality, but to the exertions of one of the traversers—to his strong sense of justice and feeling of humanity—the feelings of a just and honest citizen. He saw the consequences that might have resulted, had that meeting taken place. Picture to yourselves what might have occurred. You had on one hand the tried batallions of Britain, armed with every implement of war—guided by the most experienced leaders—ready to do what these leaders might think right; on the other hand, you had an unarmed and defenceless multitude. The slightest accident—the slightest approach to violence, even an angry expression—and a collision between the army and the people might have ensued. The armed soldiery of the country might have been let loose, in the full plenitude of their strength, upon an unarmed, helpless, and, I may add, defenceless multitude; and the plain of Clontarf might have been a second time saturated with the blood of our countrymen. That such a danger was avoided is due to Mr. O'Connell; he stopped that meeting, not as I said before, from a conviction of its illegality, but because he foresaw the fearful consequences that might have flowed from it; and in my judgment he is entitled to the warm gratitude of every friend of humanity, for his conduct on that occasion; and there is not an individual in the community who owes him a deeper debt of gratitude than the Attorney-General himself. I hesitate not to say that if I were to select the act of Mr. O'Connell's life which was most deserving of praise—the act of his which I would most wish to send down with his name to posterity, I would not select his exertions for Catholic emancipation, that great measure by which he restored millions of his countrymen to their rights; but I would select his conduct on the occasion of this Clontarf meeting, by which he avoided those consequences which might have outraged every feeling of humanity. Gentlemen, let me now call your attention to the nature of the charges brought against the traversers. They are charged with combining, conspiring, and confederating together for the bad and atrocious purposes imputed to them by this indictment, but as appears to me untruly and unjustly attributed to them. Gentlemen, if you separate from the charge in the indictment, the high-sounding phrases given to it, you will find that it is nothing more nor less than this: an agreement between two or more persons to do an illegal act, or to do a legal act by illegal means; the very instant that such an agreement is entered into, the crime is complete; and if men agree to do an illegal act, they may be put on their trial for conspiracy, the very hour and moment after they entered into that agreement, and it is not necessary that there should be any act done or outrage committed; the offence consists in the agreement being entered into; and before you can convict my client, or any one of the traversers, you must be satisfied that they did enter into that agreement, for the purpose stated in the indictment. Gentlemen, on the part of my client, the Rev. Thomas Tierney, I controvert that allegation altogether. I deny that any such agreement was entered into by the traversers—I deny, if such did exist, that you have a particle of evidence upon which it is possible you could say, in justice to yourselves, that my client was implicated in it.

Gentlemen, let me ask you this plain and simple question—have you a shadow of evidence of the existence of such an agreement by the traversers in general, or by Mr. Tierney in particular? Have you had any person produced to you who ever saw them together, arranging such an agreement—or who ever said he knew that such an agreement had been entered into. I do not mean to say that you should have direct evidence of the fact. I acknowledge it might be made without direct positive testimony; but what testimony of any kind have you to enable you to say that this agreement ever did take place? where could you say it took place? Has the Attorney-General shown you when it did take place? He has gone over a period of nine months, and he has then left it to you to pick out the date of the existence of this alleged agreement—he has not told you where the agreement took place. The meetings have been held in every part of Ireland—did it take place in the north, or the south, in the east, or in the west? Was it before the first meeting, or before the second, or the third? He has offered no evidence to show at what time or place such an agreement was entered into. He has read for you innumerable speeches and publications—he has read extracts from the newspapers—he has given you a line of prose here, and a line of verse there—and he flings them into your jury-box, and calls upon you to spell and construct a conspiracy out of them. I trust you will never do it, when you recollect that the Attorney-General had a plain course before him to vindicate the law, which, if he had adopted, he might have tried every one of the traversers in less time than it took him to address you in this case; and therefore I am sure you will not aid him, you will not infer for him the existence of a conspiracy; for, gentlemen, it is the principle of all criminal law, that the charge should be made out by proof, it is not to be left to a jury to conjecture criminality. Gentlemen, my friend, Mr. Sheil, called your attention to the indictment in this case, and he described it, as he well might have done, a "monster indictment," words which are particularly appropriate; for it is in accordance with the oft-repeated expressions of the Attorney-General himself in the course of the present prosecution. Gentlemen, it well deserves to be called a "monster indictment;" I do not believe a precedent for it is to be found in the records of our criminal courts. It is truly a "monster," and it well deserves to be handed down to posterity as the "Frankinstein" of the imagination of her Majesty's Attorney-General for Ireland. Is it not a monstrous indictment? You have in it an accumulation of meetings, of speeches, of publications, and from them all the Attorney-General asks you to extract the materials which would substantiate a charge of conspiracy. You have not heard it read, and I will not say it would afford you much pleasure to hear it read, but you may think it necessary in the discharge of your duty to read it, and if you read it twenty times over I doubt whether you could recollect half of the multitude of statements which are contained in it. Every person knows that the grand jury were occupied several days in the discussion of it. To be sure, they ultimately found the bill; but it is notorious, as one of them stated in the open court, that they were not unanimous in the finding of that bill. The duty of the grand jury is only a preliminary step in the proceeding, and though they were allowed to look only at one side of the case, yet it took them several days to say upon their oaths that the case was a fit one to be submitted to the consideration of a jury. When, gentlemen, the Attorney-General comes to state the case he occupies no less than eleven hours in that statement. We all know the powers of the Attorney-General—how remarkable he is for sententious brevity and power of condensation; yet with all his ability he was unable to explain the matter of the charge, or the nature of the proof in support of that charge, in a shorter space than eleven hours. What time did he take to produce his proofs of this terrible conspiracy? He took eight days in laying before you the evidence upon which he rested in support of the charge. So you have before you this indictment which it will cost you hours to read, and which it would take you weeks to understand, and out of the mass of proofs, which it would baffle the memory of a Pascal to recollect, he expects that you will extract for him a case of conspiracy. Gentlemen, there never did exist a more dangerous doctrine to the liberties of a people than that doctrine of constructive crime, and I warn you to beware of it. Constructive treason has been heretofore attempted, and this is an effort made to introduce constructive conspiracy, and you are called upon to construe a crime out of the mass of documents and evidence laid before you. Gentlemen, various attempts have been made in England to introduce the doctrine of constructive treason, but they failed. In the case of Hardy, in 1794, the charge against him was that of treason, and the overt act laid was that he was guilty of conspiracy. The mode of proceeding in that case was precisely the same as the present, and has been adopted by the Attorney-General as his precedent; he founded this case on it, and carried out the details in the same manner as they had been there carried out. The then Attorney-General of England produced evidence of a multitude of meetings, a large quantity of publications, extracts from letters and speeches, and having spent hours in stating it and days in the attempt to prove it, when the case came before an English jury, who are at all times willing to punish the man who violates the law, they had no hesitation in pronouncing their opinion that they would not construct a conspiracy, and accordingly they found a verdict of not guilty. The same took place in Horne Tooke's case also, which was referred to by Mr. Sheil, and in Hunt's case. In every instance an English jury came to the conclusion that they would not be acting fairly and conscientiously in spelling out and inferring criminality upon such grounds as those which were urged in those cases. And yet if you will take the trouble of reading them you will find the evidence the same as it is here. I trust you will follow the uniform example of English jurors, and that you will not guess, conjecture, and construct a conspiracy for the Attorney-General. He had a plain, obvious, and direct course to take—he has avoided that course and preferred adopting this tortuous one of conspiracy, which forms the subject matter of the present indictment. But observe, gentlemen, the gross oppression of this proceeding as to my client. There is no evidence that he ever knew or ever saw any one of the other traversers until the 3d of October, when he attended a meeting of the repeal association in Dublin. You will not forget that every meeting which has been proved took place before then; and it is not even alleged that Mr. Tierney was at any one of them. It is not pretended that he ever heard a syllable of any of the speeches on those occasions, or that he ever had even read, much less concurred in, any one of the publications which have been laid before you, and yet they are all adduced as evidence against him. I beg to remind you that the Attorney-General has not told you when or where the agreement which constitutes the conspiracy took place. He has taken the whole of Ireland as the scene of his operations; he has left to you to select the spot where the agreement was entered into; he has given you a period of nine months, and you are to make choice of any day which you think fit. I ask you is this a definite or specific charge which any man ought to be called on to answer. How is Mr. Tierney to defend

himself against such a charge? Is he to travel over Ireland—to visit the place of every meeting—to acquaint himself and to instruct his counsel as to every occurrence that took place there? is he to read every speech that was made—to study every newspaper that is stated in the indictment, and be prepared to show that every meeting, every speech, and every publication was innocent? To require from my client that he should do so, is to ask him to effect an impossibility. It is fair that every man should be prepared to justify what he himself has done or said, or what has been done or said by others, when sanctioned by his presence. But is it fair to ask Mr. Tierney to justify the acts and language of others, during a period of nine months, of which he was totally ignorant, and to tell him that if he does not do so, he is to be convicted as a conspirator? But, gentlemen, let me ask you on general grounds —is not the charge of conspiracy most improbable? When any man is accused of a crime, the first and natural suggestion is to inquire into his character, his rank and situation of life, his powers of judging, and how far it was likely he would be guilty of the offence charged against him. Make those inquiries here—who are the traversers? they are all men of talents and education. Allow me to mention one—Mr. O'Connell: he is known to be a gentleman of first rate talent—a most able lawyer, peculiarly versed in criminal law, perfectly aware of the nature of the crime of conspiracy, and yet you are asked to believe that he rushed with his eyes open into the commission of that offence. Any man may inadvertently be present at an unlawful meeting, and have to answer for the consequences—any man may, in the heat and ardour of speaking, utter language which he may not be able to justify, but no man can inadvertently be a conspirator. It is a crime of deliberation, and you are asked to believe that one of the ablest and most experienced lawyers of his time has deliberately become a conspirator. But again, it is almost of the essence of conspiracy to be secret. The conspirator usually moves in darkness. Is that the case here—has there been any secrecy or concealment on the part of Mr. O'Connell, or any of the traversers? has not every part of their conduct been as open as day? The proofs of conspiracy are meetings, speeches, and publications. The meetings are openly and publicly announced—the time and place fixed—the speeches are uttered in the presence and hearing of thousands—the publications are to be found in the newspapers of the day. I ask again, is this the conduct of conspirators? The meetings may have been illegal, the speeches seditious, the publications libellous, and if that be so let each man be indicted for what he has done, said, or published, and let him undergo the consequences, but do not implicate my client with acts and language in which he never participated, or find him guilty for the conduct of others over whom he had no control. Therefore, gentlemen, upon this part of the case I confidently submit that you are not warranted in finding that a conspiracy or agreement ever existed between the traversers. If you adopt that view there is an end to the case, and you are bound to acquit all the traversers; if you cannot adopt that view, I then come to the second branch of the case, and I do unhesitatingly assert that there is not the slightest ground contained in the evidence that my client ever engaged in this conspiracy, if it ever existed. It is necessary for me to tell you who my client is. He is the Roman Catholic clergyman of the parish of Clontibret, in the county Monaghan—he is a gentleman, as I am instructed, of most exemplary character, both as a private individual and a clergyman—he has filled that situation for a considerable time, and I will venture to say, from what I have heard, that no imputation of any kind can be cast upon his private character, either as a gentleman or a clergyman. Gentlemen, it is also right to tell you what his political opinions are—he is a man of talent and education, and deeply interested in the welfare of his country—he has studied the history of Ireland, and has devoted his attention to the question of the union, and has brought his mind, whether right or wrong, to the conclusion that it was a measure which was disastrous not only to the independence but to the welfare and prosperity of this country. The question is not whether he was right or not in coming to that conclusion: you may differ with him in opinion—I only state that he has come to the firm and conscientious conviction, that the union is an injurious measure and should be repealed. Does any man say, or pretend to say, he has not a right to entertain that opinion? Is there any particular privilege attached to the act of union to prevent men forming opinions hostile to it? There is no particular inviolability hedging that act to guard and protect it. It is the same as any other act of parliament, differing only in its importance; and Mr. Tierney had a perfect legal and constitutional right to entertain the opinion, that the act of union was injurious, and was a measure which should be repealed. He has also a right to express that opinion; and can or does any man controvert that right? It is the constitutional right of every man to express and advocate the opinion, that the union ought to be repealed, if that be his deliberate conviction; nay, I will go further, and say it is not only his right, but his bounden duty to do so, and no honest man, no honest Irishman, who had a particle of regard for the welfare of his country, but ought, if he brought his mind to the conscientious conviction that the union was injurious, to use every legitimate effort in his power for the advancement of that which he considered beneficial to his country. No man should hesitate for a moment if he believed the measure to be injurious—if he believed that on the altar of the union was sacrificed the independence and welfare of Ireland, to exert himself by every legitimate means to set it aside, and he would be bound by every principle which should guide a man in his conduct to omit no fair and honest effort to obtain what he considered necessary for the welfare of his country. Gentlemen, you will not consider me as discussing the question of the repeal of the union. I do not mean to offer any argument for or against the measure, it is not my province to do so, but I allude to it on this single ground, to convince you of the honesty and sincerity of the opinions which Mr. Tierney had formed and expressed. The Attorney-General has felt it necessary, for the purposes of his case, to lay before you grounds to make you doubt, if you could, the sincerity of those who advocated the repeal of the union, and he therefore thought it right, as is often done on such occasions, to take the ground of argument which he thought would be likely to be resorted to on the part of the traversers; and accordingly he told you that the counsel for the traversers would probably resort to the opinions of high and eminent men who were hostile to the union, the opinions of Bushe, of Plunket, and of Saurin. Why should not the traversers resort to them? Where are the Irish people to resort to for wisdom and instruction if not to those bright luminaries I have mentioned? I shall not trouble you by reading the opinions of those eminent men. Mr. Sheil has already read them for you; but take up any one of the speeches delivered by them, and compare the language there used with the language of any of the advocates of repeal, and you will find that, eloquent and strong as it is, it falls far short in strength of expression of the language of those eminent men. Gentlemen, I will read for you a single passage from Mr. Saurin's speech; it is as follows:—"You may make the union binding as a law, but you cannot make it

obligatory upon conscience. It will be obeyed as long as England is strong; but resistance to it will be in the abstract a duty, and the exhibition of that resistance will be a mere question of prudence." Take any of the numerous speeches laid before you in evidence, and any one of the many publications read, and you will not find a proposition so strong in thought or language as that which I have quoted for you. I ask you, gentlemen, do you doubt the sincerity of those eminent men? Do you doubt the sincerity of Charles Kendal Bushe, who, I regret to say, is no longer amongst us, but whose memory will ever remain enshrined in the hearts of his countrymen? Dou you doubt the sincerity of Lord Plunket? Who ever doubted it? I rejoice to say he is still amongst us, commanding and possessing as he ever did, the love, the respect, the reverence, the admiration of all those who have had the honour and the happiness to know him. Do you doubt the sincerity of Mr. Saurin? You have heard the panegyric which Mr. Sheil, his political opponent, pronounced upon him—"He may have had his faults," said he, "but hypocrisy was not among them." When you find these eminent men—not enthusiastic boys, but men in the full maturity of their intellect, placed at the top of their profession, holding seats in the legislature, and possessing a deep stake in the country—when you find these eminent men expressing such decided opinions with regard to the union, I ask you, do you doubt their sincerity? If they had strong reasons for the opinions which they expressed—and can you doubt they had?—may not those reasons still exist, and may they not have operated on the mind of Mr. Tierney when he came to the conclusion that the repeal of the union was necessary for the preservation and happiness of his country? But the Attorney-General went further; he endeavoured to convince you that the measure of repeal was impracticable and unattainable. I know nothing that could result from that line of argument, but to make you doubt the sincerity of those who advocated the measure, and undoubtedly if men do look after what is impracticable or unattainable, their sincerity may be questioned. But, gentlemen, it appears to me monstrous to say, that any measure, after what we have all seen in our own times, should be considered as impracticable, no matter what difficulties interposed. How many measures of great importance, in our own time, which appeared to have insuperable difficulties to contend with, which yet have become the law of the land. You recollect the question of the slave trade, which Mr. Pitt denounced as the greatest stain which ever disgraced or degraded mankind, yet that measure, supported as it was by his mighty talent, and by that of Fox and Wilberforce, and recommended by every feeling of humanity, took years before it was possible to counteract the prejudice against it, and before it became the law of the land. The unwearied efforts of Mr. Wilberforce to accomplish that measure can never be forgotten; he devoted to it the best part of his useful life; effort followed effort, defeat followed defeat, but he persevered. On his side was justice and humanity, against him was the selfishness of human interest. He stood between both, and the slave trade was abolished, and if I might be allowed to use an expression of his own, "he stood between the living and the dead, and the plague was stopped." Do you forget the Catholic Emancipation Bill? You know the difficulties against which its supporters had to contend—the struggles which they had to encounter. Opinions were pronounced that it was perfectly impracticable and unattainable, yet that measure has become the law of the land. Recollect the state of that question in 1816; its advocates had abandoned hope and relinquished it in despair. In that year an extraordinary man who now stands a traverser at your bar, came forward and undertook the cause of his country; he saw the difficulties he had to encounter, but he also saw the duties he had to perform, the rights he had to sustain. He revived the Catholic association—he advanced step by step. Unchilled by the apathy and indifference of those who ought to have been his friends—undismayed by the opposition of those who ought not to have been his enemies, he never relaxed his efforts until he had achieved the independence of millions of his countrymen; and will any man, after this, say that any public measure is impracticable or unattainable. There is the still more recent measure of parliamentary reform. We know how long it took before it became the law of the land. I therefore say you cannot cast a doubt upon the sincerity of those men who advocate the repeal of the union, though in your judgment they have great and almost insuperable difficulties to struggle against. The Attorney-General has used another ground of argument to make you doubt the sincerity of the traversers, and he has referred to the opinions and speeches of eminent statesmen with regard to that measure. I never expected to hear the Attorney-General referring to the speeches of Lord Althorp and Lord John Russell; but so far as they suited his purpose he has done so. He also referred to the more congenial opinions of Sir Robert Peel and the Duke of Wellington. These are all men of distinguished eminence, and I freely acknowledge that every respect should be paid to the opinions of such men; but I deny that any man, or any set of men, are to be bound and controlled by the opinion of others, however eminent, whether they be in office or out of office. Are the opinions of statesmen immutable? Are they not at liberty to change those opinions if they see grounds for doing so. I can refer you to one of those very eminent individuals to show you that the opinions of statesmen are not immutable. You cannot but recollect that Sir Robert Peel had for years been the decided opponent to Catholic emancipation. On every occasion in which it was brought forward he opposed it with all the power of a minister and the talent of a statesman. In 1828 he expressed a decided, unequivocal opinion hostile to it when introduced by Sir Francis Burdett. Do you doubt the sincerity of that opinion? I do not. I believe Sir Robert Peel to have been perfectly honest and sincere; yet, in less than twelve months after, that measure became the law of the land, and was even introduced, supported and advocated by Sir Robert Peel himself. Gentlemen, do I find fault with Sir Robert Peel for the change of his opinion? Quite the reverse; on the contrary, I think his conduct on that occasion the most glorious act of his political life, and for which he deserves the greatest credit. That man would be a sorry and wretched statesman who thought that because he at one time expressed certain opinions, those opinions were immutably to bind him. In 1828, and the antecedent years, Sir Robert Peel entertained an opinion hostile to emancipation; but circumstances arose—many things combined to convince him that he had been in error. Never was any political man placed in a situation of greater difficulty than Sir Robert Peel at that time. He was the idol of a party, whose leading principle was to oppose the emancipation of Catholics—he knew the risk he was incurring, and the obloquy and censure he would be exposed to by a change in his opinion—he knew, to use an expression of Mr. Burke, "that he was putting to the hazard his peace, his power, his darling popularity;" but like an honest man, and an honest minister, he had the magnanimity to risk and even sacrifice them all in the discharge of what his judgment told him was his duty to his country, and, accordingly, in 1829, he brought forward his bill for Catholic emancipation, and enforced it with all his power as a minister, and

all his eloquence as a man. Will the Attorney-General then persist in telling you that you should doubt the sincerity of the traversers, because eminent statesmen have expressed an opinion adverse to the measure of the repeal of the union? Gentlemen, if then you believe that my client entertained a conscientious opinion of the injury and injustice of the union, I think you will have an honest and constitutional motive to which you can refer his conduct. Now, gentlemen, let me come to the consideration of the acts imputed to him. If I recollect the evidence right, these acts are but two:—first, attending a meeting at Clontibret, on the 15th of August, and secondly, one at the association, on the 3rd of October, in the same year. I believe I am correct when I say, that no act was imputed to him except upon those two occasions, and if he is to be branded or convicted as a conspirator, it will be on one or other or both of these two meetings to which I have referred. Gentlemen, I will take both in their order, but before I go to the meeting of the 15th of August, I must refer to a portion of the evidence given with regard to an alleged conversation which had taken place between Mr. Tierney and M'Cann, who was produced as a witness; that conversation is stated to have taken place on the 16th of June, and I had better read to you what I think was a correct report of what was alleged to have been said at that conversation, begging you to recollect that this took place two months previous to the meeting. M'Cann told you he received instructions to go to Mr. Tierney, to learn when the meeting was to be held. Accordingly he went to Mr. Tierney, and obtained all the information it was in that gentleman's power to afford, namely, that he did not know the precise day on which the meeting was to take place; then we are told by M'Cann, that in the course of the same conversation, Mr. Tierney adverted to the union—that he said it had been fraudulently carried—that it was not binding on the conscience—that he represented it to be a concoction—that he spoke of the feeling that was becoming general among the army—that he declared that the army was favourable to repeal, and partook of the enthusiasm of the people—and that the army could not be so easily led to spill the blood of their fellow-men—and that he referred to what the army had done in Spain. This, gentlemen, was the conversation sworn to, and the plain object of this evidence was to endeavour to implicate Mr. Tierney in the charge of seducing the army. I have first to say to you on the part, and by the authority of Mr. Tierney, that he does most positively and absolutely deny, that any single particle of that alleged conversation ever took place. He acknowledges that M'Cann came to get information about the meeting—that he gave him that information, but he positively denies the truth of the residue of M'Cann's evidence as to this alleged conversation. I certainly am not able to produce any witness to contradict him, and why, because according to the testimony of M'Cann, there was no one present but himself and Mr. Tierney; but I am glad for the sake of truth and justice, that I shall be able to convict M'Cann from his own lips, and upon such facts and circumstances that it will be impossible that you can give one particle of credit to what has been said by him. In the first place is it not improbable if such a conversation took place, that a common policeman would be able to recollect the terms used—that he would be able to detail to you the strong eloquent language in which it was carried on? Have we not this further strong improbability? He was a policeman—not even one of the parishioners of Mr. Tierney, and he came dressed in uniform; is it likely or probable that a gentleman in the rank and situation of Mr. Tierney, would have held a conversation of that kind with a common policeman? I would beg leave to direct your attention to this—can anything be more unsafe than for juries to be acting on conversation alleged to have taken place so long ago? M'Cann told you he kept a diary—that he put in that diary an account of the meeting, and of what Mr. Tierney told him as to it; but he did not take any note of the conversation, and he acknowledged that he never mentioned it until he heard he was to be examined. Why did he make an entry of part of what occurred and not of the rest? If such conversation had taken place, and that he considered it of importance, why not commit it to writing as he did the part relative to the meeting. Is not his omission to do so strong evidence either that it never occurred, or that he thought it unimportant; and if he thought it so, is it credible that he would have so long carried it in his recollection? You will recollect that he said that a portion of the conversation was in reference to Spain—that the army had done a great deal in Spain. Gentlemen, the army has done a great deal in Spain in latter periods. It has abandoned the regular constituted authorities, and has, by its force, set up another government, and the object of bringing forward this conversation was to endeavour to sustain that portion of the charge which imputes to the traversers an attempt to seduce the army from their allegiance. Gentlemen, you will recollect that this conversation is alleged to have taken place on the 16th of June. I have not myself examined the papers, but I am assured by my learned friends who have done so, that the first indication of a revolt on the part of the army in Spain took place on the 11th of June, in the city of Valencia; the next demonstration did not take place until the day following, the 12th, at Barcelona; and the important revolt did not take place until the 24th of June. No account of the earliest of these movements could have reached this country until the 19th or 20th of June, as will appear from the newspapers of the day. So that it was utterly impossible that a person in the county of Monaghan could have known what had taken place until the 19th or 20th of the month. It was impossible that he could have known on the 16th of June what had taken place at Valencia on the 11th, and at Barcelona on the 12th. Therefore, I have strong reason to contend that this conversation is a fabrication on the part of the policeman, and that he had sense enough to comprehend its importance as connected with the charge in the indictment, and the obvious advantage of connecting one of the traversers with the alleged attempt to seduce the army. But if I am right in the dates there could have been no communication with this country sooner than the 19th or 20th, yet you have this wretched policeman, on the 16th, detailing and referring to events as if they had then occurred. I will not waste more time on this part of the case. I am sure you will agree with me, independent of the danger of acting on a conversation of this description, and the improbability attending it, and the clear proof that no such conversation ever took place—that I am not asking too much from you when I ask you to dismiss from your minds that alleged, and untruly alleged conversation. Gentlemen, I now come to the meeting at Clontibret, which took place on the 15th of August. Who were the persons brought forward to give you an account of what took place at that meeting? The only evidence adduced is that of two policemen. You have heard from them that there were two stipendiary magistrates present. Why has not either of them been produced? Was it not the duty of the crown, if they wanted to represent the meeting at Clontibret as an illegal meeting, to produce those best calculated to give evidence upon the subject. Though these two stipendiary magistrates were present—though they were in the pay of the government, and under its control—though

there was no difficulty on the part of the crown, if they thought fit, in producing them, yet neither of them is produced. But in order to give you an account of the character of the meeting, the policeman is produced and the magistrate kept back. Gentlemen, I wish to cast no imputation upon the crown for so doing. I know not its motives—I know not its reasons, yet I think that I am justified in saying this, that if those magistrates could have deposed to any single circumstance that would have been calculated to stamp the meeting with illegality, the Attorney-General would have called them, and I am therefore entitled to assume that he found those persons would not be able to say anything which would serve the prosecution, but might say something that would prejudice it. Well, gentlemen, that meeting took place, and not one of the traversers was present at it except Mr. Tierney. Not an iota or particle of connection is shown between him and the other traversers up to or at that time, yet he is alleged to have entered into a conspiracy and agreement with them. Are there any grounds for saying that this meeting was illegal? Was there an act of violence committed? no; was there anything done to show that the meeting was an illegal assembly? nothing. There was not one single particle of riot or disturbance—it was characterised by that which characterised all the other meetings—was perfectly tranquil, perfectly peaceable—not a finger or hand was raised; the utmost that is alleged is, that some of the people were crushed, and among them the policeman. If, gentlemen, the existence of a crush is to be the ground for attaching a charge of illegality to a meeting, I must say that the Court of Queen's Bench has held most illegal meetings for the last fortnight; there has certainly been a considerable degree of crushing in the court during that time, and although, gentlemen, from your peculiar situation, you are guarded and protected from it, no other portion of the court has been free from crushing—I might say that even the judgment-seat has been invaded, I will not say crushed, by those fair persons whom even ermined judges found it impossible to resist. The attorney-general calls upon you to pronounce this meeting illegal in order to connect my client with this conspiracy, for if the meeting was legal there is no ground for the charge against my client; and, in order to make a particle of proof against him, it is necessary to establish that this meeting was illegal. I say you have not a single particle of evidence to show that this meeting was illegal. Gentlemen, I will tell you what the object of this meeting was—it was to adopt certain resolutions. The first resolution was this: "Resolved that the legislative union was carried against the will of the Irish people." Look to the speeches of Lord Grey, and you will find the self-same proposition laid down by him. And after passing another resolution of much the same purport, a petition was drawn up to this effect: "That the legislative union having operated to our injury, we request your honorable house to repeal said union." So that this meeting, this perfectly tranquil, this perfectly peaceable meeting, having adopted resolutions, and expressed their opinion that this measure of a union was a bad one and ought to be repealed, and having exercised an undoubted legal and constitutional right, you are called on to say that my client was engaged in an illegal conspiracy! Gentlemen, you cannot do so. Gentlemen, the meeting to which I shall next refer you is a meeting of the association, which was held on the 3d of October, on which occasion Mr. Tierney was present; you will recollect that up to that time you have no evidence that he ever saw or communicated with any of the other traversers. It is not pretended or alleged that he was at any one of those meetings, with respect to which evidence has been given; it is not pretended or alleged that he ever heard or knew anything of them, or of any of those speeches or publications which have been noticed, and for the first time he is brought in connection with two of the traversers at the repeal association on the 3d of October. It is true he attended at that meeting, true he became a member of that association on that occasion, and the Attorney-General has wished you to believe that that is an illegal association. I do not know whether it attracted your attention, but I shall never forget the withering sneer with which he read the title of this association; he meant to insinuate that the "loyal repeal association" is a disloyal and illegal association. He did not venture to say so in distinct terms, but he endeavoured to do so by a sneer. I am not a member of that association, perhaps I do not approve of the object they have in view, but I do repel with indignation any attempt to cast an imputation on it of disloyalty; some of the wisest and best men in Ireland are members of that association—men eminent for talent, eminent in rank, in virtue, in patriotism, are members of that association; they may be wrong but they are not disloyal. On the 3d of October, 1843, the association consisted of at least one million of members, and are you to pronounce them all disloyal? are you to consider a sneer so potent as to brand them with disloyalty? I deny that there is anything disloyal or illegal in that association. How do I prove that? I shall resort to an authority which the Attorney-General himself must acknowledge the weight of—my authority is the Attorney-General himself. This association has now lasted for three years. It has been sitting uninterruptedly from week to week, not secretly, for it was open to all who thought it worth while to pay the paltry sum of one shilling, and the Attorney-General never until now cast an imputation upon that body. He has not dared to take steps to put down this disloyal association. He would not hesitate to do so if he dare, if the law allowed him so to do. It may be easy to sneer at it, but it is very difficult to bring a charge against it before a court of justice and a jury of his countrymen, and he has not dared to institute a single proceeding to impeach the legality of that association. Is my client to be branded with the charge of conspiracy of the worst description, merely because he attended a meeting of an association which has subsisted for years, and to this hour; against which the Attorney-General has never dared, and I will venture to say he never will dare, to institute a prosecution? But, says the Attorney-General, he not only attended this meeting but he gave contributions. Why true he did so, but is there anything illegal in that? Does the Attorney-General mean to tell you that a man may not contribute to a fund collected for the furtherance of the repeal of the union? If he lays down that as the law, though he may accuse me of ignorance, I will take the liberty of asserting that he could not sustain such a proposition. The Attorney-General cannot be ignorant of the existence of similar associations in England. Gentlemen, you must know of the existence of the anti-corn law league—you must know that they have collected contributions to an enormous amount—I believe to the amount of hundreds of thousands, and has the Attorney-General for England thought it his duty to institute a prosecution against them? The Marquis of Westminster has written a letter, sending a subscription of 500*l.* to that fund; but I have not heard of his being prosecuted for such an act by the English Attorney-General. Perhaps I am wrong in suggesting a prosecution. The meeting of parliament is approaching—the Attorney-General for Ireland must go there for the purpose of discharging his parliamentary duties, and he will have an opportunity of communicating with the English Attorney-General. He owes to that distinguished law

officer a deep debt of gratitude; he has received from him most important assistance on a late occasion, and an opportunity will now be afforded to the Attorney-General for Ireland of repaying that debt. He can from his own experience here instruct him in the law of conspiracy; and the Marquis of Westminster may be brought to the bar of the Queen's Bench as a conspirator; he may instruct him in the power of sneering away the loyalty of his countrymen, and the anti-corn law league may be branded with the charge of disloyalty. I confess that my client attended the meeting of the 3d of October, that he handed in subscriptions; but he did more, he made a speech, and that has been put upon record in the indictment, I suppose, for the purpose of handing down that specimen of eloquence to posterity. I have read that speech very attentively, and I find in it a long historical allusion to the parish in which he lived. He appears to be deeply versed in the history of that parish; he had, as might naturally be expected, a deep interest in it; and I have no doubt the parish of Clontibret stands as high in his estimation as the field either of Blenheim or Waterloo. He then comes up to the association, and falls into the prevailing and besetting sin of Irishmen, that of speech-making; he displays his historic lore, he dilates on the history of the parish of Clontibret, and therefore he is a conspirator. But, says the Attorney-General, he talked of deeds not words—of hands and hearts. Why these are but the ordinary expressions of a man of sincerity when proffering assistance—what more natural than for a man to say you shall have every assistance both of hand and heart? However, the Attorney-General says that Mr. Tierney talked of deeds, and that he meant deeds of violence, and that when he alluded to hands he meant hands with arms in them. What right has the Attorney-General to put such an interpretation upon the words of my client? On the part of my client I repudiate such a construction. I deny that there was anything in his words to warrant such a construction. It is not for you or me to pronounce with certainty on the motives of any man—this is for the Almighty alone, the great searcher of hearts, who can alone judge of the true motives of an individual; but when man comes to judge of the motives of his fellow-man, he must look to his acts and conduct alone for their elucidation. And it does appear to me to be a gross violation of charity to pervert and strain the meaning of words in order to fasten a bad motive on your fellow-being. Gentlen, I lay these matters before you, and without fear I confidently appeal to the conduct and acts of my client; and I say without hesitation I shall be most grievously disappointed if you, gentlemen of the jury, shall come to the conclusion that my client is guilty. I have now stated to you the facts and circumstances on which I rely for your verdict; and if you agree with me in the view which I have taken, and come to a conclusion that my client is entitled to a verdict of acquittal, I feel confident that it is a verdict you will be able to justify to your country now, and to your God hereafter.

MR. HATCHELL, Q.C., IN DEFENCE OF MR. RAY.

Mr. Hatchell, Q.C., rose and said—May it please your lordships and gentlemen of the jury——

Chief Justice—Whom do you appear for?

Mr. Hatchell—I am counsel, my lords, for Mr. Ray.—Gentlemen of the jury, I consider, notwithstanding what you have heard from the able and eloquent counsel who have preceded me, and who have spoken to the case generally with respect to the charges that are made against all the traversers, and particularly with respect to their own clients—I consider myself bound, notwithstanding what you have heard with respect to the law and facts of the case, still to address to you, on behalf of my client, a few observations. Gentlemen, I think you must feel that the ground has been pre-occupied—that there can be very little, indeed, for me to add to the eloquent observations of my friends Mr. Sheil and Mr. Moore, on the circumstances under which the indictment has been preferred. Still, gentlemen of the jury, there are circumstances, peculiar to the situation of each of the traversers, which it is considered right should be laid before you, in judging of the share each of them appears to have taken in those transactions, and with that assistance to see if you can bring your minds, as fair, honest, and impartial jurors, to come to the conclusion with the criminal intent charged by the indictment, that the traversers, and each of them, joined in the preconceived plan of, I may say, overturning the government of the country. Gentlemen of the jury, my client, Mr. Ray, is peculiarly circumstanced in relation to this charge. He is the secretary of the repeal association. Before I call your attention to the charge, as contained in the indictment, and which you have to try, permit me to tell you what is the real, substantial question which you have to try; and also to remind you of what you have not to try. Gentlemen, you are not to try Mr. Thomas M. Ray, as has been already observed, for having attended an illegal assembly. He denies that any assembly with respect to which evidence was given before you on this trial was illegal, and, if I had to defend him on that charge, I could do so successfully. You are not to try whether Mr. Ray, at any one of those assemblies, at any time or place, uttered a seditious speech or published a seditious libel. If such a charge was preferred against him, I am satisfied I could perfectly justify him from such a charge. He never published a libel in his life. He never uttered an accusation against man, or against the government. Gentlemen, you are not to try whether he be a repealer or not. I must admit, that if you were to try him on that charge, I could not defend him. He is and has been a repealer, and is and has been the secretary of the repeal association for several years. He has been the secretary and paid officer of that association since its institution. He became the officer, and salaried officer of it, approving of its objects, mixing himself up with its proceedings, in accordance with the principles which he professed, and to sustain his opinions on that question of which you have heard so much. But, gentlemen, I consider that when you come to try the question with what intent Mr. Ray was a member of the association—with what intent he did the acts connected with that association—as to whether he was guilty of a criminal intent, or entered into a preconcerted conspiracy—it is important to consider the position in which he stood and the relation which he bore towards that association. Gentlemen of the jury, I need not repeat to you again, and to implore you not to permit your minds to be diverted from, or your attention distracted from, the consideration of the real question for your consideration. The question you have to try on your oath is, did Mr. Ray, in conjunction with all or any of the traversers, enter into a plan preconcerted, arranged, preconceived, and with the criminal intent of exciting disaffection against the government or constitution, and with the other criminal intents which are charged in the indictment? Gentlemen of the jury, it is a question peculiarly for you—the question of intent—with what intention those proceedings took place—what was the intention of the parties who committed or did the acts which are charged as evidence of that intention; it is your peculiar province to judge of that intent. The court, the judges who preside here, it is for them

to say whether the acts given in evidence are acts that ought to go before you for your consideration; they are the judges of their admissibility, or whether these facts shall go before you as evidence; but it is your sole and exclusive province and duty to decide this upon your oaths—what was the intention with which those persons interfered in those transactions? They were the actors, but what was the intention? Was it an innocent and legal intention, or the base and criminal intention which is charged in the indictment, to create disaffection towards the government and constitution of the country? Gentlemen of the jury, permit me, in furtherance of that view, to refer to the opinion of the eminent judge who charged the grand jury in the case of Mr. Thomas Hardy. Lord Chief Justice Eyre, in calling the attention of the jury to the question they had to try, said——

Judge Burton—What do you take that from?

Mr. Hatchell—From the State Trials, vol. 24. Your lordship will find it in page 205. You are aware, gentlemen, from what has been already stated of the objects of the societies of that day—the professed objects of the societies of that day—for being a member of which Hardy and Tooke were prosecuted—that there the indictment was for a conspiracy in the nature of constructive treason. And in charging the grand jury in Hardy's case, Chief Justice Eyre said:—"If there be ground to consider the professed purpose of any of these associations a reform of parliament as mere colour, and as a pretext held out in order to cover deeper designs—designs against the whole constitution and government of the country—the case of those embarked in such designs as that which I have already considered. Whether this be so or not is a mere matter of fact, as to which I shall only remind you that an inquiry into a charge of this nature which undertakes to make out that the ostensible purpose is a mere veil under which is concealed a traitorous conspiracy, requires cool and deliberate consideration, and that the result should be perfectly clear and satisfactory. In the affairs of common life no man is perfectly justified in imputing to another person a meaning contrary to what he himself expresses, but upon the fullest evidence." Gentlemen, no man has a right to impute to another that he is not intending what he professes to do, unless there is clear, satisfactory, and unambiguous evidence to show the contrary. Every man must be presumed to be acting according to his declared intentions until the contrary is proved. Every man is presumed by the law of the land to be innocent before his guilt is clearly established; and, as already observed to you by Mr. Moore, if there be a criminal intent alleged, and if there be a legal intent to which the acts of the party can be truly attributable, common justice—the spirit of the British law—requires that his acts should be attributed to the legal and innocent motive, and not by straining to a criminal intent. Gentlemen of the jury, you have a right to go further—according to the spirit of the British law if it be questionable to what those motives are attributable—if there be doubt upon your minds in judging of the transaction, the parties accused are entitled to the benefit of such doubts, and their acts are to be attributable to honest and just motives, and not to criminal design. Now, gentlemen of the jury, you have heard with great force of expression, and great power of argument, an observation made to you already on the nature of this proceeding. It has been already characterised a "monster indictment," unprecedented in the annals of English justice or English injustice. No precedent can be found in the records of the law of England for such a proceeding as this, charging almost traitorous intentions against the parties—mixing them up in the transactions of nine months of their lives—fixing the acts of one upon the others—making each responsible for the acts of the whole, and combining those charges in a volume of overtacts—accusations which I say are unequalled in the history of the law. How is an individual to be competent to prepare himself for his defence against such multiplied accusations, for though they all tend to one, or two, or three charges of conspiracy, yet all the overt acts stated in this indictment are charged as illegal acts, to sustain the ultimate charge of conspiracy, with a criminal intention of assailing the state and constitution? Of the injustice of such a course of proceeding as in the present case has been adopted, you have heard much. You have been told that no precedent can be found for such a prosecution as the present. Gentlemen, there is but one case on record which bears any analogy to it, and that case is one which is a blot on English history, and one which has challenged the indignant animadversion of all intelligent men who have ever considered it—the case of Warren Hastings. When on occasion of Hardy's trial, Mr. Erskine, the eloquent advocate of the accused, came to speak of the indictment in that case (which falls fifty degrees short of the perplexity and injustice of the indictment on which the present traversers have been given in charge) he expressed himself in language of no common force. Lord Erskine, in page 890, of the "State Trials," expressed his sentiments upon such prosecutions as the present in no ordinary language. He began by quoting the sentiments of Lord Coke upon constructive treason, which are as follows:—"And third, how dangerous it is by construction and analogy to make treason where the letter of the law has not done it, for such a method admits of no limits or bounds, but runs as far and as wide as the wit and invention of the accusers, and the detestation of persons accused will carry men. Surely" (continued Mr. Erskine) "the admonition of this resplendent lawyer ought to sink deep into the heart of every judge and every juryman who is called to administer justice under this statute, above all in the times and under the peculiar circumstances which assemble us in this place. Honourable men, feeling as they ought for the safety of government, and the tranquillity of the country, and naturally indignant against those who are supposed to have brought them into peril, ought for that very cause, to proceed with more abundant caution; but they should not be surprised by their resentments or their fears. They ought to advance in the judgments they form by slow and trembling steps—they ought even fall back and look at everything again lest a false light should deceive them, admitting no fact but on the foundation of clear and precise evidence, and deciding on no intention that does not result with equal clearness from the fact. This is the universal demand of justice in every case. How much more especially then in this when the judgment is every moment in danger of being swept away into the fathomless abyss of a thousand volumes, where there is no anchorage for the understanding—where no reach of thought can look round in order to compare their points—nor can any memory be capacious enough to retain even the imperfect relation that can be collected from them? Gentlemen, my mind is the more deeply affected with this consideration by a very recent example in that monstrous phenomenon which, under the name of a trial, has driven us out of Westminster Hall for a large portion of my professional life. No man is less disposed than I am to speak lighty of great state prosecutions, which bind to their duty those who have no other superiors, nor any other control, least of all am I capable of even glancing a censure against those who have led to or conducted the impeachment, because I respect and love many of them, and know them to be amongst the best and wisest men of the nation. I know them indeed so well as to be persuaded that could they have foreseen the

vast field that was to open, and the length of time it was to occupy they never would have engaged in it—for I defy any man not enlightened by the divine Spirit to say with the precision and certainty of an English judge deciding upon evidence before him, that Mr. Hastings is guilty or not guilty; for who knows what is before him or what is not? Many have carried what they knew to their graves, and the living have lived long enough to forget it. Indeed, I pray to God that such another proceeding may never exist in England, because I consider it a dishonour to the consitution, and that it brings, by its example, insecurity into the administration of justice. Every man in civilised society has a right to hold his life, liberty, and reputation under plain laws. That can be well understood, and is entitled to have some *limited specific* part—his conduct compared and examined by their standard, and that he ought not for seven years, no, nor for seven days, to stand as a criminal before the highest tribunal until judgment is bewildered and confounded, to come at last, perhaps, to defend himself broken down by fatigue, and dispirited with anxiety." Such was the language of the acute and impassionate Erskine in comparing the proceedings in Hardy's case with the proceedings which had been instituted against Warren Hastings, and yet I have no hesitation in averring that in Hardy's case the parties charged were few, and the circumstances were few as compared with the number of the accused and the abundance of the accusations in the present unprecedented prosecution. How monstrous is the injustice to which my client has been made a victim, in being called upon to become responsible for the words and actions of other men beside himself during the period of seven months. Gentlemen, the task is indeed arduous which the crown has imposed upon you. You are called upon to jump at the conclusion, but everything that my client did in his capacity of paid officer to the society was done, not in the conscientious discharge of his duties as a paid servant, but with a criminal intent to pervert the law and injure the constitution of the country. That you are sworn to try—at that conclusion you are required to arrive. Gentlemen, I feel embarrassed in addressing you; I confess that I am adverse to going over the same ground that Mr. Moore has traversed in his eloquent remarks, for I am apprehensive that a repetition of the same topics by me, instead of being of value to you or to my client, would rather have the effect of weakening the impression that must have been produced upon your minds by the admirable speech of my learned friend. But I cannot avoid offering a few remarks to which I would fain attract your most serious attention in reference to the particular case of my client, Mr. Ray. Gentlemen, look at the position in which my client is placed, and have regard to the circumstances by which his particular case is characterised. Gentlemen, Mr. Ray is an humble man with a large family, who look to him alone for support. He has no other pursuits than those which are connected with his avocations in office. He was made secretary to the repeal association on its formation in the year 1840, and from the day of his appointment to the present hour his time and attention have been totally engaged by the discharge of the duties incidental to his situation. He has not given me the slightest instructions to say that the repeal movement did not enlist his good wishes in its favour—or that he did not, to the fullest extent, sympathise with the leaders of the agitation; but what he did, he did in the discharge of the duties connected with his official character—what he did, he did in compensation for his salary, and yet, gentlemen, you are called upon to view him in the light of a conspirator, and you are told to attribute every act of his—which he has performed in requital for his emoluments—as an act planned and achieved with the design of subverting the law and the constitution. If the association were an illegal society, and if it had been characterised as such by the crown, then indeed my client might fairly have been made responsible for all his actions in the capacity of secretary; but no such doctrine as this has been ever propounded—nobody has presumed to say that the association is illegal—nobody could say that it is illegal. You find my client, Mr. Ray, on principle, no doubt, a repealer, and incidentally a member of the association; but you also have distinct evidence to show that he is the paid officer of a perfectly legal association. Such is the character in which he truly appears before you. You find him discharging the routine duties of his office, and yet you are called upon to say that his acts are not to be attributed to the due discharge of his duties—are not to be viewed as the deeds of a paid servant who is anxious to give value for his salary, but that they are rather to be attributed to a fell purpose existing in his mind to outrage the laws and trample on the constitution! You are called upon by the crown to view his case in this artificial light. You are called upon to come to this conclusion, but as honest men—as intelligent men—as men who love justice—I ask you can you come to that conclusion? In my humble judgment it was a monstrous thing to include Mr. Ray in this indictment. He ought never to have been included in the present charge; and I cannot forbear from expressing it as my opinion that the crown, in having proceeded against him, have not pursued a candid, ingenuous course either towards him or towards the other traversers. They have indicted the members of a certain society for a criminal conspiracy, and they have included in the indictment Mr. Ray, the salaried servant of the association. I will not apply hard names to this proceeding—I will not go so far as to say that they were guilty of a dishonest intention, or that they could be capable of the common manœuvre of cutting the ground from under the feet of the accused parties, by including the witnesses in the indictment. I do not mean to impute any unworthy motive to my friend, the Attorney-General, but I am surely at liberty to call your attention to the disastrous effect which results to the rest of the traversers from the circumstances of my client being included in the indictment. While I repudiate the idea of attributing an unworthy motive to any quarter, I am surely at liberty to demonstrate how the effect of such a proceeding as has been adopted is exactly similar to that which would have resulted if the paltry manœvure to which I have alluded had indeed been deliberately had recourse to. By including Mr. Ray in the indictment they have deprived the other traversers of the benefit of his evidence. He was the acknowledged officer of the society—he had in his possession the authenticated books and documents of the society, written in his own hand-writing—he knew the working and machinery, so to speak, of the society, and was the only man competent in law to prove from the books the honest and perfectly legal intentions of its members. He could have proved their objects—he could have clearly demonstrated the means that were resorted to by them for the constitutional purpose of procuring the repeal of a statute which they conscientiously believed was a grievance to their country—all this he could have made as clear as the sun light; but he (the man who was in a position to prove all this) had been silenced and was incapacitated from acting as a witness by being included in the indictment. The crown might have brought Mr. Ray upon the table—they might have called for his books and examined the man who made the entries, and thus have furnished themselves with primary evidence of the most authentic character; but this they had not done, and they

were accordingly obliged to avail themselves of the ordinary newspaper reports, which did not publish all the transactions of the meetings, but only such of them as appeared at the time of public interest. They thus were obliged to resort to a species of secondary evidence, and in order to make that evidence admissible they were obliged to have recourse to the left-handed management of including in the indictment the editors of the different newspapers in which these reports were published. What was the course taken at the trial of Horne Tooke? Who was the Attorney-General of England in that day? the late Lord Eldon, then Mr. Scott. Who was the Solicitor-General of that day? the late Lord Redesdale, subsequently Lord Chancellor of Ireland, then Mr. Mitford. How did they proceed against Horne Tooke? Who was the first witness examined against Horne Tooke? Daniel Adams, who was sworn and examined by the counsel for the crown. And what does he prove? that he was the secretary of this society or association—that he had held that office for ten years—that he had made the entries in the books. But the crown may say to us here—"Oh! do you expect we should call a co-conspirator? do you expect that we should give to your counsel the benefit of his cross-examination?" Gentlemen, I hold it to be a principle—an inherent principle—of a crown prosecution, and more particularly of a state prosecution, I hold it to be the duty of those who manage it not to discriminate, to judge, to calculate, to criticise in what way the evidence may be likely to affect those who are to be prosecuted; but it is the duty of the crown to call all those witnesses who can depose to facts appertaining to the prosecution, and then to give the traversers the benefit of their cross-examination. Mr. Ray is included in this indictment; he cannot be a witness at all; I cannot call him for himself—the other traversers cannot examine him on their behalf. In Horne Tooke's case the crown did not indict the secretary; he was the first witness to prove the objects, the intent, and the tendency of the association. Horne Tooke was entitled to the cross-examination of the witness produced by the crown; he had the secretary of the society on the table to interrogate him as to the intent and objects of it. One of his questions was, "Were the members armed with pikes or muskets? No. Did you ever hear anything said in the society about pikes or muskets? No, never in my life. Was there such a thing as a secret committee there? Never. Was not everything conducted openly and publicly? Was there anything ever took place which could lead you to believe that the members intended to depose or kill the king? Oh, no, never." Would I not, gentlemen, have been entitled to ask Mr. Ray if he was a witness on the table, "Had you any reason to suppose that the members of the loyal national repeal association intended to excite disaffection towards the government, or to corrupt the army, to affect the administration of justice, or to overthrow the government?" Why have we not the opportunity of asking those questions, which we might have done if we had the benefit of his testimony. Such was the course that was taken when those prosecutions were being carried on in England, at a time when the armies of France were sweeping the continent of Europe, and when there were great dissensions at home among the people of England. The attorney-general and solicitor-general of that day put the secretary of the association upon the table in order that he might prove the facts—in order that the truth might be ascertained—the truth prevailed, and Horne Tooke was acquitted. What more questions were put to him? "What did you think was the object or intention of the greater part of the members of that society? To obtain parliamentary reform. Do you think there were many among them who meant more than what they said? I do not—I believe they meant what they said." Gentlemen of the jury, I will not go further with this examination. Observe its application to the case of my client, the secretary of the repeal association, who discharged his official duties in the ordinary way that the officer of any public society was bound to do? Why is he included in this indictment, or why is he now called upon, after having been permitted for seven months past to go on discharging the duties of his situation, to answer here as a conspirator—as one responsible for all the acts, speeches and publications of which you have heard so much? Can you on your oaths, as honest and honourable men, say, in the face of the country, that Mr. Ray, the official of a legal, a recognised association, did not discharge his duties as secretary, in accordance with the directions of those by whom he was employed; but that he exceeded his instructions, and combined in doing all those overt acts which form the charge of conspiracy against him. You are called upon to say he did not do these things with the intention of discharging his duty, consistently with his principles; but that he was engaged in a pre-concerted plot—in a settled conspiracy formed between those gentlemen, for you are to swear upon your oath that you believed such to have been his intent before you can give a verdict against him, and I am to get your answer to that plain question out of your jury box. Gentlemen of the jury, it may be said that Mr. Ray went beyond the regular course of his duty; it may be said that he did not confine himself to attending the regular meetings of the association in his capacity of secretary. Gentlemen, I am ready to admit, on the part of Mr. Ray, that wherever there was a meeting of the association, as of the association itself, he attended and officiated there as secretary, and that gets rid of all questions of evidence upon that head. But it may be alleged that he was present at Tara and at Mullaghmast. Now, on that subject I have ascertained the fact, that those were the only two country meetings at which he was ever present. The meeting at Tara took place the 15th of August; it was, I believe, chiefly an assemblage of persons from that immediate neighbourhood; but a considerable portion of them were from the county and city of Dublin, many attracted there from curiosity, and many more of course from an identity of feeling with the object for which it was convened, and from a wish to give expression to their feelings on the question of repeal. Thousands went out there in carriages, gigs, and cars to see what took place on the 15th of August at the hill of Tara. I don't know whether you are aware of it, but I believe the fact is notorious, that from the number of persons who were going out of Dublin that day, it was regarded as a species of holiday through the city. Mr. Ray went there with his family, with the females of his family, and in company with the members of another gentleman's family, of whom one or two were females. He did nothing there; he made no speech there; he did not act as secretary to that meeting, and taking that fact alone, you might as well have included every other person who attended there as Mr. Ray. There can be no doubt but thousands went there from a mere feeling of curiosity. However, we now find Mr. Ray at Tara, and as far as I can see, with respect to Mr. Ray as a traverser, on that head I have nothing requiring me to justify on his part. He may have gone there with a sympathy for the objects of the meeting; but does that attach to him the character of a conspirator? I shall not go into any of the particulars of that meeting, for its peaceable character has been deposed to by the magistrates and policemen who were present—they have told you that there was no riot, no breach of the peace, and no tendency to anything

like it there. To be sure Captain Despard was examined, but what was his evidence? Why was it given? I will tell you: it was in order to give a certain colouring to this case—a colouring of illegality to that great meeting, and that you might draw inferences from that evidence that the meeting was illegal. Well, then, Walker was examined, and what did he prove? That he saw people walking, heard bands playing, and saw a few flags or banners, and that was all he saw. Was there anything illegal in that? Walker was examined by the crown on all that he was supposed to know. Well, Captain Despard, who, it would be recollected, had no great regard or esteem for Mr. O'Connell—for what reason, I suppose, he knows best himself—but it was quite clear that, from his manner and evidence, he had a very strong feeling against Mr. O'Connell and the meeting. This Captain Despard comes from Trim, and he swears he heard the people say "Keep the step!" I asked him did they keep the step, and he said they did not. I must here remark that every policeman who was examined did, either by design or accident, endeavour in the strongest manner to give a colouring of a military character, which they were not warranted in giving, to the whole of those meetings. Captain Despard said the people came in marching order to the meeting, and by that word he wanted to impress something on your minds relative to military array. He was obliged to admit that the people did not keep the step, nor did they know how to keep it. He was a military man, and he at once committed himself in his anxiety to colour the case, and give a turn to the whole proceedings, which were totally different from the facts. It was most disingenuous in Despard to use a military term for the purpose of throwing it into your box; but, at the same time, it only proves the warmth of his temper, and the bias of his mind, and his partizanship on the subject. I will ask are men to be branded with being foul conspirators—are their lives, liberties, and fortunes to be at stake in consequence of such evidence as this that I have shown you? Captain Despard and Major Westenra were taken for foreigners, "because," says the captain, "Major Westenra had a mustache, and I had a curl in my lip" (laughter). Well, he gets into a conversation with some country fellow, who was waiting to see Mr. O'Connell pass, and because of this conversation the meeting was stigmatised as illegal. The man told him he came from Wexford, and therefore the meeting was illegal, and the traversers guilty of a foul conspiracy (laughter). This alleged conversation could have been sustained by evidence, but I think the Attorney-General knew nothing about it when he opened the case, or if he did I think he did well to leave it out and not contaminate his case with such trash as I allude to. The Attorney-General did not allude to 2,000 Shilmalier men who marched to Tara. Oh, no, he knew it would be really too farcical to do so. The conversation to which he referred, must be treated as a humbug or bantering conversation between Captain Despard and the countryman. Walker was examined before Captain Despard, and it was said also that he was near him when the conversation took place, yet there was not a word about it, but the 2,000 Wexfordmen could not be forgotten by Captain Despard. This was said by Captain Despard for a purpose—to give a colouring to the case. Why was not Walker asked about it? He might have corroborated the story. Why was not Westenra produced to corroborate the story? He was not. And well the Attorney-General knows it would be a disgrace to the case to introduce such an episode into his opening statement. It is not my intention to make any remarks relative to the other meetings, because Mr. Ray attended only that at Tara and Mullaghmast, and I will leave them to other hands. The learned gentleman then proceeded to read the evidence of Mr. Despard as follows:—"Walker was in coloured clothes; Westenra was there also and is alive at present as far as I know; a man asked him to take off his hat for O'Connell; he was surprised when he heard of the 2,000 Wexford men; and when I asked him did he believe the man, his answer was, 'I had only his word for it.'" I ask, is that evidence in this case? There was the case made by Despard of the great treasonable design concocted against the peace of the country, because he met a man who told him he came from Wexford? The only other meeting at which Mr. Ray attended was that at Mullaghmast. He went there, not in his capacity as secretary to the association, but on an invitation which was conveyed to him from the committee. He was at the dinner which took place in the evening; and that was the only place in the whole history of the transaction that Mr. Ray made a speech or said a word. Well, let us see under what circumstances he went there, and made the speech. In the course of the evening certain toasts were proposed, and amongst the rest was the loyal national repeal association. Mr. Ray spoke to the toast, but how? Did he volunteer to speak? No; he did not; he was called on to reply to the toast as the secretary of the association, and he made some observations on the occasion, but of so little importance were those observations that they were not published. The crown has not proved any publication of them—it was merely stated that Mr. Ray returned thanks on the part of the association, and that was the only time in the history of the whole transaction that Mr. Ray made a speech. In speaking of the meeting at Mullaghmast, I think this is the time to make a few observations with regard to something which occurred at that meeting. I think we have reason to complain of the mode in which the prosecution has been conducted, and my client complains of being made a party to what occurred there—but first let me ask what was the first resolution moved at the meeting, which is one of the overt acts laid as disclosing the criminal intents of the parties to excite disaffection among her Majesty's subjects? (The learned gentleman here read the first and second resolutions agreed to at the meeting.) You have had a great deal of evidence laid before you as to the numerous assemblage of persons who came together at Mullaghmast, but though numerous, it was proved that this meeting, like the others, was peaceable and orderly, and that there was not the slightest tendency to commit a breach of the peace. But it was deemed necessary, as in the case of Tara, to get some species of evidence reflecting on the character of the meeting, and on the designs and objects of those who were assembled there. Gentlemen, let me call your attention to one important piece of evidence in connection with this meeting. What do I allude to? I allude to the catch-penny ballad or placard published and printed by a person named Hanvey, whom it was the bounden duty of the crown to have produced. If it were a case of common assault, where there might be a struggle for a forty-shilling verdict to carry costs, I would understand why he was not produced, but in a crown prosecution, and particularly in a state prosecution, I deny that he ought to be kept back. When the Attorney-General opened this case, he said that seditious, infamous, and disgraceful publications were circulated by tens of thousands for the purpose of exciting one nation against the other, and suggested that the traversers either fabricated the document, or had it circulated. Why should not the Attorney-General produce the person who printed them, that we might ascertain who composed them or had them circulated. We objected to the document, we thought it unjust to be pro-

duced in evidence of a conspiracy, when it was sought to make each conspirator responsible for the acts of his co-conspirators. Was it to be endured that such a document, sold by this person, whose character was blackened as a vender of seditious publications, for profit and hire, should be received in evidence, and the person himself not produced. Mr. Browne was the regular and recognised printer of the association, who printed for the repeal wardens, and a variety of documents for which he was paid. The crown had the benefit of his evidence; but why did the Attorney-General close his case, having this document in his possession, without calling the person who sold them to show how he got them—whether he was a member of the association, or who paid for them? Yet the Attorney-General calls on you to assume, to infer, and presume, that he was a member of the association. If the object of the crown was to arrive at the truth, it was their bounden duty to produce this seditious vender of infamous publications. Do you think that Mr. Kemmis, the respectable solicitor for the crown, than whom no man discharges his duty more faithfully, was not instructed as to who he was and what he was? Why, I again repeat, was not this vender of sedition produced? He could have told us whether he was a member of the association, or from what he composed this paper. Every one knows that even at the assizes such songs and publications were sold by wretched paupers at the corners of the streets. He knew that the Attorney-General would not have suggested any course that should have the effect of making the traversers fall into a trap, or one by which they would be compelled to call a witness, of whom the traversers knew nothing, and of whom the crown might possibly know much. Such an imputation was utterly unworthy of them, he need not even suggest it against his learned friends, and he should only be brought to think so, if he should hear the Solicitor-General say, in his reply, that the traversers ought to call as their witness this vender of sedition. We can all understand that an indictment for conspiracy might be justifiable, or the only proceeding by which individuals could be punished in certain cases. In proceeding against private individuals for doing a private wrong, it might be necessary to indict persons for a conspiracy. Two persons might conspire to rob a man of his property, and in such a case the concert of their acts might be taken as the only evidence of their conspiracy. Men might be charged with offences of another character, and an indictment for conspiracy might here too be the only remedy. But the law of the constitution looked with jealousy on the doctrine of conspiracy being resorted to as a political instrument in a state prosecution; and I again repeat that it becomes a still more obnoxious proceeding—one to be discarded and scouted from a court of justice, when an indictment is founded on three hundred separate acts. The learned gentleman then cited the case of Henry Hunt, before referred to; it was an indictment against Hunt and nine others, on several counts, for a conspiracy to disturb the peace and tranquillity of the country, and to excite discontent, disaffection, and hatred of the law among his Majesty's subjects.

The Chief Justice—Where is the case cited from?

Mr. Hatchell—From Barnwell and Alderson, 536. The fourth count of that indictment was for their attending an unlawful assembly. It is stated that bodies of persons attending the meeting at Manchester appeared in military array, with the step and movement of a military march. This might, perhaps, account for the anxiety of some of the witnesses to prove the military character of the processions to some of the meetings; it was in order to bring them within the principle of this count against Mr. Hunt and his companions. The result of this trial was, that five were convicted and five were acquitted, though the object of the crown was to get them all convicted of the conspiracy. How did they escape the meshes of the net? Because the jury took it for granted that the conduct of the five convicted men ought to be visited on themselves alone; and they were not satisfied that any preconceived plan of conspiracy was proved out of subsequent transactions; and these five were convicted, not for conspiracy but for attending an illegal assembly. The jury repudiated, as dangerous to the constitution, this indicting for conspiracy. Then why was there not a count in this indictment against the traversers for attending an illegal meeting? Gentlemen, the case is either "all or nothing" with the crown; it wants a conviction for a conspiracy, and therefore it would not insert a count for attending an unlawful assembly; it thought that if you had that alternative you would only find those guilty under that count who did attend such meetings, and acquit them of the charge of conspiring. There is another case which shows the same spirit in a British jury. It was that of the Queen *v.* Vincent and others, reported in Carrington and Payne. This, too, was a conspiracy to disturb the peace, and create discontent and disaffection; the jury rejected the counts of a conspiracy; yet, at the meetings, in this case, the people were told, if any policeman should dare to interfere with you, break his head. How different was the conduct at all the meetings held by the traversers? A Mr. Vincent made use of the following words:—"To your tents, O Israel." It was not for him to put any construction upon those words. They seemed to be a favourite quotation, and were mentioned by Mr. Sheil as having been used. In another speech on another occasion, Mr. Vincent also said—"One heart and one blow; death to the privileged orders, and up with the government which the people have established." This was the language then before the jury, yet they were not of opinion that the acts of the accused were to be attributed to any preconceived plan or conspiracy, but arose at the moment out of the proceedings of the meeting. They believed that the meeting was illegal. They acquitted them of the conspiracy, and found them guilty only of attending the unlawful assembly. I now come back to Mr. Ray, and on his part I state, and call on you to go with me, that there is no act of conspiracy to be attributed to him in any part of this charge. His object was a legitimate object; and, independently of that, Mr. Ray attended the meetings at the Corn Exchange as the secretary of the association; and I call on you, as honourable men, to say, whether you can reconcile it to your consciences, or say on your oaths, whether in what he said, or in the character in which he appeared, there was anything of the criminal intention ascribed to him in the indictment. He would not have discharged the duty he owed to himself and to his country—he would not have asserted the principles he avowed and entertained, nor have fulfilled his duty as the servant of the association, had he acted otherwise. All this must therefore be taken into consideration in finding your verdict, and that verdict, I trust, will be one for acquittal for my client.

The court was about to adjourn for a few moments for refreshment, when

Mr. Fitzgibbon rose, and in a faint and scarcely audible voice, applied, as we understood, for the indulgence of the court till to-morrow, on the ground of indisposition. He also said that in a case of such magnitude, though he knew the jury was anxious to attend, yet if they were called on in such quick succession to hear the views of so many persons in the same day, it might not be contributive to the ends of justice.

The Chief Justice said he felt great unwillingness

to press Mr. Fitzgibbon to go on; he had observed that he had been labouring under a severe cold during a great part of this trial. The court all felt that no undue time had hitherto been taken up by the several gentlemen who had addressed the court and the jury, neither of whom could complain of the conduct of the counsel. This was an additional reason why Mr. Fitzgibbon's request to begin his address to-morrow instead of to-day should be conceded. The court would, therefore, adjourn till to-morrow.

The Attorney-General said he could not for a moment press Mr. Fitzgibbon to go on, but Mr. Whiteside and Mr. M'Donogh still had to address the court, and he thought one of them might go on. One of the traversers, he understood, was to address the court himself. He admitted that the illness of Mr. Fitzgibbon was quite a sufficient reason for his not addressing the jury, but he thought it might be desirable that one of the other gentlemen should do so.

Mr. Fitzgibbon said the court had been kind enough to take his indisposition into consideration as one of the ingredients of its decision. But he did not found his application entirely upon that. If they forced him to go on, he would be prepared; and if there were no other reasons but his personal convenience, he should beg them not to make their rule merely upon that.

Judge Burton—I suppose the counsel for the traversers have made some arrangement as to the order in which they are to speak.

Mr. O'Connell—They have; there has been a certain disposition of forces on this occasion, and another counsel must be substituted now.

Chief Justice—I suppose so. He will then do as I stated at first; the case will then be adjourned till to-morrow.

FOURTEENTH DAY.

TUESDAY, JANUARY 30.

Their lordships took their seats at the usual hour.

MR. FITZGIBBON, Q.C., IN DEFENCE OF DR. GRAY.

Mr. Fitzgibbon in addressing the jury said—If it please your lordships and gentlemen, in this case—on this, the beginning of the fourteenth day of this trial—the duty falls upon me of addressing you on behalf of one of the traversers, Dr. Gray. From the course adopted by the crown in thus uniting eight individuals, and putting them together on their trial, it necessarily results that each of those individuals, having the privilege of making a separate defence, may be heard by his own counsel. But from the evidence that has been laid before you, and from the nature of this case, it is plain that it is impossible to separate the cases of those defendants, and impossible to make, with any effect, an individual and distinct case for each. It is too plain that this must be dealt with as one case. It is a charge for a joint offence—it is a charge for an offence that cannot be committed by a single person—it is a charge for an offence in its very nature involving the necessity of more than one criminal, if any there be at all. I therefore, gentlemen, do not intend, nor is it at all the instruction of my client, that I should intend to separate the case of Dr. Gray from that of the other traversers. Gentlemen, you will observe that this is a charge against those eight defendants, that they unlawfully, and maliciously, and criminally, conspired together. That seems in its nature to be rather a simple charge. The single fact of conspiring—you have been told by the Attorney General, and it is the law—the single fact of conspiring constitutes the entire crime. Gentlemen, the crime being thus really simple, it seems rather a strange thing that it should take a speech of eleven hours' evidence occupying eight days—not eight days of examining witnesses, but eight days of solid reading of documents, to establish. You will find that somewhere between forty and fifty hours of the time of this trial has been spent in reading. The speech being such, and the evidence being such, where is a man to begin in defending an individual from a charge of this kind—how is he to proceed—where is he to come to a conclusion amidst such a mass as this? Gentlemen, I ask you as men of sense, ought the guilt or innocence of a fellow-subject to depend upon the chance of your being able through this matter to arrive at a true and just conclusion on the narrow issue you have to try? Who can be safe—who can be defended—what is a man to do when he is thus brought before the court, and has thus thrown down to him this pile of heterogeneous stuff, and told the charge against him is contained in that, almost without any explanation of it? And to this hour, now at the commencement of the fourteenth day of the trial, I venture to say not one gentleman that I have the honour to address knows the precise nature of the duty he has to discharge, or has the most remote apprehension of how it is he is to deal with the mass of evidence, in order out of it to draw any conclusion either as to the guilt or innocence of the traversers. Are you to take into your jury-room all those newspapers that have been read for you, and sit down to them? What are you to do with them? Is it expected you have borne them in your memory? Let me ask you how you are to arrive at any conclusion from such an undigested mass? Gentlemen, having to deal with a case thus left in confusion before you—that confusion to this hour never having been so much as approached by either the Attorney-General, nor by any of the three of my learned colleagues that preceded me—if my friend Mr. Sheil in rising to address you so ably as he did in this case, to perform a duty for the discharge of which he must be perfectly conscious of his complete ability—if he, intending not to approach that mass, that chaos of confusion—if he, intending altogether to leave that untouched, felt emotion at the magnitude of the duty he had to discharge, what, gentlemen, do you suppose must be my feelings, not of emotion but of dismay, when I feel it to be my duty to approach that mass, to try and explain to you how you are to deal with it? What do you suppose must be my feelings doing that in a case in which eight gentlemen stand here indicted before you for being conspirators—for being conspirators against the laws, and peace and happiness of their country—conspirators—a name in all ages the most odious, in every clime and state of human society the most detestable. To be conspirators is to be the worst of human beings—to be a conspirator is to be everything that can be suggested of vice, of treachery, and of villany. Gentlemen, when I am here to defend those eight gentlemen—for, as I have told you, it is impossible to separate them—when I reflect that at the head of these eight gentlemen stands one man pre-eminent—pre-eminent to a degree that perhaps no other man ever reached in this profession—pre-eminent for talents, pre-eminent for perhaps as many of the great virtues as any other that hears me—gentlemen, when I have him at my hand here, to see how it is I shall, and how it is I shall not, discharge this heavy duty that has fallen upon me—gentlemen, when I have him who, for a period of over forty years, was the ornament of his profession within this hall—when I have his son, a candidate for honours in that profession—when I stand here, gentlemen, for my own client, a young man not more than 28 years of age—a member too of another learned and honourable profession—when I consider all those things, gentlemen; and, above all, when it is recollected that I am naturally of too anxious a temperament, that I cannot approach a duty such

as this, even when it is to be discharged towards the meanest fellow-creature, without an anxiety that almost disables me from the performance of it—mine, gentlemen, when I take into account those considerations—mine is no enviable place at the present moment. But there is a little more to render my place an uncomfortable one just now. Gentlemen, I do not approach this case with any of the abilities of an orator—I have them not—I approach this case simply as a lawyer; and if my conviction be that this prosecution is an unconstitutional, an illegal, and an unfair attempt, now in the year 1844, to devise a ministerial scourge for the purpose of lashing a free people—if it be my opinion that the possession of this ministerial scourge is pursued by means illegal, unjust, and unfair, I ask you, gentlemen, again, what a duty have I placed before me! The conductors of this prosecution, the three first men in my profession in point of rank, are the persons who are pursuing this object. Gentlemen, of all those members of my profession, as individuals, so far as I have any personal knowledge of them, I will speak of as gentlemen, severally, respectively, and individually, in the most dignified and highest possible sense of that word. As lawyers, as far as I have had to do with them, I can conscientiously declare it as my opinion that they are worthy of the very highest eulogy that language can convey. I speak of them as lawyers in the best sense of the word, and I should be offering an indignity to my own profession were I not to avow that such an admission includes almost everything that can be said in praise of any man. But if I have spoken in such terms of those three distinguished gentlemen, I have spoken of them as I have observed them in common matters and common cases. It has never before been my lot either to be concerned in or to have witnessed in a court of justice a state prosecution; but it has frequently come within the range of my legal studies to read of many such cases, and from the perusal of them I have gathered this information, that if the three eminent gentlemen, to whom I have alluded, have fallen from that moral dignity which, in all other passages of their lives, as far as I have ever seen, they have honourably upheld, they have but followed the example of a greater man than any of them. Gentlemen, I say this without disparagement to them, or to any member of my profession at present in existence. They have but followed in the footsteps of the great Lord Coke himself, whose eminent virtues and high dignity as a lawyer were not proof against the personal feelings which, in all cases, have governed the conduct of state lawyers in a state prosecution. Even the name of the illustrious Lord Coke has come down to posterity with a "dishonouring blot," by reason of a state prosecution, for no friend of humanity can read, without feelings of execration, disgust, and indignation, his attack upon Sir Walter Raleigh. If those who conduct the present prosecution have fallen, therefore, from their high estate, it is not they alone who have been dishonoured. Gentlemen, I have told you that, in my opinion, this prosecution has been carried on unfairly. Yes, I use the word advisedly—carried on unfairly by the three gentlemen who are at the head of these proceedings, and by their assistants, of whom I may presently have much to say. Yes, gentlemen, carried on unfairly, that is my word, and I will redeem my pledge by showing you how applicable is the term. But, gentlemen, before I proceed further in my address, it is but right that I should call upon you to consider the position in which I stand and the character which I assume when, in the discharge of my professional duty, I proceed to animadvert on the conduct of the prosecutors of my client. This is highly expedient, and nothing more than mere justice to me. What is the nature and character of the important office whose duties I have taken upon me to discharge? Am I not the representative of my client? Am I not in duty bound to say on his behalf everything that I think he would say, and ought to say, in defence of himself, if he were defending himself, and if he had my abilities, humble as they are? Nay, more, gentlemen, am I not bound to say for him everything that I could say for myself, were I like him, not the advocate, but the man accused? Yes, that is clearly my duty, and I hope, gentlemen, that you will regard what I shall say upon the present occasion not in truth as my language, but rather as the language of a man put upon his trial, and defending himself to the best of his ability against a charge of his own guiltiness, of which he is himself persuaded he is innocent. Gentlemen, the present prosecution is a contest of a very interesting character, to the result of which the country looks with eager expectancy. It is a contest in the very temple of justice—a contest in the fortune of which are involved the characters and liberties of our fellow-subjects, and one, therefore, that we ought to carry on fairly at both sides, but, above all, fairly on the part of the prosecutors. Gentlemen, I freely concede the gentlemen who conduct this prosecution the power and privilege of exercising upon it their abillty and ingenuity to the utmost extent; but all I require of them is, that they should exercise that ability and ingenuity fairly and legally. Strike as hard as you please, but strike fairly; and if you knock me down, so that I can never rise again, I will, with my dying breath, admit, that, although conquered by superior power, I am fairly conquered; but, if you aim a blow below the belt, you outrage the laws of manly combat, and are not the honourable antagonist who deserves any respect or favour at my hands. The Attorney-General opened this case by beginning with the law of it. He told you that you should take the law of the case from the court; and in this I concur with him, for I hope I am the last man of my profession who would ever suggest to a jury not to be directed by the court on every point of law that is fair, and legal, and proper for the court to entertain. The law, you will take, therefore, from the court; but I deny that the court has the slightest jurisdiction to direct you upon the question of the guilt or innocence of the accused; that is purely a question of fact, which the court has nothing at all to do with. No action that can be imagined (not the killing of a man—no, nor even the killing of a sovereign)—no action that can be conceived, can be pronounced as a guilty act by any judge or judges,* court or courts, in this country, according to the spirit of the British constitution, nor by any power whatsoever, other than by a jury of twelve men upon their oaths. Hatfield fired a pistol at the king in the public theatre, and was taken in the fact; but no man declared he was guilty until the intervention of twelve men decided it. They alone had the power of looking into the mind or discriminating upon the intent with which the act was done. The intent is that which constitutes the guilt, and nothing constitutes the offence save the intent with which it is committed; that is a maxim as old as common sense—as old as common humanity. If the mind is not guilty, the man is not guilty. It is you, and you alone, who are to decide on guilt or innocence: and it is impossible to suggest that the court can direct you upon that point—the court has no jurisdiction to do so. The opinion of the court, no doubt, may be given, though it is rarely given in

* And yet it is said a Judge high in rank in Ireland once told a jury in a case of libel which was tried before him, that the publication was a "diabolical libel." Thus it is that men in office will assume unto themselves privileges to which they have no moral, presumptive, or legal right.

criminal cases; but in respect to the actual guilt or innocence of an accused party it never, never ought to be given. Why does the law take from the court the decision of guilt or innocence, and why does the law place the jurisdiction in twelve men selected from society? Because guilt or innocence is never to be treated by technicalities—never to be treated as a question of science. It is never, therefore, a mere question of law, which is a species of science; it is a question of morality, a question of mind, of intention, and of feeling; therefore, a jury is the proper instrument through which that question is to be decided; and, therefore, it is that they who have to pronounce upon it are taken from among their fellow-men, because they are not technically instructed in this or that profession, and the law has wisely determined that they are best calculated to scrutinize and pronounce upon the actions of ordinary men like themselves. I say, therefore, that with the question of guilt or innocence the court has nothing to do. When you are required to pronounce on the guilt or innocence of an accused party, the opinion of the judge goes into your box with little more weight than that of any other individual liable to be wrong would carry with it. The law says that each and every one of you is a better judge of that all-important question, the guilt or innocence of the traversers, than any other men in the land: therefore, gentlemen, the law placing that in your hands, and calling on you to give your verdict, it is for you carefully and jealously to examine the opinions which any man addresses to you, and to be conscious that you don't entertain it for more than its intrinsic worth. This, gentlemen, I submit to you, subject to the direction of the court—I submit that you are to be yourselves guided by your unbiassed common sense in coming to the conclusion of the guilt or innocence of my client. Gentlemen, having told you that you should take the law from the court, the Attorney-General then proceeded, subject, as he admitted, to the correction of the court, and he then stated to you what was the law of conspiracy. Gentlemen, I do not agree with him in his statement of the law. Perhaps it may be said to me—but I think that would be no answer—that my learned friend, Mr. Moore, yesterday admitted that the law as stated by the Attorney-General was the law. Gentlemen, Mr. Moore stood here as counsel for the Rev. Mr. Tierney, and his was a peculiar case. I cannot, on the part of Doctor Gray, make out that peculiar case, and I have, therefore, first to deal with this great question—is there a conspiracy at all? It then becomes necessary for me to take up this question of law which is yet untouched before you, and to expose to you the monstrous absurdity—and I think I can do so as clearly as ever I demonstrated a proposition of Euclid—the monstrous absurdity that would follow from the law as laid down by the Attorney-General. Gentlemen, you have heard a particular phrase frequently made use of during the progress of this case. You have heard of "overt acts;" over and over again has it been rung in your ears. Let me now suggest this question to each of you to ask himself—Does he at this moment, does any one of the twelve gentlemen I have the honour to address, entertain the remotest idea of what is the meaning of an overt act? Gentlemen, that word overt act occurs in only two offences, according to the law of England. You may have heard of an overt act of treason, or, as in this case, of an overt act of conspiracy. Why should the term apply in these two cases only? Let me explain to you, as it is essentially necessary that it should be explained—treason is a crime distinguished from all others in this way; that you may be guilty of it without doing any one act at all. It is, perhaps, the only crime that a human being can commit without doing anything except thinking. If you imagine the death of the king, or the sovereign, whether male or female, the moment you form that determination you are guilty of high treason? Now, what was the meaning of an overt act in treason? It was the intention formed in the mind of killing the king, or other sovereign, and treason was therefore an overt crime; it was a crime that any one may commit without telling any one else of the fact, because it was the crime of the person's own mind. Speaking of the overt act of treason, if it was spoken of to another party, it then became treason, because it was a visible act that could be seen and spoken of—it is something palpable then. The crime of conspiracy was a secret crime, but at the same time it was not merely a determination in one's mind, but with others. It was unlike treason in this particular, as the latter might be classed in the list which Milton contemplates when he says that an evil thought might pass through the mind of the purest angels; but it did not become a crime until carried into action, and if not carried into action it did not become a crime at all. Conspiracy was the secret connection of more than one party together; the law makes it so. If two or more persons agree together, and conspire by treasonable and villainous means to commit some crime against their neighbour, then the law says they are guilty of a conspiracy. If they lie in wait for their victim while he sleeps unconscious, then the law says they are guilty parties, because that is apparent to common sense and common justice, and therefore the law pronounces it a crime. The parties may consult secretly, and then you are to look at the act done in pursuance of that consultation; and from the act you may infer whether they are guilty of a conspiracy or not, and in this manner is discovered what is called the overt act. When you are called on to draw a conclusion from certain facts where there is not the appearance of guilt, and if you cannot account for it in any other manner than supposing a case of guilt, I ask, in such a case, is it unnatural or unfair to ask you to refer the action to the other motive, and that is the motive of innocence? Now let us apply this to the present case. The Attorney-General has told you that there must have been a conspiracy between the eight defendants, because they did certain acts that have been given in evidence before you here. When the Attorney-General proceeded to state the case and mention the overt acts to you, I most anxiously followed him, and I expected he would, in some place, or other, have called your attention to some speech or other act that had been previously concocted between the parties. Did the Attorney-General do such a thing? He did not. He could not produce a single speech in evidence that had been concocted previously by the defendants. He could not do such a thing, although he made a speech of 11 hours' duration, during which time he read a great deal from newspapers, but he could not produce a single speech or sentence that had been previously arranged by the defendants. Did the Attorney-General attempt to tell you that the speeches were previously written and concocted by the conspirators; if not it was no conspiracy at all. Did the Attorney-General, in detailing the case to you show you any one act that could not be done innocently by the defendants? Did the evidence produced show the parties were engaged in a conspiracy? No such thing. How did the Attorney-General attempt to argue the case before you? I will tell you. He said that there were many meetings held, and that those meetings were called by the defendants, and that the defendants all concurred in calling those meetings, and that therefore they were illegal because the defendants agreed in calling them. If the defendants, composed of two or more, agreed to do an illegal act, then they were guilty of a conspiracy. Those eight traversers did agree to call a meeting on the

Hill of Tara, and the Attorney-General says that it is illegal because they all had agreed to call that meeting, and therefore they are guilty of a conspiracy. If the meeting was illegal, and that the parties agreed in calling that illegal meeting, then they were guilty, and the law called that a conspiracy. Another portion of the Attorney-General's speech was this, that if two or more of the parties agreed to do a legal act in an illegal manner then they are also guilty of a conspiracy. The Attorney-General admitted it was legal to meet and petition parliament for a repeal of the union, and he said he admitted that to the fullest extent. It would be legal for the defendants to make that their object, but the Attorney-General said they were pursuing that object by illegal means, by calling illegal meetings and publishing seditious speeches, and therefore they were all concurring in procuring a repeal of the union by illegal means. This is the law as laid down by the Attorney-General—that is the law I have to deal with. I own when I heard that law propounded in a court of justice it startled me a good deal. Ah! but the Attorney-General did come here with some authorities. Gentlemen, Mr. O'Connell, whose countenance I am so desirous to have, and whose assistance to suggest to me or restrain me I would value exceedingly, has just told me he is obliged to go away. I am sorry to lose his countenance and assistance, but must endeavour to do my duty without him. Gentlemen, the Attorney-General read his law from a book—of course it becomes vitally necessary to examine the history of that law, and see how it has got into that book. Give me your attention. There is the indictment (holding it up)—you are told that is an indictment at common law, and it becomes necessary to examine what the meaning of that is. It means that it is an indictment which, on a similar state of facts to the present, could be sustained in the reign of Edward the Confessor—could be sustained before the conquest—in the time of Edward, a good old king, whose laws the people have been bound to obey from that period to the present. I tell you, gentlemen of the jury, that is the meaning of the words common law. Gentlemen, will you not be surprised to hear that, from the time of Edward up to the year 1794, there never was in England an instance of the members of an association—aye, from the days of Wat Tyler, there has not been an instance of an indictment for a conspiracy against the members of an association of this kind. Is not that an astounding fact, that the crime of conspiracy was not known in those days? Gentlemen, the law of conspiracy at an early period became an object of great solicitude. It was a crime too dangerous to be left undefined, and one calculated to be taken hold of as a ministerial scourge, and accordingly, it very early became the subject of statutable legislation. In the first volume of Hawkin's Pleas, I find a proper definition of a conspiracy, which I will read for you:—"For the better understanding the nature of a conspiracy, I shall consider, first, who may be said to be guilty of a conspiracy; second, in what manner such offenders are to be punished. As to the first point—who may be said to be guilty of conspiracy—there can be no better rule than the statute, the 33d, or rather the 21st of Edward I., the intent of which was to make a final definition of conspirators. Conspirators be they that do confer or bind themselves by oath, covenant, or other alliance, that every of them shall aid and bear the other falsely and maliciously to indict, or cause to indict, or falsely to move and maintain pleas; and also such as cause children within age to accuse men of felony, whereby they are imprisoned and sore grieved; and such as retain men in the country with liveries or fees for to maintain enterprises, and this is extended as well to the takers as to the givers, and to stewards and bailiffs of great lords, who, by their seignory office or power, undertake to bear, or maintain quarrels, pleas, or debates that concern other parties than such as touch the estates of their lords or themselves." Thus you see that Hawkins states that the intention of that act of parliament was to make a final definition of a conspiracy. I admit that in the same book—and I won't do as the highest law officer at the Irish bar has done—I won't suppress one part of a page which is well calculated to explain the other. I will show you by-and-by that this has been done. I was saying that I admit that in the same book, page 446, it said that "it seems more safe and advisable to ground an indictment of this kind upon the common law than upon the statute, since there can be no doubt that all confederacies whatsoever, wrongfully to prejudice a third person, are highly criminal at common law, as where divers persons confederate together by indirect means to impoverish a third person, or falsely and maliciously to charge a man with being the reputed father of a bastard child, or to maintain one another in any matter, whether it be true or false." You may now observe where an indictment will lie at common law, and it would be unreasonable to suppose that such crimes should not be punishable by it. One of the earliest cases of a prosecution for a conspiracy at common law was the King *v.* Edwards. The history of the case is this—the parishes in England were each bound to sustain their own paupers, and as a body of individuals in power sometimes assume the characters of individuals, and commit frauds similar to individuals, the parish officers in England used by gross fraud to transfer the paupers from one parish to another. The officers of one parish agreed to give a sum of money to a man in an adjoining parish to marry a cripple—not for matrimonial purposes—but, for the purpose of transferring a burthen from the parish to the adjoining one, they bribed him to the marriage, and were very properly indicted for a conspiracy. That was the first instance of a prosecution for a conspiracy at common law. Another was a cardmaker, who became famous for his manufacture; and another cardmaker, with his wife and family, conspired together and bribed the apprentice of the first cardmaker to put grease in the glue used in making the cards, that the maker might lose his reputation. They were indicted, and properly, and that case affords an illustration of what an overt act of conspiracy is. In that case it could not be proved that they had conspired and acted together. There was no one present but themselves when they conspired; but it was proved that the father, upon one day, gave money to the apprentice, the wife upon another, and upon another day the servant gave it; and the court allowed their several and respective acts to go to the jury, on the ground that being members of the same family, living in the same house, they were jointly guilty of the abominable act; and what was done by each in the absence of the others was allowed to go to the jury as evidence of the conspiracy. Let me come to the history of the Attorney-General's definition. First let me give you the definition—I have it in his own words—I took them from his own lips. He told you a conspiracy is a crime which consists either in a combination or agreement to do some illegal act, or to effect a legal purpose by illegal means. That is his definition—in support of that definition the Attorney-General cited two cases; one of them was the King *v.* Jones, 4th Barnwell and Adolphus, page 349 and 350. I pray your attention to that case. It was an indictment against several individuals for conspiring together to conceal the effects of a bankrupt after he failed, a very heinous offence according to the bankruptcy laws. In that case there was a conviction, and there was a motion to arrest the judgment, and in that case

Lord Denman spoke these words in giving judgment against the indictment—"The indictment ought to charge conspiracy either to do an unlawful act, or a lawful act by unlawful means." There is the authority the Attorney-General cited. No doubt Lord Denman is a very able and a very constitutional judge, and no doubt those were the words he used; but let me tell you the value that is to be attached to the saying of a judge under such circumstances. Mind, now, that is not a decision, nor is it the decision of the court of which he was a member—it is what we call technically a *dictum*—in plain English a saying, and no constitutional judge will ever pay much attention to such a thing; and I believe the true value of these *ipsi dixits* of judges was never more fully described than it was in this country by a very able man, Sir Anthony Hart, who, when somebody was pressing him with the *dictum* of a judge, said "he always thought that *dictums* were an attempt at the bar to mislead one judge by misrepresenting another." And I remember more than once to have heard a judge of equal ability, the present Baron Pennefather, repudiate and repress the habit of citing in one case what a judge has said in another case, and for this reason—this plain reason—that what is said by a judge in a particular case is said in reference to the facts of that case, and is not said by any means as laying down a general law to affect cases that may be composed of very different facts. It was in 1832 that Lord Denman used the words I have already repeated to you; and in 1834 the same judge (and I wonder much the Attorney-General did not make use of the fact), in the case of the King against Seymour, 1st Adolphus and Ellis, page 713, which was an indictment for conspiracy to exonerate one parish from a pauper, and to throw him upon another, again spoke the same *dictum* that he had spoken on the previous trial, in granting the motion for an arrest of judgment. It so happened, in 1839, that another case came before the same Chief Justice; it was a case in which a set of cheats were indicted for opening a shop to defraud the people. The jury convicted them, and there was a motion made to arrest the judgment, because it was not properly within the law of conspiracy. Lord Denman's *dictum* was cited to him by counsel to uphold that indictment, and what was his lordship's observation? It was this—"I do not think the antithesis is very correct," and he disregarded his own *dictum*, and the judgment was arrested; and, so far as his authority goes, there is the weight of it as to that *dictum*.

Chief Justice—Where is that case to be found?

Mr. Fitzgibbon—It is the King *v.* ——, 9th Adolphus and Ellis, page 690. But, gentlemen, there is also the *dictum* of an equally able judge, the late Lord Chief Justice Bushe, in the case of the King *v.* Forbes; he stated, in charging the jury, "the nature of a conspiracy is now to be described." Remember, gentlemen, there is a very substantial difference between a description and a definition. But the learned judge went on. "It is defined to be where two or more persons confederate together for the effecting of an illegal purpose, or to effect a legal purpose by the use of unlawful means, even although such purpose could never have been effected." I am very anxious to trace this definition, as it is called, to its source, and to find where, and when, and how, it had its origin, because, let me tell you, that in legal argument sometimes, and in books of law, particularly text books, a course is very commonly pursued analagous to that which map-makers pursue in copying from that which went before. The definition is taken from East's Pleas of the Crown, page 462, almost *verbatim*; and now let me tell you from what East copied it. In that instance East was commenting on the case of the King *v.* Edwards, but such a definition is not to be found in any of the old authorities, who are better acquainted with common law than we are. No doubt it is to be found in East's book; he is of no authority to lay down the law. A text writer! No doubt a very useful one—no doubt in the main a very correct one, but no legal authority; besides, his *dictum* is merely a comment on the case of the King *v.* Edwards; and if you deal fairly his *dictum* goes for nothing. Such is the Attorney-General's first proposition on this law of conspiracy. Now let us come to his second one, which is this—"That they have been engaged in the common design of obtaining the object in view; that moment, if they have the common design, then they are guilty of the crime charged, and the act of one is evidence against the others." Let us deal with that proposition—what is the common design? To obtain a repeal of the union. That is the common design. Can it be denied that they have been engaged in that? Can it be denied that one million at least of your countrymen have been engaged in that? It cannot. These are the conspirators—these are the worst of the most criminal of the human race, and the act of one is to be evidence against all, and against every one of them. Oh, gentlemen, give your attention for a moment to the monstrous doctrine involved in this proposition. First, you are called upon to believe that every human being who attended every one of those multitudinous meetings, being thus engaged in the common design of obtaining a repeal of the union are all guilty of being conspirators; and the act of any man of them, is evidence against every other of them! You can, if you believe that to be the law, account for why the conversation between Captain Despard and a man that he says he met on the back of a ditch, where there was not a single one of the defendants to hear what passed between them—a man, whose name, place of abode, whose very description is unknown—you can understand a conversation carried on between Captain Despard and him, has been given in evidence against those eight defendants! upon the principle, that those eight defendants, knowingly and wilfully, constituted that man, whoever he was, to be the agent of each and every one of them, and gave him authority to speak for them, and bound themselves to stand by his language, whatever it might be, in their absence. Gentlemen, you have here—believe me you have here, a heavy and serious duty imposed upon you, when you, twelve men of common sense—twelve honest men—are called upon to give the sanction of your verdict to a doctrine so outrageously absurd. The speech of the man, whoever he was, from the back of the ditch, is here put in evidence before you as an overt act of conspiracy in the defendants, that is to say, an act which proves—which affords convincing proof—that that act could not have been done by that man unless there had been a previous criminal concert and agreement between him and the eight defendants. That, mind, is the only way in which the act of that man, whoever he was, can be entertained in this case as evidence in any degree whatever to affect your verdict. Gentlemen, give me your attention for a minute. You are not here trying whether any of those meetings were illegal or not—you are not here trying whether any one opinion expressed at them was legally or morally wrong or not. Those meetings are admissible in evidence of any or either of those purposes, and of those two purposes only. First, they are admissible in evidence (and it is in this way only that the legality or illegality of them comes incidentally into question) for the purpose of showing if the repeal of the union be pursued by the defendants by legal means, therefore does the question of the legality or illegality of any of those meetings arise in this case. Secondly, whether the meetings were legal or not.

The meetings may be evidence in this case as an overt act, that is, they may be evidence showing that that meeting could not have taken place unless there had been a previous conspiracy, and a previous conspiracy of those defendants, that is the only way in which your attention can legitimately be given to any of those meetings at all. Now let me deal with this conversation between Captain Despard and this man on the ditch. If that conversation could be taken as evidence, that, in point of fact, 2,000 men, 2,000 able-bodied men, of bone and sinew as that fellow expreseed it, had marched from the county of Wexford to the county of Meath, to aid at the physical exhibition intended to be made at that meeting—if such were the intent, if such a conversation could be taken as evidence of that, and if you, from that conversation, believed that that was the fact, then, gentlemen, that conversation may be worthy of your attention. But do you believe, first of all, that two thousand able-bodied men did march from the county of Wexford, from the barony of Shilmalier? Do you believe that? Gentlemen, is that a fact susceptible of any proof? Are you to fancy to yourselves that it is the fact? Did these men go in a balloon there, and, if they did, did they soar to such a height that they could not be seen from this earth? Did they go under ground there? What road did they go?—what roads did they go? Where is the human being that saw any of them in their transit? Where were their witnesses to show that any of the peasant dresses of the county of Wexford, as peculiar as any in Ireland, were to be seen there? I take it for granted, gentlemen, that some of you have been in the county Wexford, and saw the peasant's hat in Wexford—the straw hat; and I suppose you observed the striking peculiarity of appearance of all the Wexford peasantry! Where is the man of all the police at Tara to tell you that he saw one single Wexford man at it? Captain Despard did not—who did? Gentlemen, my profession may give me, perhaps, too severe a view of witnesses. Captain Despard is a very handsome looking fellow—he has fine whiskers, and is a flippant, clever, very ready witness. He went without whip or spur, and he came here to tell us, I think not a very probable story. I own, gentlemen, that even if I were known, as I hope I am, to a jury of my fellow-citizens, and if I had to be produced as a witness to prove that conversation, I confess I would be very anxious indeed to have it corroborated, there is so much native improbability in the thing. This Wexford man, I am sure, knew Captain Despard—nay, the captain himself knew him. He must indeed be ripe for rebellion, if he thus volunteered to state to the head of the police that he had come with a body of "bone-and-sinew" men to that meeting; above all, that he should be guilty of the outrageous folly of stating that Mr. O'Connell did not want such men as Captain Despard, but "bone-and-sinew" men—a plain insinuation that he wanted men to fight, not men to petition—is the very acme of improbability. Do you think that that was the real object of that meeting? And if a man of this description knew that it was, and partook in that guilt, do you think it a very likely thing that he would thus become apparent, and turn himself as it were inside out, in the presence of a number of witnesses, and in a public place? Why, he must expect the next instant to be seized and thrust into gaol. Is the story so very probable that Captain Despard, with all his flippancy of tone and high-flowing sentiment, should expect a jury on their oaths to swallow it without corroboration? He told you, gentlemen, that this man stood upon his left hand, and immediately upon his right was his own policeman, Walker, who heard what had passed. This Walker was allowed to go from the table without being asked a single question as to whether he had heard such words. The superintendent of police, Major Westenra, was also standing by, and in actual contact with Captain Despard, and he has not been produced. Major Westenra, alive and well, living in Ireland and in the public service, and therefore amenable to the crown; this gentleman, who must have overheard such a conversation, if it took place, is not produced. It would, perhaps, be going a little too far to ask you to believe that Captain Despard was a flat perjurer and inventor of the story. I can well believe the difficulty which twelve gentlemen would have in coming to such a conclusion; still it remains to be accounted for why Walker was not questioned upon the subject, or why Major Westenra was not produced. Here, gentlemen, you are in a "fix." Let us see how it can be got out of. Walker, Major Westenra, and this pretended Wexford-man, were all on the ditch. Captain Despard comes up, and, of course, knows nothing of any arrangement on the part of the others. He sees his friend Major Westenra, and he goes up and stands near him. Now if Major Westenra and Walker had so planned the thing as soon as their friend Despard came up, that this man planted there should address him in that extraordinary way, I can then account why Captain Despard comes to prove the conversation without being guilty of perjury, and also why Walker was not questioned, and Major Westenra not produced. I will show you, in the course of this case, a little management that would render it not improbable that something of the kind may have been done in this particular instance. You may remember the crown wished to establish unity of place in the devising of the heads of ornaments of some of the cards. In the year 1844, the day of Paddy M'Kew is, to a certain extent, gone by, and we shall meet the system conducted in a more civilised way. It won't exactly do now-a-days to bring upon the table a man who has joined an association of this kind—who, perhaps, was the suggester, the contriver, the inventor, and the executor of those features of it which are, or are not, supposed to bear against the members of the society—it won't do now-a-days to bring a man who has violated every principle of truth and honour towards his associates before a jury, and expect they will believe him. That is not to be expected now; and if the master lithograph printer, Holbrooke, appeared to be a leading, conspicuous, noisy, and clamorous member of the association, it could hardly be expected that he should come here as a crown witness, and that you would believe him. Holbrooke is not produced; but two young men, whom he happened to have in his employment, are produced to prove the graving of the card; and you remember the great difficulty there was in establishing the connection of those cards with the association. What could have been easier than to prove that connection in the way it had been done in the case of the placards, where the man, Browne, who was employed concerning them, and paid by the secretary, was produced. I am sure I am addressing rational men—that I am addressing honest men—who give its proper effect to every fact brought out on this prosecution; and I ask you, is not the reason obvious why Holbrooke, who was the workman of that association, and also, at the same time, the workman of the government, was not produced to prove the connection? If Holbrooke was convicted on this table as having been the instrument of the government—that he suggested those emblems of sedition which he executed—that he put them upon the cards of this association, such a course could not fail to call aloud for your condemnation. Therefore, Holbrooke has been permitted to roam at large, to wear his cap of liberty; and, I ask, is not that of itself an evidence of craft, of subtlety, of foul play? If so, I have them there plainly connected with it, and is it too much for me to ask

you to believe that there was some contrivance and management; whether or not I have exactly defined its detail, but which forms part of that arrangement that brought this Wexford man into communication with Captain Despard. This transition naturally arises out of my observation on the Attorney-General's second proposition of law. I was calling your attention to the monstrous, the atrocious proposition, of admitting here as evidence of criminality against my client conversations held amongst the peasantry on the bridge of Baltinglass. But he gave you the proposition not merely as his own, but he comes with authority to back it up, to sustain them, though never was there a proposition sought to be applied of such monstrous absurdity as that doctrine would be in this case; and, accordingly, Mr. Attorney does not take the responsibility of it on himself; he shoulders it over on Mr. Justice Coleridge, and he cites him as the authority for it. He says, in effect, to you, gentlemen, I give it to you as I find it. I have only used a pair of scissors to cut it out of the book, and then I have put it in to form a part of the patchwork on which I mean to rest this case. He does about the same thing with this *dictum* as Sir Anthony Hart says is generally done with *dicta* of the same kind. The mistakes of one judge are used to mislead another. The Attorney-General cited the case of the King *v.* Murphy, 8th Carrington and Payne, p. 310, and in that case Mr. Justice Coleridge told the jury, "If you are of opinion that the acts of those two persons were done without a common consent or design between them, the present charge cannot be supported." It was, gentlemen, a charge of conspiracy—and then, on the other hand, he tells them, and I beg to call your particular attention to it: "It is not necessary to prove that those two parties came together, or agreed in terms to have the common design, because in many cases of clearly established conspiracy there may be no means of proving any such thing, and neither law or common sense requires it should be proved, if you believe the two persons pursued by their acts the same object, after the same means, one performing one part of the act, and the other another part of the same act, with a view to the attainment of the same object they were pursuing. You will be at liberty to draw the conclusion that they had been engaged in a conspiracy to effect that object." Now, gentlemen, while I profess my utter inability to regard the proposition propounded by the Attorney-General in any other light than as an illegal and monstrous absurdity, I entirely concur in the language of Mr. Justice Coleridge that I have read to you, taking it of course in common with the facts to which it was applied, with the case in which it was spoken, with the evidence which was offered. His whole words must be regarded as consistent with good law and common sense; and all it amounts to is this, that men who have conspired—and now I use the word in its criminal sense, for I'll bring you by-and-by to the difference between conspiracy and concert in regard to men who conspire to commit a crime—means in that sense that an understanding existed between them previously to do that illegal act, and where there are two persons pursuing the same object by the same means, it is demonstrated that they act in concert and conspire for that illegal object. If you see men agreeing in such a way as that you cannot account for the identity of the action in any other way than by clearly considering it the result of a preconcerted arrangement, you may take into your consideration. It is as plain as day that Mr. Justice Coleridge, when he applied that language, spoke it in reference to the case before the jury, to the proof given in the case; and are we to have that language thrown into the crucible of this state prosecution, and you left to extract from that general proposition the conclusion that because a million of people are associated together for a political object—the repeal of an act which they consider to be injurious—because they concur in that common intent, that every one of that million, no matter where these acts are done, how done, when done, or almost whether done at all or not, are all to be given in evidence against any one man among them? And this is the proposition which you, twelve men of common sense, are called upon on your oath to take as the law of the land. But the Attorney-General is a great man for citing cases—indeed I will do him the justice to admit that in this respect he has scarcely a rival in the hall. There is no case in the books he will not poke out for you in less than five minutes, and accordingly he did not come into court resting alone on the authority of Mr. Justice Coleridge. He had another arrow in his quiver. He told you that Mr. Justice Bailey, a great lawyer I will avow—was also in favour of his (the Attorney-General's) general proposition, and he referred you triumphantly to some words attributed to that learned judge in the case of the King *v.* Watson, in the 32d volume of the "State Tr'als," page 7. But first, let me tell you that the case of the King *v.* Watson was a case of high treason, and, therefore, not by any means strictly analogous with the present prosecution. The Attorney-General read you a very brief extract from the language of Judge Bailey upon that occasion; but hear the remarks of the judge himself, and do not content yourselves with a mere isolated passage from it. Mr. Justice Bailey was speaking of a conspiracy in a case of high treason. What was the nature and the character of the conspiracy in question? Was he speaking of an incidental agreement and union of opinion amongst a large section of the subjects of the crown. No, gentlemen, he was speaking of the unlawful conspiracy which exists in treason. His remarks had a special reference to a case of treason, and now hear in what language he expresses himself: "In order to support these it is not absolutely necessary that you should have positive evidence from persons who heard them consult or from persons who heard them conspire, or even that you should have evidence of an actual meeting for that purpose. if you shall find that there was a plan, and you shall be satisfied from what was done that there must have been previous consultation and conspiracy either by the persons who are the objects of the charge, or by persons engaged with them in the same common purpose and design, that will justify your finding the conspiracy and consultation." There is the language of Mr. Justice Bailey. I have read for you the whole passage and not a mere extract; but in order that you may clearly understand and fully appreciate the force and point of his observations, it is absolutely essential that you should take into consideration the peculiar circumstances under which they were uttered. Mr. Justice Bailey, in using those words, was not delivering from the bench any judgment upon a point of law; nor was he addressing a jury sworn to try a man. No; he was merely giving general directions to a grand jury. It is from his charge to the grand jury that the words have been extracted to which the Attorney-General attaches so much importance; but you must bear in mind that if ever there be an occasion when it is admissible for a judge to deal in generalities, and not to pay a very strict attention to the delicate subtleties of law, that occasion is furnished in the case of a charge to a grand jury. But what, after all, is the inference that is fairly to be drawn from the passage that has been so much relied upon? It is plainly this, that the jury, in order to a conviction, must come to the conclusion that there has been a previous consultation and conspiracy, and that they must come to that conclusion without any doubt; but that it is not necessary, in order to coming to this conclusion,

to have the evidence of some person who actually saw the accused parties in the act of consulting. But you must believe that they did actually cousult; and furthermore, that they consulted with a criminal intent as criminal conspirators. All that you must believe before you can find a verdict against the party or parties who are put on their trial. And now, having called your attention to the only two authorities that have been cited by the Attorney-General, I come to consider the third point of his speech; and now, gentlemen, as British subjects—as men who desire to spend the rest of their lives in a country governed by rational laws—as men who desire to leave your children the laws as you enjoy them yourselves—as men who love justice, honour, and integrity of purpose, I conjure you to pay attention to the remarks which I will offer upon this branch of the case. The Attorney-General told you that "provided a man comes into a common purpose or design he is as much in it as if he had been in it from the beginning!" Such, gentlemen, is the *legal* proposition which has been laid down by the Attorney-General for your consideration—such the proposition which *you* are called upon to ratify and adopt. He wants to prove that the repeal association is a criminal conspiracy—that every man who belongs to it is a criminal conspirator, and he gives his law a wide range, for by adopting such a monstrous proposition as this, he gravely tells you that every man who comes into a common purpose or design—to wit, the common purpose or design of procuring the repeal of an act of parliament—is guilty of seditious practices, and must be branded as a member of a wicked and illegal conspiracy. I dare say the Solicitor-General, who will have the right of reply, will endeavour to get the Attorney-General out of the absurdity in which he is thus involved by explaining that what the Attorney-General meant to convey was, that every one who came into a common purpose or design to procure the repeal of an act of parliament, by illegal or seditious means, was to be accounted a conspirator as much as if he had been in the design from the commencement. But this explanation necessarily involves the assumption that seeking the repeal of a statute, by calling together in peaceful assembly masses of people, who conduct themselves legally and decorously, and by the delivering of such speeches as have been read in court, involved illegal practices, and was, in point of fact, looking for repeal through criminal agencies. Let them prove that. The Attorney-General has alluded to the words of Mr. Justice Bailey, in the case of the King *v.* Watson, and I, too, will take the liberty of citing some passages from the same authority in the same case. Hear what Justice Bailey says on the subject—"Treason differs from felony in this, that in cases of felony there are accessaries; in treason there are none; what would make an accessary in felony would be a principal in treason—he who plans the thing." Now, I ask, what thing was it? The thing of meeting to petition parliament for a repeal of the union, was it? No such thing. Was it the thing of meeting and making speeches? nothing spoken was high treason. Justice Bailey continues and says—"He who plans the thing, devises the means by which it is to be effected." What was to be effected? why the death of the king, or the levying of war against the king, or who does any other act in pursuance of matter, was as much a principal as he who concocted it. That should be recollected applied to a case of high treason.

Judge Perrin—Is that page seven you are now reading?

Mr. Fitzgibbon—Yes, my lords. "If it were proved that in furtherance of the common object and design." What design or object? not the design or object of calling or attending a meeting at Tara Hill, or the delivery of certain speeches there; no such thing. Will he (Justice Bailey) say, "in that case, any act, and subsequent act of the party, was the same as if he had done it himself originally." That was the language in a case of treason spoken by an English judge to a grand jury, and that was the language brought forward here to support the monstrous proposition that any man of the traversers, and any one person who joined the association, whose rules and regulations were published, and circulated to the entire world—would support the monstrous proposition that all the members of that association are to be branded as foul conspirators. Such were the then propositions of law laid down by her Majesty's Attorney-General, touching and concerning the divers cases of conspiracy.; and now let me deal with something concerning illegal meetings. The law of conspiracy touching the combination of, and attending at illegal meetings, the Attorney-General supports by referring to the case of Redford and Berney, reported in 3d Starke's *Nisi Prius* Cases; and here I beg leave to give you a short history of that case. It was a remarkable fact that the Attorney-General did not think it right to give you any account of it at all. The case of Redford and Berney arose out of a very remarkable and far-famed case which occurred in Manchester in 1820. You have, gentlemen of the jury, in the case heard of the meeting which took place on the 19th of August, 1819, at a place called Peterloo, at Manchester. At that meeting Mr. Hunt was in the chair, and while the meeting was going on he was arrested, and in the course of dispersing that meeting several people were killed and some maimed. Hunt was prosecuted; the first count was the principal one, and charged him with conspiracy. There were also three other counts in it. The charges were pretty much the same as in the present indictment, such as charging him with sedition, with maliciously conspiring, &c. Hunt was tried with other defendants. The Attorney-General of that day in England did not think it safe to go to trial on the counts on the indictment, and he added a count for attending an illegal assembly. In pursuance of the indictment, Hunt was tried at the York assizes, as it was alleged he could not get a fair trial at Manchester; the trial lasted ten days, and you may be sure the then Attorney-General brought all the evidence he could possibly find to bear on the case. The question then was a conspiracy, and brought before the competent tribunal—namely, a jury of his countrymen, it not being competent for any judge or set of judges, to pronounce any man guilty until twelve of his fellow-men pronounces him guilty. It was a jury, and a jury alone, who were capable of coming to the conclusion of what was a conspiracy. The jury who tried the case of Hunt pronounced him not guilty of the conspiracy, and they gave that verdict solemnly and honestly, not because they were political partizans of Hunt - not because they were partial to the cause he advocated; and they proved the fact to the world by finding him guilty of attending an illegal meeting, at the same time that they acquitted him of the conspiracy; and therefore they found that the meeting was illegal, while they justly pronounced him innocent of the charge of conspiracy. That being the result of the prosecution of Hunt, a man of the name of Redford, who was injured at the meeting, brought an action against the captain of yeomanry, who, in dispersing the meeting, had injured this man with his sabre, and for the injury so sustained a civil action was brought to recover damages. The case was tried, and I will call your attention to the pleadings in that case. There was a plea of "not guilty," the effect of which was to deny everything; but as it was not safe to defend the case on that plea, because there were certain matters to justify and therefore several special pleas were put in, and in them it was

alleged that the meeting was illegal, and called together in consequence of a criminal conspiracy, and that in consequence of Redford having attended this illegal meeting the defendant in the discharge of his duty put him away with as little injury as possible. In this plea a conspiracy was alluded to, and it then became necessary to prove it. In consequence of this, amongst other evidence produced on the trial, was a man who stated that two or three nights before the meeting, at a place called the White Moss, he saw a great body of men going through exercise or discipline like soldiers. The evidence was tendered, as it was said the man was ill used and abused by the parties who were so assembled, but they let him go with his life, and on the next day when passing the house of that man, on their way to the meeting, the parties hissed. That evidence must have been given on the trial of Hunt when he was charged at York with the conspiracy, and if the Attorney-General was right Hunt must have been a conspirator although he was not at the night meeting where the man was abused, and where the men were drilled. This evidence was objected to, but it was admitted by the judge, and the jury found a general verdict for the defendant, but on which of the pleas it did not appear. A motion was made afterwards to set aside that verdict, on the ground that illegal evidence was allowed to go to the jury, but it was refused; and the Attorney-General says this is the *dicta* of a judge in reference to the present case—that it was a *dicta* to show what was an illegal conspiracy. First of all, those *dicta*, whatever may be their value, were all spoken in reference to the case before the court, and in reference to the question before the court, that question being narrowly and simply whether or not the evidence of those drillings two nights before the meeting were admissible, to show the jury that there was an illegal conspiracy in that case. The jury acquitted Mr. Hunt of the conspiracy where it was the question they had to try—the jury found a verdict in this case for the defendant which they might have done without there being a conspiracy. The question was, were these drillings evidence of a conspiracy—not whether they proved a conspiracy, but whether there was such proof submitted to the jury that they might come to the conclusion whether there was a conspiracy or not, and it is from the *dicta* of judges in that question brought in that way before the court that the Attorney-General has endeavoured to prove that there is a conspiracy in the present case, and that the meetings in the present case are illegal meetings; and, gentlemen, from that case he cited for you a part of the *dictum* of a very learned judge, Mr. Justice Best, now Lord Wynford. He cited those words for you, and those only, that the drilling was not innocent—that it was not necessary to decide that immediate mischief was to be done, he cites that from page 125. Gentlemen, in estimating the value of the *dicta* of judges, when cited by a lawyer in cases in which they have a great interest, I hope you will bear in mind this *dictum* as it has been cited. This *dictum* was cited for the purpose of leading you to the conclusion that the drillings that were alleged to have taken place amongst the repealers, but that have not been proved, were criminal and illegal drillings; and Mr. Attorney-General begins:—"It appears impossible to say this drilling was innocent. If it were not innocent what is it?" Here he stopped. There he began, and there he stopped. Don't you think, gentlemen, that in common fairness he ought to have read for you the charge to which the word "this" refers? Now, if there was an explanation of that pronoun in the judge's language, in fairness even to him don't you think he ought to have read it? If he wished to influence you, don't you think fair dealing towards you should make him read what the word "this" referred to? But he did not explain it; he left that to me to do, and I will do it, and do it with note and commentary. Now let us see what was the drilling that Lord Wynford was speaking of. "It is said," (alluding to the excuse made for the drilling in the particular case—mind that he was speaking of the drilling that was proved in that case to have taken place,) "it is said," he observed, "that this drilling was for the purpose of enabling large concourses of people to be at the same spot of ground." That was the excuse given for the drilling of which he was speaking. He says, "it is truly ridiculous" to give this excuse for the particular kind of drilling that was proved in this case to have taken place. Drilling in no case would be necessary for bringing large masses of people together to the same spot. It is mere pretence; but if it were necessary for that they need not go to this extent. Is that worthy of your attention? If drilling was necessary for the narrow purpose of enabling great concourses of people to come together without confusion or injury to each other—without creating alarm to themselves or other people—if drilling were necessary for that purpose, the kind of drilling necessary for the purpose, provided it did not go further, would be justifiable, that is plainly and fully to be collected from his language. "They need not go to the extent of not merely putting themselves in close order, but to the full extent short of having arms in their hands, namely, what was proved here"—he is stating to you what was proved, namely, "the act of firing. For several of the witnesses spoke of their not only forming in ranks, but of the word of command being given, such as 'make ready, present, fire'" (laughter). Here is the drilling Lord Wynford was speaking of. This is the species of drilling which he stated, as it appears to me, never could have been had recourse to for any innocent purpose. That is the drilling he is speaking of. There is also that most material evidence on that part of the case from one of the witnesses, who says they were ordered to advance in front—a military term—and on the sound of trumpet fall on their faces, as in the drilling of light infantry. These are the drillings he is speaking of. Is it fair—is it fair, let me ask, to read the sentence the Attorney-General read, which speaks of this drilling I have now read for you, without bringing under your notice what this drilling was? Gentlemen, if there exists a case in which a lawyer of the meanest order, in citing the law, is bound to cite it, candidly and fairly, that case is the case of a state prosecution. If there be a case in which common humanity requires that the law should be fairly and candidly cited, it is a case where a man of my own rank—of my own profession—who was for nearly half a century an ornament of that profession—who was for nearly half a century, without any disparagement of myself, my clearly admitted superior in all particulars of professional excellence—if there be a case in which every ennobling feeling that belongs to the human kind in any heart where feeling has found a footing, it is this case, where a man in the discharge of a public duty has the painful task imposed upon him of driving into a prison to eke out in miserable wretchedness the evening of a long life—his brother barrister—his fellow-man—who has nearly completed that measure of human life that is said to be its full extent, and to consign him to eke out the little of that life that now remains, in the cold and freezing atmosphere of a dungeon. That is the case which ought to suggest fairness and candour, if any then had been. That is the case in which I would say, standing to defend myself against my brother barrister, if it should be his duty, as Attorney-General, to prosecute me—that is the case in which I, conscious of innocence, would say to him, my brother, do your duty—do it like a man—strike hard, but strike fairly! I would

say to him strike fairly, but if you aim below the belt, I repeat it, although you succeed in parrying your treacherous blow, you are no longer a man entitled to any respect, or entitled to any quarter. Am I, gentlemen, because I am not here in my own case, am I not to fight this battle as I would fight for myself? Gentlemen, it may be productive of bad consequences to me in my career to do so—but I shall never eat the guilty bread which is earned by professional subserviency. I shall not retire to rest upon my pillow borne down with the remorseful feeling that I was an example of turpitude, as I should if I would not say over and over again every word that I am justified in saying, and in saying because I am justified in feeling it. Such, gentlemen, has been the conduct of the Attorney-General in this prosecution as to the law; and then after stating the law, he comes to the facts of this "momentous" case. Yes, I agree with him—it is a "momentous" case—but, no doubt, I don't agree with him in his reasons for calling it so. That he thinks it a "momentous" case I have no doubt, but that feeling has reference to the effects it must have upon his own position with his own party. No doubt it is a "momentous" case to him, and because he thus feels it, this prosecution has been carried on as such things ever are when the party concerned is not the prosecutor for the crown, but on account of himself. It is evident that he is influenced by the consideration of the position in which he may be placed with his party, and, therefore, gentlemen, you have witnessed the asperity, I will call it, with which he has conducted this case. He calls this a "momentous case." Is it so called by him because your verdict of "guilty or not guilty" may produce peace and quietness in the country? As to that I deny the right of any portion of the community, because it may be useful to themselves, to take one farthing out of my pocket, to touch one hair of my head, or deprive me of one moment's liberty, because it may do them good. Does not common justice revolt at the notion? If he means that it is a "momentous case" because your verdict of "guilty or not guilty" may be serviceable to the community, I deny it. I deny your right, supposing that you represent the opinions of ninety-nine out of every hundred of the people, to entertain one thought of the effect of your verdict upon them. Gentlemen of the jury, when a man is fairly convicted—when a jury pronounce him to be a criminal—then arises the question how he is to be dealt with as to his punishment, having reference to the good of the country. But while I stand here, until I am found guilty, I deny the right of any human being to plead his own good as an excuse for my conviction. Yet that is the reason that it has been said to you that this is a momentous case. Let me now give you mine. Gentlemen, you cannot be ignorant of the history of your own country, and of every other country in Europe—you cannot be ignorant of the change which took place in human affairs when the Roman empire withdrew its forces from her distant dominions, and when the northern hordes poured down upon the centre of Europe, and established themselves in power. A very slight knowledge is enough to inform you of the condition in which William the Conqueror found England. Two-thirds of the whole population of the island were bondslaves and serfs, over whom the power of life and death was exercised by the remaining one-third. They were bought and sold in the market like cattle; and the first act towards the rescuing of those wretched people from that most degrading of all human conditions, was the act of accepting their fealty, for it was he who first introduced the feudal law, and the accepting of that fealty made it at once illegal to kill them. From that hour down to the present time in these countries the mass of the people have been from time to time, and from age to age, and from generation to generation, withering under, yet struggling out of, the bondage that they were subjected to in the early period of our history. This is an indictment charging the defendants with the crime of seeking the repeal of what they consider to be a pernicious law, by the exhibition of great physical force. Now, give me your attention for a moment, and you will see what that is. It does not charge the defendants with seeking to obtain their object by the use of force. There is no such charge in the indictment. It does not allege that they had in view or in contemplation at all the use of physical force. The exhibition of it they acknowledge to. Let us see for a moment what does that mean. An immense mass of the community are dissatisfied with the present law, and they want to alter it; and they come forward in masses, in immense numbers to express their desire that it shall be altered, and their determination never to stop, never to stay in their constitutional and legal efforts to have that law repealed; and they, in the strongest language, declare their determination never to cease using every effort the law and the constitution sanction to have that law repealed. And in the course of this pressing of the people for a repeal of that law, they come forward in great numbers for the avowed purpose of showing what an immense mass of the community, and what an immense proportion of the physical and moral strength both together of the community are favourable to the change they want to make, and that is what the Attorney-General of Ireland comes here to prosecute as a crime. I wonder does the Attorney-General think that Magna Charta was brought about by crime? I wonder was there any exhibition of physical force, although it is certain there was no use made of it? I wonder if physical force was used upon Runymede, when the iron barons of England, fully armed, presented themselves as persuasive visitors before the doors of their sovereign to ask him, by way of favour, to sign the charter they had brought in ready for him? There was an exhibition there; yet that is the charter which no Attorney-General—no, no judge—nor no king of England, dare to say was procured by force, and was, therefore, void. Is that the only instance in English history of great reformations being brought about by the exhibition of the mighty proportion of the physical and moral force of the country? No; there are other instances. Let me ask you has any great measure been attained except by the means imputed to the defendants? Look to the Clare election—what was that? Was not there great physical force exhibited there? Why were not the people prosecuted? Why should they be prosecuted? If the great mass of the country be galled, if they be suffering, why should they be repressed from the expression of their feelings of that suffering? Why is this a momentous case? Because it is a case by means of which, and from your verdict, the present ministry are seeking to get into their hands a scourge by which they may be enabled to repress the public expression, the multitudinous expression of the feelings of every man in the country who may not be one of their party. That is a thing for which every ministry in every period of English history are anxiously striving for; yet not a single one of them to the present hour have succeeded. Early in the reign of Edward III., the state lawyers from time to time began to draw their constructions upon high-treason; they at length inserted what was called constructive treason; and at length in the course of time public opinion swept away all these obstructions, and restored the British law again. The last attempt—a foul attempt—was made in the prosecution of Hardy and Horne Tooke, in 1796—that was a period of tremendous anxiety—

when the affairs of France presented a spectacle which every lover of peace and order, every man who had the peace and happiness of mankind at heart, would join with all possible alacrity in averting in his own country. That was a time at which one of the ablest, one of the most learned, one of the cunningest, one of the most artful men that ever lived, was made in England Attorney-General. They framed upon that occasion an indictment against a great man—a very popular man—a very great man. In point of bearing and ability few could equal Horne Tooke. They assembled a jury upon that occasion; they got hold of the papers of the two societies of which Horne Tooke was a member—they, as in this case, raised a chaos on the table—they threw down horse-loads of these papers, and desired the jury, and ingeniously sought to induce them to pick out treason from the mass. That prosecution was countenanced by the greatest authority—it was carried on—it was pressed on with the ability that both the Attorney-General and Solicitor-General of that day possessed, for I am willing to acknowledge that they were both great men. That prosecution, however, failed; the common sense of the jury, who were Englishmen, found a verdict against the prosecution. But it was not given up—they first proceeded against poor Hardy, the poor shoemaker, and he was acquitted. That did not satisfy the destroyers of British liberty; they brought it before another jury—they drained the cup to the dregs—they were not satisfied—until three successive juries, composed of sensible Englishmen, defeated their attempt. That was the last effort made in England to establish constructive treason. I trust it will be the last.

EXTRAORDINARY SCENE—THE ATTORNEY-GENERAL.

[During the absence of the judges and jury for refreshments, a scene of the most singular and unprecedented character took place in court, which perhaps it ever fell to the lot of any man, versant with legal proceedings, to record. It was observed that some hasty observations, and that in a very excited tone and manner, passed between Mr. Fitzgibbon and the Attorney-General; and there was, to use the language of Mr. Sheil, "a hush of public expectancy and almost breathless silence;" when, after a much more protracted absence than usual, their lordships resumed their seats upon the bench.

Mr. Fitzgibbon rose and said—My lords, as I was coming into court, after having, from the effects of illness, endeavoured to take a little rest in the library, borne down by an exertion not very seasonable, having regard to the state of my health, a note was put into my hand, signed by the Attorney-General, which I ask him now to place in your lordships' hands.

A short pause ensued, and the Attorney-General having made no reply,

Mr. Fitzgibbon continued—My lords, I hope that in opening the case, I did very clearly and very plainly express my sense of the position in which I had been professionally placed. I think I did very clearly and plainly express what my feelings were in respect to the gentlemen who here represent the crown. I very clearly separated any reference, in what I said, of my private feelings from what I considered my duty required of me to express, not in reference to themselves personally, but to their conduct in this prosecution; and I do not think that I travelled out of the line of my duty in making those observations. I observed upon no act or thought of a single one of them, except an act done or a thought expressed in the course of this prosecution. I said very plainly and distinctly that I would despise myself if I left unobserved any point upon which my client might observe if he were in my position, and defending himself as his own counsel, or I in his, as a traverser at the bar, and defending myself. I pursued what I considered to be the course which my duty indicated, and I don't think I went beyond it. Now, my lords, I ask the Attorney-General to hand up that note; and if he will not, I will tell your lordships the substance of it. He tells me in that note that I have given him a personal offence, and he calls upon me, if I don't apologise for it, to name a friend (sensation throughout the court). I need not advert further to his position or to mine on the present occasion, nor is it necessary for me to refer to my peculiar position at this moment, while defending one of the traversers here; but, with these observations, I shall leave it with your lordships to deal with his conduct.

The Attorney-General rose and said, in rather an indistinct tone—If Mr. Fitzgibbon has any application to make to the court, let it be made in the usual form. Let him make an affidavit, setting forth all the facts (great sensation).

Mr. Fitzgibbon (warmly)—I never will.

The Attorney-General—He would then have to state that he attributed to me in this court—and it was so taken down in writing by some of my friends—that my public conduct in the conducting and carrying on of these prosecutions was influenced by private and dishonourable motives. By the effect which the result of this prosecution, in its failure or otherwise, might have upon myself or my personal interests, I do not think any counsel is justified, even in his public capacity, in attributing such unworthy and unwarrantable motives to me, as that I could be influenced in this case by my interests with respect to the political party to which I belong. I did then, and I do still, feel very much offended at it—very much irritated at such an allusion—and I consider that no observation which could be used could more strongly tend to excite such a feeling. Certainly, if language of the kind was not intended to convey a personal imputation on myself, I cannot conceive anything easier than for a gentleman to state that he had been misunderstood by myself and my friends. These are the circumstances, and if there is any question to be properly brought before the court, whatever its rule may be, I am perfectly certain it will not sanction any personal imputations on the counsel who are engaged in conducting it.

Mr. Moore was about to make some observation, when

Mr. Fitzgibbon again rose and said—I beg your pardon; allow me to address the court. My lords, I could very well understand the good sense and propriety on the part of the Attorney-General of calling my attention to anything which I said that might have offended him, and I could equally understand the propriety of my acting in accordance with the feelings and principles of a gentleman, had he permitted me the opportunity of taking that course which propriety would dictate. I will not now say what I might have done under the circumstances, for that was not the way he acted; but, with a pistol in his hand, he says to me, "I'll pistol you unless you make an apology;" and I cannot help telling him now, that such a course won't draw an apology from me.

Some minutes elapsed without any further observation having been made on either side, the court having been engaged during the interval in consultation.

Chief Justice—Mr. Moore, you were going to make some observations a while ago.

Mr. Moore—Really, my lords, I am afraid, after what has lately occurred, of making any observation at all in the matter. What I was going to take the liberty of suggesting to the court, in reference to an occurrence which I am sure every individual member of the bar and the public will equally regret, in

a case like the present, where the feelings of every person engaged on the one side or on the other, are necessarily very much excited, and in which I should hope every indulgence might be extended to anything irregular that may have occurred—what I was going to take the liberty of suggesting was, that as there appears to exist a very warm feeling on one side and on the other, an opportunity should be afforded of allowing that to subside, and of removing on both sides any misconception that may have previously existed. That was the proposition I was going to take the liberty of making. I cannot attempt to justify what has taken place, nor am I authorised to interfere in it; but from the position which I have the honour to hold, and the sincere personal regard I entertain for both gentlemen, and thinking it might be desirable for their own sakes, for the interests of the profession, and the sake of the public at large, if the court would allow some interval to elapse, in order that those feelings may subside, and this most unpleasant affair may be satisfactorily arranged, I have, on this account, been induced to offer my suggestion.

Chief Justice—The court are very much indebted, and very much obliged to you, Mr. Moore, for the part you have taken, and the short explanation you have given. The court feel themselves placed in a very embarrassing and perplexing situation. They feel unwilling to give any intimation of their opinion as to the propriety or impropriety of what has taken place in court, being willing to make allowance for the excited feelings of the gentlemen concerned in a case of this nature, which may carry them beyond what their cool judgment would approve of. They, therefore, give no sort of intimation at present of what their opinion is in regard to the conduct of the gentlemen at either side pending the trial of this case. They feel it to be very embarrassing to be required to pronounce any sort of opinion while a case of this nature, in which the public is so much interested, is depending before the court, the jury, and the public at large; and they also feel that of all men in the profession the Attorney-General is the last man who ought to have allowed himself to be betrayed into such an expression of feeling as has been stated to the court as having taken place in the very presence of the court; for although it took place during our temporary withdrawal, and we were not personally present, it yet occurred while the court was sitting in the discharge of its judicial functions.

The Attorney-General (interrupting the court)—I have to state, and my friends tell me so, that that note was written very hastily; but considering the position I was placed in, and the strongly irritated feeling I was under, I concur in what has been suggested to me, and I have no objection to withdraw that letter, but I shall make no further terms about it. I feel that I was very hardly dealt with, and I leave it to the court to consider what course the gentleman who used that language ought to adopt in regard to what is due to me.

The Chief Justice—The court are bound to consider what took place as if it occurred during the business of the court, and we can't by any possibility allow it to go further. It must be put a stop to.

Mr. Moore—I know how very difficult a position I am placed in; but I would take the liberty of suggesting to Mr. Fitzgibbon, after what has been said by the Attorney-General, that he should admit that he has fallen into an error, which any man may fall into; and I only suggest to him what I would do myself if I were placed in the same unpleasant situation.

Mr. Fitzgibbon—Your lordships have heard—and all who are now present have heard—what fell from me in the course of my address to the jury. The Attorney-General has repeated what he says was taken down as my language, and he says that I imputed to him dishonourable motives—of being influenced in his public conduct, in regard to these prosecutions, by the love of place, or desire of place, or personal advantage to himself. My lords, that language did not come from me—I carefully avoided it. I spoke of Lord Coke and others being influenced by those feelings which every public prosecutor was more or less influenced by in them days, and which might appear to influence public justice; but I appeal to your lordships' recollection whether I ascribed to the Attorney-General one single feeling dishonourable to him more than what I suggested was the cause of unusual warmth in a public prosecutor in all cases of this kind. I regret extremely that the Attorney-General, before he took the course he did, did not address me, for I stand here unconscious of having either said anything or done any act with the intention of wounding the feelings of another. I never imputed personal motives of a dishonourable nature to the Attorney-General. What I have done, my lords, in this case, and what I have said I have said and done in the discharge of what I conscientiously felt to be the duty I owed to my client. I did not speak of him except in the opening of my address to the jury, and in what terms did I speak of him then? I spoke of him as a gentleman in the best sense of the word—I spoke of him as a lawyer in the best and most dignified sense of the word. Such is the character and extent of the language which I applied to him personally. Did I not say all that in his behalf; and did I not add that my personal experience of him fully warranted me in saying thus much? This was the extent of my personal allusions to the Attorney-General, and if in the subsequent part of my address I made any reference to him, I did so in the discharge of the duty which, as an advocate, I owe my client, and my remarks were meant to apply to his conduct in the present case, and to nothing else. I am not disposed to claim as a right the privilege of canvassing the conduct of the Attorney-General. If it be a right it is to me a most painful one, but when I am defending a gentleman who has done me the honour of confiding to me his defence, where he is accused of an atrocious offence, I feel it to be my imperative duty to analyse the official conduct of the first law officer of the crown in the present case; but out of the present case I will not travel. I spoke of the Attorney-General as a public man, and as such only, in reference to the present prosecution. I spoke of his conduct in the present case; but out of the present case I did not for a moment travel, nor did I allude to one solitary act of his life unconnected with this trial; and am I to be told that I am to make an apology to a gentleman who——

Chief Justice—You may have misunderstood the Attorney-General, Mr. Fitzgibbon.

Mr. Fitzgibbon—My lord, it is totally impossible that I could have misunderstood him.

Chief Justice—Yes, but Mr. Fitzgibbon, we are all liable to fall into error, and it is possible that there may be misconceptions on both sides.

Mr. Fitzgibbon—My lords, the first emotion of my mind when I got his note was—no, I will not say what it was—my second was to let him out of the difficulty in which he had placed himself.

[Here Mr. Fitzgibbon took up a piece of paper in shape not unlike that on which the challenge was written; but he tore it across, and flung the fragments under the table.]

The Chief Justice—I was going to say that the whole matter has now been laid under the consideration of the court, and that there was no necessity to go any further into a statement of the circumstances.

Mr. Fitzgibbon—I have been misunderstood, my lord. I do——

Chief Justice—The Attorney-General has withdrawn the note he addressed to you, Mr. Fitzgibbon. He has expressed his regret that it was written, and wishes it to be regarded as if it had never been written. He misunderstood you.

Mr. Fitzgibbon—My lords, any man must have grossly misunderstood me who imputes to me the intention of attributing base motives to any one in the discharge of my professional duty. If I could for a moment imagine that any man could conscientiously suppose me capable of such gross conduct as that of imputing to the Attorney-General base motives—I have nothing on earth to say to his motives—I can only say that such a man has grossly misinterpreted me. Were I, indeed, capable of acting such a part, I could never again esteem or respect myself, and the direst punishment that could befal me would be the self-reproach which would follow me in every scene of my life. I only spoke of the Attorney-General in his official character as the law officer of the crown, and my remarks had only reference, I again repeat, to his conduct in the present case.

Mr. Moore rose and said that the gentlemen at both sides having given every explanation that could be expected from them, of whatever was disagreeable in this distressing occurrence, he hoped that the matter might now be fairly considered as set at rest. He trusted that it would be passed over in silence, and consigned to oblivion for ever.

The Chief Justice (after consulting with his brethren) said that the court felt exceedingly obliged to Mr. Moore for the part he had taken on this perplexing and distressing occasion. The matter was now at rest, and the court most earnestly trusted that it would not be necessary hereafter to advert in any manner whatsoever to what had taken place. I should hope it is not necessary to say any more on the matter than has been already stated.

The Attorney-General—I of course acquiesce in every thing that has fallen from the court. I have withdrawn the note, and, inasmuch as I understood Mr. Fitzgibbon to repudiate the idea of imputing any unworthy or personal motives to me, I can only say I am satisfied.

Chief Justice—That this unpleasant matter may at once be set at rest, the court think that they may call upon each gentleman to declare that he is satisfied to abide by what has just fallen from Mr. Moore.

Mr. Fitzgibbon—I can only say that I did not mean to attribute any unworthy motive to the Attorney-General, and I have no other feeling towards him at the present moment differing from what I felt this morning.

Thus the matter dropped.]

The Learned Counsel then resumed his address to the jury. He said—I hope, gentlemen, that you will not misinterpret any observations which in the course of this trial I may deem it my duty to address to you in reference to the conduct of those who have conducted this prosecution on the part of the crown, and I trust you will invariably keep it in mind that however strong may be my animadversions on the course pursued by any of the law officers, it is not my attention to attribute impure motives in any quarter, for I have nothing to do with the motives of any man in this case. I have only to analyse their official acts, and their official acts I will analyse, for it would be the grossest injustice to the defendants in this case that your attention should not be called to every act of the prosecutors, in order that you may not be improperly influenced in your verdict by any professional impropriety they may have been guilty of. There are certain rules which ought to be observed in the conducting of all legal cases, and more particularly criminal cases, and when, as in duty bound, I shall come to make observations on the breaches of these rules that have been committed in the present case, I trust you will not forget that it is against the officer and not the man that my remarks are directed. Let me call your attention to the statement of the facts of this case made by the Attorney-General; but first permit me to put you in full possession of what I understand to be the rule of the law and the profession in relation to a statement of facts. When a counsel rises to state the facts of a case he expects not to be interrupted—interruption always leads to anger, and hardly ever to any useful result, therefore the proper rule is to permit the counsel against you to state his case without interruption, and he does so upon the understanding that he will not state against the accused party anything that he himself as a lawyer does not feel persuaded that he will be able subsequently to substantiate and convert into evidence against the prisoner. Now mind that is the rule, and there is always an understanding that we will by no means transgress that rule. With this understanding the counsel goes on and states his case, and the matter against the party accused, and then he is at liberty to bring evidence in support of these facts. Was this the case pursued by the Attorney-General? He commenced by stating to you that shortly after the emancipation act passed, that is in the year 1831, he told you that the then Lord Lieutenant of Ireland issued a proclamation; and he (the Attorney-General) not only told you that, but he read every word of it for you. Yes, he read it every word for you, for what purpose? Why, to prove a case of conspiracy against men who were then boys at school, and were not, nor could not, then be engaged in any association whatever. The Attorney-General read that document for you, in order to brand as seditious the agitation then carried on on the question of a repeal of the union. He read it as evidence against men who are accused of a crime, because they agitate the question of the repeal of the union. Let it be remembered the document was read in the year 1844, just thirteen years after it was issued; what evidence, I ask you, has he given to prove it was issued at all, or that such a document was ever in the world? He read the document and sat down without attempting to inform you of any one fact relative to that document, save the reading of it. He did not attempt to make evidence of that paper, and he calls on you to found your verdict for him on what he has not offered you one particle of evidence, save the reading of a document. I now ask him for his excuse for this conduct, for reading a paper in 1844 which he alleges was published thirteen years before, and of one particular of which he has not attempted to give even a shadow of evidence. The rule of law in this case is not at all different from the rule where a man may happen to be prosecuted for murder. Well, now, suppose in the year 1844 a man was prosecuted for murder, and that the prosecuting counsel stood up and read a document in which a man of great authority and note had some thirteen years before published a statement to the world, stating that murders were very rife in his neighbourhood, and that the offenders ought to be punished, I ask, would that be a fair document to read to the jury in order to connect that man with something that had taken place thirteen years before? Would such a course be just, or would it not be done for the purpose of affecting the minds of the jury with horror at the crime of which the man then before them stood charged, not by anything the man himself had done, but for what had been published thirteen years before his trial by a man of influence? The Attorney-General read the paper alluded to, and let me ask you for what purpose? Oh, but he did not even stop at the reading of that paper. He told you about Lord Althorp, whom he stated got up in his place in the house of commons, in 1831,

and designated O'Connell's agitation for the repeal of the union as insurrectionary and rebellious. Did the Attorney-General prove to you that Lord Althorp ever made such a speech at all? He was bound to do that as he made the assertion in his opening statement to you. Did the Attorney-General even make an attempt to do so? No, he did not. Then why open such a case to you at all? He also told you that in the year 1831 Lord John Russell also made a speech in the house of commons, and that he said the repeal of the union would be a dismemberment of the empire—that it would be disastrous to monarchy, and would be the means of establishing a ferocious republicanism. I ask you is that the way to deal justly with this case—is it the way to deal with a man on trial—and, I ask, is there any justification of such conduct on the part of the Attorney-General? Is it just, is it legal for the Attorney-General to put such things into his opening statement, and sit down without offering you one single particle of evidence on the subject? He tells you the objects of the defendants was branded by Lord John Russell in 1834, and that the repeal agitation was tending towards criminality, that it would be a dismemberment of the empire, and the establishing of a ferocious system of republicanism. He told you also that Lord Ebrington, the Lord Lieutenant of Ireland, had said that he had a great horror of civil war, but that he would risk a civil war before he would accede to a repeal of the union. I ask was this fair, loyal, or just in the Attorney-General? Was it a fair act on his part to read for you the statement of Lord Ebrington, the statements of Lord Althorp and Lord John Russell, without giving any evidence of these things, or without being able to prove the facts? What legal right had he to do so? None whatever—and I here boldly assert he had not the least right to do so. Let me bring back your minds to one portion of the statement made by the Attorney-General in his description of conspiracy; he stated that it was a conspiracy to combine to effect lawful means by unlawful purposes. I ask you here, and I ask you confidently, is it legal for the Attorney-General to seek to throw illegal evidence into your box by reading documents of which he could not give a particle of evidence? Was it not arriving at a legal conclusion by illegal means on the part of the Attorney-General? Will any one of his colleagues tell you he was entitled to read the speeches of Spring Rice and the other persons alluded to, and sit down without ever attempting to offer any evidence to prove them. I say his official conduct in that was most illegal, and was done to obtain an end in the minds of the jury. If ever there was a case that ought to be confined within the strict limit of the law, and solely to the proofs, it is the present case, where a fellow-subject is under trial, and where the Attorney-General stands up to prosecute, he is bound by all ties to confine himself to strict legal rules; but the instances I have given are not the only instances I can give you of a departure from legal rules by the Attorney-General. Gentlemen, I speak to you about the proneness to indulge in this departure from legal rules. I can give you several, and I will now show you how necessary it is to confine crown prosecutors to the strict letter of the law. You all remember a man named Johnston, who was examined on this table relative to the meeting at Longford. Do you remember Sergeant Warren standing up to re-examine him? Gentlemen, you have an absolute right after a cross-examination is over to re-examine a witness—to ask him for an explanation of anything arising on the csoss-examination. You may remember that witness pausing in the part of his evidence, in which he spoke of an expression used by Mr. O'Connell as being seditious. My friend, Sergeant Warren—don't imagine I speak disrespectfully of him—I wish it to be fully understood that I do not—no man could do so of him. He has not, in or out of the profession, a superior for good or moral parts, nor breathes there a human being that with greater pleasure bears testimony to it than I do. But I am here for an accused man, dealing with Sergeant Warren's conduct in this case, and I could not forgive myself, as I said before, if I did not deal with his conduct as it deserves. I had cross-examined the witness as to the *pause*. What was Sergeant Warren's question on cross-examination? "Did you ever hear of cats' *paws?*" "Yes," said the flippant witness, "some people make *paws* of themselves"—that is, use the cat's *paws* to pull a roasted chesnut from the fire. As a wit, I don't see the value of it. I don't think the good sense of the learned sergeant worthy of the pun. As a joke it was rather an unseemly insinuation—I do not think it was very generous. I think, too, that it was incautious; but it only shows how liable to forgetfulness of the circumstances in which they may be placed, state prosecutors may be. What did it mean as an insinuation? It insinuated that the traversers, or some one of them, made cats' paws of the people—that they used them for their private advantage. I do not know why my learned friends who conduct this prosecution should claim a peculiar protection for their own feelings while they impute such motives to the traversers, who are now upon their trial, whether they should leave this court stamped as foul conspirators or not. Have I dealt unjustly with this joke? But when they make imputations against others that may be cast upon themselves, gentlemen of the jury, may it not be said that he wants to make a "*cat's paw*" of you. However, gentlemen, whatever nuts may be drawn out of the fire, neither you nor I may expect to get any of them. And I don't know why my friend who is beside me, when he comes to address you, should not point over there, and express his hope that the prosecutors may get a large nut out of the fire. Gentlemen, I cannot avoid saying that there is something in these state prosecutions that makes men forget themselves. Gentlemen, the Solicitor-General is as calm, as cool, as perfectly regulated an individual, as is to be found in the profession. The person that is last to address you in this case is the Solicitor-General, and has he forgotten himself in this case? Gentlemen, when I used a legal argument the other day, and when I said that the jury list might have been legally corrected before the forty-eight names were drawn from it, and that it ought to have been legally corrected, my friend, the Solicitor-General proceeded to show that it would not be legal to correct it, and he concluded by this observation, "that this observation came from one of her Majesty's counsel," alluding to what I professionally said. Now, that, to my humble understanding, just meant this, and nothing more or less than this, the man that could utter such an absurdity in the shape of a legal proposition in a court of law, ought not to wear a silk gown. Whether I ought to wear it or not it is on my back, and it came there not by any asking of mine; and since I got it I do not feel myself to be a different man from what I was when I was covered with the homely stuff. After having read from those speeches and those placards, the Attorney-General then comes down to the case—the case itself. He comes down to the period at which this association was established, and then he proceeds to read for you the different speeches and publications which he says were overt acts of this conspiracy. He was reading those for many days—he read for you amongst the rest a little scrap of poetry—very treasonable poetry—"The Memory of the Dead," reminding people of the year '98. I wonder, gentlemen, when he was commenting upon that little *morceau*, I wonder it

never struck him to recollect "The Exile of Erin." Now, what is that little piece of poetry? What is it but an expression of pity, and commiseration, and respect towards those who perished in that frantic struggle, telling those who may be the relatives of the unfortunate persons that so perished that there was no reason to blush for their treating them as poor misguided men, no doubt concluding with the chorus—

"You, men, will be true men, and remember '98."

I don't know whether it was expected by the repetition of those lines, gentlemen; that you, men, should be true men, and that you should remember '98. And that you should remember '98 against those of the traversers that stood the test of '98—that were loyal in '98—that were loyal since '98—and that you should be true men and remember '98 against those that were not born in '98. I own, to my imagination, that little document when read brought that idea very strongly, and it made me apprehend that it was at least expected that your verdict could be influenced against those gentlemen by inflaming your passions by a recollection of that unfortunate period. But now, gentlemen, as a general observation on all publications of that description, what do they really amount to? The past has been referred to by many members of this association, and referred to in terms which they would have you to suppose was intended to excite a spirit and feeling of revenge in the living. That that has been done—that the past has been referred to in terms not very cautious—not very likely to be adopted, by-the-bye, by men who had crime in their hearts, or by conspirators, or by men engaged in an atrocious and concealed attempt to stimulate the inhabitants of the present day to civil war. That they did use this language, plain and unvarnished, as they did, to my mind carries much conviction that they had no criminal intent whatever. That they acted openly, and plainly, and unreservedly. Now, let us for a minute contemplate the means by which this repeal of the union was to be carried. Before we come to details it is but right to have regard to the period, to the time, and to the circumstances, under which this agitation has been got up. In modern days public opinion has attained strength wholly unknown to it in ancient times. Why, what is the cause of it? The cause of it is this—the rapid communication between the several countries on the face of the earth—the rapid communication of thought—so that the whole human race has been, as it were, a single country—nay, a single family—in which no individual can stir in any public matter without being under the view and under the opinion of all. He must be but a poor observer of human events that will not perceive how vast those very engines are I speak of—this rapid communication and this power of the press—two perfectly modern engines; they are proceeding to put out of the world altogether, and I hope they will, the use of brute physical force. War is becoming daily less likely to occur, and why? because the conduct of a nation becomes as it were the conduct of an individual, and it is brought under view for the condemnation or the praise of all other nations. And hence it is that physical war is ultimately likely to give place altogether to the force of a much stronger engine, namely, the public opinion of the human race. Before the rapid communication ever existed—before this power of the press existed—nations were hardly respected at all before the form of opinion; that is not the case now; and if you will only carry in your minds that suggestion of mine I think you will find it will explain an immense mass of the matter that has been read to you. Do you recollect the sentiment so often referred to in all the speeches of Mr. O'Connell? Do you remember the words, "We wan't your sympathy—we don't want your physical force." "Ours shall be a revolution not accompanied by blood." Mark, their "revolution (if revolution it can be called to repeal a bad law as he thought) was to be bloodless;" and then again, he has repeatedly said, "Ours shall be a proceeding free from force, violence, or crime of any kind. We seek to attain that object by peaceable means, by legal means, by constitutional, by innocent means." How were they to attain it? By exhibiting to the whole human family the sufferings of this particular nation—by showing them a nation peaceable, united, intelligent, moral, religious, and yet ground to the very earth by oppression. Is Ireland in a state it ought to continue in? Whether the repeal of the union would cure the ills of Ireland I don't feel myself competent to say, neither do I feel myself competent to form an opinion; but this I do feel myself competent to form an opinion on, that where I see a waste of many miles, further than the eye can reach, of land that has been there sleeping, perfectly inert and useless to the human race for centuries—where I find that waste exist, that wild, and wretched, and dreary tract of wilderness, here and there not ornamented but deformed by human habitations, that are not as comfortable as the habitations of the common brute of the land—when I see a population who are starving and miserable, but yet strong and intelligent—when I see such beings squalid and miserable, obliged to subsist on the most wretched food, having no comfort of any kind—when I see a population such as that, and in that condition, I ask myself is that a state of things that ought to be? Does that state of things exist? If that exists, if it ought not to continue, is any man to be branded, or are any set of men to be branded by the foul epithet of conspirators? If they, finding that a certain law upon the statute book, which is now of forty-four years' standing, is the cause of that human wretchedness, and that the repeal would put an end to it, are the men who advocate that repeal, and seek proselytes to their opinions, to be branded by the foul name of conspirators? I am no repealer. No man ever heard me say privately or publicly that I desired a repeal of that statute; in truth, I have never considered the question much, from this plain reason, that I thought it useless for me to do so; but let any man convince me to-morrow that the repeal of that statute would raise this unfortunate country from that most deplorable condition, and, gentlemen, I would be a repealer. I will not shrink to say, if once I am convinced that that statute is the cause of that misery, that I am willing to pursue the repeal of it even to the death. That is going as far as any of those men have gone. But I hope no man will imagine that I would pursue the repeal of that statute by the commission of crime. Gentlemen, I hope that the many, many thousands—I hope that the traversers are men who, although they would die to repeal that statute, would sooner die fifty deaths than repeal it by conspiracy. See what you are called upon to do. Because they considered that the repeal would be the regeneration of Ireland from that state of wretchedness—because they endeavoured to persuade others by warm language to be of their own opinion, therefore you are called upon to say that they are guilty of a foul and treacherous conspiracy. What is conspiracy in its proper sense? Is it just to say that it means concert agreement? It does no such thing. The essence of the crime is treachery. Conspiracy means where men put their heads and wits together intending to commit crime, knowing it to be crime against their neighbours who are not upon their guard, entering into a conspiracy to do that which is criminal. In the complicated crimes of this country how can it be said that it is criminal for a man who claims the estate that is in your possession, thinking he is

legally, and, if you please, he is pursuing an illegal object, is he, therefore, a conspirator? See how that is illustrated by the cases that are decided upon. Those who bribed the assistant of the card-maker were guilty of the crime charged to them. Is that like the case now brought before you? Certainly not. It is utterly impossible. Gentlemen, the law of this country never sanctioned the application of the law of conspiracy in any such case as this. In the case of the King *v.* Burke, reported in the 25th volume of the State Trials, the traversers were accused of conspiring to excite insurrection in this country, and to bring in foreign forces here; and, strange to say, although it is quite plain that such a conspiracy as that would be treason, yet they were not indicted for that but for misdemeanour. In that case the witnesses were produced, who alleged that they themselves aided the three others who were on trial; the case broke down, and there was an acquittal. Having failed in that prosecution, after that the case was commenced against Hardy and Tooke, and having failed in that case, as I told you before, to establish constructive treason, the government turned their attention to a person named Yorke, commonly called Redhead. His case is reported in the same volume, and they prosecuted him for a conspiracy and misdemeanour, a conspiracy for being a member of the societies, a connection with which they had sought to establish against Hardy and Tooke. Yorke was convicted.

Chief Justice—What year was that in?

Mr. Fitzgibbon—In 1795, the year after the prosecution for treason in the case of Hardy and Tooke had wholly failed and broke down. That case of Yorke, so far as I can learn, never entered into precedent, and I do not think any lawyer reading the report can say it was a constitutional or proper prosecution. Yorke was convicted and sentenced to two years' imprisonment, and here the case rested. At that time when the government of that day instituted this prosecution against Yorke, they had not only failed in their attempt to establish a case of constructive treason; but they also failed in the attempt—the persevering attempt—to establish a misdemeanour, which would have answered their purpose. The law of libel from the time Lord Mansfield first came to the bench, in 1756, was a source of great controversy between the people and the government. The doctrine propounded by the state lawyers, and finally adopted by the bench, was that the mere fact of publication constituted the guilt of the party indicted, and that the jury had nothing to do with anything else except the bare fact of publication to find a verdict where a person was accused of having published a libel on the government, and Lord Mansfield appears to have decided that as the law in the case of the King *v.* ——, noticed afterwards by himself in the third volume of the Term Reports; but it came more directly before him in the case of Woodfall. He was prosecuted for publishing Junius's letters, which contained remarkable and pointed allusions to physical force in plain terms, and threatened not only the king's ministers with it, but the king himself. Woodfall was prosecuted, and Lord Mansfield told the jury they had nothing to do with any question except that of mere publication, and they found a verdict accordingly. They found that he was "guilty of the printing and publishing *only*." The case came before the full court on arrest of judgment, and the court ordered a new trial, holding that the assertion of the word *only* made it such a verdict as could not be acted upon; a new trial was ordered, but never was had, because the crown lost the manuscript. The same thing occurred fourteen years after in the case of the Dean of St. Asaph, who was prosecuted for a political libel; he was defended, and most ably defended by Mr. Erskine, and the jury in his case brought in a verdict in nearly the same terms as in the case of Woodfall, and there arose between Mr. Justice Buller, who tried the case, and Mr. Erskine, a very warm contest, in the course of which the judge threatened to commit Mr. Erskine to gaol. Mr. Erskine, however, stood firm, He stood, and he declared that he felt it, on the very bulwark of the constitution, and he would not readily resign the benefits which he enjoyed himself, and which he hoped to see transmitted to his posterity, The verdict in that case was, that the publication was proved, but they did not find whether it was a libel or not. Again, a motion came before the court, and the court affirmed its own law, and refused to set aside the verdict. In the year 1789, again the same question was raised in the case of the King *v.* Withers, and Lord affirmed the same doctrine. It was then too late to expect that the law would ever be corrected by the judges. The question of determining upon the guilt or innocence of accused parties was taken entirely out of the hands of the jury. The minister had then in his own hands that ministerial scourge which he had been so long looking for. But again common sense prevailed, and the community asserted its privileges in parliament through its representatives; and the parliament—not consisting of lawyers or judges—the parliament passed an act in '92 declaring that what the judges had established was not the law, and again restoring to the jury the privileges of deciding on guilt or innocence as a right peculiarly belonging to them, and refusing to them anything more than a right to express their opinion, as in other cases. Gentlemen, the last prosecution that I am aware of, of any great public moment, the last state prosecution for libel after that passed, was the case of Hole in 1817, who published parodies on the Lord's Prayer, the Creed, and the Litany. He was prosecuted by the Attorney-General of that day on the distinct and several charges, and he was tried and acquitted on the three several days, for a sensible English jury determined they would not find a man guilty where guilt was not, and that they would not, because a case was brought into court with all the weight of the crown and influence of the government, surrender those rights which they inherited themselves, and hoped to transmit to those who should come after them. Gentlemen of the jury, there never was in England nor in Ireland more than one case which at all comes near the present in point of public interest and public importance. I have no hesitation in declaring that this is a plain, open, undisguised proceeding to place the law of conspiracy upon such a footing that it will be a complete press and instrument in the hands of whoever may chance to be the minister of the day to crush the legitimate expression of popular feeling, and to silence free discussion upon all political topics. Mark the course of the proceedings in the present case. There is no count in the indictment but one, and that is for conspiracy—a conspiracy to hold meetings for the purpose of petitioning the legislature for the repeal of an act of parliament. If the meetings were illegal why was there not a count in the indictment for attending illegal meetings? If the speeches which were delivered at the meetings were seditious, why have we not a count in the indictment for uttering seditious language? If the conspiracy be one formed for the design of extorting from parliament alterations in the law by the exhibition of physical force, why not have a count in the indictment for such exhibition? Why omit all those counts? For this manifest reason, because they feared lest the jury in the present case, as in Hunt's, might find a verdict of not guilty on the count for conspiracy, and of guilty upon some other counts. Those other counts were omitted, and the whole indictment was consolidated into one count, because by some management or by some

accident it might so happen that twelve anti-repealers might get into the jury-box, and the crown knew that it would be a very convenient dilemma to bring those twelve gentlemen into, either to acquit the traversers or else to find a verdict of guilty on the conspiracy count, there being no other count in the indictment upon which they could be found guilty. Gentlemen, this is a case which it behoves you to approach with minds calm, unprejudiced, and dispassionate. Great is the trust that has been reposed in you—momentous, indeed, is the task which has devolved upon you. I tell you, gentlemen, you are here acting as the guardians of that constitution which you have received from your forefathers as your noblest inheritance—you are here acting as guardians of that law, by which rational liberty is either now to be secured or must leave your country for ever—you are here in the citadel of liberty—do not suffer yourselves to be deluded into the supposition that it is the traversers alone who are interested in the result of your verdict. You are each of you interested in this case, for the fortunes of your country are involved. Do not for a moment suppose that I fear that any one gentleman of the twelve whom I am addressing is not as upright a man as any that can be found in society, or that he would not discharge his duty in this case with firmness of purpose and unswerving determination. The Attorney-General read for you in the course of his address a very impressive passage from a charge of the late Lord Chief Justice, delivered at a special commission in Maryborough, but you must bear in mind the occasion on which that address was delivered—you must remember that it was a strong exhortation to the grand jury under very peculiar circumstances. In the commencement of his charge the late Lord Chief Justice drew the attention of the grand jury to the vast number of murders and atrocious incendiary offences which had taken place in the Queen's County during the brief space of two months, and he deemed it expedient to exhort the jurors upon the necessity of performing their duty with firmness and decision, for he knew he was addressing a body of men who lived in the midst of those desperate and reckless characters by whom the dreadful deeds had been committed which created the necessity for the special commission. Under these circumstances it was proper and just for that able and constitutional judge to tell the grand jury, in emphatic language, that those associated crimes must be met vigorously by the strong arm of the law; but, gentlemen, you must not lose sight of this fact, that the language quoted by the Attorney-General was not addressed to a jury sworn to try whether any accused parties were or were not guilty of the crime imputed to their charge. That language was used before any man was viewed as a criminal—before any man was placed upon his trial in view of the court, and when the only duty of the jury was to decide, not whether A. B. was or was not guilty, but whether the bill of indictment against him ought to be received as a true bill or ignored. If that ever-to-be-remembered judge had used such language in addressing a petty jury before whom a prisoner had been arraigned, it would have been an eternal blot on his memory as a judge of the land. It would be a blot on his memory to have done so. What, may I ask, would be the feelings of that Chief Justice if he were here at this moment to address, and explain his opinions to you relative to his brother barrister of forty years' standing. Oh, that he were here to witness the language in the case—language on the law of the case—that was applicable only to the murderer and incendiary, to be applied to the traversers in the present case. How would that Lord Chief Justice deal under the circumstances? He would, although the traverser stood at the bar, call him his friend, and would throw the shield of his eloquence around him, to protect him from such foul stains. Why did the Attorney-General not use his own language when he addressed you? Why did he use the language of a great man on that occasion, and not his own? Had the Attorney-General used his own language, it would be befitting the man, and then we would not have the language or law of a Bushe laid down here. But no, gentlemen, he did not use his own language—he used that of others, and put it forward in the case, in order to try and prejudice the case of the traversers in your minds. The Attorney-General had a plain and simple case to follow, and why not go by that case? If the case was not one of conspiracy, which I deny, why not prove it? No, but he must go so far in it as to confuse and bewilder it in such a manner that I defy any man to get it out of the chaos in which it at present stands before you. Am I, gentlemen, to take up your time by commencing and reading for you, and then explain to you the great mass of documents which you have already in part heard read? If I were to do so, what would you do (laughter)? Take the speech of Dr. Gray, my client, for instance, which he delivered at Loughrea—a very good speech, but perhaps a very warm one; I say if I take up that speech, and put it into your hands, and point out to you that it is not traitorous or seditious, that would not make the least progress in the case. It was not the sedition that was the question at present, because you should not pay the least attention at all to it, inasmuch as it was not proved to you. To what end should I take up this or any other speech, and point out to you the innocence of the language? It would be useless to do so, for it would be only knocking one head off the hydra to produce twenty others in its place. Look at the course pursued with regard to you. They selected such passages from the speeches as they thought they could count on to contain sedition, and they read them for you. For from the bread of life itself you may extract a poison strong enough to kill half a dozen of people. When they read the passages containing, perhaps, strong language—the warmth of the zeal of some of the traversers—they have not read for you passages expressly different; and I'll show you that if you are to judge of Mr. O'Connell's motives, and to decide whether he is a conspirator or not, as you will find it in his own published language, I venture to say that there is not one who would not be admonished to the strict discharge of his moral duty by them; and is it fair, then, that from expressions used in warmth—selected from the immense mass, as Mr. Sheil had observed, of three or four years' producing—they should read these passages to excite the passions of your minds? It will now be necessary for me to take up your time by reading for you some portions of Mr. O'Connell's speeches which have not been placed before you, and I hope the court will not think it unreasonable, as the usual hour of adjournment has come, to indulge me until to-morrow. It wants but twenty minutes of five o'clock.

Chief Justice—You must be aware, Mr. Fitzgibbon, that we adjourned yesterday for your accommodation, at your own request, between two and three o'clock.

Mr. Fitzgibbon—I'll go on if your lordship pleases; but I really feel physically exhausted. I am not able.

Chief Justice—How much time will you occupy?

Mr. Fitzgibbon—I really cannot tell.

Chief Justice—The public time is much occupied—I will not say abused. You have now followed three other counsel; and I thought yesterday that this day would have enabled you to finish; and the court feel disappointed.

Mr. Fitzgibbon—It is impossible for any man who

does not write his speeches to calculate the time he will occupy.

Chief Justice—The court must give the indulgence; but we were all of opinion yesterday that you would have concluded to-day.

Mr. Fitzgibbon—So was I, my lord.

When the judges were about to leave the bench,

Dr. Gray said—My lords, I beg leave to know if I can offer a few words to your lordships with respect to what occurred to-day in court.

Chief Justice—We cannot hear you now, sir, address the court. Have you not counsel, and have you not been heard through your counsel?

Dr. Gray—If your lordships hear me for a few moments, I will not trespass long upon the attention of the court.

Judge Crampton—Who is this?

Dr. Gray—I am one of the traversers, my lord—

Dr. Gray—and I beg permission to explain why it is I cannot in this case appear by my counsel.

Chief Justice—The court will not hear any gentleman when he has counsel.

Judge Perrin—And during the speech of his counsel.

Chief Justice—And during the speech of counsel.

Dr. Gray then bowed to the court, and retired.

The court then adjourned to ten o'clock next morning.

FIFTEENTH DAY.

WEDNESDAY, JANUARY 31.

The court sat at the usual hour. The traversers were in attendance.

MR. FITZGIBBON RESUMED.

Gentlemen, the magnitude of this case, and its importance to the client who has placed me here to defend him, absolutely requires that I should stand up on the morning of the second day to address you. I hope no man will object that to me, that I should not have the power, in a speech of some two, or three, or four, or five, or six, or seven hours, to digest a mass of matter that has been confusedly laid down before you without explanation—that I should not have the faculty in a short speech to bring before you the other matters calculated to explain, and neutralize, and render innocent much of what you have heard in the shape of crimination. Gentlemen, that is not my fault—it may be my misfortune. I may, perhaps, be entirely deficient in the faculty of condensation. I can deal with a case, I confess, only by details. I hope I don't stand in a wrong position from being supposed for one moment, in not concluding yesterday, to have broken any implied promise to the court.

Chief Justice—Don't imagine any such thing.

Mr. Fitzgibbon—I have a duty to perform in reference to my own peace of mind, and I must do it, no matter what time I may take to do it; I stand here only for one of the traversers, technically speaking, Dr. Gray. He, gentlemen, is a young man, and belongs to a respectable and learned profession—as respectable, as useful, and as honourable a profession as that to which I have the honour myself to belong. He is part proprietor of a newspaper of, perhaps, the oldest standing of any in your city—a newspaper that has preserved a good and unimpeached character for morality, and a high character for ability, for half a century in your city. I, gentlemen, have to defend him for having been taken with the eloquence, the ability, and what he believed to be the true and honest patriotism of a man whose tongue scarcely ever failed to seduce to his opinion any one that would only give themselves the patience to hear him. That is Dr. Gray's sin and crime, if you will: and, gentlemen, in defending him from the imputation of crime—from having been led or misled, it becomes essentially necessary for me to bring before you the passages of the eloquence of the gentleman who so seduced my client into this association, which have not yet been read to you, and which are eminently calculated, in my humble opinion, not only to exonerate from guilt the man who lent his ear to those speeches, but to exonerate every other man belonging to this association, including the first of the traversers, Mr. O'Connell himself. Gentlemen, I said to you that ingenuity had been exercised in selecting passages from the speeches of Mr. O'Connell, and by reading them in rapid succession to you, which selections were calculated to lead a man to believe that Mr. O'Connell's agitation had for its object a final termination, by insurrection in this country; that although he had peace upon his tongue, he had sedition and rebellion in his heart; and let them disguise it as they please, that has been their imputation here. Let me tell you what, to my own judgment, appears to be the true meaning of the very strongest passages they have read to you from the speech of Mr. O'Connell as calculated to such a conclusion. I take up the speech of the 11th June last, at Mallow. Give me again your attention to this portion of his speech. I will read to you the worst of it, and leaving out the intermediate passages, read those they left out in the very succession they have stated them. He says—"I never felt such a loathing for speechifying as at the present time." They would make you believe that he meant he would no longer be talking, but doing—and doing what? To take arms and rise in insurrection. That is their interpretation of his words. Let them hoodwink it—let them disguise it as they please, that is what they mean to allege. Do they believe that themselves? I ask did the Attorney-General believe that, when he framed this indictment? If he did, why shrink from his duty?—if he expected that any twelve honest men on their oaths could believe that, why did he stop short of what it was his duty to do? If those speeches were so expressive, the crime of high treason was perpetrated; and why did he not indict for high treason? He goes on—"They may like the alternative, to live as slaves or die as freemen," &c. Again they would have you believe that by that Mr. O'Connell intended to suggest to his hearers, that if they did not chose to live as slaves they should take up their arms and die in the field of battle as freemen—die on the field of battle fighting against their own countrymen in civil war; that is what they wanted to insinuate to you. Is that the meaning of Mr. O'Connell? Again I ask them if they believed that themselves, and have the most remote expectation of inducing others to believe it? If they did believe it, why did they stop short of what was their duty; and I tell you that if you believe that was the meaning of Mr. O'Connell, on your sworn oaths you are bound to acquit every one of the traversers in this indictment, because if you believe that Mr. O'Connell was guilty of high treason, the misdemeanour is merged in point of law, in that, and you cannot convict him legally. He next says—"I think I perceive a fixed disposition on the part of some of our Saxon traducers to put us to the test." That, they would have you believe, is to bring on the physical battle. "The efforts already made by them have been most abortive and ridiculous. In the midst of peace and tranquillity they are covering over the land with troops; and I speak with the awful determination with which I commenced my address, in consequence of the news received this day." News from the cabinet council, held in London by the ministry, accompanied by an article in the *Times* plainly and clearly announcing to the Irish people that physical force was to be adopted by the government, that the yeomanry was

to be armed, that Ireland was to be by arms coerced; that was the news that had arrived. That that which Mr. O'Connell intended to be a constitutional, a legal, and moral movement of the people, without the slightest possible anticipation of any sort of disturbance, or violence or force, that that should be by the government, made the ground for commencing hostilities, by way of war—that is the news. "If (this is another passage) they assail us to-morrow, and if we shall conquer them, the first use we should make of the victory would be to place the sceptre in the hand of our Queen." Remember the great stress that is laid by the Attorney-General on that passage. What! said he; is a subject to talk of placing the sceptre in the hands of his Sovereign that already has possession of it? What is the subject to mean by that except he is first by force, and war, and rebellion, and insurrection, to take that sceptre from that Sovereign? How else could he talk of restoring it to her? That is his argument, but do you believe that Mr. O'Connell ever in the course of his long life, gifted as he is with an understanding such as belongs to few persons—do you believe that he ever was dolt enough, driveller enough, idiot enough to imagine that he or any man, against the sense of the rational body of British subjects, could wrest the sceptre from the hand to whom it belongs by hereditary, and just, and legal, and constitutional right? He never could be absurd enough to fancy in his mind, or entertain the most distant notion on earth, that it could ever be in his power to have the bestowing of that sceptre on any human being whatever, much less the Sovereign to whom it rightly, and properly, and justly belongs, and belongs not with the assent—not with the consent—but with the heartfelt acclamation of every subject in every part of her dominions. He says, "Have we not the ordinary courage of the English?" and, oh, says the Attorney-General, what could they want courage for but for the battle? Is no courage necessary to keep your peaceful and moral position, and to persevere against every threat of violence by the moral force of moral opinion to seek for your rights by exposing the injustice you are suffering? Is no courage necessary for that? If a large body of the Irish population be in a state of wretchedness—of misery—and of real tribulation, and if they be—and if they would call the attention of mankind to their suffering, is no moral courage necessary for them to assemble in peaceable but in multitudinous bodies, and there to expose the suffering they are enduring? Is no moral courage necessary in the pursuit of that honest and fair exposition—that legal and constitutional exposition of their sufferings? Is not moral and physical courage, too, necessary, to carry them through that, without the commission of crime, or the appearance of any disposition to commit it? Is it fair to Mr. O'Connell to put the foul construction that has been put on that expression when he has explained what the courage he is speaking of is, not in one, or two, or three, but in a series of speeches? He says, "Are we to be called slaves, and trampled under foot?" alluding to the news that had come to Ireland of the armament that was to be sent into Ireland to trample under foot those that met peaceably. "They will never (he says) trample me at least. I was wrong: they may trample me! but it will be my dead body they shall trample upon, not the living man!" What does the Attorney-General tell you that means? That they shall not trample upon me until I have first regularly battled with them with pikes, and muskets, and cannon: we shall first meet in battle array, and have a battle, and I will fight in the battle until I am killed, and then, perhaps, they may trample upon me. But where were the soldiers or rebels that were to stand to Mr. O'Connell's back in that physical battle? Have they in the whole length and breadth of the island, covered as it is by as vigilant, as active, as intelligent, and as efficient a police as, perhaps, ever existed in this world—a police not ignorant of the inmost corner of the poorest hut on the whole of this island—a police without whose knowledge scarcely two peasants can meet together and speak together in any corner of the island—have they brought before you one particle of evidence, that one single man ever made a movement in any part of Ireland towards a preparation of any description with a view to a physical contest? What Mr. O'Connell meant to convey was manifestly this, that in the event of any such thing being attempted, the police and myrmidons of the government would find him standing at his post, amid the peaceful multitude, unarmed and undismayed, and firmly resolved, despite of every menace, to use against his adversaries the only weapons he had ever used—the eloquent tongue and the expansive mind that God had endowed him with. That is the courage to which Mr. O'Connell manifestly referred—that was his determination, and when he alluded to death it is clearly evident that he used the word in no other signification than that which I have attributed to it. Such is the course that I will unswervingly pursue, and now attack me if you dare. Set at nought, if you please, the opinions of the good and the wise all over the world; dare to meet their indignation if you have the front; dare all this, but I will still conquer you, for justice is on my side, and with me are enlisted the sympathies of all good and intelligent men. Such, gentlemen, is the true meaning of Mr. O'Connell's menace: such the only interpretation of which his words are fairly susceptible, for it is the only interpretation that can be reconciled with the whole tenor of his political life. Bear in mind my explanation of the passage till I read for you the extracts which as yet you have not heard. Now hear how he proceeds—(The learned counsel then read from Mr. O'Connell's speech at Mallow a passage which was, in substance, that the government had already taken one step of coercion, and what was to prevent them from taking a second? Yes, Peel and Wellington might act over again the part of Cromwell, and might be guilty of such acts of atrocity as the massacre of the ladies in the Bullring of Wexford. But no; he was wrong. They never shall do so.) Does not this reference to an historical event necessarily indicate what description of death it was that he apprehended? He compared his own case to that of the women who were slaughtered at Wexford, and expressed an apprehension that he, equally defenceless, and as little disposed as they were to have recourse to physical force for his protection, might be attacked and cut down like these ladies, while pursuing a legal and constitutional course. That is clearly what he meant to convey. He then went on to ask, "What are the enjoyments of life to me if I cannot vindicate my fame and my country." What did he mean by vindicating his fame? he meant redeeming his political pledge, for early in the commencement of the agitation he solemnly pledged himself that if the people would take his advice, and, forgetful of the sectarian differences of Catholic, Protestant, or Presbyterian, would unite together as one man, their moral combination would become irresistible, and they would necessarily be free. He felt that it was he who had led them into this movement, and, finding that the government were taking severe measures for the crushing of the agitation, he felt it to be his bounden duty to exhort them in the most earnest language to persevere in despite of every menace, and to continue in the constitutional course they had entered on undismayed and undeterred by the contemplated movements of any government. He told them still to persevere in their good cause, and cheered them on by the assurance that moral

force would be too strong for physical. He next proceeds to say, "All that is delightful—all that the enthusiasm of romance can fling round the human heart—is centred in my love of Ireland. She never has been a nation—for her own children had her split and rent asunder and divided when the Saxons first polluted her verdant soil with his accursed foot." And is not that true, gentlemen—is it not literally true? Have we not the authority of history for saying it is true? Can these prosecutions wipe facts from off the face of history? Preposterous idea! Is not that true in reference to England herself as well as to Ireland? Did not the Saxon with his accursed foot invade the land of the ancient Britons, banishing peace and happiness from their shores? What monstrous absurdity to expect that by a prosecution of this kind you can change and falsify the history of the human race! For my part, I know not who the descendant of the Saxon is—neither does Mr. O'Connell. I know not where to look for the man, nor does Mr. O'Connell, upon whose shoulder I can put my hand and say, "You are one of the murderous Saxons who invaded this country in the time of the Britons." No; it is morally and physically impossible that any man could do so, for the blood of the conquerors and of the conquered have long since intermingled, and the races are no longer distinct. Mr. O'Connell was alluding to the men and scenes of by-gone days, and that this was the fact is clearly to be seen by a perusal of subsequent passages of his speech. He then goes on to say, "From that day to this dissensions and divisions, together with a false confidence in the honour of the enemy, and penal laws, all, all have contributed to keep her in peril and degradation; but the hour is come when her people can be a nation, and if they follow the counsel that they get, their country will be their own. I feel it now to be my duty to warn you against these Saxons." But who were the men whom Mr. O'Connell designated by the appellation of "Saxon?" Surely he must have meant to refer to men who, like the Saxon, would invade this country with arms in their hands—men, who would decide arguments not by reason nor by justice, but by the sword and the bayonet. "Perhaps a few days will tell us what they mean." There again, says the Attorney-General, is deep sedition. What, allow me to ask you, gentlemen, could he have expected? Where was the military organization—where was the training—where were the arms—where were the officers? Oh! but he had officers too! Did he not say that his men could follow the repeal wardens as well as the soldiers could follow the sergeants? Did he mean by that, that they could follow them into the field of battle? Yes, the kind of battle that he was fighting. That they would follow them to those peaceable, legal, and constitutional meetings for exposing their grievances—he meant that they could follow them there. And yet you are told in effect that he boasted they could follow their repeal wardens to the battle! A battle without arms—without discipline, without officers, without anything in the world calculated to make them anything except victims to be slaughtered. Are you, twelve gentlemen of sense, to be called upon to believe that? Do you suppose that he would ever have let them know that he entertained those ideas if he really did, or that they could so understand him? Gentlemen, they did not so understand him; but they want you, hoping that, perhaps, you may be politically opposed to him, to fasten this construction upon his language, and to give it a false interpretation in order to put down repeal. Gentlemen, I will not address you upon your oaths. I will address you upon your honour. I know not whether you are the political opponents of Mr. O'Connell or not, but if you are I am glad of it—for your verdict of acquittal will do the greater credit to you and to your country. If he be guilty as a conspirator convict him—uncaring for the consequences; but if he be not that foul conspirator I entertain no apprehension from any of the twelve gentlemen I see in that jury box. I do not imagine—I will not ask you gentlemen, to find a verdict against the evidence—far, far be it from me: my humble efforts are directed, and shall be directed, to opening your eyes thoroughly to the whole case, and doing so honestly and fairly, and without the smallest exaggeration. I shall now proceed to read to you a few passages from his speech which I think you ought to be acquainted with; and if I should occupy your time at some length in doing so, I trust you will remember that some forty or fifty hours were spent in reading documents against him. From a speech of his delivered at the association on the 14th of September, 1841, I shall read you an extract, and it is quite essential that your attention should be drawn to the sentiments of Mr. O'Connell during that period of the agitation. He says:—"We all know what the Chartists have done. We know who their leaders are in Dublin, and that the attempts made by them in Ireland have been totally abortive. In Drogheda the clique was broken up, and Hoey, who came over from Barnsley, found he had nothing to do. To that, of course, he could not object; but he found, at all events, that Ireland was not the place for the physical-force men, and he went back again. It was said that Chartism had made some head at Loughrea; but if there was anything of the kind, there is little doubt that it would soon be put down by that pious and exemplary prelate, the Right Rev. Dr. Coen, the Catholic bishop. He would give his valuable assistance in hunting the Fergusites out of Loughrea. We don't repudiate Chartists because they bear that name, but we cannot associate with men who have been stained with crimes of the most evil tendency. . . . . We cannot allow our cause to be sustained by such means. We cannot, without tarnishing our cause, and putting ourselves in danger, join them; and I caution the repealers of England from uniting with them. Suppose now, that we were to join the Chartists, and that a Tory Attorney-General took it into his head to prosecute a member of this association, what a theme he would have to dwell upon when addressing a jury! He would say—'Oh! gentlemen, he is one of the repeal association, who fraternizes with the torch-and-dagger men of England—he is a part and parcel of that confederation many of whose members have been already tried and convicted upon the clearest testimony of high treason and sedition.'" Now don't forget the imputations upon Mr. O'Connell, that he had his eye fixed on an insurrection—a physical force contest with the constituted authorities of the country. Observe how he deals with the party—the powerful party, the unanimous party, the insurrectionary party in England. Was not the movement in England the very thing of all others that he would have been glad to avail himself of, if his intentions were such as they have been represented? He absolutely showers contempt upon them. If he hoped to avail himself of them, or to make any use of their insurrectionary movement, is that the language he would have held towards them? In another speech of his at the meeting of the association on the 17th of the same month, he was speaking of the Catholics of Maryland, who had offered the association their support, and in proposing the reply to their communication, he says—"That reply should be deliberately framed, with the caution and care becoming men who are determined that in anything done by them they shall not hold out the slightest idea of violating or infringing the law or constitution, in any contingency. . . . . They (the Catholics of Maryland) introduced in

the body of their charter, entitling them to their land, a provision—that conscience should be free, and that religion should be unshackled by the atrocity of human persecution. They had in their hearts the spirit of pure Christianity, and they proclaimed this as the free basis of their social association and compact—that Christianity was an affair between man and his Creator, and that the human law was atrocious that limited the operations of conscience. It is a delightful spectacle to witness such liberality; and it is an equally gratifying fact to know, that some years afterwards, it being necessary to put this principle of religious freedom in the shape of a positive enactment, the law was immediately passed, there being four-fifths of the members of the legislature Catholics. Yes, these men were unanimous in carrying out that principle to the fullest extent in their official station in the colony, and that act of parliament was drawn up by a Jesuit. . . . . The Catholics, about the year 1672, got into power and authority again, and their first act was to proclaim once again the principles of liberty of conscience. . . . . I did not say that Irishmen would go over to cut down or oppose Englishmen seeking for their rights. I could not say anything so absurd; but I did say that if an attempt was made, no matter from what quarter, to subvert the throne, five hundred thousand Irishmen would be found ready to lay down their lives to defend it." Was that the statement of a man who sought power and ascendancy? I ask, is there any good man in society that does not feel grateful to him for that statement? There is the language of the man who is branded to you a foul conspirator, who you are told has treason in his heart while he has peace on his tongue! Do you believe it, gentlemen?—let me ask you do you conscientiously come to that conclusion? Again, "As to the Recabite society, or any other society, the members of which are known to each other by secret signs or pass-words, it is illegal, and subject those belonging to it to transportation." You remember, gentlemen, that it was said, that the association was an illegal society, and that the cards were their pass-words; the signs by which the members were known to each other. Well, let me ask you, what is a pass-word? It is a secret sign by which the members of an illegal and criminal association are known to each other, without being known to other persons who are not members of that society. That definition of pass-word agrees with common sense. Well, did you ever hear of the members of any illegal and secret society going out in multitudinous assemblages and telling the whole world their pass-words? Did not the members of the association go to the meeting with their cards in their hats? And then you are called on to believe they were secret signs and pass-words. Such monstrous doctrine I have never heard. Really, gentlemen, this is so absurd that I will not dwell on it longer. Again, hear Mr. O'Connell in September, 1841:—"Mr. O'Connell moved that the newspaper be obtained wherein a statement was made by them (the Chartists) that the sceptre and the cross should be pulled down together, and he believed that the greatest enemies both to religion and liberty, at present in existence, were those men. They would not listen to argument, they would not listen to reason, but they quarrelled with every man who did not go so far as they themselves; and it was creditable to the operatives of Ireland, upon whom the Chartists were forcing themselves, to keep aloof from them. . . . . The good sense of the coal-porters, and of the people of Ireland generally, is manifested by their total abhorrence of Chartism. . . . . He would say for Ireland that nothing could be further from her intention than to seek a separation from England, and such an event could never occur. . . . . The Irish wanted nothing but legislative indpendence." You have heard, gentlemen, the motto of Ireland for the Irish, and it was insinuated that Mr. O'Connell wanted, or meant, to keep Ireland for his own purposes, for his own party, and to establish what the Attorney-General called an atrocious republicanism. No; he had not the treasonous design sought to be cast on him, for he meant that Irishmen of every grade, of every sect, of every party and politics, should enjoy equal rights and privileges with their fellow-neighbours. Hear what he says: "I am here counsel for the Tories as well as the Liberals, for they are Irishmen. . . . We declare no war with the Protestant community, we bear them no ill-will. . . . . There is not a man of them whom he will not receive with open arms. . . . . When Sir Abraham Bradley King was thrown aside, it was I who came forward to vindicate his cause, and enabled him to pass the evening of his life in competence, comfort, and ease. When the coal-meters were bereft of their employments, and thrown helpless on the world, it was I who procured for them compensation. I made the family of Mr. Folds comfortable and happy, though I felt confidently assured that there was not one of his relations possessing the franchise who would not vote against me. Never, throughout the whole course of my public life, have I made any distinction in my conduct towards men by reason of their political doctrines, nor will I now make any distinction. We will offer no violence to their prejudices or predilections." Gentlemen, can any one of you regret that the man who could so advocate the cause of his countrymen of all parties—the man with such an eloquent tongue—can you regret, I say, that he drew millions of his countrymen around him? Can you say that a man using such language was a foul and fierce conspirator in his heart? "The fact is, we have heretofore had all parties in Ireland except an Irish party—Orangemen and Rockites, Blackfeet and Whitefeet, Hearts of Oak and Hearts of Steel, Whigs, Tories, Radicals. I am sick of them all; I must have a party of Irishmen, bound together in the love of our common country, and whose happiness will be their dearest object. Let us differ no longer with a man because of his religion. If he be wrong, that is his own affair, not mine. For my part, I can never fall out with my neighbour for his religion, for I find I have quite enough to do to mind my own—heaven help me!—and, indeed, I think if we would generally come to the resolution of paying to our own religion one half the attention we now direct to that of other people, we would be all better and happier far. . . . . We look with no feelings of ill will or aversion upon England; we wish not to weaken the British connection; we regard the Queen with affectionate gratitude for the kindness of disposition she has manifested towards us. If we had a parliament of our own, then, indeed, the connection would be eminently calculated to advance our prosperity and promote our happiness." Is that not true? Is it not an historical fact that we have had all parties in Ireland except an Irish party? And has not the great body of society stood by in silent abhorrence at the selfish conduct of such parties, because it was selfish ends they aimed at? It was not the partly selfish and villainous party Mr. O'Connell wanted to form in Ireland. "I want a party," says he, "for all Ireland." That was the dictate of an honest heart, and I say the utterance of these sentiments are a proof of a noble and Christian mind. Hear again what he says:—"He was one of those who led no man into scenes of violence, of outrage, or of blood—no movement of his tended in the slightest degree to disturb the social circle, or to tarnish the cause of liberty by the shedding of one drop of human blood. Never until he appeared had they had a leader who was

resolved not to suffer them to come into danger, or kept them religiously within the bounds of law and order." . . . . . Gentlemen, is it possible, let me ask you, to imagine that a man who would propound those liberal, those enlarged moral and religious feelings, and express them in such language—is it possible to believe that he, at the same moment, had the black heart and foul mind of a conspirator? Then, at the association, on the 27th of September, 1841, he says:—"I am not for any sect or party, but for the good of the entire people. I care not what religious denomination a man may have. I wish that every individual of the land should feel that he is an Irishman, and should desire to see his native country prosperous and happy." . . . . . Will any of you, gentlemen, dissent from that sentiment? Will any of you, by your verdict, tell the people of this country—the divided, distracted people of this country—that the man who preached those principles of union, morality, and religion amongst them is nothing but a conspirator? Are they to be told that any man who preaches peace and order, unanimity and abstinence from crime, is to be regarded as a conspirator? Was he a statesman that directed those prosecutions? Was he an honest man or a fool that directed them? What did he hope to do for this country by a verdict of guilty against the man who preaches such doctrines? Hear him again on the 5th of October, 1841:—"He was for obtaining the highest political advantages by means of the law and the constitution, by a struggle of all good and peaceable men, and without shedding one drop of human blood—the violation of any right—or the spoliation or injury of any particle of human property. . . . . The people of Ireland meant to obtain the restoration of their native parliament, by those means which all wise and good men could sanction, and on which, he trusted, Providence would smile—by means of the law and the constitution. . . . . I move that the thanks of the association be given to the repealers of Salford and the neighbouring towns, for resisting any entreaties of the Chartists to join their illegal association. The Chartists are men of fire and faggot, of slaughter and bloodshed. . . . It is our most sincere wish that turbulence and outrage should be suppressed. . . . I respect the rights of the landlords; I do not want, far be the thought from me, to plunder them of their properties. . . . . I move, sir, a form of address to our revered and beloved Sovereign, who is not the Queen of a faction or party, but of her entire people—a Queen who is the first of her race who has shown a disposition to do perfect justice to Ireland—the Queen who has evinced, in a peculiar degree, some of those qualities which distinguish her race, without their obstinacy, in her blessed perseverance to reign for the benefit of her entire people." Is that the language of a traitor? Must not every loyal man be grateful for the application and exercise of that eloquence which Providence gave him in thus pourtraying this beautiful picture, from the beautiful, the good, and the benignant original, in language calculated to enlarge the noblest ideas of the most loyal subject, and endear the Queen to every heart; and you by your verdict to tell the people of this country—the suffering millions of this country—that the man who preached admiration, love, and reverence to the Sovereign, is a traitor, a conspirator against the peace of the throne? Gentlemen, I don't apprehend you will do anything so absurd. Again, in Mr. O'Connell's speech at the association on the 18th October, 1841:—"Any man who has one particle of the statesman about him will recollect that the great evil of the country is agrarian disturbances, and these agrarian disturbances are rendered more horrible by the assassination of landlords and land agents. That crime that has been most frightful in Ireland is the crime of deliberate murder, committed upon the landlord, the agent of the landlord, or the in-coming tenant. Every statesman must know the cause was not attributable to the practice of clearing the land, and turning out the tenantry. It is a frightful mischief against which we have directed all our influence—against which the law has levelled all its batteries—and against which the clergymen of the Catholic persuasion have lifted up their hands in supplication to God, and in entreaty to man. It is a crime that has frighted the land, and disgraced Ireland, this assassination of landlords, agents, and in-coming tenants. How often from this place have we thundered, in the loudest voice we could, the cry that the red arm of God's vengeance was always extended over the murderer; that, sooner or later, he would meet with condign punishment in this world, and that if he were fortunate enough to escape that punishment here, it was only to make the punishment hereafter more hideous, as it would be eternal. . . . If there be anything that a statesman should desire to heal, it is that species of crime; but he is not a statesman that can think that he will heal that crime without removing the cause." Gentlemen, is not that an eloquent, able, and rational appeal to the two parties involved in that unfortunate struggle—to the misguided people, and the misguided landlords who may have provoked threats of vengeance from the miserable peasantry? Again, on the 26th of October, he said at the association, "Now what I am looking for—the object of this association—is to prevent separation. We are looking for repeal to prevent the possibility of separation." Again, hear him when he was elected Lord Mayor—hear this conspirator—hear his sentiments on the moment of his success and his triumph—hear his sentiments when he was placed in the seat of power—in the seat of dignity—hear with what sentiments he accepted that place:—"If I be elected Lord Mayor of the city of Dublin, I pledge myself to this—that in my capacity of Lord Mayor, no one will be able to discover from my conduct what are my politics, or of what shade are the religious tenets I hold. In my capacity of a man, however, I am a repealer—to my last breath a repealer—because I am thoroughly, honestly, conscientiously convinced that the repeal of the act of union would be fraught with the richest benefits to our common country, and would be, in an eminent degree, calculated to advance the interests of all classes of her Majesty's subjects in Ireland. Most ardently do I hope that my conduct, and that of the gentlemen of my own political persuasion, with whom I am allied, may be such as to set a glorious example to the world of the manner in which Irishmen, who differ widely as the poles in political principles, and the higher points of religious belief, may yet unite together in harmony of spirit and perfect unanimity of purpose, and may, with faithfulness, honesty, and truth, go hand in hand with each other on a grand and national question, the design and motive of which is to promote the welfare of all without distinction." Again he says—"I shall certainly make it the study of my life to palliate, if not absolutely to justify, the high eulogiums which my too kind friends have bestowed upon me; and there is no possible effort which I will leave unessayed to convince those who have opposed me to-day that they were mistaken, most fatally mistaken, as to my impulses and my motives, and that there is no notion on the subject of the strictest impartiality, no conception with regard to the most unswerving integrity of purpose and of action, which they may have imagined to themselves, that they will not find realised, to the utmost of my ability, in me. . . Whether he be Whig or Radical, Orangeman or Reformer, Tory or

Repealer, is a question which will never be asked by me of the man who comes to seek for redress or demand a right. 'Tis a question which shall be as foreign from the practice of my life as it is foreign to, and abhorrent from, the character and principles of justice? Can any man dissent from those expressions? . . Will you convict him for these sentiments? Ask yourselves, as men and as christians, if you ought to do so? I have no doubt of the answer that will be given. On the 9th of March, in the association, Mr. O'Connell said—"No, there shall not be one drop of blood shed in Ireland, as long as I live, in any political struggle whatever. . . . . Man is not entitled to shed the blood of his fellow-creature, and the red arm of God's vengeance falls sooner or later on the murderer." There is truly and eloquently expressed the kind of force, the kind of power by which Mr. O'Connell expected to effect the regeneration, as he conceived it to be, of his native land, not by the pike or the gun, not by the bayonet, but by the gigantic and electric force of public opinion in favour of justice—by the aid of public opinion, now more gigantic than it ever has been since the creation of the world. It is a century since Locke, that immortal being, propounded to the world that of the three kinds of law that exist—the law of God, political law, and the law of opinion—the latter had more universal influence on men's actions than the other two. Gentlemen, in his day the press was comparatively powerless—in his day it would have been a difficult thing to arrest the attention of any country—in his day mankind were carried away by a national strife—England was ignorant of what France was doing, and France was ignorant of what England was doing, and opinion was comparatively weak—it could have no effect whatever upon nations—but not so at the present day. Gentlemen, what I am addressing to you to-day will, before to-morrow's sun rises, be at the other side of the channel. What I am to-day saying to you—what is heard by the few in this court will, before to-morrow's sun sets, pass through the mind, and be the subject of opinion of many millions of your fellow-beings—what I am now addressing to you will be, before a second sun rises, upon the Atlantic on its way to the New World. Whether it be rational or not it will be before the eyes of all civilized mankind, as your verdict will be in this case. In March, 1843, the "Memory of the Dead" has been referred to, and in January 1844, it has been read for you again with well practised emphasis—and by-and-by you will be told that those who were under the guidance of Mr. O'Connell were reminded of those things for the purpose of inciting their passions. Gentlemen, that is a most unfair and mistaken construction to put upon it. See for a moment what the object in view was—it was to make Ireland the seat of peace and quiet, in place of discontent, misdeeds, crimes, and bloodshed. And for this purpose it was necessary to remind the inhabitants in the strongest, most energetic, and emphatic language, of the woes and misfortunes brought upon their ancestors by having recourse to physical force. Now, take that as a clue to "remember '98." Remember the fathers of families having lost their lives at their own doors. Remember the outrages on humanity that were perpetrated. Remember they arose from insurrection. Let the blood stand in your remembrance; but remember to avoid the mistake. Is it a crime to remember that those poor victims fell from their errors? Does not the common feeling of mankind pity the unfortunate victim of mistake, and separate him from others who have suffered for their crimes? Is the memory of the man to be forgotten for whom it was written—

"There came to the beach a poor exile of Erin,
The dew on his thin robe was heavy and chill—
For his country he sighed, whilst by twilight repairing,
To wander alone by the wind-beaten hill."

Who was he whose memory was rescued from oblivion by the poet, and preserved for the respect and pity of mankind? Was not he a rebel? I wonder it did not enter into the memory of the Attorney-General that the author of these lines enjoys a pension to this hour, and that it came from the suggestion of Queen Caroline, the consort of George IV. Was it not necessary to remind the living of the crimes and errors of the dead? If the living were to be converted into a nation—a noble nation—it was necessary to remind them that they were by descent entitled to be noble, and to remind them of the bravery of their ancestors? When they were to refrain from physical force and moral power, gentlemen, it was necessary, too, to remind them that their ancestors had been the victims of treachery, of the breach of faith in past times—not to stimulate the millions to massacre for the dead (it is unfair to make that use of it), but to induce them to avoid their errors. Some allusions have been made to the communications from America, as if that country were looked to for aid; but I will read for you what was said by Mr. O'Connell at a meeting of the association on the 15th of November, 1843:—"We are told that it is nothing less than treason for us to receive such support as this from America! Why it is the very contrary of treason. It would be treason were we to co-operate with the Americans against the peace of England, and inspire them with feelings hostile to the well-being of this empire; but we do the very contrary—we inspire them instead with respect and regard for the constitution of Great Britain. In his opinion, whatever might be that of others, repeal was the only means to prevent the total separation which they appeared so much to dread. They sought for repeal as the only resource against separation." I will now read an extract from Mr. O'Connell's speech at the association, of the 14th of November, 1841—"But the Americans knew how to estimate and appreciate the motives of the Irish people. They felt assured that Ireland had resolved to carry out the great objects which she proposed to herself by moral and peaceable means alone—by uniting all Ireland in one sentiment of good will and unanimity—in one unalterable determination to succeed in establishing the legislative independence of their native country. Let it not be said by any that their object was to excite a spirit of hostility to England. Far from it; the Americans were fully sensible of this fact, that nothing could be better calculated to consolidate the power and influence of England than the achievement of repeal. They knew that the faithful heart and ready arm of Ireland were the best stays of England in all quarrels and distresses, and that by no measures could such defences be more readily insured than by the conceding of our national independence. He did not know what they ever got from England when she was strong; but he knew that they got a great deal from her when she was in distress, and that she would not be long in distress when she would do them justice, and then she would increase her strength and make herself powerful." Mr. O'Connell has frequently, unhesitatingly asserted, that the concessions of justice by England to Ireland have invariably been obtained in the hour of England's danger and distresses; and what reason, let me ask you, gentlemen, was there in making such an assertion? Do you not all know that it is true—literally true? It is a matter of history; and some of you may still have it in your memories that in the year 1792, when Mr. Egan brought into the Irish House of Commons a petition for the emancipation of the Catholics, the petition was turned out, or, to use a parliamentary phrase, was kicked out of the house with the utmost indignity; but before that year had passed over, England was embarrassed with difficulties—she was environed

with state perils, and that very bill passed the house of commons. But, mark what use Mr. O'Connell makes of the fact. In his speech of the 14th November, from which I have already quoted, he proceeded to observe—"That should not, however, lessen his allegiance, or diminish his respect and attachment to the admirable young Queen that holds the throne of these realms." Gentlemen, is there a man amongst you who can put his hand upon his breast, and declare that he, in his conscience, believes that the man who uttered such language as this had any sympathies in connection with the dagger-men and the torch-men? No—for what tongue could have held up to public scorn in more burning language of eloquent detestation than Mr. O'Connell's the atrocious offences of the dagger-men and the torch-men? I am come to a meeting of the association on the 20th December, 1841. Mr. O'Connell spoke at that meeting, and, in alluding to the countenance and co-operation which the association was in the habit of receiving from the repealers in America, expressed himself in the following language. He said:—"The association had no delegate, and he would add, never will have a delegate in America. They had no object in view which would render it necessary for them to have a delegate in any foreign or independent country. Their American friends advised them to continue in the peaceable course of agitation which they had commenced, but at the same time to persevere to the end. They did not require of them to lessen their allegiance to the throne. If they gave any other advice, the Irish nation would spurn assistance with disdain; but no, they encourage them to obey the laws, and to revere the constitution. . . . Let him not be misunderstood. What he said was, that they sought the same principle which the Americans did of self-legislation, but they were distinguished completely from the Americans in their mode of action in working that principle out, and while the Americans carried theirs to total separation, the people of Ireland were determined to adhere, with inalienable loyalty, to the crown of Great Britain. The cause of Ireland was like that of America in the principle of self-legislation. In other respects they differed—being free from violence and crime—turbulence and bloodshed." Such is the language of the man who is now arraigned before you as a conspirator—as one who designed, by bloody and violent means, to subvert the law and trample on the constitution! And now, gentlemen, let me ask you, is this principle of self-legislation, alluded to by Mr. O'Connell, a thing so obviously wrong—so contrary to the well-being of your country—so obviously at variance with common sense and common justice, that the question is not to be discussed, and that the man who attempts its discussion is to be branded as a conspirator? Is it a proposition so plain and so palpable as to admit of no disputation, that the best parliament to legislate for this country is a parliament, five-sixths of whose members are men who are in as blissful a state of ignorance as to the real state and condition of Ireland as was Mr. Ross, whose opinion of your countrymen, gentlemen, was such that he would not take 50,000*l.* to come over here avowedly in the character of a government reporter. Mr. Ross was so circumstanced that he had fully as good an opportunity of becoming acquainted with the state of Ireland as five-sixths of the members of the imperial legislature, and yet am I to be told that a parliament so constituted is, beyond all comparison, the best and most beneficial to legislate for this country? From the evidence of Mr. Ross, you may easily draw an inference of the ignorance which exists in the public mind in England as to the real state of this country; and when I reflect that the imperial parliament is to a large extent composed of men who know as little about us as Mr. Ross, I am not surprised at the extraordinary statutes which have been passed for this country—statutes which would otherwise challenge my unqualified amazement—I cease to be astonished that a poor law should be devised for Ireland, the operation and intent of which is to catch the starving poor, and treat them as animals who are not to be killed, but whom it is proper to confine in prisons where they are to be fed and clothed at the expense of those who, as yet, have not arrived at the same state of pauperism as themselves (laughter). I also cease to be surprised why a law should be enacted which renders it imperative on me to get a brand and mark upon an old rusty gun, whose last act was to shoot a whiteboy, and upon a shattered rusty brass blunderbuss, which performed a similar exploit some 25 years ago. Since then they have been lying in a damp cellar of mine mouldering with rust, and there is no alternative left to me but that either I must abandon my professional pursuits for a considerable period, while I get them branded, or else that I must give them to my servant with directions to pitch them over the Liffey wall into the river (laughter). But to return to the topic on which I was addressing you. A great moral demonstration of the Irish people was to be. What was meant by a moral demonstration? The human family was to be shown that the people of Ireland—although they were once criminally divided—although they were once criminally armed one against the other—although they were once a drunken, besotted, contemptible set of savages—that although they were all this at one period, they could be reformed into a nation, and a moral, peaceable people. Has that moral demonstration been made? Has it been made in all quarters of the country—amongst men of all ranks—amongst men of all professions; and has it been achieved by the very agitation which is now going on through the land? Gentlemen, this is a question well worthy your serious consideration. Mr. Hughes came over to this country as a stranger, who never set his foot upon Irish soil before. He arrived the day before the Mullaghmast meeting took place, in the unfavourable and unpopular character of a government agent. He takes the road for his destination on an outside car at night, and he travels from Dublin to Mullaghmast, and he arrives safe at the end of his journey. No man molests him. In the morning he proceeds to the platform, where the meeting was to be held, and he arrives there before Mr. O'Connell arrived, whose protection, perhaps, he might have sought for. He intimates that he is present as a government reporter. He at once confesses himself and declares the nature of his mission; and how is he received? Every accommodation is given to him to take down fully and perfectly everything he shall observe—everything he sees and hears. Yet does his presence not repress or mitigate the strength of the language, or resolutions which were previously arranged for that meeting? Now, if insurrection or rebellion was in their minds, I don't think you can reasonably suppose that they would not have altered their language. There is to be a dinner the same day after the meeting. Is he allowed to make his way in the best manner he can to it? No such thing. He is placed as a guest at the table—he is treated as a gentleman, and allowed to enjoy the hospitality of the enemy. We did not hear that there was any sneer at him—anything said or done from which he could infer the smallest disrespect towards himself. He remains there until a late hour at night. Then he proceeds to return to Dublin, but does not ask Mr. O'Connell for any protection. He had seen the great moral demonstration of the people—after viewing the mighty magnitude of two hundred and fifty thousand men, he could not discover among them anything tending to violence, crime, insolence, or inhumanity. His heart is fearless, for confidence is

begotten by this great moral demonstration of the Irish people, and he takes his open car on the public road, accompanied only by his English friend, both known to be persons who had been sent there to take down what passed, and afterwards perhaps to prove it. We heard of no insolence being offered to him—nothing of the sort. They travelled back in perfect safety. This is the way in which Mr. Bond Hughes was treated by the people while he was acting in the capacity of a government agent. He crosses the channel again, and comes over here to be a witness against the idol of this people. He swears his informations; he makes a great mistake; and there are circumstances which might give it the appearance of being otherwise than unintentional. The first emotion of the man affected by it was to institute a prosecution against Mr. Hughes; and steps were taken with that view. Mr. Hughes was indicted, and yet he came upon that table to stand the cross-examination of the Irish bar, with that impeachment—with that presumed blot upon his character; he was to be cross-examined by members of that bar who, perhaps, are not remarkable for keeping terms with their opponents. He was cross-examined before you. And was there one single question put to him affecting his character, or importing that he was not a gentleman, in the fullest sense of the word? Is not that a great moral demonstration in Ireland (laughter among the bar). Who can deny it? Has Mr. O'Connell, then, failed in any degree in first making, and then proclaiming to the world, that the Irish people were an honest, a sober, a virtuous, and an inoffensive people? Your verdict cannot take away the effect of that demonstration from the eyes of mankind. Whatever may be the event of this trial—I cannot say that I am not anxious about it—but whatever may be its event, Ireland has got a place in the history of nations, and in the opinion of mankind, which it is not in the power of any verdict, or any judgment, or any punishment to take away. Dec. 27th, 1841, Mr. O'Connell again said, "The Queen, long life to her, who was the sincere friend of Ireland, when she was, at least free, but she was then a prisoner in her own palace. She was a Sovereign who, with manly intrepidity, kept the advocates of bigotry from power for twelve months, and may God in heaven bless her for doing so." . . . . . Here is the passage in his speech—the sentiment that Jackson misrepresented—but whether from design or accident I will not say at present. I will read the passage just now for you; but, in the mean time, let me tell you that Jackson came on that table purporting to be a reporter, and that he took notes and reported speeches made at the association.

Solicitor-General—What is the date of that?

Mr. Fitzgibbon—September, 1841.

Solicitor-General—Mr. Jackson did not report then.

Mr. Fitzgibbon—No; but the sentiment is the same. The cross-examination of Mr. Hughes and Mr. Jackson was the same, because they appeared then under different circumstances. Jackson did not represent himself as what he was: he was not a reporter, but a person who wrote long-hand; he was not capable of taking notes, and therefore it is no wonder that I assailed his accuracy, which I did, and nothing else: nor did I wish to assail anything except his accuracy when he put down words for Mr. O'Connell which he never made use of. Here is what Jackson says was spoken by Mr. O'Connell—"I know such a struggle will not take place while I live." That is as it is sought to be thrown up to you, a struggle of rebellion—an insurrection—a fight—that is the meaning put on it for you, gentlemen, but I will show you how the fact is. Mr. Jackson goes on. "But after my death (says Mr. O'Connell) it is not an improbable, and may not be an undesirable result." That was the way Jackson took his notes in long-hand; but I will now read for you what was really said. Here it is: "While he lived there should be no outbreak; there should be no crime or violence of any kind. But when he passed from this mortal stage—when he finished his earthly career—and that in the common course of nature should soon take place—if the union were to continue, it would, perhaps, be found that an outbreak could hardly be prevented in order to dissever the connection. It was, therefore, that he struggled to perpetuate it; it was, therefore, that he wished they should be the fellow-subjects of England—her equals, but not her slaves—bound together by the golden link of the crown—but governed by her own domestic parliament." . . . . . It will be proved to your entire satisfaction that Mr. O'Connell never used the words set down for him by Mr. Jackson. Why, the words were flat, stale, clumsy. It was not like the manly and lofty style of O'Connell—no one ever heard him utter such a sentence. Let me ask you, was there any treason in what Mr. O'Connell did speak? Was there any foul conspiracy in those sentiments? And yet, there is the conspiracy of which he stands charged in the indictment, the essence of which is, that he was guilty of being a member of a criminal and traitorous association. This was the language which he used to the people of Ireland, the next day, at the association—this is the language he uses—"What he then said would pass through the papers, and the people would be assured throughout the land, that the association condemned nothing so much as the system of administering illegal oaths or forming secret societies. There was nothing which he abhorred with more conscientious detestation than illegal oaths. Let the people bring any wretch who attempts to cajole them into taking illegal oaths before the magistrates." Was that the language of a person to bring into hatred and contempt her majesty's government, as was charged in the indictment? "There breathed not in these dominions a single man whose heart was fuller than his with feelings of the most devoted and inviolable allegiance, and there was no man who valued more highly the British connection." Are you to infer from these that the defendants threatened the country with violence? Are you to be called on to say that the man who uttered the sentiments made use of by O'Connell, whose eloquence and whose ability were never surpassed—are you to be called on to find him guilty of a conspiracy, because his sentiments do everlasting credit to his countrymen and himself? Again, in January, 1842, he says—"I need not tell you to separate quietly, for you will do so yourselves. Let there be no violence of any kind, but let peace and good will be your watchword. I intended they should sink deeply into your minds, and that you should profit by them. I intended them as a practical lesson to you of peace and good will towards your neighbour, and mutual good will and affection to all your fellow subjects." Again, in January, 1842, he says:—"But it was right that the Americans should know what were the principles, what the system of action of the Irish repealers. Theirs was not a contest to be achieved by the sword or the battle-axe. . . . . They would do no violence, nor offer any outrage to human property or to human life. He was bound by allegiance to his revered, and if the term be not deemed indecorous, he would even say, to his beloved sovereign . . . But he was only pursuing the path which his allegiance pointed out to him, in endeavouring to re-establish the legislative independence of Ireland, in which measure would be found the firmest safeguard for the connection between the countries." You recollect the insinuation about the Irish manufactured cap that was symbolical of the crown that Mr. O'Connell looked for. Was it to be

crowned in his grave he was? In the whole course of his eloquence, where you find him alluding to the possibility that if justice to Ireland is not granted, a violent separation of the two countries may take place, he never mentions it without designating it as one of the greatest evils that could befal both countries. Here is the man that intended civil war and bloodshed—such a man as Homer designates "brotherless, godless, houseless," is he that is desirous of war—a wretch, an outcast—without bodily tie to mortal man or living being—without a spiritual tie to his Creator or his God—without a residence to hide his head upon earth. That is the only man who, according to the first of poets, could be fond of civil war. Is there anything in anything that ever was uttered by this first of his profession—aye, I will also call him, the first of Irishmen for having preached those doctrines to the people—is there anything in this that could link him with the wretch I have described? Again, he says—"He had heard, with a throb of pride and gratification, that the first soldiers to present themselves at the muzzles of 500 guns of the Chinese battery were the Royal Irish. . . . . He was the loyal man, for he offered to England, for her protection, eight millions of undaunted hearts—gallant, hearty, devoted." . . . . . Again, in the *Register*, there was a reported speech of the 4th of April, 1842, in which Mr. O'Connell said—"Now, nothing could be more foolish, nay, more criminal, on the part of the repealers, than to be engaged in any transaction where riot took place, or blood was shed. He would sooner lose the assistance of the repealers of Manchester, valuable as it was, than be in connection with any party who would join in tumult or outrage of any kind. . . . He hoped they would never more hear of anything like what occurred at Manchester." . . . . Now, gentlemen, attend to this, for here is a sentiment that has been very strongly pressed against the traversers by counsel for the prosecution: "The Queen (he asserted it as a constitutional principle) had it in her power to revive the Irish parliament whenever she pleased. All he wanted was the sanction of the monarch of Ireland. The Scotch philosophers proved the Irish to be the first amongst the human race. The Queen should have the support of this first class. She had only to call on them in any emergency, and she would be triumphant. . . . . They sought for nothing of a selfish or sectarian character; they wished to do good to every man who was a sojourner in their land, no matter to what class or creed he might belong. . . . England would want Ireland. The Queen might want Irishmen, and, beyond all doubt, she should have them. . . . . He would, while firmly attached to the throne, and determined to preserve the connection with England by the golden link of the crown—by every constitutional means—restore her parliament to Ireland." The Attorney-General challenged the bar of the defendants to stand up and support, if they could, the assertion here made, that the Queen could, in the exercise of her prerogative, revive the Irish parliament and direct her writs to the commons of Ireland and summon a parliament to meet in Dublin. Now, gentlemen, don't leave out one part of Mr. O'Connell's sentence. That would not be fair. He says that he asserted it as "a constitutional principle." Mind he never said that he could find a case in point. He was speaking of a totally different subject from that of which the Attorney-General was speaking. He was speaking of the great "constitutional principle" propounded in the Irish parliament by Saurin, Bushe, and Plunket—namely, what was "the constitutional principle" propounded by those great men? It was that a union—an act professing to effect an union obtained from the Irish parliament by bribery, by corruption, or any other unconstitutional and unjustifiable means, would be void—that the union thus obtained would be void, as being brought about by fraud which would vitiate any act of parliament. Acts of parliament were commonly passed in reference to private estates, and if any one of these be obtained by fraud, by misrepresentation, or any sort of malpractice, it is void; and will it be said that that great principle was not to be attended to in the compacts of nations? That is what Mr. O'Connell meant, when speaking of the act of union as void. Those great men whose names he had mentioned, had propounded that constitutional doctrine, as applicable not to what happened before the union, but to what would be the case if the act of union were passed. In the language of Plunket, the act would be the act of a "suicide." It would not annihilate the immortal soul of the Irish parliament. What does that mean? What does the immortal soul of the Irish parliament mean? It means the inalienable right of the Irish nation to have a parliament of their own. Could it have meant anything else? It could not. Mr. O'Connell then was speaking of the great constitutional principle, and the difference between what is called the constitutional law of the land and the detailed law of cases is precisely the same as the difference that exists between the brickbats of which a building is made and the building itself; and many an eye that can understand the shape and size of a brick cannot comprehend a view of the entire building. The Attorney-General expressed his wonder that the Irish parliament should speak of the act of union as void; for if it were, the act of Catholic emancipation was void also. Mr. O'Connell never propounded such a montrous proposition as that the united parliament was not a valid parliament for passing acts, but that, according to the constitutional principle laid down by Locke, the parliament was elected to make laws, and not for the purpose of selling a constitutional settlement. Do not misunderstand Mr. O'Connell. He has been misunderstood and very grossly.

The court and jury here retired for a short period. When they returned,

Mr. Fitzgibbon resumed. He said—Gentlemen, perhaps I have fatigued you—indeed I feel fatigued myself; but I think it necessary to read for you these extracts from Mr. O'Connell, lest it may hereafter be said that he was not sincere from the commencement. If I omitted them it might be said that although Mr. O'Connell repudiated, denounced, and execrated the Whitefeet, he did it for the purpose of drawing around him men who were inclined for peaceful efforts only; and that although he originally held out promises of peace, yet, in the end, when he had brought the multitude together, he would change his course. I, therefore, think it necessary to exhibit to you that, from the beginning to the end, his views and principles were the same. I will show to you what his principles were in '41, in '42, and '43. At a meeting of the association, held on the 11th of May, in the year 1842, speaking again of the Chartists, he said—"Thank God there was no danger at present of a war between that country (America) and Great Britain. . . . He was glad of it, because he loved peace, and abominated those atrocities that were perpetrated when nations were at war with each other. . . . . He wished emphatically to tell his friends in Belfast that he did not mean they should form any connection with the Chartists in this country and in England. As to the Chartists in this country, God only knows where they were to be found. They might find them, after a great deal of labour, like a needle in a bundle of straw, and, when found, they would not be worth the trouble of looking for them. [Again, observed Mr. Fitzgibbon, hurling contempt upon them—men may forget injuries, but they never

forget contempt.] He wished that to be particularly known. He heard that in Belfast some of those Chartists had made an harangue at a repeal meeting. He trusted in future they would be allowed to hold their own meetings wherever they pleased, but that the repealers should have no connection with them. . . . . Their rulers ought in time to conciliate the true-hearted and loyal people of Ireland. [See, observed Mr. Fitzgibbon, the principles of loyalty he is always inculcating.] The time might come when it would be necessary to call on them to support the crown and the institutions of the country; and if the day should come, he would not be wanting—his arm was as strong as ever it was, and he had no doubt that even in England he would effect such an organization as would save the country from any revolutionary movement. Whilst they revered liberty, and were attached to religion, still they would respect the opinions of every human being in existence. . . . . Great revolutions could be accomplished without the shedding of one drop of blood. He was the disciple of that new political religion which taught the lesson that moral power was amply sufficient to accomplish the liberties of mankind—that there would never be a necessity to fight for them. . . . . Her Majesty could again summon the Irish house of commons to meet for the despatch of Irish business, and turn the money changers out of the temple of the constitution." . . . . Is that treason? Is that sedition? Is that a proof of the dark conspiracy you were told of? What!—"Her Majesty could again summon the Irish House of Commons to meet." Is he wrong in law? If he be, is that a crime? Is it a crime that he advanced in 1842 the opinions so eloquently expressed by others in the year 1800? Assuming it to be wrong—to be absurd—the question here is, is it evidence to you that a criminal conspiracy was formed by him? Never, gentlemen, let it out of your minds for one instant that that is the narrow issue you have to try. Again, on the 16th May, at a repeal meeting, he (Mr. C'Connell) spoke to the same effect? Is it not (continued Mr. Fitzgibbon) the principle of the British constitution—is it not the right of every British subject to express his dissent to every even imaginary grievance? keeping within the bounds of the law. Mr. O'Connell has been abused; it has been said that he raised a prejudice against men of property; but has anything been read to you which could tend to such a conclusion? On the 21st of May, 1842, Mr. O'Connell made a speech at the association, in which he said—"They did not concur in any conduct that was violent, or outrageous, or illegal—the way they looked for liberty for themselves, and the only way they could suggest to look for it, was by peaceable and constitutional efforts, embodying the strength of public opinion, and a total abstinence from any violation of the law, or outrage against morality . . . . They (the Americans) were mistaken in the allusions which they made to the possibility of the repeal cause ending in separation. No; on the contrary, he was convinced that the repeal agitation was the only thing which would bind Ireland to England, and that the expectation of repeal was the feeling which would prevent separation. He had not the least doubt that if repeal was not granted, separation would, in all probability, be the consequence. It was not in the nature of things that the connection, as it stood at present, could continue." . . . . Mark, gentlemen, he declared that he did not want the strength of the bone and the sinew, but the strength of public opinion. Will you not, in exercising your duty in looking into his heart, be guided to the feelings of that heart by the language that emanates from that heart? The most legitimate ground upon which a rational man might blame Mr. O'Connell and the repealers would be this—that they assume, and arrogating to themselves that a repeal of the statute of union was the only remedy for the evils of Ireland, prosecuted the object of repealing that statute with a little too much zeal, assuming that their cure was the only cure. I won't defend that course; on the contrary, I blame them for it. I don't think they had a right to assume that; I think they had no right to disregard the opinions of every man who does not think that the repeal of that statute would not be the only remedy of the evils of Ireland, but many who think it would be no remedy at all. I don't think they were right in that, but because I don't think they were right in that, does it follow that I think they were criminally in error? What party is it that took up a certain opinion for any period in this country that did not advocate that opinion as if it was the only right one? Is not that the common sin of all parties—is it not plainly so? Is not that the sin of the Orangemen—is it not the sin of the Conservatives—is it not the sin of the Chartists—is it not the sin of the Repealers? Why, it is—it is the common fault of them all. Don't imagine that I am going to defend them. I censure them; but that is all I do. Were I on a jury, called upon on my oath, or on my honour as a man—as a just man—that because a person was arrogant in assuming his opinion to be the only right one, and seeking to enforce that with a little too much zeal, is it therefore that I am to find that man guilty as a foul conspirator? Gentlemen, they are distinct things; you are not here trying the reasonableness of those men in assuming that theirs was the best mode of remedying the evils of Ireland. You are trying whether they entered into a criminal and foul conspiracy to commit crime. It is no conspiracy. I will demonstrate that to be as clear as light before I sit down, on authority that cannot be disputed—not by the *dictum* of any judge or judges, but by the solemn decision of the Court of Queen's Bench. But, gentlemen, Mr. O'Connell, sensible that it would be arrogating a little too much, to suppose that repeal and nothing else would remedy the evils of Ireland, makes use of reservations which I will repeat to you. Give him the credit of believing himself that the repeal was the only remedy—there is no crime in that. Belief is a thing over which you have no control. No man can control his belief. A man may say he believes if he does not, but the man who does believe cannot help believing. Don't forget that. When Mr. O'Connell was accused of refusing the sympathy of those who would not become repealers, he said—"he would ask them would they do anything else, and if they did he would join them." Is not that fair? Is it not plainly propounding to the world that all he was looking for was the happiness, the dignity, and rights of his country—that he thought the repeal of that statute of the union was the best means to obtain his patriotic object; and what else did he say? "If you don't think so, show me any other and I am ready to join you." None other, gentlemen, was offered. Again, on the 28th of August, 1842, at the meeting at Drogheda, Mr. O'Connell said—"He wished to preserve the connection with England by the golden link of the crown, but to do away with the degrading, debasing, and impoverishing measure of the union." . . . Now, gentlemen, I may here observe that the means by which Catholic emancipation was carried could not fail to be present to the mind of Mr. O'Connell during the whole course of this repeal agitation. And here I may call your attention to a portion of the statement of the Attorney-General, of which my client, I think, has no small reason to complain—to complain in point of law and to complain in point of justice and fairness. The Attorney-General asserted to you that the organization of this repeal

movement was after the plan of the organization of the rebellion of '98. He broadly asserted it, and he brought into court a volume, which he said, but didn't prove, contained a report of the committee of the house of commons in Ireland of that day, and he told you that that committee reported to the house of commons that certain insurrectionary, disloyal, and rebellious associations had been formed, and he concluded by telling you that if he opened that book and read it to you, that the organization of that rebellion, that criminal organization of '97 was the type and pattern from which the organization of the repeal movement had been copied. Now, I arraign that course of statement as illegal—illegal in the highest possible degree; for no counsel, no matter what his rank may be, has a right, in a criminal case, to attempt to affect the minds of the jury against the party accused by his own unsupported and unsworn testimony. What right had the Attorney-General, in point of law, or in point of justice, or in point of common fair dealing, to insinuate to you, or to tell you that if he read that book it would demonstrate that the repeal agitation was copied from the organization of 1797, that had a rebellion for its object? What right had he to do that in point of law or justice, or common fairness? I arraign that statement of his as unfounded—as a totally unfounded statement; and if his imagination traced for him, as I am quite sure it did, some likeness between the description given of the organization of '97 and that of the present association, it was owing to his imagination alone, and he utterly deceived himself; and I think if he felt that, he had no right to put that book in evidence. But when he knew that book would not be read in evidence what right had he to refer to it in his statement, or to attempt to draw those monstrous conclusions from it, that this peaceful, moral combination, this legal association of 1843, was copied from that atrocious, that criminal rebellion of '98? Gentlemen, the Attorney-Geueral blinded himself; his zeal blinded him, it blinded him as to the facts of the case as well as to the law. He had much nearer home—much more obvious—that which was the true type of this association; and now let me implore your attention for a moment or two. Catholic emancipation, which virtually had torn and agitated Ireland by a moral contest, but not by a physical force contest, or a criminal contest, a sinful or an immoral contest—after 29 years of a moral contest, Catholic emancipation was at last carried, and how? Give me your attention for a few moments while I detail it to you. A private gentleman, Sir Valentine Blake, of Menlo Castle, a very ingenious man, fond of reading political acts of parliament affecting the rights of the Catholics of Ireland to prevent any constituency returning a Roman Catholic member as their representative—he propounded that plan, and I have not the least doubt that the Attorney-General and other lawyers who hear me would say, that there was as little law to sustain that doctrine as the one that the Queen could issue writs and summon a parliament in Ireland; one was just as untenable in point of law as the other, and you will observe as I go on how striking is the likeness between the father and the son. Acting upon that suggestion, which I believe Sir Valentine Blake himself communicated to Mr. O'Connell, the seat for Clare having been vacant in 1828, Mr. O'Connell says to the people, "An act of parliament is not necessary to emancipate us; we will do it ourselves." He says the same in 1843. "We'll do it ourselves with the help of our little Queen." "Give me," he says to the electors of Clare, "your good assistance, never mind your landlords. I am qualified to be a member of parliament." And yet, gentlemen, that was not considered a crime, he was not prosecuted for that. He went down to Clare—the whole county got into a ferment—a ferment which had its foundation in law, peace, good order, and sobriety, which never had been before equalled in this country. The whole population of the county came together as one man; they flocked in troops from all directions; their enthusiasm knew no bounds, and the landlords might as well have talked to the winds as to them. No temporal consideration that could be suggested could prevent them from voting for Mr. O'Connell. Persons who had come over from England to witness the contest report its results to Peel and Wellington, and the emancipation bill was passed the very next session, although it was decided by the proper tribunal that Mr. O'Connell's election was illegal, and he was not permitted to take his seat. It very naturally occurred to Mr. O'Connell's acute mind that it would be a sure and politic measure in his repeal movement to have recourse, in order to the attainment of his object, to a similar course of proceeding to that which he had adopted in the struggle for emancipation; and it is to this fact that everything is to be attributed that fell from him in reference to the revival of the old Irish parliament. Hence it was that he used such language. "This, your parliament, is not dead, but only slumbers. We want no act of the imperial legislature to procure its revival. Let the Queen only issue her writs, the Chancellor, you may take my word for it, will sign them, and then see how soon we will have a parliament in College-green." He wanted the people of Ireland to make a magnificent demonstration of moral power similar to that which was made on occasion of the Clare election, when the people were bound together with such unanimity of peaceful purpose that they would endure the pain and ignominy of a blow rather than violate the peace by retaliating on their adversary. One man, and he was the most quarrelsome man in Clare, did actually bear the blow, and told the man who struck him that he would give him the value of his pig after the election was over if he would repeat the blow (loud laughter). He wanted to have the people's mind brought to the same tone and temper in the year 1843 in which it was in 1829, and that circumstance fully accounted for everything he had said in reference to the resuscitation of the Irish parliament. He told them that he was tired of speaking, and that he wanted practical measures, but he did not allude to deeds of arms. He told them expressly what he wanted—he told them expressly that he wanted a council of 300 to sit in Dublin in order that the people's determination might be fully evinced, and when the popular mind had given itself the fullest expression then the Queen was to be besought to issue her writs, and the legislature was to be requested to sanction the desire of the people to have a parliament of their own. He wished to institute in this country the same great moral combination which had been so successful in the year '29—he wished to appeal for success to the same agencies by which Mr. Peel, who gained his popularity in England by abusing the Catholics and resisting their emancipation, was induced to come into the house of commons with the emancipation bill in his hands, and to use all his influence with the crown to get it passed. That, gentlemen, is the very origin and the rational explanation of Mr. O'Connell's plan for the restoration of the Irish parliament; and I defy any man, with a fair and honourable mind, to whom this explanation of Mr. O'Connell's conduct is once suggested, not to be at once completely satisfied with it. I admit, and believe, that there may be many honest men who, differing from Mr. O'Connell on political matters, may have heretofore conscientiously believed that his objects were different from what they are in point of fact; but when once the mind of such a man has been brought to consider such an explanation as I have now given, which ma-

nifestly bears on the face of it all the characteristics of truth, I defy him not to acknowledge that the explanation is satisfactory. The counsel for the prosecution would have you believe that Mr. O'Connell, when he came to the time of the monster meetings, had his scheme ripening for a violent and treasonable insurrection in Ireland, for that he had in contemplation the training of people to military operations, not by nightly drillings, but inuring them to long marches, for that his meetings were held at a great distance from the respective houses of the people who attended them. By this means it was pretended that the people were habituated to march like the soldiery through the country. That is the interpretation put upon Mr. O'Connell's proceeding by the Attorney-General; but if Mr. O'Connell had it in contemplation to appeal to measures of physical force, and to organise the masses for that purpose, is it likely that he would have repudiated and denounced the Chartists and whiteboys. The co-operation of the Chartists would have been invaluable for the carrying out of such an illegal project. He might at all events have desisted from abusing them. He did not do so. If he had contemplated violence would such words as those have escaped his lips at a meeting of the association on the 1st of January, 1843:—"He had received the most certain information that the societies which were established in England under the name of Chartists, or rather the branch of them named socialists, were making the greatest exertions to spread their fatal principles through Ireland. He was not going to accuse the Chartists generally, or anything like universally, of being socialists, but a great number of the Chartists were socialists in England and Scotland, and all the socialists were Chartists. . . . . He was shocked to hear there were socialists in Dublin, and every man must hear it with sorrow; it was the first time that such a misfortune had happened in Ireland. Hitherto they differed from one another in religious belief; there were Protestant, Catholic, Presbyterian, Dissenter, and Methodist, but they were all Christians. . . . . Should such miscreants as those, he asked, be tolerated, and was he not entitled to have the assistance of clergymen of every persuasion to put them down? . . . . . He proclaimed to them from that spot, that if they had anything to do with the Chartists or socialists, they would put themselves in their power, and be made the victims of their plans. He trusted that the sentiments he uttered on the subject would be circulated through the country, and that the honest shrewdness of the Irish people would induce them to take hold of those incendiaries, and bring their acts to light." There is the language of a man who, if you are to believe the Attorney-General, was at that moment organising his countrymen to make him the leader of an atrocious republic—of a man who, it is insinuated, had in contemplation the wicked and nefarious design of arming the father against the son, and the son against the father, if the father was loyal and the son a rebel—of putting the rope in the hand of the executioner—the bayonet in the hand of the soldiers—the pike into the hand of the peasant—of deluging his native land in blood, and creating scenes of anarchy and horror too dreadful for the human mind to dwell upon. Gentlemen, is that imputation to receive credit at your hands? As honest men, and as men of common sense, I ask your integrity, and I ask your intelligence, can you bring yourselves to believe that Mr. O'Connell, the darling of his countrymen, would now in his 69th year fling to the winds the peaceful principles which all his life he had been inculcating, and convert himself into an abominable incendiary, on whose grave the widow and the orphan shall spit in execration, and whose memory shall be accursed for evermore? Gentlemen, will you believe it? Look at the man, and say has he any of the ingredients of the conspirator about him—look at the man, who for the last forty-six years of his life was in the habit of absolutely thinking openly, and really expressing the sentiments of his mind so openly, that some of his friends could wish him not to do so. There was the man who was in the habit of speaking his thoughts and feelings, and yet he stood there branded as a foul conspirator. The man who all his life thought aloud, and no man could say that any man ever did so with so little loss to character as Mr. O'Connell did—he was the dark and infamous criminal conspirator that you are called on to believe he is. The name of conspirator was one of the foulest and opprobrious that can be applied to a human being. The moment a man conspired to commit a crime, his mind would not stop there, but he would consent to the commission of another, and once the mind was entered on the foul road of conspiracy, nothing would stop him. Gentlemen, the definition given to you of the crime of conspiracy by the Attorney-General was not the definition of any crime at all, for you must recollect that a combination or argument does not imply guilt, nor does an illegal act imply guilt, and I will prove it to you beyond all doubt from one of the best legal authorities, that neither of the above implies guilt. I am not now going to speak of the *dicta* of a judge—I am not going to cite one judge, and mislead another by it; but I am going to cite what will bind all the judges in England—I am going to cite a long-established rule in law, which was solemnly argued and ruled by the judges, and which has never been controverted—it is the case of the King *v.* Turner, and others.

Judge Burton—Where is that case?

Mr. Fitzgibbon—In 13 East, page 228. [He then went on to read the case, which was one where the defendants were charged with a conspiracy for going at night into a preserve to kill hares, and that they went there armed with bludgeons, &c.] This case was decided in the King's Bench by Lord Ellenborough, who was as good a judge on all legal subjects as ever sat on the bench, and as fair a prerogative judge as ever adorned the English bench from the days of the English conquest down to the present time. I will request you, gentlemen, to remember that the case I am now about citing was a case where the eight defendants were indicted for a conspiracy, for unlawfully, wickedly, &c., and for illegal and criminal acts, &c. [Counsel read the indictment, which was one of the common form, and continued to say]—I ask you was the project of those eight persons honest?—was it innocent?—in reference to the peace of society was it innocent?—as to the enjoyment of property was it innocent?—with regard to the spilling of human blood, which might have taken place in consequence of the bludgeons the parties brought if they were opposed in their career, was it innocent? Every man in society would say that in all those particulars the project was not innocent, and the case was brought before a jury who found the defendants guilty of the conspiracy. Subsequent to that verdict the court was moved to arrest judgment in the case, because the evidence did not constitute any crime within the meaning of the law of England. Even assuming that all the charges laid in the indictment were proved, it did not constitute a crime in the penal code of England. The case came on for argument before the full Court of King's Bench, and Lord Ellenborough delivered the unanimous decision of the court on that occasion. He said (alluding to a case cited) "that was a conspiracy to indict another of a capital crime, which, no doubt, is an offence; and the case of 'The King *v.* Eccles and others,' was considered as a conspiracy to do an unlawful act af-

fecting the public. But I should be sorry that the cases in conspiracy against individuals, which have gone far enough, should be pushed still further. I should be sorry to have it doubted whether persons agreeing to go and sport upon another's ground—in other words to commit a civil trespass—should be thereby in peril of an indictment for an offence which would subject them to infamous punishment. Rule made absolute." It should be remembered that the parties in that case had entered into a man's premises at night to rob him of his property; and yet the court were unanimous in arresting the judgment. They went there with bludgeons for the purpose of intimidating any person they might have met. It might be said the present case was calamitous to the public; but that I deny. There was no necessity to make the case double to obtain lawful ends by unlawful means. Crime may be defined in law books, but the law recognises no such thing as a definition, because a jury was the only tribunal to do that, and I don't think you will have much difficulty in coming to a proper conclusion as to the charge of conspiracy in this case and pronouncing your verdict of acquittal on it. What man in society would be safe when retiring to rest if he were to be charged with a conspiracy because he entered into an agreement with some other person to do some act that might be lawful, which some of the parties agreeing might endeavour to effect by means illegal, but from which he might innocently dissent. The proposition was monstrous and absurd. You may be told of cases in point, and a lawyer may be as earnest in citing his cases as I am now in addressing you (laughter). But I call on you to reject every thing and any thing I may have said if it does not challenge respect from your reason. There are, gentlemen, one or two other topics upon which I have to address you. Do not blame me that my address has been so long. Believe me that I sincerely commiserate every one of you for being abstracted from your business, and while I do so believe me that I am myself an object of as much commiseration. Gentlemen, the situation of any man defending his fellow-man from the imputation of a foul crime is an anxious one, and to me, naturally of an anxious temperament, as I must acknowledge myself to be, it is a situation not devoid of pain; and when I tell you that for the last three days I have not eaten half a pound of solid food—that for the last three nights I have not enjoyed five minutes' tranquil sleep—I am sure you will feel that I am not unworthy of commiseration; and feeling my exhaustion to be increasing, I would not, without necessity, lengthen the effort I have made, and perhaps endanger the loss of my life to a family the eldest of whom is not six years old. But as long as any thing remains unsaid, which I believe is necessary to be said—as long as I have strength to support me on my legs, I will proceed; and I would retire to my bed unable to sleep for the remainder of my life, if I felt that I left unsaid any thing which I believe I ought to have urged. I hope, therefore, gentlemen, that you will not blame me if I should appear to be tedious. Another charge in the indictment is, that Mr. O'Connell and others conspired together to create disaffection in the army. The only evidence of that portion of the conspiracy is a letter written by a Mr. Power. Gentlemen, that Mr. Power has been served with a crown summons to attend here as a witness. If that letter—if the contents of it amount to an effort to destroy the affections of the soldiery to the government—that letter had for its object a foul crime. To tell the soldiery, whose duty it is without reflection to obey the orders of the intelligent minds of the persons under whose command they are, and whom they are unthinkingly bound to obey, that they should not do so—I say if that letter was written for such a purpose it is a criminal one; and the man who wrote it ought to have been prosecuted. I say so, assuming that to have been his intention—but, recollect, I am not saying that it was; and I think if you read it you will think it was not. If we had the author of that letter here it would be a triable case, one not requiring three or four weeks debating, for the jury would have a reasonable certainty upon which they might found a conviction or an acquittal. If it were written for a criminal purpose he should have been prosecuted; if the purpose were not criminal I am sorry it should have been brought forward here for the purpose of damaging those who had nothing to do with it. Mr. O'Connell is proved to have praised the sergeants of the army—to have said they were the finest set of men in the world—to have said that they ought to be officers, and that if he succeeded they should. Thus, it is said, he thought to seduce the soldiery from their duty. Why, gentlemen, when you have two motives that may be ascribed to the accused, the one an innocent and a legal one, the other wicked, criminal, and illegal, a jury of humanity are bound to acquit of the guilty motive. If they can reasonably adopt the innocent one—if they have no difficulty in adopting the innocent construction, they should repel the criminal charge. Let them remember that Mr. O'Connell was endeavouring to effect conciliation among all classes, peasantry and soldiery alike, and that one of the greatest means of inducing those connected with the repeal association of every grade to entertain those feelings which Mr. O'Connell wished to propagate was, the strong expression on the part of Mr. O'Connell that he entertained those feelings himself. And his object being to put an end to the smallest inclination on the part of the peasantry towards insulting or in any sort of way disliking the soldiery, and the showing that those peasantry might see an army among them without either feeling dislike to that army or apprehension from it, was one of the purposes of Mr. O'Connell in those demonstrations, as also to impress his hearers with a feeling of respect for the sergeants of the army. This language was not addressed to the army. No soldier—no sergeant was proved to be present, and do you think that Mr. O'Connell was fool enough to imagine that certain expressions of his, used for a different purpose, should, when conveyed through the newspapers to the sergeants of the British army, have the effect of winning those sergeants from their allegiance and their duty? It is perfectly ridiculous to think so. But, gentlemen, Mr. O'Connell did not keep in his breast his sentiments in relation to any sort of tampering with the army. Accordingly, at the national repeal association on the 14th of September, 1843, when his plot was ripe—when every thing which he had ever said in praise of the sergeants was long published—when everything had been done by him that could possibly be supposed as intending to seduce them, the subject came on incidentally before Mr. O'Connell; and now let me read for you when the subject came before him indirectly what he does say in relation to it. The learned gentlemen then read the proceedings at the repeal association on the 14th of September, 1843, by which it appeared that Mr. O'Connell had forbidden any person connected with that body to interfere in any way whatever with the soldiery. Now, gentlemen, continued the learned counsel, I pray your attention to the period at which Mr. O'Connell thus plainly and publicly, wholly and distinctly repudiates, disavows, and prohibits, any intention of any kind of tampering with any member of the army. No nation fit for liberty could entertain a feeling of hostility to the armed force necessary for the government of the country. The Irish had been accused of entertaining such a feeling, and Mr. O'Connell wished to force it out of their minds,

and therefore held up the sergeants and the whole army as a body of men not deserving dislike, but as a body of men deserving love, respect, and affection. Why should he not be so interpretated? The whole course of his life—the whole torrent of his eloquence—everything he has ever said and ever done had for its object the establishment of love, order, and good will, amongst his fellow men. Every abusive expression he ever uttered I can trace to what he thought was some political act of turpitude on the part of some individual. He has, no doubt, often too strongly, and often censurably, expressed his dislike of political sentiments not agreeing with his own; and don't think I am here to defend him for what he has done wrong, when he so far forgot that benignant nature which, beyond all doubt, belongs to him. Another imputation in this case is the collection of money, and I hope before I sit down to convince my friend Sergeant Warren that that money has been collected, not as the chesnuts have been drawn out of the fire, but fairly and legitimately collected. And I cannot advert to that unseasonable joke, which I have dealt with as an act in this case, without at the same time expressing to you what I feel, that I don't believe there is a man in existence whose benevolent mind, and expanded and dignified understanding, and whose humane heart will be more thoroughly open to conviction when any man pleads before him the innocence of a human being than Sergeant Warren is; and believe me, gentlemen, when I came down on his joke with such severity as, perhaps, I did, I meant to apply my observation against the joke, and against any injurious effect which it might have on my client's interests in this very trying case. Although I never can admit that a jest, no matter how innocently intended, in the slightest degree calculated to prejudice a man on his trial—I never can admit the propriety, under any circumstances, of such a jest; and although I shall never flinch from the duty of coming down with all the little force that nature and art has given me on a jest, under such circumstances, I hope I shall convince you that everything severe I have said of it was said only of the paltry thing itself, and not one word of it was said of the truly dignified and amiable man who for a moment forgot himself when he uttered it. Ours is a peculiar state of society—justice which should be common to all men, free as the air we breathe, priceless as the water which we drink, according to human ordinances it happens to be physically and absolutely impossible to get it if you have not money. Courts of justice, as Horne Tooke said, not intending to abuse courts of justice, or bring them into disrepute, are open to every man. No doubt they are, and the London tavern is open to you, too, but you must have the price or you cannot get the expensive article. Because to ascertain what justice is, requires the aid of scientific, educated, and talented minds, and that aid cannot be procured without paying them for exercising the calling they are brought unto. It is as impossible for a nation as for an individual to bring its case within the portals of the proper courts of proper jurisdiction, without having the golden key to that temple also. It is impossible to collect the signatures to a petition, intended to be the petition of millions, without an enormous expense. It takes a hundred thousand pounds to canvass the county of York, yet the county of York does not contain a tithe of the inhabitants of this country. It is quite plain that, in order to procure that which Mr. O'Connell frequently said they must have discussion, that money is as necessary as the parchment for their petitions. That is known to every political party in this country; and I doubt whether there is a warm Conservative in it, either at the bar or on the bench—either in the cellar or in the palace, who has not contributed his money towards what he considered to be the cause of the country and the interests of the country; and when they were out of power, I would like to know the amount of money they collected to get back again—I have no doubt, believing their restoration to power to be for the good of the country, they contributed large sums; and I am sure no person was illnatured enough to say they were making cats'-paws of those that were giving them the money. But you are not dealing here with the question whether the collection of this money was justifiable or criminal. You are called upon here to find by your verdict—whether it was justifiable on the part of those who sought for repeal, believing it to be good for society at large, just as the Conservatives believe the union to be, to subscribe for its attainment. I would give every man of them credit for believing it, and thinking he is acting according to his duty as a patriot. But I only ask you to put on the same footing those funds that are collected for the purpose of bringing into discussion the opinions of a people so numerous, so rational, and so honest, and entertaining those opinions with every bit as fervent a zeal. That is all I shall say to you on the subject of collecting the money. Now, there is just one other subject that has not been touched upon yet, and that is the arbitration. It is said in this indictment that those arbitration courts were devised by conspiracy—criminal conspiracy—for a criminal purpose, that criminal purpose being to bring into odium and contempt the constituted courts and tribunals of this country. Now, gentlemen, in the first place, if you can believe that any of the traversers in his own breast entertained so illegal, so immoral, so criminal, so foul, so uncharitable a purpose as that, come down upon him with the heaviest censure that your minds can bestow, and you have my concurrence. But, unless you believe that they so entertained that diabolical purpose of bringing into contempt, odium, and disrespect, those without respecting whom—without venerating whom, it would be impossible for any society to exist; unless you believe that that wicked, illegal, and immoral purpose was made the subject of a criminal conspiracy between two or more of the traversers; unless you believe that two or more of the traversers did criminally combine to carry that unhallowed purpose into effect, I care not by what means—no matter whether any one of them—no matter whether every one of them in his own mind entertained such a purpose, you cannot, unless you believe that they conspired to effect it, find them guilty. Now, in the first place, have you any evidence that any one of them ever entertained such a purpose? Where is the expression of any one of them of any such purpose—of any such feeling in relation to the constituted tribunals? At some of those meetings some one or other, I really forget who, spoke about not liking the Saxon ermine, and so on. Gentlemen, that was improper language. Why? Because it was open to be misinterpreted. I don't think the man who uttered it, whoever he was, meant to say that the judges of this country were Saxons in ermine, who ought not to be respected and revered as judges. It was hyperbole—censurable hyperbole—but it was not the crime of conspiracy. It was not any of the traversers uttered it. What did they do? They instituted those arbitration courts. Now, just for a moment attend to me while I bring fairly before you the whole of the matter. The Chancellor believing it to be proper and right—believing it to be his duty to the country—I have no doubt he did think that magistrates who attended those repeal meetings were unfit to be justices of the peace in Ireland, and accordingly he withdrew the commission from every one that attended those meetings. Others of them took umbrage at this, and they resented it. The act led to a good deal of angry discussion, and a

good deal of unjustifiable language was, no doubt, used in reference to it. The act of the Chancellor was dealt with in many publications in terms not expressing that respect he is entitled to. But the act was calculated to beget anger, and it did beget anger; but it produced no other effect. That, however, did not establish a conspiracy, nor did it exhibit a diabolical determination to bring into contempt the judicial tribunals of the country. When the magistrates were dismissed by the Chancellor, the people said in their turn that they would be up with him by-and-by, and they, accordingly, made arbitrators of those dismissed magistrates, for the purpose of deciding their differences with their own consent, but not of entertaining any cases except where both parties agreed to refer the matter in dispute to their adjudication. There was not a meeting of these arbitrators held throughout the country that was not publicly advertised; every man in the community knew that it was to take place, and every policeman in the district was at liberty to attend at them, and observe what was done; and yet the crown produced but a single policeman, who swore that he found Mr. John O'Connell and Dr. Gray sitting at the Rock, waiting for suitors, and that he was treated with every respect and attention, and not interfered with. Now, if that was illegal, the "Ouzel Galley" would be illegal, and it is not. They have their forms, and they will give them to you if you want them; and if a man comes before them he must be bound by their rules, and they will not allow him to depart from them, and they will make him pay them their fees, which are in the first place applied to the expenses of carrying on the tribunal, and the residue is applied to charitable purposes, and there is nothing wrong in all that. The adoption of these courts only shows the peaceful determination of the Irish people to forget all past differences, and settle any disputes that may arise between them through the intervention of these arbitrators—and there is nothing illegal or wrong in that. Gentlemen, I should not think it necessary to occupy your time at any greater length on the subject, but that it is suggested to me to remind you of the Quakers, who settle all their differences by arbitration. They don't go to law with each other. If they did, except in those cases reserved by the society, they would be expelled, they would be read out of meeting—and there is nothing illegal in all that; God forbid there should. Gentlemen of the jury (continued Mr. Fitzgibbon), I would sit down with great peace of mind in this case, if I had been allowed without interruption to finish what I had to say; and to the latest hour of my life I will regret that I was not. I had originally intended to conclude what I had to address to you with an explanation and a commentary, which an unfortunate incident in this trial made me at one moment determine not to pronounce. I shall regret that incident to the latest hour of my life, not for any injury it may do myself. I regret it, and I ever shall, because I fear that nothing can prevent it from doing some little injury to one that I would not injure; to one to whom I would suggest to ask his brethren who assist him in this prosecution how I spoke in private, and how I commented upon in private, the abuse which the political friends—

Mr. Sergeant Warren—I do not know, my lords, whether I am in order or not, but—

Mr. Fitzgibbon—It is better you should hear me.

Mr. Sergeant Warren—I would most respectfully submit to Mr. Fitzgibbon—

Mr. Fitzgibbon—I assure you it is better you should hear me.

Mr. Sergeant Warren—I think it was said by the court, and agreed to by both sides, that they should forget all that had passed.

Mr. Fitzgibbon—I would, my lords, suggest to him to ask his friends who assist him how I spoke of him and how I spoke of myself. I would suggest to him to do this when he was misunderstood, and, therefore, misrepresented, and in a very material matter too, which to this hour has never been explained as it ought to have been in his favour by any one. My lords, he was represented at one stage of this proceeding as designating this as a foul conspiracy, and that he would show it to the public to be so. He was misunderstood, and I said so at the time. He was not speaking of the case of the traversers—he was speaking of the accusation that was about to be preferred against Mr. Hughes. My lords, I knew it to be my duty to deal without the least reserve with the statement that I heard from him, so far as I believed it to be wrong against my client. In the beginning of my statement I distinctly and plainly expressed why I felt it to be my duty; and stated that anything I should say of it was not my language directed personally towards him, but was the language of my client, not directed personally against him, but directed to what that client had a right to consider wrongly done by him professionally. My lords, I cannot say that I was quite satisfied with what took place here yesterday, and I will tell your lordships why I was not. My lords, I regretted then, I shall ever regret, that the Attorney-General did not speak to me, and tell me that I had wounded his feelings. My lords, I wish to set him right; I wish to set myself right; it has not been done. I was not therefore satisfied, and I am not, with what took place. No human being has opened his lips to me on the subject since. My lords, it was not satisfactory to me, because I fear it was not satisfactory to him and to his feelings; and I think justice was not done to him as a lawyer, and as a gentleman I do not think justice was done. He placed himself, unfortunately, in a moment of irritation, in a false position that did not, and that ought not, to belong to him. I felt that he had done so the moment I read his note; and the first impulse of my heart was to give him an opportunity, and to solicit and beg of him to take it, of relieving himself from that position. I offered him back his note; I begged of him to take it, and to retract it. Unfortunately still, my lords, affected by the same irritation, he refused. That placed me in a situation that I could not endure; I could not go on with the case of my client, which had been entrusted to me, with the feeling upon my mind, that the Attorney-General intended to insult me, believing that I had intended to insult him. My lords, my next impression was that which I shall ever rejoice I did not yield to—to put his note in my pocket and go on in silence. It was then suggested to me by my friend, and the friend of everything that is good (Mr. Moore), to open the matter to the court; I did that, and I ever regret, and ever shall, to the latest hour of my existence, the false position in which these facts, which occurred without my consent, have put a man, of whom I said in my opening that he was a gentleman in the best sense of the word, and a lawyer in the most dignified sense of that word; and there was not a word that I said yesterday, or at any moment of my life, ever since I knew the Attorney-General first—and I have known him but slightly, and that at the bar—not one word that would have the sanction of any desire of mine, or feeling of mine, to wound his feelings. My lords, I dealt with nothing but his conduct in this case; and if he was my father ten times over, charged with the duty of defending a client that I supposed to be affected by conduct of his which was wrong, or which I believed to be wrong—viewing it as a lawyer, I would have come down on it with the same severity. I am, my lords, naturally an ardent man; it is too plain that I am so; I am a man of impulse, and it is unfortunate that I am so; I forget every consideration of self; I do so to a high degree; I am sensible of it, but I can no

more help it than I can help sleeping. My lords, I said I was not satisfied with what occurred yesterday; it was because I felt, and I feel, that what I said has operated upon that temper, which can no more be helped by the Attorney-General, than his breathing can be helped, to bring him into a false position, which, as I said before, he ought not to stand in. He, my lords, is not deserving of censure, and I never intended to censure him; I do not think he is deserving of censure, even for the little momentary impropriety into which irritation of feeling betrayed him. My lords, I trust that what I now say will be satisfactory to his feelings. I had no concern for my own, any further than to redeem my own conscience from self-reproach, for having been even inadvertently the cause of one moment of undeserved pain to the feelings of another. That, my lords, is all I wish to say; and I trust I will not be considered to have abused the patience and attention of the court in saying it.

This statement was listened to with considerable interest.

A pause having then taken place for a short period, in anticipation of the Attorney-General addressing the court, it rose and adjourned to ten o'clock next morning.

SIXTEENTH DAY.

THURSDAY, FEBRUARY 1.

The court sat at ten o'clock, and the jury and traversers were in attendance.

Mr. Henn, Q.C., on their lordships taking their seats, said—I am instructed, my lords, to submit on the part of the traversers, that we conceive, according to the true construction of the act of parliament, the court has no power to proceed with this trial, the term having ended. We merely wish to mention it to your lordships that if you be of a different opinion you may take a note of our objection.

The Chief Justice—Oh! certainly.

The jury and traversers were called over, and respectively answered to their names.

MR. WHITESIDE, Q.C. IN DEFENCE OF MR. CHARLES GAVAN DUFFY.

Mr. Whiteside said—May it please your lordships, and gentlemen of the jury, in this case I appear before you as counsel for Charles Gavan Duffy, proprietor of the newspaper called the *Nation*. I could wish my client had selected his advocate from my brethren of the bar, where so many are to be found my superiors in every talent, and every acquirement; my sense of inferiority is increased by the disparity between my humble abilities and the task committed to my charge. Nevertheless, assured of your patience—convinced of your indulgence—satisfied of your anxiety to hear candidly what may be urged on behalf of the accused, from whatsoever quarter it may come—I gain resolution from my confidence in you. The solemnity of this state prosecution would be enough to bespeak your considerate attention. The principle involved in the issue—the all pervading anxiety of the public—the very nature of the accusation itself—combine to mark out this as a question of no ordinary expectation. My anxiety is so to place before you the merit of my client's case, that truth may prevail, and the cause of public freedom triumph. I will not, at the outset, disguise from you that the result of this case is regarded by me with trembling apprehension, not from the vulgar terror of popular indignation, or an outbreak of lawless fury, because should they occur the arm of government is powerful enough to repress and punish such excesses. My apprehension arises from a better motive. I feel the importance of your decision. I am anxious for the character of our common country, for the purity of its justice, that your decision may be consistent with the principles of a free constitution and may rest on the immoveable ground of truth. Be assured, gentlemen, this day's proceedings will be scanned by the opinions of enlightened England, and whatever other country possesses freedom. As far as human infirmity will permit, discharge your duty unflinchingly between the crown and your fellow-subjects. Be tender of that subject's freedom, and your decision will be approved by your own consciences and by all just men throughout the world. Gentlemen, you are not empannelled to try the traversers for their political opinions; the soundness or unsoundness of their views, the policy or impolicy of their proceedings; the possibility or impossibility of their projects being carried into execution, form no part whatever of your inquiry. Still less do you sit in judgment upon the style adopted by a political writer, or upon the taste exhibited by a popular speaker. Yours is a more severe duty than that of the moralist or critic. Although you are satisfied that the speeches made were intemperate and rash; and although you may condemn the character and style of many of the written productions in evidence before you, and disapprove of the general objects had in view by many of the parties accused this day, still there is not the least conceivable approach made thereby as to the decision of the question of their guilt or innocence on the particular subject-matter charged by the present indictment. Crime is what is alledged against the defendants, and crime of a defined character; and if that peculiar crime, as is described and explained on the face of the indictment, be not clearly and distinctly proved, no matter of what supposed offence the traversers, or any one of them, might by possibility be suggested to be guilty, still you would be bound to acquit them on the present indictment. To find a man guilty on one charge, because there may be a surmise of the possibility that he might be accused of another, would be to violate the law and justice of the case; and from the strict line of your duty I know you will not swerve. You are not—I say this with deference—to remember any one word spoken or written by the traversers, or any of them which has not been proved in evidence against them on the present occasion. The crime of which they are accused is that of conspiracy. In the proper acceptation of the word, there is nothing criminal involved in it. It means having one spirit; and the prevailing idea conveyed by it is, that of a common sentiment amongst men for the accomplishment of a common object. Now, a community of sentiment on political subjects is not criminal. Associations exist for purposes literary, scientific, religious, and political. Their object is to accomplish a given end—to concentrate opinion, and strengthen that opinion—to bring it to bear on a particular subject, and by means of that concentration obtain benefits and blessings, that would not perhaps otherwise be accomplished. Governments are naturally, perhaps necessarily, quiescent; they are repugnant to change, and adverse to popular movements; and it requires very great efforts, and very great concentration of opinion, to obtain from government that which, when it is obtained, all parties regard as a benefit and improvement. It is by that means that the wisest reforms have been effected, the grandest triumphs in humanity have been accomplished, and the wisest projects that ever entered the human mind have been gained. In ordinary cases, when men are charged with a particular crime, they are to be tried if they are guilty of it on what they have themselves done, or on what they have themselves written; and the evidence to convict them must be given under strict, rigid rules prescribed and fixed by law. But, as you have seen, there is in this crime of conspiracy a latitude

of proof permitted which your own experience as jurors tells you would not be suffered in any other proceedings. One man is sought to be affected here, not by what he has himself done, spoken, and committed, but by what other men have done, spoken, and committed. That an individual should suffer for the consequences of his own speeches and actions is natural and right, because he had power to control the one and regulate the other, but it would seem to be difficult to understand the justice of the rule that fastens guilt on one man, not by what he has himself done against the law, but by what has been done by other persons at a distance, over whose movements he had no control—whose tongue he did not license—whose words he could not check, and over whose actions he had no authority or power. If in ordinary cases that observation is founded on good sense, it is of infinitely more weight when you come to apply it to a charge of political conspiracy. There it is necessary for a jury to be infinitely more on their guard, for the incautious language—the improper actions of one man may be charged as guilt against another. Look to the way in which it is sought to sustain the present charge. The proceedings of a meeting were first given, then the speeches at a dinner; next came the editors of the *Freeman* and the *Pilot*, each charged with having published the extracts in their newspapers, respectively, for the purposes of this wicked conspiracy, and then comes the editor of the *Nation*, for having transcribed them into his weekly publication. That disposed of one meeting, and of a dinner, and so it went on from March to October. The indictment may well be divided into two parts, the first consisting of an octavo volume, large and ample in its reports, and giving copious details of speeches; and the second forming an abridgment of proceedings at the association, the plan for the renewed action of the Irish parliament, the leading articles in the repeal newspapers, the angry letter of Mr. Power, the miscellaneous documents read at the association, and the whole forming a precious folio to please the tastes of the readers. Well, indeed, may I say that the guilt of any man must be difficult of proof which requires a document of such extraordinary prolixity to have explained to the jury, and that the innocence of that person must be clear indeed which needs such a mass of parchment to have it endangered or obscured. The traversers are accused of a conspiracy to create discontent and disaffection between the subjects of the Queen, to promote among the people of this country feelings of ill-will towards their fellow-subjects in England, to promote disaffection in the army, and by the demonstration of great physical force at their meetings to bring about changes in the constitution and government of the realm. They are also charged for having conspired to bring into disrepute the courts of justice by the establishment of courts of arbitration, by inducing suitors to withdraw their cases from the lawful tribunals, and to have their differences adjusted by private individuals. This is the conspiracy charged; and your duty is simply to try whether the accusation has been borne out by the facts given in evidence. The Attorney-General, who, I think, has stated the case on behalf of the crown with great moderation and good temper, began by stating what were the principles and the authorities on which he relied as necessary to explain the doctrine of conspiracy. With respect to the first cases cited by him, that of the King against Jones, 4th Barnwell and Adolphus, I respectfully submit that it is not in point, because the indictment which was one against a bankrupt for concealing a part of his effects, but as on the face of it did not set forth an illegal act or a conspiracy to effect a legal act by illegal means, the court held that it could not be sustained. To show the jury in passing what was the evidence necessary to support a charge of conspiracy, I may remind you of the case of the King against Brownlow and others. There was a common purpose to dine together at Daly's Club-house, and I believe they did execute their agreement merrily together; there was a further agreement to sup together, which I suppose was executed with equal mirth; and thirdly, they agreed to go together to the theatre. One had a rattle, which he chose to throw, another was pleased to whistle, and a third to throw a bottle on the stage. They were finally indicted for a conspiracy, but the grand jury having ignored the bills, the Attorney-General availed himself of his privilege to file an *ex-officio* information. The case came before a petty jury, one of the accused was acquitted, but respecting the others they could not agree, and the matter remained so since, except that many of those engaged in the trial have since passed away and are not now in existence. The learned gentleman proceeded to quote a case from 8th Carrington and Payne, where Mr. Justice Coleridge, on an indictment charging parties with a conspiracy to prevent the collection of rates, told the jury that in order to sustain the charge they should be satisfied that the accused had acted in concert in furtherance of a common object, either together, or by one at one time, and another at a different period. In 9th volume of the same reports, the court will find the case of "The Queen *v.* Frost, Vincent, and Edwards." The first count charged the accused with having conspired to excite discontent and disaffection in the minds of the subjects of the Queen, and to excite them to hatred and contempt of the government and constitution of the realm, and the second count was for a conspiracy to induce large numbers to meet together, and by force of terror and alarm to procure great changes in the constitution and the laws, and to annoy, alarm, and disturb the subjects of the Queen in the peaceable enjoyment of their property. On the part of the prosecution it was proposed to ask Mr. Roberts, the superintendent of police, if persons had complained to him of being alarmed by those meetings. Carrington, for defendants, submitted that persons who were alarmed should be themselves called to prove the fact; but the evidence was received, and Mr. Roberts stated that several persons had complained to him of being alarmed, and requested him to send for military assistance. It was competent, therefore, for the crown, on the indictment before us, to have asked any of the police magistrates or officers who were produced if any person had complained of being put into terror by the meetings which have been held in the various parts of Ireland. The next case referred to by the Attorney-General was the King *v.* Stone, in 6th Term Reports, page 527. There the party was indicted for a conspiracy with Jackson, a person who afterwards died in this country from taking poison; the charge was for conspiring to collect intelligence, and to communicate with France, and evidence was given to connect the prisoner with another. Lord Grenville, the secretary of state, proved by a letter of Jackson the treasonable information, and Mr. Erskine objected that as it was not the act of the prisoner, it should not be received against him. At first Lord Kenyon conceived that the act done by another person could not be given in evidence against the prisoner, and the next day he said he was satisfied that the evidence was admissible. The jury in that case, no doubt impressed with the danger of finding any man guilty for the act of another —an English jury of that day—found the prisoner not guilty. The next case my learned friend referred to was the King *v.* Reoley, 25th volume State Trials, Mr. Home's edition. An inflammatory speech is there stated, page 1,006, and all the matter relied

upon in support of a charge of conspiracy are explained by proper averments in the indictment. The libel itself was not merely read but it was proved in evidence that it had the effect which it was asserted it actually had. In page 1,019 counsel for the crown stated that pikes were prepared, in the language of the libel, for the innocent purpose of self-defence—that was the excuse, and the pikes were produced, as was also the cutler who made them. The Attorney-General more than once relied on the rule laid down in the charge in this case, and I beg your attention to it. Justice Rorke said "that it was a matter of charity to believe that Lords Chatham and Camden, and Archdeacon Paley, and others, believed what they said in parliament in reference to the same subject, and if the conduct of the defendant had been merely a speculation of his own, it would have been a different thing, but when he had gone forth and expressed those opinions in a large assembly it would be for the jury to say whether he did not so address them with a view to inflame the minds and passions," and the man was found guilty. Now, gentlemen, I don't see the value of the distinction taken by the learned judge, that a man may broach certain opinions in parliament which another cannot express out of it. I don't think there is any such law, and I apprehend with great respect that his lordship was mistaken. The next case which the Attorney-General relied on was the King *v.* Watson, and Justice Bayley, in that case said, "It is not necessary that you should have the evidence of persons who heard the prisoners consult or conspire, if you are satisfied that there was a previous consultation or conspiracy, and the acts done were the result of that, you are at liberty to draw the conclusion that a conspiracy existed." In that case Sir C. Wetherell was counsel for Watson, and the jury, upon that charge, thought fit to acquit the prisoner. The next case quoted in the Attorney-General's statement was that of Redford and Birley, in the third part of Starkie's Reports, and that is a case which I think is more analogous to the present than any of the others. It was an action brought, not against the civil authorities, but against the military, who had been called upon by them; and one of the witnesses, named Andrews, proved, as stated in page 85, that he saw a number of persons going to Whitemoss to be drilled, and it was proposed to ask the witness whether he was alarmed, for the purpose of establishing the case. It was objected that the impressions made on his mind by those facts could not be given in evidence, but Justice Holroyd was of opinion that it was receivable, and the witness answered the question. He stated that he was asked whether he would go with them to get a big loaf for a little one; that they would make their way to London, and would make use of the property of every one who had property as they went on the road, and that afterwards those seven hundred persons went to be drilled; he added that he was alarmed, and the evidence of apprehension was received. The learned counsel continued to refer, at considerable length, to the opinions of Mr. Justice Holroyd, as they were reported in the case of Redford *v.* Birley and others, 3d vol. of Starkie's Reports. That learned judge, in page 102, expressed his sentiments as to what constituted, in his opinion, an unlawful assembly. He said—"But however, gentlemen, for the purpose of showing this was an illegal meeting, I will state some things which constitute an unlawful assembly: a riot is, when three or four unlawfully collected together to do an unlawful act, as if they were creating a nuisance in a violent manner and beat a man; that may constitute a riot. Persons may be riotously assembling together, yet, unless they do some act of violence, it would not go so far as to constitute actually a riot; but if they come armed, or meet in such a way as to overawe or terrify other persons, that of itself may perhaps, under such circumstances, be an unlawful assembly." Such are Justice Holroyd's opinion upon this topic. The learned judge then proceeded to allude at much length to the memorable case of Lord George Gordon in 1780. "Kennett," he said, "was the Lord Mayor of London at that time, and Lord George Gordon called an immense number of persons in St. George's fields. They were called for an ostensibly lawful purpose, and there was of itself nothing further meant nor intended than to petition the house of parliament to repeal acts which were passed in favour of the Roman Catholics. They met on that occasion in immense numbers, but not so many as on the occasion upon which we are now unfortunately sitting. Lord G. Gordon went up with their petition to the house of commons, and they accompanied him there. So far there was nothing amiss, except that being tumultuous it was indiscreet, because it was going with a great number of persons, which was tumultuous, or had the appearance of being so, and if they were not satisfied with the result, some amongst them might break out into acts of violence." Such were Justice Holroyd's views of illegal meetings. Much reliance has been placed by the counsel for the crown in the present case on the opinions alleged to have been expressed in this same case of Redford's by Lord Tenterden, in reference to the right of subjects to exercise in military manœuvres; but, my lords, on reference to Starkie's report I find that Lord Tenterden did not express any positive opinion on the subject at all! In page 128 Lord Tenterden observes, "It is by no means to be taken for granted that it is lawful for the subjects of this country to practise military manœuvres under leaders of their own, without authority. It is not to be taken for granted that that is law. I believe, on investigation of the subject, it will be found not to be law. *I pronounce no opinion upon it*," and that is what is called the positive opinion of Lord Tenterden! The learned counsel then referred to the celebrated case of the King *v.* Hunt, better known as the case of the Manchester riots, as reported in Barnwell and Alderson, and also in Mr. Hunt's biography. The most ample report of Hunt's trial was to be found in the biography of that distinguished patriot (laughter), and it had been introduced at great length into the work by Hunt's biographer. The evidence against Hunt referred to the Manchester meeting, and in an especial degree to a resolution which was passed thereat. That resolution was a somewhat startling one, no doubt, for it was to the effect that if the people's grievances were not redressed against a given day, and the parliament reformed, the sage individuals who concurred in the resolution were to consider themselves as relieved from their allegiance. This was a bold step; but the next project that they had in contemplation was more daring still, for they proposed to meet together on a given day, and to elect a member for Manchester, without any writ issuing for that purpose, and without any authority whatever from government. The magistrates interfered, however, and that project was given up: but they resolved upon the meeting on the 16th of the month, and they did hold their meeting on that day, after having spent the whole of the 15th in drilling at Whitemoss. One of the witnesses examined on the trial, in reference to that meeting, was a man of the name of J. Murray, who was reported in page 295 to have given evidence to the following effect:—[The learned counsel then read the evidence of the witness Murray, as reported in the work referred to. It was to the effect that the witness had been present on the 15th at the drilling at Whitemoss; that he heard the words "march" and "eyes right" (laughter); that he was told by the drill-sergeant to fall in; that on

declining to do so the cry of "spy," was raised against him, and that the people cried out "kill him—murder him;" that he and a man who accompanied him to the fields had to fly for it; that they were pursued by eighty or ninety men, and that his companion was knocked down and kicked into a ditch; that he (witness) on a subsequent day was again pursued by the Huntites; that he was knocked down and kicked; that he protested against such treatment, and said that he did not like that kind of reform in parliament; that he was compelled to go on his knees and swear against the monarchical power; that he was again beaten, and then permitted to return to Manchester] There was another witness examined of the name of Ashworth, who, as reported in page 307 of the same book, deposed that he heard the people say that they would make a Moscow of London; and that he saw pike-heads, flags, and banners, with inscriptions on them, such as, "Better die like men than live as slaves," &c., &c. You see, gentlemen, what a strong analogy there obviously exists between Hunt's movement and the repeal movement (laughter). Don't they resemble each other in every feature and characteristic (laughter). Gentlemen, it is monstrous—it is in the last degree preposterous, to endeavour to contend that any similarity exists; for never were two cases more thoroughly and essentially different. Mr. Justice Bayly said the people carrying banners were alone liable to the penalty attached to the illegality or criminality of the act. I wish to call your lordships' attention to that fact, for it appeared in the course of this trial that an arch was erected across the road where some of the traversers were proceeding to a meeting, and it is sought to attach blame to them for the intent of the parties erecting that arch. The Attorney-General in his opening statement did not cite the recent cases of the Queen *v.* Vincent and others, out of 9 Carrington and Payne, p. 95. He did not quote that case for——

Chief Justice—I believe he did.

Mr. Whiteside—No, my lord, it was another case he cited, and I wish to call your particular attention to the charge preferred against the party then. The first count charged them with, that they being evil-disposed persons, did disturb the public peace, and excite discontent and hatred, &c. in the minds of her Majesty's subjects. The 12th count was for a tumultuous assembly, and the 13th count was for a riot. Hear the evidence given in the case. Mr. Phillips, the mayor of Newport, swore that he went to the meeting at eight o'clock on the evening of the 19th March, and that he heard Vincent address the assembly relative to the government. He described it as a cannibal and atrocious system. He then referred to the people's charter, and said the snow-ball of Chartism would be hurled from the hill on their oppressors. Very like this case, is it not? (laughter.) He told the people if any policeman interfered with them to break his head. Very like what the traversers told the people, is it not? (renewed laughter.) Mr. Johnston, a commercial traveller from Liverpool, was examined, and stated that he had a conversation with Townsend, who wanted him to supply three hundred muskets, six hundred cutlasses, and pistols in proportion; but he refused to furnish arms for such an abominable purpose. He then went and informed the magistrates. Baron Alderson, in summing up, said—"You will have to say, looking at all the circumstances, whether the defendants attended an unlawful assembly. You will consider how far these meetings partook of that character, and whether firm and rational men, having their families and their property, would have reasonable ground to fear a breach of the peace. It must not be merely such as would frighten any foolish or timid person, but such as would alarm persons of reasonable firmness and courage." The jury found the defendants guilty of attending an unlawful meeting, but acquitted them of a conspiracy. Hear what Mr. Baron Alderson in his charge to the grand jury says on the same case—"There is no doubt that the people of this country have a perfect right to meet for the purpose of stating what are or what are not their grievances. That right they always have had, and that right I trust they will always have. Let them meet if they will in open day, peaceably and quietly, and they would do wisely, when they meet, to do so under the sanction of those who are the constituted authorities of the country. To meet, under irresponsible presidency is a dangerous thing, but nevertheless if when they do meet under irresponsible presidency and conduct themselves with peace, tranquillity, and order, they will perhaps lose their time and nothing else. The constitution of this country does not punish persons who, meaning to do that which is right in a peaceable and orderly manner, are only in error in the views they have taken on some subject of political interest." The next book I shall quote from is a report of the late trials of the Chartists in England, and it is remarkable for the clear law as laid down in that case by Baron Rolfe. In the case I shall cite the people went about destroying mills, injuring property, and preventing people attending to their work. Feargus O'Connor was one of the persons charged. He was the proprietor of the *Star* newspaper, and he was charged on a separate count framed to meet his case. The acts charged against him were not committed at the same but at a separate time, and he was only to suffer for what he himself had done. Yet I have heard it said here that for acts done two years since or more, by parties seeking a particular object, a man who had not originally participated in these acts is to be responsible because he subsequently joined them. I'll not trouble the court with reading the evidence given in this case, but I will send it up to the bench. At Blackburne the military fired upon the people; and I now turn to the charge, which is in page 358. In that charge the learned and able judge stated that the charge was one of conspiracy. The first charge against Mr. Feargus O'Connor was that he attempted by force of arms to dismiss men from their work. The next count was that he attempted by violence to change the laws of the realm; and further, that the said Feargus O'Connor endeavoured to create disaffection amongst the subjects of the realm. You see, said counsel, that the charge of spreading disaffection, standing alone, is not sufficient—it is nothing. The learned judge further stated that if several persons were each ignorant of the acts of the others, those so ignorant of the acts could not be considered guilty of them. He further said that the jury, to convict them of the conspiracy, should believe that all were guilty of one and the same act. Those who took a part in the combination to compel a rise in wages, but took no part in the movement that occurred, which was no part of the conspiracy, could not be convicted under the count for the conspiracy. Gentlemen of the jury, having stated these principles to the court I shall now pass to the facts of the case. Let us see, before we proceed further, what is it you are to find on this indictment. According to the principles I have stated you are to find what the parties have done. What? Is it that they agreed on a political question? No. That they combined to carry out their views on a political subject? No, but that they conspired and confederated by a complete union of purpose—by a perfect unity of design—by a complete pre-arranged plan to do all the acts set out in that indictment. If you find them guilty upon any one count—if you find them all guilty, you must find them guilty of having done all in that count, with the illegal effect specified in that count.

Mr. Justice Perrin—I suppose you do not mean to say they are to find that the traversers committed every overt act?

Mr. Whiteside—Certainly not, my lord; but I say they must find them guilty on any count of one and the same conspiracy. The overt acts are quite distinct from the conspiracy.

Mr. Justice Burton—I wish to know, Mr. Whiteside, in what way the book you handed up to us is authenticated?

Mr. Whiteside—The publication of that book was by a man who was candid enough to state the circumstances of his own conviction—Mr. Feargus O'Connor (laughter).

Mr. Justice Burton—Then, this is an account of the trial by him.

Mr. Whiteside—Yes, my lord, and he, a lawyer, states that he was satisfied that he was tried according to law, and that he was punished accordingly (a laugh). The whole was taken in short-hand by him. Gentlemen, the Attorney-General may make out this conspiracy by one or two means—first, positive and express proof that the traversers entered into the agreement to do these acts—or he may make it out by inference from the several matters which have been given in evidence before you. There is no evidence of express agreement to do these things, so that we come at once to the second part. The object of Mr. Duffy is to accomplish the repeal of a certain act of parliament, called the act of union, commonly called the 40th of George III. The object he had and has in view is perfectly legal. No parliament can make a law that another parliament cannot unmake. The legislature of one period cannot bind or fetter the legislature of another—if so, absurd and cruel laws would become perpetual. A great body of evidence had been given and received. The act of Mr. Duffy is received because he is on trial—the act of Mr. O'Connell is received because he is on trial—the act of Dr. Gray is received because he is on trial; and the speech of Mr. Steele, for the same reason; but if my client agreed with all or any of them for a legal and commendable object, he is not reponsible for the intemperate effusions of their mind; and these matters are received because they are their acts, but not evidence to fix guilt on my client. The first thing I direct your attention to is the vast meetings that have been held throughout the country. They commenced on the 19th of March, 1843, and terminated in October, in the same year Now I observe that there is complaint of those meetings as unlawful—no charge of riot—of a breach of the peace, or tendency to it—no charge of assault on persons, or that property was endangered; therefore you are required to believe, strange enough, that attending at those meetings, and causing those meetings to be held, which are not for an unlawful purpose, are overt acts to prove a guilty conspiracy, such as is laid in the indictment. I care not for the words in this indictment, that there was an "exhibition of physical force;" that language is not sensible—it is not explained—there is nothing in it to lead the understanding to what it emphatically means. I have quoted to you already the words of an eminent judge, who said, "God be thanked, it never has been questioned that the right of the people of England to petition is their ancient, undoubted, unquestionable privilege." They may meet to petition: and will any man tell me that the meeting over which Lord Roden presided was legal, and that to meet and petition for repeal is unlawful? If such a thing is asserted as law, I reply again, the law of England should cease to be regarded as a rule of reason. I require the Attorney-General, since they have at the other side, in the progress of the trial, put questions to us, to state to you whether he requires twelve men, administering the law of England as it exists, to adopt that monstrous proposition laid down by the Attorney-General, that the more profound the tranquillity of these meetings—the greater the peace—the more perfect the order, the greater is the illegality; the greater the determination not to violate the law, the more incontestible is the proof of conspiracy. Gentlemen, I may say with truth, that these meetings of the people are disliked both by kings and their ministers. For men born to command, dislike hearing the language of the people, expressing, perhaps, in tones of indignation, their grievances or their wrongs. Such sounds startle their ears, and discompose their serenity. Try it by this test: suppose the twelve gentlemen, whom I have the honour to address, agree upon any one question—a fiscal question or any other in which they may be interested—hold a meeting, let your facts be the most convincing, your reasoning the most just, still your meeting is treated with contempt by the press, your observations produce no effect upon the minister: let 1200 of the same class of men meet with the same object in view, and the reporters will flock to hear you, and your argument will reach the public; your resolutions will find their way to the minister of the day—he begins to see what is the bearing of the public mind upon a public question, and his slowly-moved nature begins to be affected. But, suppose, 1,200,000 men meet and exhibit determination and resolution in the pursuit of their object—meet three, four, and five times, and state in plain, unmistakable terms that the minister must consider their cause of complaint—that he must discuss it with them, the attention of government will be awakened to your wants; and let me tell you, you would not be conspirators, because you agreed in one common object, and you would not be made conspirators if one of those assembled used violent and foolish language, or if an incendiary or spy should spread through the congregated mass seditious matter which was not brought home to you as having been connected with it in act or language. And, gentlemen, the humbler classes of the community (to call them rabble is the height of insolence), who have not in their several individual positions in life the same moral weight as each of you, must compensate for the want of it by the addition of numbers in their meetings; and if the reporters that came here from England were astonished at the peace, order, and good manners exhibited by *those savages* who inhabit this part of the empire—if the peasantry of Ireland at those meetings conducted themselves better, as one of the witnesses said, than the British house of commons—I will not say that they are more orderly than the house of commons, as that house is now sitting—but if the people are well conducted at those meetings, then those assemblages are as legal as yours would be, gentlemen of the jury, though so different in numbers. I will now, gentlemen of the jury, call your attention to a few of the meetings held in England which were not considered illegal. The first meeting I advert to is that which Mr. Ross, the crown witness, proved he was present at, the meeting held in London upon which 200,000 persons of the lower classes were present. They met together to discuss their grievances, which consisted of the sentence passed upon the Dorsetshire labourers; they marched to Downing-street to visit the minister of the day, Lord Melbourne, with a petition which it took twenty men to lift. They were headed by the Rev. Dr. Wade, a clergyman of the established church, in full canonicals, and, be it remembered, it was imputed to Mr. O'Connell as a leading fault that he went to those meetings in his red robes of office. It is not very likely that a man going to incite men to the commission of crime and violence would proceed to effect that object in his robes. [The learned gentleman then read the description of the meeting

from the *London News* of April 27th, 1834, by which it appeared that those 200,000 men marched in military array—five men deep, with banners and insignia, &c.] Now, gentlemen, what is the result of those 200,000 pepole marching through the streets of London, with flags and banners, uninterrupted by any person? and what is stated by the prime minister of England sensibly is this—200,000 persons coming to the seat of government to present a petition is a thing that cannot be sanctioned by the government. He says, your meeting is justifiable—your petition is justifiable—your conduct is justifiable; I shall have no objection to lay your remonstrance before the king, but I cannot receive a petition from a deputation of 200,000 persons. I admit that you had a right to meet and come to that conclusion—send it to me to-morrow and I shall lay it before the king. Where is it suggested those men are guilty of conspiracy for meeting for those objects with flags and banners, and marching through the streets of London? The police of London were ordered to leave the ground except there was a tendency to riot and confusion, and there was neither. But the right objection is taken to that meeting, that where such a large body of men shall proceed to the king or the houses of parliament, that is a proceeding that ought not to be sanctioned or established as a precedent. An account of that meeting is given in the *Morning Post* of the day. It commends the conduct of the government in not interfering with the meeting, and, speaking with regard to the London *Times* that had censured it, observed, they thought such conduct strange when they recollected the loud praise formerly given by that journal to the brickbat and the bludgeon. I shall next have to refer to a meeting of the Birmingham political union, held October 8th, 1831. I will state the rules of that body when I come to discuss the constitution of this assembly, which, as the Attorney-General said, was illegal:—"Grand meeting of the Birmingham and other political unions of the midland districts—On Monday, in pursuance of advertisements issued by the council of the Birmingham political union, a public meeting of the inhabitants of the town and neighbourhood took place off New Hall Hill, for the purpose of demonstrating to the house of lords that the public enthusiasm in favour of the reform bill is not abated, and in order to petition the right honourable house to give their final sanction in carrying that great measure into a law without delay. The spot fixed upon for the scene of this amazing spectacle was New Hall Hill, a large vacant spot of ground situated in the northern suburbs of the town. It consists of about twelve acres of rising land, in the form of an amphitheatre. In the valley a number of waggons were ranged in half circle, the centre one being appropriated to the chairman, and the various speakers who addressed the meeting. About half-past eleven o'clock, the Birmingham Union, headed by Messrs. Attwood, Scholefield, Muntz, Jones, &c., and preceded by the band, began to arrive, but such were their numbers that a considerable time elapsed before all had taken their stations on the ground. The scene at this moment was peculiarly animated and picturesque; at different points of the procession various splendid banners were carried, on which were as varied devices and mottoes; among the latter we noticed, 'William the Fourth, the people's hope.' 'Earl Grey—the just rights of our order secured, we will then stand by his order.' The device of a dove with an olive branch, and the rising sun, with the motto, 'Attwood, Union, Liberty, and Peace.' 'Taxation without representation is tyranny.' 'Lawley and Skipwith, and the independent representatives who voted for reform.' 'Let it be impressed upon your minds—let it be instilled into your children, that the liberty of the press is the palladium of all your civil, political, and religious rights.' 'Union until England is regenerated, Scotland renovated, and Ireland redressed.' 'The best security for the throne of kings is the people's love.' It is utterly impossible adequately to describe the appearance of this most magnificent assembly. When the council had taken their stations on the platform, upon the lowest computation not less than 80,000 were within the range of vision, and in about half an hour afterwards, when the Staffordshire unions arrived upon the ground, the number present was calculated by some at considerably above 100,000. The spectacle was the most splendid of the kind we ever witnessed. Among other distinguished persons present on the occasion, drawn to the spot by motives of curiosity, but who took no part in the proceedings, were Prince Hohenlohe (the brother of the celebrated prophet of that name), and the Chamberlain to the King of Prussia. They accompanied Mr. Attwood, to whom they had been introduced by Mr. Rothschild, for the purpose of witnessing the progress and perfection of Birmingham manufactures; they had likewise had the good fortune of witnessing an unparalleled exhibition of Birmingham public spirit." The speeches were a little warmer, and it is not necessary to state them, but they say plainly they will have their rights; that that bill shall be passed—that the then representation in parliament was a mockery, a libel on the constitution, an insult to them—that they, the wealthy inhabitants of Manchester, should not be represented though the little town close by had two representatives; they say that that may be law, but it is not constitutional, and they will have it redressed. They went further, which was improper. They intimated their intention to pass a resolution not to pay taxes, and to send up 100,000 persons to London to quicken the deliberations of the house of lords. That would be unlawful. Did any minister of the day say that that meeting was illegal? No attorney-general that ever stood on English ground would have dared to say so, and I don't say that insolently or presumptuously; whether it was right or not is another question. They said they would combine, unite, and become powerful, and since this law was resisted by the oligarchy for unjust purposes, they would oblige them to pass this law by a moral confederacy; that is what Mr. Solicitor-General says is a demonstration of physical force. They had many of the rich, wealthy traders, and a great portion of the physical force of the country at their back, and they say this law ought to pass; the resistance to it is corrupt, it is resisted, because men wish, for their own profit, to prevent that from being the law; but they shall not prevent that being the law of the land—and is it not now the law of the land?—and that it is the law of the land is as much owing, perhaps, to that meeting as to any other cause. I recollect that Lord John Russell said he did not see why the people should not speak out, and that the whisper of a faction should not put down the voice of the nation. There was then none of the mawkish, sentimental twaddle about men expressing their conscientious convictions that such a law should be the law of England as would provide for their freedom. There were other resolutions, which I shall not read to you, which were very bold and startling. I will now bring the Attorney-General to the part of England he is connected with—his own happy Yorkshire (laughter). Ripon, for which he is representative, is situate there, and I am sure no more honourable or better representative could be found. I will bring him back, gentlemen, to Yorkshire, and tell him when next he goes there to inquire about King Richard (laughter)—that is, Mr. Oastler—and to see his placards. There was very great discontent in the North of England on the factory bill and the poor law bill. The mass of the people thought the young

and old engaged in those factories were white slaves —slaves living under the beneficent rule of England, and worse off, as they describe it, than the black slaves—that their children were forced to work when they did not possess strength to do so, and speeches and songs were made about this grievance. I shall now quote from the *York Herald and General Advertiser* of the 28th April, 1832, and I will show how they met:—"Great Yorkshire meeting in support of the ten hours' factory bill—This great meeting, in support of justice and humanity, was held in the Castle-yard on Tuesday last. According to the programme the various divisions of operatives entered Leeds from Halifax, Huddersfield, Bradford, Dewsbury, Heckmondwicke, Keighley, Holmfirth, &c. &c., with their flags and music. They repaired to the White Cloth Hall Yard, where refreshment was served to those who, from want of employment, could not afford to supply their own wants. The first Leeds division left that town at eleven o'clock at night, and the second an hour after." [The learned gentleman then read a description of the procession, banners, &c., and an extract from the speech of Mr. Oastler, and proceeded]—Mr. Oastler did not mince the matter. Nothing could be more distinct or emphatic than his language. He began by saying that they had come together to give a vote against the unendurable white slavery. He denounced the aristocracy, and declared that the wealth they possessed was the proceeds of their sweat and labour. Did any Attorney-General ever say that because those men combined for a common object the means they took were illegal? And yet, they assembled from distant places—they marched with lighted flambeaux in thousands—some of them came sixty, seventy, eighty, or a hundred miles—to do what? To demand that the manufacturers should recognise their claims; that the legislature should listen to their grievances—should discuss those grievances—should redress them; that they should listen to the call of humanity on their behalf, and that they should do those artisans that justice which I hope yet will be done to the poor labourers of Ireland. Gentlemen, there is an account given in a publication, from which I shall read some extracts to you, of the means which were employed in order to get that act of parliament passed. And what do you suppose they call these gatherings? Pilgrimages of mercy. Than the language of these publications nothing could be more exciting; they held the manufacturers to be almost worse than the negro slave owners—they insist that the law shall be altered—they prevail, and the law is altered. Gentlemen of the jury, I will now draw your attention to the meeting which was held at Hillsborough, and which I think Mr. Sheil spoke of to you, and I will take the report of it from the *Dublin Evening Mail* of the 31st of October. The men of the north are described as having done their duty well, and I am happy to hear it. I admire them and I like them for it. They marched to Hillsborough, "in border fashion," to express what?—that the men of the north were determined that the union should be maintained, and that they would stand by the government in maintaining it with their lives and fortunes. They marched there to express that determination—by what means? by what is called, in the language of this indictment, "the demonstration of physical force." They resisted the agitation for the repeal of the union. Had they a right to do so? What! 75,000 men meet and march "in border fashion" to Hillsborough to maintain the union, and do you, gentlemen of the jury, think if they met to-morrow for a like purpose again to express their determination to maintain the union, and to declare their confidence in Mr. Attorney-General and Mr. Solicitor-General, to say how grateful and how much indebted they were to them, and passed a vote to that effect for the spirited zeal and ability, and I will add, moderation with which they conducted these prosecutions, I ask would not Mr. Smith return them thanks in his most flowing and graceful style (laughter)? How deeply grateful would he not express himself, and would he not say—"Gentlemen, to the latest period of my life I shall cherish this expression of the confidence and approbation of so many of my fellow-countrymen, and I cannot sufficiently express my gratitude for the too flattering manner in which you have declared your approbation of my conduct, and that of the government, of which I am an unworthy member (loud and general laughter through the court). Gentlemen, I am happy to find that you are determined to sustain the union, which is now the law, the church, and the state, and all the established institutions of the country" (prolonged laughter). Yes, gentlemen of the jury, 75,000 men met at Hillsborough for a common object, and having a common purpose, and they did what they met for in capital fashion. Scarcely one who met there—and there were no women or children among them—but could handle a gun and polish a musket; and, gentlemen, I believe the Attorney-General rejoices, from the bottom of his heart, that they can do so. Suppose those men came to a resolution, such as the following:—"Resolved—That we are of opinion that the union is unconstitutional, illegal, and a grievance, and should be repealed"—I would ask had they not equally a right to meet and express that opinion? Suppose that they came together to express that determination with flags, and banners, and bands of music, performing those tunes with which Mr. Napier is so familiar (laughter), for full many a time and oft has he defended most respectable clients charged with the slight excesses they may have committed on their return from pleasant parties, where they commemorated the memory of the man who, as Lord Plunket described him, "came to this country to conquer Ireland into happiness and peace." Suppose, then, they assembled, as the *Mail* says they did, "in border fashion," and declared in bold language that they would give their countenance to the minister in suppressing the agitation; that they were prepared to back him with their lives and properties, what would be said of its legality? Was it not a formidable demonstration of physical force? What would it have been if it consisted of but five, or ten, or fifteen thousand men; but it was a meeting of 75,000 Protestant yeomen, every man of them in the possession of arms? Had they a right to say that they would resist the repeal of the union? I say they had. The Solicitor-General says they had not by this prosecution. There is no law that I know of for one class of men more than for another; there is no law for the nobleman that is not for the peasant; and I have no doubt on my mind that you will not make any distinction whatever between the assemblage of 75,000 men at Hillsborough and 500,000 men at Tara. I have no more doubt than that I am now a living man, that with twelve men on their oaths no such consideration of a paltry or pitiful nature will be allowed to enter their jury-box, as to induce them to hold that meetings of a peaceful character, to petition the legislature and the crown, are not as legal and consistent with the rights of the subject as that the crown of these kingdoms belongs of right to our most gracious Sovereign. I know that you, gentlemen, will not act on that left-handed principle; that you will not say the men of the north may meet to express their sentiments and opinions, but the men of the south shall not do the same. The law of this realm is an equal and an impartial law—a law which knows no distinction between man and man—which discriminates between no religious or political class or creed, but throws its protecting shield alike over

all. I am sure, gentlemen, you will show that you are not insensible to the benefits of that constitution, of which you are this day in some degree the guardians, and that when a *bona fide* meeting is called for *bona fide* purposes, and not as a mask to conceal or cover an intention to pull down the institutions of the country and spread ruin and devastation through the land, that such a meeting is not a violation of the letter of the law or the spirit of the constitution. And now, gentlemen, I will take the liberty of directing your attention to the general character of the meetings, as it is demonstrated by the general tenor of the evidence, for I will take the evidence *en masse* in this respect, and will not go through the meetings *seriatim*. Analyse with accuracy the testimony which has been given upon this branch of the case, and carefully compare it with the testimony which might have been given. Rank and file, we had the whole police establishment of Ireland upon the table. I mean that there is no rank, office, or degree in the constabulary department, a representative of which has not been brought before you, gentlemen, in the character of a witness. We have had police sergeants and police constables, and head constables of police, and inspectors of police, and sub-constables of police, and aspirant constables of police—all these we have had, but very few police magistrates, though their evidence might have been very important, and would, probably, have carried much weight with it. We, to whom the defence in the present case has been entrusted, adopted every expedient that human ingenuity could possibly suggest, in order to obtain authentic and undeniable evidence as to the true character of the monster meetings. During the few weeks of respite which your lordships were kind enough to permit us, we appointed agents throughout every district of the country, to whom we assigned the duty of discovering what acts of violence, if any, had been committed at those meetings—whether the person of any man had been assaulted, and whether the property of any man had been injured—whether men who differed on political points from the traversers felt terror or alarm at the meetings; and we can prove by evidence the most incontestible that no one of these things was ever known to have occurred. No alarm was felt by any rational man in the community, for no injury was any where offered to life, character, or property. Indeed, gentlemen, you have had this fact demonstrated even on the evidence of the crown themselves. From east to west, in no single instance was there an infraction of the law—of good order or decorum—no exhibition of arms of any kind. No violence—no intimidation—no alarm—no terror—in no instance was one man injured or insulted by another—the people went by masses to those meetings—men, women, and children, and so admirable was their conduct and their arrangements that not even an accident occurred. Why did not the crown ask the witnesses whom they brought upon the table whether they knew of any alarm having been created by this movement? If the meetings were held with, as the Attorney-General insinuates, the purpose of instilling awe into the public mind, why did he not bring witnesses from Mallow, from Baltinglass, or from any other of the districts that were the scenes of the monster meetings to prove the alleged fact? No living man had been adduced as a witness to prove anything of the kind, and for this obvious reason, that such a statement was utterly incapable of proof. The police were scattered every where through the country. They were ubiquitous, sometimes attired in their uniforms, but more frequently disguised in coloured clothes; they were dispersed amongst the people in every quarter of the country. They were in the nature of spies, though he did not use the word invidiously, and their duty was to make inquiries in every hole and corner, and to report to the government every thing that took place. What was the result of their evidence? What was the sum and substance of their testimony? This, that whether they were disguised or not disguised they were never subjected to unworthy treatment at the hands of the people—that no injury was ever inflicted upon them—that the people conducted themselves invariably with peacefulness, good order, and tranquillity—and that, although this disadvantage is naturally connected with the assembling together of multitudes in vast masses, that the ill behaviour of a solitary individual may be imputed to the charge of the whole meeting, and may bring danger on all, yet on no one occasion was there an instance of even an individual impropriety of conduct. If the contrary was susceptible of proof, why was it not proved? No witness has proved that there was any display of weapons of any description. The people went empty-handed to the meetings, or else were armed with nothing more than a white wand, somewhat similar, as far as I can judge, in length and thickness to the switch wherewith my learned friend and myself were, in former years, corrected for our boyish misdeeds (laughter); and even these were carried only for the purpose of preserving order, and preventing confusion and obstruction on the roads. Such is the evidence of our crime—such "the head and front of our offending." Our meetings were peaceable, orderly, and legal. But I forgot that, in saying this, I am uttering my own condemnation, for the monstrous proposition for which the Attorney-General is contending is, that the more peaceable, the more orderly, the more decorous were the meetings, the more deserving are they of reprehension; and the more eloquently it is attested that their objects and purposes are wicked and treasonable (laughter). The fact is, our peaceable demeanour is nothing more or less than an evidence of the atrocity of our fell intent (laughter). This is the doctrine contended for by the counsel for the crown, and according to this doctrine it naturally follows, that if you, gentlemen, had been put into that jury-box in order to decide upon the sanity or insanity of any one of her Majesty's subjects, every effort that is made to prove by the most authentic evidence that the words and actions of the party whose case is under consideration have been in the strictest possible conformity with the dictates of the most unclouded reason, every particle of evidence that is adduced to prove this fact must, according to the Attorney-General, be regarded as damning and most conclusive evidence of the insanity of the man upon his trial (laughter)! Yes, gentlemen, the legality of our proceedings is to be regarded as an evidence of our intention to attain a legal object by illegal means (laughter). If we had acted like the old Irish—if we had demeaned ourselves like drunken, besotted, ill-conditioned men, knocking down and beating all we met, that would have been all natural, and nobody's suspicions would have been aroused. That would have been quite consistent with the Irish character—the law would then have been broken, as it ought to have been broken, and as it had been broken in Ireland from time immemorial. But no; we demeaned ourselves with courteousness towards every one, with the strictest good order, and for that reason the suspicions of the Attorney-General are aroused—for that reason he walks into court with Hawkins and Hale in his hand to prove that we have been guilty of treason, conspiracy, and everything that is horrible (laughter). The Attorney-General, to be sure, told you that our petitioning parliament was only a plea or empty pretext for giving a legal complexion to unlawful proceedings, and indeed I think I understood him to say that he intended to adduce evidence to

prove that petitions from these meetings were never lodged in the house of commons. But he has not brought evidence to prove anything of the kind, nor would it have been of consequence even though he had. We did adopt petitions at all these meetings, and the contrary is not to be assumed, because forsooth the petition may not have followed immediately on the track of the meeting. Mr. Erskine, in Hardy's case, distinctly expressed it as his opinion that a meeting was not to be deemed criminal or illegal because the petition may not have been prepared with panting expedition. It was contemplated by the repealers that the repeal petitions, like the Chartist petitions, should be held over until thousands upon thousands of signatures had accumulated, in order that when at length they were brought under the consideration of the house they might produce a deeper and more serious impression upon the public mind. It was sought to be proved that the people marched to those meetings in military array. But when a witness was produced to prove the fact, he was asked did they keep the step, and he said no; and indeed I defy any man to keep the step to such music as is played by the temperance bands (laughter); and because the people did not march with regularity, oh, says the Attorney-General, that's rank sedition (laughter). He hears some attempt made by a parcel of boys in the country to play some tune, and up he starts, and says that's rank treason (loud laughter). They don't play party tunes, however, these temperance bands; no, they are not like the music—the good and loyal music—played by the bands in the north of Ireland. Oh, dear, not at all (loud laughter). I'll tell you the music they play there, "The Protestant boys will carry the day" (great laughter). "The Boyne Water," and oh, the croppies lie down, of course, "Down, down, croppies lie down" (immense laughter). These are the royal tunes in the north, they despise all others in the world, and many a broken head, and black eye, and sore arm, has resulted from not joining with the loyal bands who play those loyal tunes (a laugh). But they don't play God save the Queen there at all, and because the temperance bands play it, oh, says the Attorney-General, that's rank treason (great laughter). Well, when we come to deal with the bands, they had colours flying—they had uniforms—they were in fact fine fancy fellows, swaggering away, thumping a big drum, and playing God save the Queen. How fearfully annoying and seditious that to loyal ears (laughter). Why, I tell you what, gentlemen, I never heard such music as the temperance bands play. I defy any man but a policeman to march to it. I heard one the other day coming from Mr. Purcell's, and I could have sincerely wished it any place else at the time. Ah, but because the poor fellows who compose the temperance bands through the country don't go to the public-house now at night, get drunk and break each others heads as heretofore, because they don't do that, but indulge in playing their musical instruments, why, it is said by the Attorney-General—it is distorted by a supple understanding—it is twisted into a foul and rank conspiracy. Well, I think the charge was not far wide of the mark, for I never heard of a fouler or a darker conspiracy—to do what though?—to murder harmony (roars of laughter). Oh, yes, these temperance bands did conspire, confederate, combine, and agree to —— murder harmony (renewed laughter). That was the strong ground on which the other side relied. We have heard of mottoes, too, and a good deal about the treasonable designs on them. The good and loyal mottoes of the Attorney-General would be—"Church and State," with the "Constitution of '88" (great laughter). Yes, these would be the mottoes of the Attorney-General, the good old loyal constitution of 1688 (renewed laughter), and others that, no doubt, he believed in his heart to be true, sincere, and genuine (great laughter). These were the real loyal mottoes in the mind of the learned Attorney-General. Let us turn now to the treasonable ones. Mind, they don't bear the inscription of "Church and State," for one of the first of them was "Liberty and Old Ireland." Compare that with church and state, and if you do not conclude it is rank treason, why—— (the remainder of the sentence was lost in a storm of laughter). I ask you is it not rank treason and foul conspiracy to put "LIBERTY AND OLD IRELAND" on a flag (great laughter)? Another has "REPEAL OF THE UNION," and another, "WE WILL NOT BE SLAVES." There's treason for you—no getting out of that (laughter). Come we now to the next, and it's awful—"We will not be slaves." There's treason for you (renewed laughter). The people say we will trust in O'Connell and his advice, who tells us to come quietly to a meeting, and go home peaceably. There's treason for you (immense laughter). He tells us not to commit a crime, and we obey him; that's rank treason at all events (shouts of laughter). We go to the meetings quietly, return peaceably, don't drink, commit no crime, violate no law, and up starts the Attorney-General and tells us it is all rank treason and foul conspiracy (great laughter). Oh! says the crown prosecutors, those fellows have returned to reason; they won't get drunk and break each other's heads now; they won't go to gaol, they will persevere in dogged peace and tranquillity and we are all ruined. It must be treason—rank and foul conspiracy (shouts of laughter). Why, Sir Thomas Staples will not have a single case in the north-east circuit (laughter). In north or south, east or west, there will not be a man to go to gaol (great laughter). The crown prosecutors start up, crying out, down with the temperance bands (laughter). The fellows won't meet in the public houses, but they play music, and the crown lawyers all conspire, confederate, and agree to make that a conspiracy (roars of laughter). Talking about mottoes, it's very odd what I can tell you about the late Duke of Sussex—I will go even to royalty for an illustration. The Duke of Sussex made a speech sometime after the Manchester massacre. That speech was delivered at the Fox Club dinner in Norwich, in the year 1820, and when the king's health was given it was drunk in silence—mind that, in silence—the king was the brother of the Duke of Sussex, and yet his health was given in silence. That's not the way we do the thing in Ireland, when the Queen's name is mentioned we kick up our heels and fling our hats into the air, and shout for joy (laughter). Those who say the Irish people are not devoted to the aristocracy and love the constitution are mistaken—there is not on the face of the earth a more devoted people than the Irish to their superiors. At the dinner where the Duke of Sussex made the speech there was a motto "Liberty or Death," and the Duke said he would prefer losing his life to his liberty. That was the language of one that might have filled the throne of England, but the moment a poor Irishman puts liberty on a banner, the officers of the crown start up and say it's treason (laughter). Well, let us turn to some of the banners or placards of one of those meetings; it was stated that there was an arch erected at the Tullamore meeting, but that was not put up by Mr. O'Connell, or any of the traversers. It was erected on the road, and before O'Connell came up. There was a placard there, with the words "Ireland her parliament, or the world in a blaze." This was affixed without the knowledge or consent of Mr. O'Connell, and the moment he saw it he sent Mr. Steele, who could not be examined, to pull it down, and he refused to enter the town until it was pulled down. It will be proved to you that it was taken down and destroyed

before the meeting. I rely strongly on that. Does not that fact tell strongly in favour of my clients? I will turn now to what occurred at Mullaghmast. We don't object to the evidence given as to the banners and flags, and what he said at the meetings where they were used, although Mr. Justice Bayly says, evidence should only be given of what was said of them, or unless they were within view of the speakers. If the meeting at Mullaghmast was illegal then there is an end to all meetings. What is the test of an illegal meeting? I will try it by the test of the meeting at Hillsborough—the speeches, banners, flags, the conduct of the people going to and coming from it; and, gentlemen, these things are to be looked at and considered with the eye of a Christian, and as men who respect the privileges of the constitution, and not with the captious eyes of a lawyer. You are not to find men guilty of different motives to what they avow themselves. The Marquis of Downshire, and some of the highest men in the land, were at Hillsborough, with their tenantry at their backs; and if a ballad-singer from Belfast came there to sell a slanderous, wicked, disgusting production, are they to be tried for it because they spoke from the hustings? No—this should not be. Is it because an ill-minded, illiterate fellow—a spy—sells that production for the eager eyes of those who are willing to buy anything offered to them—that others should be prosecuted? Is what a ballad-singer vends at Mullaghmast to be acted on and given in evidence. Gentlemen of the jury, you should ask has Mr. O'Connell sanctioned it. Where is the evidence that he did? Where is the man to prove that he was ordered to do it? What is the proof given by the crown? They have produced the printer, Mr. Browne, the printer of the association; but there is not a particle of evidence to prove any order for the printing of it, and then the Attorney-General says we should produce the printer. The Attorney-General says he proved all that he had to prove. I complain that he has kept back the witness who could have proved the printing of this ballad. It is not our duty to bring him forward. They have ascribed guilt to us, and they should prove it. And, gentlemen of the jury, although the evidence as to that ballad has been received by the court, it is not evidence against us as it is not proved that we had any common intent with the person who printed or sold it; and even if one of the traversers had caused it to be printed, it is not evidence against the others unless they had agreed to the printing. If the placards used at the meetings are not evidence against us, unless proved to have been used by preconcert, union, and combination, how can this ballad be evidence unless proved to have been similarly used?

The court here retired for the usual time. When their lordships returned,

Mr. Whiteside continued—Gentlemen of the jury, I shall now draw your attention to some portions of what was said at those meetings, and as you have heard Mr. Fitzgibbon allude to some of the best passages in Mr. O'Connell's speech, I will take up a few of what may be considered the worst. I will first observe that many of those speeches are not actually proved to have been spoken by Mr. O'Connell. The nature of the accusation enables the party accusing to put in a number of papers containing, as it is alleged, speeches of Mr. O'Connell's, but it is proper for a jury to discriminate between Mr. O'Connell and the newspaper reporter; for recollect, gentlemen, that some of the most eloquent passages have been attributed to men, although they have never spoken them. In the course of this trial a speech of Mr. O'Connell's, in which he speaks of the battle of the Boyne, and the defeat of the Irish people, was read. It was singular enough that Sir Walter Scott, in alluding, on one occasion, to the battles of his countrymen "in flood and field," admonished the Scots not to fall into the mistake of their forefathers, but to be steady, firm, and united, in their moral agitation, and not to be divided and wavering as their ancestors were in their physical conflicts. This was precisely the meaning of Mr. O'Connell's allusion to the battle of the Boyne. He encouraged the people to firmness in the political struggle in which they were engaged, by a reference to historical facts. His language plainly meant nothing more nor less than this—"By their want of perseverance your ancestors lost the memorable battle of the Boyne; in the constitutional struggle in which you are engaged, be sure that you preserve perseverance and unity, and you will certainly succeed." But let me ask you, gentlemen, is my client responsible for the speeches of Mr. O'Connell? Mr. Duffy was not at any of the monster meetings. Mr. O'Connell spoke at Clifden, and at Mullaghmast, and he used certain illustrations—pray who could prevent him? He touched on poetry and prose, everything his excited fancy could dictate. But did Mr. Duffy conspire that Mr. O'Connell was to refer to the battle of the Boyne, or the battle of Aughrim, or to use those warm words? Mr. Duffy, in common with the other journalists of the country, published those speeches, and, most unjustly, the *Mail* and *Packet*, which also published those speeches, with their own comments, were allowed to escape by the Attorney-General, who preferred striking a blow at their professional rivals (laughter). Then comes—"Better die as freemen than live as slaves"—a sentence which merely shows the speaker's independence of thought and boldness of spirit. There was another expression which was much dwelt on by the Attorney-General. "The people would be stultifying themselves to expect redress from an English parliament." An attempt was made by the learned counsel (afterwards Lord Redesdale) who conducted the case against Horne Tooke to extract from a similar expression an intention to have recourse to physical force, but on that occasion the jury declined to adopt the view of the learned law officer. The subject Mr. O'Connell was discussing was the repeal of the union, and if he admitted the perfect justice dealt out to this country by the imperial parliament, he would be inconsistent in demanding a domestic legislature. He was of opinion that the ready justice which would be dispensed by a domestic parliament might be well contrasted with the cold neglect with which the application and remonstrances of the Irish people were received by an imperial parliament. He was not arguing against the powers of the house of commons, nor that it should be lopped off as a useless branch of the legislature, but that the particular house of commons in existence was not so pure as it ought to be. And when he spoke of the parliament being bribed and packed, he merely spoke of that particular house of commons as not being as immaculate as it ought to be. At the Longford meeting Mr. O'Connell spoke very freely of Lord Beaumont—my client and Mr. O'Connell agree in carrying out the repeal of the union, but he did not agree that Mr. O'Connell should abuse Lord Beaumont, or that Lord Beaumont should abuse Mr. O'Connell. I certainly read in the *Evening Mail* in the month of August last the speech of Lord Beaumont, in which he said, talking of Mr. O'Connell, "he despised his vituperation, and despised himself as he did the reptile that crawled in the dust." That, gentlemen, was language too ignominous to be applied to Mr. O'Connell, who, whatever may be his faults or his indiscretions, had brought Lord Beaumont into the house, where he had an opportunity of using that insulting language towards an absent man. But Did Mr. Duffy combine and confederate that Lord Beaumont was to utter what he did in the house of lords, and

that Mr. O'Connell was to utter what he did in retort? Mr. O'Connell felt justly incensed against Lord Beaumont for the contumelious language applied to him; for whatever might be his faults, he had certainly a place in the history of his country; he had a European name. There was a badness of taste, a coarseness of manner, and a weakness of judgment exhibited by his lordship in this attack, which showed that a vulgar Irish peasant might be more polite than an hereditary member of the British parliament. Mr. O'Connell had also said, "I will take care you will do no wrong; but if they attack us we will do so and so." This was explained by another observation—that they must discuss the question with the repealers—that they must hear them, and that they were not to be put down without being heard. What could be more absurd than to say that because on the arrival of certain news from London, Mr. O'Connell makes use of certain words, every one who agrees with him on the subject of repeal, or any other subject, must be liable to be prosecuted for his words? Besides, the physical condition of a speaker is to be considered at the time he delivers his speech. Those were generally after-dinner speeches, and I have no doubt if Mr. Attorney-General himself were to get up after dinner, well primed with a speech upon church and state, he would be much more bold, animated, and excited than he was in this court (laughter). There would be a great deal of what is termed inflammatory matter in his address, and it would not be a bit the worse for it (laughter). Much has been said about the use of the word "foreigner," by Mr. O'Connell. Let it be remembered that he had legal authority for the use of the word. In the case of Mahony *v.* Ashley, 3rd Barnwell and Adolphus, page 482, in the case of an action for a bill of exchange, it was argued that Ireland was a foreign country. This was denied on the other side, because of the union. The objection was overruled, and Ireland was solemnly decided to be a foreign country. With regard to the language that had been used by Mr. O'Connell, respecting Sir Robert Peel and the Duke of Wellington, it is purely personal matter; and when he spoke of having more physical force than had been present at Waterloo it was a mere boastful expression of pride, for the purpose of showing that as large meetings at Hillsboro' and in England had marched shoulder to shoulder to accomplish their object, so those meetings of equal numbers must have their complaints discussed. The Attorney-General alluded to Sir Robert Peel's declaration in parliament, of her Majesty's intention to maintain the union inviolate. That declaration possessed no legal authority. We only knew what passed in parliament by a breach of privilege, and to force us to read the speeches of the members would be an act of intolerable despotism. If a gentleman stood up and put a question to Sir Robert Peel and he replied—was that to affect the law, rights, and liberties of the people? The converse of that doctrine was laid down by Lord Mansfield, who said, "he never felt bound, in his judicial capacity, to honour even the resolutions of either house of parliament with the slightest regard." To show how a question can be asked and evaded, it is only necessary to read to you the passage to which the Attorney-General alluded in his opening of this case. Viscount Jocelyn asked his right honourable friend Sir R. Peel, whether the government were determined to take any measures to put down the agitation that existed in Ireland with reference to the act of union?—Sir Robert Peel said he thanked his noble friend for giving him an opportunity of saying a word on that subject, and told him that there was no power which was granted him by the law and the constitution which he would not put in requisition for maintaining the union. He further stated that he was authorised by the Queen to state her determination to maintain inviolable the connection between the two countries.

Sergeant Warren—When did this debate take place?

Mr. Whiteside—On the 24th of May. Sir Robert Peel also said, if he required any additional powers, he would apply to the parliament. Now, at the very time upwards of twenty of these meetings had taken place in Ireland, and there is not even a suggestion made that they were illegal; he does not even hint, much less say, these are illegal meetings, and we will repress them; they are unconstitutional, and we will put them down. Lord Cottenham says, in reference to what Sir Robert Peel stated with regard to the sentiments of her Majesty, that that declaration was illegal, and was as unfortunate as it was unconstitutional. Sir Robert Peel, as I before stated, said that if what had been done was illegal, he would apply to parliament for power to put it down; and yet Sir Robert Peel now directs the Attorney-General to ask an Irish jury for a verdict condemning these meetings, while he himself did not dare to do so in his place in the house of commons. In looking to what had occurred at the meeting at Mullaghmast, there might have been something said which was violent and improper; but in looking to the correct report of what Mr. O'Connell had spoken, so far from expressing any wish to make any religious distinctions, by a reference to the massacre supposed to have taken place, he said it was a massacre committed, not by Protestants on Catholics, but by Irish Catholics upon the members of the same faith. His object evidently was, therefore, not to create any religious distinctions, or to foster ill-will between Protestant and Catholic. Another part relied on in support of the prosecution was the form, character, and processions got together at the several meetings. It was said that there was an imposing military array. No matter how discordant the music or irregular the march, still it was relied on as forming a ground to sustain the charge. I'm sure the jury will recollect what I have quoted for them where the parties were drilled regularly, and where they walked by torchlight to attend meetings in England. The Attorney-General has stated to you that the meetings and processions were all of a similar character. Now let us take the Donnybrook meeting and procession as a specimen, and say what was the impression left on our minds respecting it. That meeting was attended by artizans decently dressed, by respectable people in trade, and by several other classes. The procession walked through the streets of the city—they passed the castle gates—there is no question but that it was held under the very eye of the government and of the Attorney-General, who asked them to take it as a type of the rest. Well, be it so. We saw them go in procession, and I now confidently ask the jury, would they believe any person who might swear that he was put into terror or alarm by the proceedings? Most assuredly you would not; and if you will look to all the other assemblages throughout the country, and take the Donnybrook meeting as an example of their order, peace, and tranquillity, if you act on the principle *ex uno disce omnes*, you will find that they were all held peaceably, and that all the sentiments expressed were tolerant, constitutional, and legal. You will recollect what reliance was placed on the mottoes and flags, and the evidence of Mr. Stewart and by Mr. Jolly, who described the troops as marching in regular columns, and who in answer to my question said that the persons on horseback had women behind them on pillions, and that there were females and children in the crowd. You will recollect what one of the policemen said to me about a very foolish speech which he asserted had been spoken by Mr. O'Connell—namely, that the labourers

would be farmers, and the gentry lords. Nay, he even went so far as to say that if Mr. O'Connell's views were fully borne out he might one day become Lord Ballincollig himself (a laugh). You must judge of the good sense of Mr. O'Connell if ever he said anything so very absurd; and you are now called upon to take it in proof of a guilty conspiracy, and that it was spoken in furtherance of a guilty plan entered into for the common purposes the traversers had in view? Will the Solicitor-General now tell me that, according to the common law of the land, if persons meet with colours flying, and banners floating, they therefore constitute an illegal assembly? Was not the Solicitor-General himself a law officer of the crown when the Orangemen were in the habit of meeting and walking in procession with emblematic flags, with music and with arms, which, if vexed, they sometimes used, and they were tried only for a riot? Will the learned gentleman now say that, according to the common law of this country, the Orangemen who have met to commemorate the coming of William the Third to this country, because they walked in procession, were guilty of an offence at common law? He certainly will not. Neither were they considered so in parliament, for it became necessary to introduce a bill drawn up, perhaps, by the learned Solicitor himself, and introduced by Lord Stanley to meet their case, and an act was passed accordingly, leaving it open to every other body of men to meet together and to use flags, banners, and music. That was a mock liberality, indeed, they should have aimed at all or at none, but they have no right now to come to a jury, and because of a defect or omission in their own legislation, ask them to declare by their verdict that a meeting was illegal at common law. By passing an act to meet the case of the Orangemen of the North, they had declared that the common law of the land was insufficient for their purpose. The passing of that measure was opposed by Mr. Lefroy, who now administers justice in another court, who maintained the legality of those who walked in procession to defend themselves from attack. But what was the answer given by Lord Stanley? He said, it was not necessary to celebrate festivals with loaded muskets, and exhibiting flags and banners, and emblems to insult their Catholic fellow-countrymen. They refused to extend that law so as to affect meetings like the present, and you are now called upon, at the beck of those ministers, to put down those meetings. There were two persons in the house that opposed that measure; one of those persons was one of the traversers at the bar, Daniel O'Connell. His old enemies were the Orangemen of Ireland; he might speak of them as he pleased; and if he had forgotten their virtues, and remembered but their vices and faults, he might have given his vote to extinguish their rights. But he says distinctly that there is no case made out for this measure—and that, therefore, though a Catholic, he would support the amendment before the house. There was one other member who supported the amendment, and he is, I believe, the second gentleman you are called upon to convict, another son of Mr. O'Connell, and on the same manly and constitutional grounds. Will the learned gentleman stand up to tell you that marching, I put it that they marched regularly in procession, I want to know will it here be laid down by the bench or asserted by the law officer of the crown that that is illegal? That as against the Orangemen required the interposition of a statute to put it down, and you, gentlemen, are called upon without any statute to declare by your verdict, that such processions are illegal and unconstitutional. Therefore, gentlemen of the jury, to sum up matters in relation to those meetings, whether with regard to processions, as they are called, I submit they were lawful; you know of your own knowledge that processions a hundred times more formidable occurred for a hundred years without objection, and that it required an act of the legislature to put them down, and you will say to those legislators, as you thought fit to put down the Protestants of the north, we will now leave you to deal with those processions that you would not also put down, though called upon to do so. I submit that Mr. O'Connell's real object was to discuss the question of the repeal of the union, and no more. It is insinuated that those large meetings were calculated to excite discontent, but the kind of discontent is not stated. Many men are discontented, who are not conspirators. A hungry man is discontented; Cicero, with all his eloquence, could not make him otherwise. The advocates for the abolition of slavery were discontented. They said the law of slavery was against the law of God; and but for that discontent slavery might still remain a blot on English humanity, braving the vengeance of heaven itself. Therefore it is not a crime to be discontented with any law, and discontent does not make my client a conspirator. I take it the word discontent may be better understood by coupling it with the word disaffection. It is not said to be disaffection against her Majesty, or the forms of the constitution. No such thing. I quite admit that to excite discontent against the house of commons, against the just prerogatives of the house of peers, against royalty, to curtail the prerogatives of the crown, to say the crown was an unnecessary part of the constitution, would be seditious, but to wish to extend the beneficent principles of that constitution to every part of the empire never can be held to be discontent against the constitution you applaud. Therefore, gentlemen of the jury, all that has been said in that indictment about disaffection and disloyalty only applies to an effort not to do away with the house of commons, but to restore it; not to abolish the house of peers, but to bring it back to where its presence is so desirable. Not to limit the prerogative of the crown, but, perhaps, improperly to extend its privileges. How, then, can that be an illegality? Now, gentlemen, suppose you were of opinion that the union had been carried by unfair and dishonest means, and that you conscientiously believed it to be an evil to your country, what mode would you naturally resort to to obtain the repeal of that measure? An unreflecting man might say, why not ask it of the crown? Why not rely quietly on the justice of the cause? But an Irishman—one of the traversers—might say, we did appeal to justice, and we found it a broken reed. He found that popular strength, popular organization, were the only elements on which we could reckon, and that the claims which were denied to justice were granted to the moral, the peaceable, but the formidable concentration of popular opinion. What is the history of Ireland for the last eighty years but a series of societies, associations, and clubs, for the attainment of one object or another? Almost every one of the objects which they sought are this moment the law of the land, thereby proving that they should originally have been granted although they were not. It is a very questionable doctrine, indeed, whether political rights and privileges are only to be granted when it is necessary to concede them for the purpose of checking discontent, and to teach that great but painful secret, to rely on popular organization and that everything will be granted, but that without it everything would be denied. Now, let us see what has been the state of this country since 1760. In that year the first Catholic association was formed, and they obtained a relaxation of the penal code in 1776, establishing that popular organization succeeded in obtaining that which ought to have been granted half a century before, and while they were seeking redress for their grievances, in relation to

heir civil rights, another body of men combined, confederated, and conspired, to use the terms of the indictment, to rescue Ireland from contempt and poverty. That body was the Volunteers of Ireland. What was the condition of Ireland at the time they were embodied? The commerce of Ireland was prostrated—her trade was put down—her manufactures were destroyed—she was a country without commerce, and had a parliament without freedom. They were discontented, and it is well for you to-day that they were—and those men, who were not called disloyal or disaffected, combined together for one common object, of having justice done to their native land. All that the genius of Swift, the learning of Molyneux, and the patriotism of Lucas failed to obtain—all that was denied to justice was yielded to men with arms in their hands. They combined to be something more than the mere serfs of England; they were discontented with a law, and they struggled for its repeal. The Catholic association, having learned how concessions were to be obtained, formed themselves into a new body in 1792. In 1806 a new association was formed, and in 1810 another, under the direction of Mr. Scully. In 1823 the last society of that kind was formed, which embraced a large portion of the Irish people. The aristocracy, the gentry, the priesthood, and the people—became members of it. They had their rules, and the rules of the present repeal association are almost *fac similes* of them. They collected their rent—they appointed rent-collectors, and they broke no law in all they did. That association ceased in 1825; but it was not by prosecutions for conspiracy. Aggregate meetings were held in every part of the kingdom, and a simultaneous meeting was held on the 21st of January, 1828, at which no less than a million and five hundred thousand persons assembled, having one common object—they assembled under the sanction of the law, and the great crown lawyer of that day, the Attorney-General (Mr. Plunket), did not prosecute them. In fact, this chain of meetings and the others for a similar object, were held under the eyes of the executive, and such was the extent to which, in regard to newspaper publications, their proceedings were promulgated, that eight hundred copies of the *Register* were circulated weekly by that association. The Brunswick Clubs sprung up, their object being to resist the emancipation, and, at length, that confederation was put down in 1829. But what was the lesson taught the people of this country—that if they were organized by peaceful agitation they might be victorious almost over the conscience of the Sovereign, the wishes of the English people, and the inclination of a British parliament? Thus, you see what has been the policy of England—what the method adopted by her in her dealings with this country. Like an angry and fickle parent, she chastises her without cause, and she rewards her the next moment with a sugar plumb. If the government had cause to complain of this agitation, why not proceed to deal with it according to the spirit of the constitution, by legislation? It applied an act of the legislature to the suppression of delegates from the Catholic association, the 32d Geo. III., cap. 29. That proved that an act of parliament was necessary, in order to put down such a combination. What, then, was the obvious duty of the government with respect to the repeal association? If they wanted to put it down, why not adopt the course pointed out by Lord Jocelyn in the month of May last? I am sure it will be admitted upon all hands that as a lawyer there is no man whose words are more deserving attention than Lord Plunket; and he declared that he would not say the Catholic association was illegal. Common law and common sense were with Lord Plunket, and that the principles which he propounded were founded on truth is clearly evidenced by subsequent events, for the government, finding it utterly impossible to crush the association by common law proceedings, were obliged to have recourse to parliament for new and more extensive powers. Lord Brougham's speech on that memorable debate is one which for brilliancy of thought and energy of expression, must ever stand pre-eminent. He, too, demonstrated the absurdity of alleging that the association was at variance with the common law. The learned counsel read from the *Mirror of Parliament* Lord Brougham's eloquent defence of the Catholic association, in which the noble lord, after ridiculing the conduct of those who pretended that the peaceful conduct of the people during the emancipation movement constituted the most appalling feature of the movement, concluded by observing that such language brought to his mind the quotation—

"My wound is great because it is so small."

And surely the inference was plain that was conveyed in the next line—

"Then 'twould be greater were it none at all."

And upon the same principle it is contended that the danger of the present movement bears an exact proportion to the tranquillity and good conduct of the people! Well, then came two acts of parliament. The first was called the coercion act. A more tyrannical act of parliament was never passed by any government. But, gentlemen, bear this in mind, that in order to the suppression of the associations which then existed in this country, it was absolutely necessary to apply to parliament for the introduction of new and coercive measures, because the associations were not at variance with the common law. And if the bygone associations were not contrary to the principles of the common law, how can you, who sit in that box, to administer the principles of that law, and not to frame enactments—how, I ask, can you be called upon to declare that the repeal association, which is less comprehensive and more mild in its constitution than any of the others, *is*, unlike them, at variance with the common law? The first thing on which the Attorney-General relied in order to prove the constitution of the association, and the full intent of the conspiracy, was the associates' card, but I, for the life of me, cannot understand what evidence of conspiracy there is on the face of that document, unless, indeed, a sketch of the Bank of Ireland (a very bad one by the way), can be regarded in that light. On one corner of it is the word Catholic, on another the word Protestant, on the third the word Presbyterian, and in the middle the motto—*Quis seperabit.* That did not look like a conspiracy; did it not rather look like a charitable and generous attempt to unite all classes of religionists in the same bond of union, and to merge in oblivion all sectarian differences? My learned friend did not allude to this motto; and yet I think it is of no insignificant importance, for it proves the true character of the movement, and shows that instead of having been instituted, as alleged by the Attorney-General, for the purpose of spreading dissension amongst the different classes of her Majesty's subjects, it was instituted expressly for the purpose of promoting good will and good fellowship amongst all classes of the community. The Attorney-General next referred to the members' card, and appeared to be of opinion that it was pregnant with evidence most damning and conclusive of the seditious objects of the repealers; but I confess I am quite at a loss to imagine how he managed to arrive at such a conclusion. One corner of the card is occupied by a statistical calculation of the yearly revenue of our country; there is, surely, no mark or token of conspiracy in that. In another corner we find an accu-

rate statement of the population of the country; in another corner we find an accurate statement of its geographical extent of the country as compared with other countries; there is then a statement of how much Ireland supplied towards the maintenance of the wars, and the whole concludes by the assertion of a fact, which, I am sure, no man here will dispute—namely, that we have no parliament; and yet this card is given in evidence to prove a conspiracy? Undoubtedly, there are some historical allusions in the card, but will it be pretended for a moment that it is criminal to allude to historical events? If so, the Scotch people ought to be put on trial, and Burns, who wrote some beautiful lines on Bannockburn, must henceforward be handed down to posterity as a conspirator. But now I come to the volunteers' card, and were it not for the valuable assistance which, I have no doubt, I will receive from your lordships in the task, I would approach the interpretation of this card with fear and trembling (laughter). In one corner of it I find a likeness (faithful, I am to presume) of a celebrated Irish legislator, who rejoiced in the appellation of Ollam Fodlha (hear, hear). I confess with shame my utter incompetency to treat of the merits of this gentleman—but my Lord Chief Justice, who is deeply read in Irish lore, is conversant, no doubt, with his writings, and will understand the principles of law which have been propounded by this illustrious Solon (laughter). He, gentlemen, is the best judge of what then was seditious, unlawful, and rebellious, in putting the head of Ollam Fodlha on the card (laughter). In that case I have to tell you, gentlemen, that the judges on the bench are a party to the conspiracy (laughter). If you look into the hall of the courts, a place where you come to seek for justice, and where it is to be presumed it may be had inside, I say the founders of this institution have had the hardihood to place the head of Ollam Fodlha in a niche there (laughter). You will give all the value of purity of intention to the people who thought Ollam Fodlha ought to be a model of uprightness and justice, whilst you must brand as a conspirator the man who puts that name on a card (laughter). Here is a name that I confess puzzles me a little, and one in reference to which I must certainly apply to Judge Burton for assistance (laughter). It is the name of the gentleman called Dathy (great laughter). Did you ever hear of such a name as Dathy (renewed laughter)? Why, the very sound of it is conspiracy (laughter). Dathy! But who he was, what his opinions or thoughts, how he conducted himself, whether in accordance with the law or against it, I can't tell (laughter); but if there was anything particularly wicked in his conduct, how putting his name on this card makes the people who did so conspirators, I leave for the learned judge to explain it to you. All I know about the gentleman is, that I am assured by my friend Mr. Moore here he was a Pagan, and died at the foot of the Alps from a flash of lightning (loud laughter). But the defendants go forth and put two other names on their cards, and what names are those? The names of Grattan and Flood. Men whose names would go down to posterity—whose memory would be handed down from generation to generation as long as Ireland lasted; but how would those names be handed down? Was it as men who struck down the monarchy, and abolished the constitution of the realm—who, by their fierce spirit and force of arms, endangered them? No, but as the men, to one of whom even the Irish Protestant parliament had voted no less a sum of money than 100,000*l.* for his exertions in the cause of his country; as two peaceable men who had by their persuasive and eloquent tongues accomplished more than ever man accomplished—the two men to whom the world looked back with admiration, and respect, and esteem. And is it come to this in Ireland that an Irish jury are called on to pronounce men as a band of conspirators because they put the names—the immortal names—of Flood and Grattan on their cards (great applause in court)? If such be the case, I say it here, and I say it emphatically, that the answer will be found enshrined in the hearts of an Irish jury (loud applause). What is there treasonable in the names of Grattan and Flood? The next card is rather singular, and if treason existed in the names of Ollam Fodlha, and of Grattan and Flood, I deny the ingenuity of man to discover anything in this portion of the card bordering on conspiracy. The first thing I see on that card is a picture of the Queen on the throne, with the sceptre in her hand, and the crown on her head, and underneath the words "God save the Queen." Unless you can come to the conclusion that there is something malignant and wicked in that, you must and will say not guilty. We pass on to the beauties of nature, and I find here on the left of the picture the Giant's Causeway. Were any of you ever at the Giant's Causeway? If not, go there, and endeavour to discover the analogy between the conspiracy which the Attorney-General insinuates to exist between it and the present defendants (loud laughter). Where do we get to next? To Glendalough, in the county of Wicklow. I find that on the right hand of the card. Look what a serious matter this is. The Giant's Causeway on one hand, and Glendalough on the other. Who can deny that is not rank conspiracy (great laughter)? It was not with the Jacobins of France they were dealing, but with the beauties of Glendalough and the Giant's Causeway (laughter). The next place painted on the card was "Achill," in the west, and lest Mr. O'Connell should be forgotten, here is a very nice picture of "Derrynane Abbey;" then there are the words "Erin go Bragh"—a wolf dog and one of the old Irish harps. I hope the day will never come when a jury will consider such allusions to the ancient glory and music of Ireland, which, it must be acknowledged, is the most touching, the most pathetic, and beautiful in Europe—I hope I say the day will never come when such allusions will be considered by a jury as a conspiracy. There was an explanation written to the card by Mr. O'Callaghan, and it was contended as one reason for a repeal of the union, that Ireland was the only nation in Europe of its importance, that had not a parliament of its own. It was not true "that the Irish people never fought well except out of their own country; they ought to remember Benburb, where the unfortunate Charles the First was backed by the Irish against his rebellious English subjects, who ultimately brought his head to the block." Was it wrong to speak of the brave defence made by the Irish? The treaty exists to this moment which proves that they did. And is it a crime to respect the memory of the brave? I now come to the rules for the repeal wardens, upon which the Attorney-General commented so gravely. They are taken from the rules of the old Catholic association. [The learned gentleman read this document, which is already referred to, and continued]—These rules are copied from those of the old Catholic association, and contain instructions to the repeal wardens to guard against secret societies and all combinations against the law. [Mr. Whiteside then read the rules of the national association from which the rules of the loyal repeal association were formed.]

Mr. Justice Perrin—What date was that association formed?

Mr. Whiteside—In 1840, my lord.

Mr. Justice Burton—What was that passage about physical force—will you read it again, Mr. Whiteside?

Mr. Whiteside said it was the second rule in

which the association recommended the total absence of all physical force or violence, or breach of the laws of man, or ordinances of God.

Mr. Henn then read an address to the "People of Ireland," which was one of the documents proved in evidence.

Mr. Whiteside continued—I shall now, gentlemen, call your attention to two documents. One is the letter which you will recollect was proved in this case. It is from Mr. Sharman Crawford, and is headed—"Repeal and Federalism;" and I contend that the fact of Mr. Sharman Crawford, a man of his fortune and position in the country, almost agreeing in the opinion, that something like a local legislature should be obtained, is an important fact. In that letter he sets forth the grievances under which he says Ireland laboured, which are, in fact, the same Mr. O'Connell has spoken of; and, therefore, the substantial matters of disagreement are, that one would have federalism, and the other an independent parliament. The other document to which I have already alluded is the protest of the Irish members. It was signed by thirty-two members of parliament, and it sets forth the grievances of Ireland—the very grievances that Mr. O'Connell states justify him in seeking for repeal. That protest was signed by one of the members for Belfast—the representative of a wealthy, influential, and important constituency, and his opinions have not been disavowed or disclaimed by his constituents. It was also signed by Mr. Smith O'Brien, a member of parliament, the son of a baronet, a Protestant, and a gentleman of distinction; and who since then, in a distinct letter, declared that nothing but a separate legislation could promote the amelioration of Ireland. Was it then sedition in Mr. O'Connell to hold the same opinion with the wisest, the most just, and most respectable individuals in this country? In support of my opinion I refer you to the trial of Hardy, in page 211, in which it was relied on that every act done by the persons who were charged with conspiracy was done, written, and published in the face of the world—that they could be found in every newspaper, in every coffee-room in the kingdom; and so it was with Mr. O'Connell even from the beginning of his public life. In January, 1800, he made a speech in the Royal Exchange, and he made that speech publicly—he made it under the surveillance of Major Sirr, a gentleman of considerable police talent. Yes, he who is now charged as a conspirator, made that his first speech against the union. Forty-four years ago, at a great public meeting, he broached opinions for which the charge of conspiracy is now preferred. In 1800, the corporation and the parish meetings in Dublin came to the conclusion, that after twelve or fourteen years the union was a fatal measure, and therefore should be repealed. The learned gentleman then proceeded to read from the report of the select committee on secret societies, a description of the proceedings of the United Irishmen, in which secrecy and assassination were recommended as expedient for the carrying out of their designs. The society of United Irishmen was not a debating society (they seemed to have a horror of public speaking). Secrecy, it was said in page 67 of the report of the select committee on secret societies, was expedient and necessary—that was the bond of their union. Another passage in the same page stated that a "distinct agreement with France had been made to get help, assistance, arms, ammunition." The report stated that the committee had found systematic proof of designs having been adopted by France to overturn the laws, civil constitution, and every existing establishment in Great Britain and Ireland. He also read a passage from one of those papers in which the United Irishmen appealed to "Brutus, prince of patriotic assassins," as the model by which they would be guided in their treatment of "any villain that would aspire to sovereign power, or infringe on the people;" and he asked if any analogy could be supposed to exist between the proceedings of those men and the repealers, whose chief weapon was publicity and oratory. The United Irishmen had hung up in their place of meeting—"Beware of oratory." Mr. O'Connell was certainly the last man who could be accused of bidding his followers to "beware of orators." Oratory was the delight of Irishmen, it was one of the few enjoyments that the Irish people possessed (laughter). What would be the object of the Attorney-General in referring to the United Irishmen, unless it were to show that the repealers, as they did, sought for French sympathy and French assistance? Could it be said that Mr. O'Connell sought for either? Mr. O'Connell, who had abused Louis Philippe, who, according to Mr. Jackson, the correspondent of the *Morning Herald*, the gentleman who wrote the Kilrush petty sessions, and embellished his correspondence, condemned the French constitution, and the French house of peers, and even went so far as to state that the Irish people would give their assistance to restore the legitimate sovereign of the French nation to the throne of his ancestors. I submit, on the whole of this part of the case, that it is impossible, looking to the publicity of their proceedings, the time their opinions were first taken up, the motives that led those people to adopt those opinions, the consistency with which they adhered to them, it is impossible to come to the conclusion that any one thing that has been adopted, and as Lord Erskine says, "printed and given to the world" for the last twelve months, it is impossible to come to the conclusion that those persons were banded together in a wicked and abominable conspiracy to accomplish their nefarious designs, their preconceived plot, by the wicked means specified in that indictment. Gentlemen of the jury, Mr. Attorney-General has deprecated, and deprecated strongly, the agitation of this question for a repeal of the union. He has told you that there is a fixed settlement for ever of the constitutional relations between the two kingdoms. Gentlemen of the jury, the Irish people, or a large mass of them, are of opinion that they do labour under grievances—that there are causes and reasons why they should seek for a repeal of this union, and you are not to condemn them on that ground. The universal people of this country look to the composition of the government which rules them. Its members are able, honourable, and distinguished; but there is not to be found amongst them a single individual connected with Ireland to represent the wants and wishes, or the miseries of any section of the people. The nobility of the north—generous, kind, forbearing, to their tenantry; a bright example to all quarters of the kingdom; no one member of that ancient nobility shares in the imperial councils. The gentry and aristocracy of the south or west are equally excluded. In fact, the country which produced a Burke—the teacher of statesmen, the saviour of states—it is matter no less of surprise than concern—cannot supply one gentleman qualified to assist in the administration of the affairs of his native country. Self-legislation the Irish have lost; for self-government they are, it seems, incompetent. They think had they a native parliament they would have a larger share in the management of their own concerns. Perhaps I may add, were we a united people we would have it also. Were there no other reasons against the system of the exclusion of Ireland, as such, from the government of the country, it hurts the national pride, and he is but a poor statesman who thinks the pride of a sensitive people can be wounded with impunity or safety. But, gentlemen, it is of small consequence, you may think, who the

individuals composing a ministry may be, provided the people under their rule are contented, prosperous, and happy. Are our countrymen so? Alas! a large portion are destitute. Pressed down by poverty, they look around for the causes. They behold a country blest by Providence with the means of wealth. They strive with gaunt famine for existence in the midst of fields teeming with fertility and plenty. The strong man pines for employment in his native land for the daily pittance of a sixpence. Must he starve in silence? May he speak in the language of complaint, remonstrance, and indignation? If he does, is he seditious? And if, in the agony of his misery, he thinks, though erroneously, a native parliament might help him to employment, is he criminal to wish for the means of life? Is he seditious to say so? And if he feels his single voice would be unheeded as the idle wind, and unites with others, miserable as himself, to give weight to the expression of their common wants, is he—are his associates conspirators? Is the conspiracy the blacker, because no property has been invaded, no person injured, no outrage attempted, and that profound tranquillity has been maintained? These people think they have found the secret of their misery—the cause of their intolerable woe—the want of a resident legislature, and they imagine if they could obtain that blessing, employment would succeed to compulsory idleness, and food to starvation. They think, perhaps erroneously, that the presence of an aristocracy is a blessing to a country, and a resident gentry the source of industry and wealth. They conclude, perhaps rashly, it is not morally right that millions should be drained annually from the soil of Ireland by those whose tastes are too fastidious to permit them to spend one hour among the people who labour to supply their extravagance or their necessities. They say, by the evidence of their senses they know the value of a resident peerage and gentry, by the happy results which flow from such a residence wherever it exists. They blame the union for the loss of their gentry and aristocracy, and they see the crying evils of absenteeism daily increased—therefore, they object to the union. The attractions of a parliament, they fondly imagine, would induce them to return—therefore, they demand a repeal of the union. Alas! Ireland has little now to induce her gentry to dwell in their native land—its rare natural beauties lose their freshness while compared with the fascinations of the senate, or the glittering splendour of a court. Patriotism is a homely virtue, and can scarce thrive by absence, by education, by a residence, by tastes, by feelings, by associations which teach Irishmen a dislike, not unmingled with disdain, for their native country. These people look to their stately metropolis. Have they no reasons for what you may think their mistaken opinions? Their memories are haunted by the recollection of its ancient glory—their minds affected by the melancholy conviction of its present nothingness. A once splendid capital the union has *improved* into the respectable town of a struggling province. The Irish people are acute enough to see, what cannot be hidden, the houses of their nobility boarding-schools or barracks—their University deserted—their Linen-hall waste—their Exchange silent—their Stamp-office extinguished—their Custom-house almost a poor-house—the very administration of justice threatened to be removed to Westminster; and they read, not very long since, a debate got up by the economists as to the prudence of removing the broken down Irish pensioners from Kilmainham to Chelsea, to effect a little saving, careless of the feelings, the associations, the joys, or the griefs of the poor old Irish soldiers who had bravely served their country. That cruelty was prevented by something like an exhibition of national spirit and national indignation. Thus the Irish people see all the public establishments of their capital extinguished by the hard rules of political economy, or withdrawn from the poorer kingdom to carry out the unbending principles of imperial centralization. They behold the senate house of Ireland a bank—the magnificent structure within whose walls the voice of eloquence was heard, stands a monument of former greatness and present degradation. The glorious labours of our gifted countrymen within these walls are not forgotten. The works of the intellect do not quickly perish. The verses of Homer have lived for twenty-five hundred years and more, without the loss of a syllable, while cities, and temples, and palaces have fallen. The eloquence of Greece tells of her freedom and the genius it produced. We forget her ruin in the recollection of her greatness. Nor can we read, even now, without emotion, the exalted sentiments of her inspired sons, poured fourth in exquisite language, to save the expiring liberties of their country. Perhaps their genius had a resurrectionary power, and in later days quickened a degenerate posterity from the lethargy of slavery to the activity of freedom. Men have lived amongst us who approached the greatness of antiquity. The imperishable records of their eloquence may keep alive in our hearts a zeal for freedom and a love of country. The comprehensive genius of Flood—the more than mortal energy of Grattan—the splendour of Bushe—the wisdom of Saurin—the learning of Ball—the noble simplicity of Burrows—the Demosthenic fire of Plunket—and the eloquence of Curran, rushing from the heart, and which will sound in the ears of his countrymen for ever. They failed to save the ancient constitution of Ireland—wit, learning, genius, eloquence, lost their power over the souls of men. With one great exception, our distinguished countrymen have passed away, but their memorials cannot perish with them. While the language lasts their eloquence lives, and their names will be remembered by a grateful posterity so long as genius shall be honoured and patriotism revered. The Irish people, lastly, demand that the union be repealed, because, they say, their feelings have not been consulted, nor their grievances redressed, nor their miseries relieved by the imperial parliament Wealth has diminished, say they, amongst us; before us there is a gloomy prospect and little hope Our character has been misunderstood, and frequently slandered—our faults magnified into vices, and the crimes of a few visited upon a nation. The Irish—the mere Irish—have been derided as creatures of impulse, without settled understandings, a reasoning power, or a moral sense. The Irish people have their faults—God knows they have; but they are redeemed by splendid virtues; their sympathies are warm, their affections generous, their hearts are brave. They have embraced this project of repeal with ardour. It is their nature, where they feel strongly, to act boldly and to speak passionately. You will not punish your countrymen for the enthusiasm of their character; remember what it has effected, and forgive its excesses. Recollect that same enthusiasm has borne them triumphantly o'er fields of peril and glory—impelled them to shed their dearest blood, and spend their gallant lives in defence of the liberties of England. The broken chivalry of France attests the value of their fiery enthusiasm, and marks its power. Their high spirit has its uses not merely in the storm of battle: it cheers their almost broken heart—lightens their load of misery, well nigh insupportable—sweetens the bitter cup of poverty which thousands of our countrymen are doomed to drink. Without enthusiasm what that is truly great has been achieved for man? The glorious works of art, the immortal productions of the understanding, the incredible labours of patriots and heroes for the salvation of the liberties of mankind, have been promoted

by enthusiasm, and by little else. Cold and dull were our existence here below, unless the deep passions of the soul, stirred by enthusiasm, were sometimes summoned into action for great and noble purposes: the overwhelming of vice, wickedness, tyranny—the securing and spreading the world's virtue, the world's happiness, the world's freedom. The hand of Omnipotence, by whose touch this island started into existence, amidst the waters which surround it, stamped upon its people noble qualities of the intellect and of the heart—directed to the wise purposes for which heaven designed them, they will yet redeem, regenerate, and exalt this country.

A loud burst of applause followed the concluding sentence.

Mr. Moore said that his friend Mr. Whiteside being very much exhausted, begged their lordships would permit him to postpone the remainder of his address (as he had not yet concluded all he had to say) to the following morning.

Their lordships at once acceded to this application, and the court adjourned.

SEVENTEENTH DAY.

FRIDAY, FEBRUARY 2.

When Mr. Whiteside entered the court he was received with loud cheers.

The judges took their seats on the bench at the usual hour. The jury and traversers were also present.

At the sitting of the court Mr. Whiteside rose to resume his address to the jury, but was interrupted by the

Chief Justice, who begged he would wait for a moment, and then proceeded to observe:—I am not now addressing myself to you, Mr. Whiteside, but I would wish the people in the gallery would attend to what the court feel right to say with regard to the impropriety which took place yesterday evening. A great deal of cheering and improper noise took place—a just tribute due to the distinguished talents of Mr. Whiteside, but a great indecorum, and improperly committed before the court. Such a thing cannot be allowed again; and those who are disposed so to signify their approbation, or disapprobation, of what takes place in this court, must be informed that the court is not the place to show any signs of such feeling, and they must hold their tongues, and keep quiet.

MR. WHITESIDE RESUMED.

He said—I shall draw your attention now, gentlemen, to the charge in this indictment, on the subject of the arbitration courts. This single accusation is spread over a great portion of the indictment, and much dwelt upon by my learned friend, the Attorney-General, in his address to you. I apprehend it would astonish you very much if any of you were prevented on the ground that you recommended one of your brother jurors not to go to law. You must recollect the thing to be done, and advised to be done, and how it is to be done—to see if the act itself be legal, and if the means adopted for the carrying out of the act be legal also. I submit that it is both a religious and moral duty, if possible, to compromise the subject matter of litigation between two parties, and you will find it in that book, which I am sure is a high authority in your estimation—the Bible. Next, it is a moral duty. In Paley's Moral Philosophy, head entitled "Litigation," you will find these words, "But, since it is supposed to be undertaken simply with a view to the ends of justice and society, the prosecutor of the action is bound to confine himself to the cheapest process which will accomplish these ends, as well as to consent to any peaceable expedient for the same purpose; as to a reference in which the arbitrators can do what the law cannot, divide the damage when the fault is mutual, or to a compounding of the dispute by accepting a compensation in the gross without entering into articles and items, which it is often very difficult to adjust separately. Therefore the thing recommended to be done is both a religious and moral duty. The law itself respects arbitration and encourages it by every means, and it has occurred frequently in our experience, that while a suit was pending, and after great expense was brought before a judge and jury, it has been suggested by counsel or the court, that the subject matter of that dispute shall be referred by consent to discreet men to adjudicate upon it. The statute law of the land recognises arbitration. By the 10th William III. it is provided that it shall be lawful to refer matters to arbitration. By two later statutes, one that is called by the name of the learned gentleman that passed it—Pigot's Act, 3 and 4 Vic., there are provisions introduced to facilitate arbitration and compel the attendance of witnesses. By the 5th and 6th William IV. it is also recognised, and by the 5th and 6th Victoria, where the matter in dispute is under 20*l.*, the arbitration awards are relieved from stamp duty. The statute law recommends arbitration to be adopted where it makes no positive enactment on the subject. [The learned gentleman referred to the friendly societies' act, and several other authorities, to show that arbitration was recognised, and proceeded]—Thus, gentlemen, you perceive that religion and morality support and sanction, and that the statute assists in enforcing arbitration—that arbitration to rest exclusively on the consent of the parties. Having referred to Blackstone's Commentaries in support of his proposition, counsel proceeded—Now, gentlemen, to apply this matter to the parole evidence given before us. The parole evidence consisted of the testimony of Hovendon, a policeman. He stated that he was an inspector of police; that he went into a reading-room at the Black Rock; he was received with kindness; there were no professional men there in wig or gown; no oath was administered; the parties proceeded solely and singly, by consent of the parties, and they disclaimed all other jurisdiction. On consent, and consent alone, they acted; two parties appeared before them, and that vital suit was referred to Kingstown, but whether it was settled or not I know not. Referring to the doctrines I have stated, it is plain that on consent, and consent only, did the parties presume to act. To advise men not to go to law is no crime, but a moral duty, and that several should agree in the recommendation, in the performance of a moral duty, is not a crime. The thing to be done is not illegal, and the question is, whether the mode in which it is done is illegal, to carry out the common plot or conspiracy laid in the indictment. Four or five documents were read by the Attorney-General, but they proved nothing—one being the form of summons served by one party on the other. I tell you that if a matter was referred to you by two brother jurors in the box, you must give, and it is the usual practice for gentlemen, when a matter is referred, to give and sign the same form of notice, apprising the parties they are to come before them on a particular day, and refer the matter in dispute to them, so that allegation is good for nothing. As to the other document, the form of award, it shows nothing but how a proper award may be made. The statute law prescribes that if the subject matter of arbitration be 20*l.* and upwards, the award must be stamped, that the revenues of the country may be protected. The form of carrying out the award shows only this—that where there is a consent to refer a dispute to A. B. here is the form of award in which the consent can be carried into execution; and the directions read state—you are to take notice that the arbitrators

have no power, authority, or jurisdiction, except by consent of such parties as came before them. That was the last rule adopted by the association; and the proposition of Doctor Gray, that any person that would not abide by the decision of the arbitrators should be expelled the association, was not adopted. There is nothing more in this part of the case but this—a recommendation to the parties to consent to arbitration. That consent is the root of all references to arbitration, and the thing being a moral thing to do, and the means being legal, I submit that this novel, this unprecedented, extraordinary ground of accusation cannot be relied upon in the present case. It is said you did more—you not only induced parties to refer suits to arbitration, but that those justices that had been dismissed should be selected as arbitrators. That has been most strongly pressed by the Attorney-General, and has been over and over again urged. I admit frankly that it was said by Mr. O'Connell and others that they hoped that those persons being dismissed justices residing in some parts of the country should be selected or appointed to act on behalf of the people; and they hoped the time would come when the people would be at liberty to elect their magistrates. It arose from a matter merely accidental, and never was intended or contemplated by those who became repealers. It was long afterwards that the act was done which led to the appointment of these ex-justices as arbitrators, and it was not the result of a common design. It arose from the act of the government. They saw that a number of gentlemen of high respectability attended these repeal meetings, and it is quite plain, from reading the correspondence of the Lord Chancellor, that he did not consider they had thereby done an illegal act. In his letter of the 28th of May, 1843, he says that it had been his earnest determination not to interfere with expression of opinion by any magistrate in respect to the repeal of the union, although, from his arrival in this country, he felt it to be inconsistent with his duty to appoint to the commission of the peace any one who was pledged to the support of that measure; but he afterwards assigns as his reason for dismissing them, that after the discussions in the house of lords, and the declarations made in parliament by Sir Robert Peel, in answer to the plain and distinct question of Lord Jocelyn, he felt it his duty to ask whether they intended to attend any more of these meetings, and if so, to dismiss them. That letter plainly showed that attending these meetings originally was not an illegal act, and his letter was then merely a warning. Gentlemen, it is not my duty, consistent with the high respect I entertain for that distinguished functionary, to enter on a discussion of the grounds on which he proceeded; but there were men of high authority expressed their opinions upon it, and among others, two who had filled the office of Lord Chancellor of England. I mean Lord Cottenham and Lord Campbell, who in the house of lords disputed those grounds, and said very plainly that it was unconstitutional to dismiss those magistrates. That a justice of the peace had the same right to express and entertain his opinion as any other man in the community, and that for having so done it was illegal and unconstitutional to dismiss them. When the members of the repeal association saw that such high legal authorities entertained that opinion in reference to the dismissal of these magistrates, and considered that the declaration against repeal, on which their dismissal was based, did not come directly from her Majesty, or in any constitutional shape upon her authority, they did—and it is not for me to say who was right or who wrong—seeing that these gentlemen possessed the confidence of the people, that the people were piqued at their dismissal, recommended their appointment as arbitrators, and, in the words of Mr. O'Connell, "recommended that all miserable petty session litigation should be put an end to, and that all disputes arising in those districts where the magistrates had been dismissed, should be referred to them as arbitrators, and that he hoped the day would come when he would see the magistrates appointed by the people." Gentlemen, I defend that assertion of Mr. O'Connell. He had a right to make that observation. I have yet to learn from Mr. Solicitor-General that it is illegal to express a wish to walk in the ancient footsteps of the constitution, and that a desire to return to the ancient state of the wise administration of justice is a combination and a conspiracy. The more we investigate the old rules of the common law of England, the more deep is our respect for, and attachment to them. They were based on the soundest principles of constitutional freedom, and they only serve to show how strong should be our attachment to those principles which form the basis of public freedom and liberty. Gentlemen, the ancient title of a justice of peace or magistrate was "Conservator of the Peace." In the second volume of Coke's Institutes, page 558, he says:—"These conservators, by the ancient common law, were, by force of the king's writ, chosen in full and open county, *de probrioribus et potentioribus comitatus*, by the freeholders of the country, after which election, so made and returned, then in that case the king directed a writ to the party so elected." And, gentlemen, on this subject there is a great deal of instructive commentary in the able argument of one of the learned judges now upon the bench—I mean Mr. Justice Perrin, in the case of Taaffe and Downes, page 778—which shows a good deal of the origin of the appointment of those justices to which I adverted. The sheriffs were originally appointed by the people, and they had the appointment of the juries. The law did not give the appointment of the sheriffs to the crown, because if a cause might arise between the crown and the subject, he might return an irregular jury. The sheriff was elected by the people for the same reason as Lord Coke says, because their office concerned the administration of justice to all. The coroner, for the same reason, was appointed by the people, and he alone of the three is now the same as in ancient times elected by you, by the people, as were the sheriffs and justices of the peace. The appointment of sheriffs are now vested in the worthiest hands in which they could be placed—the judges of the land, and the crown are bound to select a sheriff from the names of fit and proper persons returned by the judges. Now, if you wish to know how the people lost their right of appointing those officers, you shall hear it in the language of one of the most eminent legal authorities that you can be referred to. I quote from the first volume of Blackstone's Commentaries, page 347—"But when Queen Isabel, the wife of Edward the Second, had contrived to depose her husband by a forced resignation of the crown, and had set up his son, Edward the Third, in his place; this being a thing then without example in England, it was feared would much alarm the people, especially as the old king was living, though hurried about from castle to castle, till at last he met with an untimely death. To prevent therefore, any risings, or other disturbances of the peace, the new king sent writs to all the sheriffs in England, giving a plausible account of the manner of his obtaining the crown, and withal commanding each sheriff, that the peace be kept throughout his bailiwick on pain and peril of disinheritance and loss of life and limb, and in a few weeks afterwards it was ordained in parliament that good men and lawful should be assigned to keep the peace. And in this manner, and upon this occasion, was the election of the conservators of the peace taken from the people and given to the king." Gentlemen, I think the question of arbitration is so

far set at rest. I have but one remark more to make, and that is, that before you hold anything to be criminal, merely because it is novel, you will ask, and require from the crown to show you some plain, clear expression in a book of law constituting the criminality of that act. Another short topic was adverted to by my learned friend the Attorney-General—the Queen's speech—and I shall now ask you to attend to what I suggest in regard to it. It may have occurred that unseemly language was used in relation to that document, but I beg of you to bear in mind the distinction which was always made between it as not the act of her Majesty but that of ministers. Our gracious sovereign is not responsible for any one word in that speech. The Whig ministry censured the Tory speech, and that Tory censured the Whig speech, and I believe it is not within the compass of human possibility to frame a speech so as to please all parties. Gentlemen, I shall refer you to two authorities, which I hope the Attorney-General will not censure me for quoting. You may wish to know in what terms two stout Conservative newspapers treated the speech of her Majesty in July, 1839, on the education question. I quote from the London *Standard*, and what is its language? The answer, insulting to the majority of the house of lords, the half of the house of commons, and the whole people—an answer not to be surpassed in petulance and insolent hypocrisy, by anything that has proceeded from the throne since the expulsion of the Stuarts—is thus, by the vile self-artifice of Lord Melbourne, brought home to the Queen personally. Is this the way to insure her Majesty the affection and respect of her people? Will they love her more for preferring the interests of Lord Melbourne to their wishes? Will they respect more a princess of twenty years and two months, because she is represented as rebuking sharply the majority of the lords, the great majority of the British members of the house of commons, the nation, and the church, and associating with that rebuke a claim of confidence in her attachment to the interests of the church almost in the words of the Popish tyrant, James the Second? Has the Queen no friend to set the truth of these matters before her Majesty? Alas! we fear she has none! An execrable foreign influence interposes between her Majesty and her truest and best friend—that friend whom nature and experience call upon her to trust before all others. We know not what the house of lords may think it right to do on this answer. We hope, however, that an acknowledgment will be extorted from Lord Melbourne, that the answer is his and not the Queen's, in any but the merely formal sense. This is absolutely necessary in justice to her Majesty." So much for the *Standard*; and now, gentlemen, permit me to draw your attention to the mild and gentle strictures which appeared in another journal of similar politics—the *Morning Post*—about that same speech. I purposely confine myself to a reference to those newspapers, for I am well aware that they are papers which are likely to find favour in the eyes of the counsel for the crown; and I think it utterly impossible that journals whose political principles are so thoroughly orthodox could commit any error on the subject of the right of the public to express their opinions without reservation, in reference to the speech of the Sovereign. Hear, then, the *Morning Post*:—"We are of opinion that it is impossible to conceive anything more grossly ungenerous—anything more unmanly and base than the conduct of the present ministry to their Sovereign. Look at the answer to the address of the house of lords which these ministers have presumed to put into the mouth of her Majesty. Was ever sovereign so misguided and degraded before, except in those unhappy periods when rude rebellion has lorded it over legitimate monarchy? Most sincerely do we pity the monarch who is made the victim of an administration at once so daring and so contemptible. We know not how long this is to be borne. We think it has been borne too long already. We call on every man who thinks that the religion of the people, and the safety, honour, and dignity of the crown matter of importance, to make a personal stand against the vileness which appears to infest high places. We know what the present administration has given us. It has given us a frivolous, scandalous, and prurient court—a dishonest and despised government—a wronged, insulted, and indignant people. We trust that the day may yet be when all this will be reckoned up, and when justice will be done to the guilty." Which, being interpreted, meaneth when the Whigs go out and the Tories come in (laughter); and now, gentlemen, let me implore of you to treasure up in your memory these elegant extracts (laughter). Remember how the Tories speak of the Whigs, and how the Whigs speak of the Tories, and then consider whether you can find it in your hearts to deny to a man who, like Mr. O'Connell, does not care a bean blossom either for Whig or Tory, the right of abusing whatever ministry may chance to be in power for whatever speech they may please to put into the Sovereign's mouth (laughter). But I defy the Solicitor-General to quote from any one of Mr. O'Connell's speeches anything in reference to a Queen's speech which comes within a thousand degrees of the severity of these comments. I challenge him to show that Mr. O'Connell ever uttered a sentence in his life which contained a reflection as these newspapers do on the person of her Majesty; and I say it with pleasure, for I cannot but deprecate such observations, for they indicate something on the part of the man who uses them which does not partake of that high feeling of loyalty which ought to characterise all well-disposed subjects, and which ought assuredly to characterise, in a supereminent degree, everything that comes from such constitutional quarters as the *Standard* and *Post*. Gentlemen, the next charge brought against the traversers is that of endeavouring to excite disaffection and discontent amongst her Majesty's subjects serving in the army. It is a singular charge, and peculiarly so from this remarkable circumstance, that it is not asserted that the traversers undertook or conceived any project for the purpose of exciting mutiny amongst the troops, or encouraging the practice of desertion. It is merely charged against us that we endeavoured to excite discontent and disaffection; but it is not stated amongst whom we endeavoured to excite discontent, or against whom disaffection. Mr. O'Connell's remarks in reference to the army arose, in the first instance, out of a most tragical transaction which occurred last summer. A soldier dropped suddenly dead while on drill, and the coroner's jury, which sat upon the body, added to their verdict a statement to the effect that his death was induced by great fatigue consequent upon excessive drilling. This verdict gave rise to an infinity of public discussion, particularly in the newspapers, some of which contended that the jurors were not justified in appending that statement, for that it was subversive of discipline, while others as stoutly maintained that the jurors were quite right in having done so, for that it was full time that the grievances of the soldiery should be inquired into. The memory of this occurrence was yet fresh in the public mind, when another equally tragic event occurred. A private belonging to the 5th Fusiliers, a Protestant and an Englishman, stepped out of the ranks, when on a drill, and shot the adjutant, a Scotch officer, dead upon the spot. This dreadful occurrence gave rise also to much discussion, and men asked each other whether there must not be some-

thing wrong in the discipline of the army—something exceedingly oppressive upon the soldiery—when a man of good character—who, up to that time, had conducted himself with strict propriety—could be guilty of a crime so horrible and atrocious. It was the topic of general observation. Mr. O'Connell incidentally, in the course of his speeches, made some allusion to it; and a clergyman of the name of Power also wrote a letter on the subject, which was published in the *Pilot*. Of that letter I will say nothing, for Mr. Power is defended here by counsel.

Chief Justice—There is no traverser before the court of the name of Power.

Mr. Whiteside—Oh, no, my lord, I am aware there is not. What I meant to convey was, that there is counsel here for Mr. Barrett, who is responsible for the publication of that letter. That letter may, perhaps, be fairly enough adduced in evidence against Mr. Barrett, but I deny that it can be adduced in evidence against the other traversers; and what I complain of is, that the invisible gentleman with the scissors should have been so exceedingly polite as to have introduced it into his indictment for the purpose, forsooth, of proving a conspiracy against my client! No specific act is laid to Mr. O'Connell's charge, designed for the purpose of weaning the soldiery from their allegiance; and the head and front of his offending consists in his having expressed it as his opinion, that sergeants ought to be more frequently promoted to commissions. But, gentlemen, were it not that I do not wish to weary out your patience, I could quote extracts *ad infinitum* from military works, written by officers in the army, in which the same doctrine is distinctly propounded. For my part I pass no opinion upon the subject, but I cannot see why the right of other parties to do so should be disputed. Gentlemen, the Attorney-General has called the traversers severely to task for having adopted the resolution of the old Volunteers, and for having quoted in their speeches the words of some illustrious men, now no more, who expressed it as their opinion that in point of constitutional principle, and upon constitutional reasoning, the union was null and void. He told you what is stated by members of parliament against an act before it becomes law cannot justify a man in opposing that act of parliament after it shall have become the law of the land. That is certainly true to a certain extent; but I cannot help thinking that the Attorney-General is endeavouring to push the principle somewhat too far. He finds fault with us for having quoted the words of that distinguished man, Mr. Saurin, but I do not think that he had any right to call us to task for having done so. Why should not Mr. O'Connell refer to Mr. Saurin's words? They are public property—they are the property of the Irish people. The sentiments, honestly and deliberately expressed of a member of the legislature, are worthy of being perused, for we are to suppose that they faithfully represent his thoughts on the occasion, and I do not think that any man is justified in placing on record and handing down to posterity any opinion of his with a view to prevent a law passing, which opinion he does not consider to be founded on truth. But, gentlemen, it is a monstrous thing to impeach Mr. O'Connell at this period for having used Mr. Saurin's words. If it was treason to do so, why was he not indicted long ago? It is rather too late now, for it appears he has been doing so unremittingly for the last thirty-four years. My lords and gentlemen, I hold in my hand the report of the trial of Mr. Magee, of the *Evening Post*, in the year 1813, and by reference to page 109, I find that Mr. O'Connell used the following words. (The learned counsel here read an extract from Mr. O'Connell's speech on the occasion in question, in which the honourable and learned gentleman quoted the memorable expression of Saurin, declaring that the union was not binding on conscience.) My lords, Mr. Saurin was present when Mr. O'Connell thus expressed himself, and he never denied having used these words, nor ever withdrew them. And now let me refer you to the parliamentary debates upon the question of the union, and direct your attention to the fact, that there was scarcely a speaker of distinction who did not prophecy that the day would come when the union would be re-discussed and re-agitated. Mr. Bushe says, addressing Lord Castlereagh, "Let me adjure the noble lord to weigh well and consider deeply the probable permanency of a measure so conducted. Let me implore him to avail himself of the passing experience of his own days, and of the instructions which history may afford him, and when he sees volcanic revolutions desolating the face of the political world—the first elementary principles of society loosening and dissolving, and empires not built upon the liberties of the people crumbling into dust. Let him contemplate the awful change which he is about to accomplish, and consider the responsibility he incurs to his sovereign by exchanging the affections of a loyal nation for the reluctant obedience of a degraded and defrauded province. Let him look for the permanency of this transaction something further than to the vote of to-night, or the job of the morning, and let him have some better document than his army list for the affections of the people. Let him consider whether posterity will validate this act if they believe the constitution of their ancestors was plundered by force or filched by practice. Let him, before it be too late, seriously ponder whether posterity will validate this act if they believe that the basest corruption and artifice were exerted to promote it; that all the worst passions of the human breast were enlisted into the service, and all the most depraved ingenuity of the human intellect tortured to devise new contrivances of fraud. I do not say these things have been—I state hypothetically, and ask, if posterity believe such things will they validate the transaction? If they believe that there was foul play from the first moment to the last, both within doors and without, that the rabble to force the parliament and debauched or intimidated to petition against the constitution of their country. If they believe that in parliament the disgust of the measure, notwithstanding a proscription which made office incompatible with honour, stained the treasury bench—that the disgust of the measure broke asunder and dissociated laws of the tenderest and most delicate connections of human life—that the nominal office of Escheator of Munster became an office of competition, and after the parliament was thus reduced, that the Irish commons were recruited from the English staff. If they were to believe those things, and that human frailty and human necessities were so practised upon—that the private sentiments and the public conduct of several could not be reconciled, and that where the minister could influence twenty votes he could not command one 'hear him.' I say not that these things were so, but I ask you if posterity believe them to have been so, will posterity validate this transaction?—will they feel themselves bound to do so? I answer—that where a transaction, though fortified by sevenfold form, is radically fraudulent, all the forms and solemnities of law are but so many badges of the fraud, and posterity like a great court of conscience will pronounce its judgment." Another of the learned judges of the land, who has since retired from the bench—I mean Mr. Justice Moore—spoke on that occasion. His words will be found at page 81 in the last volume of the debates—"Sir, I have no hesitation to say that if they carry the measure under all the circumstances which I have stated

and observed upon, it will be a robbery and not a treaty—an act of constraint and violence, and not of compact and volition—a conquest, not a union. A union upon such principles, and accomplished by such means, policy never can require, justice never can sanctify, wisdom never can approve, patriotism never can reconcile, time never can cement, and force never can establish. It might be a union for a few days, a few months, perhaps for a few years; but it would be followed by ages of ill blood, generations of hostility, centuries of contest, and desolation and misery, to this island to all eternity. It would be a union founded on the violation of public faith—erected on national degradation—equally subversive of the moral, physical, and political fitness of things, and equally odious and abominable in the sight of God and man." Gentlemen, I will give you only the closing words of Grattan on that occasion. He said—"The question is not now such as occupied you of old. Not old Poynings—not peculation nor plunder—not an embargo—not a Catholic bill—not a reform bill: it is your being; it is more—it is your life to come. Whether you will go with the Castle at your head, to the tune of Charlemont and the Volunteers, and erase his epitaph, or whether your children shall go to your graves saying, 'A venal, a military court, attack the liberties of the Irish, and here lie the bones of the honourable dead who saved their country.' Such an epitaph is a nobility which the king cannot give his slaves—'tis a glory which the crown cannot give the king." Gentlemen of the jury, Mr. Saurin made a speech on that occasion; and when we refer to a man's speech, we should take into account his character, and the circumstances of the man speaking. We should see if the man is a rash and fiery politician, and that his words are not entitled to respect and esteem. Was that man rash and fiery? No, he was remarkable for the solidity of his judgment, the seriousness of his mind, the gravity of his style; he did not contend certainly that the parliament might not be so constituted as not pass a bill of union; but he said you are not elected by the Irish people with the knowledge that you are brought here to vote away the liberties of that people. If you do so, it is illegal and void. Before the Scotch union was carried, a notice was given to the people that the representatives were to be elected for that purpose. Mr. Saurin said—"But I conjure the house to consider with the nature of the measure itself, and the effect which it may have on the country before it acceded to the present resolution. Under the constitution of Ireland we have lived happy—we have all bettered our condition—our country has advanced in greatness, with uncommon rapidity—our commerce increased—our agriculture improved—our laws have assumed a sublime and impartial character—it has furnished everything for hope, and nothing for despondency. It is that constitution which has those benefits to which we have sworn allegiance; and I caution those who would annihilate it for ever, of the heavy weight of responsibility which they must incur in the prosecution of the project. If the measure is good, and to think it deserving of being considered by the country, dissolve the parliament, take the sense of the nation constitutionally. I know no other mode in which the voice of the country can be properly collected; but do not introduce the placemen whom you have sent out and call their return an expression of the voice of the nation. Give the country fair play; let it speak through its constitutional organ; its voice will have its weight, and you at least will, if you should be disposed to entertain this measure, have a decent colour for your proceedings. Sir, I do not wish to recur to the unhappy scenes which have so materially injured our country; but it should be remembered that the profession of which I am a member, which from its education, its habits, its zeal to defend the constitution in the hour of its danger, that that profession has expressed itself decidedly against this measure, and your incompetency to entertain it. From the rank which I hold in that profession, many of my friends think that it may be conducive to the public cause that I should appear in this house to give the measure of the union a most decided negative; no other earthly consideration could have induced me to trespass on your patience. I have come forward at their solicitation; and when I tell you I am an enemy to union, it is because I am an ardent friend to his Majesty's and to British connection. Gentlemen, I will trouble you with one word more—it is the declaration of the father of the late Lord Lord Fitzgerald and Vesci, who at the time was prime sergeant of Ireland, a very lucrative office. He sat in the house of commons at the time, and hear what he says—"Posterity will inquire into the means by which this union was carried. If the question had never been made, I should have declined the discussion of it; but as it has I must declare that it is not, in my opinion, within the moral competence of parliament to destroy and extinguish itself, and with it the rights and liberties of those who created it. I acknowledge the competency of the English parliament to adopt the union with Scotland, because the number of the representatives and the peerage only was increased, which as the crown by its prerogative may do, so may the act of the legislature. But after the union the constitution of England continued, but the constitution of Scotland was dispersed. And of this opinion must the great advocate of constitutional establishment have been. The house of lords was not competent to dissolve the house of commons, nor even to dissolve itself, nor to abdicate if it would its proportion in the legislation of the kingdom; that though a king may abdicate in his own person he cannot abdicate for the monarchy. The constituent parts of a state are obliged to hold their public faith with each other. Such a compact may, with respect to Great Britain, be a union, but with respect to Ireland it will be a revolution. The Scotch parliament was elected with a notice to the people, that such a measure would be submitted to their discussion. How different the present case. Will the measure proposed benefit the country, and remove the causes of the discontent? In my opinion not. It will, on the contrary, increase the agitation of the one, and aggravate the other? Will it tranquillize this great metropolis, which so lately as the last summer, by its valour and spirit, preserved this country to ourselves and to Great Britain, while the government of the country lay shuddering in the Castle? Whom, then, will it gratify? Not the loyalists, but the United Irishmen. Nine in ten of the men execrate the measure—the women are unanimous against it. Would to God that they would emulate the Athenian ladies, and subject the man who would vote for it to the ban of their displeasure. Will it give you any stronger claim on Great Britain? No; and I am satisfied that the honour of the British nation would reject such an insinuation. Would Great Britain, that arms for the deliverance of Europe, that seized Prussia, Sardinia, the Emperor, and guarantees his loans, that makes Egypt an object of his care; will she refuse her protection to Ireland?" He concludes—"Posterity will inquire into the means by which this union is carried." Gentlemen, you see what that man clearly foresaw. Yes, he saw that posterity would inquire into the means by which that union was carried, and posterity has inquired into the means by which it was carried, and by which they lost the last glory of their nation—a free parliament. Those men were not satisfied with passing speeches. No, they have left on record their strong and de-

cided opinions on the subject; they were not satisfied with the speech of the moment; they drew up a solemn and elaborate document, in order to leave their opinions to posterity, and in order to procure this document a place in the records of parliament, that all future generations might refer to the sentiments entertained by them on the subject of the union. It was drawn up and put on record, and Lord Corry, son of Lord Belvidere, moved the protest and address to his Majesty. Mr. Whiteside then read from the 4th volume of Grattan's Speeches, the protest adopted by the anti-union members. The following is the extract:—

"On this day Lord Corry, with a view to leave on record the sentiments of the people of Ireland against the union, moved the following address to his Majesty, which, as it contains the principal objections made by the leaders of the opposition to this measure during the course of the session, has been thought worthy to insert:—Were all the advantages, which without any foundation they have declared that this measure offers, to be its instant and immediate consequence, we do not hesitate to say expressly, that we could not harbour the thought of accepting them in exchange for our parliament, or that we could, or would, barter our freedom for commerce, or our constitution for revenue; but the offers are mere impositions, and we state with the firmest confidence, that in commerce or trade their measure confirms no one advantage, nor can it confer any; for by your Majesty's gracious and paternal attention to this your ancient realm of Ireland, every restriction under which its commerce laboured has been removed during your Majesty's auspicious reign, and we are now as free to trade to all the world as Britain is. In manufactures any attempt it makes to offer any benefit which we do not now enjoy, is vain and delusive; and wherever it is to have effect, that effect will be to our injury. Most of the duties on import, which operate as protections to our manufactures are, under its provisions, either to be removed or reduced immediately; and those which will be reduced are to cease entirely at a limited time, though many of our manufactures owe their existence to the protection of those duties; and though it is not in the power of human wisdom to foresee any precise time when they may be able to thrive without them. Your Majesty's faithful commons feel more than an ordinary interest in laying this fact before you; because they have, under your Majesty's approbation, raised up and nursed many of those manufactures; and by so doing, have encouraged much capital to be vested in them, the proprietors of which are now to be left unprotected, and to be deprived of the parliament on whose faith they embarked themselves, their families, and properties in the undertaking." And again—"But it is not only in respect to these delusions held out as to trade and revenue that we feel it our duty to lay before your Majesty the conduct of your ministers on this measure; we must state the means by which they have endeavoured to carry it. That in the first instance, admitting the necessity of conforming to the sense of the parliament and the people, they took the sense of the commons, and found that sense to be against it; that they then affected to appeal against the parliament to the people, at the same time endeavouring, by their choice of sheriffs, to obstruct the regular and constitutional mode whereby the sense of the people has been usually collected; that on the contrary, they did use or abet and encourage the using of various arts and stratagems to procure from individuals of the lowest order, some of whom were their prisoners and felons, scandalous signatures against the constitution; that notwithstanding these attempts to procure a fallacious appearance of strength and muster against parliament, the people have expressed their sentiments decidedly against the union, and twenty-one counties, at public meetings legally convened, and also many other counties by petitions signed by the freeholders, and many cities and towns have expressed, either to your Majesty or to this house, or to both, their decided and unalterable hostility to this union, yet your ministers have, as we believe, taken upon them to state to your Majesty, and your ministers in Britain, in defiance of all these facts, that the sense of the nation is not adverse to the measure; that if there could be any doubt that your Majesty's ministers, in the appointment of sheriffs did consider how they might obstruct the people in delivering their opinion regarding the union, that doubt is fully explained by their continuing in office the sheriff of the former year in more than one instance, whence it also appears how decidedly the sense of the country is against this measure, when your Majesty's ministers found it difficult to procure any person to serve the office of sheriff who was properly qualified, and was also a friend to the measure; that finding the sense of the people as well as the parliament to be against it, your Majesty's ministers attempted to change the parliament itself, and refusing to take the sense of the nation by a general election, they procured a partial dissolution, and did so publicly abuse the disqualifying clause in the place bill (which was enacted for the express purpose of preserving the freedom and independence of parliament,) that by vacating seats under its authority, very many new returns were made to this house for the purpose of carrying it, and thus did they change the parliament without resorting to the people; that before the ministry had perverted the place bill, the sense of parliament was against their union, and if that bill had not been so perverted, that sense had remained unaltered; that of those who voted for the union, we beg leave to inform your Majesty, that seventy-six had places or pensions under the crown, and others were under the immediate influence of constituents who held great offices under the crown; that the practices of influence above-mentioned were accompanied by the removal from office of various servants of the crown who had seats in parliament, particularly the Chancellor of the Exchequer, the Prime Sergeant, three Commissioners of the Revenue, a Commissioner of Accounts, a Commissioner of Barracks, and the Cursitor of the Court of Chancery, because they would not vote away the parliament; also by their withdrawing their confidence from others of your Majesty's faithful and able councillors, for the same reason; that they procured or encouraged the purchase of seats in this house, to return members to vote for the union, also the introduction of persons unconnected with this country to vote away her parliament; that they have also attempted to prostitute the peerage, by promising to persons, not even commoners in parliament, her sacred honours, if they would come into this house and vote for the union: and that, finally, they have annexed to their plan of union an artful device, whereby a million and a half of money is to be given to private persons possessing returns, who are to receive said sum on the event of the union, for the carrying of which, to such an amount said persons are to be paid; and this nation is to make good the sale by which she is thus disinherited of her parliament, and is to be taxed for ever to raise the whole amount, although if your ministers shall persevere in such a flagrant, unconstitutional scheme, and the money is to be raised, it is for the union; and being therefore an imperial concern ought to be borne in the proportion already laid down for imperial expenses, that is, two seventeenths by Ireland, and fifteen seventeenths by Britain; that under these unconstitutional circumstances your Majesty's ministers have endeavoured, against the declared sense of the people, to impose upon

them a new constitution, subverting the old one." And again—"That whether we rest on this incontrovertible and self-evident truth, that no parliament in another kingdom can have the local information or knowledge of the manners, habits, wants, or wishes of the nation, which its own parliament naturally possesses, and which is requisite for beneficial legislation; nor can be supplied with the necessary information either as promptly or accurately; or whether we look to the clear proofs of that truth, which the progress of this measure has afforded, by our ministers having called to their assistance, in London, the great officers of this kingdom, most likely, from their station, to give full information for framing their measure; and though all their talents, and all their own information, and what they obtained by letters while it was pending, were employed for months there, yet, when they brought it back, a few hours' or rather a few minutes' inquiry on the spot, in Dublin, forced them to alter their project in very many articles, complete and perfect as they thought it. We have strong additional reason to tell and to represent the manifest and irreparable injuries which this kingdom must sustain by the want of a resident parliament, and the impossibility of legislation being carried on for it as it ought to be. Therefore, inasmuch as the measure of an union is an unnecessary innovation—and innovations, at all times hazardous, are rendered peculiarly so now by the awful situation of the times: inasmuch, too, as far from being an innocent experiment, it is replete with changes injurious to our trade and manufactures, and our revenues: inasmuch also, as it destroys our constitution which has worked well, and substitutes a new one, the benefits which we cannot see, but the numerous evils and dangers of which are apparent, and which, in every change it offers, militates against some known and established principle of the British constitution: inasmuch, also, as it so far endangers the constitution of Britain as not to leave us the certainty of enjoying a free constitution there when our own shall be destroyed: inasmuch as it tends to impoverish and subjugate Ireland, without giving wealth or strength to Britain: inasmuch as it tends to raise and perpetuate discontent and jealousies—to create new, and strengthen old discontentedness of interests in our concerns of trade, manufactures, revenue, and constitution—and instead of increasing the connection between the two kingdoms, may tend to their separation, to our consequent ruin, and to the destruction or dismemberment of the empire: inasmuch as it endangers, instead of promoting or securing the tranquillity of Ireland, as it degrades the national pride and character, debases its rank from a kingdom to that of a dependant province, yet leaves us every expense and mark of a kingdom but the great essential one of a parliament." And again—"Inasmuch as it has been proposed and hitherto carried against the decided and expressed sense of the people, notwithstanding the improper means resorted to to prevent that sense being declared, and to misrepresent it when known." And again—"Inasmuch as it leaves to be determined, by the chance of drawing lots, the choice of thirty-two members to represent as many great cities and towns with a levity which tends to turn into ridicule the sacred and serious trust of a representative—and while it commits to one person the office which the constitution commits to two, of speaking the voice of the people and granting their money, it does not allow the electors to choose which of the two they will entrust with that power: and inasmuch as means the most unconstitutional, influence the most undue, and bribes openly avowed, have been resorted to to carry it against the known sense of the commons and people, during the existence of martial law throughout the land: we feel it our bounden duty to ourselves, our country, and our posterity, to lay this our most solemn protest and prayer before your Majesty, that you will be graciously pleased to extend your paternal protection to your faithful and loyal subjects, and to save them from the danger threatened by your Majesty's ministers in this their ruinous and destructive project, humbly declaring with the most cordial and warm sincerity, that we are actuated therein by an irresistible sense of duty, by an unshaken loyalty to your Majesty, by a veneration for the British name, by an ardent attachment to the British nation, with whom we have so often declared we will stand or fall, and by a determination to preserve for ever the connection between the two kingdoms, on which the happiness, the power, and the strength of each irrevocably and unalterably depend."

I see, (continued Mr. Whiteside,) that Mr. Saurin was one of the tellers upon that division—the numbers were, 77 to 135—and, therefore, he must be considered as a party to that protest. Mr. Toler, who was so peculiarly distinguished for his legal acquirements (loud laughter), voted for the union and obtained a peerage. Mr. Saurin continued a commoner till he died. Gentlemen, it has been observed by the Attorney-General, but very wrongly—that the condition of Ireland at the time the volunteers were established warranted them in the resolutions which they adopted, but that the state of the law now does not justify a similar line of conduct. His argument was, that Ireland then had a parliament perfectly independent, and that England obtained, by the enactment of 6th George I., the power to treat her as a dependant country; and, therefore, the volunteers were justified. But the argument fails. Lord Coke, in 4th Institutes, said that it was in the power of the English parliament to bind the people of Ireland, but not unless Ireland was expressly included by name in the act. This was, then, the state of the law in the time of the volunteers. That Ireland was bound by an English act, when named in it, therefore the volunteers acted against the letter of the law, though they did not against its spirit. When we had a parliament here—which was deprived of its authority—if it were just to adopt resolutions condemnatory of the English act which deprived that parliament of its power, how much more reasonable is it to adopt resolutions in the spirit of those of the volunteers, when we have lost that parliament, and all the benefits of a resident legislature. I find in looking again at the resolutions that an ancestor of my friend Mr. Tomb's attested by his own signature that it was illegal and against the spirit of the law to attempt to bind the people of Ireland by an English act of parliament. The Attorney-General has said that the act of union was a great and final settlement; but that assertion destroys the very principle upon which the union rests. If he says that an act of parliament contains a provision for its finalty, then the volunteers of '82 made no mistake. They found that by the 6th George I., the parliament of England had presumed to bind the people of Ireland, and they said we must have that act abandoned—repealed—and they succeeded. I will next call your attention to the consideration of what Mr. O'Connell has asserted about the revival of the Irish parliament, and I will first, however, dispose of his proposition for the "Renewed action of the Irish parliament." Mr. O'Connell in that extraordinary document sets forth the whole of the Irish population, and states his opinion, that household suffrage is the best. Why, gentlemen, that is the suffrage we have at present in Dublin. Every man who has a house worth ten pounds possesses a vote, and there are very few houses in Dublin that are not worth ten pounds. The Duke of Richmond, who was examined by Mr. Erskine on the trial of

Hardy, was of opinion that the whole system of the franchise was corrupt, and that every man who had not committed a crime ought to have a vote; and that there ought to be annual parliaments, vote by ballot, &c., all which was very well for a Duke. And in his letter to Colonel Sharman he (the Duke of Richmond) states that he is of opinion that the two nations should have but one parliament, provided the Sovereign of England should reside a reasonable time in this country, and hold her imperial parliament in it, which he said her Majesty could do with a scrape of her pen—and, gentlemen, I hope she may. It is a positive insult to the understanding of any man to say that such a state of things would not be positive benefit to the country, improve her trade, her manufactures and her resources. Even our own profession would be benefited by it; for the residence of her most gracious Majesty in this country would be no bar to her loyal subjects to go to law (laughter). The Attorney-General adopted the Socratic doctrine in his argument with us: he put questions to us. Now I am not to be held accountable for the doctrines propounded by others who have spoken before me. But it can be said, as was alleged, that it is revolutionary to state that every town possessing 10,000 inhabitants should have a representative? Why, that is but the principle of the reform bill. Mr. O'Connell also says that every man who marries shall have a vote. I think there can be no objection on that score—and that the conspiracy on that ground may be abandoned; and certainly such a question could not be submitted to a more favourable jury, for you are all married (laughter). Has Mr. O'Connell said that her Majesty was to be pulled from her throne—the house of peers to be abolished—and the house of commons extinguished? No. What then has he done? He has been guilty of the monstrous proceeding of extending the royal prerogative? The Attorney-General, the legal champion of the crown, charges it as a crime against Mr. O'Connell that he said the Queen has a larger, wider, and more extended prerogative than her Majesty possesses. Where is the authority in which it is laid down that the man who propounded such a proposition is to be charged as a conspirator. What authority is there for saying that Mr. Duffy, Mr. Steele, or any one else, is to be charged with conspiracy, because when they heard such a proposition they did not say to the person propounding it, cite us some authority; cite us your case. Suppose Mr. O'Connell, instead of saying that parliament should be reformed—that a parliament should be given to Ireland—said, sir, I am of opinion that parliament is a humbug—a nuisance; that her Majesty has a perfect right to rule, independent of either house of parliament. Why, what would be the consequence? I cite a case in point. A celebrated writer in England wrote a book in which he said that the house of commons might be dispensed with. That was voted to be a scandalous and seditious libel by the house, and the Attorney-General of the day was directed to prosecute the writer. He was accordingly prosecuted, and the case is to be found in Peake's cases in the King's Bench. It is called the King *v.* Reeves. Lord Kenyon there laid it down that the power of free discussion was the right of every subject of this country—a right to the free exercise of which we were indebted, more than to any other claimed by Englishmen, for the enjoyment of all the blessings we possess; for the reformation, the revolution, and our emancipation from the tyranny of the Stuarts, &c., &c.; and that in a free country like this the productions of a political writer should not be hardly dealt with. He directed the jury to read through the whole book, and then form their judgment on the entire work. That was his charge, and do you wonder that the people of England should be so much attached to the judicial system under which they live, when you hear laid down by the Lord Chief Justice of England a doctrine so constitutional, so favourable to freedom and the right of the subject as that doctrine. The jury in that case retired; they had the book before them, and though they decided that the book was improper, yet, nevertheless, they thought that he was not actuated by any bad intention; and Lord Kenyon said he approved of their verdict. That was the doctrine propounded from the bench, and the jury having looked with the eye of men of sense qualified their verdict by saying they deprecated what was said by the defendant, the mode in which he conducted his argument, but they found their verdict of not guilty, and the Lord Chief Justice said he approved of their decision. Therefore, if Mr. O'Connell said her Majesty may dispense with the house of lords he would be safe according to the authority of that case. If he said the Queen might dispense with the house of commons, he would be safe according to the authority of that case. But what has he said? That the Irish peerage might be restored to the position in which it once stood—that the house of lords would be Protestant, and that the house of commons ought to be restored. In England the right of free discussion is the right of Englishmen, and I put it to your good sense to say whether the arguments of the writer of that book, or Mr. O'Connell's argument is more consistent with the principles of the constitution under which we live? Gentlemen, the power and prerogative of the crown to issue writs seems to have been a very extensive power—at least, as it was formerly exercised. In the reign of Elizabeth, she, wishing to have a majority, sent the writs to only fifty boroughs and left out ten. There are very remarkable instances where the crown have withheld writs from places entitled to send representatives to parliament, as to numbers. Looking to the parliamentary history, we find the most elaborate discourse ever spoken, made upon this subject. It was by Sir John Davies, the Attorney-General to King James the First, and was to be found in Leland's History of Ireland. In that discourse you will see the right King James the First had for what he did do, to create forty boroughs in the north of Ireland in one day. It was questioned in that parliament whether he had a right to do so; the question was discussed, carried over to England, and it was decided in favour of his right, and those persons so elected, under his writs, sat in parliament to the period of the union. The last instance of the kind was the issuing of a writ for the borough of Newark, and it was decided in the house of commons by a very large majority that the Sovereign had a right to create the borough. Mr. O'Connell's argument was this, that the Sovereign has still the power to create boroughs in England. Chitty, in his work on the prerogatives of the crown, enters into that question, and says there was nothing to take away the prerogatives of the crown in that respect. Then, if it does exist, the union is in the power of the Sovereign, and that learned writer says it is in the power of the crown to create boroughs as they did before.

Mr. Justice Perrin—What is the date of that work?

Mr. Whiteside—It was published in the year 1820; since the union. Whether the argument be right or wrong, which is not the question before you, is a man to be branded as a conspirator, because without knowing whether Mr. O'Connell was right or wrong—and Mr. Duffy will pardon me, for I don't think he has read sufficiently on the subject, he adopted his opinions. I will show you by a passage from a speech made by Mr. O'Connell in the debate in the Corporation of Dublin, that he put this as an extreme case; that speech is in a pamphlet, most widely scattered, and it was a fair proceeding, for it scattered the opinions of my friend

Mr. Butt, who made a most able, argumentative, and learned discourse against Mr. O'Connell in that debate.

Chief Justice—I don't think you can cite that.

Mr. Whiteside—Then I can state the substance of it. Mr. O'Connell said, that as the prerogative of the crown in the issuing of writs was putting an extreme case, because he knew not any instance, where the people were unanimous, that parliament had ever refused to grant their legitimate request; and, therefore, he exhorted the corporation to petition—which they did—and the people of Ireland to petition; and this led to the mass of petitions that have been prepared. And I contend that all these things go to prove that his object was to make an impression on parliament. If he looked for the crown to exercise its prerogative, the meetings and the petitions would be useless, so that all the acts prove that he looked for relief from parliament, and not from the prerogative of the crown. There are two general considerations that I shall advert to on the subject matter of this case; that is, whether the general conduct pursued by the defendants showed they were governed by motives that actuate men engaged in a conspiracy, and whether the general conduct pursued by the government showed that the government believed they were engaged in a conspiracy. How did the defendants act? Everything they did, everything they wrote, everything they spoke was before the public; every morning their speeches appeared in the frigid *Saunders*, and at night in the fiery *Pilot*, and they sent up to the government proof of their guilt, and evidence for their conviction. They spoke openly and in day light, those dark projects, those treasonable designs, these hidden contrivances; their rules are given to the public—they employed the printer of the crown to print them, and they declared their object to be the peaceable organisation of the people—to concentrate popular opinion, and carry out the objects they had in view, and that was a legitimate and proper object. What was the conduct of the government? Did that government show they believed that there existed in this country a conspiracy, beginning in March, and continuing up to October? If those publications were seditious, and proof of a conspiracy; if they were incentives to rebellion, and calculated to poison the public mind, and infect popular feeling in this country, for two whole years the court sat in which the Attorney-General had the right from his high station, to do what he thought proper in the defence of the law and constitution on any of those publications that are now asserted to be extraordinary seditious, and why have they not been prosecuted by him? And I retort on him the argument he used, that if it were mischievous in those defendants, or any of them, to spread poison through the land, it is more mischievous in the champion of the government, the sentinel of the state, not at once to come forward and stop the mischief when it might be stopped. Parliament sat until the month of August, and I call your attention to the discussion to which the Attorney-General referred—the question put by Lord Jocelyn to the minister, and the evasive answer given by that minister. Gentlemen, the attention of the government was also drawn most forcibly to the condition of Ireland in *parliament*. The ministry were united to *act* against the meetings in this country—they declined. The government had a large majority in the commons; they might have legislated and saved the country from confusion or convulsion—they did not do so. They might have put down the meeting of the repeal association, as the Catholic association was put down by act of parliament. I call upon you to recollect, that up to the latter end of August that parliament sat, and nothing was more easy than for this ministry, commanding a majority of that house to say, "We put down the Catholic association by the statute law; we put down unlawful combination; we put down the Protestants of the North; and give us now only a short act of parliament to put down those who disturbed the public peace." They allowed the parliament to separate and did nothing; the do-nothing policy appeared to be their rule of action. What were the people to believe? What did they believe? Why, that they had not transgressed the law; and that as the parliament did nothing, and the crown did nothing, they might persevere with peaceful agitation. Again, I say, to acquit the government you must acquit my client. Gentlemen, the parliament separates; the Irish government breaks up for the summer; his Excellency, of whom I speak with profound respect, retires to England for recreation, or for the cultivation of those elegant tastes for which he is distinguished; the Lord Chancellor betakes himself to the banks of the Thames, to the charms of Boyle Farm, to muse on law, or think of Pope. Our noble Secretary seeks some quiet dell, to lose, if possible, his unclassic recollections of *Irish politics*. The Attorney-General escaped from the bustle of St. Stephen's, to the tranquillity of home; and Mr. Solicitor, active as ever, was up to indulge, in most pleasing anticipations of the future, his cheering contemplations upon his present desirable prospects. The Prime Minister went to Drayton; her Majesty to sea. Ireland was left in the most comfortable manner possible to go head-foremost to destruction. A happier arrangement of things could not be made; property and life were consigned to the mercy of the conspirators; and the progress of the conspiracy advanced unheeded and unchecked. The Clontarf meeting s announced, and then, how shall I describe it? A bluish cloud hung on the declivities of the mountains; the political horizon is overcast indeed; a dangerous activity on the part of the government succeeds a dangerous silence; couriers fly to the Irish officials; the ears of the crown lawyers prick up—here is sedition; but where is his Excellency?—here is illegality; where is the Lord Chancellor?—here is matter of political expediency; where is the noble Secretary?—what welcome news they brought who summoned English functionaries to return to the seat of their Irish happiness. Meanwhile, time passed, no Attorney was ardent; no Solicitor apprehensive, they longed for the arrivals; they were, I believe, seen together on the sea-shore, straining their eyes towards the coast of England, and, in the agony of their expectation, exclaiming:—

> "Ye gods, annihilate both time and space,
> And make two lawyers happy."

They come!—they come! The privy council is assembled. I cannot tell you, gentlemen, what passed, or what was said at the first meeting of that august body—the Robertson or Gibton of future times may tell. I'll tell you what they do—they do nothing (laughter). The do-nothing policy prevailed; and on Friday they separated, having done nothing, with the happy consciousness that they had done their duty (laughter). Refreshed by sleep they reassembled on Saturday. They considered—they composed—they publish, and the proclamation is issued at three o'clock, forbidding the meeting; for which meeting there were thousands on the march, almost at that very moment, to attend next morning. The Commander-in-Chief receives his order, and prepares for battle. The cannon is loaded—the bayonet is fixed—the cavalry mount, and forth marches our victorious army in all "the pride, and pomp, and circumstance" of glorious war. It was a glorious sight to see (laughter). The advanced guard, by a brisk movement, pushed on and seized Aldborough-house (a laugh).

The light infantry, protected by cavalry, rush forward—the army are placed in position. The Pidgeon-house bristled with cannon, and looked awful, and the police skirmished, and the Commander-in-Chief—what did he do? It is stated that Sir Edward Blakeney, at one o'clock, rode down to inspect the troops—approved of what was done—rode home and dined! And if he does not get a peerage for the happy deeds he did that day, justice will not be done to Ireland (laughter). Such a triumph was never achieved since the renowned days of Irish history, when Brian Boroihme buckled on his mighty sword and smote the Danes (laughter). To be serious—was that a wise, consistent, judicious course of policy to make the law understood, respected, and obeyed? Was it not the last policy that should be resorted to for the purpose of governing so mercurial a people as the Irish? The meeting at Donnybrook was not forbidden—the Clontarf meeting was to be put down by the bayonet. Will constitutional knowledge be much edified by the body of that most interesting document—that learned and great performance, the proclamation, which it fulminated at the very last moment, when the meeting is on the point of being held, although other meetings of the same character and nature have been endured by that same government? Do the Irish laws vary with the season, and is that law in June that is not law in October? For the Attorney-General said the meeting at Donnybrook was the type of all the other meetings that were held; and I put it to your own unbiassed nature if it were—if the government saw the men that went to that meeting passing by the Castle-gate, and knew it was held, and were aware of it—they read the speeches—they had their reporters there, and knew everything that passed, why not then put down those meetings? Heated, inflamed, they see an enthusiastic people in pursuit of a darling object. Which are the most blameable—the people for holding those meetings that they did not see denounced or put down by the law—or the ministry that stood by and witnessed the folly and knew of the madness that allowed the mischief to prevail and spread over the country, until it was to burst forth like a fiery volcano, and sweep the country in a torrent of devastation? Did the conduct of the government prove that its members believed in the existence of the conspiracy here alleged? There are two parties on trial—the government and the accused. I repeat my question, did the conduct of the government prove a belief existing in the minds of its members that there was in this country, for nearly a year past, not merely intemperate speeches made, but a conspiracy such as is now pretended? And did the acts of the government prove they considered the notorious facts in evidence established its existence? Is there not something exquisitely absurd in the whole proceeding? The assertion of the Attorney-General is, that a terrible conspiracy has long existed to rend society asunder and subvert our vast political system. The proofs of this giant conspiracy are, say they, many and clear—monster meetings have been held to carry out their horrid project, and masses of excited people called together to be stimulated by the maddening eloquence of the chief conspirator. These meetings, say the counsel for the crown, were full of danger, fatal to social order, pretexts for rebellion—they were unconstitutional and illegal—the speakers who addressed them were trumpets of sedition, and the speeches made were overt acts to prove the great joint crime; each and all of these mighty assemblages were overt acts of a conspiracy—each and all of the speeches were uttered in furtherance of the one united comprehensive plan; each of the meetings of hundreds of thousands of conspirators were full of danger—they excited the apathetic, inflamed the ardent, alarmed the timorous, and lighted throughout the kingdom a flame of discord—each monster-meeting was an object of dismay and terror—expected by the government to burst forth, volcano like, and spread destruction in its fiery course; the publications of the press were each and all, as we have proved, incentives to sedition and stimulants of rebellion—and each of these publications when written was seditious, in prosecuting a base and wicked object. Gentlemen, reflect upon these arguments—weigh them well, and then ask your honest understandings can you adopt them? Will you give a political verdict to save the government from the consequences of past neglect? Suppose you assented to the construction now given to these overt acts, what would you expect ought to have been the conduct of the government? The counsel for the crown require you to judge the traversers by their acts; I call upon you to judge the government by *theirs*. If the Attorney-General's views of this case be correct, he has pronounced a severe condemnation upon the government he so ably serves. He would not represent the ministry as watching their political adversaries, till they transgressed the accurate boundary of law, and by their conduct or their silence, ensnaring innocence into what might be tortured legal guilt. This could not be believed of honourable men—and, I say it sincerely, the members of the government are all honourable men—but consider well the argument addressed to your understandings by her Majesty's Attorney-General. The kingdom was in utmost peril—nothing was done by me in power to avert it. According to this argument the government had a great constitutional duty to discharge, which they deserted. According to the scope of this reasoning they were bound by all the solemn responsibilities of duty and allegiance to save the country. They madly consigned it to devastation and ruin. Convinced of the malignity of this conspiracy, having uncontrolled power at their command to arrest its progress, they behold complacently the prerogative of their Sovereign usurped—her power subverted—her empire torn assunder—a kingdom well nigh lost. The most sacred obligations bound the ministers to check the progress of disaffection; they knew of its existence, they had before them the vital proofs—they suffered it to increase and gather strength until it poured along like an overwhelming torrent. Upon this statement, which of the two parties contending before you this day were most blameable? The enthusiastic people heated in the pursuit of a favourite project—who met, and spoke, and wrote what they thought, however mistakenly, for the good of their native country, or the ministers of the crown, who saw the folly, knew the danger, witnessed the madness, and yet encouraged and increased the terrible mischief by their silence and apathy? The Attorney-General might have filed his information for a seditious libel against the *Nation*, if there was ground for it, during two terms, the last of which did not end until last June. He might have prosecuted any one of the speakers at the meetings, arraigned for seditious language or seditious conduct, and visited upon that individual the consequences of his peculiar crime. He might have charged the meetings as unlawful assemblies, and prosecuted those who attended them, and tested the legality of any one of these meetings by a separate and just prosecution; or he might have manfully grappled with the meetings of the repeal association as illegal assemblies. And, lastly, he might have advised a government proclamation to have been issued, warning the people against any of these large assemblies, as, for example, Donnybrook, on the grounds assigned to impeach their legality, and thus publicly proclaim the intention of the authorities to dispute the lawfulness of such assemblages of the people. No one

of these things did the minister or his legal advisers do, and yet they now tell you no one of these meetings was more criminal than another; they were each illegal, and all proofs of the wicked conspiracy successively illegal, at all times illegal. They afforded startling proofs of this deadly combination. Yet they were not proclaimed, nor put down, nor dispersed. Was the mental vision of the crown lawyers obscured?—was their eyes less eagerly bent on the pages of Hawkins and Hale? Was the Attorney-General less decided last March than he is now? Was Mr. Solicitor-General less zealous for the government he served? Their bounden, paramount duty was to have advised with firmness, and to have acted with decision, if they all deemed these overt acts, as they are called, to have been criminal and dangerous. Perhaps it might not have been expecting too much from their high character, that if they found advice—given from a conviction of the necessity of action—neglected or despised, they would have quit office rather than hold it to the disgrace of their profession and the ruin of their country. Gentlemen, these are admirable lawyers, uncompromising to their sense of duty. The government did themselves honour by their selection. If they had given the advice which, on the supposition that such a state of things as is now contended for, existed, they ought and could have given, the government would have acted on the legal advice on which they justly reposed implicit confidence. The crown lawyers did not so advise the government—they did nothing—and meetings were justly held, and speeches freely made. If all these things had happened in darkness, if it had been essential to wait till evidence could be got to bring to light the guilty practices of a dark conspiracy, I could understand it. But all that was done or spoken was in presence of thousands—the whole world saw and knew what was done, spoken, and written by the associates of this black conspiracy. Gentlemen, the lawyers were right—the government then was right—there was no conspiracy—there is no conspiracy; but to acquit the government of blame, you must acquit my client. The learned counsel then remarked—having thus viewed the case generally, he would now apply himself to the case of his client, Mr. Duffy. Mr. Duffy is the proprietor of a weekly journal, and is prosecuted here for no private calumny; for no slander on private virtue, integrity, or honour. He has not invaded the peace of families, or sought to gain a base notoriety by blackening the reputation of those from whom he differed. He is accused here to-day for the terms in which he has advocated a great public question; the style in which he has treated a vast political subject. That he had a right to advocate and discuss his own view of the repeal of the union, cannot be denied; he might do so ardently, boldly, vehemently. Reflect on the position in which such a writer is placed. He is, as the law stands, encompassed with quite enough of difficulty and of danger; forced from the necessity of his profession, to engage from day to day in the discussion of angry topics, on which public feeling is inflamed; forced to report and notice what is passing before his eyes, else his paper would not be a newspaper; and obliged to comment upon what is passing, promptly, and without reserve. If he is deficient in spirit the public will not read him. If extravagant, the Attorney-General threatens; and sometimes the doors of the Queen's Bench open for his admission, whence he cannot retire as quietly and as comfortably as he might wish. Further, he is responsible for the acts of all who write a political squib, or a spicy article for his paper; and for his own almost involuntary acts. And if a poetic youth, within the walls of a college, sends a clever song to the compositor to fill a corner—even the poetry, however harmonious, the Attorney-General intermixes with the horrible prose of an indictment. Nay, more, the proprietor is liable, though absent, for the sins of others, though he has committed none himself. Gentlemen, this situation is difficult and critical enough without adding to its dangers. The accusation against Mr. Duffy is, that he has embarked in the wicked conspiracy spread on the face of this indictment. And as you see there is no proof whatever of a common agreement to conspire, you are to collect by an inference of reason, not by guess or conjecture, that Mr. Duffy has made himself by the acts he has done a conspirator, a member of the precise conspiracy charged by this indictment. Whether your understandings may not be obscured by the huge mass of matter given in evidence against the other parties in this case, the danger and the injustice of this prosecution, that the acts and the declamations of one man are admitted to prove the guilt of another, at least make out the existence of a common object, and although you will be told that each person is only to be affected by the share he has taken in the same, yet, I greatly fear you will not be able, at least not without some attention to separate the case of Mr. Duffy from the case of others with which it has been most unfairly connected. I deny there is any general conspiracy, and have endeavoured to prove there was none. If there was, secondly, I deny Mr. Duffy to have been a party to any such conspiracy. I say his acts establish nothing criminal against him. He is a repealer—that does not entitle this court to deprive him of his liberty or fortune. Mr. O'Connell is also a repealer, that fact does not prove that he and Mr. Duffy have conspired to effect repeal in the manner charged. Well, then, what is it Mr. Duffy has done? As to the monster meetings, he attended none. The accusation against him may be divided into two heads—the reports of proceedings published by him—the leading articles or original matter printed by him. As to the first, a few moments' reflection would be enough to convince you that it would be the very acme of injustice to find Mr. Duffy guilty of conspiracy, merely, because reports of proceedings which have been given in all the daily papers found their way into his weekly journal. Could a weekly journal of any politics stand one hour, if it omitted all notice of the stirring events of the week. Is he more guilty of reporting such meetings than the *Mail* or *Packet*, or *Saunders* or *Warder*? the difference is merely this—these journals report the meetings and abuse them, Mr. Duffy reported and praised them. What is the proprietor of a weekly paper to publish, but the news of the week? And what is the news of the week in Ireland where repeal meetings have been held, but the doings at these meetings? And, therefore, to make Mr. Duffy a criminal for his narrative of weekly, passing, and extraordinary events, would be no less absurd than cruel. I cannot believe, upon the ground of merely reporting or publishing narratives of events, any person in that box would find a verdict of guilty against my client. The Attorney-General himself seemed to admit this, because he said, "Mr. Duffy used his paper not to circulate news, but as an engine of the association to forward the conspiracy." Therefore, I infer the Attorney-General himself admitted, the mere narrating or publishing the news of the day, would not make the traversers guilty of this crime. It would be better, surely, to tell quickly what really happens than ancient falsehood. Upon the subject of the reports, as reports, could any twelve impartial men decide that the traverser, from the bare fact of copying into his journal what had been printed in twenty papers before, was a conspirator with the speaker to upset the government of the country? What overt act is this of conspiracy? Did Mr.

Duffy agree that Mr. O'Connell should so speak as he has spoken? According to the definition relied on by the counsel for the crown, if one man does one part of an act, and another person the remaining portion, there is proof of conspiracy—then does that definition apply to this case? The Attorney-General proposes to establish the crime of conspiracy, by picking out three or four articles, published at different periods, and suggested by passing events, culled from the publications in a weekly newspaper, extending over a period of nine months, and read to the court as being calculated to prejudice the minds of the people against the government of England; and, observe, that all the intervening quotations which might qualify or explain them, are passed over, although the learned gentleman ferretted out everything else that could serve his purposes, whether in large type or in small. The song on which they rely is entitled "The Memory of the Dead," and was published in the *Nation* on the 1st of April, 1843. A very proper day for the publication of that which is now selected by the crown as evidence of a conspiracy. And suppose it was, in the words of the indictment, "an incentive to rebellion," why was not the publisher of that seditious song at once brought into court and dealt with for it? But nothing is done until it is forgotten, and at the eve of eight months a song printed in the *Nation* is stuffed into the indictment. But what is most unaccountable with respect to its appearance there is, that there is no averment whatever respecting that song, except that Mr. Duffy published it. It does not tell you what it relates to. What '98 does it refer to? or how does he connect it with the subject matter of this conspiracy? There is not a word of prefatory matter to explain what it refers to. Why, then, I again ask, is a criminal intent to be fastened upon any man without even the form of an averment to give an application to what he writes or publishes? Are you to visit this act of Mr. Duffy's on Mr. O'Connell, or to presume that it was published in pursuance of a common plan between the traversers? That song was written by some clever young man, and I took the liberty of reading to you another song published in the same paper on the same day, and which it was certainly as agreeable to hear as many of Mr. Attorney-General's statements. These very sweet agreeable verses were read from the very same paper. Are you to be asked to believe that Mr. O'Connell and Mr. Steele knew beforehand that some young men, perhaps within the walls of Trinity College, animated with that poetic fire which illumined his imaginative soul, would write that song and send it to the compositor of the *Nation* to fill up a corner in his paper? Are you to believe that all this was done in pursuance of a common object, and in furtherance of a conspiracy? Is it come to this, that the government of England is not safe; that the constitution of England is in danger, because some young men, gifted as the writer of that song unquestionably was, adverted, in poetic language, to the mistaken views of men who lived in former days, or will any twelve honest, or intelligent, or experienced men, be asked to find a verdict on such grounds? Gentlemen, it is not fair—it is not chivalrous—it is not generous thus to take a young man to task for the ardent and warm-hearted effusions of his early youth. The writer whom, of all others, I most admire—the writer who, in my opinion, has, by his writings, done more than any other author to uphold our social system—to mend the morals and improve the mind—Robert Southey himself commenced his career by writing that memorable work, Wat Tyler; but the tone and temper of his mind were changed when a sounder judgment and more extensive knowledge of the world taught him to view men and manners by the calm light of cool, dispassionate reason. Alas, Mr. Solicitor, am I to be told that it is worthy of a wise and enlightened government to bear down with the fell current of a state prosecution upon the writer of that enthusiastic little song, written with the ardour of thoughtless youth, and that, too, after the lapse of nine months from the time of its composition? Gentlemen, in the disastrous and criminal movement of '98, amongst the most prominent of the leaders were two ill-fated members of my own profession—Henry and John Shears. In a review which recently appeared in a respectable literary publication, the *Athenæum*, of a memoir of the "Life and Writings of the late William Taylor, of Norwich," I find this remarkable fact noticed, that the first letter of a long correspondence between Taylor and Southey transmits an elegy on the fate of those unhappy young men. I will read for you an extract from the review in the *Athenæum*—"In 1798 William Taylor became acquainted with Robert Southey, then rising into fame, and a correspondence ensued between them which extended over many years. It is singular that Taylor's first letter should transmit an elegy on the fate of Henry and John Shears, who had just been executed for high treason in Dublin; Taylor celebrates them as martyred patriots. The passage in which their mother is introduced, bidding them farewell in the dungeon, will give a general notion of the spirit which pervades the whole:—

Sons, 'twas for this I bore you—die as men
To whom your father's country and your offspring
Deserved to owe the good
Ye struggled to obtain.
Thy wife, son, cannot speak—she loves thy children;
And in her poverty shall thank her God,
That thou hast boldly dared
Devote them for thy country,
Thou needest, John, thy mother's counsel not.
If the few weeks that, ere we meet, roll by,
Worthy of thee I spend,
Well pleased mine eyes shall close."

And, gentlemen, am I to be told that the man who penned that touching verse is to be branded for evermore as a conspirator, because he commiserated the unhappy end of the ardent and misguided men who loved their country "not too wisely, but too well?" No, gentlemen, such a proceeding would be scandalous and disgraceful; and equally unworthy is it of the government which prosecutes in the present instance, to direct the thunders of their indignation against the enthusiastic young author of the "Memory of the Dead." Let the Solicitor-General tell how the government of England punished Mr. Moore for poems not a whit more indicative of a conspiracy (if conspiracy indeed there be) than the stanzas which have been read for you. Let him tell you how Moore was punished for writing such lines as these in the "Lamentation of Aughrim:"—

Could the chain for an instant be riven
Which Tyranny flung round us then,
Oh! 'tis not in man or in heaven
To let Tyranny bind it again.

But 'tis past; and though blazoned in story
The name of our victor may be,
Accursed is the march of the glory
Which treads o'er the hearts of the free.

He will tell you how the bard was punished for penning the song of "O'Rourke, Prince of Breffny," and of inserting in it such lines as these:—

Already the curse is upon her,
And strangers her valleys profane:
They come to divide—to dishonour;
And tyrants they long will remain.

But onward—the green banner rearing,
Go flesh every sword to the hilt:
On our side is Virtue and Erin;
On theirs is the Saxon and Guilt.

Yes, gentlemen, the author of the "Adventures of an Irish Gentleman in Search of a Religion," and of the "Memoirs of Lord Edward Fitzgerald," was punished. But how was he punished? He was punished by a pension from the English government—yes, Moore was punished with a pension for his sedition; and you, gentlemen of the jury, are now solicited to bring a verdict of "guilty" against the writer of this song, and to declare your conviction that the emanation of a mind, young, ardent, poetical, and imaginative, though mistaken, was written in furtherance of a common plan and design of the most infamous nature! However ardent the youth of Ireland may be, it should never be forgotten of them that they never forgot their loyalty to their sovereign, even when, in 1715 and 1745, the best blood of England and of Scotland bedewed the scaffold, in consequence of the mad, and well-nigh successful attempt to dislodge the present royal family from the throne of these countries, the Irish were faithful even to the death. Are not the free subjects of a free state to be permitted to raise their voices in constitutional protestations and remonstrance, when they think that their interests are endangered or injured? Scott, the most cautious of writers, was once called upon to decide between his attachment to his party and his love of Scotland. The British ministry declared their intention to introduce—regardless of the feelings of the Scottish people, who considered that their interests were vitally concerned—a bill in reference to the joint stock banks of Scotland. The Scotch thought that they would be injured by the contemplated bill; and Sir Walter Scott, fired with indignation at the idea that the act should be introduced without consulting the wishes and feelings of his countrymen, wrote, under the signature of "Malachi Malagrouther" a series of letters, which excited such a flame of indignation in the country, from north to south, from east to west, that the minister of the crown was obliged to fly away with his obnoxious bill under his arm, just as the Attorney-General would be forced to fly off with his monster indictment on his shoulder, for it would not fit under any man's arm (laughter). But hear how Sir Walter expressed his indignation. [The learned counsel here read an extract from page 320 of "Malachi Malagrouther's" letters.] The British minister failed, for the Scotch said, "we must get our joint stock banks"—aye, and they did succeed in getting them; and are we not a country as good as Scotland, that succeeded in wringing from the British minister their rights upon a great mercantile question? Was that to be done in a cold and servile manner? Do you think Scott did it in that cold and mawkish manner, and said, as we lawyers say, "ah! I respectfully submit?" (laughter). No, he had to excite a national spirit (laughter)—and, therefore, he went boldly about the task, and Sir Walter Scott succeeded in making his country—which contained about one quarter of the number of inhabitants that Ireland does—he succeeded, I say, in making her happy, respectable, and great, while we remain a poor, pitiful, pelting province. I am not asked to say this. I hope that the people of Ireland will combine in the one cause, and that is the cause of their common country, for the common good of that country, for the good of this ancient kingdom, that she may once again flourish in the world's history. Gentlemen, I now come to the shuffling of the indictment, and what do you think the Attorney-General relies on part of it for? Why, a letter, signed "Dalcassian" in the *Nation* newspaper (great laughter). Dalcassian—treason of course (laughter). This letter has reference to one of the lakes in Ireland, called "Lake Belvidere;" it says "we don't want lakes at all; let us have lough and then it will look like Irish—we want no Italian or German names at all, let us have Irish names; and it further stated that Roderick, one of the last kings of Ireland, died on an island in that lake;" that's conspiracy—but I cannot see anything very wrong in that, and I venture to assert that if every reader of the *Nation* in existence was put on the table, and asked, by virtue of your oath, do you remember the letter of the Dalcassian, he would boldly say, on my oath I don't remember a word about it (a laugh); and that is a part of the conspiracy charged in the indictment, and sought to be palmed on you as treason, along with Ollam Fodhla and the other old gentlemen who lived in his days (great laughter). That is one part of the charge; and now I come to that which they rely on for a conviction. The subject is from the same paper, the *Nation*, of the 29th of April. This is headed, "Something is Coming—aye, for good or ill, something is coming." The learned gentleman then read the article. He commented generally on it as he proceeded. and said the article was calculated to conciliate all parties, for it should be remembered that there were political storms as well as physical hurricanes. It said that coolness was the only thing. Anything, I ask, inflammatory in advising the people to be cool and steady? I can't see there is, although the Attorney-General wishes you to believe there is (laughter). The people are sober now; and I respectfully submit there is nothing of conspiracy in that (great laughter). Let them be kind and conciliating to the Protestants—neither canI see any harm in that; but every person don't view things in the same light as the Attorney-General does (a laugh). I don't think it is wrong in a writer to endeavour to conciliate Protestants, because he well knew there were 800,000 good Protestants in the north of Ireland, who were strong-minded men, who reasoned well, and who, once they took up a subject, and were convinced of the utility of it, would not cease until their object was accomplished. The writer knew the difficulty of getting these men out, and therefore he wanted to conciliate them. And I don't see anything wrong in that, for their assistance would be valuable to the repeal cause; and, let me ask, what other mode could be adopted? It was recommended by Mr. O'Connell—it was recommended by Sir Walter Scott, and with effect; and this was the ground the crown went on for a conviction, because the writer in the *Nation* endeavoured to conciliate his Protestant brethren. They (the *Nation*) say they differ from Mr. O'Connell; and, I ask you is that a sign of conspiracy (laughter)? I say the newspapers do not speak the conclusions of the association, and, therefore, there is no conspiracy between them, and you had that from Jackson, who proved it on this table, and yet the Attorney-General wants to put that ostensible meaning on it, but you are not to give it a meaning not warranted by the facts. The next article they rely on is the article headed "Our Nationality," a thing that will be always objected to by our brethren at the other side of the water, or, at least, by the ministry, and the only thing they set out in that is the word "clutched" (laughter). It is rather curious that Mr. Barrett used that word also in a speech made by him. "Oh," says Mr. Barrett, "we will think like the old woman's cow," and, gentlemen, Mr. Attorney-General put the old woman's cow into the indictment (great laughter). We will think, says he, like that until we clutch, what——(laughter)? It was not the Queen, or the Chief Justice, or the Prime Minister, or the Attorney-General they were about clutching, but their nationality—their independence (laughter). I ask you is

this to be brought up in judgment against the defendant? I ask any man of you here has he not read worse articles in the English papers, calculated to irritate the people of England, and inflame their minds, none of which were prosecuted, but passed by and were forgotten? The advertisement about the Clontarf meeting was not what it should be, but was it not, when observed by Mr. O'Connell, at once withdrawn? I have shown you that the true object of that document in the *Nation* was, that there should be a grand procession to Clontarf. At the request of some Protestant clergymen it is given up, as it was the sabbath-day, and the time of divine service, and even the streets were avoided in which places of worship were. I rely on this to show that no offence was offered; but as they had proceeded in a procession to Donnybrook, they considered that they might do so to Clontarf. I admit that strong language has been used, and I regret it. The term "Saxon" has been applied to Englishmen. Mr. O'Connell has entirely renounced it at the request of an English gentleman—I believe he borrowed it from Moore. Moore was wrong to have used it. Yet, probably, when these trials are over, if I called upon the learned gentleman (pointing to the Solicitor-General) I would find "Moore's Melodies" and "The Irish Gentleman in search of a Religion" in his study; yet, perhaps, if he knew who knocked at the door, he would, like the lady in the play, thrust one into a drawer, put the other under the sofa, and place "The Whole Duty of Man" on the table (loud laughter). As to the language made use of in many of the publications given in evidence in reference to the English people, it is impossible for me to defend expressions the use of which my heart condemns. I believe the English to be a great, virtuous, free, magnanimous people; and the world has seen the proofs of their wealth and spirit. It is, however, to be regretted that the practical good sense which pre-eminently marks their character did not induce them in past times to look narrowly into the condition of this country, and to do that justice to Ireland which the governments of England and the monopolists by whom they were surrounded and controlled, refused to do. Perhaps something may be ascribed to prejudice; more to the narrow views entertained on questions of political science, and of trade and commerce, by most men at the period referred to; and something more to the reprehensible ignorance of the circumstances and feelings of the Irish people, which prevailed even amongst educated Englishmen till a later and happier era. These, combined with other causes, spoiled the happiness and checked the prosperity of Ireland; but that Englishmen take delight in cruelty or injustice, would not be believed in the most barbarous climes, and ought not to be believed, nor to be asserted here. Gentlemen, respecting the dreadful scenes which, within the memory of living men, and the former scenes, more dreadful still, recorded in the page of history, which have been enacted in Ireland, and adverted to in some of the speeches and publications in evidence before the court, I should, rather than revive the recollection of their horrors, exclaim, in the words of Lord Coke—"Let oblivion bury them, or silence cover them; the moralist weeps, the patriot trembles for the liberty of his country, the philanthropist despairs of the improvement of his species, while they contemplate such terrible passages in the history of mankind." To bring these shocking events before the public eye can answer but one good purpose—to hold out to us, who live in better days, a warning to shun the madness and crimes of our forefathers, and a lesson to repress the evil passions which led to their perpetration. To all generations, such awful transactions hold out a solemn admonition of the errors committed by the ruling powers in times past, to the end that similar errors might, for the time to come, be avoided, and remedies, if possible discovered for the miserable consequences of misgovernment and neglect. The last document to which I shall refer is "the Morality of War," which the Attorney-General has dwelt upon so eloquently, and translated with not a little freedom into "the Morality of Rebellion." It seems that from the first moment it met his eye it startled his legal mind. But if it was the dreadful article he appears to have believed it to be, it astonishes me that he did not at once run off with it to the government, and exclaim, "I will forthwith file an information in the Queen's Bench against the author." I request your attention to it. It states that a communication was received through Mr. Haughton from a Mr. Ebenezer Shackleton expostulating for having the words Benburb, Clontarf, &c., upon the repeal card. Now, gentlemen, do you think that the traversers combined together that Mr. Ebenezer Shackleton should write that letter? Quakers, gentlemen, are a class of men who proclaim a dislike of war, but are very anxious to live under the benefits derived from it. I remember the story of a Quaker, which I will tell you. He was on board a ship which was attacked by pirates, and boarded; one of them came rather closely to the man of peace, and he seized him round the body, exclaiming very gently, "My principles will not allow me to shoot or cut thee down, but I see no reason why I should not remove thee from my presence," and he peaceably flung him overboard. In my youth I was called upon by a Quaker to second a resolution at a meeting of the Friends of Peace, and I could not repress my laughter when he produced at the meeting an immense roll of parchment, which he said contained the names of every one who had fallen in battle from the days of Alexander to the battle of Navarino. How is it, gentlemen, that because Mr. Ebenezer Shackleton, through Mr. Haughton, writes this letter to the *Nation*, that Mr. O'Connell and Mr. Steele should suffer for it? Mr. Whiteside then read the following extract:—"We feel no wish to encourage the occasions of war; but, whenever the occasion comes, here or elsewhere, many sagacious and informed souls, bold hearts, and strong arms, will be found to plan, lead, and fight. May the examples of Miltiades and Washington never want imitators when there are tyrants to invade, freemen to defend, or slaves to struggle for liberty." This is the article, gentlemen, that the Attorney-General has brought you to pronounce a verdict upon; I defend that sentiment; it was noble, worthy a generous and enthusiastic nature. Has the time arrived when the ardent mind of youth may no longer dwell on the virtues of a great hero of antiquity, who saved his country? or the greater hero of modern times, whose illustrious life is an example, useful for liberty and civilization, for ever? I shall not compare Washington with the vulgar tyrants who have insulted or enslaved the world, with the insatiable ambition of Napoleon, or the deep hypocrisy, and black treachery of Cromwell—the simple grandeur of his nature obscures the splendour of antiquity, and our minds are filled with admiration for his moral greatness and transcendant virtue. But that he lived under a diviner dispensation, we might have supposed his felicity hereafter to have been that ascribed by the poet to Cato—being surrounded by the spirits of departed virtue, and giving laws to the assembled just. And even now, it may not be presumptuous to believe it may be a portion of his unspeakable felicity to behold, from his habitation in the skies, the results of his illustrious labours here on earth. America has been frequently referred to in the papers read to the jury, and the reference dwelt on to the prejudice of the traversers. England has no reason to fear comparison with America or her

institutions. I prefer the system under which we live; but I am shocked, in contemplating the absurd caricatures of America drawn by the popular writers of the day, who deprave the public taste, and mock its judgment. Considering what America is, and what she was, I am tempted to exclaim with the Roman historian—"*Civitas incredibile memoratu est, adepta libertati, quantum brevi creverit.*" A political writer may corrupt the public taste, deprave the morals of society, and lavish praises on the character of the eighth Henry, the profligate Charles, or the bigot James, and may hold out as examples of virtue a Domitian, or a Nero, and he is safe. The Attorney-General will never prosecute such offences against good taste or truth; but if the same writer ventures to celebrate the benefactors of mankind, the Attorney-General will prosecute the author as guilty of sedition against the state. The whole case was now before you, and was emphatically for your decision. You have seen the many instances where the crime of conspiracy was attempted to be fastened on Englishmen, in which English juries have refused to convict. In that terrible book containing the state trials of England, where the real history of that country is written, there are many instances of truth stifled, justice scoffed, and innocence struck down. On the other hand, there are memorable examples of victims rescued from oppression, by the honesty and courage of British juries. Hardy, who discussed the great question of parliamentary reform, thus was saved; thus was rescued Horne Tooke; with their conviction freedom of discussion might have perished. At an earlier period still, in the days of the second James, when the seven bishops were accused of conspiracy, for asserting the rights of Englishmen, a jury delivered a verdict of acquittal, and the shouts of joy with which it was received proclaimed their freedom. Even in the days of Cromwell, after he had waded through slaughter to a throne, and under the sacred names of liberty and religion trampled upon both, the tyrant found the virtue of a jury to be beyond his power. The forms of justice he dared not abolish while an Englishman lived, and we have it upon record that when, in the plenitude of his power, he prosecuted for a libel upon himself, there were twelve honest men to be found who had the courage to pronounce a verdict of not guilty; thus proving that the unconquerable love of liberty still survived in the hearts of Englishmen. I quote the words of a patriot lawyer, who, in reference to that immortal precedent, exclaimed—"When all seemed lost, the unconquerable spirit of English liberty survived in the hearts of English jurors." I will say that the true object of this unprecedented prosecution is, to stifle the discussion of a great public question. Viewed in this light, all other considerations sink into insignificance; its importance becomes vast indeed. A nation's rights are involved in the issue—a nation's liberties are at stake—that won—what preserves the precious privileges you possess? The exercise of the right of political discussion—free, untrammelled, bold. The laws which wisdom framed—the institutions struck out by patriotism, learning, or genius—can they preserve the springs of freedom fresh and pure? No; destroy the right of free discussion, and you dry up the sources of freedom. By the same means by which your liberties were won, can they be increased or defended. Quarrel not with the partial evils free discussion creates, nor seek to contract the enjoyment of that greatest privilege within the narrow limits timid men prescribe. With the passing mischiefs of its extravagance, contrast the prodigious blessings it has heaped on man. Free discussion aroused the human mind from the torpor of ages, taught it to think, and shook the thrones of ignorance and darkness. Free discussion gave to Europe the reformation, which I have been taught to believe the mightiest event in the history of the human race—illuminated the world with the radiant light of spiritual truth. May it shine with steady and increasing splendour! Free discussion gave to England the revolution, abolished tyranny, swept away the monstrous abuses it rears, and established the liberties under which we live. Free discussion, since that glorious epoch, has not only preserved, but purified our constitution, reformed our laws, reduced our punishments, and extended its wholesome influence to every portion of our political system. The spirit of inquiry it creates has revealed the secrets of nature—explained the wonders of creation, teaching the knowledge of the stupendous works of God. Arts, sciences, civilisation, freedom, pure religion, are its noble realities. Would you undo the labours of science, extinguish literature, stop the efforts of genius, restore ignorance, bigotry, barbarism, then put down free discussion, and you have accomplished all. Savage conquerors, in the blindness of their ignorance, have scattered and destroyed the intellectual treasures of a great antiquity. Those who made war on the sacred right of free discussion, without their ignorance, imitate their fury. They may check the expression of some thought, which might, if uttered, redeem the liberties or increase the happiness of man. The insidious assailants of this great prerogative of intellectual beings, by the cover under which they advance, conceal the character of their assault upon the liberties of the human race. They seem to admit the liberty to discuss—blame only its extravagance, pronounce hollow praises on the value of freedom of speech, and straightway begin a prosecution to cripple or destroy it. The open despot avows his object is to oppress or enslave, resistance is certain to encounter his tyranny, and perhaps subvert it. Not so the artful assailant of a nation's rights; he declares friendship while he wages war, and professes affection for the thing which he hates. State prosecutions, if you believe them, are ever the fastest friends of freedom. They tell you peace is disturbed, order broken, by the excesses of turbulent and seditious demagogues. No doubt there might be a seeming peace, a deathlike stillness, by repressing the feelings and passions of men. So in the fairest portions of Europe this day, there is peace, and order, and submission, under paternal despotism, ecclesiastical and civil. That peace springs from terror, that submission from ignorance, that silence from despair. Who dares discuss, when discussion and by discussion tyranny must perish? Compare the stillness of despotism with healthful animation, the natural warmth, the bold language, the proud bearing which springs from freedom and the consciousness of its possession. Which will you prefer? Insult not the dignity of manhood by supposing that contentment of the heart can exist under despotism. There may be degrees in its severity, and so, degrees in the sufferings of its victims. Terrible the dangers which lurk beneath the calm surface of despotic power. The movements of the oppressed will, at times, disturb their tyrant's tranquillity, and warn him their day of vengeance or of triumph may be nigh. But in these happy countries the very safety of the state consists in freedom of discussion. Partial evils in all systems of political governments there must be; but their worst effects are obviated when their cause is sought for, discovered, considered, discussed. Milton has taught a great political truth, in language as instructive as his sublimest verse—"For this is not the liberty which we can hope, that no grievances ever should arise in the commonwealth—that let no man in this world expect, but when complaints are freely heard, deeply considered, and speedily reformed—then is the utmost bound of civil liberty obtained that wise men look for." Suffer the com-

plaints of the Irish people to be freely heard. You want the power to have them speedily reformed. Their case to-day may be yours to-morrow. Preserve the right of free discussion as you would cling to life. Combat error with argument—misrepresentation by fact—falsehood with truth. "For who knows not," saith the same great writer, "that truth is strong—next to the Almighty. One needs no policies nor stratagems to make her victorious; these are the shifts error uses against her power." If this demand for a native parliament rest on a delusion, dispel that delusion by the omnipotence of truth. Why do you love, why do other nations honour, England? Are you—are they dazzled by her naval or military glories, the splendour of her literature—her sublime discoveries in science—her boundless wealth—her almost incredible labours in every work of art and skill? No; you love her—you cling to England because she has been for ages past the seat of free discussion, and, therefore, the home of rational freedom, and the hope of oppressed men throughout the world. Under the laws of England it is our happiness to live. They breathe the spirit of liberty and reason. Emulate this day the great virtues of Englishmen—their love of fairness—their immoveable independence, and the sense of justice rooted in their nature—these are the virtues which qualify jurors to decide the rights of their fellow-men. Deserted by these, of what avail is the tribunal of a jury? It is worthless as the human body when the living soul has fled. Prove to the accused, from whom, perchance, you widely differ in opinion—whose liberties and fortunes are in your hands, that you are not to persecute, but to save. Believe me, you will not secure the true interests of England by leaning too severely on your countrymen. They say to their English brethren, and with truth: We have been at your side whenever danger was to be faced or honour won. The scorching sun of the east, and the pestilence of the west we have endured to spread your commerce—to extend your empire—to uphold your glory. The bones of our countrymen whitened the fields of Portugal, of Spain, of France. Fighting your battles they fell—in a nobler cause they could not. We have helped to gather your imperishable laurels—we have helped to win your immortal triumphs. Now, in time of peace, we ask you to restore that parliament you planted here with your laws and language, uprooted in a dismal period of our history, in the moment of our terror, our divisions, our weakness—it may be—our crime. Re-establish the commons on the broad foundation of the people's choice—replace the peerage, the Corinthian pillars of the capitol, secured and adorned with the strength and splendour of the crown—and let the monarch of England, as in ages past, rule a brilliant and united empire in solidity, magnificence, and power. When the privileges of the English parliament were invaded, that people took the field, struck down the monarchy, and dragged their sovereign to the block. We shall not imitate the English precedent, we shall revere the throne. We struggle for a parliament, its surest bulwark; that institution you prize so highly, which fosters your wealth, adds to your prosperity, and guards your freedom, was yours for six hundred years. Restore the blessing and we shall be content. This prosecution is not essential for the maintenance of the authority and prerogative of the crown. Our gracious Sovereign needs not state prosecutions to secure her prerogatives or preserve her power. She has the unbought loyalty of a chivalrous and gallant people. The arm of authority she requires not to raise. The glory of her gentle reign will be—she will have ruled, not by the sword, but by the affections; that the true source of her power has been, not in the terrors of the land, but in the hearts of her people. Your patience is exhausted. If I have spoken as I could have wished, but if, as you may think, deficiently, I have spoken as I could. Do you, from what has been said, and from the better arguments omitted, which may be suggested by your manly understandings, and your honest hearts, give a verdict consistent with justice, yet leaning to liberty—dictated by truth, yet inclining to the side of accused men, struggling against the weight, and power, and influence of the crown, and prejudice, more overwhelming still—a verdict to be applauded, not by a party, but by the impartial monitor within your breasts, becoming the high spirit of Irish gentlemen, and the intrepid guardians of the rights and liberties of a free people.

When Mr. Whiteside concluded his magnificent address, which was listened to with intense attention, he sat down amidst a burst of applause which the presence of the court could not repress.

The court then retired for a few minutes, and resumed at half-past two o'clock.

MR. M'DONOGH, Q.C., IN DEFENCE OF MR. BARRETT.

Counsel said—May it please your lordships, and gentlemen of the jury, in this case I appear here as counsel for Mr. Barrett, the proprietor of the *Pilot* newspaper. Mr. Barrett stands indicted for an unlawful, malicious, and seditious conspiracy to overturn the law and constitution of these realms. Associated with him in that indictment are several other persons, and amongst them two members of parliament, one of them high in rank in the legal profession, a gentleman holding a patent of precedence from the crown, and entitled to precedence immediately after her Majesty's sergeants-at-law. But this indictment takes a wider range, and soars to a loftier flight; the effect of it is not merely to fling imputations upon the traversers here—it involves, as I will show in the sequel, a grave condemnation of millions of the Irish people. The prosecutors admit that they have no direct or express evidence to establish this charge of conspiracy; they rest their case on presumptive evidence alone, on inferences from circumstances; and it is therefore important, gentlemen of the jury, that you should be distinctly in possession of the rules of judgment which apply to such cases, for to you is confided the task of arriving at a conclusion from the facts and probabilities under the guidance of the court. I presume you are familiar with that principle of the law which declares that every man is to be presumed innocent till his guilt is established. This presumption of innocence requires no statement to sustain it; the law of England is a just law, and does not narrow or restrict the right of an accused party to be held innocent of the crime laid to his charge until it shall have been brought home to him by clear and positive evidence. You have, therefore, the assurance and authority of the law for presuming every man innocent till the contrary is established; and how is this to be done? It is not by exciting suspicions—it is not by creating doubts or starting difficulties; probabilities are not enough to justify a verdict. It is sufficient that you should collect from the facts and circumstances proved before you that the accused may be guilty, or that this innocence is doubtful. That innocence must be incompatible with the sworn evidence before you can find a verdict of guilty. An eminent authority, Lord Kenyon, has declared that no man ought or could be found guilty according to the law of England unless the jury were firmly assured that his innocence could not by any possibility be reconciled with the facts disclosed in evidence. It has been often said, and no doubt you have heard it, that circumstantial evidence is in many cases safer to rely upon than direct testimony; but there is only one case in which that holds, namely, where the

circumstances are utterly incompatible with the supposition of the prisoner's innocence. The utmost caution is therefore necessary to be exercised in estimating the weight and effect of circumstantial evidence, and if juries imperatively require the safeguard of this caution where the evidence is all on the one side, how much more indispensable is it in the present case where many of the facts and circumstances have a tendency to prove the innocence of the accused? It is my duty, on behalf of Mr. Barrett, to establish that innocence; to argue from what has been established in evidence, and to demonstrate to your satisfaction that the facts and circumstances do not bear out the allegations in the indictment. [The learned gentleman here read from the indictment the passage in which the intent is charged against the traversers, and proceeded]—Gentlemen, that is the intent charged, and it is alleged that in pursuance and in order to carry out that intent the parties did certain acts, which I shall also describe in the terms of the document itself. [The learned gentleman read the passage alleging the conspiracy.] In these terms the intent and the conspiracy to carry it out are stated, and the indictment proceeds to enumerate several overt acts, such as that the parties assembled in this and that place, with thousands of other persons—that they made speeches; and the indictment concludes with charging three newspapers, the *Pilot*, the *Nation*, and the *Freeman*, with publishing those speeches. Now, gentlemen of the jury, divest the indictment of its technical jargon, ponder the weight, and scrutinise the severity of its imputations; consider the number of the criminals whom it shadows forth, if it does not directly accuse, and you will, I am sure, agree with me that it is not one which ought to have been lightly preferred, and that the evidence to support it should have been in its simplicity, cogency, and force, proportionate to the magnitude of the cause. Is the evidence you have heard simple, cogent, and convincing? No; it is confused, involved, and inconclusive. It is a medley of documents and speeches, and acts not grouped in any order, but irregularly flung together to support this baseless fabric of a conspiracy. As if to make confusion more confounded, the Mullaghmast meeting, the latest in point of time, was selected as the first for proof. This was, I suppose, to let in light on the case (laughter); but, gentlemen, it is my intention to throw light on the case, for I shall begin at the beginning, and go through the proofs respecting each meeting as they occurred, a course the more necessary to pursue and to insist upon at this stage of the proceedings, inasmuch as the Attorney-General in his opening statement read those parts of the speeches which he supposed would have an effect hostile to the case of the traversers. I will read for you those parts of the same speeches which seem to me favourable to them, and I am convinced, gentlemen, that you will take notes of those passages with the same honest assiduity which I have observed you to exercise previously during the opening statement of the Attorney-General. The first of the meetings, in order of time, brought under your consideration, was that held in Mullingar, and I confidently appeal to the notes of the learned judges whether there is any evidence whatever of the circumstances attendant on that meeting? Was there a single witness produced who proved to you what occurred there, or the numbers who attended? They might have been stated truly and accurately; they might have been lessened by design, or exaggerated by fancy, but there has been no evidence of any human being on the subject. No test of cross-examination could be applied, and yet this meeting occurred in a county near Dublin, studded with police stations, swarming with constabulary, and plentifully supplied with magistrates. The meeting was so constitutional, so unexceptionable, that the gentlemen who conduct this prosecution for the crown have made their selection; they turn aside from the inquiry, and they call no witnesses, either policemen or magistrates, from that locality. They have one of the public newspapers of the day; they resort to the *Pilot*, of May, 1843; that is the evidence in this state prosecution to prove that transaction. The portion which they read purports to be a report of a public meeting held at Mullingar on the 14th of May. At that time, Mr. Barrett, my client, was the registered proprietor and printer of that paper. He was responsible for what appeared in that paper, being the only person that had any control over it. If the report of those speeches, said to have been made at the meeting, to which the character of sedition is ascribed, was considered libellous, the crown had the opportunity of prosecuting and bringing to justice Mr. Barrett, the registered proprietor. They might have indicted him for that publication in May, 1843, and if they had done so, your attention would be confined to the single fact, and not distracted, as it has been, by a variety of topics. But that course has not been pursued by the crown, and you are trying now, in 1844, a charge of that species of crime which Sir William Purcell, and other eminent criminal writers, spoke of. In 2d Russell, 675, it is said that perhaps few things are left so doubtful in the criminal law as the point at which a combination of several persons in a common object becomes illegal. But this old document of 1843, which was hastening to oblivion, as well as its contents, is produced, and not only is it given in evidence against Mr. Barrett, but against all the traversers, and put in evidence against Mr. Barrett, not as showing that he published a seditious libel, but that he had criminality in his mind, and that he was a conspirator. To convict him you must be satisfied that he was a personal conspirator; but with what shadow of justice can this report in a public newspaper be proved as being entitled to the least importance against the other traversers? What is it? a mere narrative of past facts. It may excite some surmise whether posterity will not condemn a prosecution in which, when it was sought to convict Mr. O'Connell, the first piece of evidence found against him was one of the public newspapers of the day, printed eleven months before. These are the overt acts. It is not the overt acts that constitute the crime—the mere assembling of the meetings was nothing; but you are to find that the traversers combined and conspired for the wicked purposes imputed on this record; I refer you to this piece of evidence, the newspaper, if it deserve the name. If any one of us subscribe to a particular society, is it fair that we should be liable for publications in a newspaper in sustainment of the views of that society? The *Pilot* of the 15th of May contains a report of the meeting at Mullingar, at which the chairman made these observations:—"He said they had assembled for the purpose of petitioning for a repeal of the act of union, having found, by bitter experience, that the imperial parliament was not able, or at least willing, to do any good for Ireland. If they had back their own parliament, Irish interests would be attended to; and he need hardly tell them, that if they had it the Irish agricultural interest would not have been so completely ruined as it was. It was a shame for the landed interest and the aristocracy, who were instrumental in putting the present government into power, and who were almost ruined, without any good being done to any other class, that they did not come forward and declare that they should legislate for themselves, and manage their own affairs. If they had their parliament, native industry and manufactures would be encouraged—taxation would be reduced to less than half

what it was at the present time—the people would be able to purchase a large quantity of the beef and mutton produced in the country—the labourer and the artizan would have constant employment and good wages—sectarian prejudices and animosities would be totally forgotten in the universal prosperity and happiness that would exist throughout the country, and Ireland would then constitute the real strength of England, instead of being, as she was at present, a source of weakness and embarrassment to her. These were blessings worth struggling for, and they had come there that day to assist the liberator of their country in obtaining them." The object of the meeting was to petition parliament for the repeal of an act of the legislature, and that is a right that every British subject is entitled to exercise. Independent of any other statute, the bill of rights asserted and defined the right of the subject to that constitutional privilege. The exercise of it was at one time endeavoured to be curtailed; but it was again asserted, and the legislature of England confirmed the subjects' rights, and declared by an act that "all commitments and prosecutions for such petitioning were illegal;" and I will now, gentlemen, read a page for you from a work which you have frequently heard quoted in the course of this trial, 9th Carrington and Payne, page 110, in which Baron Alderson holds the same principles as the right of the subject. And in the case of Kemp *v.* Neill, it was declared by resolutions of the house of commons that all such petitions were legal and receivable. The people of Ireland then did meet, and when their universal feeling was demonstrated by those meetings, then was the time for them to present them to the house of commons. It is equally clear that they had a right to meet and discuss what they considered to be their grievances, as well as those which really were grievances, and such is the language of a carefully prefaced charge of the same judge, Baron Alderson, to the grand jury of the county of Monmouth so late as 1839, and there cannot be the least doubt of it. I now beg to refer your lordships to the doctrine laid down by De Lorme in his work called "The Constitution of England," page 310, which is to the same effect. Gentlemen, the crown have proved that those meetings did take place, but they have proved nothing to show that any one of them was an illegal assembly. The crown, I say, have established that they were convened for legal purposes; they have not attempted to show anything to the contrary, and it is a rule of law as well as of common sense that no criminal intent is to be assumed with sufficient proof, either by direct or circumstantial evidence of its existence. The resolutions at these meetings having been passed, a resolution of loyalty and attachment to the Queen was adopted, and the people separated, after having given three cheers for her Majesty. When that demonstration for loyalty had been made the people dispersed. The only speech at that meeting which is charged as an overt act, is that of Mr. Barrett, and his after-dinner speech is selected for that purpose. The same sentence spoken before dinner might be open to the charge of indiscretion, but it appears to me to be the greatest confusion of metaphorical language I ever met with—the allusion to the old woman's cow. I can't understand it. It was, as I said, a confusion of metaphorical language; but to argue gravely that it was an overt act of a conspiracy surpassed anything I ever heard resorted to in the desperation of a falling case. He did not say that they would stand up and fight against the Queen's troops, but he says they may silence us if they please, but yet we'll get our independence. The next meeting in order of time is the Longford meeting, which took place on the 29th of May. Although those meetings were not presented in their order to you, I shall take them as they occurred. In reference to this meeting two police constables were examined, James Johnston and John Maguire, and I very much regret the manner in which Johnston gave his evidence, and the comtemptuous manner in which he spoke of persons that he called Priest so-and-so, for I think that temperate and respectful language should always be applied when speaking of ministers of religion of any denomination. One of them, the Rev. Mr. O'Beirne, said that the loyalty of Ireland was not the loyalty of expediency, but that Ireland should cease to be legislated for by persons who did not understand her condition, and he gave a very meagre and incorrect outline of what took place at the platform. I am sure the witness was labouring under some extraordinary excitement when he told Mr. Fitzgibbon, who cross-examined him, that the people came to that meeting in a sweating rage of excitement. What were the mottoes he saw there? One was the Irish words "*Cead mile failte*," and the other "Repeal and no Separation." That was the way the people of Longford understood the meaning of this agitation. Gentlemen of the jury, the *Freeman's Journal* of the 31st of May was read to you, in which Mr. O'Connell made some severe comments on Lord Beaumont, who thought proper to make a severe attack upon him; and if Lord Beaumont felt that he had a right to complain of this he might have instituted a prosecution for it. But that is a matter with which you have nothing to do; this language in reference to Lord Beaumont cannot affect this prosecution; a personal quarrel can have no concern with your verdict. The crown next gave in the papers of the 31st of May, and several portions of Mr. O'Connell's speech were read from them, and I now shall read some passages which were not read by the Attorney-General. The learned counsel continued to read a variety of extracts from Mr. O'Connell's speech at the repeal association, on the 31st of May, 1843, and contended that the whole tenor of Mr. O'Connell's expressions were such as to indicate his anxiety to promote good will and union amongst all classes of the community rather than to set one class of her Majesty's subjects against the other, as he had been accused of doing by the Attorney-General. The next meeting to which the Attorney-General had alluded to was the meeting at Drogheda. Not a single witness had been brought upon the table to prove that meeting, or to prove Mr. Barrett's connection with it. All the testimony with which we have been favoured on this point is a copy of the *Pilot* newspaper of June the 7th, containing a report of the Drogheda repeal demonstration, and even that is not an original report, but was cut by the scissors-editor of Mr. Barrett's paper, and copied from the *Freeman's Journal* and *Drogheda Argus* into the *Pilot*, just as it might have been copied into the *Mail* or the *Packet*. [The learned counsel read a variety of extracts from the report of the repeal proceedings at Drogheda, Mallow, Donnybrook, and Tullamore, and then continued]—Gentlemen, find out of all this a conspiracy, if you please; find it if you can. The doctrine of law is that you are to acquit every man, but to convict them only if you must. I defy you to find an overt act of a conspiracy in all these quotations; I defy any man with an honest understanding or a just conscience to do so. There is one motto, which was exhibited before the meeting commenced, which requires some explanation—"Ireland her parliament, or the world in a blaze." True it is this motto was not at the meeting, and equally true it is, was not on any road leading to the place of meeting; it was in a back street, and it was not put up by any one who came to that meeting, but by some inhabitant or person staying in the town. But is Mr. O'Connell and the other traversers

to be found guilty, because of that? We shall give proof about that matter; we shall not permit it to sully the character of these meetings. We shall prove that it was ordered to be taken down the moment it fell under the observation of those who took a part in the meeting. Another motto was—"Repeal, Justice and Prosperity to all creeds and classes," and that was suffered to remain. That did not dishonour the meeting. Mr. Stewart admitted that the meeting was of a peaceable tendency, but that the people came there with great regularity on horseback. Why, no honest man could blame them for not allowing their wives and children to be trampled on by travelling in regular order. He would recollect that, but he could not remember that anything was said about ribbon societies. He did not see "Repeal and no Separation," nor did he see "God save the Queen," with the emblems of a rose, thistle, and shamrock entwined around it, and gentlemen, I trust in God, and I am sure I speak the sentiments of my client, long may she and her descendants wear that crown adorned with the shamrock, rose, and thistle around it.

At this stage of the learned gentleman's discourse, the court adjourned to ten o'clock next morning.

EIGHTEENTH DAY.

SATURDAY, FEBRUARY 3.

The court sat at the usual hour.

Mr. O'Connell—My lords, I respectfully submit to the court, as the line of observation which it will be my duty to take will not be precisely that taken by any other counsel, and as I know the materials Mr. M'Donogh has will take a considerable part of this day, if it were not interfering too much with the course of this trial, I would be glad your lordships would hear me on Monday, and not call on me this day. I can promise the court that in what I have to say, and it is not much, I shall condense still more, by knowing that I shall be called upon on Monday.

The Chief Justice—Certainly, Mr. O'Connell, we shall comply with your application. I wish to know if Mr. Steele intends to address the court.

Mr. O'Connell—No, my lord.

MR. M'DONOGH RESUMED.

He commented upon the evidence produced with respect to the Baltinglass, Longford, Clifden, and Tara meetings. In referring to the Tara meeting he said—With respect to what had been stated concerning Captain Despard, he agreed with Mr. Hatchell, that the affair was nothing more than a joke of some clever Irishman, whom he believed he would be able to produce. Mr. Trevelyan, a writer of one of the morning papers, while travelling in a hackney car, asked the driver what the letters G.P.O. meant, which he observed on the milestones? The reply was "God preserve O'Connell." Now he (the driver) was humbugging, just as the man humbugged Captain Despard. He (Mr. M'Donogh) could prove to the satisfaction of the jury that the person who quizzed Despard was neither more nor less than some pleasant Irishman, who said to himself, "Come, I will have a joke with you." The next meeting was that of Mullaghmast. An attempt had been made to show that a placard had been written and published in furtherance of the common plan and design of conspiracy, which, it was alleged, existed amongst the traversers; but anything more absurd than such an attempt he had never heard of; for he denied that there was any, even the slightest community of sentiment between that placard and the speeches made by Mr. O'Connell or his fellow-traversers. The inference which was plainly left to be drawn from that foolish, nonsensical document was, that the massacre of Mullaghmast was a massacre of Catholics by Protestants, whereas one of the most forcible and energetic passages in Mr. O'Connell's speech on that occasion, was that in which he expressly impressed upon the minds of his audience the fact, that the tragical occurrence of by-gone days to which he alluded, did not arise out of any sectarian difference, for that the men who were murdered were Catholics, as were also the men who slew them. He told them that both the slayers and the slain were of the same religion, and his purpose in alluding to the event at all was, not to set one class of religionists against the other, but to warn all Irishmen against suffering themselves to be made the victims of treachery and fraud. The placard, therefore, was manifestly at direct variance from the avowed sentiments of the traversers, and although it had been distinctly proved that not one copy of it had ever reached the platform or the banquet-room, the crown call upon you, gentlemen, twelve honest intelligent men, upon their oaths, to declare that the traversers were fully cognizant of its contents, that it was published at their instigation, and published for the furtherance and promotion of one common seditious design. It was printed, not by Mr. Browne, who they have endeavoured to show was the acknowledged publisher of the association, but rather by a man of the name of Hanvey, whom they have not brought upon the table, although his name and address were given in full at the foot of the publication. Why did they not bring Hanvey on the table, as they had brought Browne, and prove, if possible, out of his lips the connection of the association with the placard? They had refrained from doing this, because they well knew that they would be utterly unable to prove any such connection. He now begged leave to direct their attention to the speech of Mr. Barrett, at Mullaghmast. [The learned counsel then read from the *Freeman's Journal* the report of Mr. Barrett's speech on the occasion of the Mullaghmast demonstration.] He would now come to the next meeting, which was intended to have taken place. He alluded to the intended meeting at Clontarf, and he would more particularly refer to the substituted meeting which was held at Calvert's theatre on the 9th of October. It was proved by Mr. Bond Hughes that a meeting was announced to take place at Clontarf, but the evening previous to the day on which it was to be held a proclamation was issued by the Lord Lieutenant, by the advice, of course, of his law advisers, prohibiting that meeting. That was the first interposition of the government, and it was obeyed with a promptitude worthy of commendation. He relied upon the fact of that prompt obedience as being favourable to the traversers. It was the prevention of that meeting that occasioned the assemblage at Abbey-street theatre. He paused for a while, to ask every honest-minded man whether the obedience to that proclamation was not the most practical illustration of the doctrine of peace so frequently expressed by Mr. O'Connell? His admonitions to observe the law were sounding in the ears of the Irish people—he had been repeating them over and over again throughout the whole course of the agitation, and he (Mr. M'Donogh) submitted to the understandings of the jury that Mr. O'Connell's words and deeds were the best proofs of the purity of his intentions. Well, the Clontarf meeting did not take place, but the resolutions prepared for Clontarf were approved of at the meeting on the following day in Abbey-street. It was well that meeting was held, because it evidenced what the peaceable objects of the intended Clontarf meeting were. The two first resolutions adopted at the Abbey-street meeting asserted the right of petitioning for the repeal, and perfect allegiance to the Queen. The third was a

vote of confidence in Mr. O'Connell, and the fourth was to the effect that a petition be forwarded to the house of lords and commons for a repeal of the legislative union. Mr. O'Connell made a speech upon that occasion, in which he said that he had two objects—one of which was, to proclaim to Ireland that there was but one way of obtaining the repeal, and that was by obedience to everything bearing the form of legal authority. Resistance was not right until legal authority was done away with; and the iron and dread hand of power was raised against them. Those were precisely the same sentiments which Mr. O'Connell uttered at Mallow. At the Abbey-street meeting he also cautioned the people to obey everything that looked like legal authority, and they received the injunction with cheers and cries of "we will." He said he wanted to carry the repeal of the union without one drop of blood—without disturbing the social order, but by legal and constitutional means—so that when he came to face his Redeemer at the moment of his account, he would have nothing to answer for in the advice he gave to the Irish people. Mark (said Mr. M'Donogh), we do not read this speech for ourselves—the crown have actually read it against us. He would now come to certain publications attributed to Mr. Barrett. The indictment embraced proceedings and publications of Mr. Barrett's for a period of about nine months. He published, during that period, three times a week, each paper, containing three or four columns of leaded matter. After all the assiduity of the crown, they were only able to bring against him the publication of reports of meetings, and his attendance at three dinners. Four leading articles are all that is charged against him. Now, with respect to the first, it is a report of public meetings which he, as a matter of course, published cotemporaneous with other journals of the city. The *Saunders*, the *Monitor*, and other papers, published the same things, some, perhaps, in a more abridged shape, and others more enlarged; and will you, gentlemen, say that these papers are guilty of a conspiracy for having done so? This is a class of publication which is generally done by the sub-editor, or scissors-man, who cuts out the report from other journals, and condenses it, or otherwise; and in all the cases where reports of public meetings are given in the *Pilot*, I only find one headed "from our own reporter," not one more, all the rest being copied from the *Kilkenny Journal*, *Drogheda Argus*, the *Freeman's Journal*, or other papers, and was Mr. Barrett to be charged with a conspiracy for doing what was done by every newspaper in the world? Mr. Barrett was charged with having made three speeches, but he never attended one of the monster meetings at all, not because he repudiated them, but for the plain and simple reason that he was not a member of the repeal association. It was stated by Jackson that Mr. Barrett handed in money to the association, and that was all. He did not make a speech there in his life, nor was he charged with having done so, it was not even attributed to him that he did so. He attended there, and because he had the honesty to hand in money that was remitted to him from the country, he was charged with being a conspirator. Mr. Barrett merely handed in money intrusted to him, but he never paid one shilling himself to the association, nor did he in any manner interfere with the internal arrangements of the association. He took no part whatever in the proceedings, not because he repudiated it as illegal, he knowing it to be perfectly legal, and he (Mr. M'Donogh) insisted it was perfectly legal, but because Mr. Barrett was not a member of the association, and therefore he took no part whatever in its arrangements. He never attended a monster meeting in his life for the same reasons. Well, there were certain other charges sought to be made against him, and one of these was a short article introducing a report of a meeting which was held in America, and at which Mr. Tyler, the son of the president of America, attended and made a speech. The sentiments made use of by Mr. Tyler were absolutely attributed to Mr. Barrett. You remember, gentlemen, the article; it was inserted in the *Pilot* of the 10th of March last. This was a short leading article, introducing or referring to the meeting which took place in America. It called on her Majesty's ministers to pay attention to the fact, that the son of the American president attended the meeting, and made a speech in moving the first resolution, and that his speech was a bold and statesmanlike effort. That was the passage relied on by the crown as a conspiracy, because Mr. Barrett called the attention of the government to the fact of Mr. Tyler attending a meeting in America. The meeting in America was called in order to sympathise with Ireland for the struggle she was then making for the recovery of her legislative union. He proceeded to read certain passages from the speeches made at the meetings in America to the following effect:—Mr. Tyler said they had assembled there to express their opinions on the wrongs of this country.

Chief Justice—Where was that meeting held?

Mr. M'Donogh—At the city of Washington, in America, and the crown seeks to make what took place there, as evidence against Mr. Barrett, and says it is an overt act of the conspiracy which it is sought to charge the defendants here with. A gentleman makes a speech in America, and the crown fastens on certain passages of it and charged his client with conspiracy for having published that speech; was that fair or just? Well, Mr. Tyler proceeds—He says, "It is our duty to express our opinions on the force exercised by England over Ireland." He would ask was there anything unconstitutional or illegal in that? if so, farewell to free discussion on every subject. Will it be said that men cannot meet and talk on every subject they please? If you come to the conclusion that it was illegal, why then the government will step in and put you all down when you meet to discuss any subject no matter how legal it may be. Well, you heard that Robert Tyler made a speech and that one passage of it ran thus: "The libation to freedom was often purchased in blood;" but if the jury took the whole context of that speech, it was as clear as the noon-day that he referred to the freedom of America, which was unhappily purchased in blood. He read the speech and proceeded—Mr. Tyler said the Irish soldiers, poets, and writers were the admiration of the world, and for publishing this speech Mr. Barrett is charged with having concocted a plan of conspiracy. The Hon. J. M'Keon, member of Congress for New York, also made a speech at that meeting, and because you are told it was a bold speech, it is laid as an overt act of conspiracy against my client. He would call their attention to a remarkable piece of evidence, which was all-important, as it was charged against Mr. Barrett that he published that speech as an overt act; in fact, they gave the publication of it as proof of the conspiracy; but what he for one would give in proof, as a substantial piece of evidence, would be an article in the *Pilot* newspaper of the 12th of April; it was the act of the association, of Mr. Barrett and Mr. O'Connell; and it was not by one act but by all—by a fair, just, and manly view of their acts that they should be tried. He then read the speech of Mr. O'Connell contained in that paper, in reference to the speech of Mr. Tyler, in which he stated that the association should avail itself of that opportunity to explain the position in which they stood with the people of America; that the value of freedom should not be overrated, but that a revolution would be too dearly purchased

at the expense of one drop of blood; and that in his time, and while he lived, not a drop of blood should be spilled except it might be his own; that he wished to exhibit his gratitude to the Americans; but at the same time to point out the species of peaceable support he would receive, and that he sought no change that would not be effected by legal and moral means. He (Mr. O'C.) concluded by proposing that the thanks of the association should be conveyed to Mr. Tyler, and that a letter, expressive of the opinions of the association, should be written by Mr. Ray to Mr. Tyler. Mr. M'Donogh then read that letter, and went on to observe that that was the manner in which the sentiments of Mr. Tyler had been responded to, and that was the mode in which the sympathy of the Americans was accepted—every means of effecting the objects of the association that were not moral and peaceable were rejected. He then said he would read a document as evidence of the peaceable intentions of the association—it was the plan for the formation of the National Repeal Association, as published on the 15th of April, 1840, three years before any attempt was made to suppress that body. [He then read the rules of the association.] He then observed that the rules of 1840 were acted upon in 1843. That they had not been changed or deviated from, and embodied the same spirit and principles—the same sentiments were continually repeated—the same moral and peaceable means were over and over again promulgated; and was it because an angry expression had occasionally fallen from some of the traversers, that the jury were to fasten fastidiously upon it, and exclude their repeatedly peaceable declarations from their consideration? If the rules which he had read were the rules of that body, it was absurd to say it was an illegal one.

Here the Chief Justice asked for the newspaper containing the rules to be handed to him.

Mr. M'Donogh—I have now to refer to an act of one of those defendants, and it is the act of the whole of that body. I refer to the *Freeman's Journal* of the 30th of January, 1841. "At a meeting of the repeal association, Mr. O'Neill Daunt said it was now his pleasing duty to state that answers had been received from her Majesty and his Royal Highness Prince Albert, announcing the receipt of the address forwarded to them by the association, congratulating them on the birth of the Princess Royal (immense cheering). The learned gentleman read the letter Mr. Ray forwarded with the address, and replies of Mr. Maule, acknowledging its receipt by her Majesty." Why these unfortunate men, for unfortunate they are, whatever may be the result of this trial, who are now stigmatised before the public as traitors, planning the severance of those countries, are from the year 1840 to 1843, known to the authorities, inviting by their rules the interference of the authorities amongst them, and declaring they would throw open their books, not alone to a magistrate, but to a common policeman. Well, those very men that are now stigmatised as traitors are communicated with by the authorities, when, in their loyalty, they send that address to her Majesty and Prince Albert. [The learned gentleman read a communication, acknowledging the receipt of the address, by Prince Albert, and conveying his thanks for the sentiments it contained.] Mr. O'Neill Daunt moved that those documents should be inserted on the minutes of the association; and Mr. Clements, a Protestant gentleman, and a member of our bar, seconded the motion, which was passed amidst acclamation. These traitors and conspirators are known to the law; from 1840 they are suffered to go on; they are permitted to think themselves what they are, a legal body; and yet, in the year 1843, without an act of parliament being introduced to indicate to those men, misguided if they be so, that they should not longer continue those acts, they turn round upon them, and indict them for conspiracy; instead of indicting the particular parties that may be the medium of conveying these alleged seditious speeches to the public, or venturing to indict them for attending an illegal assembly. Now, gentlemen, the fourth piece of substantive evidence which I accumulate on that particular topic, and when I come to offer it hereafter, I shall place it with one particular subject referred to, that is the letter of Mr. Tyler. [The learned gentleman read a letter from Mr. Ray to the repeal wardens of London, reprehending them for permitting Chartists to join their body, and directing them to return the money they had received from them, as the association would not enrol the names of any persons who were Chartists on their books.] I shall be able to give in evidence that particular letter, and shall read it in connection with the renunciation by the association of all sympathy from America, save that which concentrates moral opinion. I read in connection with it the repudiation of the Chartists, and directing that the money should not be received, because their doctrines or those of their leaders inculcated a reference to physical force. As the other leading articles that were ascribed to Mr. Barrett were not written by Mr. Barrett; but whether it was written by him or not in the discharge of his duty as a journalist, or whether he erred in that duty, is no ground to say he is a conspirator. If such a principle were established, no more effectual mode than this could be selected to extinguish the liberty of the press in this country. An act of parliament, the 5th and 6th Victoria, has been recently passed, the effect of which is to extend the liberty of the press, and this act of parliament is virtually sought to be repealed by this prosecution. If this prosecution succeed, instead of prosecuting a proprietor of a newspaper for a libel, they have only to gather together various other papers and proprietors, and say we will indict them for a conspiracy, and thus exclude them from the fair defence which the statute affords them. I shall now call your attention to the 5th and 6th Victoria, entitled an act to amend the law relating to defamatory libels.

Solicitor-General—But not seditious libels.

Mr. M'Donogh—I am speaking generally on the subject. [The learned gentleman then read an extract from the act of parliament.]

Chief Justice—Is that an imperial act?

Mr. M'Donogh—Yes, my lord.

Judge Crampton—Extending to Ireland?

Mr. M'Donogh—Yes, my lord. The Solicitor-General suggests that a seditious libel is not referred to in that statute. This act only just now occurred to me, and I am not prepared to say that he is not right, and from his greater familiarity with the act of parliament he may be so. But suppose the words "seditious libel" are not there, parties may be indicted for conspiring to defame another just as well as if a conspiracy, by seditious papers, to effect a certain purpose; and any private prosecutor, if this precedent be established, may, instead of bringing an action of defamation, indict a party for a conspiracy to defame him. This is an effort to suppress the liberty of the press in this country, by seeking to make a journalist guilty of an overt act, from all the leading articles that shall be raked up and pushed in one after another against him. As to some of those articles, they were not written by Mr. Barrett at all, but when Mr. Barrett was out of town; and on his return, Mr. Barrett reproved, with just severity, the party that had written them. I allude to the article where the murder or homicide, I shall not pronounce the character of the offence, for which a man is committed for trial at Tullamore, was spoken of with levity, and Mr.

Barrett reproved the person that put that article into his paper. I call the attention of the court to this proposition, that although, on a constructive publication in a newspaper, an arbitrary rule has been adopted by the judges that the publication shall be evidence against the party in the indictment for libel, even though his mind was not guilty. That cannot hold, however, where the charge is that he conspired; for where the indictment is for conspiracy it must be shown that he was not only guilty in act but in intention. The next letter to which he would refer was one signed by a Rev. Mr. Power, a parish clergyman of the Roman Catholic persuasion, and that letter referred to "the duties of a soldier." He thought it singular, in the annals of jurisprudence, that, instead of instituting a prosecution against the writer, if it deserved a prosecution, that it should be instituted against one who had no connection with it. Mr. Power's name was subscribed to that letter, and he was ready to avow it—he was ready to justify it—and he will do so before the termination of the trials, when it will be shown that at the time that letter was received, Mr. Barrett was absent in his country house. Why should a letter, which was printed in his newspaper, during his absence, make him liable to punishment? or how can it prove that he entered into the conspiracy charged in the indictment—a letter, the contents of which he was, when written, altogether ignorant? Did, he would ask, that letter communicate the purpose of his client's mind, and the fact that he had entered into the conspiracy? Quite the reverse; for, as already stated, he knew nothing about its contents. The very concluding language of judges to juries proved his assertion "that unless they were satisfied of a previous conspiracy, they were bound to acquit the defendants." That fact was involved in the consideration. It would not do to reach any, or all of them, by arguing in a circle, or to surround the entire of them by meshing them altogether; they, the jury, were bound on the oath they had sworn that there was a previous conspiracy, they were to do that if they could. As to the letter written by Mr. Power, (and of which Mr. Barrett had no knowledge, and of the publication of which he knew nothing,) he therein put forth his sentiments, and which he published to the world; and in doing that he only followed the example of men who were equally attached to the soldiery, who had no idea to corrupt them, whose only object was to inculcate on them moral duty. There was a remarkable trial on that subject to which he would refer. The Attorney-General of that day, and it was a most agitating period, filed informations against John Drakard. He would read the particulars from Lord Brougham's speeches, Introduction, pages 7, 8, 9. The very same charge was also attempted to be brought against a public journalist. Had any one of the troops serving in Ireland departed from his allegiance to the sovereign, or had any attempts been made to tamper with one of them? Had any soldier been brought forward to support the charge? Not one. It was sought to produce a certain result, which certain result had not, and could not be produced. The leading articles published in the *Pilot* newspaper could not be brought forward as libels. Supposing that they were published by Mr. Barrett's consent, they only showed that he (Mr. B.) was moved by a just feeling. The articles could not be condemned as seditious, and his client was not responsible for them. To support the charge of conspiracy against Mr. Barrett, it must be proved that he was responsible for them. They (the jury) would observe that the evidence given by Mr. Jackson showed that Mr. Barrett was scarcely ever at the meetings of the repeal association. When he was there he merely handed in money. He never made a speech at the association, and it had not been shown that he was ever there during the delivery of a speech. He took no part in the arbitration system; he took but little part at the association, and it was sought to convict on conspiracy. It was his (Mr. M'Donogh's) duty to divest his client of responsibility, and to show to what extent he, by fair and legitimate evidence, was connected with the transactions that had taken place in reference to the repeal question. Mr. Barrett was proved merely to have been present at three dinners, to have made but two speeches, and to have written, or caused to be written, certain leading articles; and yet, they were to be told that on such evidence he was to be convicted of an atrocious crime. Certain matters had been referred to with a view to stamp the repeal association as illegal. For example, it was said that Mr. Bond Hughes had produced a manifold copy of a letter, purporting to be written by a Mr. Skerrett, on the subject of elections. What at last did Mr. O'Connell? He (Mr. M'Donogh) was referring to the letter. "When the proper opportunity should arrive they would have a right to put him out." Now, the very principle of representation was that the elected should represent the feelings and wishes of the majority of the electors. Mr. O'Connell did not say "put him out against the law," but just this—"when the law shall give you the right, why then exercise your right." He (Mr. M'Donogh) read a speech in which Mr. O'Connell stated that no man should be interfered with as regards his private relations of life for not being a repealer—that in public relations only, parties should be either approved or disapproved; by that he meant that a person should exercise his own judgment at an election. Now, such a statement as that was brought forward for the purpose of sustaining an act of illegality. He would now say a few words relative to the arbitration courts. In one of the reports of the sub-committee it was stated that one proposition was, that if any person should dissent from the award he should be expelled. That proposition was never adopted, but even if it were, the certificates were never issued. That he was prepared to prove; if the arbitration courts had contemplated anything immoral or illegal would they have admitted Bond Hughes to their meetings, and have given him manifold copies of their documents? Their meetings were public, the police were admitted and treated with respect, and the committee consisted of 500 persons, seven of whom were barristers of considerable eminence. Could anything like a conspiracy be inferred from that? The document suggesting the expulsion of any member who did not submit to the award of the committee was never adopted; but if it had it would be no more an act of illegality than that well-known rule of the Quakers, by which any member of the body was expelled who refused to submit his cause of difference to the arbitration of his brethren, and abide by their award. The formation of the arbitration committee formed no part of their original plan, it sprung out of the dismissal from the commission of the peace of a number of gentlemen in whom the people had confidence, and therefore should not be regarded as an overt act proving a previous conspiracy. Besides, these courts never exercised the authority of magistrates, nor administered an oath. Their first act was to disclaim such authority, and the first case that came before them stood over, and no decision was come to, because the parties did not choose to submit to the award. The learned gentleman next referred to the Queen's speech, which appeared in the *Gazette*, of the 29th of August, 1843, and expressed his conviction that the Attorney-General would not make any use of that speech that would be hostile to the interests of the traversers. He (Mr. M'Donogh) then read an address of the Attorney-General in the celebrated case of Hardy, in which that eminent

lawyer told the jury that they were not to deny the prisoner his presumption of innocence, even though an act of parliament had been passed characterising his conduct as a conspiracy to subvert the monarchy. He warned the jury against giving any weight in their deliberations to the voice of the legislature. He (Mr. M'Donogh) trusted the same course recommended by that Attorney-General would be adopted by the jury in the present case. He (Mr. M'Donogh) had heard the Queen's speech with profound contempt—(much laughter)—with profound respect and veneration. He was sure his learned friends would admit that that was a mere mistake; and when he committed that mistake speaking before them in the sincerity of his heart, would they convict Mr. Barrett for any similar mistake into which he might have inadvertently fallen?

The Chief Justice—At what part of your speech do you think you are now?

Mr. M'Donogh—My lord, I apprehend I have not much more to add, as I do not intend to go over any of the ground which has been so ably argued.

The Chief Justice—Well, the jury had better retire, and it is now more than half-past one.

The court then adjourned for the purpose of taking some refreshment.

When their lordships had returned Mr. M'Donogh resumed his address. He reminded the jury that it was a settled law of the land, that when a man was accused of any offence, whether conspiracy or anything else, it was absolutely necessary that the jury, before they returned a verdict of guilty, should be satisfied that the evidence adduced on the prosecution was such as to bring guilt home to him beyond the possibility of doubt. This point had been distinctly ruled so in the case of the King *v.* Pollard, 2nd Campbell's Reports, page 293, and there were two points upon which the jury should be clearly convinced in their own minds before they found a verdict against the traversers. The first was the actual existence of the conspiracy, and the second was the purpose, design, or intent of the persons who were partners in that, so called, conspiracy. Mr. Erskine had acknowledged the truth of this maxim of law, and had stated the principle with much distinctness in Hardy's case, page 359, of "Ridgeway's Life of Erskine." [The learned counsel here read the passage referred to.] The jury, in a case of imputed crime, ought invariably to view the whole case as exhibited by the evidence, and if, after a calm and dispassionate review of the testimony, they felt any doubt of the guilt of the traversers, they were bound in duty to give them the benefit of it. Something had been said at the commencement of the present trial in allusion to the construction of the jury, but this was a topic upon which he would not touch, for he would never utter a word that could be by possibility construed into an expression of doubt upon his part, that the respectable and intelligent gentlemen whom he had the honour to address would discharge their duty with firmness, propriety, and discreetness. If they had upon their minds any rational doubt of the alleged conspiracy having been substantially proved by the evidence that had been adduced on behalf of the crown, they should not, they could not, find the traversers guilty. He admitted that he felt deeply interested in the results of the present proceedings, for if the jury could, consistently with the maxims of law and the dictates of their consciences, find a verdict of acquittal, he had no doubt but that verdict would do more to attach the people of this country to the administration of justice, and to convince them of the purity of the legal tribunals, than anything that had occurred for centuries past. Those who advocate the repeal are no despicable faction—they are the majority of the Irish people. Whatever may be our speculations as to the result of our verdict, I cannot better conclude the observations I have had occasion to make to you than by humbly imploring Providence to lead your minds to a just conclusion.

The learned gentleman then resumed his seat.

MR. HENN, Q.C., IN DEFENCE OF MR. THOMAS STEELE.

My lords—I am concerned here for Thomas Steele, and it now becomes my duty to address a few observations to you, but they shall necessarily be very short. Gentlemen of the jury, it is with unfeigned regret that I feel compelled to intrude myself upon your notice at this stage of the proceedings. I was not aware myself until a very short time ago, that this duty would devolve upon me. I was concerned for Mr. John O'Connell, and had with me a leader, I was proud to serve under, Mr. Sheil; he was my senior, and I did not think I should have to trouble you at all. But, gentlemen of the jury, Mr. Steele, who appeared before you without counsel, has thought fit to change his original intention, and has been unwise enough to select me as his advocate, and I am therefore, gentlemen, compelled to undertake the duty that, under those circumstances, I could not justifiably decline. But if, gentlemen, I regret it at all, it is not for my own sake—it is for the sake of my client, because I do feel an honest conviction that my client's cause is just, and I am apprehensive that the strength of it may be affected by the feebleness of my advocacy. I know, gentlemen, it would be most unbecoming in me, under those circumstances, to trespass upon your patience at any length, and I feel convinced that I shall best discharge my duty to my client, by trespassing upon your valuable time but for a very short period—indeed I feel the subject has been almost exhausted. I feel the learned gentlemen who have preceded me have addressed you with such extraordinary ability—I feel that everything that eloquence, that wit, that sound reason could do has been already done, and I tremble with apprehension lest I should have the effect of effacing from your memory what I wish to sink deeply into it; and, therefore, gentlemen, it is, that I do sincerely regret that I have been called upon to trouble you at all; but, gentlemen of the jury, I am bound to do so. I shall endeavour, however, to abstain as much as possible from going over the same topics that have been urged with so much more ability than I could approach them, and I shall if possible introduce new matter. I fear I cannot introduce much of any importance, but I shall avoid as much as I can that which has been already pressed upon your attention, with this exception, that I shall, at the outset, gentlemen of the jury, repeat what has been said by some of those who preceded me. I shall implore you to recollect that you are not empannelled to try whether repeal is beneficial to this country; you are not empannelled to try whether the discussion of it is beneficial to this country; and, gentlemen of the jury, I beg at the outset to impress that upon your minds, because I know at this moment there are hundreds out of this court who actually believe that that is the question you are trying. I know that before you were empannelled there were hundreds, aye, thousands, of your fellow-citizens who were convinced that was the question to be tried. You must know, gentlemen of the jury, that this was tried and prejudged by hundreds of conscientious and honest men, and I feel thoroughly convinced, that before the facts of this case were opened—before the law applicable to this case was cited, there were not to be found in your city ten men who had not formed their opinions upon this case—no, not two—I doubt if there was one; and well convinced am I that honest and honourable men had come to the conclusion of the guilt or innocence of those persons before they were aware of the question to be tried, or of the law

applicable to it. Well convinced am I that there was not in your city a sincere and honest repealer who did not pronounce a verdict of "not guilty," before they were put on their trial; and equally convinced am I, that there was not an honest and conscientious opponent of repeal who did not pronounce a verdict of "guilty." I am, therefore, gentlemen of the jury, anxious to impress upon your minds that this is not the question you have to try. It is immaterial what opinions we may entertain with respect to the policy of repeal, or the benefits or the mischief that may result from its discussion. It may be unbecoming in me to intrude upon you or upon the public my own political opinions; but I do not hesitate to say that I differ in opinion from the traversers in this case; I do not hesitate to avow that, notwithstanding all I have read, or all I have heard, I retain the honest opinion that a repeal of the union would be fraught with mischief to England, and ruin to Ireland. I will not, however, say, gentlemen of the jury, that I have not heard much since this trial commenced, calculated to shake the opinion I had previously formed, and will readily confess, that I would now, with much greater doubt, enter into an argument on that question, than I would have done before. But still I have the presumption to retain the opinion I had previously formed; and though I know there are hundreds, thousands, millions, of my countrymen who honestly entertain a different opinion, and though I see many amongst them much more competent to form an opinion than I am, I claim the right to announce that opinion—I claim the right to enforce that opinion by all legitimate means, and by all arguments that I could use, to induce others to adopt it—I claim the right, if I feel that there is a great body of persons coinciding with me in that opinion, respectable from their intelligence, and respectable from their numbers—I claim the right to make known to the government of the day, and to the minister who holds the reins of government, that fact. Gentlemen of the jury, the right I claim, I feel I am bound to concede. Nay more, on the part of the traverser for whom I address you, I claim that right for him; and I assert, gentlemen of the jury, that the traverser here, honestly and conscientiously believing that a repeal of the union is essential for the well being of this country, has a right to entertain—has a right to announce—has a right to convince others, that that opinion is right—has a right to collect the sense of the nation, and has a right to collect that in such a manner as will apprise the minister of the day what are the real sentiments of the people that are governed by him. Gentlemen of the jury, I therefore say again, that the question to be discussed here is not whether repeal is beneficial or not, or whether the discussion of it is beneficial or not; but it will be my duty to call your attention to what the precise questions are which you have to try, for without an accurate knowledge of what the precise questions are, it will be utterly impossible to apply the evidence which you have heard in this case, to which, with great pleasure I observe you have attended, for without the extraordinary attention—without the extraordinary patience you have displayed, human intellect would not be able to collect out of the mass of evidence which has been placed upon the table in this case, the means of arriving at a just conclusion, or knowing really what you ought to do. You have heard it over and over again stated, that this indictment charges nothing but a conspiracy, and that is perfectly true. But I do not think your attention has as yet been called, although the indictment has been read more than once, or at least called, with sufficient accuracy, to the precise object of the conspiracy imputed to the parties. Before I do so, I beg most respectfully to impress on your minds one or two propositions on a point of fact, under the correction of course, gentlemen, of the court. My learned friend, Mr. Whiteside, has told you that, originally, conspiracy did not mean anything criminal, but a common assent to a common purpose—but in the legal acceptation of the word, conspiracy implies crime. Gentlemen of the jury, you have heard that a conspiracy to effect a criminal object is itself a crime, and you have also heard it laid down that a conspiracy to effect even a legal object by criminal means is itself a crime. Now, gentlemen of the jury, I think, for all the purposes of this trial, I may simplify the proposition in point of law, and tell you what the simple proposition is—that a conspiracy to do a criminal act is itself a crime, and you will find that the two propositions I have stated, resolve themselves into that *one*. Because, gentlemen of the jury, a combination to effect a common legal purpose, such as to procure the repeal of an act of parliament, is not itself a a crime, but if parties combine to effect that by the commission of criminal acts, then there is a crime. But what is the crime? it is not the combination to procure the legal object, but it is the combination to use the criminal means. To use the criminal means is to do a criminal act; it then becomes a conspiracy to do the criminal act, and that is what constitutes the crime. Now, gentlemen of the jury, keep this I pray you in your minds, and I will tell you why I am anxious you should do so. There is no principle in the law better established than that which has been laid down by the gentlemen at the other side, that if you have clear and satisfactory proof of persons conspiring to do an illegal act, the act of each done in furtherance of that common object, is not only evidence against the others, but in point of law the act of the others. I admit that at the outset. I admit it freely, it is undoubted law. And if men, therefore, conspire to do an illegal act, if men conspire for instance, to waylay and beat another, and if one of them in furtherance of that object strikes a deadly blow, the others would be answerable for the consequences. But, gentlemen of the jury, on the other hand it is quite clear, that if men combine for the purpose of doing a legal act, and, in the prosecution of that common design, one of them transgresses the law, he is answerable for his own transgression; but he cannot implicate the innocent in his guilt. And, gentlemen of the jury, the difficulty in this case will result from this, that the rule of law, although at first laid down with precision and exactness, has afterwards been loosely stated. I trust the Attorney-General will excuse me for saying so—I know he did not mislead you intentionally, for I know that he is utterly incapable of it. There is no man in the profession for whose character I have a more sincere respect, and I can assure him, that I have not the slightest intention in anything I shall offer to cast the slightest disrespect upon him. But he did say in language that might in common parlance be misunderstood, that an act done by one of the conspirators might have an effect upon the others. That proposition is perfectly true, if you keep in mind, what I am sure was also meant, that the ultimate object of all was in itself criminal. But it is not true, if that which was complained of as illegal is to be done by one of the parties in the pursuit of the common object, unless it was the common object of all to do that precise and particular illegal act. And, gentlemen of the jury, I do think if you would keep those principles in your mind, they will assist you much in the consideration of the evidence that has been given in this case, and will help to lead you to a right conclusion. Gentlemen of the jury, with those introductory observations I shall now respectfully call your attention to what the charges are that are preferred against the traversers here. The crown prosecutors

has thought fit to put on their trial eight traversers; they have thought fit to put upon the files of this court what may well be called a "monster indictment;" they have thought fit to include in that indictment a vast variety of charges, and they have thought fit to spread upon the face of it a vast number of what are called overt acts. Of that, gentlemen, I do not complain. I do not complain of their stating any overtacts of which they meant to offer evidence; but I do complain that they have put us to unnecessary trouble and expense in preparing to defend ourselves with respect to a variety of overt acts stated in this indictment, and stated in the bill of particulars in support of it, of which not a particle of evidence is offered. But you will keep this in mind, that your verdict does not necessarily depend upon the proof of a negative of the overt acts. The overt acts are not the charges of crime. You might be satisfied that every one of the overt acts was proved, and it would not necessarily follow that you should convict for the crime. The overt acts, gentlemen, are but stated in evidence of it, and the proof of the overt acts would not necessarily lead to the conclusion that the particular charge was supported; and so I would admit, that although the overt acts were not all proved, you might, nevertheless, be satisfied upon the evidence that a criminal charge was proved. Now, gentlemen of the jury, this indictment charges the traversers, Daniel O'Connell, John O'Connell, John Gray, Rev. Thomas Tierney, Richard Barrett, Thomas Steele, Charles G. Duffy, and Thomas M. Ray, with unlawfully and seditiously conspiring to raise and create discontent and disaffection amongst the Queen's subjects in Ireland, and to excite such subjects to hatred and discontent of, and to unlawful and seditious opposition to the government and constitution, and to stir up jealousies, hatred, and ill-will between different classes of her Majesty's subjects in Ireland, and her Majesty's subjects in other parts of the United Kingdom, especially in England, and to create discontent and disaffection amongst divers of her Majesty's subjects serving in the army, and to cause, and aid in causing, divers subjects unlawfully and seditiously to meet and assemble together in large numbers at various times and at different places for the unlawful and seditious purpose of obtaining, by means of the intimidation to be thereby caused, and by means of the exhibition and demonstration of great physical force, changes and alterations in the government, laws, and constitution as by law established, and to bring into hatred and disrepute the courts established by law in Ireland, and to diminish the confidence of her Majesty's subjects in the administration of the law therein, with the intent to induce them to withdraw the adjudication of their differences from the cognizance of those courts, and subject them to the judgment and determination of tribunals to be constituted for the purpose. So far the intents are recited, and it then proceeds to say that they did unlawfully, maliciously, and seditiously combine, with divers persons unknown, to do what, gentlemen? Now, here is the first charge—to raise and create discontent and disaffection amongst the liege subjects of our lady the Queen. That is the first charge preferred by this indictment, that they did conspire to raise and create discontent and disaffection among the liege subjects of our lady the Queen. Now, gentlemen of the jury, let me ask you, as men of common sense, and men of the world, have you any doubt at all as to what the common object of those persons was, if common object they had? Have you any doubt at all that the common object was to procure a repeal of the union. That, gentlemen of the jury, is not charged; it is not charged here that they conspired to procure a repeal of the union, but that is the true offence. I will tell you why it is not charged, because if it had been charged, the indictment would not stand one moment: you would be saved the trouble of trying it—their lordships would have held it to be bad—a demurrer would have been laid, and you would have been saved the trouble of trying it. And therefore I say, gentlemen of the jury, this indictment shows that the gentlemen who framed it agree with me in the law; and instead of charging a conspiracy to do that which was the ultimate object, they allege a conspiracy to do a certain thing which they treat as a crime, and which they would have you infer was done in pursuit of a common object; but if you are satisfied that the common object was a legal one, that the common object was to procure a repeal of the union—if you are satisfied that the parties did things tending to raise and create discontent and disaffection with that object—I say that would not warrant a conviction for the crime here imputed to them—namely, a conspiracy to raise and create discontent, because then the principle I have laid down would apply, that if in the pursuit of the common design, any one or more, without previous concert to use illegal means, does use them, that cannot affect the others. But see, now, gentlemen of the jury, what is the nature of the charge. Is it not preposterous, is it not absurd, is it not so vague and indefinite, as to render it unsafe for any jury to act upon a charge so vague as that, or for any court to say, that that constitutes a legal offence? If there was nothing more in this indictment than that, would the case last five minutes? A conspiracy to raise and create discontent and disaffection! What is the meaning of that charge? Why, if that was to be supported in a court of law, I would ask you is there not an end to all discussion and improvement, and all amelioration of our laws? Is there not an end to all chance of getting rid of bad laws, and of getting good laws? Why, gentlemen of the jury, how is it possible to argue any question, or to reason with any reasoning man, to satisfy him that an existing law is bad, without exciting discontent? How is it possible to reason with any men and convince them that it is essential to their well-being that a new law should be introduced, without exciting discontent? And am I to be gravely told, and will the crown prosecutors here gravely assert, that men are to be put on their trials, and charged with a criminal offence, because they have used arguments in support of a legal object they have in view—which arguments may, perhaps, excite discontent, and how? By convincing men that the law which they seek to change is injurious and unjust. Gentlemen of the jury, I assert, it is preposterous to say that such a charge as that could be supported by evidence like this, or that it amounts to evidence of a crime at all. But I am told it is coupled with disaffection. What is the disaffection? Discontent and disaffection amongst the subjects of our said Lady the Queen. Why, was there ever a more vague charge? I believe there are some indictments in which words of this kind are introduced; but it is impossible to attach any weight to them. Disaffection and discontent amongst her Majesty's subjects! Disaffection to whom or to what? Is the disaffection to the Queen, or the government, or the constitution? No such charge; it is disaffection amongst the liege subjects of her Majesty. Gentlemen, I am not quibbling. Upon an indictment of this kind the charge should be intelligible to an ordinary understanding, and you should be able to see what it is the prosecutor here means. I profess I am unable to say what it is; but let me take it that it means disaffection to the Queen. I am ready to admit that to conspire to create disaffection to the Queen is a criminal offence; but, I ask you, gentlemen, could you convict those traversers for that? Is it disaffection to

the government? What means the government? If the ministry of the day, the charge is idle and absurd. There can be no such thing as disaffection to the ministry. God forbid I should live to see the day when it would be said to be a criminal offence to excite disaffection against the ministry. Is it the government in another sense? Does the government mean the constitution by law established? Could you convict them for that? What means the constitution? It is the government of the realm by the king, lords, and commons; but it is perfectly consistent with that constitution that there may be a separate parliament—that there may be independent legislatures—that there may be a house of lords and a house of commons in England, and a house of lords and house of commons in Ireland, and one common Sovereign. That was the constitution before the act of union incorporating the two legislatures; that act did subvert the then constitution; the repeal of that act would restore the two independent legislatures, and leave the constitution untouched. It is idle and absurd to say—I do not think it will be said—I have not as yet heard it said that it would be treason, or that it would be a criminal offence to endeavour to procure the repeal of the union, upon the ground that it would be endangering the constitution. Gentlemen of the jury, what is the evidence of disaffection to the Queen? I will tell you what it is: that on every opportunity and on every occasion Mr. O'Connell, who is one of the traversers—and the general traverser here, I would say—never omitted to proclaim his loyalty and his devoted affection to the Queen—to proclaim it in a manner the most impressive and best calculated to inspire those feelings into the auditory he addressed. I protest I find no other evidence in the case of disaffection to the Queen. But we are told, gentlemen of the jury, that men may say one thing and mean another. No doubt they may; but those who impute a crime—those who impute a meaning different to that which is expressed—are bound to prove it; and this is not only charity, but it is justice to a man who uses certain expressions in their plain and ordinary meaning; and I say no jury could, on mere suspicion, impute a different meaning to them in the absence of proof; the avowed expression itself is no proof of a different meaning. How are we to judge of the thoughts of men? How, but by their words and by their actions. We have his words; what are his actions? Why, gentlemen of the jury, if his object, or the object of any of the traversers here, was to create disaffection to the Queen, think you would the professions of loyalty to the Queen be repeated at the times, at the places, and under the circumstances that they were? Think you would he announce it at the close of almost every meeting to the assembled multitudes? Think you he would have asserted it in such a manner as to have drawn forth thunders of applause and cheers that made "the welkin ring?" Think you that they were all hypocrites? think you, gentlemen, that those professions of loyalty were addressed in open day to the assembled multitudes with a covert purpose of creating disaffection? The thought is idle. If he thought of disaffection in his heart, he took the most extraordinary means to accomplish it; I say that every speech was calculated to counteract it, and that it did produce that effect is beyond all doubt. Gentlemen of the jury, I dismiss that charge—it is idle, it is absurd; and I will say that if there was nothing else in this indictment, the gentlemen for the crown would not stay here one hour. Well, gentlemen of the jury, they are next charged with conspiring to excite the subjects to hatred and contempt of the government and constitution of this realm as by law established. I think I have disposed of that charge in the observations I have already made; I say, gentlemen, with profound respect, that it strikes my humble judgment that it is utterly impossible that you can come to the conclusion that they conspired to excite the subjects to hatred and contempt of the government and constitution of this realm. That they did endeavour to convince the persons they addressed that a repeal of the union would be beneficial to this country I freely admit—that was the common object; but again I repeat the observation I have already made, that if there could be spelled out of the confused mass of evidence upon evidence, by taking detached sentences of this speech and detached sentences of that speech, or detached sentences of this publication and detached sentences of that—if there could be spelled out anything to create hatred and contempt of the government and constitution, I say that would not support the charge that they conspired to do that; because you must see that the common object was to procure a repeal of the union; and if some rash and indiscreet persons used intemperate language, I say that cannot support the charge that they conspired to excite the subjects to hatred and contempt. Gentlemen of the jury, the next charge is the unlawful and seditious opposition to the said government and constitution. The pleader here has indulged himself in using a vast variety of words that seem to me to signify the same thing; and, gentlemen of the jury, I think the observations I have already made are fully applicable to that charge. The next charge is—and also to stir up jealousy, hatred, and ill-will between different classes of her Majesty's subjects, and especially to promote amongst her Majesty's subjects in Ireland feelings of ill-will and hostility towards and against her Majesty's subjects in England. Gentlemen of the jury, let us deal with that charge. It is an extraordinary charge; and it is new to me that such a charge as that can amount to the imputation of crime. Let us see, gentlemen of the jury, what is the evidence in this case—upon what do they rely in support of that charge? Why, they rely upon certain passages in some speeches, which they say are calculated to produce the effect; but, gentlemen of the jury, what were the speakers doing? They were endeavouring to convince their hearers, what they themselves conscientiously believe, that a repeal of the union would be essential to the benefit of this country; and in doing that, gentlemen, they were justified in using all fair arguments that they could to convince them. They were justified in resorting to one of the most powerful arguments that can be urged—a reference to past history; and if the facts in history are calculated to produce such effects as those, I deplore it. But is it alleged that they falsified facts or misquoted history? is it alleged that they misrepresented history? And even if they did, I return to what I set out with—that if some of the speakers, in pursuit of the common object, took that mode of enforcing it, it does not support the charge of conspiracy, which is not a charge of conspiracy to promote the repeal of the union, but to excite feelings of hostility and ill-will between her Majesty's subjects. And, gentlemen of the jury, I tell you, that unless you are also satisfied of a perfect concert, combination, arrangement, and conspiracy, to effect that purpose, the charge in the indictment is not sustained. Now, gentlemen of the jury, the next charge is to excite discontent and disaffection amongst divers of her Majesty's subjects serving in her said Majesty's army. Gentlemen of the jury, is that charge supported? What is the evidence of it? A similar species of evidence which has been resorted to in the progress of this trial; one or two speeches of Mr. O'Connell, in which he speaks in terms of high commendation of the army. You, gentlemen of the jury, are thereforce called upon to infer that he designed by using those means to excite them to discontent and disaffection. There

are also, gentlemen of the jury, some publications read—there were publications that I do not stand here to defend, inserted in one or two papers. There is amongst others, a letter of a priest, the Rev. Mr. Power, published in one of those papers. I will not trouble you with canvassing that letter. The counsel of the editor has been heard; but I say it is unfair, unjust, it is harsh and oppressive to make use of that as evidence against the other traversers here, or as evidence even against him to support the charge of conspiracy. The plain, the simple, the obvious, the direct, the manly, the honest course is abandoned, and a circuitous course is taken. And, gentlemen, it is sought now to convict one man of another's acts, and to use the acts of one as evidence against the others, arguing thus in a circle. Admitting that where the object is legal, the illegal act of one is not evidence against the other—admitting that if the common intents be to do the illegal action, then that the illegal act is evidence; what do they do? They take the act which they say is illegally done by one in furtherance of the common legal object, and they use that not as evidence of a combination to do a legal act, for that would not support them, but as evidence of a conspiracy to do an illegal act. They hope (but I trust their lordships will guard you against being misled) by this means, gentlemen of the jury, to get in aid the acts of persons over whom Mr. O'Connell had no control—of persons over whom Mr. Steele had no control, nominally to support the charge of conspiracy, but really and truly, gentlemen of the jury, to procure, if they can, that which is their great object—the conviction of the great Leviathan (laughter). Now, gentlemen of the jury, I complain of that. I say that that is not fair dealing. I say that if any of those publications had the tendency here stated, that it should be submitted to you in another and clearer form, they should have made each man responsible for his own acts, and his own acts alone, and put the matter in a course of trial that would enable the crown to bring forward its case, shortly, simply, and clearly, and state simply and clearly what their case was and their evidence, so that men of ordinary intelligence should easily see if the charge were supported or not, and enable you without difficulty to hear the case of the crown and the evidence offered in support of it—to hear the case for the defence and the evidence produced to support it, and then come to a conclusion without difficulty, and not inflict a task on you almost beyond the powers of human intellect. The next charge, and one on which, it appears to me, the greatest stress has been laid, is a charge "for causing and procuring divers subjects of our Lady the Queen unlawfully, maliciously, and seditiously to meet and assemble together in large numbers, at various times, and at different places within Ireland, for the unlawful and seditious purpose of obtaining by intimidation, to be thereby caused, and by means of the exhibition and demonstration of great physical force at such assemblies, a change and alteration in the government, laws, and constitution of this realm, as by law established." I pass by two of the objects, namely, to obtain changes in the government and the constitution, and I come to that which charges them with causing large numbers to assemble, to obtain by means of intimidation, and the demonstration of physical force, changes in the laws of this country. The change of the law adverted to clearly is the repeal of the act of union, and the conspiracy alleged is a conspiracy to procure large assemblies unlawfully to meet for the purpose of procuring that change by intimidation. That, I think, is the substance of the charge, putting it as concisely as I can. Now, gentlemen of the jury, if that charge be supported, and assuming for a moment that there was a combination to procure a change in the law, you are to keep in mind what I have said at the outset, that unless they preconcerted to do that which is alleged here to be a criminal act, the common purpose being lawful, none can be affected by the acts of the others. Where is the evidence that they procured those large assemblies to meet, and suppose there is, that those meetings were unlawful? If they were assembled for the purpose of intimidation—in the sense here intended—by intimidation—to procure a change in the law, I would admit it would be illegal; but if they were not assembled for that purpose as here laid, I deny it was illegal. I say the mere circumstance of their having assembled in large masses does not constitute illegality. I admit that if a large assemblage of persons takes place under circumstances calculated to excite alarm in the minds of firm and reasonable men, that, without reference to what the object is, may be unlawful. But I say if men—no matter in what numbers—assemble for the purpose, as Baron Alderson laid it down, of stating their grievances, or what they conceive to be grievances, and assembling in such a manner as not to excite alarm in the minds of reasonable and firm men, I say that is not illegal merely on account of their numbers. What is proved to demonstration in this case? The indictment here states a vast number of what they call those monster meetings, commencing so far back as the 19th March, at Trim. There are stated in the indictment no less than sixteen of them, and the bill of particulars contains twelve of them, making altogether twenty-eight. Evidence has been offered, gentlemen, of, I think, ten meetings: but, gentlemen of the jury, what are the facts? You have from the 19th of March down to the 3d of October, twenty-eight of those monster meetings; but you have no evidence that there was at any one of them a single act of outrage, or an act tending to a breach of the peace. Have you it not proved that those meetings were attended by persons on behalf of the government and by policemen? Have you not those policemen actually taking notes of the speeches that were made at those meetings, and can it be now considered that those were unlawful meetings? You have this fact, that from the commencement to the end of this agitation—if you please to call it so—government had information of what occurred. Those who were concerned in those meetings anxiously, ostentatiously published their proceedings and their intention of holding those meetings, and the speeches delivered at them, and, strange to say, some of the overt acts stated in this indictment to prove a conspiracy is that the editor of a paper did publish those reports. I speak it with sincerity. I do not—I cannot believe that if the government of the country or the law advisers of the government did really believe those meetings were unlawful, they could have permitted them to continue from the 19th of March up to October holding those meetings, and holding twenty-eight of them in that time. I say it honestly and sincerely that I don't think it credible the government could have sanctioned by their silence those meetings if they thought they were illegal. I am sincere in saying so. I prefer no charge against the government. I don't think the men placed at the head of affairs in this country could so completely forget their duty as to remain passive if they really believed those meetings were illegal, or that such consequences as the vivid imagination of the Attorney-General depicted to you was likely to flow from them. The law officers permitted them to continue; for, if they thought it necessary to interfere, and if their opinion were rejected by government, they would disgrace themselves by holding office under it. I believe that no other cause can be assigned for this than the conviction on the minds of those at the head of affairs that these meetings were law-

ful. What is the evidence that they were not lawful? I was startled when I heard it. The evidence produced to show that they were not lawful is that they were quiet, and that Mr. O'Connell, at every one of those meetings, preached and inculcated peace, and that is corroborated by the damning fact that his advice was obeyed and peace was preserved. That is evidence of the character of those meetings. I admit that the people assembling in vast masses rendered it likely that danger might ensue, and that at the first meeting men of ordinary courage might entertain alarm, though it did not appear they did, and take measures to stop them; but each succeeding meeting negatived the possibility of injury arising from them; gave proofs of the legality of their proceedings, and there is no other way for accounting for the conduct of the government than that they believed them to be so. The conduct of the government would be infamous in the extreme, unless it resulted from the cause to which I have attributed it. It may appear strange that I should be here defending the conduct of the government from the aspersions cast upon it by their own defenders; and I do say the facts prove that those meetings were perfectly legal and perfectly peaceable. But then, gentlemen, there is another species of illegality alleged against them in this charge. It is, that the meetings were for the unlawful purpose of intimidation, by the exhibition of physical force. Gentlemen, is that charge supported? I ask you, can you, as honest men, say, that you believe there was any intention, on the part even of Mr. O'Connell himself, (though again I say his act would not support the charge of conspiracy,) that those parties should resort to physical force, or, by the exhibition of it, intimidate? I ask you, do you not believe that which he over and over again professed, were the real and genuine sentiments of his heart? I ask you, do you not believe that this was one of the means which, at the outset of my speech, I told you I, or you, or any man would be justified in using, in order to bring conviction to the mind of the minister, by the publication and expression of the people's sentiments? I ask you, after all you have heard from those eloquent persons that preceded me, as to the meetings in England, can you doubt that the real object was to evince to the government of the country in a manner that would bring home to their minds most clearly and satisfactorily what the sentiments of the Irish people are—the real majority of the Irish people? Do you imagine that Mr. O'Connell really intended to march with those repeal wardens, to encounter the artillery of Great Britain? Do you think that he intended to assail the house of commons? Do you think he had the slightest thought to induce the minister of Great Britain to apprehend an outbreak of physical force. Gentlemen, his whole life belies the charge; for I do say, if ever there was a man who wielded such power over his fellow-man, there never was a man who would shrink with more abhorrence from the least appearance of crime, or blood, or physical force. I do say, gentlemen, his life belies the charge. I say the whole progress of the agitation, which had for its object the accomplishment of Catholic emancipation, proves the great and beneficial effects arising from the course which he advocates, preserving perfect peace, but at the same time making a moral demonstration, that no minister in his senses could possibly disregard. I say, gentlemen, he has done nothing wrong—he has done nothing illegal, in ascertaining what the true opinion of the country is—that there is nothing wrong, or nothing illegal in exhibiting what that opinion is—and that there is nothing wrong, and nothing illegal in communicating it to the minister of the day. I say, gentlemen of the jury, that he is a weak minister who would seek to exclude such information from his cabinet. I say he is insane, that would shut his eyes and close his ears against the acts and voice of a nation; and I say he is worse, who, if he were satisfied of what the genuine feeling of the nation is, would venture to disregard it. But, gentlemen, what were the means pursued at those meetings? Ostentatious publicity, as I have already said, was given to their speeches—their proceedings were published—they did not merely assemble men to ask their opinion, but they discussed the question, and assigned their reasons—they published those reasons, and let them go forth to the world. I am not here to pronounce an opinion upon the validity of those reasons; but if they be wrong, let them be answered by something else than by a state prosecution—let men's reason be convinced—let the question be entertained where it ought to be discussed—and let the assembled intelligence of Great Britain decide upon it where it ought to be decided. But, gentlemen, it is idle to say that such a movement can be thus suppressed. The attempt is alarming, and I do feel as firmly convinced as that I stand here, that the result of this prosecution would tend to promote, rather than repress, that which is complained of as an evil; and I trust I will never live to see the day when free discussion is permitted to be put down by means of a state prosecution. Nothing—nothing but misery can result from it. Now, gentlemen, the next charge is, that they conspired to bring into hatred and contempt the courts by law established for the administration of justice. Gentlemen of the jury, that has allusion to the proceeding with respect to the arbitration courts; and with respect to that I do not mean to trespass on your attention by going over again the arguments you have heard urged as to the legality of that proceeding; but if you are of opinion that the object of that proceeding was to enable parties to obtain cheap justice, there is no crime committed. It is idle and absurd to say, that recommending men to submit their disputes to their fellow-men is calculated to bring into disrepute the constituted tribunals of the land. It is absurd to say that the complaint of the expense attendant on a suit in the superior courts is anything like a crime. Why, gentlemen of the jury, if the proceedings of the superior courts were not openly canvassed—if the complaints of the suitors were not attended to, would we have all the beneficial reforms that in our own time have taken place? Is it not exposing the exactions to which suitors are often obliged to submit that all these amendments have taken place? I say it is monstrous to allege that it is criminal for a man to complain of the expenses necessary to be incurred in resorting to the superior tribunals; and, if you find that these men have merely suggested others whom they recommend as the best sessions to submit their disputes to—if you find in the carrying out of that, there is nothing done except by the consent of the parties, I say, gentlemen of the jury, that is not illegal, and I would like to have that question tried in this way—a more fitting way than a state prosecution—by an action of debt brought upon the award of one of those arbitrators, and to see whether that could be sustained. Gentlemen of the jury, the next allegation is, that they conspired to diminish the confidence of the Queen's subjects in the administration of the law. That is the same charge, gentlemen, in other words; but I am yet to learn that there is a crime in endeavouring to induce persons to withdraw the adjudication of their differences from the courts. I have myself sometimes, not often, been guilty of that offence. I have recommended men, unwisely, I admit, not to go to law, and I have recommended men more than once to submit their disputes to other tribunals than those constituted by law. Those are all the charges included in the first count; the other counts vary not materially until we come to the eleventh; they

only vary in the phraseology. The seventh count I shall advert to; it is a short one. It is a charge that they conspired and agreed with each other, and with divers other persons—it is the same as I have been adverting to, but it states more distinctly that the change which they sought to effect in the law was the repeal of the act of union. But I must call your attention to the eleventh count, it is certainly an extraordinary production. [Counsel here read the eleventh count of the indictment, and proceeded]—Why, gentlemen, if the charge that they intended by the exhibition of physical force to intimidate be not supported, can there be anything more ridiculous than to say that the object was by causing large numbers to assemble and hear seditious speeches, and by seditious publications to intimidate? Gentlemen of the jury, I have now gone through the charges preferred in this indictment, and let me ask you, are you satisfied in your consciences that any one of those charges is substantiated? Are you not satisfied that if there was a co-operation at all it was to procure a repeal of the union? But is there any evidence to satisfy you that there was a pre-concert and an arrangement to do any of the illegal acts that are mentioned in this indictment? I confess to you that I have been at times, in the progress of this trial, disgusted with my own profession. I feel grieved and pained when I find men of high intellectual attainments, great information, and unquestioned honour, resorting to the species of arguments I have heard urged in this case; and when I find men of that description coming down with arguments to meet every possible state of facts, prepared to draw from the directly opposite facts the same conclusion, and to ask the jury to come to that conclusion which they wish to establish. If at any of those meetings any language calculated to lead to a breach of the peace had been used, with what triumph would it have been fastened upon? If they had heard, as at some of the meetings in England, "down with the Queen;" and if there had been an insult offered to the Queen's name, how properly and triumphantly would it have been relied upon as evidence of a criminal intention? But, gentlemen, you find no such thing. You find the absence of this and the presence of directly the contrary, and yet you find the counsel for the crown alleging that those facts equally lead to the same conclusion. If the declarations are made there is evidence of hypocrisy; if the declarations are not made there is evidence of conspiracy. I profess I don't know how a man can defend himself from an argument such as this. But you will judge upon the whole of the case, and you will say whether you are satisfied with the evidence which has been gone over by those who have preceded me, with so much ability, that I shall not trouble you by going through the details of that evidence. But I beg of you to keep in mind, when you are applying yourself to that evidence, what is the charge, and you must, before you pronounce a verdict against any of the traversers, be satisfied, beyond all reasonable doubt, that they did conspire together, not merely to procure, if they could, a repeal of the union, but to do those illegal acts that are specified in the indictment. Upon what, gentlemen of the jury, does the Attorney-General mainly rely? Oh! he says, gentlemen, true it is the meetings were all peaceable—true it is that there was not an outbreak—that from March to October they continued in quick succession, and there was no overt act indicating the slightest tendency to a breach of the peace; but, says he, I see into futurity, I see that your object was different from that you avowed; true it is there is not a rebellion as yet; but why? because fortunately I have put a stop to it; I have allowed this organization to proceed until the whole country was ready to break out; but it would have broken out but that I have placed this indictment upon the file, and by this crown prosecution I have prevented the outbreak. Why, gentlemen, if it were not a subject too serious to be enlivened by a jest I might appropriately introduce a speech I once heard was spoken. A learned advocate in addressing a jury upon another occasion said, "Gentlemen of the jury, I smell a rat; I see it brewing in the storm; but, please God, I will crush it in the bud" (laughter). Gentlemen of the jury, whether your senses of smelling are as acute as the Attorney-General's I know not; but he expects you will give him credit for seeing it brewing in the storm, and that by your verdict you will crush it in the bud. But, gentlemen of the jury, let us come now more particularly to the facts stated with reference to my own client, Thomas Steele. He avows that he would not allow me to stand here as his advocate if I did not avow that it was his highest pride to approve of every act of Mr. Daniel O'Connell; and, gentlemen of the jury, perhaps that was the reason why it was thought fit to introduce him into this indictment at all. Let us see the great charge that is preferred against him in the indictment. It is alleged that on a certain occasion, I believe on the 3rd October, the said Thomas Steele did then and there speak in substance, and to the effect following, that is to say—"Sir, I request to have the honour to second the resolution of the Liberator, inasmuch as I have expressed from the first time very strong opinions with respect to the Mallow meeting. I have from the first considered that meeting of more national importance than Mullaghmast, at which

> 'Behemoth, biggest born of earth,
> Upheaved its vastness;'

and for the cause assigned by the father of his country, it was the first meeting showing that the national spirit of Ireland was not to be broken by the Duke of Wellington and Peel, who have traitorously made the sovereign the mouth-piece of their villainy, and they have followed it up until they have made her the subject of a caricature in her own capital." [Here is the treason, gentlemen.] "I have looked at the caricature of the Queen by that inimitable caricaturist who signs himself as 'H. B.,' in which the Queen is represented as taking water like a duck with a bonnet on its head, swimming over to France, with Louis Philippe, the perjured tyrant, waiting to meet her." [Now only think of their introducing this into this indictment.] "It has been represented to be a mere voyage of pleasure, but every man of common sense understands distinctly why she was sent by Peel and Wellington in the undignified position of her own ambassadress, *hoiking* one day to France" [no inuendo, gentlemen, as to what *hoiking* means] (laughter), "and another day *hoiking* to Belgium for the purpose of propping up the fallen fortunes of England. Peel and Wellington, who dare to threaten us, were met by the defiance at Mallow of O'Connell." Now, gentlemen of the jury, is it possible, with a serious countenance, to read that speech so introduced as an overt act, to implicate Mr. Steele in this conspiracy, which is really all except the statement of his attending the different meetings? I can well conceive the scene that must have taken place when my learned friends were preparing this indictment. At that period my learned friend, Sergeant Warren, was enjoying the repose and quiet of the Court of Chancery. His mind was not at that time haunted by the visions that tormented his learned colleagues (laughter); but I can fancy to myself three sages of the law sitting in conclave on this indictment. I can imagine their delight, when, from the mass of newspapers before them, they were able to select a speech so full of treason as this. I can well conceive the gravity with which they would read—I can also conceive their

judgment upon it, as wise as ever was pronounced by the sapient Dogberry himself (laughter). But I will tell you, gentlemen, what put Dogberry in my mind. It was one of the rules we learned at college that one of the helps to memory was the concatenation of ideas, and as soon as I heard this evidence, the name of a play in Shakespeare occurred to me—"Much ado about nothing" (laughter)—in which play, gentlemen, Dogberry cuts a conspicuous figure (laughter). Upon one occasion a witness says in the presence of Dogberry, "I heard him say he had received a thousand ducats from Don John, for accusing the lady hero wrongfully." "Flat burglary," says Dogberry (laughter). And I can well believe, when they read this speech—the exclamations of my learned friends—"treason," says the Attorney-General, "sedition," says the milder Solicitor, "flat burglary," says Brewster (loud laughter), and having found, gentlemen, combined, in this short speech, treason, sedition, and burglary, there could be no doubt at all that it should be convincing proof that Duffy, Tierney, Barrett, and all the other traversers, who knew nothing on earth about it, were guilty of a foul conspiracy. Oh! say they, we will put it in the indictment. The scissors were brought into requisition, and, accordingly, this precious morsel is transplanted from the ephemeral productions of the day in which in a short time it would sink into oblivion, and it is given immortality by being transferred into this indictment. I can well conceive, gentlemen, the feeling of the clerk when he was employed upon it. I think the Solicitor-General's recording angel must have blushed as he gave it in, and I should have thought his gentle nature would have induced him to drop a tear upon the page, and blot it out for ever (laughter). But it was otherwise ordained, and here it is, to descend to posterity a memorial of the eloquence of Tom Steele, the treason of H. B., and satisfactory evidence of the leniency of the Attorney-General, who omitted to include him in the charge of conspiracy, and a perpetual record of the wisdom and good sense of this prosecution. Now, gentlemen, am I not right in treating that with levity? but as there is not sound argument in this, take it as an example, and by it judge of others. I ask you would it not be a monstrous and unjust and absurd thing to say any of the charges here of conspiracy against the others is supported by this evidence of what Tom Steele said? Gentlemen of the jury, it is really a mockery of justice to introduce such a speech as that, and rely upon that as an overt act establishing the charge of conspiracy against those persons. I shall not trouble you by going through the other facts of this case, they have been spoken to with great ability. I am glad my labours have been light, for if it had fallen to my lot to discuss it in the first instance, I would have sunk under this task. I know my intellect would not have enabled me to cope with the variety of charges and the masses of evidence on which you are asked to come to the conclusion that some one of the charges is supported, but I am relieved from that duty by the circumstance of my following persons so much more able than myself. But I implore of you to consider well the vast importance of the duty you have to discharge. I am thoroughly convinced that from the moment you entered that box, your minds were disabused from anything like political feeling—I am well convinced, that in assuming the awful duty of jurors, you brought your minds to the consideration of the question, unprejudiced by anything you might have thought or might have heard—I am sure that the mists of popular prejudice that pollute the atmosphere outside the court have not been permitted to enter within the precincts of this sacred temple—I am sure you have brought your minds to the consideration of the case as free from those prejudices as the judicial ermine is free from taint. You are discharging a great and important duty—a deep interest—an interest that pervades Ireland—an interest that extends to England—an interest that stretches beyond the limits of Great Britain, and actually attracts the attention of the civilized world, is attached to this subject. There is not a state in Europe in which there are not at this day thinking men observing the proceedings here. They are watching to see whether in point of fact that freedom of discussion, on which you heard such splendid eulogiums pronounced—that freedom of discussion of which Britons have so loudly boasted, is a reality or an unreal mockery. They are watching, to see if there be the means of keeping open what has been called the safety valve of the state, or whether there is an attempt now to be made to close it, and God only knows, gentlemen, what might be the consequences of the condensation of the stream. They are anxiously watching to see—and the result will tell—whether the trial by jury is that palladium of British liberty, that safe-guard of the people, which Britons have so triumphantly to all the world proclaimed that it is; or whether it is a vain-glorious boast. But, gentlemen, I have the most perfect reliance on your integrity, your honour, your intelligence. I am greatly supported by having witnessed the extraordinary attention you have paid to the case; I have no fear as to the result; and I am convinced that you will, by your verdict, prove, that there is not on the face of this whole earth a tribunal from which the accused is so certain of justice, as a jury of Irish Protestants.

The learned gentleman having concluded his address, the court adjourned to Monday.

NINETEENTH DAY.

MONDAY, FEBRUARY 5.

THE LIBERATOR.

The announcement of the sheriff upon Saturday that the galleries set apart for peers and their families would be fully occupied this day, was more than realised. It was filled to overflowing. By far the larger portion of the space which was set apart for the accommodation of the public was on this occasion filled with ladies. They occupied exclusively the front seats of the gallery—they filled to the inconvenience of a "crush room" the approaches to the bench—they elbowed Queen's counsel, and carried by *coups de main* the benches of the juniors. Wigs with horsehair powdered no longer made the whole court look hideous, for bonnets beautifully gay, bright eyes, and beauty more brilliant from the contrast, relieved the dull monotony of the hoar frost in which at all other times the frequenters of the hall of justice appear enveloped.

There was never witnessed anxiety more intense, more all-engrossing, than that which was manifested by those who yet had hopes that they might enter, or black disappointment more gloomy than that of those who had resigned all expectation of getting a look at the wished-for interior, even through a doorway.

But on the countenances of every being in the court sat interest the most absorbing and intense. Every breath was held—every muscle was set to silence as the judges assumed their places, and the great traverser appeared prepared to enter upon his defence. Every eye dilated—every ear was strained as he rose to address the court, and you might hear the lightest thing fall through that assembly of the rank, the fashion, the beauty, the learning, and intelligence of this land.

Their lordships sat shortly after ten o'clock, but long before that hour the court, and every avenue leading to it, was densely crowded—the announcement of Mr. O'Connell's intention to address the

jury having excited the greatest anxiety to obtain ingress. The passages to the bench, as well as to the galleries, were filled with ladies.

Mr. O'Connell arrived a short time before the court sat, and took his seat in the side bar.

The jury and traversers were then called over.

THE LIBERATOR'S DEFENCE.

Mr. O'Connell rose and said—Gentlemen, I beg your patient attention while I show you, in as few sentences as I possibly can, and in my own plain and prosaic style, the right I have to demand from you a favourable verdict. I ask it without disrespect and without flattery—I ask it on the ground of common sense and common justice—upon these grounds I demand your favourable verdict, being thoroughly convinced that I am plainly entitled to it. I do not feel that I should have been warranted in addressing you at all after the many speeches you have already heard, and that powerful display of talent that so delighted, as well as, I trust, instructed you; but I do not stand here my own client. I have clients of infinitely more importance. My clients in this case are the Irish people—my client is Ireland—and I stand here the advocate of the rights, and liberties, and constitutional privileges of that people. My only anxiety is lest their sacred cause—their right to independent legislation—should be in the slightest degree tarnished or impeded by anything in which I have been the instrument. I am conscious of the integrity of my purpose—I am conscious of the purity of my motives—I am conscious of the inestimable value of the objects I had in view—the repeal of the union. I own to you I cannot endure the union; it was founded upon the grossest injustice—it was based upon the grossest insult—the intolerance of Irish prosperity. This was the motive that actuated the malefactors who perpetrated that iniquity; and I have the highest authority—the ornament for many years of that bench, but now, and recently, in his honoured grave—that the motive of this proceeding was an intolerance of Irish prosperity. Nor shall I leave that on his word alone. I have other authorities for it, with which I shall trouble you in the course of as brief—for I am exceedingly anxious to make as brief an address as I possibly can. I am not here to deny anything I have done, or here to palliate anything that I have done. I am ready to re-assert in court all I have said, not taking upon myself the clumsy mistakes of reporters—not abiding by the fallibility that necessarily attends the reporting of speeches, and, in particular, where those speeches are squeezed up together, as it were, for the purposes of the newspapers. I don't hesitate to say that there are many, several harsh things of individuals and clumsy jokes that I would rather not have said, but the substance of what I have said I avow, and I am here respectfully to vindicate it; and as to all my actions I am ready not only to avow them but to justify them; for the entire of what I have done and said, was done and said in the performance of, to me, a sacred duty—the endeavouring to procure the restoration of the Irish parliament. If I had no other objection to it, I would find one in the period in which it was carried—it was a revolutionary period. The nations of Europe were overwhelmed by a military power, inspired as it was by the infidel philosophy of France. At that period almost every country in Europe was torn from its legitimate sovereignty—people were crushed—princes were banished—kingdoms and states were altered—it was a revolutionary period; but, alas, a day of retribution and restoration has come for every other country but this. What has since happened has fortunately restored the natural, or at least the political, order of things in other countries—every country has its day of retribution and restoration—save only Ireland. Ireland alone remains under the influence of the fatal revolution of that period, and you are assembled in that box to prevent justice being done to Ireland as it has been to other countries. This is not the time to discuss how you were put into that box—nor is this the place to get any remedy on that subject. I do not assert the Attorney-General had anything to do with that matter but what the law allowed him to do, and over which the court had no control. If wrong had been done the remedy lay elsewhere; when, if right was violated, it will be redressed; but here I am put to address you without either discourtesy or flattery as to the species of tribunal I am about to offer my arguments. It is quite certain there is a considerable discrepancy of opinion between you and me; there can be no doubt of that—there is a discrepancy on one subject, and one of the utmost importance—we differ as to the repeal of the union; if you had not so differed, you would not be in that very box. You also differ with me on another most important subject, and that is on the subject of our religious belief. If you had been of the same faith as me, not one of you would be in that box; and these differences are, perhaps, aggravated by the fact that I am not only a Catholic who was most successful—and I can say it without boasting, for it is a part of history—in putting down that Protestant ascendancy of which, perhaps, you are the champions—certainly you were not the antagonists—and in establishing that religious equality against which some of you contended, and against which all of your opinions were formed. This is a disadvantage which does not terrify me from the performance of my duty. I care not what may be the effect as regards myself—I care not what punishment it may bring down—I glory in what I have done—I boast of what I did. I am ready to defend all I have succeeded in accomplishing. I know I am, gentlemen of the jury, in your power; but I know I am in the power of jurors of honesty and of integrity, and I appeal to you as such. There are points on which we essentially differ. The first is, the repeal of the union—and you are all aware of my former conduct respecting Catholic emancipation; but you are there to administer justice—you are there to do what is right between all parties; and while I remark those things it is not because I despair of your doing me justice. I would, however, prefer not being harassed with the thought that by any possibility, either by the infirmity of human nature, or from any cause, other ingredients should enter in. Gentlemen, I now have done with you. I pass on to the consideration of the case itself; I come to the prosecution. It is a curious prosecution—it is a strange prosecution—it is the strangest prosecution that was ever instituted. It is not one fact, or two facts, or three facts. No; while that for which our criminal law is most lauded is the simplicity with which a particular fact is tried, so that the jury may be disembarrassed from everything else—here it is the history of nine months you are to go through—here you have a monstrous accumulation of matter flung before you; and I defy the most brilliant understanding that ever ornamented a court or jury to disengage what may be of importance from that which may induce an unfavourable result, but which ought not legally to do so. The great difficulty is to bring such a quantity of matter before you. In doing so your memory fails; and it is worse than a failure, as it is apt to recollect what may be put strong and striking, while it may forget that which should make an important consideration—those parts which are explanatory and mitigatory. I arraign this prosecution not in the spirit of hostility or of anger, but on constitutional principles—the impossibility of any jury so disengaging that mighty mass of matter now before it as to find

out what was really the question to determine. Let me now see whether I can help you in that. I will endeavour to see how much of the affirmative there is in this prosecution, and how much there is of negative quality in it—that is, what it is, and what it is not. The entire strength of this prosecution consists in that cabalistic word, "conspiracy." If I look to any dictionary for its import, or if I ask common sense, I find it means a secret agreement among several to commit a crime. That is the common sense view of it, as well as its dictionary meaning. A private agreement among several to commit a crime; but this word in recent times was taken under the special protection of the bar. They have not only considered it an offence to conspire to commit a crime, but they have put two hooks into a line—so to divide the subject as both committal of crime—that they spell out "conspiracy" in such a way as to attain that end. I do not think there is much of justice in the second branch, if at all brought into consideration, unless it was so clear and so distinct as to substantiate the offence. We will now take this conspiracy—let us see whether there are any negative qualities in it as to the evidence produced by the crown. It is admitted by the crown itself in this case, that there was no privacy—no secrecy—no definite agreement whatever to bring it about—but, above all, there was no private agreement, no secret society, nothing concealed, nothing even privately communicated—there was no private information; nay, not one private conversation—everything was open, avowed, proclaimed, published. A secret conspiracy! which there was no secrecy about—all lay openly proclaimed, and openly published—whether in the *Dublin Evening Mail* or *Dublin Evening Post*, for all has been raked out of that secret abyss of all secret channels of communication, the public newspapers. Really, it is quite too harsh a thing for one to be called on to defend himself against a conspiracy so perpetrated, committed in open day, and committed by public announcement, with the ringing of bell, to know who would come as witnesses to the conspiracy. To be a conspiracy there must be an agreement; but whether private or not that is another question, but I insist on it there ought to be something to conceal, and will admit that it should not be in the presence of the legal authorities, nor in the presence of her Majesty's Attorney-General, the Solicitor-General, or any of the learned sergeants. Really, see what a monstrous thing it is to call that a conspiracy which everybody in the world might know, and which all might witness. Some persons had formed the arrangements; it was occasionally attended by Mr. Such-a-one one day, and by Mr. Such-a-one another day; on the third day Mr. Barrett was there; Mr. Duffy once or twice, thus spelling out the affair in that way. In common sense, could it be endured that such should be denominated a conspiracy? A conspiracy! Where was this agreement made—when made—how was it made? Was it made in winter or in summer—in spring or in autumn? When was it attended—on a Sunday or on a week-day? Can you tell me the hour of the day, or the month, or the day of the month? Can you tell me any one of the three quarters of the nine months? Who was by—who spoke—who made the arrangements—who moved and seconded the resolutions? Gentlemen of the jury, I appeal to your common sense—to your reason. Place yourself for one moment in my position, and if you were addressing a Catholic jury, look for one moment and see—how?—with what?—I will not say with indignation—but with what high feelings of conscious integrity you would laugh with scorn in daring to find you guilty of a conspiracy, under such circumstances. You have not, in this case, the slightest shadow of a concoction; you have not one particle of that which should belong to a charge of this sort. I do not even know, from this proceeding, whether I was present at this conspiracy or agreement, either public or private. Ought I not, then, to have the advantage of an *alibi*? If you were to run over the nine months of this conspiracy, it would be a kind of toss-up to know whether I was there or somebody else—to know who was there—and to find out whether this agreement was in writing, or whether it was a mere parole agreement. And I want also to know has any one told you? If there were an action in the *Nisi Prius* court, and you were the jury in the box, and that the question was one of plain contract, is there any possibility of your not finding a verdict on a contract which was given in evidence? But here there is nothing of the sort. I remember it being once said to a judge by a lawyer—"O, my lord, it would not be evidence on a ten pound promissory note, but it might be evidence in a criminal case." Your lordship might have heard that such a thing was once said, but I will only say to you that it would not be evidence as to the ten pound contract; they should get the definition—if right, it should be in the bill of particulars. Such a definition—as agency and conspiracy—and not be at last in the bill of particulars. I do not mean to profit by the circumstance, but I say it is not in the bill of particulars; and therefore if they had attempted to give it in writing, without giving it in the bill of particulars, they would undoubtedly have shut out from the beginning all evidence. Shall they escape your honest view of such a subject as that of consciences, and if there had been a conspiracy it would be proved, and that the only reason why it is not in all its details, and all its circumstances is, because it did not exist. What are they to do? The Attorney-General, forsooth, leaves it to you; the agreement ought to be in reality; it is an imaginary one, and you are to vote that the imagination is a reality, and find me guilty because you imagine. I do not wish to speak disparagingly of the Attorney-General—no man is less inclined to do so than I am; on the contrary, my lords, I admit the ingenuity with which he stated the case. I admit the talent he displayed, the industry he evinced throughout. He was eleven hours at it, eleven mortal hours!—when did he tell you of the conspiracy? "Oh!" said he, "wait awhile, wait till I come to the close, and when I do come to the end, go back to the beginning (laughter), and find out the conspiracy," and allow me to say, that if any gentleman could have found out the conspiracy, it would have been the Attorney-General. Yes, he did take eleven hours in throwing out that garbage to the jury, "There," said he, "is *The Pilot*, *The Nation*. Here are speeches and publications—now find out the conspiracy. The case is good enough for you to make out the conspiracy." I remember a case on the Munster circuit in which the celebrated Mr. Egan was engaged for the defendant. It was stated by Mr. Hoare, a gentleman of dark appearance, who made a very powerful speech on the merits of the case. Mr. Egan said, "Oh, I will make such another—I will," at once—"gentlemen of the jury," he commenced. Now, he was sure of his jury, and all he wanted was an excuse for them. "Gentlemen of the jury," said he, "surely you will not be led away by the dark oblivion of a brow" (laughter). One of the counsel who sat near him said, "Why, Egan, that is nonsense." "To be sure it is," was the reply, "but it will do for the jury" (loud laughter). So the eleven hours are good enough for you. Oh! it is nonsense—it is criminal nonsense—to call that conspiracy which takes eleven hours in the development. Hardy was tried for constructive high treason. At the anniversary which always took place in celebration of the integrity of

the jury, one who had been a juryman in the case was in the habit of attending, and when his health was drunk always made the same speech, to the effect that he was not accustomed to public speaking, and in the course of such speech he would say—"Mr. Chairman, I will tell you why I acquitted Mr. Hardy. The counsel was eleven hours stating the case; there were eight or nine days occupied in giving evidence. Now I knew that no man could be guilty of treason when the case could take so many words and such a length of time to prove, so I made up my mind to acquit." Now, what necessity could there be for the Attorney-General to ransack newspapers to make out a case of conspiracy against the crown? If the case were a good one, depend on it the Attorney-General has talent enough to tell you all in one hour and a half at the utmost. Give me leave to say—and by what I am about to state I mean to signify no disrespect to the counsel for the crown—I consider myself, although I am not here with my wig and gown, a barrister still, and I have a fellow-feeling for the profession; but give me leave to say that the Attorney-General unquestionably would, could he have done so, have shown you the when, the how, the manner—he would have pointed out all the particulars. But what has he shown you? Nothing; and he leaves the case in your hands, thinking that it is quite good enough for you. There is no privacy or secrecy even imputed. You have nothing to conjecture—there is nothing to suppose that happened in private—nothing at all. The entire is before you, and, therefore, as you knew all, I say that there never was a case in which the Attorney-General so signally failed as in the present. You may remember when this trial was about to commence; the whole country was full of rumours. It was said that something dark and atrocious would come out—that there was a clue to everything. Why, my lords, I do solemnly assure you that no less than seven gentlemen have been pointed out to me after this mode—there is Mr. So-and-so, one who was seen with Mr. Kemmis's officer. That man was at the Castle—that man is a barrister, whose office is not far distant from yours in Merrion-square. "Don't," it was said, "associate with Mr. So-and-so; keep him at arm's length; he is treacherous; he is betrayed." I repeat it, that no less than seven persons have suffered in their characters exceedingly by the allegation that they were in fault; the answer was—"they have nothing to betray them—much good may it do them; they will invent." Now, it is an acknowledged fact, that informers who have nothing to tell—invent. Now, I ask, after all the rumours which have been afloat, did you not, every one of you, expect, when you came here, to learn something—did you not expect to have some plot discovered—to hear of some secret imagination—to hear some private conversation regarding these traversers given in evidence, influencing and altering the nature of their public acts? If you were so fortunate as not to expect this, you certainly have not been disappointed; but if you entertained the expectation, was ever disappointment so complete and unmitigated? Go where you please, and you will hear it said, "Oh! is that all the Attorney-General has done? has he nothing more to say? We knew all that before." A conspiracy! this is a conspiracy! Aye, gentlemen, what has become now of the dark designs, the stratagems, the foul conspiracy, the government chimeras dire of the imagination? What has become of them? They are vanished. There is nothing now—there is nothing disclosed—there is nothing to be concealed. It would have been the duty—I don't deny it—it would have been the duty of the government to prove conspiracy, if such a thing existed. Gentlemen of the jury, they had inclination to prove, but they could not. You perceive with what interest they forward every part of this case, but, above all, the strong and striking interest they have in discovering evidence of real facts, of existing facts—with what interest they hunt out the conspirators, and follow them to their caves and recesses. Every power, all that influence, and wealth, and authority could do, has been exerted. The expectation of promotion has been ventured—promotion in the constabulary; every temptation held out, but all in vain—for one very plain and simple reason—there was nothing to betray, and you know that. Well, then, what is the evidence? If there was nothing new, let us see what the old evidence is. "The life," they say, "of an old coat, is a new button." What does the evidence consist of? First, meetings—next newspapers. They spell out an undefined conspiracy—that conspiracy existing in the imagination—a conspiracy without position or time; and to prove that conspiracy, they produce accounts of meetings and volumes of newspapers. We will consider each of these consecutively. First of all, you allow me to make this observation, as there is nothing secret. I ask you what could tempt me, an old lawyer, to enter publicly into a conspiracy? I boasted that I kept the public free from the meshes of the law—I say that I boasted of this. You have heard the statement read at least twenty times. I boasted of preventing men from violating the law. Now, do any of you believe that, after this, I could enter into a public conspiracy? You might say, if there was something private—something secret, you might then say, "the old lawyer thought he would be secure of his co-conspirators;" but there is nothing secret. Under all these circumstances you may, perhaps, have a more terrible opinion of me than those who I will venture to say know me better. You know me principally through the medium of the calumnies and abuse heaped upon me by those parties against whom I am opposed, but there is not one of you can consider me such a blockhead—such an idiot, as that I should publicly conspire to ruin the cause which is nearest to my heart—to ruin a cause which has been the darling object of my every ambition—that I should ruin the prospect of that for which I refused to go on the bench, and the offer of being the Master of the Rolls. It is a question whether I did not refuse the Chief Baronship before ever it was offered—(laughter)—but there is no question that I did not refuse the offer of the Mastership of the Rolls. Gentlemen, I know that I have but a short time to labour in my vocation here, and that there is an eternity on which I must soon enter. I approach that judgment which cannot be long postponed, and do you believe that under such circumstances I would be guilty of that with which I stand charged? Ah, no, you do not think I would have the cruelty, the folly, to enter into such a conspiracy. You do not believe I would have the absurdity to enter into that conspiracy. As Irish gentlemen put your hands to your hearts, and say do you believe it? I am sure you do not. Pardon me if I have made too free, but I will say there is not one of you can spell a conspiracy out of all that was laid before you during the eleven hours in which the Attorney-General was ringing changes on that word, going backwards and forwards from meeting to meeting, and from policeman to policeman, in coloured clothes and out of coloured clothes—not one of you can believe that any such conspiracy ever existed. I proclaim, firmly, you cannot believe it. I know your verdict may imprison me, and shorten the few days yet before me, but it cannot take from me the consciousness that I am entitled to your acquittal, and that there is not a man of you who would pronounce a verdict of guilty that would not himself be conscious of it being a mistake. Perhaps what the Attorney-General wants you to be-

lieve is, that I was a conspirator without knowing it—that I fell into a conspiracy as a man falls into a pit might without knowing it was there. This was in the open day. I saw the pitfall. Every thing was clear, and if you believe any thing against me you must believe I was a conspirator without knowing it—a conspirator ignorant of conspiracy—and that is the question you are selected to try. In the technicality of law, I would say that even in that case there could be no guilt, for there can be no guilt without guilty intention; but I scorn to make points of law—as a matter of common sense this is plain and obvious, and I trust I may say irresistible. Oh! this is a curious invention—this sweeping conspiracy of the Attorney-General; it has been so powerfully put to you already that I shall not repeat it at any length—that there would be an end to every great movement for the amelioration of human institutions if you were to concede to the Attorney-General a conspiracy which has neither been stated nor proved. It is a new invention made at this side of the water. Some exceedingly sagacious person here first dreamed of it; and you were to be put as it were into a sleep with this incubus—this imaginary conspiracy—conspiracy resting on your consciences and minds. But why was it not sooner invented? There was the slave trade—would that ever be abolished if the Attorney-General's doctrine of conspiracy had been enforced as law? Would it ever have been abolished if the judges of the King's Bench had given this doctrine of conspiracy the sanction of their authority? The advocates of the abolition of the slave trade had their public meetings, they had their monster meetings—they had their aggregate meetings—they had their private meeeings; they published the guilt of the West India planters, and the cruelty of the slave-owners; they made themselves bitter, unrelenting enemies by so doing; for it is astonishing how much malignity arises from that inherent, unhappy propensity in man for power and authority. There never was a more formidable party than that which was arrayed against the slave-owners. They might have looked in the newspapers, and found every species of guilt charged against them by Wilberforce and others. Why was not Wilberforce charged with conspiracy? That man who wrote his name on pages of the most brilliant history and humanities of men—who will be revered as long as worth, generosity, and piety, are in the world. Oh! he might have stood, as the humble individual before you stands, accused of conspiracy, because he sought to put an end to the thraldom of the slave. The venerable Clarkson, who is still alive, might also be charged with conspiracy, and thus rendered unsafe in his honoured old age. Ah! gentlemen, do not presume to interfere between humanity and its resources. Do not venture to arrest the progress of any movement for the amelioration of the institutions of the country. Do not attempt to take away from your fellow-subjects the legitimate mode of effecting useful purposes by public meetings, public canvassing—speaking bold truths boldly and firmly. Shut not men up in dark corners—drive them not into concealment—send them not back into conspiracy, for then they would really conspire. In the name of Wilberforce and Clarkson I conjure you to dismiss from your box with honest and zealous indignation every attempt to prevent the millions from seeking peaceable and quietly to obtain an amelioration of existing institutions. There may be a little ingenuity displayed in reference to this comparison of the present movement with that for the abolition of slavery, and a distinction may be taken. There is a distinction, but the principle is the same. The next conspiracy was for the abolition of the slave trade. I rejoice that I was a sharer in that conspiracy. I care not though the gloom of a prison should close upon me, my heart rewards me with the consideration that humble, ungifted, and undistinguished as I am, I had the honour to belong to that conspiracy by which the slave trade was abolished. I attended a meeting for that purpose, and poured out, perhaps with more talent than the inspiration of liberty could ever give for any thing else, my indignant load of contempt on those who practised slavery, and trampled under foot the humanity and kindliness of our nature. I had a share in that movement. Oh! how would they have stared if this doctrine of conspiracy was sooner invented, and the slave bound for ever, till somebody with milk-and-water accents—with mild tea-table talk endeavoured to persuade some one to abolish it (laughter)—until some one went to America and spoke soft things to the owners of the negroes, and having in as gentle a way as possible insinuated the atrocities practised towards the slaves, then, by-and-by to coax the owners, and win upon them to consent to the abolition of slavery. Oh! gentlemen, it was the calling down of public indignation—the rousing of all that was virtuous in the public mind, and that heaven-descended spirit of persevering, open, bold humanity that shook off the fetters of the negro, and re-established him in freedom. What would become of reform in parliament if such demonstrations of public opinion had not been made? Was there a man among the Whig aristocracy that did not approve of it, not join in such demonstrations? Were there not great meetings held? You have heard of the Birmingham meetings, and hundreds of other meetings, for the purpose of obtaining parliamentary reform. What reform in parliament could be obtained without such meetings? Would the additional reform promised in the Queen's speech ever be carried, if England did not assemble in her countless thousands? And in Ireland the agitation for repeal had already extracted promises of good for Ireland, even from those who had been the enemies of the restoration of the Irish parliament. At the time of the agitation for Catholic emancipation, the most eminent lawyer of that period—and the Attorney-General will not think that I pay him no respect when I say he was his superior, certainly his equal. He was an eminent lawyer, and had a strong, and perhaps conscientious, antipathy to Catholic emancipation. I do believe there was no more decided or honest opponent of that measure than Mr. Saurin. He thought the law was violated by that agitation. He prosecuted some of those engaged in it. He was defeated in one trial, and he succeeded in another. But would he ever dream—would he, in the very wildness of imagination, think of turning the efforts made for Catholic emancipation into a conspiracy? I was prosecuted for words spoken. My friend on my left (Mr. Sheil) was prosecuted for words spoken, but the Attorney-General never thought of violating the constitution by turning those efforts for emancipation into a conspiracy. Yet had not we our county meetings—our simultaneous meetings? Did not, on the 30th of January, 1829, all the Catholics of all the parishes in Ireland meet? Was that evidence of a conspiracy? Upon one day every parish in Ireland met. On one day they proclaimed a determination to persevere till they obtained religious equality. No man ever dreamed of turning that into a conspiracy. It was reserved for our time—it was reserved for our day—it was reserved for the glory of the present Attorney-General to have found out that which none of his predecessors could possibly discover. Gentlemen, at the present moment a very serious question is in agitation in England—the Corn Law League. I care not what your opinions are with regard to that question—I mean no disrespect—they say the object of that league is to obtain cheap bread for the poor, and an increased

market for labour. I do not mean to argue the point with you; we have enough of our own. They have held many meetings—they have used the boldest language, and the Rev. Mr. Fisher has accused them of inciting to assassination and incendiarism. We are free from that accusation—we are free from the slightest imputation—and is this case to be sent over to England to put down that glorious struggle? and is the attempt to give cheap bread to the poor to be turned into a conspiracy? Oh, no, gentlemen, no; the English are safe in the glorious integrity of their jury-box—there won't be a single juryman sworn to try them who differs with them in opinion—there won't be a juryman sworn who even differed with violence upon any principle with the traversers. No; the Englishmen are safe—I was wrong in saying they were in danger—the Englishmen are safe in the protection of their jury-box—and do you, gentlemen, protect us as the English protect them. Indeed, it is manifest, if the Attorney-General triumphs in this case, no great grievance can be redressed. When authority and power are interested, it requires a more cogent argument than justice to obtain relief, and it is only obtained by the power of public demonstration, and the accumulated weight of public opinion. A French author says—I do not quote him as an authority, for no man hates French infidelity and French republican opinions more than I do; but a French author says that "You cannot make a revolution with rose water." He would make it with blood—I would make it with public opinion, and I would put a little Irish spirit in it But I come to the *menagerie* of evidence which sustains this case. I told you there were two classes of evidence—if I am not wrong in using the words monster meetings and newspaper publications—we will take each of them. I am not here to deny that these meetings took place. I admit that they were held. I admit that the people attended them in hundreds and hundreds of thousands, but it has been said that the magnitude of these meetings would alone make them illegal. I do not discuss that question. I do not give it weight enough to do so. But I again admit that they took place, and I will ask you was any life lost at any of those meetings? You will answer no not one! Was any man, woman, or child injured? You will answer no! unanimously no! Did an accident happen to any living thing so as to injure it in the slightest degree? Was there a single female, young or old, exposed to the slightest indelicacy? Was there one shilling's worth of property destroyed at any one of those meetings? You answer no, unanimously no! Oh, but I forgot—there was a policeman in coloured clothes who described a ferocious assault made by the people coming in from Carlow, which very nearly overturned the gingerbread and apple stands of the old women (laughter)—and the amount of violence perpetrated was the overturning of some gingerbread stands. If there had been any violence committed would we not have heard of it?—would it not have been proved by the policemen or magistrates who attended? Oh, gentlemen, it is ridiculous—that is, it is the prosecutions which are so. There was no violence, no battery, no assault, no injury to property, not the least violation of morality, or even of good manners. Not one accident happened at one of those meetings; not even a casual accident; and if I incited the people, and had them ready for rebellion, would they have been thus restrained? and would they not have committed outrages by which their feelings would be manifested? But no, so completely were they devoid of ill feeling, so completely had every harmonising influence sway over them, that grown mothers and young mothers carried their infants with them as their best and surest protection. Oh, it would delight you to have seen them!—the men stood back for them to pass! the mothers and daughters knew they had their husbands and brothers there, and so help me, heaven! I withdraw the violence of expression, and I say, that there could not have been a more convincing and triumphant evidence of the total absence of irritated feelings, than the kind of feeling which they evinced. I turn boldly and say, the world does not produce a country where such meetings could take place. They could only occur among this calumniated people, who, according to the *Times*, are "a filthy and felonious multitude." Yes, there are no people on the face of the earth except the Irish people alone, who could afford such a specimen of moral dignity and elevation. They have been educated to it—forty years have they been so—the emancipation educated them, and now they are sublimed into peaceful determination. They will not be ruffled by anything which may have happened in this court. They will abide your verdict; they may disapprove of it if it is unfavourable, but they will not be guilty of the slightest violation of the law. But was any one intimidated by those meetings? They could have produced magistrates or policemen, one by one, to prove their intimidation. They could have produced the most timid, either in pantaloons or petticoats, to prove there was intimidation. With the most ample means of proof, there is the greatest neglect of evidence. My lord, I appeal to your lordships if there was one particle of intimidation—is there one particle of such evidence before you? And is it not thoroughly certain that it is so only because such evidence is not in existence? Gentlemen of the jury, it is not that alone—it is not purely inferential—the police were at the meetings; they might have asked if any one complained to them—whether the most timid person in the neighbourhood or vicinage expressed alarm or apprehension. They asked them no such question; it had been answered already. Now, my lord, there was another feature in those meetings, to which I shall beg to call your attention. There was not one of those meetings at which any mandate from authority was disregarded; no proclamation was disregarded, no magisterial warning resisted in the slightest degree. There was no message or personal intimation from any justice of peace treated with disregard—no police inspector, or sub-inspector, or constable disobeyed. Recollect that, my lords—remember that, gentlemen of the jury. There is not the slightest evidence of even the smallest disregard of legal authority. If we were seditious, why did we not get some warning? Why was there not a proclamation issued against these meetings. Oh! but there was a proclamation at length. I don't like to enter upon any angry topic; but that proclamation was immediately obeyed. You have no evidence of any conspiracy in any one of them, no evidence of anything but a ready submission and obedience to the law. Conspiracy! shame on those who invented such a term, as applied to men labouring as we were in the sacred cause of our country's liberty—obeying the laws, committing no violence. No, my lords, no. We have had many misfortunes in this country, many afflictions, many things to endure. Oh, gentlemen, your verdict will not be an additional one. It will be such a verdict as will calm the troubled waters. If those meetings were tranquil before, why there is no need of it. If the language was harsh or violent, your verdict will soothe and soften it. Even the excuse of violent language they shall never have again. No, gentlemen, they were not illegal meetings; they were meetings, as I will show you, suited to the purpose they had in view. If it had been at one, or two, or three, or ten of them this tranquillity had prevailed, it would, perhaps, seem casual, but at every one of them the behaviour of the people was the same. The entire thirty-seven included in the indictment come within the same catalogue. It

could have been by nothing but design, when you accumulate the number, that the same peaceful demeanour prevailed at all of them. The government knew of them, why was not their illegality previously imputed to them, if it existed? I am not one of those who would insinuate or say that the Attorney-General meant to urge them into criminality, in order that he might pounce upon them. I say no such thing—I would do him more justice. He did not previously interfere, because there were no grounds for a prosecution—there was nothing to warrant his interference. That is his defence. And I do not attach any criminality to him for not having interfered with them before. [Mr. O'Connell here had a short conversation with Mr. Sheil, after which the learned gentleman resumed.] I am told that I used an equivocal word—I said that those meetings were quiet by design. I repeat it. The design pre-existed long before one of them were held—the design to be quiet and peaceable existed, and it will continue to exist. There was no such arrangement for any particular meeting. That was the education which I spoke of the Irish people having received—the education that the only certain way to establish their rights, and to obtain valuable amelioration and free institutions, was by peaceable conduct and obedience to the laws. I ask you, gentlemen, what evidence is there of a conspiracy from what has passed at any of these meetings? I leave it to your conscience—to your integrity, to answer the question. What care I what your politics are—you'll answer before your Maker for the verdict you pronounce—I leave the responsibility to you. This is one part of the conspiracy, and the next is the publications in the newspapers. Do not imagine I am going to detain you in canvassing all the phrases and sentences that have appeared in these papers. I am not. You have been powerfully addressed on that topic already. I shall take up the general nature of the evidence of those newspapers, from which you are called upon to fabricate a conspiracy. I submit that, with the exception of what is proved to have been delivered by me, the evidence of these newspapers is no evidence against me, unless the conspiracy is first proved. And see what a circle that would lead you into. Are you to find the evidence of conspiracy from the newspapers? The newspapers are no evidence against me unless I be first proved to be a conspirator. Be that as it may, I shall leave it to the court as a matter of law, but I leave to you the weight, the worth of the evidence, shall that evidence go to you at all. Suppose it does, what is there in it against me?—what is its substantial weight against me? Is there any proof that I ever saw one of those newspapers? Is there any proof of any connection between me and those newspapers? It will appear by the dates that when some of the harshest passages in them were printed I was not in town—I was attending these meetings in the country, and it was moved that at the association I distinctly disavowed that any newspaper was the organ of it. But it is said that we circulated those newspapers. See what the fact is. Those who subscribed a certain amount allocated a portion of it, according to our rules, to the purchase of a newspaper, and they were entitled to any paper they might select. The evidence is not that we selected any newspaper for them, but they ordered any one they pleased; and bear in mind at the same time that we proclaimed that not one of them was the organ of the association. It is said that these newspapers contained libels. If they did why were they not prosecuted? They were answerable for it under the law of libel. That should be our protection, if there were libels in them. The Attorney-General was competent to institute a prosecution. It was not our duty to examine them—it was his. But the fact is, the Attorney-General would have prosecuted every one of those newspapers long ago if he thought it worth his while. Every great newspaper "WE" imagines himself a man of great importance; but when once these newspapers are read—if read at all—they are forgotten; and, I would venture to say, that not a particle of what is charged here as published by them would be thought of now if it was not for these trials. They are emphemeral productions—we are accustomed to them—they are either read and forgotten, or are not read and passed by. But what is it they are charged with? Exciting the people to violence and tumult. Did any one of them produce such an effect? Was there any sort of violence among the people? You, gentlemen, have to decide whether that political problem I have sought to solve—whether the political theory I have sought to realise, that which has been the leading principle of my political life—is one in its nature to be considered fairly, honestly, and liberally. Yes, gentlemen, if you thus regard it you will take the whole tenor of my past life into consideration before you come to a conclusion as to the verdict which you ought to return, and you will form your judgment by a reference to the great and leading principles of my political career. It appears to me that the Attorney-General himself, if I did not misconceive the drift of his observations, admitted the peaceable nature of my intentions; and of this there certainly can be no doubt, that the newspapers which have been given in evidence against me are full to overflowing with my admonitions to the people to observe the laws and to yield the most implicit obedience to everything having the shape and semblance of legal authority. Evidence the most convincing has been adduced, even by the crown, to demonstrate what the great principle was upon which the repeal movement was founded and designed. It has been proved to you that this maxim received universal acceptation amongst us—that "the man who commits a crime gives strength to the enemy." This sentiment was printed upon flags and banners—it was attached to all our documents—it was inscribed upon our platform, and painted on the walls of the association. It was universally acknowledged amongst us as the cardinal maxim of our political lives, and was the topic of our conversation. We left nothing undone to impress upon the minds of those who joined the movement that the man who committed an offence against the law gave strength to whoever might be the enemy of our cause. Such was the principle that we proclaimed. It may be said that it was one that savoured of hostility; but if so, it had only a stronger effecton that account. You have heard again and again of my assertion that the most desirable of all political ameliorations were purchased at too dear a price if they could only be obtained at the expense of human blood. That is the principle of my political career? and if I stand prominent amongst men for anything, it is for the fearless and unceasing announcement of that principle. From the day when first I entered the arena of politics until the present hour I have never neglected an opportunity of impressing upon the minds of my fellow-countrymen the fact, that I was an apostle of that political sect who held that liberty was only to be attained under such agencies as were strictly consistent with the law and the constitution—that freedom was to be attained, not by the effusion of human blood, but by the constitutional combination of good and wise men—by perseverance in the courses of tranquillity and good order, and by an utter abhorrence of violence and bloodshed. It is my proudest boast, that throughout a long and eventful life I have faithfully devoted myself to the promulgation of that principle, and, without vanity, I can assert, that I am the first public man who ever proclaimed it. Other politicians have

said, "win your liberties by peaceable means if you can," but there was *a riere pensée* in this admonition, and they always had in contemplation an appeal to physical force, in case other means should prove abortive. But I am not one of these. I have preached under every contingency, and I have again and again declared my intention to abandon the cause of repeal if a single drop of human blood were shed by those who advocated the measure. I made the same principle the basis for the movement in favour of Catholic emancipation; and it was by a rigid adherence to that principle that I conducted the movement to a glorious and triumphant issue. It is my boast that Catholic emancipation, and every achievement of my political life, was obtained without violence and bloodshed; and is it fair, I ask you, gentlemen, that you should be called upon at this hour of the day to interrupt a man who has laid that down as the basis of his political conduct, and who at no period of his existence was ever known to deviate from the maxim? Is it right that men of honesty and intelligence should be called upon to brand now as a participator in conspiracy the man who has been preaching peace, law, and order during his whole life, and has invariably deprecated and denounced the idea that the objects of his political life were to be attained by an appeal to violent means? Gentlemen, I belong to a Christian persuasion, with whose members it is a principle of doctrinal belief that no advantage to church or state—no, not even heaven can be sought to be attained at the expense of any crime whatsoever; that no sin is to be justified or palliated by any account of advantage, however enormous, that may possibly be obtained by its commission. If there was in that box a single member of my own religious persuasion there would be no necessity for my impressing this fact upon your minds, for he could tell you that he professed that same doctrine in common with myself. All my life I have studiously endeavoured to model my political conduct according to the standard of that maxim of my religious belief, and, therefore, should you now be called upon to do your judgment and common sense the violence of believing that I could proclaim one thing and practice another, I fearlessly assert that there is no circumstance of my life, from my birth to the present hour, which can warrant you in doubting the sincerity of my professions. It will appear from reference to the newspapers that have been given in evidence—and even though there were no newspapers, the fact is so notorious as to admit of no dispute—that no man ever possessed so much of the confidence of the Irish people as I. No man enjoyed it so unremittingly, and in so large a degree. I have obtained the confidence of all classes of the Catholic laity—and not of the poor Catholics alone whose condition might be ameliorated by any change, but of the middle and higher classes also. I have also the honour of enjoying the confidence of the Catholic clergy, and the Catholic episcopacy, and to what am I to attribute the possession of their good graces unless to the assertion of this principle and to the unswerving fidelity with which, through all the vicissitudes of my political life, I have invariably adhered to it? How long could I possess their confidence if I were the base deceiver I am pictured? Not an hour. But I possess their confidence, because they are thoroughly convinced of the sincerity and integrity of purpose with which I have announced my sentiments. I am here surrounded by my countrymen, who have confided their cause to my management, for no other reason than that they have the fullest possible reliance on the sincerity with which, during a period of forty years, I have proclaimed the doctrine that the man who commits a crime injures the cause he espouses, and strengthens the hands of those who are its antagonists. My whole life is a refutation of the accusation that I am insincere; and is the invidious task now to be assigned to you, gentlemen, of branding your countrymen as fools and dotards—men who patronise hypocrisy, and who for near half a century have suffered themselves to be befooled and deluded by empty pretences? The public will not believe it—England will not believe it—nor will any enlightened country in creation believe it. I am here pleading before the European world. I am pleading the cause of my country before a jury of Protestant gentlemen, in presence of the kings and people of the universe, and with what amazement will they not gaze upon you if by a verdict which doubts for a moment the sincerity of my political professions, you brand as fools and dotards millions of your Catholic fellow-countrymen, and with them, many, very many Protestants of the greatest intelligence and the highest possible respectability. No, you cannot for a moment question the honest sincerity with which I have ever advocated that glorious principle, the advocating of which was the pride of my youth, the glory of my manhood, and the comfort of my declining years. I feel I have not done you justice in pressing this topic at such length upon your consideration. Such prolixity was unnecessary; for, I am sure, you are wholly incapable of taking such a view of my conduct as that insisted on by the crown. The only further observation which I will offer upon this branch of the case is merely to state that I doubt whether my sincerity in this respect has ever been questioned, even by the most implacable of my enemies. I do not think that it was ever publicly impugned, and certain I am that it ought never to have been impugned either publicly or privately. It is utterly impossible for me to believe that after having been so successful in my endeavour to obtain popular rights by means purely consistent with justice, humanity, the law, and the constitution, I could now fling to the winds every principle of my by-gone life, and assume the character and play the part of a conspirator. Nothing in my public conduct, I must again repeat, could justify such a suspicion. Nay, I fearlessly aver, there are incidents in my public life which give the lie to any such suspicion. Permit me to instance a few facts. You must all remember what a frightful combination existed eight years ago amongst the workmen and operatives of the city of Dublin. Lives were lost in our public streets, or men were assaulted with such brutal violence that, if death did not ensue, the circumstance was to be attributed rather to a happy accident than to any forbearance on the part of the conspirators. The combination had spread to such a dreadful extent that the public authorities were unable to cope with it. It has been frequently alleged against me by my enemies that I am a man who would sacrifice principle to popularity. How stands the fact? I came forward—I opposed the combination publicly, single-handed, and opposed them at the peril, not only of my popularity but of my very existence. The fact is notorious in Dublin. At the meeting in the Exchange the operatives were infuriated against me, and I owed the preservation of my life to the police. But it was my duty to oppose the combination, and I did not shrink from it. It was my duty to do it—I did not shrink from it—I persevered in it, and what occurred? I persuaded those who had been most ferocious against me, and from that day to this not a single combination outrage has occurred in Dublin. I opposed combination at the expense of popularity—at the risk of life; and is it credible, I ask you, that I should have taken that part to play the hypocrite somewhere else? It was not in that alone that I exhibited my abhorrence of violence of any kind; for don't you find, throughout these newspapers, my perpetual opposition to rib-

bonism? Have they not read over and over again to you my denunciations of ribbonism—my warning to the people—my denunciations of the system to the police, calling on them in time to stop its progress? Oh, if there was any conspiracy would I not be glad to be assisted by the conspirators? If my means were iniquitous, would I not have the advantage of that iniquity? I had influence—I had only to countenance the ribbonmen, and heaven knows how far it would have extended! It has been stated to you over and over again—it is part of the prosecution—my discountenance of these ribbonmen; nay more, my resistance to all secret societies—my constant denunciation of them; oh, do but take these things into your consideration, and say in your conscience, if you can, that man is a hypocrite, who, without anything in the world to move him but adherence to his principles, flung away the instrument that would tarnish his cause, however useful it might be. Another thing in my public life was, that I opposed, at the risk of my popularity, and loss of popularity, the present system of poor laws. With the influences I possess could not I have roused the poverty of Ireland against its property, and insisted that all that were poor should be fed by all that were rich, as others did? No; I saw the danger of such a proceeding; I was taunted by many a sincere friend—sneered at by men who have joined me again. No, no; I consulted my conscience, and that conscience told me that the real nature of the provision makes more destitute than it relieves—that its machinery must be the great burthen on the property of the country. But, my lords, since it became law, I have not given it any opposition. I have allowed the experiment to be tried, and those who were most inimical before have avowed that I was right, and they were wrong, and I am ready to ameliorate it, and assist its working if I can. Gentlemen, you also recollect it is given in evidence the manner of my answer to young Mr. Tyler's speech and letter—you saw from that and from the speech given in evidence by Mr. Bond Hughes; and now, my lords, as I have mentioned that name, I think it right to say that as I was one of those convinced that that gentleman had wilfully sworn what was not true, I am glad to have mentioned his name, because it affords me an opportunity I am proud to take of stating that I never saw a witness on the table who gave his evidence more fairly than Mr. Bond Hughes, and I am thoroughly convinced that the contradiction in his evidence was a mistake that any honest man might fall into. It is not part of this case, but I am sure your lordships don't think me wrong in making this public avowal. Gentlemen, it appears by his report also how emphatically I informed the Americans that we were anxious for sympathy from them, but that we would take no part, in the slightest degree, disparaging of our allegiance. But that is put still more strongly when you recollect the denunciations I made of the American slave-owners. Large sums of money were sent from the American slave-holding states—the remittances were in progress—money was in progress of collection in Charleston, Carolina; but did I mitigate my tone, or moderate my language in condemning the principle of slavery? Did I not denounce the slave-owners as enemies of God and of man—as culprits and criminals? Did I not compare as ociation with them to association with pickpockets and felons? Did I not use the most emphatic language to express my denunciation of the horrible traffic in human beings—of all the immorality, and all the frightful horrors that belong to that system? Oh, if I was a hypocrite, would I not have passed over the topic with a few soft words and have accepted their sympathy. Is there hypocrisy in my public sentiments that no amelioration in any public institution can be worth one drop of blood. Gentlemen, you have in the newspapers also that the democratic party in France, headed by Monsieur Ledru Rollin offered us sympathy and support. It is a considerable party—it is a powerful party—it is the party that hates the English—the party most of all ferocious against England, a hatred which arose from the blow their vanity got at Waterloo. You have my answer to that offer; did I seek his support, or the support of his party? Did I mitigate and frame my answer in a way that I should appear unwilling to accept that support, but really allow it? No; I took the firm tone of loyalty—I rejected their support—I refused the offer; I cautioned him against coming over here, for we would do nothing inconsistent with our loyalty; and is that the way in which my hypocrisy is proved? Gentlemen, it was not that party in France alone that I defied. Even at their present monarch I have hurled my defiance. To be sure, the Attorney-General, with great ingenuity, introduced a report of the secret committee of the house of commons in Ireland in 1797, and he said we were acting on that plan. They were looking for French assistance—they had French emisaries in France—they had probably persons representing the French here—acting on the plan! imitating the conduct of the united Irishmen in 1797! Oh, gentlemen, it was directly the reverse. It may be said I speculate on the restoration of the elder branch of that family—Henry the Fifth, as he is called. I would be very sorry to wait for a repeal of the union till that occurs (laughter), not that I disparage his title—for my opinion is, that Europe will never be perfectly safe until that branch of the Bourbon family be restored—restored under liberal institutions. But I refused any, even the slightest assistance from that party—I hurled the indignation of my mind against the man that would force the children of France to be educated by infidel professors. I am not entering into the topic further than that you have seen by these reports my antagonism to the French government. There is another matter in my life—my opposition to the Chartists. Recollect, gentlemen, that when the repeal association was in full force the Chartists were in insurrection in England—that they were entering in hundreds and thousands into the manufacturing towns in England—recollect, gentlemen, that there is something fascinating to all the poorer classes in Chartism. Oh, if I was playing the hypocrite would I not have been mitigated in my tone respecting them? I did denounce them. I kept the Irish in England from joining them. The very moment a Chartist subscribed to the funds of the association his money was handed back to him, and his name struck off our list. Now, if my object was popular insurrection, good heaven! would not any man in my situation have wished to have strength? There was no oath to be taken—no danger of the penalties of the law—yet I discountenanced Chartism. And, my lord, I do firmly declare, that it is my conscientious conviction that if I did not interfere Chartism would have spread from one end of Ireland to the other. Gentlemen of the jury, these were the societies I succeeded in driving from Ireland, and am I to be charged with a conspiracy for this? Another point to which I will call your attention is this—it has been my constant aim to pay the most devoted allegiance to the Queen; you have it in evidence, and you have heard it read out of all the newspapers, that the name was treated with the utmost respect, attention, regard, and delight in every place by the Irish people. I have never made a speech which did not breathe the most dutiful and affectionate loyalty to her person, crown, and dignity. I stand here and repeat, I never made such a speech. I always made a difference between the Queen and her ministers, and the Attorney-General has no right to say that I ever uttered one particle of disloyalty in arraign-

ing the speech alluded to. When I spoke I made the distinction between the minister and the Sovereign, and I say there is not a particle or taint of disloyalty in the observations I made. I answered that speech, not as the speech of the Queen, but of the minister of the day, and I say there is no taint of disloyalty in it. I am come to a time of life when she can do nothing for me; and yet I am sure there is not a man in the court who could infer that I meant disloyalty. In one thing I think the Attorney-General did not act fair to me; and it does afflict me that I should be charged with disloyalty to the Sovereign in the manner he has sought to fasten it on me. In speaking of the ministry the word Judy occurred, and then the Attorney-General tells you I called the Queen a fishwoman. That speech had no reference to the Queen at all—don't believe it; I feel angry at it. That speech had reference to the minister alone, and to him I applied the term "Judy," and nothing else, and it is utterly false that I used the word to the Queen; and I here disclaim, abjure, and disavow the man who would be capable of using such language to the Sovereign. No matter what I may be accused of, I have never been accused of disloyalty or disaffection to my Sovereign, and I repeat, I never did any such thing as the Attorney-General has stated to you. When I did use strong language, I have always distinguished between the Queen and her ministers. Gentlemen, I fear I have detained you rather longer on this point than I had intended, but I have to judge of my case by referring to you my public conduct which is fully before you. I may have talents, and whatever they were I must now say, in the decline and evening of my life, that my long and ardent desire was breathed for the liberties of my country. Gentlemen, it was said the meetings, when they took place, had some object—so they had, the repeal of the union? Was that a bad or injurious purpose? I deliberately say it was not; no, it was the most useful that could possibly be had for the benefit of this country. I say there is not a man in this court, the neutrality of the court alone excepted, that ought not to be a repealer, and I think before I sit down I will make you all repealers (loud laughter). I will show it is your duty to join the repeal cause, and then I am sure you will have pleasure in doing so (laughter). I mean, in the first place, to show you the destruction caused in this country by the English parliament—that it had from the most remote period watched this country with a narrow jealousy. I will give you some evidence regarding the woollen manufacturers of this country. It is a long time ago, and occurred in the reign of a king whose actions you are not inclined to condemn. I will show that the settlement of 1782 was to be a final adjudication and establishment of the Irish parliament for ever. In the next place, I will show you the great prosperity of Ireland subsequent to that period. I will next show you that the union was founded in the grossest injustice and fraud—I will show you the distress that followed the union statute—I will show you the ill-treatment of Ireland by England, which is a matter of history so well known, that I will not detain you on the point. Yet being brought here by the Attorney-General, my defence is, that I am not looking for what is injurious to the country, but for what would be of the greatest possible benefit to this country. I have a right to this: for I have represented the county of Clare, with 250,000 inhabitants; I have represented Waterford, with 300,000 inhabitants; I have represented Kerry, with 260,000 inhabitants; I have represented Meath, with 300,000 inhabitants; and I now stand here, the proud representative of the county of Cork, with her 730,000 inhabitants; and I feel it a duty I owe to the country to state that I am seeking what will benefit her inhabitants. I twice represented the city of Dublin, and I feel gratitude to the Irish people for the confidence reposed in me, and I here stand up to demand for her her just rights and privileges. I first propose to show you the misgovernment of Ireland by England, and I will do so from a French author. He was an historian, and one of the literati of France, and I will give you his description. Hear what he says. It is from "Thierry's History of the Conquest of England by the Normans," 3d vol. page 430:—

"The conquest of Ireland by the Anglo-Normans is perhaps the only one which has not been followed by gradual ameliorations in the condition of the conquered people. In England the descendants of the Anglo-Saxons, though unable to free themselves from the dominion of the conqueror, advanced rapidly in prosperity and civilization. But the native Irish, apparently placed in similar circumstances, have for five centuries exhibited a state of uniform decline. And yet this people are endowed by nature with great quickness of parts, and a remarkable aptitude for every description of intellectual labour. The soil of Ireland is fertile and adapted to cultivation; yet its fertility has been equally unprofitable to the conquerors and the conquered, and the descendants of the Normans, notwithstanding the extent of their possessions, have become gradually as impoverished as the Irish themselves. This singular destiny, which presses with equal weight upon the ancient inhabitants and the more recent settlers of Ireland, is the consequence of their proximity to England, and of the influence which, ever since the conquest, the government of the latter country has constantly exercised over the internal affections of the former."

There is a disinterested and impartial historian giving you this melancholy picture of the state of things, and you may see it is all owing to the baneful influence of the English government on this country. The next authority which I shall quote is not one that would be found in the same ranks with the last—it was Mr. Pitt. In speaking of the commercial propositions of 1785, I find he says:—

"The uniform policy of England had been to deprive Ireland of the use of her own resources, and to make her subservient to the interests and the opulence of the English people."

That is not my language, gentlemen; they are the words of Pitt, avowing that the policy of England had always been to use Ireland for her own purposes. I will read another authority of more consideration with you—it is that of the Lord Chief Justice Bushe, delivered in parliament in 1799:—

"You are called upon to give up your independence, and to whom are you called upon to give it up? To a nation which, for six hundred years, has treated you with uniform oppression and injustice."

These, recollect, are the words of Lord Chief Justice Bushe, and not mine.

"The treasury bench startles at the assertion—*non meus hic sermo est.* If the treasury bench scold me, Mr. Pitt will scold them—it is the assertion in so many words in his speech. Ireland, says he, has always been treated with injustice and illiberality. Ireland, says Junius, has been uniformly plundered and oppressed. This is not the slander of Junius, nor the candour of Pitt—it is history. For centuries has the British parliament and nation kept you down, shackled your commerce, and paralysed your exertions; despised your characters, and ridiculed your pretensions to any privileges, commercial or constitutional. She has never conceded a point to you which she could avoid, or granted a favour which was not reluctantly distilled. They have been all wrung from her like drops of her blood."

The words are not mine, gentlemen.

"And you are not in possession of a single blessing (except those which you derive from God) that

has not been either purchased or extorted by the virtue of your own parliament from the illiberality of England."

In 1798, when a government pamphlet was first published by Mr. Secretary Cooke, which first broached the subject of the repeal of the union, he says:—

"A union was the only means of preventing Ireland from growing too great and too powerful." At the same time admitting—"When one nation is coerced to unite with another, such union savours of subjection."

I will quote again from Lord Chief Justice Bushe. In denouncing England's intolerance of Ireland's prosperity, during the debates on the union, he used the following language:—"I strip this formidable measure of all its pretensions and all its aggravations; I look on it nakedly and abstractedly, and I see nothing in it but one question—will you give up the country? I forget for a moment the unprincipled means by which it has been promoted—I pass by for a moment the unseasonable time at which it has been introduced, and the contempt of parliament upon which it is bottomed, and I look upon it simply as England reclaiming, in a moment of your weakness, that dominion which you extorted from her in a moment of your virtue—a dominion which she uniformly abused—which invariably oppressed and impoverished you, and from the cessation of which you date all your prosperity. It is a measure which goes to degrade the country, by saying it is unfit to govern herself, and to stultify the parliament by saying it is incapable of governing the country. It is the revival of the odious and absurd title of conquest; it is the renewal of the abominable distinction between mother country and colony which lost America; it is the denial of the rights of nature to a great nation from an intolerance of its prosperity."

From the commencement I told you I would prove that it was hatred of the prosperity of Ireland; and if he who uttered that opinion were here to-day he would avow it. These topics were almost forgotten, and I am obliged to the Attorney-General for having reminded me of them. I will read another document to prove that the English policy has always been against the amalgamation of the Irish people. It is an extract from a letter from Primate Boulter to the Duke of Newcastle, which is dated Dublin, January 9th, 1724:—

"I have made it my business to talk with several of the most leading men in parliament, and have employed others to pick up what they could learn from a variety of people; and I feel by my own and others' inquiry that the people of every religion, country, and party here, are alike set against Wood's halfpence, and that their agreement in this has had a very unhappy influence on the state of this nation, by bringing on intimacies between Papists and Jacobites, and the Whigs, who before had no correspondence with them: so 'tis questioned whether (if there were occasion) the justices of the peace could be found who would be strict in disarming the Papists."

Mark, gentlemen, the paternal feeling of the government of that day. "It spurned, as an 'unhappy influence,' the intimacy between the Papists and Whigs." Gentlemen, have I not now proved what I said—by the authority of Thierry, of Pitt, of Bushe, and of Primate Boulter? And I conjure you to remember that opinion of Bushe—that the oppression of Ireland arose from an intolerance of her prosperity. And he uttered that sentiment uncontradicted. I will next bring your attention to the transactions of 1782—that period, which must be familiar to your recollections—the one bright spot—the one green island in the oasis surrounding it. The transactions of 1782 were of consummate advantage to England. She was then assailed upon every side. America had first rebelled, and afterwards separated from her. She wanted Ireland. Being without troops to garrison her citadels and secure her safety, the gentlemen of Ireland armed. But did they think of separation? No; they asserted their right to an independent legislature and free trade, and they obtained both, for it was not safe to refuse them. The adjustment which then took place between the two countries was declared to be a final one. The English house of lords said so, the commons said the same, the lord lieutenant of Ireland announced it, and the two British houses of parliament declared it was a final adjustment. And how was it got rid of? I will show you. [Mr. O'Connell read the document.] Such were the principles in which that great settlement was brought about; and do you know, or did you know in your lives, a single individual who was a Volunteer in 1782 that to the last moment of his life did not boast of having participated in that mighty and most salutary change. It was glorious to Ireland to preserve their allegiance, and join it with liberty—to ascertain constitutional rights, and obtain legislative independence. The connection with England was stronger—the connection was never disputed, but proclaimed by the patriots of that day, and the connection was preserved by that measure. I am asked whether I have proved that the prophecy of Fox was realised, that the prosperity that was promised to Ireland was actually gained by reason of her legislative independence. Now, pray listen to me. I will tell you the evidence by which I shall demonstrate this fact. It is curious that the first of them is from Mr. Pitt again in the speech he made in 1799, in favour of the resolutions for carrying the union. If he could have shown that Ireland was in distress and destitution—that her commerce was lessened—that her manufactures were diminished—that she was in a state of suffering and want, by reason of or during the legislative independence of the country—of course he would have made it his topic in support of his case, to show that separate legislatures had worked badly, and produced calamities and not blessings; but the fact was too powerful for him. But his vicious ingenuity availed itself of the fact, which fact he admitted; and let us see how he admitted it. He admitted the prosperity of Ireland; there was his reasoning. Now mark it—"As Ireland," he said, "was so prosperous under her own parliament, we can calculate that the amount of that prosperity will be trebled under a British legislature." He first quoted a speech of Mr. Foster's in 1785, in these words—"The exportation of Irish produce to England amounts to two millions and a half annually, and the exportation of British produce to Ireland amounts to one million." Instead of saying you are in want and destitution, unite with England, and you will be prosperous—he was driven to admit this:—Ireland is prosperous now with her own parliament, but it will be trebly prosperous when you give up that parliament, or have it joined with the parliament of England. So absurd a proposition was never yet uttered; but it shows this, how completely forced he was to admit Irish prosperity when no other argument was left in his power, but the absurd observation I have read to you. He gives another quotation from Forster, in which it is said—"Britain imports annually 2,500,000*l.* of our products, all, or very nearly all, duty free, and we import almost a million of hers, and raise a revenue on almost every article of it;" this relates to the year 1785. Pitt goes on to say—"But how stands the case now [1799]? The trade at this time is infinitely more advantageous to Ireland. It will be proved from the documents I hold in my hand, as far as relates to the mere interchange of manufactures, that the manufactures exported to Ireland

from Great Britain in 1797, very little exceeded one million sterling (the articles of produce amount to nearly the same sum); whilst Great Britain, on the other hand, imported from Ireland to the amount of more than three millions in the manufacture of linen and linen yarn, and between two and three millions in provisions and cattle, besides corn and other articles of produce." That, said Mr. Pitt, was in 1785—three years after her legislative independence—that was the state of Ireland. Have you heard, gentlemen, that picture, that description? You have heard that proof of the prosperity of Ireland. She then imported little more than one million's worth of English manufacture; she exported two and a half millions of linen and linen yarn, and adding to that the million of other exports, there is a picture given of her internal prosperity. Recollect that we now import largely English manufactures, and that the greatest part of the price of those manufactures consists of the wages which the manufacturer gives to the persons who manufacture them. Two millions five hundred thousand worth of linen and linen yarn were exported, and one million of other goods. Compare that with the present state of things. Does not every one of you know that there is scarcely anything now manufactured in Ireland—that nearly all the manufactures used in Ireland are imported from England? I am now showing the state of Irish prosperity at the time I am talking of. I gave you the authority of Forster (no small one) and of Pitt, of Irish prosperity during that time. I will give you the authority of another man that was not very friendly to the people of this country—that of Lord Clare. Lord Clare made a speech in 1798, which he subsequently published, and in which I find this remarkable passage, to which I beg leave to direct your particular attention:—"There is not," said his lordship, "a nation on the face of the habitable globe which has advanced in cultivation, in agriculture, in manufactures, with the same rapidity, in the same period, as Ireland" (viz., from 1782 to 1798). That was the way in which Irish legislative independence worked, and I have in support of it the evidence of Pitt, Forster, and Lord Clare; and Lord Grey, in 1799, talking of Scotland in the same years, says—"In truth, for a period of more than forty years after the (Scotch) union, Scotland exhibited no proofs of increased industry and rising wealth." Lord Grey, in continuation, stated that—"Till after 1748 there was no sensible advance of the commerce of Scotland. Several of her manufactures were not established till sixty years after the union, and her principal branch of manufacture was not set up, I believe, till 1781. The abolition of the heritable jurisdictions was the first great measure that gave an impulse to the spirit of improvement in Scotland. Since that time the prosperity of Scotland has been considerable, but certainly not so great as that of Ireland has been within the same period." Lord Plunket, in his speech in 1799, in one of his happiest efforts of oratory, speaks of her as of "a little island with a population of four or five millions of people, hardy, gallant, and enthusiastic—possessed of all the means of civilisation, agriculture, and commerce, well pursued and understood—a constitution fully recognised and established; her revenues, her trade, her manufactures thriving beyond the hope or the example of any other country of her extent—within these few years advancing with a rapidity astonishing even to herself; not complaining of deficiency in these respects, but enjoying and acknowledging her prosperity (hear, hear). She is called on to surrender them all to the control of—whom? Is it to a great and powerful continent, to whom nature intended her as an appendage—to a mighty people, totally exceeding her in all calculation of territory or population? No! but to another happy little island, placed beside her in the bosom of the Atlantic, of little more than double her territory and population, and possessing resources not nearly so superior to her wants."

Here is the evidence of its failure as regards advantages to Ireland, and the benefit to be derived from Irish legislative independence:—

"Such is the right hon. gentleman's (Mr. Pitt's) infelicity upon this great question, that the measure which was to be the remedy becomes the source of all distempers. Instead of quieting, he has agitated every heart in that country. The epoch from which was to begin the reign of comfort and confidence, of peace, and equity, and justice, is marked, even on its outset, by the establishment of that which rests every civil blessing on the caprice of power. Ill-starred race! to whom this vaunted union was to be the harbinger of all happiness, and of which the first fruit is martial law—or, in other words, the extinguishment of all law whatsoever."

Advantages to be expected from the independence of Ireland.

"17th May, 1782.

"He desired gentlemen to look forward to that happy period when Ireland should experience the blessings that attend freedom of trade and constitution; when by the richness and fertility of her soil, the industry of her manufactures, and the increase of her population, she should become a powerful country; then might England look for powerful assistance in seamen to man her fleets, and soldiers to fight her battles. England renouncing all right to legislate for Ireland, the latter would most cordially support the former as a friend whom she loved. If this country, on the other hand, was to assume the power of making laws for Ireland, she must only make an enemy instead of a friend, for where there was not a community of interests, there the party whose interests were sacrificed became an enemy."—2 vol. p. 60.

Lord Chief Justice—I beg your pardon, Mr. O'Connell, I am not able to bear the heat of the court. I would be sorry to incommode you, but it will be necessary to open one of the windows.

Mr. O'Connell—Not at all, my lord. I will return in a moment.

Mr. O'Connell having been permitted to withdraw for a short time, the court and jury retired for refreshment.

The court having resumed, Mr. O'Connell thus proceeded:—When the adjournment took place, I was in the act of reading to you several authorities, showing how much Ireland prospered under her own independent parliament. I will now direct your attention to such documents as will tend to corroborate the facts contained in those I have already adverted to. You have heard that in 1810 a meeting was held in Dublin to petition the legislature for a repeal of the union. I will read an unconnected passage from a speech delivered by a gentleman belonging to a most respectable house in this city. It is as follows:—

"Some of us," said he, "remember this country as she was before we recovered and brought back our constitution in the year 1782. We are reminded of it by the present period. Then as now our merchants were without trade, our shopkeepers without customers, our workmen without employment; then as now it became the universal feeling that nothing but the recovery of our rights could save us. Our rights were recovered; and how soon afterwards, indeed, as if by magic, plenty smiled on us, and we soon became prosperous and happy."

Let me next adduce the testimony of a class of citizens who, from their position, and the nature of their avocations, were well calculated to supply important evidence on the state of Ireland, subsequent to the glorious achievements of 1782. The bankers

of Dublin held a meeting on the 18th of December, 1798, at which they passed the following resolutions:—"Resolved—That since the renunciation of the power of Great Britain, in 1782, to legislate for Ireland, the commerce and prosperity of this kingdom have eminently increased." "Resolved—That we attribute these blessings, under Providence, to the wisdom of the Irish parliament."

The Guild of Merchants met on the 14th January, 1799, and passed a resolution declaring—"That the commerce of Ireland has increased and her manufactures improved beyond example, since the independence of this kingdom was restored by the exertions of our countrymen in 1782.

"Resolved—That we look with abhorrence on any attempt to deprive the people of Ireland of their parliament, and thereby of their constitutional right and immediate power to legislate for themselves."

I have, in addition to these, from the most unquestionable authority (an authority incapable of deceiving or of being deceived) the relative increase in England and Ireland of the consumption of tea, tobacco, wine, sugar, and coffee, from 1785 to the union, which is as follows:—

Tea.....Increase in Ireland .....84 per cent.
Increase in England .....45 per cent.

From 1786 to the union:

Tobacco...Increase in Ireland.....100 per cent.
Increase in England..... 64 per cent.

From 1787 to the union:

Wine .....Increase in Ireland .....74 per cent.
Increase in England .....22 per cent.

From 1785 to the union:

Sugar.....Increase in Ireland .....57 per cent.
Increase in England .....53 per cent.
Coffee.....Increase in Ireland .....600 per cent.
Increase in England..... 75 per cent.

I could multiply quotations. What need have I for so doing? I have proved that no country on the face of the earth ever increased so rapidly in prosperity, as Ireland did from 1800 to the union. There is a cant phrase used for want of argument against us repealers—"you wish for dismemberment of the empire." Reflect for one moment on the absurdity of saying this. Ireland, under her own parliament, with her own legislature, increased in prosperity to the incalculable extent I have shown. Is it possible to believe that that increase in prosperity would have had the least tendency to the dismemberment of the empire, or separation from England? She was increasing in prosperity during the connection—she was increasing in prosperity during that period of legislative independence—why should she, then, think of dismemberment? I can understand the term as applied to a period in which trade was declining—in which the consumption of the articles I have mentioned greatly diminished—I can understand the term dismemberment, as applied to poverty and destitution, but it is absurd to talk about dismemberment, as applicable to a period when there was an increase in prosperity, such as Ireland experienced under her own parliament again. Is it not melancholy to think that such an opening scene as that to which I have directed your attention should have been closed at once? It really afflicts me to reflect that there should have existed—should I call him a monster—to disturb such increasing prosperity to gain dominion, and actually, to use the words of Charles K. Bushe, "invoice the prosperity of Ireland." At the time when the great change took place the governing principle was anything but what it should be. The state English debt was considerably increased—the destruction of the Irish parliament, and the means used to effect that destruction, were certainly those suited to the nature of so deleterious an object. You will find that all that the worst passions could effectuate were arranged, in order to effect the destruction of Ireland. The Attorney-General has referred you to the report of the select committee of the house of commons in 1797. I will refer you to that of 1798. There I find that which was stated by Lord Plunket as to the fomenting of the rebellion until it should come to such a pitch that it might suddenly explode was the great means of bringing the bad passions of Ireland in play. It appears by that report that there was a person of the name of M'Guane, who was a colonel in the United Irishmen. He transmitted to government all meetings of colonels, and of the county and provincial rebel committees, from April, 1797, till May, 1798. These communications were made through Mr. Clelland, land agent to Lord Londonderry. But while on this point, I will direct your attention to another fact. In the Life of Grattan, vol. 2, p. 145:—

"Shortly before his death Lord Clonmel sent for his nephew, Dean Scott, got him to examine his papers, and destroy those that were useless. There were many relating to politics that disclosed the conduct of the Irish government at the period of the disturbances in 1798. There was one letter in particular which showed their duplicity, and that they might have crushed the rebellion; but that they let it go on on purpose to carry the union, and that this was their design. When Lord Clonmel was dying, he stated this to Dean Scott, and made him destroy the letter; he further added, that he had gone to the Lord Lieutenant, and told him that as they knew of the proceedings of the disaffected, it was wrong to permit them to go on; that the government, having it in their power, should crush them at once, and prevent the insurrection. He was coldly received, and found that his advice was not relished."

So here you have that which necessarily followed from not acting on the communications of M'Guane, and the fomenting of the rebellion for the purpose of carrying the union. The entire country were against the measure, but they were controlled and checked by military power. Lord Plunket says:—

"I accuse the government of fomenting the embers of a lingering rebellion; of hallooing the Protestant against the Catholic, and the Catholic against the Protestant; of artfully keeping alive domestic dissensions for the purposes of subjugation."

I will now read a passage from a speech made by Lord Grey, in the year 1800, on the repugnance of the Irish nation to the union:—"Twenty-seven counties," said his lordship, "have petitioned against the measure. The petition from the county of Down is signed by upwards of 17,000 respectable independent men, and all the others are in a similar proportion. Dublin petitioned under the great seal of the city, and each of the corporations in it followed the example. Drogheda petitioned against the union; and almost every other town in the kingdom in like manner, testified its disapprobation. Those in favour of the measure, professing great influence in the country, obtained a few counter petitions. Yet, though the petition from the county of Down was signed by 17,000, the counter petition was signed only by 415. Though there were 707,000 who had signed petitions against the measure, the total number of those who declared themselves in favour of it did not exceed 3,000, and many of these only prayed that the measure might be discussed. If the facts I state are true (and I challenge any man to falsify them), could a nation in more direct terms express its disapprobation of a political measure than Ireland has done of a legislative union with Great Britain? In fact, the nation is nearly unanimous, and this great majority is composed, not of bigots, fanatics, or jacobins, but of the most respectable of every class in the community."

Mr. Bushe says:—

"The basest corruption and artifice were excited

to promote the union. All the worst passions of the human heart were entered in the service, and all the most depraved ingenuity of the human intellect tortured to devise new contrivances for fraud."

"Half a million or more were expended some years since to break an opposition—the same or greater sum may be necessary now;" and Grattan added, "that Lord Castlereagh had said so in the most extensive sense of bribery and corruption. The threat was proceeded on—the peerage sold—the caitiffs of corruption were everywhere—in the lobby, in the streets, on the steps, and at the door of every parliamentary leader, offering titles to some, office to others, corruption to all."

Let me now request your attention to a description given by Plunket of the mode in which the union was carried—"I will be bold to say that licentious and impious France, in all the unrestrained excesses to which anarchy and atheism have given birth to, has not committed a more insidious act against her enemy than is now attempted by the professed champion of the cause of civilized Europe against a friend and ally in the hour of her calamity and distress—at a moment when our country is filled with British troops, when the loyal men of Ireland are fatigued and exhausted by their efforts to subdue the rebellion—efforts in which they had succeeded before those troops arrived—whilst the *habeas corpus* act was suspended—whilst trials by court-martial are carrying on in many parts of the kingdom—whilst the people are taught to think they have no right to meet or to deliberate—and whilst the great body of men are so palsified by their fears, or worn down by their exertions, that even the vital question is scarcely able to rouse them from their lethargy—at a moment when we are distracted by domestic dissensions—dissensions artfully kept alive as the pretext of our present subjugation, and the instrument of our future thraldom."

Such, gentlemen, is the description given of the means by which the union was carried. You know how much money was spent in the purchase of rotten boroughs. You know that three millions were expended in the actual payment of persons who voted for the union. You know that there was no office in the state, no office from the highest in the church to the lowest in the constabulary, that was not used to gain the desired purpose. There was more fraud, corruption, and iniquity employed in the carrying of the union, than perhaps ever accompanied any public transaction. You will easily imagine the result. The union has been destructive to Ireland; you feel this yourselves; you see it by the state of your streets; you know it by the position of your commerce. Having shown you the general spirit of the English government—having adverted to the finality as intended as the treaty of 1782—having shown you the extreme advantages and prosperity of Ireland from the independence of her own parliament—having shown you the means by which the union was carried, I come now to detain you for as short a time as possible by a reference to the evil results of that measure. In the year 1794 the Irish debt was only seven millions; in the year 1798 it had increased to fourteen millions:—

"About the year 1794 the Irish debt was 7,000,000*l.*; in the year 1798 the Irish debt was 14,000,000*l.* At the last-named period the English debt was, at least, 350,000,000*l.* At the time of the union Ireland owed 21 millions—England 446 millions. What were the terms of the union? They were these:—that England was to bear for ever the burden of these 446 millions, and consequently for its interest and charge, the burden of a separate taxation of seventeen millions annually, and that Ireland was not to be charged with that 446 millions at all for its principal or interest. But were these conditions complied with? No; of course they were not, and Ireland now owes every penny of that stupendous sum (hear, hear). You are charged with every farthing of it; and, notwithstanding all the distinct promises of Castlereagh, the lands, the properties, the labours, the industry of the Irish people—all, all are liable to be mortgaged for the debt."

That you may have some idea of the mismanagement as to finances, and that you may know how much has been done to accumulate the Irish debt and to relieve England's, I refer you to the finance report of public expenditure. Recollect that the Irish parliament had an interest in keeping the people of Ireland out of debt; recollect that England owed 446 millions, and that Ireland owed 21 millions. The Irish parliament has been often assailed, but could there have been a more protective parliament, one that would tend to keep the country more free from debt? The English parliament were throwing away money; the Irish parliament were trifling and economical, keeping down the public debt. In 1822, Sir John Newport remonstrated. He says—

"Ever since the union, the imperial parliament had laboured to raise the scale of taxation in Ireland as high as it was in England, and only relinquished the attempt when they found it was wholly unproductive. For twelve years he had remonstrated against this scheme; and had foreseen the evils resulting from it, of a beggared gentry and a ruined peasantry. Ireland had four millions of nominally increased taxes, while the whole failed as a system of revenue, and the people were burthened without any relief to the treasury (hear, hear). It would be found, as it was in some other countries, that the iron grasp of poverty had paralysed the arm of the tax-gatherer, and limited in this instance the omnipotence of parliament. They had taxed the people; but not augmented the supplies; they had drawn on capital—not income; and they, in consequence, reaped the harvest of discontent, and failed to reap the harvest of revenue."

Lord Lansdowne, also, in making a motion on the state of Ireland in the same year, said:—"The revenue in 1807 amounted to 4,378,241*l.* That between that year and 1815, additional taxes had been imposed, which were estimated to produce 3,376,000*l.*; and that so far from an increase to the revenue having been the result, there was a great decline—the revenue in 1821 having been only 3,844,889*l.*, or 533,000*l.* under the amount before the imposition of three millions and a-half of new taxes. He had, on a former occasion, stated it to be his opinion that the repeal of the taxes in Ireland would tend mainly to the revival of manufactures in that country, and bringing it into a prosperous condition. It was objected to him on that occasion, that he sought, by giving large and exclusive advantage to Ireland, to raise her up into a manufacturing country, which should make her the rival of England and Scotland. While he disclaimed any such intention, he feared Ireland was far, indeed, from any such prosperity."—*(Hansard, volume XI., page 659.)*

GENERAL ABSTRACT OF TAXES REPEALED OR REMITTED SINCE 1800.

	IN GREAT BRITAIN AND IRELAND.		
Customs ...	£7,929,567	£635,200	
Excise ...	14,093,638	368,530	
Stamps ...	443,624	152,609	
Post-office ...	130,000	13,198	
Property Duty	14,617.823		
Windows ...	1,577,773	179,403	
House ...	250,000	53,673	Hearth
Servants ...	472,061	42,988	
Carriages ...	391,796	71,086	
Horses ...	1,672 034	67,524	
Dogs ...	6,876		
	£41,085,202	£1,584,211	

The taxes repealed or remitted in Ireland being one twenty-sixth part of those repealed in Great Britain. From Finance Report of Public Expenditure, 1815:—

"That for several years Ireland has advanced in permanent taxation more rapidly than Great Britain itself, notwithstanding the immense exertions of the latter country, including the extraordinary and war taxes, the permanent revenue of Great Britain having increased from the year 1801 to the proportion of 16¾ to 10; the whole revenue of Great Britain, including war taxes, as 21¼ to 10; and the revenues of Ireland in the proportion of 23 to 10. But in the twenty-four years referred to your committee, the increase of Irish revenue has been in the proportion of 46¾ to 10!!!"—Session 1814-15, vol. 6.

"The annual amount of taxes repealed in England since the peace is 47,214,338*l.*, and the amount of taxes repealed in Ireland in the same period is 1,575,940*l.*, the taxes repealed or remitted in Ireland being one-thirtieth of those repealed or remitted in Great Britain (hear). Here is another table, composed of the same materials, and coming out of the same shop, makes the quantity repealed in England only 41,085,202*l.* but it leaves the quantity repealed in Ireland the same number as mentioned above or a little more—it makes it 1,584,211*l.*"

Gentlemen, would that occur in an Irish parliament? If he was accused of making Ireland what she ought to be in commerce and manufactures, would he have disclaimed any such intention? And what must have been that spirit of parliament towards Ireland which made it necessary for a statesman to disclaim anything so atrocious, so outrageous, and so abominable as the intention of making Ireland the rival of England and Scotland? You perceive from this the fatuity and folly of transferring the management of your affairs to a parliament wherein it was considered a reproach to make Ireland the equal of those countries, and how it is the imperative duty of every man who takes a part in politics to come forward and have a legislature which will not consider it a reproach but a praise to endeavour to make Ireland the rival of every country in commerce and manufactures. This fact speaks trumpet-tongued, and with a voice that, I trust, will rouse you to just indignation against any attempt that may be made to put down the natural uprising—the peaceable and tranquil uprising—of the entire Irish people to obtain the benefit of a native parliament. There is a document here which I cannot avoid quoting for you:—

"The enormous excess of British over Irish debt at the union left the British minister no excuse for their consolidation, and accordingly it was arranged that the two debts should continue to be separately provided for. The active expenditure of the empire (*i. e.* the expenditure clear of charge of debts) was to be provided for in the proportion of two parts from Ireland to fifteen for Great Britain. These proportions were to cease, the debts were to be consolidated, and the two countries to contribute indiscriminately by equal taxes, so soon as the said respective debts should be brought to bear to each other the proportions of the contributions—viz., as 2 to 15; provided also that the fiscal ability of Ireland should be found to have increased. Now, the 2 to 15 rate of contribution was denounced at the time by Irishmen as too high for Ireland, and afterwards so admitted by the British ministers themselves. Its consequence was, to exhaust and impoverish her to such a degree that her debt in sixteen years increased 230 per cent., while the British only increased 66 per cent. This disproportionate and unjust increase of the Irish debt brought about the 2 to 15 proportion between it and the British debt."

It is delightful to me to have an opportunity of stating these facts in a place from which I know they will be extensively circulated (laughter).

"Advantage was taken of that single branch of the contingency contemplated in the union act, although the other branch of the contingency—viz., the increase of Ireland's ability had not only occurred, but, by the confession of the English ministers themselves in 1816, the very contrary had occurred—namely, Ireland had become poorer than before. Advantage, we say, was taken of that single branch of the contingency to consolidate the debts, to do away with all measure of proportionate contribution, and place the purse of Ireland, without restriction or limit, in the hands of the British Chancellor of the Exchequer, thenceforward to take from it, and apply as he liked, every penny it did then and might at any further time contain, and rob Ireland of all chance of benefit from any surplus of revenue thenceforward and for ever."

Here we find that England was increasing the taxation of Ireland at the rate of 4,000,000*l.* per annum, and such was the state of Ireland that instead of this new taxation producing one 6d. of revenue, the actual precedent revenue fell 500,000*l.* in the ensuing year. The debt of Ireland increased 230 per cent., while that of England increased only 60 per cent. Can it be possible that any one will say that that increase was necessary? What prosperity can you have under such a state of things? The moment you have any prosperity it will be converted into English revenue. The moment you are able to bear a new tax, it will be used not only to pay off your own debt, but to maintain increased English expenditure. Was there ever anything which required greater vigilance than the pecuniary management of the country? I have given you the most galling instances of the abuse of the power of mismanagement. I have given those instances from what, if they were not parliamentary documents, you would hesitate to credit the amount of robbery so open, plunder so obvious and so extensive, the accumulation of debt so entirely inconsistent with the supposed details of the union—so inconsistent with all that could occur under anything like proper management. You, gentlemen, are familiar in private life with the evil effects resulting from giving to others, even the most disinterested persons, the management of your concerns; and it is with nations as with individuals. But, then, you may be told that when the peace came there was a relaxation and a diminution in the taxation. I will tell you what there has been—there has been a diminution of taxation in England of 41,085,202*l.*, but in Ireland the diminution has been only 1,584,211*l.*, that is in the proportion of 1½ to 40. That is the way the English strike off taxes for themselves; that is the way they diminished our taxation. There is another bitter ingredient in our cup, that the taxation which, up to 1836, was in Irish currency, was then converted at once into British currency, and by that operation one-thirtieth was added to our taxation. As mercantile men, interested in the prosperity of our country, I ask you is it possible that there can be prosperity while the management of your concerns are in their power? Your relaxation from taxation depends on their will and mercy. Had you an Irish parliament, they would insist on the accounts being fairly taken. They would pay every penny that Ireland owes, but no more. Can you then, by any verdict, stand between your countrymen and the obtaining of this justice from England? I have shown you what have been the financial effects of this miscalled union. I shall now read a document of great importance as to the means by which the union was carried. It is the protest of nineteen Irish peers against the union. [Here the honourable and learned gentleman read a protest, which was signed Leinster, Meath, and several others of the peers of Ireland.] This, gentlemen, is the authentic declaration of the Irish

peerage, in reference to the atrocity committed against this country by the carrying of the act of union. I am sure there is not one of their descendants who do not glory that his ancestor signed that protest, and I trust we will soon have an opportunity of seeing those descendants carrying the intentions of their ancestors into effect, and taking their seats in a parliament in College-green. Among other evils resulting from the union is the inadequacy of the representation of Ireland, as contrasted with that of England, and in particular the infinitely less voice of the people of Ireland, by reason of the inadequacy of the register. Gentlemen, the following extract, which is of some length but great importance, will tend to show the injustice done to Ireland in the nominal union, by giving something like an adequate proportion of representatives to England, but denying to Ireland a similar advantage. I am anxious to read this now and cast it before the public, because there appears to be something like a disposition to concede something on this point. Last year we were told there was a termination to concession. This year we were told that something will be done in the extension of the parliamentary franchise. You will see how necessary this is:—

"The result of the injustice done to the people of Ireland by the restriction of the elective franchise is made manifest by a contrast between the population of the several counties in England, and the number of registered voters therein, with the population and number of registered voters of the different Irish counties. We take our statement of numbers from the parliamentary papers, and by comparing the least populous counties in England with the most populous in Ireland—Westmoreland and Cork, for instance, we find the following result:—The rural population of Westmoreland is 43,464, and its number of registered voters after the reform act amounted to 4,392, nearly one out of every ten inhabitants. Whereas, in the county of Cork the population is 703,716, and the number of electors registered afer the Irish reform act, was only 3,835, being scarcely one out of every two hundred of the inhabitants.

"We ask, therefore, is this to be endured?

"I may now mention the effect in particular localities—in Wales the population is 800,000—in Cork the rural population is 713,716. How are they respectively represented in parliament? Wales, with its 800,000 inhabitants, 28 members of parliament; the county of Cork, with nearly the same population, has but two members of parliament: the county Mayo, with 400,000 inhabitants, has but two members of parliament; Wales, with 800,000 inhabitants—only double the number—has 28 members of parliament. The people of Ireland don't know these things, but I will take care they shall know it; and I anticipate easily the result. I will just give another specimen:—I will take five counties in each country to show you how the representation stands:—Cumberland, with a population of 126,681, has four members; the county of Cork, with a population of 713,716, has but two members. Leicestershire, with a population of 197,276, has four members. Tipperary with a population of 390,598, has but two members. Northampton, with a population of 179,276, has four members. The county of Down, with a population of 337,571, has but two members. Worcestershire, with a population of 211,356, has four members. The county of Galway, with a population of 381,407, has but two members. Wiltshire, with a poulation of 239,181, has four members. Tyrone, with 302,945, has but two members. That is to say—five English counties, with a population less than a million—that is, with a population amounting to 953,770—have 20 members; and five Irish counties, with a population of 2,116,177 persons, have only ten representatives. Now let me show you the number of electors in six counties. Westmoreland, with a rural population of 43,464, has 4,392 registered electors. Cork, with a rural population of 713,716, has 3,835 registered electors. Bedford, with a rural population of 88,524, has 3,966 registered electors. Antrim, with a rural population of 316,909, has 3,487 registered electors. Hertford, with a rural population of 95,977, has 5,031 registered electors. Galway, with a rural population of 381,564, has 3,061 registered electors.

"Here is Westmoreland, with less than one-fourteenth of the population of Cork, and yet it has an absolute majority of 557 registered voters! Is this to be called reform?

"Again, take the county of Bedford, with a rural population of 88,524 inhabitants; its registered voters under the reform act were 3,966, whilst Antrim, with a population of 316,909, had only 3,487 registered voters—that is, Bedford had an absolute majority of near 500 voters over Antrim, notwithstanding the enormous disproportion in the number of its inhabitants.

"Hertford, with a population of 95,977 inhabitants, had 5,013 registered voters, while Galway, with 381,564 inhabitants, had only 3,061 electors.

"Rutlandshire, the smallest county in England, with only 19,385 inhabitants, had 1,296 voters, while Longford, with 112,558 inhabitants, had only 1,294, absolutely two less than Rutlandshire.

"Again, Huntingdon, with a population of 47,779 inhabitants, had 2,647 voters, while Donegal, with a population of 289,149, had only 1,448 voters; and Limerick, one of the wealthiest counties in Ireland, with an opulent agricultural population of 248,801 inhabitants, had only 2,565 electors.

"Nay, even the Isle of Wight, with only 28,731 inhabitants, had 1,167 voters, while Mayo, with 366,328 inhabitants, had only 1,350 voters, and Protestant Tyrone with a population of 310,000 inhabitants, had only 1,151 electors, absolutely 16 voters less than the Isle of Wight.

"The Island of Anglesea, also, with a population of only 33,508 inhabitants, had 1,187 voters; while Kildare with 108,424 inhabitants, had only 1,112 voters; and Kerry with 265,126 inhabitants, had only 1,161 voters, just 26 voters less than Anglesea, and six less than the Isle of Wight.

"Even if we compare the largest counties in both countries, Yorkshire, with an agricultural population of 913,738 inhabitants, and Cork, with a population of 703,716, we will find that the English county had 33,154 electors, while the Irish one had only 3,385.

"We find, therefore, that England, in her rural population of 8,336,000 inhabitants, had 344,564 county voters, while Ireland, in a similar proportion of 7,027,509 inhabitants, had only 60,607 registered electors.

"The consequence of all these defects in the Irish reform act is, that the disproportion between the number of electors in English and Irish cities and boroughs, when compared to the relative population, is as great as in the counties. For we find from the same returns that, after the reform act, Exeter, with a population of 27,932 inhabitants, had 3,426 voters—Hull, with 46,746 inhabitants, had 4,275 electors—while Waterford, with a population of 28,821 inhabitants, had only 1,278 electors, being in the ratio of 3 to 1.

"Again, comparing the largest cities and boroughs in Ireland, with the smaller ones in England, we find the following results:—

"Worcester, with a population of 27,313 inhabitants, has 2,608 voters, while Limerick, with a population of 66,554 inhabitants, has only 2,850 electors.

"Chester, with only 21,363 inhabitants, has no

less than 2,231 voters, while Belfast, the wealthiest and most commercial city in Ireland, with 53,000 inhabitants, had only 1,926 electors.

"The city of Cork, with 110,000 inhabitants, had only 3,650 electors, including the non-resident freemen, while Newcastle-upon-Tyne, with a population of 42,260 inhabitants, had 4,952 voters. Preston, with a population of 33,112 inhabitants, had 4,204 electors—both of them more than Cork, which last city has more than treble the number of inhabitants, of either of the other two; and Bristol, with 104,338 inhabitants, not equal to the population of Cork, has 10,347 voters, being three times the constituency of the Irish city.

"If, too, we compare the smaller boroughs in both countries together, we find that those which barely escaped schedule A. with populations varying from 2 to 3,000 inhabitants, have more electors than the boroughs in Ireland, retained by the act of union, with from 10 to 12,000 inhabitants.

"For example, Wallinford, Launcestown, Wareham, Arundel, have all under 3,000 inhabitants, while the electoral constituencies in all exceed 300 voters. However in Athlone and Bandon, with over 10,000 inhabitants in each, the voters do not exceed 250, and in many others, such as Kinsale, Coleraine, and New Ross, the available constituency falls far short of 200 voters.

"If also we compare the metropolitan constituencies of both countries, where an equality in household value may be expected, we will find that Dublin, with a population of 210,000 inhabitants, had only 9,081 voters, including all the bad freemen lately manufactured by the corporation, while the city of London, with a population of only 122,000 inhabitants, had 18,584 electors, and only 17,315 houses above 10*l.* value.

"Nothing can more clearly illustrate the disadvantages under which the Irish cities labour, with respect to the 10*l.* household franchise, than the comparison of the number of houses of 10*l.* a-year clear value in London, and the number of electors upon that qualification, with the number of similar houses in Dublin, and of similar electors.

"These facts appear from parliamentary returns. The number of 10*l.* houses in the city of London are 17,315, and the number of electors appear to be 18,584; whilst in Dublin, the number of houses of 10*l.* value, according to Sherrard's valuation, amounted to 14,105, while the number of electors only amount to 9,081. Thus in the city of London, there are more electors than 10*l.* householders, whereas in the city of Dublin the aggregate of electors does not amount to within one-third of the number of 10*l.* householders.

"WALES COMPARED WITH IRELAND.

"Wales has a population of 800,000. In Cork the rural population is 713,716. How are they respectively represented? Wales has twenty-eight members; Cork, with nearly the same population, has but two.

"Here is a parliamentary paper; it was published in 1832, and the sessional number is 206. It states the relative amounts of the English, Scotch, Welsh, and Irish revenue in that year, and there is no similar paper of a later date that I am aware of:—

The Irish revenue was £4,392 000
The Welsh revenue was 348,000

This is the exhibition which the return makes of what the hon. member considers the superior wealth of the principality of Wales. That principality, in point of fact, falls below Ireland in any of those pretensions to representation founded upon wealth. I have looked into the amounts of the revenue collected in the single port of Cork, and they exceed that of the principality of Wales. There are no annual records to be referred to in such a case, but I find that in one year the customs of Cork amounted to 263,000*l.*, and that in another year the excise amounted to 272,000*l.* These amounts give, I believe, a fair average view of the revenue collected in the port of Cork, and their total is 535,000*l.* The receipts of Wales are only 348,000*l.* Cork, then, is entitled to more members than the entire principality of Wales, on these very grounds on which Great Britain justifies her overwhelming numerical superiority in the house of commons. If Wales have not a representation disproportioned to her wealth, Cork ought to return 43 members to parliament."

This is the way in which Ireland has been defrauded in her franchise, her representation, and in every one of the details of the union measure. But are there no other evil results from the union? Is it not injurious in its consequences to your commerce, your agriculture, and your manufactures, to have a distant legislature? I had many particulars to lay before you, showing the state of different trades in Dublin, and how they had been injuriously affected by the total neglect of an English parliament; but I shall for the present take for example the coal trade. I have extracts from seven or eight volumes of the Reports of the Chamber of Commerce upon that trade, which I shall read to you. [The hon. and learned gentleman then read the passage, and proceeded.] Why have I read these to you? I will tell you. For eight years the merchants of Dublin, the merchants of Ireland, complained of the hardship to their trade. The Tories were in office, and they were succeeded by the Whigs. This plain and palpable violation of the act of union was established, clearly proved, and yet there was no redress from Whig or Tory. At length the agitation for repeal commenced—the discussion of the question was coming on—and the Whigs put an end to the grievance; and what they would not do in justice to the mercantile interests, they did at length from a prudent and proper motive, and the articles of the union were, in that respect, carried into effect, and the duties taken off coal. Gentlemen, I ask you, is it not a sad consequence of the union the enormous expense incurred in obtaining any private bill in London respecting property, railroads, or any other matter it may be necessary to obtain it for. There is the expense of going to London—the loss of time there—and the heavy cost of passing any such bill through a committee. What has lately happened in your own neighbourhood? The Dublin and Drogheda railway bill cost 28,000*l.* before it was passed. If the parliament was in Dublin, 1000*l.* would be more than it would be necessary to expend upon it, and I defy any man to carry a private bill there, particularly if there should be any opposition to it, without a proportionate expense. Can anything be more frightful than the expense of election committees? Every witness must be taken to England, and must be kept there; and if he should be sent back after his examination, or otherwise out of the way, you have a chance of losing your seat, as well as all your expenses. Is it worthy that the entire of the expense should be circulated in London, and not one farthing of it in Dublin; and not a single Irish lawyer receives even a solitary fee out of it, while such vast sums are expended in the complicated machinery of bringing a petition before a committee of the house of commons in London. Every shilling goes into the pockets of the English barristers practising there. Gentlemen, the expenditure of public establishments in this country before the union produced a considerable mitigation of the taxation. What is now become of all those boards? Where is the treasury board?—transplanted to England. Where is the excise board?—transferred to England:

the customs board?—transferred to England. The stamp-office and others are greatly diminished, and progressing to extinction—even the Old Man's Hospital is extinct. Is this principle of centralization fair which produces all those advantages to England, and all this misery to Ireland? I shall now ask your attention to a statement of the number of English and Scotchmen appointed to offices of the state in Ireland. I take it from the *Mail*. Let me first observe that the Lord Lieutenant of Ireland is an Englishman; the Chief Secretary is an Englishman; the Lord Chancellor is an Englishman. The writer in the *Mail* proceeds, in answer to an article in the London *Times* relative to this topic of complaint:—

"The archbishop of Dublin is an Englishman; the chief administrator of the Irish poor law is an Englishman; the paymaster of Irish civil services is a Scotchman; the chief commissioner of Irish public works is an Englishman; the teller of the Irish Exchequer is an Englishman; the chief officer of the Irish constabulary is a Scotchman; the chief officer of the Irish post-office is an Englishman; the collector of excise is a Scotchman; the head of the revenue police is an Englishman; the second in command is a Scotchman; the persons employed in the collection of the customs are English and Scotch, in the proportion of thirty-five to one.

"But the *Times* may perhaps observe—'True; but all this is only the elucidation of unbarring the gates of preferment unsparingly and honestly.' Scotchmen and Englishmen are placed in office in Ireland; and Irishmen, in return, in Scotland and England, in order to draw closer the bonds of union between the three united nations.

"Again, let us see how facts actually stand. There are cabinet ministers—Englishmen, 10; Scotchmen, 3; Irishmen, 0!"

The Duke of Wellington scarcely considers himself an Irishman, and certainly cannot be called a representative of Irish interests in the cabinet.

"Lords of the Treasury—Englishmen, 4; Scotchmen, 1; Irishmen, 1. Clerks of the Treasury—Englishmen and Scotchmen, 112; Mr. Fitzgerald, [query an Irishman?] 1. Members of the Lord Steward's and Lord Chamberlain's Household—Englishmen and Scotchmen, 225; Irishmen, 4. British Ministers to Foreign Courts—Englishmen and Scotchmen, 131; Irishmen, 4. Poor Law Commissioners—Englishmen, 3; Irishmen, 0. We presume," adds the editor, "that these facts show that the natives of the three kingdoms are all placed upon an equal footing!!! The chances of access to preferment to an Englishman or Scotchman in Ireland, being in the few instances that have occurred to us while writing, as 6 to 0; while the probability of an Irishman obtaining place in England, appears from an analogous calculation, to be in the proportion of 491 to 10, or as 1 to 50. He could easily swell," he adds, "this list, were it necessary."

I have read that to you to show the meaning of the phrase, "Ireland for the Irish, and the Irish for Ireland." It is a perfect fallacy, a delusion to assert that the Irish are indemnified by promotions or appointments in England for the loss of the appointments at home. The places in England and Scotland are few enough for Englishmen and Scotchmen, and they give them the places in Ireland in addition. I proceed, gentlemen, to show you other evil results from the union. I quote from Fox's remarks upon the state of the nation in 1807:—"The union was atrocious in its principle and abominable in its means. It was a measure the most disgraceful to the government of the country that was ever carried or proposed. So far was he from thinking that Great Britain had a right to govern Ireland if she did not choose to be governed by us, that he maintained that no country that ever had existed or did exist, had a right to hold the sovereignty of another against the will and consent of that other." I have given abundance of proof from extracts I have read of the prosperity of Ireland under the fostering care of her own parliament; but I will quote a little further. I will show by a reference to parliamentary papers the decrease from 1800 to 1827, of consumption in Ireland, compared with increase in England. I find the respective consumption of tea, coffee, sugar, tobacco, and wine, from the time of the union to the year 1827, to be stated in the following manner:—

Tea	Increase in England...	25 per cent.
	Increase in Ireland....	24 per cent.
Coffee	Increase in England...	1800 per cent.
	Increase in Ireland....	400 per cent.
Sugar.....	Increase in England...	26 per cent.
	Increase in Ireland....	16 per cent.
Tobacco....	Increase in England...	27 per cent.
	Decrease in Ireland...	37 per cent.
Wine	Increase in England...	24 per cent.
	Decrease in Ireland....	45 per cent.

Decrease of consumption in Ireland from 1802 to 1823, from Tables published by Mr. Halliday.

IMPORTED INTO IRELAND.

Green Tea.....	1802 ...	152,674 lbs.	
Do.	1823 ...	38,168	
Decrease	...	114,506 lbs.,	or about $\frac{3}{4}$ths.
Port Wine.....	1802 ...	4,487 tuns.	
Do.	1823 ...	1,014	
Decrease	...	3,473 tuns,	or about $\frac{3}{4}$ths.
French Wines..	1802 ...	454 tuns.	
Do.	1823 ...	121	
Decrease	...	333 tuns,	or about $\frac{3}{4}$ths.

Those who defend the union and advocate its continuance are in the habit of averring that our trade in the exportation of cattle has greatly increased since the passing of that measure, which in my mind has operated with a most disastrous influence on the fortunes of my country. But, gentlemen, I hold in my hand a document which will demonstrate to you that this is a delusion, and will make you clearly understand how the real facts of the case are. Our cattle export has diminished by the union. Hear how the facts really are. The learned gentleman read the following document:—

"The defenders of the union ordinarily lay much stress on the increased export of cattle, sheep, and provisions since that measure. This export, however, is *from a starving people;* and being so, the argument as to its great value to Ireland is not one to waste much time in considering. A curious fact has come out with reference to this subject. A return appeared in all the Dublin papers last November, of the number of sheep and horned cattle at the great fair of Ballinasloe, every year from 1790 to 1842. The following extract from it, we put in the same table, with figures, from a Parliamentary Return of 1843, and the Irish Railway Report, showing the *export* of the articles mentioned in two of the years included. We have no return of the export last year:—

Years.	Sheep.	Export of Ditto.	Horned Cattle.	Export of Ditto.
1799	77,900	800	9,900	14,000
1835	62,400	125,000	8,500	98,000
1842	76,800	...	14,300	...

"The question naturally arises—what became of the 77,000 surplus sheep in the first year, as well as the sheep at other fairs? *They were eaten at home.*

"As to oxen, 14,000 went away in 1799, and

98,000 in 1835; yet if we test the product of all Ireland in the former year, by the most sufficient criterion of the amount at Ballinasloe fair, we shall find that Ireland had then *more for sale than in* 1835, and consumed the greater part of the surplus over her export—exporting the remainder in the more valuable form of *provisions*.

"The parliamentary documents quoted before, enable us to show what the export of provisions was in the years 1799 and 1835:—

Years.	Export of Cattle.	Swine.	Beef & Pork, Barrels.
1799	14,000	4,000	278,000
1835	98,000	76,000	140,000

"There has then been since the union a decrease of the more valuable export, viz., provisions—valuable because of the labour employed at home in their manufacture; and an increase of the less valuable, viz., the live animals—less valuable to a country as an article of export, by reason of the small quantity of employment which is given in the preparing of it.

"As the diminution of the number of barrels of beef and pork will not by any means account for the great increase of the live export—while the whole number of cattle produced in Ireland in 1835, was, at any rate, not greater than in 1799—it follows that much of the excess of live export in 1835 must have been by deduction from the number previously consumed at home, and therefore that the home consumption in the latter year was considerably less than in the year before the union, notwithstanding the cent. per cent. increase of population."

Gentlemen, you must bear in mind that the trade of cattle exportation is much more beneficial to the population of a country than made-up provisions. The increase in the cattle exportation trade is indicative of a country's prosperity in a degree much more eminent than the increase in the provision trade. In fact an increase in the latter branch of commerce is rather indicative of distress amongst the people. In the one case we have an evidence of prosperity, and in the other a clear proof of poverty and destitution. In 1833, Dr. Hoyton gave us the advantage of a clear research upon this subject. Permit me to read it for you:—

"The exports and imports, as far as they are a test of a decay of profitable occupation—so far as the exports and imports are supplied from the parliamentary returns—exhibit extraordinary evidences of the condition of the labouring classes. The importation of flaxseed (an evidence of the extent of a most important source of employment) was—In 1790, 339,745 barrels; 1800, 327,621 barrels; 1830, 469,458 barrels. The importation of silk, raw and thrown, was—In 1790, 92,091lbs.; 1800, 79,066lbs.; 1830, 3,190lbs. Of unwrought iron, in 1790, 2,271 tons; in 1800, 10,241 tons; in 1830, 871 tons. Formerly we spun all our own woollen and worsted yarn. We imported in 1790, only 2,294lbs.; in 1800, 1,880lbs.; in 1826, 662,750lbs. An enormous increase. There were, I understand, upwards of thirty persons engaged in the woollen trade in Dublin, who have become bankrupts since 1831. There has been doubtless an increase in the export of cottons. The exports were—In 1800, 9,147 yards; 1826, 7,793,873. The exports of cotton from Great Britain were—In 1829, 402,517,196 yards, value 12,516,247*l*., which will give the value of our cotton exports at something less than a quarter of a million—poor substitute for our linens, which in the province of Ulster alone exceeded in value two millions two hundred thousand pounds. In fact, every other return affords unequivocal proof that the main sources of occupation are decisively cut off from the main body of the population of this country. The export of live cattle and of corn has very greatly increased; but these are raw materials; there is little more labour in the production of an ox than the occupation of him who herds and houses him; his value is the rent of the land, the price of the grass that feeds him, while an equal value of cotton, or linen, or pottery will require for its production the labour of many people for money. Thus the exports of the country now are somewhat under the value of the exports thirty years since, but they employ nothing like the number of people for their production; employment is immensely reduced; population increased three-eighths. Thus, in this transition from the state of a manufacturing population to an agricultural, a mass of misery, poverty, and discontent, is created."

By this statement you will see that the importation of yarn increased, but that is no subject for felicitation, inasmuch as that that increase was obtained at the expense of a diminution in the home manufacture of the article. The next document to which I will take the liberty of directing your attention, is a report by Dr. Stack, in reference to the state of a valuable charitable institution in this city. It is an important document, as clearly evidencing the effects of the union upon institutions of this kind:—

"The Sick Poor Institution, since its establishment in the year 1794, has shared in the sad reverses which the locality has undergone over which its operations extended. The Liberties of Dublin, once the seat of manufactures and of wealth, have degenerated into the habitation of the decayed or unemployed artisan; the abode of fashion has now become proverbially the haunt of vice, and poverty, and of disease; hence, while the necessity for such an institution as this has become every day more urgent, the supporters of it have proportionably diminished—as the objects of relief have increased, its friends have decreased. In order at once to perceive this altered state of things, a mere inspection of the returns made at the different periods is all that is necessary. In 1798, patients, 3,040; income, 1,085*l*. 17*s*. 1*d*.; 1841, patients, 16,159; income, 367*l*. 4*s*. 10*d*."

Thus you will perceive that while the patients increased four-fifths, the income of the institution decreased in the proportion of three-fourths. I have now to submit to your consideration some melancholy details illustrating the disastrous effects of the union upon our national industry. The statement may be relied on as strictly authentic. [Here the learned gentleman read the extract alluded to.] There is scarcely a trade in Dublin concerning which I could not, did I not fear to trespass at too great a length upon your attention—give you details equally distressing, for, alas! equally authentic details, showing a daily decrease of employment and a daily increase of misery and distress—showing how men who were once opulent manufacturers are now reduced to absolute beggary—showing this fact, which is more eloquent than a thousand arguments, that whereas before the union there were 68,000 operatives in Dublin, there are at present not more than 4 000. About a year since I made inquiries into the state of the Liberty, which has been well described to consist of one mass of ruin; and the following description was handed to me. [Here the learned gentleman read the extract alluded to.] Need I dwell upon the evidences of ruined greatness and fading prosperity, which every moment meet your eye, as you walk through the streets of Dublin?—need I tell you how prosperity, happiness, and affluence, were once found to reside, where nothing now can be found but misery, distress, and desolation? I have a statistical statement of the decay of house property at hand, but I will not trouble you with a lengthened detail of it at this hour of the day. Take two or three of the leading mansions of the city, and mark to what they have been reduced. What has become of the house that

was once the noble mansion of Lord Powerscourt's family? It had been a stamp-office; it is now the counting-house of a respectable firm in the cotton, silk, and woollen trade. What has become of Lord Moira's house—that house which had once been the residence of the Plantagenets in this country? Alas! are you not well aware that it is now the Mendicity? And that magnificent edifice, the Belvidere House, what sad reverses has it experienced? It cost 28,000*l.* in the building—the stairs alone cost 3,000*l.*, but the whole premises were the other day sold for a school to the Jesuits for eleven hundred pounds; and are these melancholy spectacles day by day and hour by hour to be displayed before our eyes, and are we to make no effort to retrieve the fallen fortunes of our country? Are the men who would restore her to her pristine prosperity to be menaced with a dungeon? Are the men who endeavour to succour and defend her to be branded as malefactors and conspirators? It is to you, gentlemen, that I appeal for a solution of this proposition. I have established my position; I have shown the prosperity of Ireland before the union; I have shown the advantages to be secured to Ireland by a restoration of her domestic parliament; I have shown how manufacturers have been reduced to the condition of operatives, and operatives to the condition of mendicants, by the ruinous effects of that disastrous measure—all that have I shown, and nothing more, and for that I am to be persecuted—for that I am to be prosecuted as a conspirator! I have shown you the results of the union, and have I not displayed to your eyes a picture, the contemplation of which renders it the duty of all honest and true-hearted men to endeavour to remedy this state of things? That we are combined for repeal is our pride and boast; but that we are combined together for any illegal or criminal purpose is an idea which, with scorn and indignation, we repudiate. Even before the union was introduced, the moment there was an apprehension of its being introduced, coupled, as it was then said to be, with Catholic emancipation, the Catholics of Dublin held a meeting in Francis-street, on the 9th of April, 1795, John Sweetman in the chair, at which they expressed their indignant refusal to accept emancipation coupled with any union measure. The first time I addressed a public assembly was on the 13th of January, 1800. It was my maiden speech. Pray listen to the last passage of the speech, and you will find that the ruling principles of my entire political life are all embodied in it, and that my views were anything, and are anything, but sectarian. [Mr. O'Connell then read the passage from his speech.] That was my first public declaration. In the sincerity of my soul I made that declaration—in the sincerity of my soul I made that offer. It might have been taken up; there was a strong party in the country at that time highly unfavourable to the Roman Catholic claims. But I risked it, and I repeat, in the sincerity of my soul, I made the declaration that I would prefer the re-enactment of the penal code in all its horrors than consent to the union; and I threw myself upon the generosity of my fellow-countrymen, the Protestants of Ireland. Gentlemen, in 1810, you have already heard, the repeal was brought forward, and public meetings were held in the city of Dublin. My speech upon one of those occasions has been read for you. I won't distress you by reading anything like the entire of it; but allow me to read for you the concluding passage, because it bears upon the topic I am now discussing. [Here the hon. and learned gentleman read the passage alluded to.] Is that sectarianism? Is that preferring the interests of a party or portion of the people to the nation at large? Sectarianism! Why, gentlemen, you cannot but be aware that the cause of the Protestant Dissenters of England was warmly advocated by me—that it was I drew up the petition in favour of the English Protestant Dissenters—that that petition was signed by 28,000 Catholics, passed at meetings of the association, and afterwards at the great aggregate meeting of Catholics, and that petition which I drew up was not upon the table of the house of commons six weeks when the Protestant Dissenters of England were emancipated. I therefore treat with contempt and indignation the idea of sectarian difference; and again, throughout the entire volumes that have been presented to you, has there been one word of a bigoted description found amongst them? I have made more speeches than any other public man that ever existed—I have been more abused than any other man, but amidst all their calumnies, they never flung upon me an accusation of bigotry against my fellow-beings of any other persuasion. I have been calumniated in everything else—in that I have been spared, and why? because the folly and futility of the calumny was so excessive that even my calumniators spared me on that point. Sectarianism, therefore, is out of the question; but what was our mode? Legal, and peaceable, and constitutional proceedings. I need not remind you again that I possess the confidence of the Irish people. I possessed it with a full repetition of my determination that all should be peaceable, with my full declaration that one single act of violence would detach me from the repeal agitation. But it has been said I made violent speeches. Has any violence proceeded from me? If I have made violent speeches, would not it be fair to give me a recent and speedy opportunity of seeing how far the reports of those speeches were accurate, and what explanatory portions were applicable, and not reserve them from so remote a period? If violence is to be talked of, let us see is this violence—it is an article taken from the *Cheltenham Gazette*:

(From the Cheltenham Journal and Stroud Herald, August 2d, 1841.*)*

"What would, in reality, be justice to Ireland? What would be the greatest blessing that could be conferred on Ireland? The answer to these questions is prompt, and comprised in a single word—conquest. Few are the nations, if any, that are the worse for having been conquered—and in the great majority of instances, as conquest implies superiority, the conquered have been gainers. The Romans were conquered, and where they conquered, they also civilized.

"Now Ireland, though under the dominion of England, has never been conquered by her. She may take this in the light of a compliment or the reverse. To this day she is wild, savage, uncivilized, scarcely human. We speak of the mass of the people—of the aborigines of the island, of the Popish part of the population—of the wretched and ferocious slaves of O'Connell—of those who have never been brought under the gentle sway of the Protestant faith.

"Had Ireland been actually conquered by England, it would not have been thus.

"The first step towards the conquest of Ireland would be to send over a commanding military force, not to shed blood, but to prevent the shedding of blood.

"Every individual Popish priest should then be secured and exiled for life, nor be permitted to return under the penalty of death; and all persons found aiding and abetting a Popish priest in secreting himself should also be condemned to exile for life.

"These men, the priests, &c., might be shipped for some of the colonies, and there receive allotments of land, and there be kept under strict *surveillance*.

"Such is a simple outline of measures for the bloodless conquest of Ireland.

"It is for a Conservative government alone to achieve this glory. Let Sir Robert Peel and his colleagues look to it."

It appears by those papers that we did not threaten anything, and it appears distinctly that every disclaimer, and repetition of disclaimer, to use anything but peaceable and legal means, was given over and over again. There was no violence of any kind; none whatever had taken place. We are now charged with a newspaper conspiracy, because it is alleged that certain newspapers contained libels. Why, if they did, there is no person in the world more open to or capable of punishment for an offence than a newspaper proprietor. He is perhaps more in the hands of the law than any other man in existence. There is the stamp-office, which must know all about him, and the moment he offends they have nothing to do but call on him to account for his actions. The Attorney-General had this facility if he wished, or if the libel law had been infringed. But there is one thing in the so-called newspaper conspiracy that cannot be got over. Take up the *Nation* which was read for you—a great deal of prose and a considerable quantity of poetry—love songs and all (laughter)—and then take up the *Pilot*, which was also read for you—all prose and no poetry—take up any of these articles, and can you say that one of the journals copied the other? Can they produce any of these papers where the other copied an article from it? No, they cannot; and they could not charge them with conspiracy unless they joined for that purpose. In place of conspiracy they would find discord, not concord, between them. There was not a particle of combination amongst them. In fact, there was not only no combination amongst them, but a kind of rivalship and jealousy relative to these articles. Was that like combination or rime? I will not go into that question at present as it is so well ascertained. Well, gentlemen, one word about arbitration courts. I shall not trouble you with many observations on that head. One of the great advantages of these courts, however, was the abolition of unnecessary and superfluous oaths. There was no oath taken in these courts at all. Gentlemen, I do not know if it strikes you in the same light as it strikes me on the subject of oaths; but I think the establishing of such courts a great advantage in that respect. In the superior courts the oath was a different thing; but I ask any christian man if he would not wish to see unnecessary swearing abolished? I find by a parliamentary return in 1832 that there were one hundred and seventy-two thousand oaths taken in the excise department, and in another year one hundred and fifty-eight thousand in the excise also. This was an unnecessary profanation of the name of the Deity—one hundred and fifty-eight thousand oaths in one year, and one hundred and seventy-two thousand in another! What an enormous quantity of unnecessary oaths! In the arbitration courts there was no oath whatever necessary. I shudder at the idea of so many oaths being taken in one year, and I had several conversations on the subject, and Lord Nugent did me the high honour to ask my assistance in bringing in a bill to abolish unnecessary oaths and substitute a declaration in their stead. I consented, and we succeeded in passing a bill substituting declarations instead of oaths, and I hope I shall see the day when such will be extended even farther, for I abhor the taking of the sacred name of God in vain, and the man who would tell an untruth in a matter of property would not set the least value on his oath, nor would he at all scruple swearing to what he knew to be false, if he thought it ripe for his purpose. I hope, gentlemen, we will see the day when declarations like the Quakers, which are as binding on the conscience as the oath, will be substituted and used as an oath by all christian men and in all christian countries. I am sure you will not ascribe conspiracy to that, I am satisfied. Well, gentlemen, I now come to the means by which we were to achieve the repeal of the legislative union. The means are pacific, and I would not adopt any other means for the accomplishment of that sacred object. It was said that the meetings were not commensurate with the objects in view, but the object was one that could not be ascertained if the entire Irish people had not called for the repeal of that union. A charge of that description should not be made when the Irish people demanded it. The words of Grattan were that the demand was made backed by the voice of the Irish. I re-echo that word, and the minister was bound to obey that call. We have made the experiment, and we find that the mind of the nation is in favour of a domestic legislature. We have made the experiment—we did not do so without the enunciation of the voice of the Irish people. We have that voice from one end of the country to the other. The voice has gone abroad, and it only remains for the Irish people to call for the restoration of their Irish parliament. When I brought the question before the house of commons, the members who supported it were small—only one Englishman, and not one Scotchman; but what was the change since that time with respect to the measure? And was it not idle and absurd in the last degree to say that anything was intended save the regeneration of the country by the most peaceable means. What has the crown read for you as part of the conspiracy? Why, the rules of the association. [He proceeded to read the rules, which are already before the public.] Mr. O'Connell then continued: This, gentlemen, is the plan of the repeal association. No alternative was held out by these rules but the fullest allegiance, the most perfect loyalty, unqualified peace; and in this way, and no other, was agitation to be conducted. Yet under these circumstances, we have the charge of combination made against us, which amounts to one of conspiracy. That document, gentlemen, is given in proof against us. Well, however, to carry their proof further, the crown have read two other documents. The first is, "the reconstruction of the house of commons," and the second, "the renewed action of the Irish parliament." The first of these was signed upon the 14th of May, 1840, and the second upon the 22d of August, 1843. Now, my lords, this has been read against us as evidence of a conspiracy. And although it has been read before, I think it my duty to read it again.

Chief Justice—What is the date of the document you are about reading from, Mr. O'Connell?

Mr. O'Connell—The 14th of May, 1840, my lord. Mark, gentlemen, that after taking the scale of representation from the returns of the population of the different towns, it begins at page 7, thus. [Here the honourable and learned gentleman read the extract.] Mr. O'Connell then proceeded: Part of that document has been read by the crown, and it distinctly states that by parliamentary means, and by parliamentary means only, was repeal to be obtained. I shall call your attention by-and-by to a portion of that document. The next document was also read, and I am entitled to the full force of all it contains. The crown had no right to select portions from it, and I am entitled to the benefit of the unobjectionable parts, for they had no right to suppress them. [Mr. O'Connell then read "the renewed action of the Irish parliament."] There, my lords, is the evidence for the prosecution—there is the evidence to prove a conspiracy—there is the evidence to prove illegal means—there is the evidence to prove illegal objects. Gentlemen of the jury, I put it to you—it is not my evidence—'tis not I produces it—'tis not we who have called upon it in our defence, though it does contain, I think, an admirable de-

fence; but it is brought before you on the part of the crown, and produced by the Attorney-General; that is the Attorney-General's evidence, and upon that evidence I call upon you to acquit us—you are bound to believe it; there is the plan for repeal, what fault do you find with it? There is a theory introduced into it not called upon for practice, but I insist upon my right to discuss that theory. I may be wrong, but it is a great constitutional question which man is at liberty to discuss, and form his opinions upon. The opinion may be erroneous, but the right is undoubted, and I insist upon it that question ought to be considered in a way favourable to the claims of Ireland. The competency of the Irish parliament to pass the act of union was discussed long before the union itself was talked of. One of the works by which the revolution of 1688 was consolidated was a book written by Mr. Locke upon government. He wrote it for the purpose of sustaining the Whigs of that day—the Williamite Whigs—to prove that James had no title to the throne, and that William was the lawful monarch of England in consequence of what had happened. That book, gentlemen of the jury, was a class book in Trinity College at the time the union passed. It was a book out of which the young men were examined. Shortly after the union it was found inconvenient to let it remain, and for some reason I don't know the cause, but it was withdrawn. But at one time it was a book of authority, and requiring not any council to give it authority; it was the great instrument by means of which the revolution of '88 was achieved, the principle of which revolution no man admires more than I do. In Locke's book on government, I find—

"The legislature (he says) cannot transfer the power of making laws into other hands, for it being but a delegated power from the people, they who have it cannot pass it over to others. The people alone can appoint the form of the commonwealth, which is by constituting the legislature and appointing in whose hands that shall be; and when the people will have said, we submit and will be governed by laws made by such men and in such terms, nobody else can say other men shall make laws for them. The power of the legislature being derived from the people by a positive voluntary grant and institution, can be no other than what the positive grant conveyed, which being only to make laws and not to make legislatures, the legislature can have no power to transfer their authority of making laws, or to place it in other hands."

No doctrine can be more distinct. No delegated legislature, elected for a time, had power or authority to transfer the rights of their constituents to anybody else. Upon this subject Lord Grey was very explicit.

"Lord Grey (then Mr. Charles Grey) said in the British house of commons—'Though you should be able to carry the measure, yet the people of Ireland would wait for an opportunity of recovering their rights, which they will say were taken from them by force.'"

But I have a still more explicit authority. Hear this passage from the speech of Mr. Saurin, spoken on the 15th March, 1800, read by me on the trial of John Magee, in his presence, and adopted with manliness by the Attorney-General of the day:—

"Those great men had assisted in the revolution of 1688—they had put down the slavish doctrines of passive obedience—they had declared that the king held his crown by compact with the people, and that when the crown violated that compact, by subverting, or attempting to subvert, the constitution which was the guarantee and safeguard of that people's liberty, the crown was forfeited, and the nation had a right to transfer the sovereign power to other hands. They had no notion of the doctrines, which he was sorry to see now received—that the supreme power of the state was omnipotent, and that the people were bound to submit to whatever that power thought proper to inflict upon them. At that day such a monstrous proposition as this would not have been tolerated, though now it began to raise its head and threaten the constitution. But he for one would not admit it; he would re-assert the doctrine of the glorious revolution, and boldly declare in the face of that house and of the nation that when the sovereign power violated that compact, which at its revolution was declared to exist between the government and the people, that moment the right of resisting that power accrues. Whether it would be prudent in the people to avail themselves of that right would be another question; but surely if there be this right in the nation to resist an unconstitutional assumption of power which threatened the public liberty, there could not occur a stronger case for the exercise of it than this measure would afford if carried against the will of the majority of the nation."

Nothing can be more explicit than that constitutional doctrine; nothing can be more extensive than its operation. It was asserted by Saurin, quoting the highest authority of the heroes of the revolution of '88, so called of the persons that carried that revolution, that by the English constitution the principle of passive obedience and non-resistance is totally foreign to our constitution—the right to resist, rather a delicate question, commences when the contract is broken; but the existence of a constitutional right of that description shows it. The revolution itself would be void if this doctrine were not true. He then goes on to say:—

"If a legislative union should be so forced upon this country against the will of its inhabitants, it would be a nullity, and resistance to it would be a struggle against usurpation and not a resistance against law."

That was alleged too, with reference to a period after the union was carried; that is, looking to its having all the sanction of form, the great seal of England on the one hand, the great seal of Ireland on the other, and the consent of the crown given to it; yet Mr. Saurin, talking constitutional doctrine, declared it to be a nullity, and resistance to it a matter of prudence. And in a second speech of his, which was published in the shape of a pamphlet—

"You may make the union binding as a law, but you cannot make it obligatory on conscience. It will be obeyed so long as England is strong, but resistance to it will be in the abstract a duty, and the exhibition of that resistance will be a mere question of prudence."

I will be bound by it, says he, as a law, and so say I, but it will be void in conscience and constitutional principle. It will be obeyed as a law, but it will be the duty of the people to exhibit that resistance to it when it is prudent to do so. He did not mean by that resistance, force, or violence—he meant legal and peaceable means—but by means adequate to the purpose while they keep within the precincts of the law. There is another authority—Lord Plunket. He says:—

"Sir, I, in the most express terms, deny the competency of parliament to do this act. I warn you, do not dare to lay your hands on the constitution. I tell you, that if, circumstanced as you are, you pass this act, it will be a mere nullity, and no man in Ireland will be bound to obey it. I make the assertion deliberately. I repeat it. I call on any man who hears me to take down my words. You have not been elected for this purpose. You are appointed to make laws, and not legislatures—you are appointed to exercise the functions of legislators, and not to transfer them—you are appointed to act under the constitution, and not to alter it; and if you do so, your act is a dissolution of the government—you resolve society into its original elements, and no man in the land is bound to obey you. Sir, I state doctrines

that are not merely founded on the immutable laws of truth and reason; I state not merely the opinions of the ablest and wisest men who have written on the science of government; but I state the practice of our constitution as settled at the era of the revolution; and I state the doctrine under which the House of Hanover derives its title to the throne. Has the king a right to transfer his crown? Is he competent to annex it to the crown of Spain, or any other country? No; but he may abdicate it, and every man who knows the constitution, knows the consequence—the right reverts to the next in succession. If they all abdicate, it reverts to the people. The man who questions this doctrine, in the same breath must arraign the sovereign on the throne as a usurper. Are you competent to transfer your legislative right to the French council of five hundred? Are you compentent to transfer them to the British parliament? I answer—No! If you transfer, you abdicate; and the great original trust reverts to the people from whom it issued. Yourselves you may extinguish, but parliament you cannot extinguish. It is enthroned in the hearts of the people—it is enshrined in the sanctuary of the constitution—it is as immortal as the island which it protects. As well might the frantic suicide hope that the act which destroys his miserable body should extinguish his eternal soul! Again I therefore warn you. Do not dare to lay your hands on the constitution—it is above your powers."

Oh! it is a beautiful passage—"As well might the frantic suicide hope that the act which destroys his miserable body should extinguish his eternal soul! Again I therefore warn you. Do not dare to lay your hands on the constitution—it is above your powers." I insist on the truth of that constitutional law. I take the qualification as laid down by Saurin—it is binding as a law while it continues to have the form and shape and pressure of law—but it does not bind on conscience or principle—a right—though it had been said to me, why this would make all the acts which were passed since the union void. I deny it—it would do no such thing. I say they are voidable, but not void. It has been said, you would by that repeal even the emancipation act. If I could get the repeal of the union, I would make you a present of emancipation. Where do I find the principle of its being voidable, not void. I find it in the language of Saurin. I may be wrong in this position, but I cannot be wrong to argue from it. It may be said that this act is to be obeyed, and it is to be considered as law. Gentlemen of the jury, the point was raised already in 1782, when the Irish parliament declared that no power on earth could bind the Irish people but the king, lords, and commons of Ireland; and there was an act passed to that effect, the consequence of which was to do away with the authority of all laws passed in England, and which were binding on Ireland, though they regulated the property of Ireland; but Chief Baron Yelverton stepped in, and by his act declared all laws passed in England to be binding in Ireland, and that they should continue to do so. But it may be said this is inconsistent with our allegiance—I deny it; for this authority exists in the Queen, which can only be exercised through her responsible minister. It is no derogation of her power—it is rather an increase of that power. And shall I be told this of a country which had made so many irregular successions? Richard the Second was dethroned by parliament—so was Richard the Third, and Henry the Seventh set up. When also the royal succession was altered in the reign of Henry the Eighth, and settling nothing, there was another alteration at the time of the Revolution in 1688—so that there could not be anything illegal in discussing this question. Surely not. There may be a mistake—there may be an error, but there cannot be crime to discuss the matter publicly, undesignedly, and with the sustentation of the authorities I have addressed. You have Saurin, and Plunket—you have Locke, you have Lord Grey, giving their opinions in favour of it. I draw to a close. I now come back to the evils of the union, and I would look to every honest man to exert himself for its repeal. Would it not cure the odious evils of absenteeism? It was calculated by an able man that 9,000,000*l.* a year pass out of this country; the railway commissioners reduce it to 6,000,000*l.* Take the reduced amount, and I ask did ever a country suffer such an odious drain of 6,000,000*l.* of absentee money?—6,000,000*l.* raised every year in this country not to fructify it—not to employ the people of the country—not to take care of the sick, and poor or desolate—but 6,000,000*l.* are transplanted to foreign lands—sent there, but giving no return—leaving poverty to those who enriched. Take 6,000,000*l.* for the last ten years. Look now at 60,000,000*l.* drawn from this unhappy country. Take it for the next six years—can you in conscience encourage this? There is a cant that agitation prevents the influx of capital. What is the meaning of that? We do not want English capital; leave us our own 6,000,000*l.* and we shall have capital in abundance. We do not want that left-handed benevolence which would drain the country with one hand and let in niggardly with the other. There is another item which exhausts the resources of this country, and that to the amount of nearly 2,000,000*l.* annually; in the last year it was so low as 700,000*l.*, but whether the one or the other it is drawn out of the country never to return. There is again the Woods and Forests. That department receives 74,000 a-year out of Ireland in quit-rents, &c. How was that expended for the last ten years? between the Thames Tunnel and to ornament Trafalgar-square. We want an additional bridge in Dublin. Why have we not the 74,000*l.* for that purpose?—have we not as good a right as that it should be expended on Trafalgar-square? If we had the parliament in College-green would that 74,000*l.* be sent to adorn a square in London? Have we not sites and squares enough in Dublin for the purposes of public utility? There are other evils attending this continued drain on the country. I remember there having been quoted in parliament the work of Mr. Young, a political economist, who journeyed in Ireland in '78, who, in speaking of the increase of population, he accounted for it by the never-failing bellyful of potatoes—they had all a bellyful of potatoes, and to that he attributed the increase. But is that the case now? Has not the country sensibly declined—is not even one meal of potatoes a treat and a treasure? According to the evidence of the commissioners of poor law inquiry the people are now in rags. Was this my language? No, gentlemen. I appeal to yourselves—are they not reduced to misery and wretchedness, frittered away by periodical famine? and there were six or eight since the union. There was relief from England, while provisions were in quantities transported from this country; provisions were in the country while the people were perishing with hunger: but those provisions were exported from the country. But the poor law commissioners report the following frightful picture. But first let me tell you that the population commissioners' report shows the aggravation of the evil. The gentleman who made that report is a military officer—Captain Larcom—a man of science, of integrity, and of honour. He reports the state of the population to be this, that 30 per cent. of the town and city population were in abject poverty, and that 70 per cent. of the agricultural were in abject poverty. These are not my words, they are the words of Captain Larcom. Where, then, is the advantage of the union, which has thus increased

poverty, bringing pestilence, and involving our poor in misery and filth? Gentlemen, why should we not adopt any plan by which we would escape from these horrors? To be sure, the poor law commissioners go more into details. Mind you, gentlemen, this is evidence made on oath before the poor law commissioners. Allow me to read some of it to you. "One family had but one meal for the space of three days—another subsisted on a quart of meal a-day—another lived on a little boiled cabbages without anything to mix with them." Gentlemen, I will not harass your feelings by reading any more, the book is full of them; and are two millions three hundred thousand of your fellow-countrymen to live in a state of positive destitution and nothing be done for them? Is no effort to be made? Permit me to call your attention to a few passages of a report of a meeting held last Monday week, in reference to the sick and indigent of your city. [Mr. O'Connell then read an extract from *Saunders*, detailing the misery which pervaded the city.] Can any language of mine describe the misery which exists more fully? Another hideous feature of Captain Larcom's report is, that the population is diminishing by 70,000 in ten years. It increased from the period of 1821 to 1831, and from that to 1841 the population has diminished by the number of 70,000, who would have been all reared up if they had anything to support them; and are we to be hunted down, who are the friends of the poor? Are we, who wish to have industry rewarded—are we, I ask it on every principle of sense and justice, are we to be prosecuted and persecuted for seeking the means of relieving this distress? We have the means of relief in our power; we live in the most fertile country in the world, no country is in possession of such harbours, the earliest historical mention of which is made by Tacitus, admitting that our harbours are the best, and that consequently they were more crowded. The country is intersected with noble estuaries. Ships of five hundred tons burden ride into the heart of the country, safe from every wind that blows. No country possesses such advantages for commerce, the machinery of the world might be turned by the water-power of Ireland. Take the map, and dissect it, and you will find that a good harbour is not more remote from any spot in Ireland than thirty miles. Why is not the country prosperous? Did I not read for you of the unheard-of magical prosperity that followed her legislative independence? Did I not read extracts from the writings and speeches of men most adverse to Ireland—of men most anxious to conceal her greatness as evidence of her increasing prosperity under her parliament? What happened once will surely happen again. Oh, gentlemen, I struggle to rescue the poor from poverty, and to give wages and employment to those now idle—to keep our gentry at home by an absentee tax after the example of the government last year, if by no other means, and compel them to do their duty to their country. I leave the case to you—I deny that there is anything in it to stain me with conspiracy—I reject with contempt the appellation. I have acted in the open day in the presence of the government—in the presence of the magistrates; nothing was secret, private, or concealed—there was nothing but what was exposed to the universal world. I have struggled for the restoration of the parliament to my native country. Others have succeeded in their endeavours, and some have failed, but, succeed or fail, it is a glorious struggle. It is a struggle to make the first land on earth possess that bounty and benefit which God and nature intended.

The Chief Justice inquired if the traversers were going into evidence, and being informed by Mr. Moore and Mr. Hatchell that the witnesses could not be conveniently produced this evening, the court adjourned to the usual hour next morning.

TWENTIETH DAY.

TUESDAY, FEBRUARY 6.

The court sat a few minutes past ten.

The jury and traversers having answered to their names,

Mr. Moore, Q.C., immediately rose, and said that, as counsel for the traversers, he would avail himself of the indulgence of their lordships, which was so kindly granted by them on the preceding evening; but as they did endeavour, to the utmost of their power, to go through the evidence which was already adduced in the case to the court, and which, with few exceptions, was established in their favour by the crown, they meant, therefore, to rest their defence on what had already appeared before their lordships. They had brought a considerable number of witnesses to town; they were in town at present, and able to prove a certain number of facts; but, under the circumstances stated, they came to the conclusion that they would not be warranted to take up the time of the court to establish what had been already considerately established. They would, therefore, examine but very few witnesses.

F. W. CONWAY, ESQ., PROPRIETOR AND EDITOR OF THE DUBLIN EVENING POST, SWORN, AND EXAMINED BY MR. HATCHELL, Q.C.

Where do you reside at present? At Rathmines road.

Did you live in or near the city of Dublin in the year 1810? I did.

Were you at that time in any way connected with the *Freeman's Journal*? I was editor.

Do you recollect, in the year 1810, having attended a meeting at the Royal Exchange, at a discussion of the question of repeal? Yes.

I need scarcely ask you whether you know Mr. O'Connell? I do.

Did you know him personally at that time? Yes.

Do you recollect having seen him at that meeting on that occasion? I do.

Was there a chairman at that meeting on that occasion? Yes.

Do you recollect who was the chairman? His name was Sir James Riddle, who was high-sheriff at that time.

Do you recollect what was the object of the meeting as announced? To petition for a repeal of the union.

You have with you a statement of the proceedings at the meeting? I have.

Were you present at the whole of those proceedings? I was.

Were you in any way connected with the meeting? I was secretary.

What did it purport to be a meeting of? Of the citizens of Dublin.

Are you able, by looking at the file of the *Freeman's Journal*, to assist your memory as to what took place? I read the proceedings last night; the report was given on 19th September, 1810; the meeting took place the day before.

Was the petition agreed to? It was.

What do you say was the purport of the petition? It prayed for a repeal of the act of union.

Are you able to state who were the principal persons who took part in the proceedings? The leading persons at the meeting were Mr. Shaw, the present Sir Robert Shaw, and Colonel Talbot.

Was the petition agreed to? It was.

Did Mr. O'Connell speak at the meeting? He did.

Was his speech reported in the *Freeman's Journal*? Yes.

Did you hear him make that speech? I did.

Did you see the report in the *Freeman's Journal* shortly after the speech was made? I did.

Are you able to state whether it was an accurate report? Two reports appeared in the *Freeman's Journal*. With regard to the topics, I am quite sure they were all correctly given. The second report was more correct; the periods were better rounded. We had not so good a corps of reporters in Dublin as we have now.

But substantially the topics were the same in both reports? Yes; but the second report was decidedly the best. [The witness then read the speech referred to.] I am now connected with the *Dublin Evening Post*. In the year 1800, John M'Ghee, senior, was the proprietor of that paper. The file of the *Dublin Evening Post*, of the 14th January, 1800, was then handed to witness, and having pointed out in it a speech of Mr. O'Connell's made at a meeting of Roman Catholics, it was read to the court by Sir Colman O'Loghlen. The speech adverted to the means by which the act of union was procured, the evils it entailed on the country, the necessity of struggling for its repeal, even though the agitation for emancipation should be abandoned for that purpose.

Sir Colman O'Loghlen read from the *Freeman* of the 10th May, 1810, the address of the freeholders of the city of Dublin to Mr. Grattan; he also read the answer of that gentleman. The learned counsel read another address from the same body to Sir Robert Shaw, with that gentleman's answer. He also read from the same paper a very numerously-signed requisition for the repeal of the union.

The Attorney-General repeated his objection to this evidence.

Chief Justice—The objection comes very late; other evidence of nearly a like nature was admitted without objection.

Attorney-General—We have not sought to exclude the documents already read, because they had reference to what was said by Mr. O'Connell himself at those meetings relating to the repeal of the union; but it appears to me a very different question with regard to the present objection. It is as much that the public time should not be unnecessarily occupied, not caring much whether it is proved or not.

Chief Justice—It is very little value one way or the other.

Mr. Hatchell—Having been opened in statement by Mr. Sheil we thought it right to offer evidence to that effect.

Judge Crampton—It's quite outside the issue to be tried in this case.

CROSS-EXAMINED BY MR. SERGEANT WARREN.

I believe you were proprietor of the *Freeman's Journal* in 1810? I was editor.

That paper has since passed into other hands? It has.

How long is it since you ceased to be connected with it? In 1812 or '13.

And you are now connected with another paper? I am the proprietor of another paper.

What paper is that? The *Dublin Evening Post*.

The witness then left the table.

JAMES PERRY AFFIRMED BY THE CLERK OF THE CROWN.

Chief Justice—What religious sect or denomination do you belong to, Mr. Perry? To the Society of Friends. I am a Quaker.

To Mr. Whiteside—I am a member of the Society of Friends. I have got the rules of that society in reference to the question of arbitration.

Attorney-General—I certainly object to any evidence being received in reference to the rules of the Society of Friends.

Mr. Whiteside said he had only a few short questions to put with respect to the practice of arbitration; and he had no objection that Mr. Perry should so guard his answers as not to commit himself, or the Society of Friends, to a charge of conspiracy by the counsel for the crown (laughter). The rules of arbitrators which he (Mr. Whiteside) proposed to give in evidence, were the same as those adopted by the traversers; and it was clearly his right to show by that fact, that the traversers had no intention to subvert the jurisdiction of the Queen's courts of justice.

The Attorney-General—I entirely object to this evidence being received, as illegal and unfounded on every legal principle. I think the validity of the objection is so obvious that I need not waste the public time in arguing it. I have had a very great disinclination to interrupt counsel in stating a case, when matters may be stated which are not properly admissible in evidence. It is a very inconvenient course to interrupt the statement of counsel, but I shall now take the opinion of the court as to whether this evidence can be received. He proceeded to say that his objection was, that that which was legal in itself, in consequence of the purity of the intention, which he acknowledged in the Society of Friends, could not be admitted to justify an act, the illegality of which arose from the criminal object with which it was done. Bearing in mind this distinction, he submitted that the rules of the Society of Friends had no relation whatever to the issue, and could not be put in evidence to show the intention of the traversers, which was the gravamen of the charge.

Mr. Whiteside submitted that his question was more to the point than the question to, and answer of, Sir Robert Peel in the house of commons. The rules of this body had been framed years ago, and acted upon ever since.

Mr. M'Donogh, for the traversers, contended that it was alleged that the parties here entered into certain rules with a certain intention, it was competent to them, being necessary for their defence, to show that similar rules had been entered into by a large and most respectable community of persons, and had been acted on by them for a series of years, without even the imputation of a criminal intention. The evidence of this custon was, he submitted, of importance to the traversers.

Mr. Fitzgibbon was about offering some observations, when

The Chief Justice said that the court thought that hearing the counsel at each side was sufficient.

Mr. Sergeant Warren followed in support of the objection. If the arbitration regulations were legal in themselves, they did not require to be supported by the rules of the Quakers or any other body, and, therefore, should stand or fall by themselves. On the other hand, if the regulations of the arbitration courts instituted by the traversers were intrinsically criminal, and at variance from the law, it was absurd to contend that they could be legalised or rendered less obnoxious to the law by the circumstance of the arbitration courts founded by the Society of Friends being also illegal; the legality or illegality of the repeal arbitration courts could not in any wise be affected by the legality or illegality of similar courts established by any other class of persons whatsoever, and as a principle was involved he protested against the receiving of the evidence which was offered on the other side, for he thought that a principle was involved, and if this evidence were admitted, it was plain that the court might as well enter into the investigation of any regulations of clubs or societies in England or Ireland. If the present evidence were admitted he could not understand on what plea the court could refuse to hear evidence respecting the regulations of each district class of religionists in the country. In the celebrated case of Horne Tooke an effort was made by the counsel for the traverser to give in evidence cer-

tain resolutions which were passed with impunity in England and in Scotland, and which it was contended were similar to the resolutions for which the London Convention was prosecuted; but the court were on that occasion unanimous in deciding that the resolutions could not be admitted in evidence, and Mr. Erskine acquiesced in this judgment. The cases, he contended, were completely similar in point of law, and the principle involved was identical.

The Chief Justice delivered his judgment. He said—In my opinion the evidence is clearly admissible, and the nature of the charge brought against the traversers is such as to prove that it ought to be received. The indictment is this, or to this effect, that the traversers conspired together in order to bring into disrepute the Queen's courts of justice and the tribunals of justice existing by law in this country, and to substitute other modes of determining differences between the Queen's subjects in derogation of the Queen's courts. Surely it cannot be contended but that the *animus* or intent with which these things are done enters into the essence of the charge. The traversers are charged with having established the arbitration system with the criminal intent of depreciating her Majesty's courts and bringing them into disrepute, and surely they ought to be permitted to adduce such evidence as they suppose will have the effect of proving that their motives and intentions were not of the nature attributed to them. In a question of intention of this kind, when the question is *quo animo*, these things were done. It is essential that the court and jury should have the fullest and most authentic evidence before them, and it is perfectly fair that the traversers should be permitted to submit to the consideration of the court this proposition, whether there is not a vast number of highly respectable men in the community who, without any criminality having ever been alleged against them, have adopted a plan exactly similar as the traversers aver to, that for the adoption of which they (the traversers) are now put upon their trial. They no doubt allege that their intentions in adopting the arbitration system is equally pure as the intention of the Society of Friends. They assert that one of the most respectable classes in the community adopted similar practices without ever having been objected to; and surely these are matters fit to be inquired into and taken into consideration when we find that the traversers are accused of having established the courts with a criminal intent. In this view of the subject I think the evidence is clearly admissible.

Mr. Justice Crampton said he was sorry to be obliged to differ from the Lord Chief Justice, and he believed from the rest of the court also. A legal principle, however, was involved, and he could not acquiesce in the reasoning by which it was endeavoured to make such evidence admissible on the present occasion. It was very true that a question of intention might be involved in the present case, and the object of the traversers in bringing the present witness on the table might be to show that the intention imputed to them by the indictment was erroneously imputed; but I am rather inclined to think that the intentions of a party in doing particular acts is to be decided from his own acts and his own declarations, and not from the actions and declarations of other persons. If the principles adopted by the traversers were just, and fair, and legal, they were just, and fair, and legal without any reference being had to the course adopted by the Quakers, who were no doubt a highly respectable class of men; but if on the other hand these principles were illegal, they could not be legalised by saying that they had been sanctioned and adopted by the Quakers. The institution of such bodies as arbitration courts might, in the abstract, be very legal and innocent, and certain it was that nobody had ever accused the Quakers with having made their arrangements as to arbitration with the view of bringing into disrepute the tribunals by law established. Their arrangements were, therefore, perfectly legal. But the allegation in the present case was, that another body of persons, to wit, traversers, had adopted the same course as the Quakers, but with a very different intent indeed; and he could not see how the purity of the traversers' motives could be demonstrated by a reference to the purity of any other man or men whatsoever. Many acts, which in themselves were legal, were rendered illegal by the intention, and he thought that the only fair criterions of the intentions of a party accused were the acts and declarations of that party. If this evidence were admitted, a precedent would be established for admitting in evidence the regulations of every political club or society in England; nay, they might even cross the Atlantic, and give in evidence the regulations of societies in America.

Mr. Justice Burton said that at first he was not aware that there was any difference of opinion amongst his brethren of the bench, otherwise he would have expressed his opinions before now. The subject was one which admitted of some doubt, for it appeared that Judge Crampton dissented; but he (Mr. Justice Burton) fully concurred in the view taken of the point by the Lord Chief Justice. The question which arose here was, whether the mode proposed by the traversers for the purpose of settling differences was done, as charged in the indictment, with the intent to bring the courts of justice throughout the country into contempt. That was the question; and as it was averred that that was the intent, the traversers had a right to show that it was not done with that intent. The traversers had clearly a right to show that in many instances certain bodies of persons, from a sentiment and desire to keep in peace with their neighbours, and having disputes settled without expense, had adopted the same rule of arbitration, and for that purpose the traversers referred to bodies, not merely the Quakers, but to persons concerned in mercantile questions, and questions that might arise in matters of commerce or maritime affairs, and it was contended in this case that the intent was precisely the same, and that it was not to bring the courts of justice into contempt. That was a question, not for the court, but for the jury, and surely if that be the question the traversers had a right to show that their object in forming these courts was merely for the purpose of facilitating the termination of disputes of that description. If they chose to have that question submitted to the jury, he (Mr. Justice Burton) could not see how it could be kept from them.

Mr. Justice Perrin said he concurred in the opinion expressed by the Lord Chief Justice and his brother Burton. The first count of the indictment charged the traversers with intending to bring into disrepute and contempt with her Majesty's subjects tribunals established for the administration of justice—that they did conspire, amongst other things, to diminish the confidence of her Majesty's subjects in the administration of the law, with intent to induce them to withdraw the adjudication of all their differences from the cognizance of courts of law, and to send them to courts of arbitration. That was the charge, and the present was the most material evidence, inasmuch as it went to show that that highly respectable body of her Majesty's subjects for a great succession of years had adopted and published rules having the same tendency. He quite agreed that this evidence did not conclude the question, and it would be very important matter for inquiry what the intention was; but plainly it was evidence. They referred to the Society of Friends and to the Ouzel Galley, to show that the course of proceeding re-

specting arbitration courts did not necessarily involve the criminal intent. The traversers had, however, not merely to prove those rules, but should go further and show cases in which the acts of the arbitrators made by those rules were agreed to and held binding. Would not that be powerful evidence to go to the jury, to show that this course of proceeding could not necessarily involve a criminal intent? and that was the only point here.

The witness then read the following rules of the Society of Friends respecting arbitration:—

"Advised—That all friends do keep out of differences; that one friend go not to law with another. And it being considered in this meeting that it is inconvenient and of bad consequences for friends to be forward in going to law, advised—that all friends be careful to avoid as much as may be, and endeavour to live at peace with all men, for we are called to peace, and to be a peaceable people.—D. 1677.—1687.—1807.

"Advised—That no friends shall go from the order of truth, and former advice, to sue one another at law, but that all differences among friends be speedily ended by themselves, or by reference, and not prolonged or delayed.—L. 1690.

"Friends are desired to be zealously and heartily concerned to put a speedy end to differences that may happen between any friends; and that when any disagreement is determined, the persons concerned do quietly submit thereto, without showing discontent, or using any reflections or unseemly expressions either against the arbitrators or person or persons with whom the difference had been; and that all other friends forbear raising unnecessary discourses thereon, whereby to endeavour to bring friends into a liking or disliking of the case either on the one hand or the other; and thereby make parties, either while the matter is before the arbitrators or afterwards; but rather that all should endeavour to promote love and peace.—D. 1720.

"Let friends everywhere be careful that all differences about outward things be speedily composed between themselves *or by arbitrators*, without troubling monthly or quarterly meetings with such affairs; and it would be well that friends were at all times ready to submit their differences, even with persons not of our religious persuasion, *to arbitration rather than contend at law.* Hear the causes between your brethren, and judge righteous between every man and his brother, and the stranger that is with him.—L. 1737—1833.

"Whereas it sometimes happeneth, to the hurt of truth and grief of many friends, that differences do arise among some professing truth about outward things, it is therefore by this meeting thought convenient, and advised, when any friend or friends shall hear of any such difference betwixt any friends in which they belong, that they forthwith speak to, and tenderly advise, the persons between whom the difference is, to make a speedy end thereof; and if such friend do not comply with their advice, that then they take to them one or two friends, now and again exhort them to end their difference; and if they, or either or any of them, refuse, then to let them know that it is the advice and counsel of friends that they should each choose an equal number of indifferent, impartial, and judicious friends to hear, and speedily determine the same, and that they do bind themselves to stand to their award and determination, or the award and determination of the major part of them, that shall be made and signed by the arbitrators, or the award and determination made and signed by the umpire, if there be one agreed unto.

"Also this meeting doth advise, that if any friend shall refuse speedily to end the difference, or refer itas before advised, complaint be made of that person unto the monthly meeting to which he doth belong; and if, after admonition, he shall refuse to so refer his case, that the meeting do testify against such person, and disown him to be of our society. And if any friends that shall be chosen to hear and determine any such difference as aforesaid, after they have accepted thereof, and the parties differing are become bound to stand to their determination, shall decline and refuse to stand and act as arbitrators, that then the person or persons so refusing be required to give the reasons of their refusal unto the monthly meeting unto which they belong; and if that meeting shall not esteem those reasons sufficient justly to excuse them, then the meeting is to press them to stand to what they have accepted; and if, after such admonition, they shall continue to refuse to stand as arbitrators, that the meeting do testify against them, or either of them, as such are not subject to the just rules of our society, neither ought to be admitted thereunto, until he or they condemn or retract the same.

"And it is the advice of this meeting, that persons differing about outward things, do as little as may be, trouble ministering friends with being arbitrators in such cases. And that all persons differing be exhorted by the monthly meeting to which they belong when their cases are referred, and judgment and award made, signed, and given thereon as aforesaid, to stand to and perform the said award which they have bound themselves to perform; and if any one shall refuse so to do, that then the monthly meeting to which such person may belong, upon notice thereof to them given, shall admonish him thereunto; and if, after admonition, the present to refuse, then the meeting do testify against him.—1697.

"It is the sense and judgment of this meeting, that if any member of our religious society shall arrest, sue, or implead at law, any other member of our religious society before he hath proceeded in the way hereinbefore recommended, such persons doth therein depart from the principle of truth and the known way thereof, and acts contrary thereunto, and ought to be dealt with by the meeting he belongs to for the same; and if he shall not give satisfaction to the meeting for such his disorderly proceeding by condemning it and himself therein, that then he be disavowed by the meeting. Or if the party so sued or arrested, taking with him, or, if under confinement, sending, one or two friends to the person who goes to law, shall complain thereof, the said person shall be required immediately to stay proceedings; and if he does not comply with such requisition, the monthly meeting to which he belongs shall disown him, if the case require it."

Mr. Whiteside—Have you known those rules to have been acted upon by the Society of Friends? They have been, as far as I know, uniformly acted upon.

Have those who disobeyed them been expelled? I have no recollection of any instance of it, but they would be expelled if they disobeyed those rules.

Were you yourself a member of the Ouzel Galley? No, I was not.

But you are aware of the existence of that body? I am. I was a party to an arbitration in the Ouzel Galley, and I saw Mr. Brewster there (laughter).

WILLIAM COSGRAVE EXAMINED BY MR. M'DONOGH, Q.C.

You are connected with the Ouzel Galley? I am; I am secretary and register of it.

You have been some years acting in that capacity? I have, since 1810.

Have you been present at any arbitration during that time? I have at most of them all. The parties called on me and named arbitrators—then I handed them this printed deed of submission, and they signed it.

Mr. M'Donogh—Are those proceedings taken pursuant to the rules of the society? They are.

What number of persons compose the society? About forty when it is full; sometimes there are not so many, but it is filled up as soon as possible. When claims are referred to the society the party claiming generally names the arbitrator.

Tell me the names of the gentlemen who compose the society? Thomas Crosthwaite, Arthur Guinness, James Charles, Thomas Wilson, William W. Colville, John Hone, Thomas Maxwell, George Law, Henry Wilson, S. Boileau, William Fortescue, and—

Mr. M'Donogh—That will do.

Chief Justice—That's quite enough for the present.

Mr. M'Donogh—Are there certain fees paid by the parties to the society? Yes, when parties come to have arbitration, they are required to lodge four guineas each to pay the expenses of the arbitration, and then the case is settled by the arbitrators.

Then the deed of submission is signed by the parties? It is, that it may be made binding and enforced in the court.

CROSS-EXAMINED BY MR. BENNETT, Q.C.

It is to those who chose to refer their differences to the society that arbitration is granted; it is open to any person, and strangers may refer their differences to it; it is a part of the deed of submission to be made a rule of court; the parties referring to the arbitrators name their own person.

Judge Crampton—The party names the arbitrator himself? Yes, my lord; one names one, and the other names another member of the society.

Mr. Bennett—Do you believe the society is incorporated by charter or otherwise? I don't believe it is, as it is a very old society, and I am not aware they are incorporated by act of parliament.

MR. CHARLES VERNON SWORN AND EXAMINED BY MR. FITZGIBBON.

I am registrar of newspaper stamps in the stamp-office.

Mr. Fitzgibbon—Produce the *Morning Register* of September 14, 1841. I have it here; I see a speech of Mr. O'Connell's in it.

Mr. Fitzgibbon—I have no desire, my lords, to have each of the speeches read, but I am willing to have the portions which I referred to in my statement read. However, if the other side wish I have no objection to the whole of the speeches being read.

Attorney-General—I don't know how this paper can be made evidence at all, and therefore I object to it.

Mr. Fitzgibbon—The publicly-expressed opinions of O'Connell on the subject is in issue, and I do not see how it can be objected to here. We have it here in one of the papers which the Attorney-General alleged was authorised and circulated by the association.

Attorney-General—No, no.

Mr. Fitzgibbon—Yes, yes; you said so.

Attorney-General—There was no daily paper circulated by the association at all; it was only three-day week and weekly papers the association circulated.

Mr. Fitzgibbon—They have given in evidence here several morning newspapers, without producing the reporter who reported the speeches read out of the same papers by the crown; now, here is one of the newspapers which contains the opinions of Mr. O'Connell on this subject, and which always published the proceedings of the association the next morning, and we want to prove this out of the papers, which are not very many.

Judge Burton—Is the paper one of those which published the proceedings, and which was read here?

Mr. Fitzgibbon—It was not read here, my lord, but is a paper which published the opinions of Mr. O'Connell; it is the *Register*, which has since merged into the *Freeman's Journal*, and———

Solicitor-General—The only paper we have given in evidence is one which we proved Dr. Gray to be part proprietor of, and it is quite useless to say that they can have recourse to another paper now, and say it is evidence.

Judge Crampton—If Mr. Fitzgibbon proves the speech to have been made by Mr. O'Connell, then he will admit the paper in evidence.

Solicitor-General—We think there is a vast difference between this paper and that which we read in evidence.

Mr. Fitzgibbon—It is alleged here that the defendants conspired to raise disaffection, &c., in the minds of her Majesty's subjects, and———

Judge Crampton—Can you show that is a speech of Mr. O'Connell's, and spoken by him as published in that paper? If you do not, you prove nothing, and in that case the paper cannot be admitted in evidence.

The *Freeman* of the 27th September, 1841, was then produced.

Solicitor-General—I object to that paper being given in evidence. We do not object to the production of any paper published in 1843; but a speech delivered by Mr. O'Connell in 1841 being called for to be read, the proper evidence is the reporter. They have not produced him, or accounted for his absence. He never before heard such a proposition, as that a newspaper was sufficient evidence of the delivery of a speech.

Mr. Fitzgibbon—The question here is, is what was published by Mr. O'Connell and Dr. Gray criminal. We offer in evidence their acts, and we now confine ourselves to acts which occurred since the formation of the repeal association.

Mr. Justice Crampton—How do you show they are their acts?

Mr. Fitzgibbon—Dr. Gray is the proprietor. He is said to be one of those who conspired to circulate inflammatory matter. I want to show that he circulated with equal anxiety matter of a legal and peaceable tendency.

Mr. Sheil—My lords, in Horne Tooke's case matter written by him twelve years before was admitted to be read, and the paper now produced was published by Dr. Gray very lately.

Mr. Justice Crampton—That is quite a different case from the *Morning Register*.

Chief Justice—I think it admissible.

Solicitor-General—I have sent for an authority which I will have in court in a few minutes, which I think will satisfy the court that it is not admissible.

Mr. M'Donogh—At the trial of Mr. Cobbett, in July, 1831, he offered in evidence a speech made by him at Salisbury. The Attorney-General opposed the admission of it, but it was admitted by Lord Tenterden.

Solicitor-General—My objection is that they have not proved it to be a document published by Mr. O'Connell or Dr. Gray. The act of parliament does not allow statutable proof of the publication to be sufficient in favour of the proprietor.

Mr. Justice Burton—The fact of publication by Dr. Gray ought to be proved.

Mr. Fitzgibbon (to the witness)—When did Dr. Gray become the proprietor? On the 8th February, 1841.

Solicitor-General—That answer does not remove the objection, which is, that the statutable proof of proprietorship cannot be given in favour of the proprietor. If you want to prove it in his favour, you must do it in the ordinary way. In the case to which I before alluded, an action was brought against

the proprietor of a newspaper for matter contained in one of its numbers. He tendered as evidence in his favour other copies of the same paper, and offered to prove the publication under the statute, but was not allowed. He did not object to the proof of the speech of 1810, as it was proved, independent of the newspaper, by a person who was present.

Mr. Brewster—The case alluded to is Watts against Frazer, and it is sent for.

Mr. Whiteside—Cobbett was allowed to give, in proof, one of his *Registers*, without any evidence of proprietorship being given.

Mr. Justice Crampton—Was it objected to?

Mr. Whiteside—No.

Mr. Justice Perrin said the court was waiting for authority.

Mr. Sergeant Warren referred to 7 Adolphus and Ellis; after which he stated there ought to have been either a reporter or some reputable person to prove, as was offered in the case of Mr. O'Connell's speech in 1810.

After which discussion as to the admissibility of the newspaper, it was ultimately handed to Mr. Vernon of the stamp-office.

Mr. Fitzgibbon—What date is that paper? It is dated the 5th November, 1841.

You perceive in that paper the proceedings of the association? I do.

Go to the passage that is marked.

The witness then read the portion marked, and also a letter from Dr. Gray, published in the same paper.

A resolution of Mr. O'Connell, to the effect that the letter should be inserted on the minutes of the association, was then read.

Mr. Fitzgibbon then said—Have you the declaration of Dr. Gray, proprietor of the *Weekly Freeman?* I have not.

It then having been proposed that the witness should read from the file of the *Weekly Freeman* produced by the defendants a speech delivered by Mr. O'Connell,

Mr. Brewster said—This is not the stamp-office copy that is produced?

Mr. Fitzgibbon—Can any man in the world entertain a shadow of a doubt that the type is precisely the same; and, in the name of common sense, I ask, can there be any objection to Mr. Vernon reading from the copy produced?

Judge Crampton—Common sense ought to tell you, Mr. Fitzgibbon, that the one is evidence and the other is not.

The Attorney-General not objecting, the witness proceeded to read the speech, in which Mr. O'Connell adverted to the necessity of having the franchise extended, and equal rights and privileges meted out to all parties without distinction. He also referred to what he considered the injustice of having the majority supporting the church of the minority, and expressed his opinion that the ecclesiastical revenues might be appropriated to the education of the people at large. The state of the representation was next noticed, and a comparison made between this country, England, and Wales, for the purpose of showing that Ireland was inadequately represented in the imperial parliament.

Mr. Bourne, at the request of Mr. M'Donogh, read from the *Pilot* of the 15th of April, 1840, the plan of the National Association.

Their lordships retired for a short time.

When the court resumed its sitting,

Mr. Bourne proceeded to read from a report published in the *Pilot* of Wednesday, April 12th, 1843, Mr. O'Connell's speech at the repeal association. He also read the address of Mr. O'Connell, to Mr. Robert Tyler, son of the President of America, conveying the thanks of the association to him for his speech.

Mr. M'Donogh—That is all I shall trouble you to read from these two papers at present.

Sir Colman O'Loghlen said there were some documents which were proved by Browne the printer, and we intend to hand them in as read. Browne proved that those documents were printed for, and paid for by the association. The first is entitled "A series of Reports of the Loyal National Repeal Association, first and second series."

Chief Justice—Reports on what subject, Sir Colman?

Sir Colman O'Loghlen—Reports on different subjects, published, circulated, and paid for by the repeal association.

Sergeant Warren—There is no proof of their circulation by the association.

Mr. Whiteside—Yes, there is. Browne proved they were printed and paid for by the association.

Chief Justice—We have heard no statement about them yet. Let us hear what they are.

Sir Colman O'Loghlen—The title page of this one is the "First series of Reports of the Loyal National Repeal Association of Ireland, dedicated to the people of Ireland by Daniel O'Connell, M.P."

Judge Perrin—What is the date of that document?

Sir Colman O'Loghlen—The date on the title page is 1840; they are printed by Browne, for the association.

The Clerk of the Crown then proceeded to read the first report of the repeal association, which was dedicated to the people of Ireland by Mr. O'Connell.

Attorney-General—We assume for the present, that the whole of that document is read for the present.

Sir Colman O'Loghlen—Of course, we enter all as read, but at present I wish to have the first passage read.

Chief Justice—Let it be entered as read, but let us see what they are about.

The Clerk of the Crown then proceeded to read the following extracts from the report alluded to:—

"I dedicate these reports to you; they were written by one of yourselves for the benefit of you all—they have met the approbation of the national repeal association, and therefore I have no hesitation in recommending them for your perusal.

"Read them attentively—they will show these things—

"First—That the union was no compact or agreement made between parties entering into arrangement with one another—it had not any one of the features or ingredients of a contract or a bargain.

"Secondly—That the union was carried by the open employment of military force and violence, and under the rule of martial law, in the total absence of constitutional protection for life, limb, and liberty.

"Thirdly—That the most enormous and profligate bribery and corruption were also used in order to achieve that measure—bribery the most extensive and complicated, the most barefaced and profligate, that ever disgraced the actors in any political transaction since the beginning of the world.

"Fourthly—That the union was in its terms thoroughly unjust and oppressive to the Irish people.

"Fifthly—That the union law refused to Ireland an adequate representation in the united parliament, and this enormous injustice was perpetrated with reckless carelessness.

"Sixthly—That the union saddled Ireland, and charged all the property of the Irish people, with no less a sum, in the first instance, than four hundred and forty millions sterling, not one shilling of which was justly, or fairly, or even in point of fact, chargeable to Ireland; and such enormous injustice has since been augmented by an addition of more than three hundred millions sterling, over and above the former sum.

"Seventhly—That but for the union Ireland would not at the present day owe a single shilling of national debt, whereas she is at present chargeable, in common with Great Britain, with eight hundred millions.

"Eighthly—That but for the union Ireland would be the least taxed country in Europe, unburthened with debt, and such would be the condition of Ireland notwithstanding the union, if justice were done her by the imperial parliament in matters of finance.

"These propositions are capable of demonstration, and I think that any man who reads the following reports will inevitably perceive their perfect truth.

"I have hitherto for some years struggled to obtain justice for Ireland from the united parliament, but I have struggled in vain.

"Fellow-countrymen, why should we not insist upon the repeal of the union statute? But I need not argue that point. Every man must feel that it must be good for Ireland to govern herself, and to have her own income spent within her own bounds, and amongst her own people.

"The conviction that the union must sooner or later be repealed, has become all but universal. Ireland cannot much longer consent to be a province.

"There is in truth but one question, and that is, how is the union to be repealed?

"I do not hesitate to say, that the question appears to me of easy solution. It requires but these few things to make the repeal safe, certain, and free from difficulties.

"First—Let the agitation for the repeal be kept perfectly free from sectarian dissension, and from all taint of being a struggle for sectarian ascendancy—all sects and persuasions must see that they have an equal interest in the repeal—no species of political preference can be allowed to any one over the others—the benefit of the repeal is calculated for all, and all should combine to obtain it.

"Secondly—The agitation for the repeal should be peaceable and legal—there should be no force, no violence, no outrage—there should be no threat, no menace. In short, there should be not only no violation of the law, but no tendency to such violation. The acts of the repealers should be marked with moderation as well as with firmness. The language of the repealers should be pacific and conciliatory. In manner as well as in matter, every thing should be done to disarm hostility, and to obtain and justify confidence.

"Thirdly—It is the bounden duty of the repealers to demonstrate, that no man can suffer in goods or in person by the carrying of the repeal. The repealers must constantly show forth the obvious truth, that no man's property will be injured or diminished by the repeal; and that on the contrary, the property of every man must be augmented and rendered more secure. In short, the repeal must be good for every body and injure no one.

"Fourthly—The actual mode of carrying the repeal must be to augment the numbers of the repeal association, until it comprises four-fifths of the inhabitants of Ireland. The combination must be open and avowed—there must not be any secret society, or secrecy of any kind—there must be no declaration or oaths—no sign taken, or pass-word—there must in short be no violation of the law, nor anything concealed from the lawful and constitutional authorities of the state.

"Fifthly—Petitions to parliament for the repeal must emanate from each province in Ireland—there ought to be at least one million of signatures to each of the four provincial petitions. The universal sentiment of the Irish nation must be embodied in those petitions, in firm but respectful language—Catholic, Protestant, Presbyterian, and Dissenter, must all join in them; and when such a combination is complete, the parliament will naturally yield to the wishes and prayer of the entire nation.

"It is not in the nature of things that it should be otherwise.

"Such a combination as I have spoken of was never yet resisted by any government, and never can. We are arrived at a stage of society in which the peaceable combination of a people can easily render its wishes omnipotent.

"Fellow-countrymen, I now lay these reports before you—I have, perhaps, done some service to my native country—I have, perhaps, some title to your confidence, and I would be unworthy of that confidence if I were capable of violating the solemn pledge I give you—that the rest of my life shall be devoted to the repeal, at least until I see our domestic parliament restored.

"I have the honour to be your faithful servant,

"DANIEL O'CONNELL.

"17th July, 1840."

"THE ADDRESS OF THE NATIONAL ASSOCIATION OF IRELAND TO THE PEOPLE OF IRELAND.

"Fellow-countrymen—The National Association of Ireland address you for the first time, and on a subject of the deepest importance.

"They are an association framed for the purpose of obtaining, by peaceful, legal, and constitutional means, the repeal of an act of parliament by which the legislative union was enacted.

"The pretence upon which that statute was framed was, that the Irish people should be placed on the same footing of equal rights, privileges, and franchises, and political, manufacturing, and commercial advantages, with the more favoured parts of England and Scotland.

"That union has now lasted forty years, and still the people of Ireland are not placed upon a footing of equality with British subjects. They have not the same political rights with their fellow-subjects in Great Britain. Their manufactures have been almost annihilated, their commerce overborne, instead of being cherished; and the principles of civil and religious liberty, which have been applied to the other portions of the empire, are refused to be acted on in Ireland.

"Fellow-countrymen, there is but one hope, but one prospect of redress—it is the repeal of the legislative union, and the restoration of the domestic parliament of Ireland.

"The people of Ireland are so wearied and disgusted by the defeat of every hope they have entertained, and by the refusal to attend to the prayer of their petitions for the redress of those grievances, that it is impossible to concentrate their exertions upon any topic or topics of public interest, save upon the repeal alone.

"We, therefore, confidently conjure you to direct your attention, and exert all your best energies to the attainment of the repeal.

"The only modes of action which we would advise or assist in must be in their nature legal and constitutional, and in their operation always tranquil, peaceable, and totally devoid of violence or outrage of any kind whatsoever.

"We resort only to moral force—to the power of public opinion—to the concentration of legal and peaceable combination—to the presentation of petitions signed by millions, and the influence of such petitions to obtain the legislative enactment we desire.

"We cannot succeed unless the people of Ireland almost universally join with us in respectfully, but firmly, calling upon the legislature to repeal the union.

"There can be no doubt of success if the Irish people universally, or even generally, join in making a legal and constitutional demand for the repeal.

"In struggling for the repeal we have at least the consolation to know that there is no other mode

whatsoever in which we can procure an alleviation of the oppression and degradation inflicted upon Ireland by the union.

"We have formed a national association for the purpose of working out, in the manner we have already described, the repeal of the union.

"For this purpose pecuniary funds are necessary, and we therefore confidently call upon you for a repeal rent.

"It was the Catholic rent that secured emancipation—the repeal rent will restore our domestic legislature.

"The repeal rent will be the means of exhibiting the numerical strength and the sincerity of the people of Ireland for repeal.

"Every person who subscribes one pound is capable of being a member of the national association.

"Every person who collects from others one pound is capable of being a member of the national association.

"Every person (male or female) who subscribes a sum of not less than one shilling annually, will have his or her name registered in our books as a repealer.

"And, as we are desirous of affording to all—even the most humble—the opportunity of practically displaying their patriotism and zeal, by contributing to the repeal fund, we would suggest, and most earnestly recommend, that regulations be entered into in each parish, whereby the monthly collection of one penny shall be made from those persons who prefer paying in that proportion; and their names, equally as those who pay the shilling in advance, shall be enrolled in the national register of repealers.

"We hope to obtain parochial lists of subscribers, showing the numbers who contribute, in such a manner as to have their names inserted in the list of repealers.

"Every parish transmitting the subscription of 200 repealers, shall be furnished with a weekly newspaper, containing the proceedings of the association, addressed to such person as the subscribers shall select; and an additional weekly paper for every additional 200 subscribers, shall in like manner be transmitted.

"If one million of the eight millions and a half that constitute the inhabitants of Ireland, will contribute one shilling each, we should have a fund of 50,000*l.*, by that means alone; and when that fund is subscribed, the repeal of the union will not much longer be deferred.

"Let the funds be increased, by the subscription of two millions of the Irish people, to the sum of 100,000*l.*, and the Irish legislature will very shortly after be seated in College-green.

"We conjure the people of Ireland to reflect, that the amount of this subscription will test the zeal of the Irish people for the repeal; and will demonstrate, in a mode devoid of all violence or turbulence, the number of the Irish nation who desires to see their native legislature restored—absenteeism abolished—manufactures cherished—commerce encouraged—equal freedom conceded to all—conscience free and unshackled—and liberty, glorious liberty, the right and inheritance of every native of Ireland, whatever be his class, creed, or religious denomination.

"Fellow-countrymen, we conclude by calling on you to recollect, that the salvation of your country is in your own hands.

"As we obtained emancipation we can obtain repeal. He who shrinks from aiding us, deserts the dearest interests of his country, and is unworthy of the name of Irishman.

"DANIEL O'CONNELL,
"Chairman of the Committee.

"21st April, 1840."

"There is one topic more to illustrate the grievous injustice done to the Catholic people of Ireland, by the appropriation of the ecclesiastical revenues to that small minority which constitutes the Protestant established church in Ireland—it is this:

"The Presbyterian established church in Scotland, being the church of the majority of the Scotish people, is in possession of the ecclesiastical state revenues in Scotland, although those revenues were founded by their Catholic ancestors for purposes of exclusively Catholic piety and religion—purposes, many of them directly opposite to, and contradictory of, the tenets and practises of Presbyterianism.

"The episcopalian Protestant church in England, being the church of the majority of the English people, is in possession of the ecclesiastical state revenues in England, although those revenues were founded by their Catholic ancestors for purposes of exclusively Catholic piety and religion—purposes, many of them directly opposite to, and contradictory of, the tenets and practises of episcopalian Protestantism.

"Thus, in Scotland and in England, the church of the majority possess ecclesiastical revenues, granted, not by Presbyterians or Protestants of any description, but by Catholics.

"Whereas, in Ireland, the church of the majority is that of the persons who founded the ecclesiastical state revenues—it is the only church able and willing to perform and carry out all the intentions of the donors and founders of those revenues—yet these revenues are taken from the church of the majority of the Irish people, and bestowed by law upon the antagonist church of a small minority of that people!

"It does, therefore, appear manifest, that every circumstance attending the ecclesiastical state revenues increases the nature and extent of the grievance on the score of church temporalities, inflicted on the Catholic people of Ireland.

"Your committee cannot conclude, without once again warning the people of Ireland—

"First—That there is no prospect of obtaining the salutary change they require from the united parliament.

"Secondly—That the injustice they complain of can be redressed only by means of the repeal of the union.

"Thirdly—That such repeal must be sought for only by legal and constitutional means; there must not be any outrage, violence, or crime whatsoever. Any outrage, any crime, any illegality, on the part of the repealers, would give strength to the enemies of Ireland, and would weaken, and ultimately destroy, the best energies of her friends.

"Let us then prosecute our agitation for repeal, within the law and constitution, with the sanction of all good men, and, we trust, with the blessing of God. Irishmen of every sect and persuasion have an identity of interest in restoring to their country the blessings of a domestic legislature. But, above all, the unjust and insulting inequality which the union inflicts upon Ireland, ought no longer to be borne in silence by Irishmen.

"We close, by reminding the association emphatically—

"That Scotland does not support the church of the minority in Scotland, and that the Scottish people would not endure such an appropriation of her ecclesiastical revenues.

"That England does not support the church of the minority in England, and that the English people would not endure such an appropriation of her ecclesiastical revenues.

"But that Ireland, on the contrary, suffers this giant, this monster evil; and the first duty of Irishmen must be to obtain, by constitutional and legal means, its total abolition.

"DANIEL O'CONNELL,
"Chairman of the Committee.

"April 23, 1840."

"Such was the state of Ireland at the time it was determined to carry the union.

"The usual means were these. First—The spirit of revolutionary fury was encouraged! The rebellious disposition was actually fostered, until it was made to explode! And bitter religious dissensions were promoted amongst all classes of the people!!

"For the truth of these allegations there are abundant proofs—they are to be found in the recollections of hundreds and thousands of us who remember these things which we sorrowfully witnessed. They are to be found in all the debates on the union—in the accusations and appeals of the opponents to that measure—in the admissions and boastings of its advocates. But the most powerful evidence of the entire, is the report of the Irish house of lords, printed in the latter end of the year 1798.

"By that report it appears that the revolutionary spirit and military organization of the United Irishmen commenced in Ulster—the focus was in the town of Belfast—it spread through the greatest number of the Protestants and Presbyterians, especially the latter, of that province. The superior officers had all their meetings in Ulster—amongst others the colonels met monthly, and gave in their reports of the strength and state of discipline of their various regiments—privacy was observed of course as much as possible—but one of the colonels was a spy in the pay of the treasury; and he regularly, after each meeting of colonels, made a report to the government of all their proceedings.

"The Irish government could therefore at once have seized the entire staff of the rebellion—they could stay its progress, and crush its hopes, by arresting at once all its leaders—but they allowed it to run on and augment for about eleven months, without interruption.

"All this appears from the report of the house of lords, above alluded to.

"Why did the government allow the organizations to go on, and the colonels to continue their meetings for ten or eleven months without interruption? The answer is obvious—the government had an ulterior object in view, to attain which they thought any sacrifice of blood cheap—that object was—the union!!

"It is true they speculated too dangerously—the experiment will never be made again—they imagined that between the armed force which they then commanded, and the powerful auxiliary of the bigotry of the northern rebels, they could easily suppress the rebellion, when it became just ripe enough to frighten the country into the union.

"But they almost fatally miscalculated. Wexford, without any previous organization, was driven into rebellion by the ferocity of an unhappy nobleman, Lord Kingsborough, and of his regiment of militia; and if any one other county had been roused to an exertion similar to that made by the men of Wexford, the rebellion would have been a revolution, and the intended union would have been exchanged for an actual and perpetual separation.

"Even the unforeseen excess to which the rebellion extended, was converted by the unionists into further means for carrying the union. The alarm and dismay became greater—the confusion more complete—the rancour of party spirit more virulent—Irishmen were rendered more incompetent to protect themselves—and thus their inherent rights were spoliated with malignant satisfaction and perfect facility.

"On this subject also, the powerful eloquence of Plunket was heard to denounce the crime, and to call for vengeance on the criminals. He accused the government—we use his own words—'of fomenting the embers of a lingering rebellion—of hallooing the Protestant against the Catholic, and the Catholic against the Protestant—of artfully keeping alive domestic dissensions, for the purposes of subjugation'—in other words, the carrying the union.

"Secondly—'The deprivation of a legal protection to liberty or life—the familiar use of torture—the trials by courts-martial—the forcible suppression of public meetings—the total stifling of public opinion—and the use of armed violence.'

"All the time the union was under discussion, the HABEAS CORPUS ACT was SUSPENDED—no man could call one hour's liberty his own.

"All the time the union was under discussion COURTS MARTIAL had unlimited power over life and limb. Bound by no definite form or charge, nor by any rule of evidence, the COURTS MARTIAL threatened with DEATH those who should dare to resist the spoliation of their birth-rights.

"There was no redress for the most cruel and tyrannical imprisonment. The persons of the King's Irish subjects were at the caprice of the King's ministers. The lives of the King's Irish subjects were at the sport and whim of the boys, young and old, of the motley corps of English Militia, Welsh Mountaineers, Scotch Fencibles, and Irish Yeomanry. At such a moment as that, when the goals were crammed with unaccused victims, and the scaffolds were reeking with the blood of untried wretches—at such a moment as that was it that the British minister committed this act of spoliation and robbery, which enriched England but little, and made Ireland poor indeed!

"Besides the suspension of the *habeas corpus* act, and the consequent insecurity to personal liberty—besides the existence of courts-martial, and the consequent insecurity of human life—besides all these, actual force was used—meetings of counties, duly convened to deliberate on the measure, were dispersed by military force. It was not at Maryborough or Clonmel alone that the military were called out, horse, foot, and artillery, to scatter—and they did scatter—meetings convened by the legal authorities, to expostulate, to petition against the union. Force was a peculiar instrument to suppress all constitutional opposition.

"Why should we dwell longer on this part of the subject, when in a single paragraph we have, in eloquent language, a masterly description, which easily supersedes any attempt of ours? Here are the words of PLUNKET—'I will be bold to say that licentious and impious France, in all the unrestrained excesses that anarchy and Atheism have given birth to, has not committed a more insidious act against her enemy, than is now attempted by the professed champion of civilized Europe against Ireland—a friend and ally—in the hour of her calamity and distress. At a moment when our country is filled with British troops—whilst the *habeas corpus* act is suspended—whilst trials by courts-martial are carrying on in many parts of the kingdom—while the people are made to believe that they have no right to meet and to deliberate—and whilst the people are palsied by their fears, at the moment when we are distracted by internal dissensions—dissensions kept alive as the pretext of our present subjugation, and the instrument of our future thraldom!!!——Such is the time in which the union is proposed.'

"Thirdly—The union was accomplished by the most open, base, and profligate corruption that ever yet stained the annals of any country.

"The leading feature, after all, in the union was, the daring profligacy of the corruption by which it was carried. It was reduced into a regular system. It was avowed in the house. It was acted on every where. The minister set about purchasing votes—he opened office with full hands. The PEERAGE was part of his stock in trade, and he made some

two scores of peers in exchange for UNION VOTES! The EPISCOPAL BENCH was brought into market, and ten or twelve bishoprics were tracked for UNION VOTES!! 'The BENCH OF JUSTICE' became a commodity—and one chief justice, and eight puisne judges and barons, ascended the bench, as the price of VOTES for the UNION!!! It would extend beyond our calculation, to make out a list of the generals, and admirals, and colonels, and navy captains, and other naval and military promotion, which rewarded personal or kindred VOTES for the UNION.

"The REVENUE departments have long too been the notorious merchandize of corruption. It is not surprising, therefore, that the Board of Excise and Customs, either conjointly or separately, and the multifarious other fiscal offices, especially the legal offices, were filled to suffocation, as the rewards of UNION VOTES.

"The price of a single vote was familiarly known; it was 8,000*l.* in money, or a civil or military appointment to the value of 2,000*l.* per annum. They were simpletons who only took one of the three, the dexterous always managed to get at least two out of the three; and it would not be difficult perhaps to mention the names of twelve, or even a score of members, who contrived to obtain the entire three—the 8,000*l.*, the civil appointment, and the military appointment.

"Lord Castlereagh actually declared in the house of commons that he would carry the union, though it might cost more than half a million in mere bribes. His words, as reported by GRATTAN, were —'Half a million or more were expended some years ago to break an opposition—the same, or a greater sum may be necessary now.' Such was the open, the unblushing, the impudent effrontery of Lord Castlereagh. Grattan added, he (Lord Castlereagh) 'had said so in the most extensive sense of bribery and corruption. The threat was proceeded on, the peerage sold, the caitiffs of corruption were every where—in the lobby, in the street, on the steps, and at the doors of every parliamentary leader, offering title to some, offices to others, corruption to all.'

"The present Lord Chief Justice Bushe was more vehement in his exposure of the atrocious means used to carry the union. He stated 'That the basest corruption and artifice were exerted to promote it; that all the worst passions of the human heart were entered into the service—and all the most depraved ingenuity of the human intellect was tortured to devise new contrivances of fraud.'

"Such were the means by which the union was carried. It was not a compact—it was not a bargain—it was the government, in the words of Lord Plunket, availing itself of the calamity and distress of Ireland, in a manner worse than impious and licentious France would have done, to her bitterest enemy.

"And yet, with all these resources of intimidation and corruption the union was defeated in the first session in which it was brought forward; and it was proved then to be impossible to bribe a sufficient number of the members of the Irish house of commons to vote away the independence of their country.

"Another plan was therefore adopted, after the defeat of the measure in 1799?—some thirty or forty of the Irish members, who could not be induced to sell their VOTES, made a species of compromise by selling their seats to the government, and thus retired from parliament. The government thereupon filled those seats with Scotch and English officers, having no connection whatever with Ireland beyond their casual residence there with their regiments, and who having filled the seats so vacated, formed the actual majority by whom the union was carried.

"Besides all this, it is perfectly clear that the Irish parliament had no right whatsoever to vote away their country's independence.

"The King could not attach the allegiance of the Irish people to any foreign crown; to France, for example, or even to Hanover; and the Irish parliament had still less right to swamp the Irish constituencies and Irish representatives by Scotch or English constituencies or representatives.

"These opinions are not merely theoretical—and they rest upon much higher authority than that of your committee. They are the language, and the distinctly pronounced judgment of the most eminent men of the legal profession in Ireland. Saurin, who was afterwards for more than twenty years Attorney-General in Ireland, declared that the house of commons had no authority to pass the act of union. His words were—'You may make the union binding as a law, but you cannot make it obligatory on conscience. It will be obeyed as long as England is strong; but resistance to it will be in the abstract a duty: and the exhibition of that resistance will be a mere question of prudence.'

"Such was the language of Saurin, which he never denied, retracted, or qualified: on the contrary, he unequivocally pronounced the struggle to get rid of the union to be in the abstract 'a duty.'

"Let it be remembered, that the man who preached this doctrine was afterwards offered and refused the office of Lord Chief Justice of Ireland; and was actually the Attorney-General in Ireland for about twenty years; enjoying more of the confidence of the British government than any other law officer ever did or ever will. He it was that declared the union not to be obligatory on conscience; but, on the contrary, the resistance to it to be a duty.

"Another more eminent lawyer still—one who has been since appointed to the office of Master of the Rolls in England—then elevated to the peerage —then made Chief Justice of the Common Pleas in Ireland—then made (and he now is) Lord High Chancellor of Ireland—Lord Plunket. This greatest of constitutional lawyers has left on imperishable record his sentiments as to the legal effect of the act of union. Here is the solemn legal judgment of Lord Plunket on the competency of parliament to pass the act of union.

"'I, in the most express terms, deny the competency of parliament to do this act. I warn you, do not dare to lay your hands upon the constitution. I tell you, if, circumstanced as you are, you pass this act, it will be a nullity, and that no man in Ireland will be bound to obey it. I make this assertion deliberately. I repeat it, and call on any man who hears me to take down my words. You have not been elected for this purpose—you have been appointed to act under the constitution—not to destroy it. You are appointed to exercise the functions of legislators, and not to transfer them; and if you do so, your act is a dissolution of the government; you resolve society into its original elements, and no man in the land is bound to obey you.'

"After some pointed illustrations of the practical truth of this constitutional doctrine, this eminent lawyer went on to address the Irish house of commons thus:—'Yourselves you may extinguish, but parliament you cannot extinguish! It is enthroned in the hearts of the people—it is enshrined in the sanctuary of the constitution—it is immortal as the island it protects. As well might the frantic maniac hope, that the act which destroys his miserable body, should extinguish his eternal soul. Again, I therefore warn you, do not dare to lay your hands on the constitution; it is above your power.'

"Such were the means by which the union was carried, and such was the inherent radical defect, in point of law and of conscience, in that measure.

it is right to see how this inherent vice in the creation of the union—how the bad spirit in which it was proposed and carried, was exhibited by another eminent lawyer. We shall call on the public to listen to the opinion of Lord Chief Justice Bushe upon that subject—this is his opinion:—

" ' I see nothing in it (the union) but one question—Will you give up the country? I forget for a moment the unprincipled means by which the union has been promoted; and I look on it simply as England reclaiming in a moment of our weakness that dominion which we extorted from her in a moment of our virtue; a dominion which she uniformly abused, which invariably oppressed and impoverished us, and from the abolition of which we date all our prosperity.'

" He adds:—

" ' The union is a measure which goes to degrade the country, by saying that it is unworthy to govern itself. It is the revival of the odious and absurd title of conquest. It is a renewal of the abominable distinction between mother country and colony, which lost America.

" ' It is the denial of the rights of nature to a great nation from an intolerance of its prosperity.'

" With this quotation we close our report; hoping that the language of these eminent lawyers will sink deep into the recollection of the country.

" The people of Ireland can, within the compass of this report, behold the means by which the union was carried; they can see the inherent defects in that measure; and if they have the virtue their forefathers possessed, they will, by obeying the dictates of duty, restore to a great nation the rights of nature, of which she has been deprived from the basest of all motives—an intolerance of her prosperity.

" DANIEL O'CONNELL,
" Chairman of the Committee.

" April 30th, 1840."

He next read the address of the national repeal association to the people of Ireland, which has already appeared. The report of the committee of the national association, on the number of representatives for Ireland was then entered as read. Also the report of the same committee, dated April 27th, 1840.

The next document handed in was the report of the national association on the means by which the union was carried. This was read from page 38 to the end.

The Clerk of the Crown still continued to read extracts from the various reports adopted by the repeal association.

WILLIAM MORGAN, EXAMINED BY MR. HATCHELL.

Is a coachmaker, residing at Tullamore.

Do you remember the meeting held in Tullamore on the 16th July last? I do.

Do you know where Mr. Deane's house is situated? I do.

What is the name of the person residing in the house at the opposite side of the street? His name is Hand.

Do you recollect seeing an arch across the street? I do. I saw it at about ten o'clock on Sunday morning.

Did you observe what was written on it? I did.

What was it? " Ireland her parliament, or the world in in blaze."

Did you see the arch taken down? I did.

Did you assist in taking it down? I did.

Do you know Mr. Steele? I do.

Did you see him whilst the arch was being taken down? No.

Did you see him somewhat about that time? Before.

At whose request did you take down the arch? At Mr. Steele's—Mr. O'Connell having expressed to him his disapprobation of its erection. I should think it was taken down about a quarter past eleven, after second prayers. The people were assembled about two o'clock.

CROSS-EXAMINED BY MR. BREWSTER.

I attended a meeting there; I don't know that there was a committee for getting up the meeting; I heard there was a committee, but I did not subscribe to it; Mr. Deane was the painter of the arch, and he assisted me to take it down; I believe he is here; I cannot tell who put up this arch; it was suspended from his house; I live within 100 perches of the place, but not in the same street; nobody came to town with me who assisted me in taking down the arch except Deane; the street in which the arch was suspended was one of the entrances to the chapel; there was a large attendance at the chapel that day; I did not see any of the processions coming into the town.

Sir Colman O'Loghlen then put in the resolutions and petitions agreed to at the Mullingar, Longford, and Drogheda meetings, and they were entered as read.

Sir Colman O'Loghlen—My lord, in the *Pilot* of August the 6th you will find that a resolution was adopted that a petition be presented to parliament, praying for a repeal of the union. In the same journal of the 6th of September you will also find that an invitation was given to Mr. O'Connell to attend the Loughrea meeting. These papers have been proved by the crown, and I wish you, therefore, my lords, to enter them as read.

Mr. Charles Vernon having again ascended the table, read from the *Freeman's Journal* of the 27th October, 1841, a report of a meeting of the association, in which Mr. O'Connell moved a vote of thanks to the people of Quebec, and that their letter be inserted on the minutes. Mr. O'Connell on that occasion reprobated the conduct of the Canadians in resorting to violence, and advised the people always to maintain the laws inviolate. Mr. Vernon then read from the *Freeman's Journal* of the 5th of April, 1842, another report of the association, in which he repudiated the Chartist principles, and expressed his abhorrence of their conduct.

The witness next read from the *Freeman's Journal* of the 6th January, 1842, the speech of the Lord Mayor at the repeal association, in reference to admitting the people of Canada as members, because they were British subjects, and also an extract from the same paper of the 22d of January, 1842, in which a speech of Mr. O'Connell's was also published.

The witness, in compliance with the request of Mr. Fitzgibbon, next proceeded to read the reports of Mr. O'Connell's speeches at the repeal association on the 25th of March and the 11th of May, as they appeared in the *Freeman's Journal* of the following days respectively. Witness also read a report of Mr. O'Connell's speech at an aggregate meeting for repeal and Irish manufacture, published in the *Freeman's Journal* of the 17th of May, 1842; also a report of Mr. O'Connell's speech delivered at the repeal association, published in the *Freeman's Journal* of the 23d of May, 1842. (The witness then read extracts from Mr. O'Connell's speech at the association, published in the *Freeman's Journal* of the 24th of May, 1842.) He (Mr. O'C.) said that at the time of the union there resided 300 commoners in Ireland, who spent their fortunes in Dublin and the country. He (Mr. O'C.) was obliged to reside in London, and spend his money there, which ought to be spent in Ireland. He instanced the case where the people were employed at the time Ireland had her own parliament, and the misery brought on the country by the union statute. England at that time owed four hundred and forty-six millions of money—Ireland owed but twenty millions, and yet she was saddled with half the debt of

England. If the people would be employed, the goals would be empty—no crimes would be committed, for it was poverty that caused the commission of crime.

Mr. Vernon then read from the *Freeman* of the 16th of August, 1842, a speech made by Mr. O'Connell at the association, in which he stated that one of the great motives he had for the repeal, was that it would cause the spending of four millions of absentee money in this country, together with two millions of surplus, which was now spent out of this country. He read the entire speech.

As soon as this document was read, the *Freeman's Journal* of the 14th September, 1841, was produced. and the speech of Mr. O'Connell denouncing the Chartists was read from it.

Mr. Fitzgibbon said that their lordships might recollect that he and several others of the counsel for the traversers mentioned their intention to produce Mr. Power—that he was subpœnaed for the purpose—and was also served with a crown summons to attend. The statement made on that matter was perfectly accurate. Mr. Power was now on the road, but being in a bad state of health, it was with great difficulty that his physician was induced to consent to his proceeding to Dublin otherwise than by easy stages. He was expected to-morrow by one o'clock. On his evidence they were prepared to prove certain facts, if the crown would allow Mr. Power to be examined as soon as he could attend, or otherwise the case might stand over until two o'clock to-morrow.

Chief Justice—Are you done with everything else?

Mr. Fitzgibbon did not wish to take up the time of the court reading things which he believed the jury were not prepared to consider. He would, therefore, state to the court that there was no other fact which they thought it necessary to prove, nor was there anything else to which they intended to advert. The crown might either throw out of the evidence any observations made by them on that letter, or let the case be adjourned until Mr. Power would arrive to-morrow.

Mr. Hatchell—We want to prove that Mr. Power wrote that letter—that it was his name which was signed to it.

Chief Justice—Let the service of the summons be proved.

Mr. Fitzgibbon was prepared to do a certain thing, but what it was it could not be expected he would then state, but he would be able to show that his evidence would wholly exculpate the traversers from anything contained in that letter. He would then take the opportunity of referring to certain newspapers, which might be entered as read.

The papers were of the following dates—*Freeman's Journal*, 21st December, 1841; do., 29th December, 1841; do., 26th January, 1843; the last showing Mr. O'Connell's objection to the Chartists.

PATRICK GAYNOR EXAMINED BY MR. MONAHAN.

Served the copy of the subpœna on Saturday evening; the Rev Mr. Power was very unwell at the time; he said he was entirely in the hands of his physician, and that he would go to town the next day if he could obtain permission to do so. Mr. Power wrote to his physician, and to Mr. Burn, a magistrate in the county of Waterford; they all three met on Saturday, and after some conversation, it was decided that Mr. Power should go to town by slow stages; it was agreed that one of Mr. Burn's family should go with him, and that they should both be in Dublin on Wednesday evening; I saw Mr. Power first at his own house; he mentioned that he had been previously sent for, and said that the reason why he had not come before was that he was very ill; he was afraid that his life would be endangered by his coming.

CROSS-EXAMINED BY MR. FREEMAN.

Saw Mr. Power in his parlour; the Rev. Mr. Casey, his curate, was with him; they had been dining in the parlour.

Was there anything on the table? Indeed I did not take notice of anything particular; I was asked to partake of some dinner.

Did he ask you to take anything else after your long journey? Yes—some wine.

Did he pour the wine out from the bottle that was on the table? He did.

Which bottle, I suppose, was on the table for him and his curate? No, he desired his girl to bring it down (laughter).

Did the three of you join in taking the wine? The Rev. Mr. Casey did not.

Did you and Mr. Power drink to each other's health? We tasted (laughter).

He filled a glass of wine for himself and one for you? Yes.

Did he give you more than one glass? No.

Was any punch offered to you? Nothing but one glass of wine.

You left after taking the wine? I did.

The witness was then desired to withdraw, and, after a few observations from Mr. Hatchell and the Solicitor-General,

The Chief Justice said he should not require the Solicitor-General to begin his statement until he was satisfied he would not have any undue interruption.

Mr. Moore then said they should not press for reserving the examination of Mr. Power, and announced that the traversers had closed their case.

The court then adjourned till ten o'clock next morning.

TWENTY-FIRST DAY.

WEDNESDAY, FEBRUARY 7.

The court sat at ten o'clock, and the jury were, as usual, called over.

THE SOLICITOR-GENERAL'S REPLY.

He said—May it please your lordships: at length, gentlemen of the jury, it has become my duty to address you in this case upon the evidence that you have heard; and never, perhaps, did one more arduous devolve upon a law officer of the crown. The momentous importance of this trial—the vast variety of topics that have been introduced into it—the talents, the eloquence, the ingenuity of the host of counsel against whom I find myself called upon single-handed to contend—the consequences of your verdict, as affecting the law of the land, and the peace, the tranquillity, and, I may add, the happiness of this country—all these considerations, gentlemen, might well appal a person, far more confident than I have ever been, in his powers both of mind and body, when rising to discharge so formidable a task. It is, therefore, with no little anxiety and apprehension, that I approach the execution of this important duty. Great, however, as is the responsibility attached to it, there is, I am conscious, yet a greater; I mean your's, gentlemen of the jury. You have sworn, by the most solemn of all obligations, to find a verdict in this case according to the evidence; unbiassed by any prejudices, political, sectarian, or religious; unaffected by fear, by favour, or by affection; uninfluenced by any other consideration, than the truth and justice of the case. That you deeply feel the extent of that responsibility, the close attention you have paid to the progress of this trial abundantly evinces; and it is my conviction of that, which emboldens me to expect a little further extension of that patience which has already been

so severely taxed. I ask for your verdict, not by appealing to your passions or prejudices, but by calling upon you, as honest and intelligent men, to exercise your sound judgment; and if you cannot give me that verdict upon the fair exercise of your judgments as applicable to the evidence, I do not ask it at your hands. But before I have concluded, I think I shall present this case to you in such a light, as will relieve you from the slightest possible difficulty as to the course you ought to pursue; and vindicate, in the eyes of every honest and fair man in the country, that verdict which I confidently anticipate I shall receive. You have heard no less than eight addresses on the part of the several traversers. Many of these have been not only different, but inconsistent. In one respect, however, there is a marvellous coincidence amongst them all, and that is, gentlemen, the total absence of any, the slightest, comment upon—nay, I may say any the least reference to, the evidence in the case. Not a single observation, from the commencement to the close of those able and eloquent speeches, has been addressed to the real merits of this question. Before I apply myself to the details of the evidence on the part of the crown, it will be necessary that I should advert, as briefly as I can, to the topics which have been thus superinduced. I think you will see, that they have not the slightest bearing upon the case, and that they must have been resorted to for no other reason than from the necessity which lay upon the defendants to evade touching upon the question which you have been sworn to investigate, namely, the existence, or the non-existence, of the conspiracy which we charge. My learned friend, Mr. Sheil, has not often favoured us lately, by exhibitions in our courts of his splendid talents and eloquence. His appearances have been, "like angel visits, few and far between." This, however, was considered an occasion, I suppose, on which it was necessary to resort to something extraordinary; and accordingly Mr. Sheil has, on the part of Mr. John O'Connell, addressed you (he must pardon me for saying so) not upon the case, but upon various other subjects, to some of which it will be necessary I should advert. He appeared as counsel for Mr. John O'Connell. He certainly, gentlemen, delighted us by one of the most splendid exhibitions of eloquence I ever heard; I must, however, say of his speech, "*materiam superabat opus;*" the execution was elaborate, but the matter very meagre indeed. In short, gentlemen, he threw the case of the client overboard; and so indeed the client himself appeared to consider, for you recollect he disclaimed, in a great measure, the defence which his counsel had set up for him. Do you recollect his promise—"I will show you, gentlemen of the jury, that my client is innocent of this charge?" Do you recollect that? Now, I ask you, can you point out a single fact relied on by him, or a single observation addressed to you upon the case, tending to show the innocence of his client? There were topics of general interest, but not bearing at all on the particular evidence which you have heard. The first of these was a sort of attack upon the crown, or the prosecutors, for the length of time which has been suffered to elapse before the prosecution was instituted against Mr. O'Connell and his colleagues. Gentlemen of the jury, that struck me as a most singular species of defence; because, gentlemen, in the first place, it involves, as you will at once see, something very like an admission of the guilt of these parties. For what does it come to? "You suffered us to go on, you enticed us into crime." My friend, the Attorney-General, was actually called by Mr. Sheil "the artful dodger of the state," and compared to the "*delator*" of the Roman empire. I forget the other phrase that was applied to him—all leading to this, that the crown, or the government, had actually seduced these people into the commission of crime; and had, after they had been suffered to go on, day after day, and week after week, suddenly turned round on them, and told them that they had violated the law. Why, gentlemen of the jury, is it not monstrous to set up an allegation of that nature, upon the question of the guilt or innocence of these parties? If they have not violated the law, they must be acquitted. If they have violated the law, what kind of defence is it to say that the government have forborne to prosecute them for a certain time? What sort of defence would it be considered in any other case? The question of the guilt or innocence of these traversers cannot depend on the length of time (for which I shall presently account) which was suffered to elapse before the prosecution. That must depend on the merits of the case, independently of the conduct of the government altogether. I think it right to disabuse your minds of an impression which the traversers' counsel have sedulously endeavoured to create, as to whom it is we are prosecuting here, and as to what is the subject of prosecution. You have heard, over and over again, that this is an indictment against the people of Ireland, an indictment for the purpose of putting down free discussion, extinguishing the privilege of petitioning, and establishing an arbitrary control over the constitutional exercise of legal rights. Gentlemen, with respect to this being a prosecution against the people of Ireland, allow me to say, it is not a prosecution for exercising any legal right; it is not a prosecution against any of those unfortunate deluded people who have attended these meetings at the instance of the traversers. They are not the persons prosecuted; on the contrary, it is my thorough belief and conviction that a verdict which would have the effect of stopping the proceedings to which these people have become victims, would be the most favourable result that could happen with respect to them; and so far from being an abridgment of their rights, would tend, as I shall hereafter more fully have occasion to observe, to their amelioration in every respect. But, gentlemen of the jury, it is then said, that we are prosecuting here for the purpose of putting an end to free discussion. To this I answer, that we are not prosecuting any person for entertaining any particular political or religious opinions. I avow at once, that every one of these traversers has the fullest right to express, in a constitutional and legal manner, his opinion on any public subject whatever; nay, more, to use his best exertions, if he thinks those opinions right, to propagate them, to have them entertained, as far as possible, by all persons in the community, and to use all legitimate and proper means to accomplish that end. But I deny the right of any person to attempt to bring about such an object by the means which are charged in this indictment. Nor, gentlemen, are these prosecutions any encroachment upon the liberty of the press. It is true, there are included in this indictment three gentlemen, who are proprietors of newspapers; but they are included, gentlemen, not as proprietors of newspapers, but as conspirators; and I deny the imputation that this is a prosecution, or a persecution, of the press. Your verdict for the crown in this case will not interfere with the liberty of the press, or the exercise of any constitutional right. Nor, gentlemen, are we prosecuting here for any public disturbance, any riot, or breach of the peace. Our charge is this, that Mr. O'Connell, Dr. Gray, Mr. Duffy, Mr. Barrett, and the other traversers, have entered into an illegal confederacy, for the purpose of effecting changes in the constitution of this country by other than constitutional means. That is what the law calls a conspiracy. Gentlemen, I believe every one of the counsel who addressed you for the traversers has over and over again stated to you, that the offence of conspiracy

necessarily implies secrecy. Gentlemen of the jury, in a popular sense conspiracy may imply secrecy, because it very seldom happens that persons who are engaged in an illegal design, enter into that design or agreement publicly; but a conspiracy may, so far as relates to the acts that evidence it, be as public as any other offence which is the subject of prosecution in our law. My friend, Mr. Sheil, draws his definition of conspiracy from our great dramatic bard. The passage in Julius Cæsar, which my friend has referred to on this occasion, may convey a popular notion of conspiracy, but we must not take our legal definition from the authority of Shakspeare, as urged by Mr. Sheil, or from that of Dr. Johnson, as put forward by Mr. O'Connell. I must beg, in this place, to dispute the authority of both those eminent personages, and must take the liberty of saying, that, in point of law, a conspiracy means neither more nor less than this—where two or more persons concur in the prosecution of an illegal object. The test is, not the secrecy, but the object of the combination. Gentlemen, we say that the traversers have concurred in a common and unlawful design. That design, I may at present generally characterise as this—the attempt to procure, by means of intimidation, a repeal of the legislative union, which, according to the law of this country, cannot be legitimately repealed but by an act of parliament, the result of the free will of the legislature. What does the indictment charge? That the traversers entered into a common plan, by means of seditious speeches, by means of large meetings, by means of publications in newspapers, by other means specified in the indictment, to effect that change which can only legitimately be brought about by the instrumentality of parliament. And it is monstrous and absurd to tell a jury, "we have done all this above board—our proceedings have been public—newspaper reporters have been present to take our speeches." To be sure they were, because the object was to have all this brought before the public—to have it read to the people of this country—and that emissaries should be despatched to all parts of Ireland, for the purpose of giving publicity to those proceedings. Yet we are told, that because these things were public, there cannot have been a conspiracy, from which they originated. It is curious to observe the anxiety that seemed to exist in the minds of the counsel on the opposite side, to dispute the soundness of that definition in point of law. You will find that what they have been labouring to convince you of is this—that here they have been only prosecuting a legal object; which legal object, they say, they may fairly and lawfully accomplish if they can. An attempt to interfere with that is, as they contend, an attempt to put a stop to the legal and constitutional rights, which they and every other subject of this realm are entitled to exercise. It is, therefore, gentlemen, of great importance, that you should distinctly understand, that no matter what the object is which parties have in contemplation, if they seek to bring about that object by improper and unlawful means, they are guilty of a conspiracy. I shall now, gentlemen, call your more particular attention to the nature of this charge, which I am not quite sure that you yet fully understand. We first allege that these traversers and others entertained, in common, the unlawful design of exciting amongst her Majesty's subjects, disaffection and discontent, and stirring them up to seditious opposition to the government and constitution. We next charge them with having combined for the purpose of exciting animosity, jealousy, and ill-will, between different classes of her Majesty's subjects, and more particularly exciting those feelings in the minds of the Irish people against their fellow-subjects in England. We next charge them with having combined for the purpose of exciting in the army a spirit of discontent and disaffection. All these, gentlemen, I am willing to admit, were designed as so many means of bringing about the ultimate object of the repeal of the union. I coincide fully with the gentlemen on the other side, that that was the ultimate object. But that is not the question we are trying. We say that though the traversers had that ultimate object, yet they resorted, for that purpose, to the illegal means specified in the indictment. That is the question you are to try. We next say, that they combined to cause large multitudes of persons to assemble together in different parts of the country, for the purpose of thereby exciting alarm and intimidation, and of procuring, by the demonstration and exhibition (not the use) of physical force, the repeal of the act of union, which, like every other statute, can only be legitimately and properly repealed by the uncontrolled act of the legislature. Tranquillity and peace at each particular meeting were indispensable to the success of the scheme. It is ridiculous for my learned friends to say, that we, the Attorney-General, or I, allege that the more peaceable the meetings the greater the crime; it is ridiculous, it is absurd—that is not what we say. Any single meeting regarded by itself no one would say was illegal because it was peaceable; but, it being contended, that because the meetings are peaceable there is no conspiracy, we answer, there was no breach of the peace, and why? Because the conspiracy was that there should be none. We lastly charge, that they have combined to cast discredit upon the administration of justice in this country; to bring into disrepute the regular legal tribunals; to establish in their room, not, gentlemen, an arbitrator here and there, to decide between one person and another upon a particular point, but judges for districts, courts of justice, to usurp the prerogative of the crown, and to put in the room of persons deriving their authority from the Queen's commission, men bearing the diploma and the appointment of the loyal national repeal association of Ireland. Now, gentlemen, from this enumeration of charges you will at once see, that they comprise both species of conspiracy. We charge a conspiracy directly to do an illegal thing, and we also charge a conspiracy to bring about what is a legal thing in itself, the repeal of the union, by illegal means—namely, by the exhibition of physical force, and the intimidation likely to be thereby caused. We have brought forward charges falling under each; and I think, that before I have done, you will not have the slightest doubt upon your minds, that each and every one of these conspiracies or confederacies is as clearly and distinctly proved, and is now as plain and manifest, as anything that has occurred since the commencement of this trial. Gentlemen, there is one more point, with respect to which, under the correction of the court, I think it right you should be informed, as respects the law of conspiracy. I collect from observations, which some of my learned friends have made, that they addressed to you this argument—"unless you are satisfied that the traversers entertained all the designs which the crown imputes to them, you cannot convict on this indictment." Now, gentlemen, the court will inform you, as I respectfully anticipate, that that is not so. You may be less satisfied with respect to one part of this case than with respect to another—that is for you; you may conceive one part more fully proved than another—that is for you. But you are not bound to find guilty of all. If you are satisfied with respect to some, or any of the imputed objects, it is sufficient for you to say so, because the indictment contains counts applicable to each branch of the case. Lastly, it is not necessary that you should come to the conclusion that all the traversers are guilty, because the case of each traverser is separate and distinct. Gen-

tlemen of the jury, if you come to the conclusion that the traversers at the bar, or any one or more of them, combined in a design for the purposes that we have alleged in the indictment, or for any one or more of them, that traverser, or those traversers, must be convicted, though you should not be satisfied that he or they combined for all the purposes, or that all the traversers combined for any one purpose. [The learned Solicitor then adverted to the law of conspiracy, and contended at considerable length in support of the law as laid down by the Attorney-General. He then continued:]—Now, gentlemen, I shall proceed to explain to you why it was, and necessarily was, that this prosecution was delayed until the period when it was commenced. I have already observed upon the singular nature of this defence set up on behalf of the traversers. Do you remember how often, over and over and over again, Mr. O'Connell told the persons assembled at his meetings that he was violating no law, that he would carry them through the convention act, that they might sit down in the presence of the Attorney-General? Do you recollect how he hurled his high and haughty defiance at the law officers of the crown? Is that challenge consistent with this species of defence—namely, "You suffered us to violate the law, you suffered us to hold these meetings, and to go on, without prosecuting us?" Is it not the duty of Mr. O'Connell, when we have accepted his challenge, to come forward and show you that he did not violate the law? Does he not owe it to those unfortunate people, whom, I must say, he has deluded in this respect? Does he not owe it to his co-traversers, and the public, to show that there was really no violation of the law, or of the constitution, in these proceedings? Gentlemen, you have already heard, that we do not impute to any one of these meetings the character of illegality, because it tended to disturb the public peace. They might have spared themselves the days they have exhausted in reading Mr. O'Connell's exhortations not to commit a crime; they might have spared themselves all the observations about no person being alarmed as to his personal security; they might have spared themselves all this, because we do not say that any one of these meetings, so far as that is concerned, would have been open to prosecution. Now let us just apply that to the argument, that this case was not prosecuted early (we will say) in the last year. Suppose we had selected a meeting in the month of March, and prosecuted the persons who attended at that meeting for being present at an unlawful assembly; what would have been the defence, and the triumphant defence? That that meeting terminated peaceably; that though numerously attended, it did not, at the time, cause any alarm to the public; that the parties assembled met for the ostensible purpose of exercising the legal right of petitioning the legislature for a repeal of the act of parliament. Such a defence it would have been impossible for us to meet. We should not have prosecuted in a case of that sort; or if we did, we should have been deservedly and properly defeated in that prosecution. But, gentlemen, you have perhaps yet to learn, (and I think the court will tell you that I am right with respect to it,) that it is not merely the present conduct, or demeanour of the persons assembled—that it is not merely violence, or a breach of the peace, or intimidation to person, or injury to property—that these are not the only circumstances which make a meeting in point of law illegal. No doubt, if a number of persons tumultuously assemble together, and commit injury to person or property, that is an illegal meeting, and may be dispersed; but, gentlemen, a meeting may be unlawful because it has an unlawful object—because it is the means resorted to to bring about an unlawful end; and until you know what that end is, till the features of the conspiracy to which that meeting is auxiliary, are fully developed and disclosed—nay, more, until they are capable of legal proof in a court of justice—until that moment arrives, it is impossible to show that any one meeting held for that purpose is an unlawful meeting. But when circumstances have occurred, which show the purpose kept in view all along by the parties who caused that meeting to assemble; when that purpose is clearly demonstrated by their subsequent acts, as the conspiracy advances towards its consummation, then the original meeting, which, standing by itself, and unaffected by reference to the whole conspiracy, could not be prosecuted as illegal, becomes at once unlawful. And, therefore, I say that every one of those monster meetings, and many other of the meetings which have been given in evidence, are unlawful meetings, not because the people in whose vicinity they were assembled were frightened, or apprehended any immediate injury to their property, but because, as it now appears, and as you will by and by see without a shadow of doubt, those meetings were held for the unlawful purpose of exhibiting to the legislature, and to the people of England, a demonstration of the physical force of this country, which it was expected would alarm and intimidate them into a concession of the measure of repealing the union. Gentlemen, I do not know where my learned friends found the facts which, as they conceived, authorised them to charge her Majesty's government, or my high-minded and able colleague, the Attorney-General, with conniving at this which now appears to be an infraction of the law. Is it in the speech of Sir Robert Peel in the house of commons, delivered so long ago as the 9th of May last? Is it in the speech from the throne? Is it in the dismissal of the magistrates for attending the repeal meetings? Are these marks of the approbation and sanction of the government of this country, of the prosecution of this insane and mischievous agitation? Are these the facts on which the gentlemen on the other side presume to say that we have countenanced this violation of the law, or seduced their clients into the commission of crime? Gentlemen, warnings of the most solemn nature, repeated warnings were given; there never were offenders upon the face of the earth, that had less reason to complain of being seduced into guilt, than Mr. O'Connell and his associates. Gentlemen, I stated, that in order to enable the government effectually to vindicate the law, as I trust they will now succeed in doing, it was necessary not only that we ourselves should understand what this conspiracy was, but that we should be prepared with evidence to coerce (I will call it) any jury as to the existence, the objects, and the nature of it, and thus make a case, which, in the eye of the world, would not only justify a prosecution, but make it compulsory, if I may use so strong a phrase, to act upon it, and to find a verdict against the accused. Gentlemen of the jury, I think it would have been improper and unwarrantable on the part of the government to institute a prosecution until they considered themselves in possession of those means. But, gentlemen, do you suppose that it required no time, no pains, no trouble to collect that evidence? Do you suppose that the evidence of those facts which we have been able to prove upon this trial, and which I shall, by and by, recapitulate, has been, or could have been procured, without very anxious care, and a great deal of time and trouble? Necessarily, gentlemen, much of both was requisite. But when we found by certain proceedings, to which I shall hereafter particularly allude, but which have been studiously kept out of your view for the last fortnight of this trial; when we found, from those proceedings, what these parties really had in view, it then, gentlemen, certainly became the duty of those who were entrusted with the duty of asserting the justice of the country, to

use their exertions, if possible, to vindicate the law, and to arrest the progress of what cannot be denied to be a fearful and mischievous evil. Gentlemen, I was surprised amongst the thousand other topics that have been urged in this case, to hear it contended by the advocates for free rights and constitutional principles, that there ought to have been an act of parliament introduced to put down this agitation—in short, a coercion act. That was actually insisted upon, I think, by Mr. Whiteside, and two or three more. Why was not an act of parliament passed, say they, to put this down? Why, gentlemen, what would have been said had an act of parliament been introduced? It would have been exclaimed—"Here is an attempt by the legislature to crush public discussion: why not resort to the common law of the land?" What would have been the argument urged by the opponents of such a bill? "You have not tried a jury—you have not resorted to the common law." Gentlemen, we were anxious not to expose ourselves to that imputation; we have resorted to the common law of the land, we have resorted to a grand jury, we have prosecuted this case in the regular, legal, ordinary, constitutional way—I hope I may add, with a due degree of temperance, in a moderate manner, in a mode not indicative of any thing like vindictive feeling. I think, gentlemen, we cannot be accused of not having given the traversers here the fullest latitude in defending themselves. So many topics irrelevant to the discussion of a case were never urged in the course of my experience, or, I believe, that of any gentleman at the bar. We raised, however, no technical difficulties; we suffered the counsel to state the opinions of others, to read histories, and to make comments of every description. Not any species of defence that could possibly have been open to them, not any public meeting, not one ground of defence has been excluded. I therefore say, that it is most unfair to accuse the government here, either on the one hand of criminal apathy with respect to the progress of this agitation, or on the other hand, when they have taken up the case and brought it forward in a court of justice, of attempting to overbear public discussion, or to crush constitutional rights. That they have not resorted to the legislature to obtain an act of parliament ought, in my opinion, to entitle them to credit rather than expose them to censure. Gentlemen, as I have observed, a meeting may be unlawful, not merely from the circumstances which accompany it at the time it takes place, but from its tendency and object. In the case, my lords, of Redford *v.* Birley, which has been already adverted to, in pages 102 and 103, the court distinguished between a riot and an unlawful assembly; after defining a riot and a rout, the case goes on to say:—"An unlawful assembly is, in any case, where they meet together in a manner and under circumstances which the law does not allow, but makes it criminal in those persons meeting together in such a manner, knowingly, and with such purposes as are in point of law criminal." Now, in the present case, it was impossible that I could tell you, or that the counsel for the crown could satisfy you, as to the purpose of these meetings, till that purpose was avowed or demonstrated. I shall show you presently, gentlemen, that it has been avowed. But it is right that I should also disabuse the public with respect to another objection which has been urged against the proceedings in this prosecution. It is said—if these meetings were unlawful, why not prosecute them as such? and if you can now show that such a meeting was unlawful, even with reference to its purpose, why not indict the parties present at that meeting for attending an unlawful assembly? Now, in the first place, being persuaded that this combination which we charge did in point of fact exist, and feeling it, gentlemen, to be our duty not to prosecute the inferior and subordinate instruments by whom, and through whose intervention, the purposes of that combination were sought to be effected, but that we ought at once to bring forward the heads of it to trial—feeling that to be our duty, the bold, straight, manly course to be pursued—we saw that that could not be done except through the medium of an indictment for conspiracy. If we had included in the indictment for a conspiracy counts for attending an unlawful assembly—as it is said we ought to have done—we should have exposed ourselves to the risk of defeat upon technical grounds; because it has been decided that if you include in an indictment several defendants on a charge of conspiracy, and also upon a charge for attending an unlawful meeting, and you fail to prove that all the defendants attended that meeting, you must elect between the two charges, and cannot proceed upon both. That was decided in the case in 8th Carrington and Payne, which has been already referred to—the Queen *v.* Murphy. It there appeared that certain of the traversers did not attend the meeting, which was the subject matter of one of the counts of the indictment, and the counsel for the traversers called upon the court to direct the counsel for the prosecution to elect on which charge he would proceed. The court held he was bound to do so; and therefore he was obliged to abandon the count for an unlawful assembly, and proceed solely upon the count for the conspiracy. But there is another, and a still more serious, indeed, it may be said, an insuperable difficulty, which would have attended the course which it is contended we ought to have pursued, that is to say, the course of including a count or counts for attending unlawful meetings with a count for conspiracy. Your lordships will recollect, that the gist of the charge here of conspiracy is evidenced by the number of meetings that took place, by the continuity, the unity of purpose that was evinced at each of those successive meetings, every one of them a link in that conspiracy, and every one of them a step in the further prosecution of it. It was therefore indispensable in the case, that all the meetings should be brought before the consideration of the court and the jury. Now these meetings took place in every part, or at least many parts, of Ireland; in Galway, in Waterford, in Meath, in Kilkenny, and other counties. Their lordships will tell you, gentlemen of the jury, that only one of those meetings could have been tried on this indictment, or, to speak more truly, not one at all; because, gentlemen, it is a principle of the criminal law, that, in an indictment, the trial must take place in the county where the offence is committed. Here then are twenty meetings, we will say, of which you have heard evidence, as bearing upon this charge; there must have been twenty indictments before twenty different juries, if we had adopted the course of prosecuting for attending unlawful assemblies, and you could not have tried the charge, *per se*, of attending an unlawful assembly—not one. You could not try Tara, you could not try Mullingar, you could not try Lismore, you could not try Mullaghmast; you would not have jurisdiction to try any one of those meetings, save and except as it was what we charge it to be, an ingredient in the conspiracy which you are impannelled to try, and of which conspiracy those meetings were so many links and so many means. It is therefore completely preposterous to say that we could adopt any other course than that which we have pursued, in order to accomplish what—I avow to be the object of the prosecution—the bringing to justice, through the intervention of the law and a jury, the real delinquents in this scheme. Gentlemen, I shall not take up more of your time by observations upon that part of the case which relates to the conduct of the government in adopting this mode of prosecution, and not bringing it forward at an earlier stage.

But, gentlemen, my friend, Mr. Sheil, after having dwelt at considerable length on that subject, then thought fit to address himself to another topic, which, I think, if he had recollected what took place before this court, might, in point of prudence, have been spared. Gentlemen, he paid the court the compliment of saying that he did not believe the judges to be corrupt: at first he said he would not throw out such an insinuation, and ultimately he went the length of saying, "I believe they are not." Gentlemen of the jury, I shall not presume to vindicate the character of the high tribunal before which I am now standing; it would be in me most presumptuous. But, gentlemen, Mr. Sheil followed up that observation by one to which I think it is my duty to apply myself; I mean, gentlemen, the constitution of the jury which is trying this case. You will recollect his quotations from Mr. Burrowes' speech on the trial of Dr. Sheridan and Mr. Kirwan in 1811—that gentleman's animadversions upon what he very properly (so far as the legal use of the word goes) designated the array of the jury upon that occasion. Mr. Burrowes impugned the conduct of the officer who arrayed that jury, for not having put upon it some Roman Catholic gentlemen. It is not for me, gentlemen, to say whether the sheriff in that respect acted correctly or not; but it is a most monstrous perversion of justice, to apply an observation of that sort or character to a jury not returned by the sheriff, not arrayed by him, but selected by ballot out of seven hundred and seventeen names. Do they mean to say that there was any impropriety in the ballot for the jury before the officer? How could we influence the result of that ballot? How could we procure any forty-eight names to be taken out of these seven hundred and seventeen? But, said Mr. Sheil, when the special jury was struck, when the forty-eight names were drawn out, we find that ten or eleven Roman Catholic gentlemen were struck off by the Crown Solicitor; that in that way the jury was (using a very mild phrase) packed for the purpose of trying this case. Gentlemen of the jury, I own I was a good deal astonished at what I must call the temerity of my right honourable friend in again calling public attention to that subject. Upon the motion which took place in this case prior to the trial, that foul insinuation was made—foul I call it, because I think that if the Crown Solicitor had been actuated by the feeling that was imputed to him, it would have been most base and unworthy conduct. The foul insinuation, I say, was made, that those gentlemen were struck off because they were Roman Catholics. The Crown Solicitor was bound to strike off twelve; forty-eight could not be left—each party must strike off twelve: twenty-four is the number to be returned—he was bound to strike off twelve. He struck out twelve accordingly, and those twelve perhaps (I do not know how the fact is, but I will, for argument sake, admit it) comprising ten gentlemen professing the Roman Catholic faith. Gentlemen, upon the motion to which I have alluded, Mr. Kemmis, the Crown Solicitor, made an affidavit, in which he stated that he had received information which, at the time, he believed, and which he still believes to be true, that these gentlemen were members of the repeal association. Gentlemen, upon that occasion the answer was, that the truth was not so; and it was distinctly stated that the fact would be negatived by affidavit. Who was it that made that statement? My friend Mr. Sheil himself. Mr. Sheil rose, and when the fact was read from the affidavit of the Crown Solicitor, he distinctly stated that he was authorised to contradict the allegation respecting those jurors, or, at all events, that it was not true, and that it would be shown, by affidavit, that it was not so—I think he said the next morning, but that is not material. From that hour to this moment no such affidavit has been made. Gentlemen, whether it can be made I have my own opinion. The making an affidavit is a serious thing. It was, therefore, gentlemen, wrong for my learned friend to insinuate, if not directly charge, that the jury whom I have now the honour to address, was in any degree selected by the crown, or that the exclusion of any individual from that jury was the result of his religious opinions. I ask you, gentlemen of the jury, as men of common sense, would it have been right or consistent with the duty of the law officers of the crown, to have allowed members of this very association, the legality of whose acts you are now impannelled to try, to sit in judgment upon their own acts, or upon the acts of that body to which they belong? Is that what the gentlemen on the other side would call fair and impartial? I call a fair and impartial jury that jury which is not, from its prejudices, or from its acts, or from its declarations, in such a situation, or under such a bias, as to preclude it from doing its duty, and finding that verdict which the law and justice of the case require.* Mr. Sheil, however, sought to make another use of this alleged partiality, or the supposed prejudices which he thought might exist in your minds with reference to his client and the other traversers. But I find it as difficult to reconcile the use which he thus attempted to make of this subject with the law and constitution of this country, as I do the other to which I have referred. He said—you are a jury of Protestants, sworn to decide a case in which Roman Catholic traversers are at the bar. I do not know whether all the traversers are Roman Catholics or not.

Mr. Sheil—No.

The Solicitor General—But Roman Catholic traversers there are. "Your verdict," says Mr. Sheil, "is to be" (as he termed it) "satisfactory to the public; therefore I call upon you to make compensation"—I use the very phrase of my friend—"I call upon you, gentlemen, to make compensation to the traversers at the bar for the disadvantage under which they labour, in having the merits of their case decided by those who differ from them in religious opinions." My friend is quite at liberty to interrupt me if I am wrong; I should be much obliged to him.

Mr. Sheil—My friend is not exactly accurate, but I am so loath to interrupt any body that is speaking, particularly as I was not interrupted myself, that unless it should be matter of ——

The Solicitor General—I heard the word "compensation."

Mr. Sheil—Yes, that was used certainly; I said that. What I said was, that I thought the jury would be more solicitous in the performance of their duty, when they took into consideration that there were sixty-five names suppressed.

The Attorney-General—No, no; that was not it.

Mr. Sheil—I beg your pardon; I said that; at least if I did not, it was what I intended to convey. I do not like to contradict any gentleman, but in point of fact that is what I intended to convey, and I am confirmed in that by the report in the paper.

The Solicitor-General—I am willing now to take it as Mr. Sheil wishes it to be understood. However, gentlemen of the jury, I will not dwell further upon this particular topic, except to make this remark: I am sure, gentlemen, you will not suffer any observation made to you, with respect to the subject of religious opinions, to have the effect of inducing you to swerve in the slightest degree from your duty. You have, gentlemen, a solemn and sacred duty to discharge; you are bound on your

* The jury in the case of the State Trials were, according to this theory, neither fair nor impartial; for by far the greater number of them were known opponents of repeal, or had been members of public bodies opposed to its objects.

oaths to do it; and, as on the one hand I should not call on you to find a verdict against the traversers by reason of your entertaining any religious opinions at variance with theirs, so on the other hand I must deprecate the introduction of a topic of that description for the purpose of intimidating you —I may use perhaps too strong a phrase—but for the purpose of inducing you, by the fear of yielding to religious prejudices, not to do that duty which is imperatively called for by your oaths, and by the evidence in the case. Gentlemen, I make this observation, and I beg your particular attention to it, that it is for the conduct of the parties connected with these proceedings in the year 1843 that they are now brought before you. I think you will see by and by, that whatever may have been the original constitution, whatever may have been the original objects, whatever may have been the original conduct of the association, which was formed in the month of July, 1840, the persons who were promoting the designs of that association in 1843, were pursuing a course utterly at variance with the law and constitution of this country. With respect to the meeting in 1810, at which Mr. O'Connell delivered the speech which was read to you at length, at which the high sheriff presided, and very many respectable citizens attended, I fully and freely admit that I see nothing in that meeting, or in the proceedings at it, at all at variance with the law. I admit fully further that the sentiments which Mr. O'Connell appears to have delivered upon that occasion, are to a certain extent, and only to a certain extent, identical with those which he has latterly professed. But we are not trying Mr. O'Connell here for inconsistency in any political opinions; we are not saying that Mr. O'Connell, and the other traversers, have, for the first time, in the year 1843, proclaimed themselves friends to the severance of the legislative connection. I am willing to concede that they have always entertained the same sentiments; that Mr. O'Connell, for instance, as far back as 1800, entertained them; but we are prosecuting Mr. O'Connell, and the other traversers, for endeavouring to carry out those principles in 1843 by unlawful means. Gentlemen, the meeting of 1810 was a perfectly legal and constitutional meeting. There was a requisition of most respectable merchants; the meeting was convened by the sheriff. Every gentleman was allowed to deliver his opinions, and a petition was agreed to. So far all right. But, gentlemen, where is the use of bringing forward the proceedings of 1810, or 1800, or 1794, or 1795, or any antecedent period, to bear upon a case to which they have no reference whatever, the facts being altogether different; the facts being in one case that there was no more than a single meeting called for the purpose of petitioning parliament; and being, in the other, a succession of multitudinous meetings for the purpose (as I shall clearly show) of intimidating the legislature into a dissolution of the union. But, gentlemen, there was then a reference made by Mr. Sheil to other assemblies, Orange lodges and the Hillsborough meeting, and the large demonstrations at those meetings. I will not take upon me to say, whether they were legal or illegal. A single meeting took place, very largely attended, and separated, and there was no breach of the peace. But what opinion must the gentlemen on the other side have of the understandings of those they are addressing, when they think a reference to a transaction of this sort, can have the slightest bearing on a case like the present? Gentlemen, Mr. O'Connell's former conduct has been also pressed into the service by Mr. Sheil. It is said that his object was to obtain a repeal of the legislative union, by the peaceable demonstration of what has been called moral force. Now, gentlemen, as an abstract proposition I do not dispute, that it is perfectly legal to obtain, in any way that the law allows, any fair way, the expression of popular will or popular feeling, in order to demonstrate to the legislature what are the wishes of the great majority of the people of the country. But what, gentlemen, I charge them here with is this—the demonstration, not of moral, but of physical force. Whether I am right, or they are right, is a matter for you—is a matter to be decided on the evidence. All the observations I am making now, you will understand are preliminary. I am not as yet applying myself to the evidence. There were some other topics to which Mr. Sheil adverted, which I think I need scarcely take up any time in discussing. Mr. O'Connell's conduct to Sir Abraham Bradley King certainly was, I am willing to admit, very liberal and generous; and Sir Abraham Bradley King has testified his gratitude in the letter which you have heard read, but to suppose that an act of kindness to Sir Abraham Bradley King can be offered to your consideration, as a justification of the conduct with which we charge him in this indictment, is quite preposterous, and I need not trouble you with making any further observations upon it. Gentlemen, I shall now pass to some topics which Mr. Moore, the counsel for Mr. Tierney, introduced into his address. Mr. Moore has arraigned the policy of this prosecution. "Do the government," said he, "suppose that the result of this trial, one way or the other, will tend to allay the agitation that pervades the public mind upon this subject?" Gentlemen, whether it will or not, it is not for me to say; nor, gentlemen, is it for you to consider. I have my own opinion on it; so probably may others, and so may you; but, gentlemen, I call upon you not to act upon any such opinion. Even though you should be persuaded that the result of a verdict of guilty against these traversers would tend to allay this pernicious agitation, yet, gentlemen, if you are not satisfied on the evidence that you ought to find that verdict, I ask you not to find it. And on the other hand, if a contrary verdict would have an opposite effect, you will not act upon that supposed consequence. Recollect the oath you have taken—it is your duty, regardless of consequences, to find that verdict which the evidence warrants. Gentlemen, Mr. Moore further says, "if repeal be unattainable, it will drop of itself." Why, gentlemen of the jury, does that follow? Is it not the duty of the crown, as far as the law and constitution will permit, to put an end to those mischiefs? Gentlemen, whatever may be the abstract probability or improbability of carrying a repeal of the union, if it be found, in point of fact, that consequences injurious to the public and the country, are the result of these proceedings, it is the bounden duty of any government entrusted with the execution of the laws, to use their utmost endeavours to put down such mischiefs. Gentlemen, Mr. Moore then says, what I think is not very consistent with other parts of his observations—"You should have proceeded against the press, you should have prosecuted for libels, you should have indicted the publishers of these seditious papers." Such a course, however, would not have reached the real evil. Where would have been the use of convicting Mr. Duffy for a libel, or Dr. Gray for a libel, or Mr. Barrett for a libel? Gentlemen, it is perfectly clear, you must see at once, that this would not have attained the desired object. But, said Mr. Moore, "here is a most unfair, oppressive, and unjust proceeding in grouping all these traversers into one large indictment"—throwing down, what he calls a "monster indictment" upon the table—throwing down a mass of newspapers, and calling on the jury to extract and spell out from all this mass a conspiracy against the traversers. Gentlemen of the jury, with respect to that, no doubt the indictment is long, but

why is it long? Because the overt acts, as they are called, necessary to evidence that conspiracy, are numerous; but the charge itself is perfectly simple and perfectly plain. I read to you in the commencement the distinct charges in the indictment, the several branches of it, and you cannot have the sightest difficulty in comprehending the nature of the accusation. The other matters in the indictment are no more than such as every jury must necessarily have to consider, namely, the evidence in support of the prosecution. Are we, because the facts necessary to guide you to the conclusion with respect to the indictment are numerous and complicated, and evidenced in various ways, are we to be taunted with having resorted to an unfair, oppressive, and unjust mode of proceeding, when we fairly put forward those matters, which are merely evidence? At all events we might, in point of law, have omitted them from the indictment altogether, because they are evidence, and nothing but evidence. So that the indictment, properly so called, is short and perfectly intelligible. Well, gentlemen, Mr. Moore then says that the Attorney-General has, what he calls, lain by. He does not indeed say, as I think was insinuated, if not directly charged, by Mr. Sheil, that this was done for the purpose of seducing the accused into the commission of crime; but he says the Attorney-General lay by, and that it was the duty of the first officer of the crown not to suffer these persons to meet together, and do these acts, under the supposition that they were not in that respect violating the law, or acting contrary to the feelings or wishes of the government. Gentlemen, I have already in a good measure answered this reasoning: but in addition to what I have already stated on that subject, I wish to say something in reply to the view which Mr. Moore in particular has taken with respect to it. I do not like introducing into this case anything appoaching to personality, but Mr. Moore did certainly use very strong language, with reference to my friend the Attorney-General, for what, he would insinuate, had been conduct on his part leading these persons to suppose that they had been guilty of no violation of the law. Gentlemen of the jury, Mr. Moore should have considered, before he made that insinuation, what is the real nature of this case. He must have known perfectly well—though certainly I do not blame him for not having brought the matter prominently before you—he must have known perfectly well, that the present charge is not the attending an illegal meeting, nor the publication of a libel, nor a breach of the peace, but the formation of a settled design, testified by the acts of the parties, to procure a repeal of the act of union by intimidation, and to use, as means to effectuate that object —first, the raising a spirit of discontent against the constitution—secondly, the sowing jealousy and ill-will between different classes of the subjects—thirdly, the attempting to create disaffection in the army—fourthly, the bringing into disrepute the administration of justice—and, fifthly, collecting together these multitudes of people. Mr. Moore ought to have known that this was the gravamen of the charge; and that such a charge could only be proved by a succession of acts. He ought not, therefore, to have said, that the delay in bringing forward the prosecution was imputable to such motives as he thought fit to ascribe to us, when it was necessarily occasioned by the nature of the prosecution itself. Gentlemen, Mr. Moore then stated that the grand jury had taken some time to deliberate on this bill. Are you surprised? Could a case of this magnitude have been conscientiously disposed of by any grand jury without long and careful deliberation? Gentlemen, Mr. Moore then referred to a circumstance, to which I think it most extraordinary that he should advert, namely, that one juror had stated in court that he did not concur in the finding of the bill. I must be allowed to say, that a more improper observation (I do not use it in any offensive sense) could not have been made. Gentlemen, you are all aware, that by the law of this country a grand juror is not to disclose what takes place in the grand jury room. He takes an oath not to do so. Mr. Moore states, that notwithstanding that oath, one gentleman did state in court, that he had dissented from the finding of the bill.* Gentlemen of the jury, I do not know, but that if this gentleman had heard the whole of the evidence submitted to you, he might have altered the opinion which he is stated to have expressed. Gentlemen, then Mr. Moore says—"You charge us with a conspiracy. Where was the conspiracy, when was the conspiracy? Give us date—give us time." Why, gentlemen of the jury, I never heard anything like that addressed to a court and jury on a charge of this nature. Mr. Moore himself admits, and every gentleman who has addressed you has been compelled to admit, that we are not bound to prove that Mr. O'Connell, Mr. Steele, and Dr. Gray, and the other traversers, went into a room, and signed an agreement to do certain things—we are not bound to prove the original concoction of this conspiracy. No; all we are called on to prove are acts of the parties, from which it is to be inferred that a conspiracy was in fact formed. And, therefore, to say that a conspiracy is not proved, because we have not shown to a jury in what street it took place, or on what day it was arranged, is most monstrous. I say it took place and existed in 1843; and if I satisfy you of that, I satisfy you of the guilt of the traversers; and so the court, I respectfully anticipate, will tell you. If I show, as I have done, that there was a community of purpose between these several traversers, each of them acting in his department, for the prosecution of a common object, and that such a co-operation could not have existed, unless some common design had been previously entertained, I do all that is necessary to establish the case of the prosecution. Gentlemen, Mr. Moore then says, that we are impeaching the loyalty of these defendants, and of the association to which they belong. My learned friend, the Attorney-General, did not, in his opening statement, say anything charging these parties with general disloyalty. I do not impeach their loyalty; all that I say is that they have embarked in an enterprize that is illegal. It may be said, in one sense of the word, that any person is disloyal who violates the law. In no further, or other sense do I impute disloyalty to these persons; but I beg to say, gentlemen, that to deny disloyalty, is no answer to a definite charge of a violation of the law. And now I wish to answer one or two observations made by Mr. Hatchell, who appeared as counsel for Mr. Ray only. As far as I could collect Mr. Ray's case, as stated by Mr. Hatchell, it is this:—"Mr. Ray is the paid officer of this association; he has only done his duty. He receives a salary—he has certain functions to discharge; he has only done those duties, and therefore is not open to prosecution." Why, gentlemen, can it make any difference with respect to the legality, or the illegality, of a man's conduct, that he acts as

* We cannot perceive any reason for this insinuation against the juror in question, Mr. Richard O'Gorman. Nothing could possibly be more unjust or ungenerous. Unjust, because utterly groundless—ungenerous, because levelled against a gentleman not entitled to reply. The simple fact is Mr. O'Gorman's justification. The foreman of the grand jury handed in the bill with the endorsement "a true bill for self and fellows, George Brooke." Now one of his "fellows" on the jury was Mr. O'Gorman; but he did not concur. How was he to make known the fact? Simply and solely by the course he adopted. None other was open to him; and how any man of ordinary fairness of disposition and ordinary clearness of understanding could insinuate forgetfulness of his oath against Mr. O'Gorman is what we cannot by possibility understand.

the paid agent or officer of an association? If the acts of that association be unlawful, Mr. Ray makes himself responsible, as every other member does, for the acts of that body to which he has united himself. If he has concurred in those acts, it is no justification to say that he acted in what he thought his duty towards his employers. Mr. Hatchell then says, "Why did you not call some person who was a member of this association, to prove the existence of this conspiracy? Why did you not call Holbrooke? Why did you include Mr. Ray?" What would have been said if we had? Would it not have been said, that the witness was an informer? That he was the hired spy and agent of the government? Would not the case have been branded as one got up by treachery? Would it not have been said, that this person received money for betraying his associates? Gentlemen, you cannot have failed to remark, in the whole course of the evidence we have not produced any person open to the imputation of being a spy or informer.* All the evidence has been given independent of the members of this association, without the slightest aid from them, or any of their body.† Gentlemen, Mr. Hatchell says, "Mr. Ray might have been produced as a witness." Suppose he had been produced as a witness, what do you think would be his answer to the very first question put to him? He would have appealed to the court, and he would have asked their lordships, whether he was bound to criminate himself, or answer any question tending to criminate himself. It would, gentlemen, have been an irresistible objection; he could not have been compelled to answer one question. Therefore, the idea of making him a witness, contrary to his own wish, is absurd. The proceedings of this association are all recorded, and there are books kept. Where are the books? Might they not have been produced? If by including Mr. Ray in the indictment, we prevented his being a witness, have we, therefore, prevented them bringing forward any evidence to show what the real objects of this association were—what their proceedings were? Have we prevented that? Have they done that? Gentlemen, did you ever before meet with a case where the evidence in answer to a charge was of the description you heard yesterday? There was not a single person connected with this association placed upon the table; not a single document emanating from it was produced, except some of a public nature; not one of their books; none of their officers; not a single ray of light thrown on this case on their part.‡ When I come to advert to their evidence, I think you will find, that instead of detracting from that of the crown, it has gone strongly to confirm it. Well, gentlemen, it is then said, that trials of this nature have taken place in England. Mr. Hunt and others were prosecuted in England for conspiracy, and also for attending an unlawful assembly. My answer, in point of law, to that has been given already. They were indicted for attending a single meeting. True it is, that in those cases the English jury convicted for attending an unlawful assembly, and not on the conspiracy. Why? Because the parties were clearly guilty of an unlawful act by attending the unlawful assembly. There was no occasion to consider whether there was a conspiracy or not; therefore, the jury very properly did convict for attending unlawful assemblies. But does my friend mean to say, that in the recent cases English juries have not convicted for conspiracy? Why, in the very cases that have been cited in the course of this trial, you will find English juries have convicted in cases of conspiracy. But I must protest against the conduct of English juries being brought forward for the purpose of influencing an Irish jury. Even supposing the facts the same, it would not be conclusive; but the facts are wholly different, and there were facts in Hunt's case which fully justified the course the jury pursued. In the case of the Queen *v.* Vincent, 9th Carrington and Payne, the jury found the defendants guilty of the conspiracy. Gentlemen, Mr. Fitzgibbon, who appeared for Dr. Gray, has also stigmatized this prosecution as illegal and unfair. He was pleased to term it "a ministerial scourge to lash the people." Now, gentlemen of the jury, I must protest against an imputation of this kind, as being one not justified, I will take on me to say, by anything that has occurred in this trial, or the mode in which it has been conducted. Have we shown anything of that sort in the prosecution of this case? Have we not presented abundant ground why this case should be investigated by a jury, for the purpose of trying the question which Mr. O'Connell himself has challenged us to try—the legality of his conduct. That is the question which he has required, which he has dared us to try, but which, I must say, he has now shown every disposition to evade. Mr. Fitzgibbon says, "suppose this is a prosecution, which in an ordinary case would be justifiable, yet it is unfairly conducted." His phrase was, that it was "a blow below the belt." Gentlemen, if he meant by that expression to say, that we had taken any unfair advantage of his client, I must deny the assertion. I think, that so far from this being "a blow below the belt," it was as fairly aimed a blow as ever was struck; and I further think, that not only has the attack been fair, but we have given the defendants the fullest scope for their vindication. It is impossible for any man to say that they have not been allowed the benefit of every topic which even the wildest fancy of their counsel could suggest. But Mr. Fitzgibbon differs from Mr. Moore as to the law of this case; he contended that the definition of conspiracy to which I have already adverted is incorrect. I shall not trouble you again with respect to the accuracy of that definition. I have already submitted to the court what occurs to me upon it, and I think the court will inform you that Mr. Moore is right, and Mr. Fitzgibbon incorrect. Gentlemen, Mr. Fitzgibbon then says, that it must appear that each and every act was concocted by all the conspirators; and he cited a passage from the judgment of one of the learned judges, Baron Alderson, that if one man does one part of an act, and another another part of an act, that is evidence of a conspiracy. Mr. Fitzgibbon says, that we should show that one part of an act was done by one person, and another part of the same act by another person, and that it will not do to prove that each of the traversers did a distinct act, although it might be in pursuance of the common design and conspiracy. I understood him so to say. Gentlemen, with respect to that, under the correction of the court, I lay down this proposition—that all that it is necessary to show is, not that each person concurred in any one particular act, or that one person took one part of a particular act, and another person another part of the act; but that each, in his way, was labouring to effectuate a common object. That unity of action is evidence as against all. It is evidence to show that there was a common object, and that evidence being given, the jury are at liberty to infer the existence of a conspiracy. Thus, if Mr. O'Connell by speaking, Mr. Ray by receiving money, Mr. Duffy by publishing, Mr. Barrett by publishing and by attending meetings—if each and every one of these persons, by different means, and in different parts of the coun-

* The learned Solicitor forgot Mr. Charles Ross, the man who represented himself as a reporter for the press, while he was in reality the paid spy of Sir James Graham. Sir James acknowledged in "the house" he had retained this man.

† Save in the case of Mr. Holbrooke, this is true.

‡ *Cui bono*, when there was nothing in the indictment charging the association as illegal?

try, was labouring in this common cause, though one of them might not know what the other was doing at a particular time, nevertheless, the act of one is the act of all, because it is an act in furtherance of the common design which they all entertain. And thus there is an end at once to this charge of injustice, which has been so often reiterated, that we are seeking to visit one man with the guilty act of another. Gentlemen, we are not seeking to visit one man with the guilt of another. We are seeking to visit one man with the act of another, but not with the guilt of another.* We are seeking to charge each man with his own guilt. What is that guilt? Not that he did a particular act, or that another did a particular act, but that he embarked in an unlawful design with other persons, and that each, in his particular way, furthered that end and that object. That is the guilt; and thus each man is answerable, not for the guilt of another person, but for his own. Mr. Fitzgibbon then says, "a repeal of the union is the common design, he admits, of these parties." Gentlemen, he says it is not illegal to combine for the common object of obtaining the repeal of the union. Certainly not; but it is illegal to combine to obtain a repeal of the union, by sowing dissension amongst different classes of the subjects, by intimidating the legislature, by causing disaffection in the army, and the various other charges in this indictment. Then he says that we have no right to convict his client for the public good. God forbid that we should seek to convict any man for the public good—I disclaim anything of that sort. You must be guided entirely by the evidence; and if you believe Dr. Gray not to be implicated in this conspiracy on this evidence, in heaven's name acquit him; but if you believe that he is, do not be deterred from your duty by the statement, that we are seeking to convict Dr. Gray for the public good. Gentlemen, Mr. Fitzgibbon then says, that his client, Dr. Gray, has merely interfered in these proceedings as a reporter; that he has been merely exercising his vocation as editor of a paper; that he has not lent himself to this combination, if it be one, and that we might as well prosecute any other editor of a newspaper for reporting the proceedings of public bodies. Gentlemen of the jury, I shall not dwell longer upon that, than to say that I mean to call your attention, not merely to the publications by Dr. Gray of the proceedings of this body, but to his acts in furtherance of this common design; acts which are not denied, and which could not possibly be ascribed to any other cause than the existence of the design charged in this indictment, and Dr. Gray's participation in that design. Gentlemen, Mr. Fitzgibbon then says—"It is very true that some warm language might have been used at these meetings; you cannot expect persons, in times of political excitement, and on great public subjects, to preserve that strict decorum in language and expression which the dignity of a court of justice would necessarily insure." All this, gentlemen, is very plausible, and all very well; but I think you will see, that the expressions used in this instance are not the effusions of a person, in the heat of the moment using language which, perhaps, he might afterwards regret, and be ready to retract, but the deliberate declaration of sentiments calculated and intended to promote the object which we say these parties had in view, namely, the dissemination through the country of sedition and disaffection, the necessary and inevitable consequence of such harangues. Gentlemen, Mr. Fitzgibbon's next argument was a curious one; he says—if these parties were guilty of anything, they were guilty of high treason; and he gravely contended, that this crime of misdemeanour was merged, as we call it, in point of law, in the capital crime of treason. His complaint, by way of defence, was this—that these parties ought to have been prosecuted for high treason. Gentlemen, whether the proceedings, if allowed to go on, might have come to such a head as to have warranted an indictment for a graver offence, is another question entirely; but we are prosecuting here for misdemeanour; and to say that there was treason in this case, for the purpose of getting an acquittal on the present indictment, seems to me to be a most extraordinary defence. Then, gentlemen, alluding to the use of the word "Saxon"—oh! says Mr. Fitzgibbon, Mr. O'Connell calls the English Saxons, and is it not true? Were they not Saxons? Did they not spring from a Saxon origin? And because that is true in point of fact, Mr. Fitzgibbon thinks he has justified the uniform use of that word in designating the English people. Gentlemen, I think you will have no doubt, that the word "Saxon" was resorted to, for the purpose of exciting in the minds of the multitudes of this country feelings of hostility against the English people, as strangers, invaders, and conquerors. Gentlemen, Mr. Fitzgibbon then says that Mr. O'Connell has always shown his aversion to chartism and ribbonism. I admit he has; and for the best of all reasons, that chartism or ribbonism, or any other kind of society, or machinery, save and except that which he himself was organizing and intending to use, would have been fatal to his projects. Gentlemen, his scheme, I say, was this—present tranquillity, present obedience to the law, perfect organization, constant agitation, the spirit of hostility to be always preserved and kept up, a readiness for action always to be maintained, but no immediate violation of the law by committing a crime, so as to place his creatures within the fangs of the law, and thereby deprive the agitation of the machinery necessary for its success. Mr. Fitzgibbon then contends that the act of union might be void on account of fraud.

Mr. Fitzgibbon—Against the spirit of the constitution.

The Solicitor-General—Gentlemen, he then says that the law does not sanction the definition of any crime. I certainly took down that expression, as having been used by my learned friend. Now, gentlemen of the jury, that is a most extraordinary doctrine for a constitutional lawyer.

Mr. Fitzgibbon—I never said that.

Solicitor-General—Then I have been extremely unfortunate in taking down what my friend said.

Mr. Fitzgibbon—I said it was necessary to the guilt of the party to have a definition of the crime.

The Solicitor-General—That is a proposition I should certainly never have thought it necessary to lay down. I should be very sorry, indeed, to belong to a country where crime is undefined. It is the definition of a crime that constitutes the real spirit and value of the law. It is impossible to charge a man with violating the law, when you do not define the provisions of that law. However, gentlemen, I will not say more on that. Then, my friend, Mr. Fitzgibbon, says, the language addressed to the people, or to the multitudes, with respect to the army, was not addressed to the soldiers, but only to the people. Now, gentlemen, that would be all very well if the language which was thus ostensibly addressed to the people, were not to be circulated through the country. But you will not fail to recollect that one of the modes by which the purpose of these parties was to be accomplished, was the circulation of those very speeches, and that very language all over the country. And, gentlemen of the jury, this suggests to me another ground why the machinery of this association was necessarily such as to require a present observance of the law. You will find the great object was to collect as many individuals as possible together, and to

* But the act is the guilt, and thus the circle is complete.

enrol them in this association. This could only be done by personal contact, if I may say so, with each individual through the agents and emissaries of the association. It would never do to have a number of multitudinous riotous meetings for that purpose. It would never do to have the public peace broken, and constables interfering, the police interfering, or the army interfering. No, it was necessary that this scheme should have time to work—that each individual should be personally applied to—that the repeal wardens, and other persons carrying out the objects of this association, should have an opportunity of enlisting those individuals, one by one, quietly and successively, without making any public demonstration, and when the time arrived, either for calling one meeting, or another meeting, getting their instructions circulated so as to cause them to assemble at that meeting; or, if the necessity should arrive, convening them all together for any purpose, legal or otherwise, which might be in contemplation. Gentlemen, Mr. Fitzgibbon then goes on to say, that Mr. O'Connell has always advised his associates not to enter into any correspondence with any individual in the army. No doubt Mr. O'Connell gave that advice, and very wisely, because to have done so would have been to have fallen into the very error against which he was anxious to guard them—the immediate violation of the law. By the statute of the 37th George III., chap. 40, which was temporary at first, but made perpetual by the 57th George III., chap. 7, it is made a transportable offence to tamper with any individual in the army; and of course, gentlemen, to enter into any correspondence with any member of the army would have been a dangerous proceeding. But, gentlemen, is the forbearing so to do any answer to the charge, that this language was used for the purpose of its having its effect on the army as a body? Gentlemen, now I need not trouble you further with any of the topics which Mr. Fitzgibbon addressed to you; they were very numerous; I do not mean to say I have adverted to them all, but I think I have to the principal of them, or at all events to such as had not been used by gentlemen who preceded him. Gentlemen, Mr. Whiteside then addressed you; and certainly there never was a more splendid exhibition of eloquence, than my learned friend displayed on this trial. It did honour to him, to our profession, and I may add to our country. I listened to him with great delight and admiration. His speech was also characterised by a tone of perfectly good feeling. He did, or attempted to do, what really and truly is the only thing that could, with any prospect of success, be attempted in a case of this description. He endeavoured to divert your attention, excusably enough, from the merits of the case, and to raise a laugh occasionally at some points of the evidence. But, gentlemen, he also professed at least to argue the case upon some points applicable to its merits; and to those I must endeavour to apply myself. Amongst others, he stated that Mr. Duffy (for whom he appeared as counsel) was no more than the editor of the *Nation* newspaper, that his conduct amounted to nothing more than the free and legitimate exercise of his profession; that the articles he inserted in his paper had not been prosecuted; that he had a fair right to assume they were unobjectionable; that if you can attribute a fair and honest motive to him, you ought to do so; and that you ought not to infer from those publications that he was a participator in this combination. Gentlemen, that is all fair matter of argument; I do not dispute the right of my friend to use those topics to you. But, gentlemen, I must take leave to differ from my learned friend, when he says that Mr. Duffy appears upon this trial in no other character than that of the editor of a newspaper. Gentlemen, the *Nation* appears to have been set up in the month of November, 1842. Now bear in mind that the strength of the case for the crown, depends on the acts of the parties subsequently to that period. Gentlemen, I do not know whether you have read many numbers of that paper, but those that have appeared on this trial warrant me in saying, that it was set up for the purpose of disseminating amongst the people of this country seditious sentiments, which up to that time certainly had not been so undisguisedly published. Gentlemen, Mr. Whiteside says, you might as well attempt to convict any other editor of a newspaper, by reason of the acts of these members of the association, as Mr. Duffy, because there has not been shown any community of purpose between him and the other traversers. Gentlemen of the jury, that is the very question you have to try. I say we have shown a community of purpose; and I evidence that community of purpose by the acts of each of the individuals. If Mr. Duffy's acts, or Mr. Barrett's acts, or Mr. Steele's acts, or Mr. Ray's acts—if they show that these gentlemen embarked in a plan, I do not care whether concocted by Mr. O'Connell, or not, if at any time they embarked in that plan, and assisted in the prosecution of it, they are just as guilty of that plan or conspiracy in point of law, as if they had assisted Mr. O'Connell at the commencement in concocting or framing it. Gentlemen, Mr. Whiteside referred to the case of Redford *v.* Birley, which has been already cited, for the purpose of showing that there was here nothing that ought to have been prosecuted, and no evidence of conspiracy, by reason of the conduct pursued at these meetings. Now, gentlemen, I shall refer to page 106 of that report, where the learned judge says—

[The learned Solicitor here quoted the passage at considerable length, and continued:—]

Gentlemen, Mr. Whiteside then adverted again to Hunt's case; and he also says there was an acquittal for the conspiracy, and a conviction for attending the unlawful assembly; and he read the circumstances of that case as they appeared before the jury, for the purpose of contrasting it with the present, and showing that the case now before you was one in which the jury in Hunt's case would have acquitted. But every one of these facts in Hunt's case, which Mr. Whiteside relied on, and called to your attention, shows that the meeting was unlawful in itself and ought therefore to be the subject of conviction, and so far from furnishing any argument against us, Hunt's case rather supports the view which we are submitting to you of the present. Gentlemen, Mr. Whiteside then contends that the legality or illegality of a meeting cannot depend on mere numbers. Gentlemen, I will not enter into that discussion; I will not admit that a meeting may not be illegal merely from its numbers. Numbers may, without more, be calculated to excite alarm, but that is not the question here. Mr. Whiteside went into a long detail of meetings at Birmingham, and meetings of persons to address Lord Melbourne about the Dorchester labourers, and various other meetings in different parts of England. I know those meetings have taken place very frequently; if they have been attended with a breach of the public peace, they have been prosecuted accordingly; if not, they have been allowed to pass over. But ours is not the case of a single meeting, but of a series of meetings for a common object. Then, gentlemen, he says there is no prosecution against the people who attended these meetings. I have disposed of that already. We are not prosecuting the people who attended, but the people who procured the meetings. Gentlemen, Mr. Whiteside then adverted to a topic, which did not appear to me properly to belong to the case, but to which we did not object, not being willing to have it supposed that we were in the slightest degree anxious to fetter the defence of the traversers.

He alluded to the Party Processions' Act, the 2nd and 3rd of William the Fourth, chapter 118; and my learned friend made the strange assertion, that that act was levelled against a particular party. Gentlemen, there is nothing at all on the face of the act to warrant that allegation. The act is quite general. It is as applicable to one description of persons as to another. No matter what profession he may belong to, what politics he may profess, any body who violates the provisions of that act is punishable under it.* Gentlemen, Mr. Whiteside next adverted to a topic which Mr. Sheil introduced into his speech. I mean the desirableness of holding a parliament in Ireland at stated periods. Mr. John O'Connell did not sanction that project, and therefore I did not advert to it, when applying myself to Mr. Sheil's speech. Mr. Whiteside, however, reverted to it, and alluded to a transaction which occurred in the course of the trial of Hardy on the examination of the Duke of Richmond. Amongst other grounds on which Hardy defended himself, was a letter of the Duke of Richmond on the question which then agitated the mind of England, namely, the constitutional reform of parliament. The Duke of Richmond was examined as a witness, and he proved that letter. In the course of it this passage occurs, on which Mr. Whiteside relied. "Before I conclude, I beg leave to express a wish that the mutually essential connection between Great Britain and Ireland may soon be settled on some liberal and fair footing. That which did subsist was on such narrow and absurd principles, that no friend of either kingdom can regret its loss; founded on constraint and dependence, incompatible with the condition of freemen, Ireland had an indisputable right to dissolve it whenever she chose so to do. But surely if we do not mean a total separation, it would be right to agree upon some new terms by which we were to continue connected. I have always thought it for the interest of the two islands to be incorporated, and form one and the same kingdom, with the same legislature, meeting sometimes in Ireland as well as in England. But if there are difficulties to such an union not to be got over at present, some sort of federal union, at least, between the two kingdoms, seems necessary to ascertain the many circumstances that concern their joint interests; an union of this sort may now be formed with much greater propriety than before, as it will be sanctioned by the free consent of independent nations." So much was read by my friend. The letter then proceeds—"I do conceive that some step of this sort is absolutely necessary, because the present footing of separation rather than union is too unfair to be able long to subsist." This, gentlemen, was in 1794. "England, besides the load of the whole debt contracted for the use of both kingdoms, bears all the burdens of naval defence and foreign negotiations, and by far more than its proportion of the land service in time of war. But what is worse is, that there is no certainty now left, that we shall have the same enemies and the same friends; different interests, as they may appear, may lead one kingdom to think a war necessary, and the other to remain in peace; the same king, in his different kingdoms, may think it wise to follow the advice of his respective parliaments: I need scarcely add that the unavoidable consequences of such a difference are a war between the two kingdoms. Unless some settlement takes place upon these and many other important subjects, I am far from being clear that it will be for the advantage of liberty in either kingdom that its monarch should continue the sovereign of a neighbouring state with which it has no connection." Such is the view of that nobleman, in that letter, as to the consequence of separate legislatures. Gentlemen, when it comes to be decided whether the union ought to be repealed or not, the considerations suggested in this letter may not be unimportant; that, however, is not the question you have to try, although Mr. O'Connell would have you believe that it is. Gentlemen, passing by that, without further preface I come to an authority which Mr. Whiteside cited from Peake's Additional Cases, page 84, the King *v.* Reeves. Gentlemen, that was a prosecution against Mr. Reeves for a libel, a libel certainly of a very gross character, no less than this, that it was competent to the King to reign and govern without the intervention of the houses of parliament at all. This the house of commons voted to be a seditious libel, and ordered it to be prosecuted. The jury, nevertheless, says Mr. Whiteside, and very truly, acquitted. The jury were not coerced by that opinion of the house of commons. And why? Because in an indictment for a libel, one question for the consideration of the jury is, whether the person published the libel with a bad intent. But, gentlemen, of the jury, what analogy upon earth can that have to a case like the present? I do not dispute that one question here is as to the intention of the parties, but that intention is to be demonstrated and judged of, not by a reference to a case in this or that volume, or to this meeting or that meeting, but by the acts and declarations of the parties who are on trial. I shall now next, gentlemen, offer a few remarks upon what fell from Mr. Henn. Mr. Henn told you, that he was unexpectedly called upon to address you. I believe, gentlemen, that that was perfectly true. I suspect Mr. Henn was called upon to buckle on his armour at the eleventh hour. And certainly, resorting to him on the part of the traversers, did show on their part very great discretion. But, gentlemen, I think when we come to consider what Mr. Henn urged, that it will be found to be neither more nor less that a sophistical repetition of certain arguments, which had been brought forward before, and which it was thought and felt, when Mr. Henn was called upon, had not been altogether such as might with safety be relied upon. As well as I could collect my learned friend's argument it was this. I admit, said he, in the fullest sense, that the act of one conspirator or party is evidence against others, if they are embarked in the prosecution of one common unlawful purpose. I will not deny, said he, that if the purpose be illegal, if the end be unjustifiable, the act of one person connected with the others is evidence against all, because they are all engaged in an illegal design; but, said he, when parties are engaged in a legal object, where their object is perfectly fair and constitutional and proper, then I say that it is most monstrous and unjust and unfair, to visit upon Mr. Duffy, for instance, the acts of Mr. O'Connell, or upon Mr. Ray the act of Mr. Steele, and so on. And, gentlemen of the jury, said Mr. Henn, that is what is attempted to be done here. I candidly admit, he adds, that the open and avowed object of my client and the other traversers was to obtain a repeal of the legislative union. But that is a legal and constitutional object; and then to say that what Mr. O'Connell thought fit to speak at a public meeting, or what Mr. Duffy thought fit to insert in his newspaper, or Mr. Barrett to publish in his newspaper, or Mr. Ray to do by collecting money, and so on—to say, that under such circumstances the acts of those individuals are to be relied upon as evidence against the others, is most unfair and illegal. Why, gentlemen, all that is very plausible, but unfortunately it involves the assumption of the very question in issue; it begs the very question which you are called upon to decide. I do not admit that the common object of these parties was simply what

* The history of the legislation of the period, as well as the act itself, makes strange work of the assertion.

Mr. Henn says it was. I do admit that they had the common object which he says they had—to procure a repeal of the union; I admit that, but I further say, that having that object, that ultimate end in view, they had the further object, the further common purpose, of attaining and arriving at that end by the use of unconstitutional and illegal means, and it would be a very strange thing to say, that because it may be truly alleged, that these parties were endeavouring to bring about what, in the abstract, would be a legal act, but chose to further that by such means as are charged in this indictment, they are therefore embarked in a lawful common purpose, so as to exclude the act of one from bearing upon the guilt of the others. Gentlemen, what is the whole of this indictment? What are we trying? We are trying this: the traversers are charged, not with a conspiracy to obtain a repeal of the union, but to procure that repeal by the means stated in the indictment. If they have not adopted these illegal means, the prosecution must be given up; but if they have—if you are of opinion that the charges in this indictment are supported in point of fact, what answer is it to me to say that they intended by these means to effect an end, which, if properly pursued, would be lawful? What answer is it to me to say, that their object was to obtain the repeal of the union? Mr. Henn would have been the first himself to detect the fallacy of such reasoning if used by another. But he did hope, I suppose, that it would succeed in diverting your attention from the real question. It is my business, if I can, to undo any effect which that attempt may have produced on your minds. I hope you understand that we are not prosecuting these parties for the expression of any particular opinion, that we are not prosecuting them for combining for a particular legal purpose; no, we are prosecuting them for resorting to means which the law and the constitution do not sanction, for the purpose of obtaining an end which is not illegal, but which pursued in that way becomes illegal, and subjects to punishment those engaged in it. Gentlemen, Mr. Henn then stated that this was a very vague, general charge. Whether he meant to say it was such an one as was bad in point of law, whether he meant to contend that, I do not know; but with respect to that, I will just call the attention of the court to the fact, that in the charge of exciting discontent and disaffection, which was the part of the indictment to which Mr. Henn's observations applied, the precedent in England of the case of the Queen *v.* Vincent was followed, and also that of the King *v.* Hunt, in 3rd Barnwell and Alderson, and the eighth plea of justification in the case of Redford *v.* Birley.

Mr. Justice Perrin—Is there any case in which a single count is so framed?

The Solicitor-General—Yes, my lord, in Hunt's case.

Mr. Justice Perrin—A single count?

The Solicitor-General—Yes, my lord, in Hunt's case. It will be just enough for me to refer your lordship to the case.

Mr. Justice Perrin—I am aware it is thrown in, in the counts generally, but I want to find whether it is singly.

The Solicitor-General—Your lordship will find by reference to the case that it is so. I shall now proceed to state to you what appears to me to be the evidence in the case, and the result of it.

The court here retired for a short time. When it resumed its sittings,

The Solicitor-General continued—I find, my lords, that the reference I made with respect to the count in the case of the King *v.* Hunt, should have been to the Queen *v.* Vincent, in 9th Carrington and Payne, page 275. The first count was for a conspiracy "to excite discontent and disaffection in the minds of the liege subjects of her Majesty, and to excite the liege subjects of her Majesty to hatred and contempt of the government and constitution of this realm, and to unlawful and seditious opposition to such government." Now these are the very words in this present indictment. A copy of the indictment in the case of the Queen *v.* Vincent was sent for to London; and this is *verbatim* the same. In that case the jury found the defendants guilty. The indictment also contained a count for attending an unlawful assembly.

Mr. Justice Perrin—Was that the only count for conspiracy in the case?

The Solicitor-General—"The second count was for a conspiracy to induce and procure divers large numbers of persons to assemble and meet together for the purpose of exciting terror and alarm." And then there was a count for an unlawful assembly. There was a general verdict of conviction, including not only the unlawful meeting, but the conspiracy. That verdict has never been questioned.

The Lord Chief Justice—What was the name of that?

The Solicitor-General—The Queen *v.* Vincent. There are two cases of the Queen *v.* Vincent reported in the same volume. This is the second report, in page 275. I may here mention the case which immediately follows that of the Queen *v.* Shelford, same volume, page 277, where there was an indictment for conspiracy, and a verdict of conviction.

Mr. Justice Perrin—In that case of the King *v.* O'Connor, that was referred to by Mr. Whiteside, Baron Rolfe seems to treat such a count as too general.

The Lord Chief Justice—I do not think we can receive that report of the trial of Mr. O'Connor by himself.

Mr. Justice Perrin—It purports to be taken in short-hand and published by him.

The Solicitor-General—I am not aware that it can be received. I do not know that it can be cited as authority in this court.

The Lord Chief Justice—I cannot receive it as authority.

The Solicitor-General—I think not, my lord.

Mr. Justice Perrin—There is another authority that you referred to, which seems to go to the same point of the generality. The case in 1st Adolphus and Ellis.

The Solicitor-General—Yes, my lord.

Mr. Justice Perrin—That is as to the generality.

The Solicitor-General—I do not dispute that a count may be too general, but here is what I should call a full decision on the point, and the verdict acquiesced in. This, I submit, is a direct authority on the subject.

Mr. Justice Perrin—Yes; if it should become material to you; if there is a finding on an indictment containing one count and no other count.

The Solicitor-General—It is open to that observation, but I do not know that it is material for the present to go further into that; it was a topic introduced by Mr. Henn, and I thought it better to notice it as he relied on it. Now, gentlemen, hitherto I have not been submitting to you what I call the strength of the case in this prosecution. I have thus far confined myself to the putting aside topics irrelevant in my opinion to the merits, excusably enough introduced (in the absence of better materials) by the counsel for the traversers, but only calculated to prevent your having, what it is indispensable you should have, a clear view of the real question that you have to try. Until you first know what that question is, it is impossible that you can estimate the value or the bearing of the evidence; and it was impossible that you could understand that question, until I had divested it, as far as I could, of the immense quantity of extraneous

matter which has been heaped upon it, for the purpose of obscuring it from your view. Gentlemen, it will be necessary for you again to revive your recollection of this indictment. I have, to a certain extent touched already on the subject to which I am now about now to call your more especial attention, namely, the alleged necessity of your being satisfied of the conspiracy having comprised all these objects. Upon this point, as upon every other question of law, you will, of course, gentlemen, receive and follow the direction of the court. It is the nature of every criminal charge, that though you may lay the offence more extensively than the evidence is afterwards found to support, yet if enough be proved to show the existence of what is in law a criminal offence, it is the duty of a jury to convict for so much. I shall just refer your lordships to three authorities upon the general principle. The case of the King *v.* Hollingbury, 4th Barnwell and Cresswell, page 329. It was said by the court—"In criminal cases it is sufficient for the prosecutor to prove so much of the charge as constitutes an offence punishable by law." This was an indictment for conspiring falsely to indict a person for the purpose of extorting money. The jury found the defendants guilty of conspiring to prefer an indictment for the purpose of extorting money: and that is a misdemeanour, whether the charge be true or false. Now that clearly shows, that even upon a single count laying a single conspiracy, though that conspiracy be not proved exactly in the form and manner in which it is charged in the indictment, nevertheless if sufficient be proved to constitute what would, if spread upon the face of the indictment, by itself amount to a criminal offence, the indictment is proved. Again, in the King *v.* Hunt, 2d Campbell, page 583, an indictment for composing, printing, and publishing a libel, the only proof given was of publication. It was contended that the defendant must be acquitted; but Lord Ellenborough said—"The distinction runs through the whole criminal law, and it is universally enough to prove so much of the indictment as shows that the defendant has committed a substantive crime therein specified." The same principle is recognised in Rex *v.* Dawson, 2 Starkie 64. Now, gentlemen, I just cite those authorities, for the purpose of informing you, that what you have to try is this; are the objects of this conspiracy proved? Is any one of them proved? Are more than one proved? If they are, it will be your duty to convict, though you should not be satisfied that all are proved. I intend to submit, that I have not the slightest doubt I shall be able to establish, that every one of the objects of the conspiracy alleged in this case is as clearly proved, in point of evidence, as anything that ever came before a court and jury. But I am anxious to guard against any mistake, as to the duty of a jury in deciding upon an indictment, as if the question they were to try in their box was, not whether any of the objects were proved, but whether all were established. Again, as I have already observed, as to the several defendants—if six should be guilty, they may be convicted, and two acquitted; so if three should be guilty, and so on; or if one be not satisfactorily connected with the conspiracy, then he may be acquitted. Having thus, gentlemen, as far as I could, cleared the way in point of law, and in point of general observation, to a discussion of the merits of this case, I proceed to what I may call the history and detail of the evidence on which we rely in support of the present prosecution. There is no doubt, gentlemen of the jury, that this conspiracy or confederacy, which we say existed between the traversers and others, is mainly to be established against them, by their being more or less connected with the repeal association. It is through the medium of their connection with that body, their respective execution of its behests, their participation in its proceedings, their common co-operation in effecting its designs—it is in this way, and upon these grounds, that the several defendants are implicated in the charge of conspiracy. Gentlemen, I think no man who has heard the evidence—not merely that for the crown, but even that for the traversers, can entertain any doubt upon this point, that whatever might have been the real objects of that body of persons, when first established in 1840, their purposes were in the year 1843, and early in that year, illegal; that supposing them to have been within the pale of the law up to that period, their conduct afterwards demonstrates, that at and from that time they were actuated by the motives which we have stated in this indictment, and that the traversers at the bar were each and every one of them participators in those motives, and in that conduct. Gentlemen, I have already remarked the fact, that the *Nation* newspaper was set up in the month of November, 1842. We have not been informed by the persons who had the evidence in their power, what the objects of the association were in 1840, 1841, or 1842. We do not know them; and when I concede them to be legal, I make that concession in ignorance of the facts. But however that may be, you will find, in the early part of 1843, there was an organization of this association, and of its affiliated bodies, most carefully and elaborately constructed, and carried on, by means which themselves indicate, in the clearest possible manner, what the ultimate object then was of the parties who assisted in that organization. Gentlemen, you have heard generally of the nature of this association, so far as relates to its members and its officers. The associates' card, which is in evidence, is for the purpose of enrolling persons in the body who contribute a shilling. Mr. O'Connell's plan was—"Give me three millions of repealers, and I will undertake to procure a repeal of the union." Now, gentlemen, the only mode of becoming a repealer, according to the plan of this association, is by the subscription of a shilling; and the associate upon paying that sum is entitled to a card. There is not anything very particular on the face of it—it merely says, "That the person named having paid a shilling, is enrolled as a repealer in the books of the association." I may here, in passing, observe that one of the topics relied upon by Mr. Barrett's counsel in his defence was, that he was not a member of this association. Gentlemen, whether he was or not, would not, in my opinion, be very material with reference to the present indictment; because it is not for being a member of the association that any of the traversers is prosecuted. But before Mr. Barrett is entitled to credit for the assertion, that he is not a member of this association, I call upon you to recollect, that according to the constitution of that association, every member is regularly enrolled. It was, therefore, perfectly open and possible to have proved the fact. It is asserted that he was not—that assertion you will not take as proof. I did not assert it one way or the other, nor did the other counsel for the crown; but when it is alleged as a matter of fact, that he is not a member of this association, with a view of its producing some expected effect upon your verdict, I must, in justice to the case of the crown, recal your attention to this fact, that the proof of that allegation was in Mr. Barrett's power, and has not been given. Gentlemen, the next order or rank in this body, after the class of associates, is that of members—that is, persons entitled to a different description of card, and who collect contributions to a certain amount. This member's card, which you will have in your box, itself furnishes material evidence. [The learned solicitor then commented upon the embellishments and inscriptions on the cards of members, and continued]—Such, gen-

tlemen, is one of the cards or bonds of union, belonging to a certain order of this association. Gentlemen, as connected with that document, allow me to recal to your memory (for I am sure you must have forgotten it), a document which was proved on the part of the crown, and as to which, in common with every other material piece of evidence in the case, one and all of the traversers' counsel have been wholly silent. I allude to the document headed "Letter to the Secretary of the Loyal National Repeal Association, explanatory of the new card for members." I do not care, gentlemen, if the traversers and their counsel were to spend four more weeks in calling your attention to the transactions of this association in 1841 and 1842; I take them up here; I call upon them to meet the charge originating here. That is what they have not done—that is what they cannot do. By "the author of the 'Green Book.'" Who "the author of the 'Green Book'" is, you will hear presently, in regular chronological order. "Printed for circulation by order of the committee of the association, April 11, 1843;" this is proved by Mr. Browne. The document concludes thus:—"This letter, the reading of which elicited the repeated acclamations of the meeting, was enrolled upon the minutes of the association on the motion of Mr. O'Connell: *Nation* office." That is, Duffy's office; this is the editor of a newspaper, who was simply following his legitimate vocation in publishing, for the information of the public, interesting articles of intelligence. Now, observe, this explanation of the card is entered upon the minutes of the association, and ordered to be generally circulated. This card would not be issued to any person who did not procure £10; but one of the objects to be promoted by the devices upon that card was, to excite in the minds of the people of this country a confidence in their own strength, and also a feeling of ill-will against "the stranger" and "the Saxon," as our English fellow-subjects are termed in the course of these proceedings. Now, gentlemen, the next document is what is called the volunteers' card. This machinery appears to have been constructed with a view to the proceedings of the volunteers of 1782; and I think you will find that the real design was, that under pretext of founding the steps that were to be adopted in the prosecution of this design upon something like precedent and legal authority, the form of an association somewhat similar to that of 1782 was adopted; and, accordingly, the card which a contributor of £20 (I believe it is) is entitled to have, is called the volunteers' card. It is embellished with a likeness of Mr. O'Connell, Mr. Grattan, and Mr. Flood; and then, gentlemen, there are likenesses of two persons, with regard to whom Mr. Whiteside was so exceedingly facetious; no one was more amused than I was at his comments upon them, which showed a great deal of comic talent. The subject taken by itself, I must say, afforded ample opportunity for the display of his powers. But, gentlemen, although he called your attention very particularly, and at great length, to Ollam Fodlah and King Dathy, he overlooked Saarsfield, Owen Rowe O'Neill, and Brian Boroihme. Now, it so happens, that these are the very persons to whom I should wish your attention to be particularly called. I do not care a farthing what becomes of Dathy or Ollam Fodlah; but you will recollect that Brian Boroihme was the Irish king or general at the battle of Clontarf, the description of which is contained in Mr. John Cornelius O'Callaghan's letter; you will recollect that Saarsfield was the Irish general who commanded at another of the battles, at Limerick; so with regard to O'Neill. Upon these, Mr. Whiteside was very discreetly silent. Now, gentlemen, I do not pretend to be able to tell you what the duties of the several persons who are entrusted with these cards may have been; I do not know what the bearer or owner of that card was, by the regulations of the association, required or bound to do, nor do I know what were the duties, the whole of the duties, of the repeal wardens, the confidential and accredited officers and emissaries of this body; all that I know is this, that by means of them it has been found possible to collect together, at the bidding of one man, any number of persons at any particular place, and almost from any distance, however remote. The earliest fact, in point of date, is that publication in the *Pilot* of the 10th of March, which had reference to Mr. Tyler's speech in America. Now mark, gentlemen, the date of all these transactions; mark the time when these cards are issued; mark the date of O'Callaghan's letter in explanation of the card; mark the other documents according to their dates, and see whether they do not develop a regularly planned scheme, to be carried into execution through the various means that I shall presently point out, of obtaining the repeal of the union by the exhibition of physical force, by attempting to corrupt the army, by sowing dissension amongst different classes of the Queen's subjects, and the other matters, which I shall not now weary you by repeating. Mr. Tyler, the president's son, makes a speech in America, in which he comments upon the repeal question in Ireland; and in that speech he says, that—"The libation to freedom must sometimes be quaffed in blood." Now let us see how this speech is commented upon by Mr. Barrett, in the *Pilot* newspaper of the 10th of March, 1843:—"How can repeal be refused, sustained as the demand is by the people of the United States, with their president at their head? Answer us that, good Sir Robert." Gentlemen, am I not warranted in saying, that at this time Mr. Barrett entertained the intention of having it communicated through his paper, that the state of things in the United States of America was such, that it would be unsafe for the government or the ministry of England to refuse compliance with the demand made by this association? Is that any evidence of an attempt to intimidate? Is that any evidence in support of part of the charge in this indictment? Gentlemen, we then have, in order of time, a publication in the *Nation*, Mr. Duffy's paper, as to which I must make a few comments, and the manner of answering which certainly struck me with a very considerable degree of surprise. It is "The Memory of the Dead." It is of the date of the 1st of April, 1843. Now always bear in mind, gentlemen, the concurrent working of the several agents in this plan; observe, that while Barrett is writing or publishing in the *Pilot*, Duffy is publishing in the *Nation*, Gray in the *Freeman*, and at the association speeches are going on, and meetings are holden in different parts of the country; all this going on simultaneously. [The Solicitor-General here re-read the song, and commented on each line or stanza as either contained a strong phrase or idea.] Gentlemen, how is that rebellion of 1798, which Mr. O'Connell has been so eloquent in denouncing, characterised in this effusion? As a struggle of right against might. This, gentlemen, is the production, or the publication, of Mr. Duffy, one of the traversers now upon trial. Gentlemen, the next document to which I call your attention is the *Freeman's Journal* of the 4th of April, 1843. It was given in evidence as containing the proceedings of the association of the preceding day:—"Loyal National Repeal Association. The weekly meeting was held yesterday at the Great Rooms, Corn Exchange." Now observe this:—"Mr. Ray next read a letter from General Cloney, dated the 2d of April, 1843. Mr. O'Connell moved that General Cloney's letter be inserted on the minutes, and that the grateful thanks of the association be presented to that old

and esteemed veteran and friend of his country." I suppose, gentlemen, I need not tell you who General Cloney is. "Mr. Barrett next said that he had to hand in six pounds ten shillings, from a locality which was distinguished in Irish story; he alluded to Newtownbarry; its fields could tell of some of the acts of English misgovernment. Mr. O'Connell—Of English humanity. Mr. Barrett—It was the sort of humanity which the vulture gave the lambs, and that England had always exhibited towards Ireland." Now, gentlemen, I come to another pulication in the newspaper, the *Nation*, which has been, I may say, altogether passed over by the defendants' counsel. I was struck with astonishment, when I recollected the evidence we had laid before you, and found no attempt was made to get rid of it by anything like observation or denial. On the 29th of April, 1843, appeared an article entitled "Something is coming." Gentlemen, it is the allegation, allow me to say the pretence—of these traversers, that their object merely was to procure from the legislature, by peaceable and constitutional means, the repeal of the act of union. In April, 1843, appears this paragraph—"Something is coming." Parliament was then sitting, the session not far advanced. Parliament sat for a long time after this. Now what is the "Something" that "is coming?" Is it the discussion of the repeal of the union in the house of commons? Is it the presentation of petitions for a repeal of the union? I think you will not say so when I call your attention to the topics introduced into this production, and the inferences which the writer calls upon the people, to whom it is addressed, to draw from it. [The learned gentlemen then proceeded to comment upon the article passage by passage, and proceeded]—Gentlemen, observe that up to this time no declaration had been made in the house of commons by Sir Robert Peel, upon the question of the repeal of the union. There is no pretence, therefore, for saying that anything in this publication can have been accounted for, or justified, by any expression of opinion in England; I mean any authoritative expression. I do not quarrel with the use of figurative language, strong language, in a document, or in a speech; and I beg leave to deny the imputation that we are prosecuting here for warm expressions or figurative language. It is for expressions about which there can be no mistake that we are prosecuting. For what was that sent forth to the multitudes of the Irish people? for what other object than this—to show them that England could not successfully resist an outbreak, that she was denuded of troops by the requisitions of her colonies abroad, that the utmost she could do was to maintain her empire in the East, that she could not spare troops for Ireland, and that if an outbreak were to take place it must be successful, as England was too weak and crippled to cope with it? Gentlemen, how often have you been told that there was nothing sectarian in these proceedings or speeches, that the objects were charitable, that differences of religious creeds were not to interpose any difficulty, but that the design was to associate every religious persuasion in one common bond of union, for the benefit of the country! But, gentlemen of the jury, with what are the traversers charged? Not with fomenting ill-will between Protestant and Catholic; no—but with fomenting ill-will in the minds of the Irish people generally, not against Protestant or Catholic, but against the English. What answer is it to such a charge to read a thousand speeches of Mr. O'Connell, inculcating this which is urged here, the policy of being kind and conciliatory to the Protestants, in order to induce them to join? The morality of these injunctions is this: "Do not violate the law; do not interfere with the police; come into no collision with the military; do not expose yourselves to be prosecuted; not because it is your duty to do so, not because the law of the land prohibits such things; no, but because such acts would be premature, and such rash proceedings have ruined before now a cause as good as yours." "Rapid, uniform, and careful organization for the repeal agitation, charity, and conciliation, and a strict observance of the law, are the pressing and present duties of every Irishman." "The present duties!" "Thus shall we"—what? Thus shall we obey the law? Thus shall we excite admiration for our adherence to the constitution of the country, raise our character with the English, show we are deserving of any benefit we ask, that we are rising in the scale of civilization, and are become a more tranquil people? No—"Thus shall we baffle our foes! We have been led into this train of thought by Mr. O'Connell's proposal to form an association of three hundred men of trust, to consider and prepare a bill for the repeal of the union." Now, Mr. Duffy would fain persuade you by his counsel, that he is unconnected altogether with this movement. If, says he, this article was of the objectionable nature which the counsel for the crown say it was, why did you not prosecute? Gentlemen, I have no hesitation in saying this, that if that prosecution had taken place, or if some of the minor agents in this combination had been attacked, the result might have been, (I do not say it necessarily would,) that we should not have been able to arrive at what we have now conclusively established—the true nature and the true objects of this conspiracy. Well, gentlemen, Mr. Duffy, not contented with that article in his paper of the 29th of April, which I have now read to you, published another on the same day, entitled—"Our Nationality."

The Lord Chief Justice—Hand those to me as you have done with them.

The Solicitor-General—I will, my lord, but I have observations on mine; we shall get a copy for your lordship. Now, gentlemen, this article—"Our Nationality"—contains the following passages.

Mr. Justice Crampton—The same paper?

The Solicitor-General—The same paper, my lord, of the 29th of April. It states—"The olive growth of nationality is overspreading the provinces, and taking permanent root in the heart of the land." Then there are some general observations to the same effect—"This is a mighty accomplishment; the great seed is sown, the people come together, they move on, they are in earnest, they are determined, the end is begun; already Ireland is a nation, and this is but the work of a few." Now, gentlemen, I must again protest against being implicated in the charge of prosecuting the people or the nation of Ireland. We are prosecuting the *few*, whose work this is; not the deluded victims who are sought to be made the instruments, by which that work is to be accomplished. Here is a description of the English people:—"Remorseless, truthless, cold, selfish, and bloody in every age and every clime; it showed them that to lean on these was to lean on death, and sense and courage did the rest. They have resolved to trust no more in treachery, and their resolve, as it ever must be in the case of a unanimous and daring nation, is already a wish fulfilled; and in their virtuous undertaking the Irish do not want for cheering inspirations. Good men, whether subdued or triumphant, from the Danube to the Seine, and from the Seine to the Ohio, look approvingly on their actions and take their cause to heart. Among the whole civilized race they have no foes but the Saxon, no opponent but the clumsy and decrepid thing that calls itself our master." Here are two of the objects followed out, the one by designating England as an old and decrepid thing, which was so paralysed as to be unable to resist aggression, and the other

holding up that nation as cold, selfish, and bloody, and steeped in blood in every age and every clime. "Our enemy may be aroused and so must Ireland. The county of Tipperary is on its peaceful parade." That, I think, gentlemen, carries its own commentary. Such is the definition of peace by Mr. Charles Gavan Duffy. The proceedings in the county of Tipperary are "a peaceful parade."

Mr. Whiteside—It does not say that.

The Solicitor-General—"The county of Tipperary is on its peaceful parade."

Mr. Whiteside—I say it refers to public meetings.

The Solicitor-General—It says:—"The county of Tipperary is on its peaceful parade; there prevailed among the people there a sense of indifference—a disinclination to work until the great task was set before them." And then it concludes:—"Twenty thousand Tipperary men, who would as soon, if called on, pay their blood as their subscriptions, would not form a bad national guard for Ireland." Gentlemen of the jury, the damning effect of that document was felt by Mr. Whiteside, upon whose client it particularly bore; and what was the course adopted by him when that document was read? He called for the production of another article in the paper, which I expected would have some sort of reference to this, and have been a qualification of it in some way. But what was it? A love song! You recollect the shouts of laughter which Mr. Whiteside elicited by this happy expedient. But, gentlemen of the jury, I was certainly struck with very different feelings when I saw an attempt thus made to get rid of the effect of this piece of evidence. Gentlemen, I think you yourselves at the time must have been struck, I will not say with the impropriety, but certainly the irrelevancy, of that reading on the part of Mr. Duffy's counsel. Well, gentlemen, I dismiss that. Gentlemen, amongst the principal instruments by which the purposes of these parties were to be accomplished, were the repeal wardens. We have proved a printed paper entitled "Duties of the repeal wardens." I will not go into a detail of all those duties. The first is, "they are to divide the parishes."

Mr. Justice Crampton—What is the date of that?

Solicitor-General—Corn-Exchange, May, 1843, my lord. The second is, "to appoint as many collectors as he may deem necessary, to act with him, and to collect the repeal fund regularly within his district, from each individual willing to contribute a farthing a-week, a penny a-month, or a shilling a-year—taking care to make every person favourable to the repeal understand, that unless he contributes to the amount of a shilling a-year his name cannot be enrolled as a repealer, and, therefore, he will be calculated upon by the enemies of Ireland as against the repeal!" It is my firm belief that many persons have been induced to subscribe to the funds of this association by coercion and intimidation. That such is the case I think highly probable, and I think the evidence here fully warrants me in entertaining that suspicion. Gentlemen, what is the meaning of having an unfortunate peasant held up by the repeal wardens of his district as an enemy to his country? Can a person thus denounced appear or show himself? Can he do so with safety to his person? It is accordingly one of the duties of these repeal wardens to inculcate on the peasantry of the country that unless each subscribes his shilling and enrols himself a repealer, he will be set down among the enemies of his country. The ninth duty of the repeal wardens is "to take care that there shall be transmitted from the association to each locality a weekly newspaper for every two hundred associates, or a three-day paper for every four hundred, enrolled in such locality, as the case may be. The sum of ten pounds collected and forwarded to the association, entitles the repealers of the district whence it comes, to a weekly paper for the entire year, gratis; and the sum of twenty pounds entitles them to the *Pilot* or *Evening Freeman* newspaper for the same period, if they prefer either to two weekly papers." The tenth duty is, "to have the newspapers to which each parish or district may be entitled, put into the hands of such persons as will give the greatest circulation to their contents." In other words, that a sort of club should be formed in each locality, where these newspapers could be read to all who assembled there, and their contents disseminated and circulated. Gentlemen of the jury, you can be at no loss from what I have already observed, and from the evidence, even as far as I have gone, to understand what the morality of this precept is: "Whoever violates the law strengthens the enemies of Ireland;" that is to say, whoever puts himself in the power of the law, thereby paralyzes our exertions, and puts us in the power of those who are opposing us, and enables them to frustrate our designs. The eleventh and last duty "is one of the greatest possible importance. It is to use all their influence and timely exertion to have all meetings perfectly peaceable, and on all occasions to prevent riot or disorder of any kind. Above all things they should endeavour to detect and bring to justice any wretch wicked enough to venture to administer a secret oath." Gentlemen, I read these to you, and dwell upon them, not because such precepts are not in themselves perfectly proper and unexceptionable; but I read them for the purpose of neutralizing the only thing like an argument which has been put forward here on the part of the traversers, that because these meetings were peaceable, and no outrage or breach of the peace occurred, and no alarm was created, therefore the parties assembled at those meetings had no illegal intention. Why, gentlemen, it is quite consistent with our case that this should be so; in preserving order they were only following out the injunctions of the repeal wardens. The particular day of the date of this is not given; it is May, 1843. Now, gentlemen, I bring you to a stage in this case of considerable importance; I mean the speech made by Sir Robert Peel in the house of commons on the 9th of May last, in answer to a question put by Lord Jocelyn, with regard to the intention of the government as to these meetings, or this body called the association. Gentlemen of the jury, I do not think that language more plain or explicit could have been used, to express the determination of her Majesty's government to use all proper and constitutional means to maintain the connection between these countries by means of the legislative union; and, further, to obtain that end by resorting to the ordinary tribunals of the law, and the regular administration of justice. Gentlemen, that is what we have done. You will recollect that the meaning which Mr. O'Connell, in the speeches made by him subsequently to the issuing of this declaration by Sir Robert Peel, attached to his words was this, that it was the intention of the government to coerce, by military force, the Irish people—to introduce military force into Ireland for the purpose of suppressing public opinion, and governing in effect by the sword; and you will observe, (and it will be most material when I come to comment on those speeches of Mr. O'Connell,) that he wraps up, or qualifies, his language always with this addition—"If they attack us." Now I say "if they attack us" is not warranted by Sir Robert Peel's speech. Sir Robert Peel expressed his determination to try in the first instance the ordinary law, and except he failed in that not to introduce a coercive act, and it will not be until you, gentlemen, disregard the evidence before you on your oaths that anything like extraordinary power will be called for. No such thing is intimated, as the intention of sending troops to this country to overawe the people, or to coerce the ex-

pression of public opinion. It is true troops have been sent into the country. Has it not appeared here, that that was caused by this association, by the apprehensions entertained by persons, whether well or ill-founded is not the question—that this agitation might not terminate peaceably?* Gentlemen, I come now to the first of what are called "monster meetings." This first meeting, which was at Mullingar, appears to have taken place on the 14th of May, 1843. Gentlemen, I will not trouble you with the details for the preparation of this meeting. I shall, however, just make this remark with respect to the temperance bands. I deeply regret that such a use has been made of them as appears in the course of this trial to have been made. I think, gentlemen, there never was a greater blessing to this country than the extraordinary reformation, of which the Reverend Father Mathew was the author; and it is greatly to be deplored that many well-meaning persons have been deterred from expressing the approbation, which I have no doubt they must have felt, of that great improvement, by the dread that their motives might be misconstrued, in consequence of the purposes to which these temperance bands have been applied.† I am fully satisfied that the reverend gentleman, to whom we are indebted for this great moral change, never intended or contemplated that anything connected with it should be so perverted. I greatly regret that a measure calculated to work out such good results, is liable to be thwarted to such a degree by the effects of the abuse to which I have adverted. Gentlemen, at that meeting of the 14th of May, one of the traversers, Mr. Barrett, took a conspicuous part. He says, in speaking of the union—"No demon could, in diabolical cunning, invent one more calculated to perpetuate religious discord—a system in which hypocrisy is made a science, and bigotry a trade, in which the name of heaven is invoked to let loose the furies of hell." Then he goes on again—"They have proved already that Ireland is of one mind, and that mind repeal. Can they unrepeal us by silencing us?" What had been said about silencing? On the contrary had it not been said expressly that until the ordinary powers of the law had been tried and failed, no gagging bill, or coercion bill, or silencing bill, would be introduced into parliament? It is a gross perversion to put that construction on the language of Sir Robert Peel which Mr. Barrett had thought fit to fix upon it. "How will they destroy that admitted fact, or efface its record? We may be silent, but all the time it will be the silence of the old woman's cow—we shall be the devil for thinking." You all remember the dramatic effect produced by Mr. Whiteside in commenting on this part of Mr. Barrett's speech. He dwelt on the word "cow," but he forgot the words "crouch of the tiger," and he did not say much on "the sure but terrible spring." Gentlemen, what is the meaning of that language? It says, we are silent for the present; true, but what is that silence? It is the silence of that determination and preparation which, when the proper season arrives, will enable us to take that "sure, but terrible spring," that will effect the independence of our country. Gentlemen, this is figurative language, but it is sufficiently intelligible. "Come what may, the die is cast!" Then, gentlemen, we proceed to the meeting at Longford, on the 28th of May. Gentlemen, you will recollect two witnesses were examined with respect to this Longford meeting, Mr. Johnston and Mr. Maguire. It is the duty of policemen to report to their officers what they observe, and it was considered right and proper not to send persons who were known. [Here the Solicitor went through the prominent portions of the evidence of both witnesses.] What right have any of the counsel to impute perjury to these witnesses, when they have not brought on the table a single person to contradict them? I say it is most unfair and unreasonable. If they were able to contradict their testimony, they might have brought their witnesses forward, and left you to decide on the matter; but when the evidence is all one way, it is rather too much to be told that that evidence is false, and that those who give it are guilty of perjury. So much for the general character and conduct of this meeting. I now come to the speech delivered by Mr. O'Connell, as detailed by Mr. Johnston in his report to his superior officer. His evidence is as follows:—"He (Mr. O'Connell) scoffed at the administration of justice, and used the term 'foreign and unsanctified judges,' in reference to the judges of this country. There were here three cheers proposed and given for the Queen, and three hearty cheers for the repeal of the union." Mr. O'Connell, he says, then proceeded thus:—"I can tell you, your's is no vain cause. We are peaceable. Let them but attack us—then"—— Here, he says, there was a pause. Gentlemen, I can very well understand the meaning of that pause, and I think you will not have the slightest hesitation in believing Mr. Johnston, when he says a pause was made. "Then—we stand at their defiance. I will tell you what they will do, they will take the commission of the peace from your respected supporters." Here, gentlemen, we have the first indication of the appointment of what are called, "private arbitrators to decide differences between individuals according to the custom of the Quakers." "I will tell you what they will do; they will take the commission of the peace from your respected supporters. But an Irish parliament will help us one of these days to punish them in an exemplary manner." Gentlemen, this took place at the meeting in the early part of the day. There was on the same day a dinner at Longford, and at that dinner Mr. O'Connell made a speech, part of which, and only a part, has been commented on, or even read, by the counsel for the traversers. It appears that Lord Beaumont, an English Roman Catholic peer, had expressed his dissatisfaction at the course pursued in this country with respect to the agitation of the repeal of the union, and his determination, not merely to discountenance it, but even, if it should be necessary, to arm the government with power to put it down. That was the provocation given by Lord Beaumont. On this occasion at Longford, a speech, reflecting on Lord Beaumont, is made by Mr. O'Connell. This Mr. Whiteside designated as a scolding match between Lord Beaumont and Mr. O'Connell. You cannot expect, says Mr. Whiteside, that Mr. O'Connell would be very measured in his terms, and if he called Lord Beaumont a "mongrel," you are not to prosecute him for that. Certainly not. [This speech is already given in the evidence on the trial.] Mr. O'Connell may preach as long as he pleases, the doctrine of obedince to the law; he may profess to inculcate on his hearers sentiments of charity, and mutual good-will, but he never can neutralize that speech, he never can qualify or explain it, he never can say that it had any other meaning than that which it must necessarily bear, in the understanding of every body who reads it, that a time might arrive, when the people of this country would fire the manufactories in England, and even the city of London itself. We charge these parties, Mr. O'Connell and his associates on trial, with attempting to intimidate the people of England. We charge them also with inciting the people of Ireland against their English neigh-

* There was not a particle of any evidence of that character given on the trial.

† It is a fact very well established that many persons most reluctantly opposed to repeal were at first the zealous advocates of teetotalism. They calculated, with great wisdom, that should Irishmen become sober they would cease to be patriots! They were speedily undeceived—the best repealers are the teetotallers of Ireland.

bours. Have I not proof of both in that very speech? Observe that no comment whatever has been made by the defendants' counsel on this passage; it was passed over as a mere personal attack on Lord Beaumont. It is the suggestion of firing Lord Beaumont's castle, and the manufactories in England, which contains the sting of this speech; and yet that is wholly passed by. Assume for a moment—give Mr. O'Connell the credit—that he did not really mean to suggest to the people of this country the diabolical project of firing the manufactories, would not the necessary effect of this speech be, at all events, to excite a feeling of alarm, and give cause for apprehension to the people of England, that if any attempt were made to maintain the union, in opposition to a violent movement, such consequences might ensue? If that were the object, that object was intimidation; and that is what we insist on in this case. I do not go the length of saying, that Mr. O'Connell intended that such a project as that should be carried into actual execution. In the *Freeman's Journal* of the 31st of May, we have the proceedings of the association on the preceding day, the 30th May; and I must call your attention, in this stage of the case, to part of the evidence which was read in Mr. O'Connell's justification—part, in fact, of his defence. It appears, that upon this occasion, Mr. O'Connell, Mr. Steele, Mr. Ray, and others, were present. Mr. O'Connell stated, on this occasion, that a certain sum had been handed in; Mr. Ray read certain letters, and then Mr. O'Connell corrects the report of his speech at Longford, and says—"He had to correct a typographical mistake which occurred in the admirable report in the *Freeman's Journal* of the proceedings in Longford. He was made to say this, 'No, your sister watched his corpse, but she is herself worse than dead—she is now a sad maniac roaming through the wilds, and, like the wretched maniac of song, warning her sex against the ruffian soldiery of Britain.' He did not call the soldiery of Britain a ruffian soldiery—he would not call them so, because it would be false. They never now saw a soldier in the dock, and he would be wronging his judgment if he called them a ruffian soldiery. He also spoke of the sergeants, whom he thought an exceedingly well-informed and well-conducted body of men, and to them the discipline of the entire army fell (hear). If justice were done to them, there was not a company, in which one of them ought not to be raised to the rank of an officer. The lines he made use of were the following. [Then he quotes the lines in the speech.]" That is the first allusion Mr. O'Connell appears to have made to the army. When that paper was read, Mr. Whiteside (I believe) requested that the speech which Mr. O'Connell delivered at a subsequent part of the proceedings should be read; and, accordingly, that speech of Mr. O'Connell was then read at great length, and I beg leave to call your attention to one or two passages of it. After saying this was the repeal year, he says—"Who could have thought that they would be able to bully Wellington and Peel—for they had bullied them out of the coercion bill?"—alluding to Sir Robert Peel's declaration that he would not resort to a coercion bill, unless all ordinary remedies failed. "Who could have thought that they would be able to bully Wellington and Peel—for they had bullied them out of the coercion bill—that they would laugh to scorn the unconstitutional attacks of a lord chancellor—or that they would receive 2,000*l.* as one week's collection of the repeal rent?"

The Lord Chief Justice—What is the date of that?

The Solicitor-General—The date of the paper is the 31st of May, my lord, but the proceedings took place on the 30th, the day before. Observe, this is the language of Mr. O'Connell, read by the traversers, and not by us. Now, gentlemen, I have to call your attention to a passage in this same speech, in which Mr. O'Connell has thought fit to assert, that the message or the declaration of Sir Robert Peel in the house of commons was not authorised; I shall just read the words—"But Sir Robert Peel had been coerced to admit that the Queen never made any such declaration. He would not characterise Peel's assertion in a word of one syllable—but he would say that it was a falsity, and Peel knew it to be such. He had derived his information from a source, which was alike incapable of deceiving or of being deceived; and the fact which he had learned from such incontestible authority was this, that the Queen, the next time she saw Peel upon official business, after his extraordinary declaration, reproached him for having made such use of her name, in a manner so unconstitutional, and not upon his own responsibility as a minister; and he had incurred the displeasure of the Queen, who never made any such declaration as he attributed to her. Oh! long life to the Queen! may heaven bless her! Three cheers for her!—(tremendous cheering)." Now, on what authority Mr. O'Connell thought fit to make that assertion to the people he was addressing, it is impossible for me to conjecture. I deny that he had any such authority. Gentlemen, I advert to this part of Mr. O'Connell's speech, not merely for the purpose of expressing my astonishment how he could feel himself warranted in making that assertion, but for the purpose of proving a deliberate intention on the part of Mr. O'Connell to represent to the people of this country, that the Queen was favourable to their views with respect to the union, and that her Majesty was only prevented from carrying those views into complete effect by the hostility of the English nation, and the opposition of her minister. When the cheers given by these people for the Queen are relied on as evidence of their loyalty, you must always bear in mind that they have been led into the notion that the Queen not only had the inclination, but that she had the power to accomplish their objects by restoring to them a native parliament; this will explain these cheers and expressions of loyalty—and this I say without at all derogating from the general loyalty of the people. We find Mr. O'Connell correcting the report as to his having used the expression, "ruffian soldiery of Britain." From this it is perfectly plain that he had read the report which he thus corrected. Do you find on that occasion any retractation of any other parts of that speech? If you could suppose that those expressions were the result of a heated imagination, can you continue of that opinion when you find the rest of the speech is substantially confirmed, no part quarrelled with or corrected except that single expression applicable to the soldiery? Gentlemen, we now come to the *Pilot* newspaper of the 7th of June, containing a report of the Drogheda meeting, which took place on the preceding day, the 6th of June. There is the usual account of the meeting, and of the banners and bands, and of the military (I call it) organisation, with which I shall not trouble you. Mr. O'Connell proceeds to address the people assembled:—"Wherever he went he had heard but one cry—the thrilling, enthusiastic, all-pervading shout of 'repeal!' How could he doubt of success? He had a nation at his back. And then he goes on:—"The Duke of Wellington resolves upon making Ireland head quarters for half the British forces. Horse, foot, artillery, and marines, are poured into the country by the thousand. Let them come and welcome. They will cause a stir in trade. Thirty thousand of them were to be quartered amongst us, and so far from being dismayed at the tidings, he was rejoiced, for that would occasion thirty thousand shillings a day to be spent in various quarters of the country. This, therefore, was the best news he

had told them yet, and he called upon them to give three cheers for the Queen's army—the bravest army in the world. To the army they would give civility, and in return they would get nothing but civility from them." Then he goes on:—"This proved the kindly feelings that were entertained by the peasantry towards the army; and he, for one, regarded their arrival as a matter rather for gratulation than anything else." To these and such passages in the speeches at the great meetings, this observation is, generally speaking, applicable, that they are of a more mitigated character considerably than those made at the dinners. At that dinner at Drogheda, Mr. O'Connell made another speech, to some parts of which it will be necessary for me to direct your attention. Mr. Barrett, it appears, was at this dinner. He responded to the toast of "The People." He says—"But let them beware how they, by aggression, put the people in the right, and cause a simultaneous and universal outbreak. Mere men of office cannot comprehend the power of the people. Military tacticians are out of their element in such a warfare. Office men or veterans never suspected that the Swiss peasantry would be capable of throwing off the yoke of Austria. The boys of Paris won the three days. Belgium threw off the yoke of Holland, through what martinets would call an undisciplined rabble. The women of Paris took the Bastile. Even in that execrable French Revolution there was one redeeming trait—that enthusiasm set at nought all the old military calculations, and surmounted what were deemed obstacles physically incompatible with success. Was there ever a country so circumstanced as Ireland for repelling aggression?" Now, this is the language uniformly used—"repelling aggression!" "With a numerous, brave, sober, and multitudinous people—every mountain a citadel, every hill a fort, every ditch a breast-work, every valley a ravine—a country in which cannon or cavalry could not act, and where all warfare must inevitably be irregular, with nothing to lose, and everything to gain by a struggle—are they mad who would wantonly provoke it?" Is this language, or is it not, calculated to intimidate the people of England, as to the state of this country, and the probability of a simultaneous outbreak at any moment when the leaders thought fit to give the signal. Gentlemen of the jury, Mr. Steele's is the next speech to which I call your attention. Mr. Steele says:—"He renewed his denunciation of Wellington and Peel, and of Cromwell's memory." And concluded by saying that—"If Ireland and Ireland's leader were compelled to resistance, that as he (Mr. Steele) had for so many years, above all others, laboured to keep the peace of Ireland, he would in that case find it a duty to his country, and to his own character, to solicit from his august friend, O'Connell, that he would appoint him to the leadership of whatever enterprises were the most desperate, to set an example to the Irish, and give proof to the Irish, that although for years he had been keeping the peace of the country, he was ready to share their dangers, if Ireland was driven to extremity by the Oliver Cromwells of the day."

Mr. Steele—If driven to resistance.

The Solicitor-General—I have no doubt that Mr. Steele most sincerely expressed those sentiments. Mr. Steele is a gentleman whose courage and manliness I respect. He has never disguised his sentiments, and he has on this occasion put them forward boldly and frankly. I have known Mr. Steele many years, and it is what I should expect from his high character. Gentlemen, I use this for the purpose, not of visiting Mr. Steele with expressions and sentiments he did not entertain; but for the purpose of showing, that an emergency might arise, in which it might be necessary for Mr. O'Connell to call in aid Mr. Steele's services, and that he would give them.

Mr. Steele—Assuredly.

The Solicitor-General—I am quite satisfied—I am quite certain that Mr. Steele would not wantonly put himself at the head of any movement that would disturb the public peace, or injure any human being. We have included him in this indictment, because we thought it impossible that any gentleman who has taken so prominent a part in the whole of this movement could be omitted. Gentlemen, Mr. Steele has identified himself with the whole of this movement, and he has in this instance expressly avowed it. We found the evidence applicable to him, as well as to the other traversers, and, therefore, he could not have been omitted. I am far from meaning anything unkind against Mr. Steele, when I read that part of his speech to show that he was present with the other traversers.

Mr. Steele—I am quite sure of that, Mr. Solicitor.

The Solicitor-General—Gentlemen, I come now to an article which appeared in the *Nation* newspaper of the 10th of June, 1843, entitled "The Morality of War." [We have already given the portion of this article relied on.] Now, gentlemen, observe this is an article on the repeal card, and upon the suggestion of Mr. Haughton, for substituting the words, "temperance, mercy," and so on, for the battle fields which at present appear on the card. Gentlemen, it is said, amongst other things, I think by Mr. Duffy's counsel, "that the articles that appeared in the *Nation* are certainly strong articles; I will not pretend," says his counsel, "to justify every thing said in that paper; perhaps they might have been the subject of prosecution if the crown had thought fit to indict Mr. Duffy for them; this article, however, was suggested by the death of a private in the 5th Fusiliers from over-drilling." Gentlemen, with respect to that, recollect that that transaction took place very far on in the summer, and this article appears on the 10th of June.

Mr. Whiteside—I did not say that in relation to this article.

The Solicitor-General—Mr. Whiteside says he did not say it in relation to this article. Then this article is undefended. I will take it either way Mr. Whiteside wishes. It is impossible to account for this article by anything that had occurred in the army, which had made it necessary for the editor of a newspaper to comment on, or suggest anything with regard to the military. Gentlemen, the next meeting is one of very great importance, and the evidence applicable to it runs to some length; and perhaps, as I could not, at a reasonable hour, close my observations on this meeting, your lordships would think this a proper time to adjourn.

The Lord Chief Justice—Very well.

The court then adjourned to ten o'clock next day.

TWENTY-SECOND DAY.

THURSDAY, FEBRUARY 8.

The Solicitor-General—My lords, since I addressed the court yesterday, I have had an opportunity of looking more particularly to the case of the King *v.* Hunt, and I find on more careful examination that it is a full authority, as it appears to me, in support of that part of the indictment.

The Lord Chief Justice—Where is that case?

The Solicitor-General—In 3rd Barnwell and Alderson, page 567, my lord. The illegality of the meeting appears on the face of the count to be the consequence of the illegal purpose for which the meeting was convened, that purpose being charged to be the exciting discontent and disaffection, and exciting the subjects to hatred of the government

and constitution. A part of Chief Justice Abbott's judgment, in page 571—2, is quite decisive, in my opinion, to show that this illegal purpose was what made the assembly unlawful; and that the count was supported and held good, as having in that way sufficiently charged an illegal act. Gentlemen of the jury, I shall now resume the consideration of the evidence on the part of the crown. The next meeting to which it will be necessary to advert, is a meeting which was held at Kilkenny on the 8th of June. The proceedings at that meeting have been read from the *Pilot* newspaper of the 12th of June, 1843. There is a long description of the number of persons who attended, with the banners, flags, music, and soforth; and then, gentlemen, Mr. O'Connell made a speech, to one part of which I request your attention. He says—"I now charge the repeal wardens, who are established in every parish in the county, to find out for me any attempt to establish secret societies in the country. I suppose you have heard of the Duke of Wellington and Sir Robert Peel having come down to parliament one fine evening, and declaring that they would prevent the repeal of the union, even at the expense of a civil war." The allusion to civil war, you will recollect, was originally made so far back as the year 1834, not by the members of the present administration, but by certain members of the administration of that day. I stated to you yesterday, what appears to me the fair construction of Sir Robert Peel's declaration in the house of commons on the 9th of May. It was not a threat of civil war, for the purpose of putting down the agitation of the repeal of the union.

Mr. Sheil—I beg your pardon. I yesterday expressed my extreme reluctance to interrupt the Solicitor-General, and that reluctance arises from the circumstance that I myself, as counsel for a traverser, had not been interrupted, and I feel that very considerable latitude was allowed us. But perhaps it will be recollected, that the case of the traversers and the case of the prosecutors are very distinct, and, therefore, considerable latitude is allowed to the counsel for the traversers. On the other hand, the counsel for the crown are generally considered to be bound by the strict rules of evidence; especially the counsel who has the last word, and who winds up, is supposed to advert to that which is only in proof. My learned friend will pardon me for saying, not only yesterday he went far indeed out of the evidence, but at present he is adverting to topics which are not in proof, and which are entirely illegitimate.

The Solicitor-General—I am not aware that I have adverted to any topic that has not been discussed, or any fact not in proof.

Mr. Justice Crampton—You were saying something about the year 1834.

Mr. Sheil—And the speeches of Sir Robert Peel, which are not in evidence. I shall interrupt him once more—and not again. I must say, I admit that great indulgence was allowed to myself by the crown, and that I make this remark solely from a sense of duty, and I make it with the utmost distrust, and with great reluctance. I think the Solicitor-General has no right to advert to the motives expressed by Sir Robert Peel in parliament for his conduct. I think, yesterday, he had no right to tell the jury, that unless they found a verdict for the crown, a coercion bill would be introduced. Those topics are—

Mr. Justice Crampton—Except so far as introducing that which had been read in evidence, that speech should not be made a subject of observation.

Mr. Sheil—That speech is made the subject of observation. But the Solicitor-General does not take that speech as it appears in the commentaries on it by any of the traversers; he takes that speech as spoken in parliament; on that speech he comments, and from that he draws minacious inferences for the jury. I was not present at the time the observation was made, but all the reports in the newspapers give the passage of which I complain. I shall not interrupt my friend again.

The Solicitor-General—I have endeavoured, as for as possible, to abstain from making any observation, which I did not think perfectly warranted by what appeared in evidence in point of fact, and what had been said, by way of observation, by the counsel on the other side. What I intended to say yesterday, with respect to this speech of Sir Robert Peel, was this—Mr. O'Connell, in some of the speeches which I had occasion to read to the jury, having justified, or attempted to justify, the possible appeal to physical force, by a suggestion that a declaration of something like civil war had been made in parliament, my intention was to show the jury that there was no well-grounded reason for that supposition, and that such an excuse did not warrant any such language being used by Mr. O'Connell, as nothing of that description had been in point of fact uttered in parliament. Nothing was further from my intention than to hold anything like minacious language to the jury, or to insinuate, that if they did not find a verdict for the crown, it would be necessary to resort to parliament for additional powers. I do not recollect using the words attributed to me; if I did, gentlemen, I beg in the most unqualified manner to retract them.

The Lord Chief Justice—I must say, Mr. Solicitor, that I did not understand you in that way.

The Solicitor-General—I hope not, my lord. I would trust my friend's recollection better than my own, but——

Mr. Sheil—I did not hear the words, but in every report they are contained.

Mr. Justice Perrin—I heard you say something, Mr. Solicitor, that at the time I thought rather strong, but so much latitude had been allowed on both sides that I did not choose to interrupt you, especially as the counsel for the traversers were present and did not interfere. At the time it occurred I remarked it to my brother Crampton.

Mr. Justice Crampton assented.

The Solicitor-General—All I can say is this, that if I did use words capable of that construction, I think the observations made by my learned friend are perfectly justifiable, and any interruption for the purpose of guarding the jury against any impression likely to be produced by observations so understood, would also be fully warranted. I freely say, in the most unqualified manner, that any such topics ought not to affect your verdict at all. It is not easy for counsel to guard his language within strict rules, and especially within those by which I fully admit counsel for a prosecution ought to consider himself bound; for I concede to my friend that there is a latitude to counsel for traversers or prisoners, which it would be unseemly and improper to allow to persons prosecuting for the crown. I have hitherto endeavoured to abstain from the use of any language or topics to which just exception could be taken in this respect.

Mr. Justice Crampton—Mr. Solicitor, I think you are taking a great deal of trouble to excuse yourself from a charge not made against you. Mr. Sheil's objection was one which was well-founded—that you read to the jury, as if it had been in evidence, the very words of what you call Sir Robert Peel's speech. That was not in evidence; and unquestionably you had no right to read that to the jury.

Mr. Sheil—And besides that, the very strong hint, that we should have a coercion bill, if we had not a verdict. Now I will not open my mouth again.

The Solicitor-General—Of course there can be no

verdict, unless the court are of opinion that the law has been violated; and what I mean to say is merely this, that we are now bringing to issue the question whether there has been a violation of the common law. Now, gentlemen, Mr. O'Connell goes on:—"We will not go to war with them, but let them not dare to go to war with us. We will act on the defensive; and believe me, men of Kilkenny, there is no power in Europe that would dare attack you and the people of Ireland, when they keep themselves in the right, and act on the defensive only." Now, gentlemen of the jury, when we hear so much said about the concentration of moral force, and the union of public opinion, I must be allowed to call your attention to the language that has been addressed to these meetings by Mr. O'Connell; and see if you can reconcile that to any other view of the case than this, either that he intended these persons should understand that they were to be in a situation to be disciplined, or else that he wished it to be understood in England that such was the state of organization amongst the masses of people in this country, that it would not be safe to refuse the repeal of the union. He proceeds—"Do you not think they were as well able to walk in order after a band as if they wore red coats, and that they would be as ready to obey their repeal wardens, as if they were called sergeants and captains." This, I am told, was no allusion whatever to anything like physical force. Gentlemen, I think it is needless for me to dwell further on that observation. The words must have reference to physical force, and nothing else. Well, gentlemen, we have now a meeting, at which, if possible, the same thing was more clearly and unequivocally admitted; I mean, gentlemen, the meeting at Mallow, which took place on the 11th of June. Mr. Jolly, who was present at part of the transaction, says—"He is head constable in the East Riding of Cork, and that he was at this meeting on the 11th of June, in plain clothes." He took no notes, but he does, from memory, state part of Mr. O'Connell's speech:—"They sent the soldiers to shoot them. The sergeants were the finest body of men in the world, but the worst treated. That the French sergeants were generally raised to the rank of officers. They were better treated than the English by being promoted. He was telling the crowd the effects of the repeal of the union—that the labourers would be farmers, the farmers gentlemen, and the gentlemen members of parliament." This, gentlemen, was laughed at; but it is the very same sort of language, you will find, that Mr. O'Connell has confessedly used on other occasions. Now, with respect to Mr. O'Connell's language on this occasion, it also appears in the newspaper of the 12th of June, and he says:—"I speak with the awful determination with which I commenced my address, in consequence of the news received this day. There was no house of commons on Thursday, for the cabinet were considering what they should do—not for Ireland, but against her. But as long as they leave us a rag of the constitution, we will stand on it. We will violate no law, we will assail no enemy; but you are much mistaken if you think others will not assail you. (A voice—'We are ready to meet them.') To be sure you are. Do you think that I suppose you to be cowards or fools? If they assailed us to-morrow, and that we conquered them, as conquer them we will one day, the first use of that victory which we would make, would be to place the sceptre in the hands of Her who has ever showed us favour, and whose conduct has ever been full of sympathy and emotion for our sufferings. Have we not the ordinary courage of Englishmen? Are we to be called slaves? Are we to be trampled under foot? Oh! they shall never trample me, at least; I was wrong; they may trample me under foot—I say they may trample me—but it will be my dead body they will trample on—not the living man." Now, gentlemen, what has that to say to moral force, or the expression of public opinion on a great constitutional question? What is the meaning of this but what we say—telling the people that if necessity should arise, he would be found with them to resist by force, and that he would suffer his dead body to be trampled on rather than desert them? What other signification could be attached to his words by the people to whom they were addressed? Gentlemen, I may here once for all make this observation. You are not to judge of the intentions of the parties, when their language is the index of that intention, by any sophistical or ingenious construction, which eight or nine gentlemen of the bar, in consultation, may be able to affix upon the words thus addressed to a large multitude; but by the natural plain signification of the words themselves, and the manner therefore in which they must have been understood by those to whom they were addressed, and to whose understanding they were adapted. Then he says:—"Yes, Peel and Wellington may be second Cromwells; they may get his blunted truncheon, and they may, O, sacred heaven! enact on the fair occupants of that gallery the murder of the Wexford ladies." Now, gentlemen of the jury, without adverting to the particulars of anything that occurred, has anything appeared in this case to warrant such a supposition as Mr. O'Connell, in this part of his speech at Mallow, has thought proper to make? Why was that introduced? Could it be for any other purpose, than that of exciting that feeling of bitter hostility in the minds of the people of this country against their fellow-subjects in England, which we say was one of the means by which the repeal of this act of parliament was attempted to be worked out? Gentlemen, I now approach a part of this case, which will require a good deal of attention. Upon the 3rd of July, a large meeting took place at Donnybrook, at which Mr. O'Connell attended. Gentlemen, upon that occasion he made a speech, in which he commented at great length upon the evils which, as he alleged, had resulted from the union. He then proceeds to hold out to the people whom he was addressing, the advantages which they might expect to accrue from a repeal of that measure. "If the union were repealed, and I were addressing on College-green those who now hear me—and I trust not one of you will forsake the world until you do hear me address you there, with the union repealed, and Ireland free—what should I have to announce to you? I would announce this to the injured trades of Dublin, that one hundred and twenty houses would be required to be built or enlarged for noblemen, and all to be furnished from the garret to the cellar. I would announce that three hundred houses would be wanted for the gentry, who, with their servants and establishments, would all come into Dublin. Instead of your looking for employers, employers will be looking for you. Instead of reducing your wages, they will be anxious to retain you beforehand, by giving you a five pound note to engage you to work for them for two or three months. Such things have been done before. There are men living and hearing me speak, who have seen them done." Here, gentlemen, this excites laughter; but one of the means by which the desired feeling has been kept up, or attempted to be kept up, in the minds of these people, is a regular system of what I call delusion. We now come to a part of the speech to which I wish to call your particular attention. "If she (England) were to do all she could, she could not do us the justice of having Ireland for the Irish, and the Irish for Ireland. England could not do us the justice of electing our own parliament, and of having the rents of Ireland spent in Ireland. I do not care what England does; I am for repeal, live or die. If

England now—now to tell me that she would do us complete justice, I would tell her by way of answer a story of a fool of Kerry—where there are not many of them. This fool found a hen's nest, and having turned the hen off, he set about eating the eggs; as the first was going down his throat, a chicken squeaked, upon which the fool said, 'Ah! you speak too late.'" Observe the application of the story. "Now we know how to suck eggs as well as the Kerry fool; and if England now tells me, that she is ready to do us justice, I will say to her, with the fool of Kerry, you speak too late!" Here is interminable hostility proclaimed. He then says—"The Irish parliament is not dead; it only sleeps. The royal prerogative remains untouched, and the Queen might come over to-morrow and issue writs out of chancery for electing an Irish parliament. She has the same right to do so as James, who issued forty writs in one day. The Queen could issue writs, and the people would act upon them, and thus the Irish parliament would be re-created *proprio vigore*, without any reference to Saxon authority. Saxons, I tell you that the moment the Queen shall be convinced that she has the right to do that, we shall have the repeal of the union, without troubling you at all." The people who attended these meetings had been instructed by Mr. O'Connell, that the Queen is anxious for them, and favourable to them; and he now lays down the law to them, that it is not necessary, in order to effectuate the restoration of the Irish parliament, that the English parliament (or the Saxon parliament as he terms it) should be resorted to, but that when her Majesty is convinced, as she is disposed to be, that it ought to be done, there is no objection to issuing writs, and thereby calling together the Irish parliament again. Gentlemen, this brings me to the consideration of the proposition, whether it is consistent with the law of this land to say, that the Queen, or the Sovereign, can reconstruct the separate parliament of Ireland, by the mere exercise of the royal prerogative in issuing writs to such places in Ireland as her Majesty may think proper. I think that I shall have very little difficulty in demonstrating to their lordships, who I take for granted will lay down the law so to you, that Mr. O'Connell's doctrine is a total perversion of the law. It is altogether unsupported by any legal principle; it is directly adverse to the best established rules of our law; it is wholly untenable; and the result of it would be to render void all the acts of parliament which have passed since the union. Gentlemen, it was not, as I could collect, exactly said that the union was void in point of law, but some passages were read from speeches of Mr. O'Connell, from which it was inferred that Mr. O'Connell's doctrine was, not that the union was not binding in point of law, but that it was not binding in point of conscience, or what is called constitutional principle. I do not profess exactly to understand what is meant by constitutional principle as contra-distinguished and different from law. Gentlemen, the precedent that is urged in support of this view of the law, is the issuing by King James of certain writs to boroughs, forty in number, in one day. From this it is sought to be argued, that, at any time, it is now in the power of the crown to exercise the same prerogative, and to issue writs of the same description. The occasion upon which those writs were issued was simply this: up to that time there had been no regular division of the kingdom of Ireland into shires or counties; there had been large districts, which from time to time were made into counties, and as they became counties they had the right of returning members to parliament—knights of the shire for those counties. King James issued a certain number of writs to certain boroughs in Ireland, in order that those boroughs should have their due share in the representation of the kingdom; and in Sir John Davies' tracts, in his speech upon the opening of the parliament to which he was chosen speaker, page 304, he says—"This parliament is called in such a time, when this great and mighty kingdom being wholly reduced to shire ground"—(that is, reduced to counties)—"containeth thirty-three counties at large; when all Ulster and Connaught, as well as Leinster and Munster, have voices in parliament by their knights and burgesses; when all the inhabitants of the kingdom, English of birth, English of blood, the new British colony, and the old Irish natives, do all meet together to make laws for the common good of themselves and their posterities. To this end his Majesty hath most graciously and justly erected divers new boroughs in sundry parts of this kingdom. I say, his Majesty hath done it most justly, even as his highness himself hath been pleased to say, that he was obliged in justice and honour to give all his free subjects of this kingdom indifferent and equal voices in making of their laws, so as one-half of the subjects should not make laws alone"—(that is, merely the shires)—"which should bind the other half without their consents." He then cites certain precedents in Queen Mary's and Queen Elizabeth's time, and then he goes on—"This did Queen Elizabeth in her time. What hath King James done now? Whereas the Queen had omitted to make boroughs in these new counties, the king hath now supplied that defect, by making these new corporations we spoke of; for why should all your old shires have cities and boroughs in them, and these new counties be without them; or shall Queen Elizabeth be able to make a county, and shall not King James be able to make a borough?" At that time, gentlemen, you will observe, there had been no regular constitution of parliament at all; it had grown gradually, and there had been no legislative act on the subject. Things, however, became totally altered when the union took place; because then the representation of the whole United Kingdom was based on the statute, and accordingly the statute in the third article enacts, that there shall be one and the same legislature for the whole United Kingdom of Great Britain and Ireland. "That it be the third article of union, that the said United Kingdom be represented in one and the same parliament, to be styled 'The parliament of the United Kingdom of Great Britain and Ireland.'" The other articles are then specifically enacted; and in the third section—(the first section is the section which embodies the several articles)—it states—"That of the one hundred commoners to sit on the part of Ireland in the united parliament, sixty-four shall be chosen for the counties, and thirty-six for the following cities and boroughs." Then they are enumerated. Now, assuming for the present that this act of parliament has legal validity, the consequence and the effect of it is this, that the places specified in it, and these only, are to be represented in the united parliament. To hold out, therefore, the doctrine that it is competent to the crown to issue its writs for the purpose of enabling other boroughs or places to return members to the united parliament is neither more nor less than to give a *non obstante* power to the crown.

Mr. Justice Crampton—I did not understand the proposition to be, that the crown should issue writs for the united parliament, but for a separate parliament.

The Solicitor-General—It comes to the same thing, my lord. This act enacts, that the imperial parliament shall be the parliament with respect to these boroughs; and if the crown has the right to issue a writ to Kilkenny to send a representative to a separate Irish parliament, it is in effect repealing the act of union, and giving a *non obstante* power to the crown. In the fourth section you will find this enacted—"And no meeting shall at any time hereafter be summoned, called, convened, or held for the pur-

pose of electing any person or persons to serve or act, or be considered as representative or representatives of any other place, town, or city, corporation or borough other than the aforesaid, or as the representative or representatives of the freemen, freeholders, householders, or inhabitants thereof, either in the parliament of the United Kingdom or elsewhere, unless it shall hereafter be otherwise provided by the parliament of the United Kingdom." Here we have an explicit and direct enactment that no meeting shall be convened, nor shall any person be elected or considered as the representative of any of the places included in this act of parliament, either in the united parliament or elsewhere, except according to the provisions of that act. Yet, Mr. O'Connell pretends to say that the Queen has the power of issuing writs to call together an Irish parliament, because, as he says, that parliament is not dead but sleeps; because it is still in constitutional and legal existence, though not actually called to meet. That is his proposition. This supposes that the act of union is altogether void; that is, in effect, the meaning. You will recollect, gentlemen, that amongst the documents they handed in, was an address to the people of Ireland, by the repeal association at its first establishment. To this address is prefixed a dedication by Mr. O'Connell, in which he says—"They were written by one of yourselves for the benefit of you all." In this publication, I find the doctrine with respect to the union laid down thus:—"Besides all this, it is perfectly clear that the Irish parliament had no right whatever to vote away their country's independence." Then he cites Lord Plunket's words, and Mr. Saurin's. "Such were the means by which the union was carried; and such was the inherent radical defect in point of law, and in conscience, in that measure." What will be said to that? Is that, or is it not, a deliberate assertion circulated amongst the people of Ireland, that by reason of the inherent want of legal power and capacity in the respective legislatures, and particularly in the Irish legislature, to pass the union, it was void in point of law and of conscience? Gentlemen, I mentioned to you that one of the objects of these parties was to persuade the people of Ireland, and to keep them in the delusion, that the Queen had the power, and also the inclination, to further their wishes, by having the union in fact repealed. Gentlemen, he by whom that is cited, and his counsel, have repeatedly relied on certain expressions used—not by lawyers as such, not by judges, not by any persons having authority to lay down the law, but by certain members of the Irish parliament before the union was passed, and whilst the propriety of passing that measure was under discussion. These are held up as the authoritative declarations of those eminent men as lawyers and as judges, that after the union was passed, it had no binding power, by reason of the alleged incapacity of the Irish parliament to annihilate the separate legislatures of Ireland. I say, gentlemen, a more seditious doctrine than this cannot possibly be broached. I say it is illegal and delusive. It is absurd and monstrous to say, that in point of either law, or of conscience, or of constitutional principle (I do not care on what ground it is put), the union can be considered as void. I say it is unconstitutional, seditious, and unlawful, to tell any of the Queen's subjects that any act of parliament is not obligatory on their consciences. To question the constitutional principle of the union, is to question its legality; and it is merely endeavouring to back out of the necessary consequences of this doctrine, when it comes to be discussed in a court of justice, to attempt to distinguish one of these allegations from the other. It is perfectly plain, that what was intended to be conveyed was, that there was no binding force whatever in the act of union. Now, gentlemen, to hold the union to be void, as has been already observed, would come to this—that the acts of parliament passed since the union would be without authority. The emancipation act, the reform act, and the act for the improvement of the criminal code in Ireland, which was introduced by the head of the present ministry, all would go by the board; and we should be brought back to the state of things prior to the passing of the union. Gentlemen, it was delusive, for this reason, that it was founded on a most unjust construction put upon the words and meaning of the very eminent men, whose names you have heard in the course of this trial. In that publication which I have last adverted to, I mean the address of the national association, you will find that it is actually stated that "the present lord chancellor"—(this was in 1840—Lord Plunket being then lord chancellor)—"that the present lord chancellor had laid it down that the union was not binding—that the Irish legislature had no right to pass the measure of the union"—leading the people to the inference, that the chancellor as chancellor, after the union, and in his judicial capacity, had laid down that monstrous proposition. Why, gentlemen, it is most injurious, and most libellous, to that eminent individual, to attribute such a doctrine to him. These sentiments he expressed when the measure was under the consideration of the Irish parliament, but never afterwards, either in his character of a barrister, or of lord chancellor. So, with respect to the late eminent individual who presided in this court. I do not know whether Mr. Sheil will object to what one of these eminent individuals stated in his place in parliament with respect to the union.

Mr. Sheil—Certainly I shall.

The Solicitor-General—Very well, I shall not advert to it. Gentlemen of the jury, you see so far therefore as relates to the doctrine, either that the Queen, by virtue of the royal prerogative, can, independently of parliament, issue writs for the calling together a parliament in Ireland, or to the proposition that the union is not binding in point of law or in conscience, neither of these can be sustained. I shall therefore assume in the rest of my address, that you are perfectly satisfied, and that the court will inform you, that there is not the slightest foundation for this doctrine, which has been so often reiterated and circulated all over this country, for the purpose of misleading and deceiving the unfortunate people to whom it was stated. Gentlemen, the meeting at Donnybrook was followed by one at Tullamore, as to which we have the evidence of a respectable short-hand writer, Mr. Macnamara. He says—"I will put an end to that—something must be done—every one, ministry and opposition, admit that something must be done. Why not do it at once? I will do it through repeal, and work while they talk. Mr. Robinson had another plan; I have one of my own. I would not let the landlords appoint valuators; you might as well consult butchers about selling meat in Lent. You will all be in favour of my plan of fixture of tenure—it is short and simple, and is founded in justice and humanity. I will tell you what it is. No landlord should recover rent unless he gave a lease—as I would say to the parson, no penny no *pater noster*, so I would say to the landlord, no lease no rent. The lease may be as long as twenty-one years, it might not be longer, and I would give the tenant power to go before the assistant barrister if the land was set too high. Did you ever see a good landlord that you did not like him? (cries of 'Never.') No, never. It is true, that property has its rights, and it shall have them; but it has its duties, and shall perform them. Oh! go home and circulate the good news, that after centuries of oppression we shall obtain freedom, because we deserve it. Spies and informers have invented the ribbon society."

He denounces the ribbon society, and all secret societies (I admit that), on all occasions. "Let every man that promises me he will catch a ribbonman hold up his hand. Oh! now I have your pledge, and no honest Irishman ever broke his pledge. Have I not teetotallers here? ('Yes.') I am proud of your confidence; I can collect you together at any time. If I want you, I can get you any day in the week." Now it is possible that these words may have different meanings. It is for you to say what they mean: whether Mr. O'Connell intended to call these people together when an occasion should arrive for an outbreak, or whether he intended to have it understood in England, and over the country, that the people could be collected at any moment he thought fit, so as therefore to create that kind of coercion or intimidation, which we say he had in contemplation, as a means of procuring the repeal of the union. Gentlemen, with regard to the Tullamore meeting, there was the evidence of a person of the name of Stewart, and other evidence with respect to which it will be necessary for me just to make a few observations. You will recollect that Mr. Stewart stated, that amongst the insignia, or banners, or inscriptions, which appeared at Tullamore, was one upon an arch—"Ireland her parliament, or the world in a blaze." The counsel for the traversers, when adverting to this meeting, said, "Oh! we shall show that this was wholly without the knowledge of Mr. O'Connell; and so far from approving of it, he, Mr. O'Connell directed it to be taken down; and Mr. Steele accordingly went and had it removed—insisted on its being taken away, and it was removed accordingly." Gentlemen of the jury, a person was called by the traversers, I do not now remember his name, Morgan, I believe it was, who certainly did prove that he took down, or assisted in taking down, this arch by the direction of Mr. Steele, about a quarter past eleven o'clock; and that accordingly it was removed. But what appeared on the cross-examination of that man? He was asked, who put up this arch? Where was it? It was at the house, or opposite the house, of a painter of the name of Dean. Dean painted it, and put it up. Why did he do so? The witness could not tell. Who desired him to do so? He could not tell.

Mr. Justice Crampton—There is no evidence that Dean painted it or put it up.

Mr. Fitzgibbon—The only evidence is, that it was suspended from an empty house of his.

The Lord Chief Justice—I do not think he said any thing about it being suspended from an empty house.

Mr. Fitzgibbon—He said so, my lord.

The Solicitor-General—Therefore, I say, Dean was the person that had authority to take it down, and was applied to to take it down, and Dean refused to take it down until sanctioned by Mr. O'Connell's desire. On his cross-examination what turned out? That that very Dean had came from Tullamore with him (Morgan) the night before, and was in town—and where is Dean? Had Dean been produced, and not Morgan, Dean could have told you by whose authority or direction, or for what reason, and at whose expense, this inscription was put up; why it was put up; who he, Dean, was—whether he was connected with the association.

Mr. Fitzgibbon—I submit, my lords, this is not legitimate; the only evidence is that——

Mr. Justice Perrin—He might have told all this; but the jury are not to infer it.

Mr. Fitzgibbon—My friend, the Solicitor-General, has not a right to imagine these things. There is no connection shown between us and Dean at all, not the slightest.

The Solicitor-General—I am not surprised at the interruption that has taken place, because it is impossible for any man to over-estimate the weight of this part of the case. I think scarcely any observations are too strong on this part of the case, with respect to keeping back evidence which might be material in the cause. Gentlemen of the jury, I now come to the meeting at Baltinglass, of the 6th of August; and we have some witnesses whose testimony with respect to that meeting appears to me to be of the greatest importance. We have, gentlemen, the evidence of a person of the name of Henry Godfrey. He is in the constabulary, and was at Baltinglass on this occasion. He says he was stationed at Donard. He heard a man say "that was the day that would frighten Saunders," a gentleman living in that neighbourhood. He says he heard Mr. O'Connell speak to this effect—"that he did not despair of getting the repeal when he had the clergy and people to back him. He was not going to tell them *now* what he intended doing." You will see there is a regular progression of the plan and carrying out of this conspiracy, which the prime mover of it does not disclose until certain periods arrive. Gentlemen, the next witness is a person of the name of Henry Twiss, and he says he heard this expression used—"The time is nearer than you think." Now, I leave it to you to judge what was brooding in the minds of the people, or of the man, at least, who made use of that expression to those about him, "the time is nearer than you think." "Let us wait with patience for a few months." But "a few months," would be the expiration of the session of parliament. What was meant by that? Was it, wait till a bill can be carried through parliament, or a petition presented? Gentlemen, I must now call your attention a little more particularly to a report of the proceedings at this meeting in the *Freeman's Journal* of the 7th of August. There is a very long account in Dr. Gray's paper, of this demonstration at Baltinglass. There is an historical account of the county of Wicklow, and a description of its natural beauties, and its advantages in a military point of view, and then there is a description of the mode in which the crowd assembled. "Temperance bands from Ballymore, Athy, Naas, Newbridge, and Rathvilly, and from our own liberties, were contributing to the enjoyment of the people. The Spitalfields bands—there were two in two vehicles, drawn by four horses each—were marshalled by Mr. Morgan Largan. More than a thousand horsemen added a military dignity to the myriads on foot." Our witnesses are objected to, and they are blamed for making use of the word "military." For the order of organization of these people, the language they put forward themselves is—"More than a thousand horsemen added a military dignity to the myriads of foot; while cars and other vehicles were crowded with females, cheerful and lovely, who were determined that they should have some portion in the achievement of the domestic felicity which will follow independence. At this period there were present, in the neighbourhood of the place of meeting, as well as in the town, 150,000 people. These had collected from the five or six adjoining counties; and a more cheerful, fine, and manly peasantry the eye could not love to dwell on. Every moment cavalcades were joining the procession. Procession joined procession, band followed band, thousand joined thousand, until the dense mass of human beings became so compressed, that one man could not move in that multitude, but all waved like a corn field beneath the passing breeze." Thus, gentlemen, in the speech delivered at the meeting, after lavishing a great deal of abuse on Lord Wicklow and Mr. Fenton, with which I shall not trouble you, Mr. O'Connell proceeds thus:—"A man was not more brave because he wore a red coat—for a frieze jacket can cover as good and as brave a heart as scarlet or blue (tremendous cheers)." That language, I sub-

mit to you, gentlemen, is sufficiently unequivocal. "If he wanted them again, would they not be ready at his word? (cries of 'To be sure we would.') Let every man who was determined to meet him again on any future occasion, where he would require his presence, for peaceable purposes, hold up his hand. (A myriad of hands were uplifted amid loud and general applause.)" Gentlemen, at the dinner, on this occasion, Mr. O'Connell made a speech. "Ireland wants all her sons to stand by her at the present moment (great cheers); and if they have no other or better leader than myself, I will myself stand by the people and the people will stand by me (tremendous cheering)." Does that allude to the presenting of petitions to the parliament for the repeal of the act of legislative union? Does he mean a leader in the house of commons? Does he mean a leader in signing petitions? Or does he mean a leader in the field? How was this understood? "(Tremendous cheering. A voice—'That will do.') Mr. O'Connell—Yes, that will do (cheers). You know that I will not allow you to violate any law. If my advice be taken, you will not be in the power of your enemies." Gentlemen, I shall not further dwell on that meeting. Recollect, that the question with respect to all these proceedings is, what is the object that the parties had in view? Now, bearing that in mind, I must call your attention to the next piece of evidence in point of date, which is a publication of the 12th of August, in the *Nation*. It seems to be a leading article in that paper, adverting to the position of the repeal question at that time. The writer goes on:—"Let us see what has been done, and what remains."

Mr. Fitzgibbon—Has this been read in evidence?

The Solicitor-General—Yes. [The learned gentleman quoted and commented on this article at great length, and continued]:—Now attend to this: it is said that the act of one person, or the declaration of one person, is only to be visited on himself; that it would be a cruel thing to visit upon Dr. Gray the act of Mr. O'Connell, or the speech of Mr. O'Connell; or on Mr. Duffy, the publication of Dr. Gray. Here we have, you will find, Dr. Gray most active in the arbitration part of this case. And here we have Mr. Duffy, in the *Nation*, publishing the article which I am now reading, containing this passage—"Arbitrators will be appointed in every barony." How did Mr. Duffy know that? How could he know it, except there was a community of purpose and design between him and Dr. Gray, and the other persons who were connected with getting up these arbitration courts? I mention that as one of the thousand instances of the community of purpose in this case. Then again, he alludes to another subject, which you will presently find more fully developed in the combination, but which at this time the writer of this article certainly knew was in contemplation:—"How soon the three hundred trustees of the Irish fund will come to Dublin we need not anticipate. Suffice it, they will come, and we fancy their advice will pass for law with the people." Now you will hear by and by what these three hundred trustees were intended to be; and here you find Mr. Duffy telling the people of Ireland, that when these three hundred trustees shall have assembled in Dublin, he takes for granted that what they say will be law for the Irish people.

The Lord Chief Justice—Is the phrase "trustees of the Irish fund?"

The Solicitor-General—Yes, that is the phrase here, my lord. Your lordship will have it explained hereafter. I am at present adverting to it, to show the cognizance of the writer of this article, of the intention of having the trustees of this fund put into operation. Now, gentlemen, it is desirable we should see what is meant by "Ireland being a nation," an expression that has been used often, both by the defendants and by the counsel who have addressed you on their behalf. Mr. Duffy, in his publication gives you, I think, a definition of what he understands by the Irish being a nation:—"Ireland is changing into a nation. She is obtaining all the machinery of one—public opinion, order, taxation"—

The Lord Chief Justice—Taxation?

The Solicitor-General—"Taxation, justice, legistion." "Taxation" is the repeal fund, "justice" the arbitration courts, "legislation" the dictates of the three hundred trustees, who this writer fancies will give law to the Irish people. This is what is meant by the phrase of "Ireland being a nation." This is not my language, gentlemen of the jury, but the language of the traversers. And again—"The organization must not only be carried everywhere, but it must be revised everywhere. If the repeal wardens of any district do not see that the organization, division, and training of all the repealers in their district is perfect." "Training!" Now, observe, the duties of the repeal wardens are continuing duties. The repeal wardens have been appointed months ago—when first, I do not know—they have been a long time in operation, and part of their duty is to train the people. Am I to be told that training means for the mere purpose of enabling a number of persons, who may assemble at a particular meeting, to go orderly and quietly, and to prevent confusion? That can be done when the meeting is called, but what is the meaning of training, as part of the systematic duty of the repealer?

The Lord Chief Justice—Hand me up that.

The Solicitor-General—Now, gentlemen of the jury, I do protest that it appears to me, that we are not calling upon you in this case to do anything, but to believe the language, and act upon the professed, and deliberate, and undisguised opinions and sentiments, of the traversers themselves, when we ask you to find them guilty of the charges against them. What does that paper amount to? Is it not a distinct allegation that Ireland is to be a nation, to have administration, justice, and taxation; that the duty of the repeal wardens was to train the people; that until that training was complete, the repeal warden's duty was not done; that the thing was progressing; that in a very short time it would be perfect; that foreign policy had been adopted; that foreign countries, not in the way of diplomacy, had been applied to, but their sympathies had been enlisted and might be calculated on; and that he must be a bold minister of England, who would dare to cope with the Irish people in war, assured, as he must be, of the sympathy and support they would receive from Europe and America, and particularly from France? Gentlemen, I now approach a part of this case which bears more particularly on one of the traversers, and for whom Mr. Moore appeared as counsel; I mean, gentlemen, the Rev. Mr. Tierney. Mr. Moore has stated Mr. Tierney to be a clergyman of the parish of Clontibret, in the county of Monaghan; and he has stated him to be a most respectable gentleman, enjoying the good opinion of his friends and neighbours, and to be a person of high character in that part of the country. I am quite ready to believe that all this is well founded in point of fact; I do not mean at all to question the correctness of that opinion; and it is certainly with great regret, I must say, that I find myself counsel against a gentleman of Mr. Tierney's sacred character and profession. I also freely admit, with Mr. Moore, that the circumstances in the case which affect Mr. Tierney are, in some degree, distinguishable from those that relate to the other traversers; inasmuch as the only two occasions on which we find him distinctly prominent in this common combination, were the two—at Clontibret, on the 15th of August, and at the association in Dublin, on the 3rd of October. Whether the circum-

stances of the case, as relating to Mr. Tierney, so far make a distinction between him and the other traversers, as to authorize the jury to take a more favourable view of his case than of the others, it is not for me to say; but when the jury come to consider the facts and circumstances, which it is now my duty to call to their attention, they will see that Mr. Tierney has, to a great extent, to a certain extent at least, mixed himself up with the objects and purposes of this body. Gentlemen, with respect to Mr. Tierney, you will recollect that a witness, of the name of M'Cann, was examined. Mr. M'Cann is a member of the constabulary force, and very strong observations were made tending to impeach his character and veracity. Now, it is perfectly plain, if you believe this witness's statement, that Mr. Tierney was, to some extent, connected with that meeting, and that he had written to barristers to attend at it, and, until their answer was received, he could not tell M'Cann the exact day. He then said—"That the army could not be induced to bayonet their fellow-subjects, and that they would not be so easily led to bayonet their fellow-men for seeking a redress of their grievances peaceably. And he referred to what the army had done in Spain." This, the witness said, was on the 16th of June. Mr. Tierney said—"See what the army did in Spain." He talked of the association, and said—"If it failed in its object, it had done so much at least, that the country should get other measures than the bayonet." He, M'Cann, was then cross-examined by Mr. Moore, the counsel for Mr. Tierney, and he stated that he took a note of this conversation so far as related to the fixing of the day, because that he was to report to his superior officer, but he did not take a note as to what Mr. Tierney said as to the army in Spain, but he was perfectly positive the words were used. He then produced his note, and said it was taken on the 16th of June, the day of the conversation; that he saw the diary into which he entered it shortly afterwards. And he said that Mr. Tierney had assisted him in keeping the peace, and in acquainting him with the names of certain offenders; and I make no doubt whatever that Mr. Tierney would feel it his duty, and act on it, to assist in that, as far as he possibly could. The witness said he had not thought it necessary to insert this conversation with Mr. Tierney in the diary, because it had no immediate reference or relation to the subject on which he was sent. Now, very strong comments were made upon this man's evidence, not merely because he did not insert this in the diary, but his veracity was assailed by Mr. Moore on this ground, that it was impossible this transaction could have taken place, or that Mr. Tierney should have so expressed himself, because the transactions in Spain were not then known in Ireland. You will recollect this, gentlemen—Mr. Moore said, if you look to the newspapers, the movement, or the pronouncement, had not taken place till the 11th, and the news of it had not arrived in Ireland till the 19th of June, and this conversation took place on the 16th of June; therefore this man must be swearing falsely. Now, that was a very strong aspersion to make on this person's character—a person occupying a situation in the constabulary—that he was stating what was not true, and could not have been true at the time. If you will have the goodness to look at the *Morning Chronicle* of the 1st of June, you will find an allusion distinctly to the revolution in Spain.

Mr. Hatchell—I must object to the suggestion of the Solicitor-General. He must comment on the evidence, and nothing else than the evidence. My friend is going into a rebutting case.

The Lord Chief Justice—If what the Solicitor-General states now is correct, Mr. Moore had no right to state it.

Mr. Hatchell—It may be open to the Solicitor-General to observe on the statement of counsel, and its not having been substantiated in proof—that is one thing.

The Lord Chief Justice—No, no.

The Solicitor-General—That was not how the fact——

Mr. Hatchell—I beg your pardon for a moment, Mr. Solicitor.

The Lord Chief Justice—Mr. Moore has made no objection to any statement on the part of the crown, but he said the witness could not have sworn the truth, because the news could not have arrived in Ireland at the time. What right had Mr. Moore to say that?

Mr. Hatchell—Supposing he stated that—I am perfectly in possession of what the court means—and the question is now, whether I am right in the observation I am going to take the liberty of submitting to your lordship. The trial, I suppose, must take the same course as any other trial.

The Lord Chief Justice—Certainly.

Mr. Hatchell—And it is said that Mr. Moore impugned the accuracy or testimony of the witness, because he was stating the substance of a conversation relating to a matter on which there could not be any knowledge or information in this country. Mr. Moore made that statement, and he adverted to some particular documents, which he said would bear him out in that statement. However, in the course of the defence no evidence was given of the existence of those documents. That is like every other statement which a counsel for a defendant, or a prisoner, or a traverser makes, subject afterwards to the observation that it is a statement made without proof. No proof has been given of it; and I do not think any instance has occurred in which, if the counsel for a defendant makes a statement, which subsequently fails, and he does not think proper to sustain it by evidence, that is to be taken as a fact proved.

The Lord Chief Justice—Probably you are quite right in the view you take of it. The result is the same, and Mr. Moore's observation falls to the ground. That observation is brought forward by the Solicitor-General in the absence of any evidence on his part, and his case is established.

Mr. Hatchell—It is quite open to the Solicitor-General to take the view your lordship has adverted to, but no other,

The Solicitor-General—I should not even have gone so far, but that Mr. Moore deviated on this occasion from what I think is the ordinary and regular practice; and that is, when counsel states a fact, generally speaking, he does so with reference to the proof he intends to give of it. But, on this occasion, your lordships will recollect, Mr. Moore said—"If you, gentlemen of the jury, will take the trouble of looking at a newspaper of the 11th of June, you will find this statement could not be true." So that I did not suppose he intended to give the newspaper in evidence, but he left it to the jury.

Mr. Justice Crampton—I think he did not go farther than to say, "If you take the trouble to look at the newspapers, you will see his assertion is not true."

The Solicitor-General—Very well. Mr. Moore then has made a statement which is utterly unfounded—unproved, and, therefore, I have a right to say, unfounded. I say that man has been falsely traduced. That conversation is proved. Gentlemen, that took place on the 15th of August. But, on the same day, there was another transaction in another part of the country, which is one of the most striking and remarkable in this very remarkable case. I allude to the meeting at Tara, which took place on the 15th of August, the same day as

the Shantibet meeting, at which Mr. Tierney attended. You will recollect that Captain Despard was examined, who attended there, not as a magistrate, but as an individual, and saw a good deal of what occurred. Gentlemen, I shall beg to trouble you first, with some parts of his evidence, and, next, to direct your attention to the very extraordinary mode which has been resorted to, for the purpose—I do not know whether I should say—of contradicting—but of neutralizing his evidence. Gentlemen, a more intelligent witness, or a more respectable one, never appeared. He has been a distinguished magistrate for many years in the county of Meath. [Here the learned gentleman quoted the evidence respecting the Wexford men, referred to by Mr. Fitzgibbon, in his speech for the defence.] Captain Despard is a military man, and formed, therefore, probably a very good judgment as to the number of persons assembled on that occasion. "I think I am under the mark. There were about seven thousand horsemen. I counted nineteen bands. The meeting concluded at about two o'clock, or half-past, when there was a sudden movement, and they went away in bodies of about twenty thousand each." Now, gentlemen of the jury, it was impossible not to be struck with the value and the weight of this testimony, on this part of the case; and accordingly, there was no kind of expedient that was not resorted to, for the purpose of neutralising that evidence. We have the different counsel taking up each and every of these distinct grounds, for the purpose of getting rid of Captain Despard's testimony. My friend, Mr. Hatchell, said, "It is a mere quiz; I know Shilmalier very well, it is a long way from Tara. This was some fellow who had hoaxed Captain Despard—it was all a quiz;" and he hoped to be able to produce the man; so said Mr. Hatchell, or some one.

Mr. Hatchell—No, certainly not.

The Solicitor-General—But he has not been called. They forgot that. But what said Mr. Fitzgibbon? (and this does infinite credit to his ingenuity)—Mr. Fitzgibbon said, "Oh! Captain Despard is not corroborated. Major Westenra is not produced. There was a policeman of the name of Walker; he is not produced." Now, I really was astonished, I must say, when I heard that solution given of this conversation; that Walker and Westenra—(who were not produced, because it was not necessary to corroborate such a man as Captain Despard)—had actually concocted the scheme to get this fellow behind the ditch, and that the hoaxing conversation took place in order that Captain Despard might have a good story to tell in a court of justice. But, gentlemen of the jury, how does it appear that when this plot took place, any of these parties had any idea of a prosecution? Do you suppose, that on the 15th of August last, they had any idea there was to be a prosecution in the following December? Upon turning, however, to the *Pilot* of the 16th of August, 1843, describing this meeting, I find this passage—"This may seem impossible, but when we state, that to our own knowledge, beside the great bulk of the population in Dublin, and the counties of Leinster adjoining Meath and Westmeath, there were large numbers from Connaught and Ulster, and some from Munster." "Oh!" says Mr. Hatchell, "it is impossible they should come from Wexford, it is too distant." Mr. Barrett gives you a very distinct account to the contrary in his paper. "The Croppies' grave in the Rath-No-Rheagh, beside the house of Cormack, formed a peculiar scene of attraction during the day, and some of the brave men of Wexford, who had travelled upwards of sixty miles to be present, said a prayer, and dropped a tear over the dust of their brave and unfortunate relations, whose ashes rest beneath, and whose fate it was to know the soldier's risk without the soldier's hope." So much for the "humbug" of this Shilmalier man who was "hoaxing" Captain Despard. Gentlemen, I now come to the speech and some of the proceedings at this meeting. Mr. O'Connell sufficiently indicates his intention in calling a meeting there by what I am now about to read to you. He says—"On this important spot I have an important duty to perform. I here protest, in the face of my country, in the face of my Creator, in the face of Ireland and our God, I protest against the continuance of the unfounded and unjust union (cheers). My proposition to Ireland is, that the union is not binding upon us; it is not binding, I mean, upon conscience—it is void in principle—it is void as matter of right, and it is void in constitutional law (hear, hear). I protest everything that is sacred, without being profane, to the truth of my assertion (hear, hear)—there is really no union between the two countries." There is then, gentlemen, a very long passage, abusive of certain things and persons. Then follows:—"Yes, the overwhelming majesty of your multitude will be taken to England, and will have its effect there. The Duke of Wellington began by threatening us. He talked of civil war, but he does not say a single word about that now. He is now getting eyelet holes made in the old barracks. And only think of an old general doing such a thing—just as if we were going to break our heads against stone walls." Then he goes on—"We will break no law." In all the speeches he says, "We will break no law." That is the question we are now trying, whether any law has been broken? That question we have brought to trial in the regular and constitutional way. That is the question you are empannelled to try, and no other. He says—"If at the present moment the Irish parliament was in existence, even as it were in 1800, is there a coward amongst you—is there a wretch amongst you so despicable, that would not die rather than allow the union to pass? (A voice—'Yes, to the last man'—cheers.) Let every man who, if we had an Irish parliament, would rather die than allow the union to pass, lift up his hands." The immense multitude lifted up their hands. "Yes, the Queen will call that parliament. The next step is being taken, and I announce to you from this spot, that all the magistrates that have been deprived of the commission of the peace, shall be appointed by the association to settle all the disputes and differences in their neighbourhood. Keep out of the petty sessions' courts, and go not to them. We shall shortly have the preservative society." Here it is avowed that the association are to appoint the dismissed magistrates to be arbitrators to settle all differences. This, it is said, is purely out of regard to the precepts of the Gospel, and in accordance with the admonitions of St. Paul; a mere imitation of the society of our respectable fellow-subjects called Quakers. Now I can understand a minister, or a government, being swayed by the peaceful expression of the popular will, to carry, or to repeal, any measure that may be considered, on the one hand, desirable, or on the other, improper; but I cannot understand this language—"that he is no statesman who does not recollect the might that slumbers in a peasant's arm"—I cannot understand that in any other sense than this, that no statesman who sees the number of persons assembled at these meetings, and considers what the effect of their "bone and sinew" would be—that no statesman who reflects on that, would dare to refuse anything those people demanded. "And when you multiply that might by vulgar arithmetic to the extent of 600,000 or 700,000, is the man a statesman or driveller who expects that might will always slumber amidst grievances continued and oppression endured too long. Gentlemen, that sentence is pregnant with meaning—"whilst I live; I, who have evoked this spirit, may,

whilst I live, allay it; but after my death there may not be a person who has the control over the masses that I have been able to exercise; and, therefore, as long as I live myself, there may be no such outbreak." But he does not venture, gentlemen, to assure us of security longer than he himself shall live; on the contrary. Gentlemen, Dr. Gray appears to have made a speech at this meeting, which, in my judgment, is sufficiently demonstrative of his conception as to the state of things, and what was in contemplation. He was called upon to return thanks to the toast of "The Press" and he said—"In one thing only am I compelled to differ from the observation that has fallen from our respected chairman. In giving the toast, he stated that the press was of no politics; and I wish to correct the error by declaring on behalf of the national press of Ireland, that the members of it were politicians in the strongest sense of the word. I had myself the honour of being among them that evening as a guest, but I feel that wherever I am I am an Irishman, and as an Irishman, I am ready to strike out boldly for the political liberty of my country. The repeal press was a political press, but its politics were the politics of Ireland; and, steadily adhering to the course it had adopted, it would never deviate to the right hand or to the left, till the people of that country were relieved from Saxon tyranny and oligarchic dominion. Every eye was fixed upon the council that day at Tara, and eagerly looked to its resolves. Was it not a national council, in the most extended meaning of the phrase?, Had they not at their head the monarch of the Irish heart? Had they not the spiritual peers of the realm? Did not the lay peers aid by their counsel? They had there, too, the clergy of the land, and the constitutional representatives of the people Aye, and the people themselves. As I this day strayed over the ruins of our past glory, I chanced to walk over the graves of the patriots of what I might call their own day." Now there is no inuendo here, I admit; but I think it is not necessary to have an inuendo as to "the patriots of their own day" at Tara. "I could not find words to give expression to the emotions I felt, as I contemplated their sad fate. A sorrowful chill came upon me when I looked upon their resting-place, and saw in their end the dark history of the past. But that chill passed away, and hope revived, when I saw that upon their graves the stone of destiny stood erect. For centuries had that mysterious relic been prostrate, as the land whose destiny its fall symbolised; but now that I see it erect again, and on Tara's hill, and over the patriots' grave, I feel that the blood of the last martyr had been shed, and that Ireland herself would soon assume the upright position, and exhibit the dignity of a nation (loud cheers)."

The Lord Chief Justice—Hand me up that paper.

The Solicitor-General—Gentlemen, I now come to certain transactions, which took place at the meeting of the association, I think upon the 22d of August. Mr. Jackson proved that he attended at that meeting, and that several documents or copies were handed to him, by the secretary or officer of the association. Amongst these was a paper entitled "Plan for the renewed action of the Irish parliament." Mr. O'Connell, at the meeting, when this was brought forward, introduced it by some observations, which I shall read to you—"He" (Mr. O'Connell,) "felt it his solemn duty to protest there in the face of high heaven, and that congregated multitude, that the union was void in principle, and in constitutional law there was no union."

Mr. Justice Crampton—Was this on the 22d of August?

The Solicitor-General—Yes, my lord. "It was an act of parliament without force or validity." This is most unequivocal language; it is impossible to qualify this language by the ingenious construction or suppositions of counsel. "It was an act of parliament without force or validity, which was submitted to." Why? "Because, in the words of Saurin, it could not be enforced by the judges and the bayonet, and they were not men of blood and strife. But while they submitted to it *de facto*, it was wrong *de jure*. They would submit to it as long as England was strong; but resistance to the union, said Saurin, will in the abstract be a duty; and the exhibition of that resistance be a simple question of prudence. He (Mr. O'Connell) thought it was now prudent to resist the union (loud cheers). He was of that opinion at present (cries of 'So am I'—cheers)—and he would get seven millions more to help him to resist it. In that assemblage he made that proclamation; but he did not mean to rest there, and he pledged himself to bring about legally, peaceably, and constitutionally, the repeal of the union (hear, hear). He rose now to place before the meeting his plan or mode for the restoration of the Irish parliament." Gentlemen of the jury, I must call your particular attention to this constitution, with which this Irish Seiyes has favoured us. The plan for this restoration of the Irish parliament, by this leader, is as follows. What is meant by "restoration?" What do you, Mr. O'Connell, and the other gentlemen assisting you in getting up this constitution, mean by "the restoration of the Irish parliament?" You shall hear—"Firstly—That the county members should be increased to 173, in the manner herein-after specified. Secondly—That there should by 127 members returned from cities and towns, in the manner herein-after mentioned. Thirdly—That the county of Carlow, being the only county in Ireland, with less than 100,000 inhabitants, should get an increase of one member, so as to have three representatives—that every other county having above 100,000 inhabitants should get an increase of two members. That every county ranging above 150,000 inhabitants should get an increase of three members. That every county ranging above 250,000 inhabitants should get an increase of four members. That the county of Tipperary, having more that 400,000 inhabitants, but less than 500,000, should get an increase of eight members. That the county of Cork, having more than 700,000 inhabitants, should get an increase of ten members." The first new feature in this "restoration" is to be an increase of the county constituency on the basis of population. Then comes—"Fifthly—With respect to the towns and cities—it is proposed that the city of Dublin, having more than 200,000 inhabitants, should have eight representatives—four for the parts north of the Liffey, and four for the parts south of the Liffey. That the university of Dublin should continue on the basis of its present constituency to send two members. It is proposed that the city of Cork, having more than 100,000 inhabitants, should have five members. That the city of Limerick, and town of Belfast, having respectively more than 50,000 inhabitants, should send four members each. It is proposed that the town of Galway, and the cities of Waterford and Kilkenny, having respectively more than 20,000 inhabitants, should send each three members to parliament. That other towns having 7,000 inhabitants should each send two members to parliament; and that 49 other towns next highest in the ratio of population, should send one member each. Such, gentlemen of the jury, is to be the constitution of what is denominated the "restored" parliament, according to the plan of the traversers, or those who were concerned in the concoction of this document. Gentlemen of the jury, they have not favoured us with any intimation of what measures would be introduced into such a parliament, except one or two. The first is, as you will hear presently, the total abolition of the church establishment, the

severance of the connection between church and state; the next, fixity of tenure, that is, the depriving landlords of the right of recovering rent unless they give leases for certain periods. Well, gentlemen, then follows a schedule, in which the population returns are referred to, and a great number of towns are inserted in alphabetical order, with their respective numbers of inhabitants, and the number of members they are to return; and in this way the total members for cities and towns amount to one hundred and twenty-seven, and for counties one hundred and seventy-three, making three hundred. So far as the fixing the number of members of the house of commons, we have satisfactory information. Then, gentlemen, comes another item; and that is the constitution of the house, and how these three hundred persons are to be returned. To meet that part of the matter—"It is proposed that the right of voting should be what is called household suffrage, requiring six months' residence in the counties, with the addition in the towns of married men resident for twelve months, whether householders or not. It is proposed that the mode of voting for members of parliament should certainly be by ballot." What do you suppose, gentlemen, would be the legislation of an assembly, composed of three hundred members, returned in this manner? Provision is next made for an exigency which might arise, and which in fact had been found to lead to considerable embarrassment and difficulty—I mean the possibility of a regency. "Eighthly—The monarch *de facto* of England at all times hereafter, whoever he may be, shall be monarch *de jure* in Ireland; and so, in case of a future regency, the regent *de facto* in England to be regent *de jure* in Ireland." But suppose such a rule made, or such a preliminary law established, what would fetter the new parliament, or prevent it, if the case should actually arise, from altering that provision, and enacting that the person who was regent *de facto* in England should *not* be regent *de jure* in Ireland? Such is the security that this plan would afford against the mischiefs which must necessarily, or at all events would probably, ensue from separate legislatures. "Ninthly—The connection between Great Britain and Ireland, by means of the power, authority and prerogatives of the crown, to be perpetual and incapable of change, or any severance or separation." Really, gentlemen, what absurdity is this! "The foregoing plan to be carried into effect according to recognised law and strict constitutional principle." Now you would expect—it would be very desirable—that they should proceed to show how that was to be done. But what comes next? "Signed by order—Daniel O'Connell!" There is the end of this scheme. All this is to be done according to "order and constitutional principle," but there Mr. O'Connell stops. Gentlemen of the jury, you will see, in the sequel, what steps were afterwards taken for the purpose of further prosecuting this plan for the restoration of a separate legislature for Ireland. I shall, for the present, proceed, as I proposed to myself, in chronological order. Accompanying the document to which I have just adverted, another was circulated on the 22d of August, 1843, which I hold in my hand, and which was copied from that which I read. It is—"Plan for the renewed action of the Irish parliament: Repeal Association, 22d of August, 1843." This document was printed by Browne, by order of the association; and a great number of copies struck off, and circulated by the order of the association.

The Lord Chief Justice—When?

The Solicitor-General—That was adopted at a meeting of the loyal national repeal association, on the 22d of August, 1843.

The court here retired for a short time. Having resumed, the learned gentleman continued:—

Gentlemen, I propose next to refer to the proceedings of the association upon the 23d of August, the day next following that upon which this plan for the renewed action of the Irish parliament was submitted to the consideration of the meeting. And this will introduce the subject of the arbitration courts, the plan for which you will find was at this meeting brought forward and adopted. The person most active, as appears by the documents, in the preparation of this plan, was the traverser, Dr. Gray. You will remember that the subject had been announced previously by Mr. O'Connell. At this meeting of the 23d of August, a report was presented by Dr. Gray, from a committee to whom this subject of arbitration had been referred. I must beg leave to request your attention to the introduction of this report, as bearing upon the motives which actuated the traversers in the institution of these courts. I admit in the fullest degree the perfect legality of any persons in the community referring their disputes to arbitration. If I, or any one of you, have a matter of difference with another, the law not only does not prohibit, but to a certain degree it recommends and assists, the reference of that matter in controversy to the judgment of private persons; and it is also, in the abstract, a duty enjoined by our religion, to avoid going to law. The respectable body of the Quakers make this a rule of their society. It is, therefore, gentlemen, quite unnecessary to assert the legality of arbitration. It is not, and never has been, denied. If this were a mere case of a reference to a private individual, for the purpose of arbitration, we should not have thought of interfering with the parties adopting that course; but I think, when I come to call your attention to the document I hold in my hand, you will say that we are not dealing with a reference by private individuals of their controversies, to arbitrators selected by themselves, but that the plan here suggested is a usurpation of the prerogative of the crown by the national association of Ireland—the repeal association—by instituting and appointing for the adjudication of rights, tribunals in the several districts in Ireland, to supersede and do away with the ordinary legal tribunals, and to bring them into disrepute and disfavour. Now observe whether it is possible to arrive at any other conclusion, as to the real nature of these courts, and the motives of the parties who suggested the institution of them? It appears, that at a particular period of last year, the lord chancellor thought it his duty to remove from the commission of the peace, certain persons who had attended repeal meetings or demonstrations. As soon as it was ascertained that the gentlemen who had attended those meetings had ceased to exercise magisterial functions, the plan of substituting for the ordinary tribunals, others to be filled by the very persons dismissed, occurred to the persons connected with this conspiracy. Accordingly, you will find that very shortly after that step was taken by the lord chancellor, a plan was concocted of reinstating, as it were, the dismissed magistrates in the functions of judges, and of coercing (for it really falls very little short of it) the persons under the control of this association to abide by the decisions of those persons, instead of going before the magistrates who had been left in the commission, or before the other tribunals established by the law. Now to compare this judicial system with the reference in any individual case of a matter of law, or of fact, to the arbitration of the Ouzel Galley, or of two gentlemen selected by the parties, is absolutely ridiculous. Here it is announced that the reason of appointing arbitrators is the dismissal of the magistrates. It is further announced that there is to be a system, the practical working of which is to be pointed out by the committee, to whom the matter had been referred. And observe now how this sys-

tem is to be carried on :—" Being further of opinion that the system of arbitration should be as universally applied as the circumstances of each locality will admit, your committee recommend that for that purpose the several counties be apportioned into districts, and that three or more arbitrators be recommended for each district, the number to be determined by the extent, population, and such other local circumstances as may seem to bear directly thereon." What is the meaning of saying that the districts already established for the petty sessions' courts shall be the districts for our courts ? to supersede the petty sessions' courts and the magistrates, the ordinary tribunals. And observe, the arbitrators, that is the judges of the new judicial system, are to be persons appointed, not by the parties, but by this association. When any individual case comes to be adjudicated on, a form is to be gone through for the purpose of keeping within the law, but the whole thing is obviously irreconcileable with the law. They then recommend " That the dismissed magistrates, and such repeal justices as have resigned, be, in the first instance, recommended as arbitrators in their respective districts ; and that a dismissed magistrate, or one who has resigned at present, be in all cases chosen as the chairman of the court of arbitration." This is flying in the face of what had been done ; saying, in so many terms, these magistrates who had been dismissed—rightly or wrongly, that is not the question now—but dismissed by the proper authority—are to be judges in our new judicial system. " Your committee are strongly impressed with the conviction, that in selecting persons to be entrusted with such high and important functions"—Selecting—why ? " as those that will necessarily devolve upon the arbitrators, the utmost diligence should be used to procure persons, not only of high moral character and local influence, but who also possess the full and complete confidence of the several classes upon whose cases they may have to arbitrate." To procure persons—by whom? by the association, or the agents of the association, before there is any difference at all. " For this purpose they would suggest, that the repeal wardens resident in the several districts, be called upon to recommend to the association"—not to the parties who are litigants, but to the association—" such persons as may seem to them best qualified to act as arbitrators, and that they be directed, in making their selection, to require the aid of the repeal clergy and gentry in their several districts." They recommend that any person who has a matter in controversy, shall serve a notice on his adversary, citing him before this new tribunal of arbitration, for the purpose of adjudicating on the matter in controversy between them. They then make further suggestions with which I need not trouble you, and they add, that the records of these tribunals are to be kept amongst the archives of the association. Their decisions, and the proceedings before them, are to be registered and recorded at the association. Well might Mr. Duffy say, in the paper which I read to you a while ago, that these parties were fast becoming a nation ; that " the administration of justice" was already in their hands. When this was stated in the course of the trial, it was alleged that that part of the report had not been acceded to or adopted. I shall show you, in a few minutes, that it was, and by a document which we have proved. Gentlemen, I shall not trouble you further on this report at present, but you will see, from the tenor of it, that it is totally different from what it has been assimilated to by the counsel, namely, the reference by private individuals of particular matters in controversy between them to the arbitration of third persons. And as connected with that document, I may just refer you to two others, which have been proved, and which were received at the association, namely, what is called the summons—but which I call the process—to be issued for the adjudication of these differences. The other is the appointment of the arbitrator. You will recollect, gentlemen, that the view they would have you to take of these proceedings is this, that the association merely recommended, that instead of going to law the parties should refer their differences to private arbitration. But, gentlemen, when people refer their differences to arbitration in the ordinary way, they choose their own judges. They are called on to sign a deed of submission no doubt, and it is said that that is similar to the ordinary cases of reference to arbitration. But, gentlemen, there is this difference, that the submission in the ordinary case is made a rule of court, and the obedience to the award is to be enforced by the authority of the court. It is neither more nor less than an appeal to the regular constituted tribunals of the land; whereas here, there is nothing of that kind, no reference to any court at all. The only sanction is the report of the committee. If the parties, on being examined, do not give satisfactory reasons for not complying with the award, they shall be expelled the association. Mr. Whiteside says, in all cases of arbitration, a summons is issued. Yes, but by whom ? By the arbitrator who is appointed. As soon as the two parties sign a deed of submission, then he issues his summons, the parties having given him power. This, on the contrary, is a summons by the litigant party to his adversary, to come before the court, and have the matter adjudicated on by them ; and this at the peril of the penalties denounced by the committee against persons who shall not think fit to comply with the injunctions contained in it. Gentlemen of the jury, the meeting at which this report was agreed to, was held on the 23d of August. The very next day the Queen's speech was delivered, at the closing of the session of parliament. Observe, gentlemen, up to this time there is not a single petition presented to the house of commons. Recollect that not a single petition is proved to have been presented to the house of commons from the opening of the session down to the 24th of August, when it was closed. Nay, more, not one petition has been proved to have been signed by any body of persons. It has been shown, indeed, that resolutions were entered into to petition, but no petition has been proved ; and the session of parliament is suffered to elapse, without the subject of the repeal of the union, as far as the evidence goes, being at all brought under the consideration of the legislature. However, the agitation had been going on, these meetings taking place, the public mind was disquieted on the matter, and the Queen's speech, which was read in evidence, adverts to the subject.

The Lord Chief Justice—I do not think that document was admitted in evidence for any purpose, except for the purpose of showing that, on that day, a *Gazette* was issued.

Mr. Justice Perrin—You recollect, Mr. Henn applied to you to know if you made use of it for any other purpose.

The Solicitor-General—The only purpose I intend to use it for is this, to inform the jury that the 24th of August was the day on which the speech was delivered, and the session closed. I agree with your lordships that I ought not to use it for any other purpose, and I shall confine myself within the most rigid rules of evidence. I feel that in my position I ought not to attempt to urge anything beyond those limits. On the 24th of August, then, the session closed, and without any petition being presented, as far as the evidence appears. Gentlemen, very shortly after that speech had been delivered, you will find Mr. Duffy publishing in his paper an article dated the 26th of August, entitled, " The crisis is upon us." " Our union with England was

not merely an unjust and iniquitous, but an illegal and invalid act. Saurin, amongst others, declared that resistance was a question of time and prudence, and would become a duty whenever strength and opportunity might concur in justifying the effort for its abrogation. A greater than Saurin has at length given forth the irrevocable voice—resistance to the union has become a duty." Now this was two days after the prorogation of parliament. "Resistance to the union has become a duty." Does that mean resistance by petitioning, after months have been suffered to elapse without a petition, and after parliament had separated? "This, the forty-third year of provincial degradation, may, if the people have worth and energy, become the first of restored independence." Has any explanation been given by Mr. Duffy of the meaning of "resistance to the union," or making the year 1843 the year of restored independence, the parliament through whose instrumentality that could be effected having separated? The people were not disposed to be troublesome or to be riotous, and are not riotous. The people were not disposed to join in anything like a public demonstration or movement. They laboured under what this writer calls "apathy to the high and holy impulses of nationality." They were quiet, "when cicatrization seemed superinduced by Whig palliatives, and the wound inflicted on our Irish pride and honour no longer gaped and bled." That is to say, certain measures were introduced by the members of that administration for the redress of the supposed grievances of Ireland, what he calls, "Whig palliatives," and as long as that was the case the people were quiet, and were disposed to be quiet—"but O'Connell tore asunder the bandages, and revealed to Ireland the exact seat and true character of her social and political disease." That is to say, he was the person who had created this agitation, torn off the bandages, as it is expressed, and induced the people to rouse themselves from that apathy into which they had fallen, in consequence of the Whig palliatives resorted to by the administration of the day. Gentlemen, in the early part of my address to you, I stated that I did not attach any value whatever to what was said or done in the repeal association during the years 1841 or 1842. We are prosecuting here the proceedings of the year 1843, each of them in the manner I have detailed to you, leading to the gradual usurpation of all the functions of the state. Having now detailed all the apathy into which the country sank from "Whig palliatives," the writer goes on—"The million-shout of Tara completed the proof, and flung back the responsibility again upon the leaders." The people had so far answered the call, that they had done their duty. "Yes! the people had sufficiently shown their willingness and worthiness to be led, by a thousand proofs of devotion to the cause of fidelity to their leaders. Whither and when? began to be asked, ere the echoes of Tara had died upon the public ear." Led when and led whither? Gentlemen, there is no ambiguity in that. "The people called upon their leaders." "You have stated to us that we ought to be ready. We are ready. When do you want us? Whither are we to go? We fling the responsibility back on you; answer us now our question." "The leaders have answered, and the responsibility is again on the people. The Rubicon has been crossed by the promulgation of a plan for the reconstruction of an Irish legislature." Gentlemen, this crossing the Rubicon is the thing, the nature of which we want to have ascertained—the legality of which we wish to have determined. They have crossed the Rubicon by the reconstruction of this Irish parliament, by the means they have adopted for the purpose of bringing it forward; and the question is, whether in that they have, or have not, acted consistently with the law.

The Lord Chief Justice—Show me that, Mr. Solicitor.

The Solicitor-General—Yes, my lord. Gentlemen, it appears that the army was not lost sight of all this time. Articles appeared with a view either to neutralize them, or at all events to induce the people to believe that they would be passive, in case any emergency should arise. You will recollect I read to you an article of the 10th of June, 1843, called "The Morality of War," published in the *Nation* newspaper, which is Mr. Duffy's paper. You remember that "the morality of war" there inculcated is this, that the writer tells the soldiers that in certain cases it will be lawful for them to obey their officers, and in others not; thus—"If a man fight in the ranks of an invader or a tyrant; if he fight against the cause of liberty, and against the land that gave him birth, may his banner be trampled, and his sword broke in a disastrous battle, and may his name rot in eternal infamy! But if he fight for truth, country, and freedom, may fortune smile on his arms, may victory charge by his side." That is "the morality of war" inculcated on the 10th of June, by Mr. Duffy. Now, we have Mr. Barrett on the same subject, or one somewhat similar to it, in the publication in his newspaper, the *Pilot*, of the 28th of August, 1843. It is entitled "The Duty of a Soldier." That is another expression for "the morality of war." The object of each of these publishers is to inculcate on the soldiers of the army their duties.

The Lord Chief Justice—What is the date of this?

The Solicitor-General—The 28th of August.

Mr. Sheil—Signed "Richard Power."

The Solicitor-General—Yes, it is. I shall make observations on the article itself, but none on Mr. Power's absence; I think it would not be right to do so after what was said. I shall just call your attention to some passages in this article. [The learned Solicitor then commented on the letter of the Rev. Mr. Power, extracts from which will be found in the evidence for the prosecution.] "There is one class of persons whom Mr. O'Connell has not taken into his school in his lectures upon political rights and duties, but who have, it seems, profited, notwithstanding, to some extent, of his peaceful doctrines—I mean the military." Mr. O'Connell has always preached peace, and always counselled his followers not to interfere with the military or police, and not to become members of ribbon societies, or anything of that sort; he has always preserved what he calls a peaceful agitation. Mr. Barrett says, "If he touched upon the subject of the army, he might at once be treated as an open rebel."

Mr. Sheil—Mr. Power.

The Solicitor-General—I am quite content to take it as Mr. Power's if you like, and published in Mr. Barrett's paper. I am quite content to take it that Mr. Power wrote and sent it to Mr. Barrett's paper. The author goes on—"A soldier is a person who hires himself to a government for the purpose of slaying his fellow-men. He does not carry destructive weapons for hunting down wild beasts, or butchering sheep or oxen. No; expressly and distinctly, it is to kill his own fellow-creatures. Viewed solely in this light, every feeling of our nature recoils with horror from the profession of a soldier; and yet the true soldier is a manly, generous, and noble fellow. His duty and his object, it is true, is to slay his fellow-man; but, then, he is no cut-throat or Orangeman."

Mr. Power—"Hangman" it should be.

The Solicitor-General—One asks naturally, why the thing is written at all? It has not been explained, why it was published, or why the Rev. Mr. Power, of Kilrossenty, thought it his duty to instruct her Majesty's army in the discharge of their duties; in what case they were bound to obey, and in what

case they were bound to disobey. The reason for this interference is not assigned; and when he says he does "not mean to make any practical application of the doctrine to this or any other country," it will be for you to say what other intention he could have had. I am merely using this as Mr. Barrett's act; we have no right to do otherwise, as it was published only in his paper. He says:—"I put it forward solely as an adjunct to Mr. O'Connell's general theory of peaceful agitation, which would bring about every amelioration in the condition of mankind, by instructing every class of the community in the moral duties they owe to each other." That is the reason he assigns for instructing the soldiery in their duties. Now, gentlemen, I think you will have no doubt, on comparing this document of the 28th of August, in the *Pilot*, with the document of the 10th of June, in the *Nation*, that the two publishers had the same common design, and that that common design was in accordance with the plan of Mr. O'Connell, and those associated with him, namely, to introduce into the army a spirit of—I will call it no more than—reluctance to interfere and do their duty, should any emergency arise to render it necessary to call on them to discharge their duty to their officers. This is instructing them how to guide themselves in such an event. If they were to follow the doctrines these papers inculcate, they would ask themselves "is this a just war—is this an occasion on which I should obey my superior officer?" And, recollect, this is in a publication avowed to be an adjunct to Mr. O'Connell's scheme, and to the following it out. Gentlemen, a meeting took place on the 29th of August, the day following this publication, to which it will be necessary to request your particular attention. You will recollect, gentlemen, Mr. Jackson deposed to his having been present at the association on the 29th of August, when Mr. O'Connell, Mr. Ray, and Mr. John O'Connell were present; and Mr. Jackson, who did not take short-hand notes, but only gave you a summary of what took place from the materials which he had collected, states that Mr. O'Connell alluded to 1829, that is the period of the emancipation act, and the year 1843; and he said that twenty-six years of despotism had passed—that he denounced the Whigs as "base, brutal, and bloody"—that the magisterial bench had been cleared of every friend of Ireland—that the people were so discontented, and the country so dissatisfied, that if the union were not now dissolved there would be a sanguinary civil war. Perhaps, said he, "not in my time, for I will leave it as a legacy to those who come after me"—and he added, "it might not be an unadvisable result." It has been broadly asserted that that language was not used, and that Mr. Jackson was either mistaken, or wilfully misrepresenting, when he charged Mr. O'Connell with having used those expressions. But I have to recal to your recollection, that the proceedings of this 29th of August are not resting on the testimony of Mr. Jackson alone, because Mr. Ross, the short-hand writer, was also at this meeting, as well as Mr. Jackson; and Mr. Ross read his note to the jury, a copy of which I have; and I beg leave to direct the attention of the jury to some passages in the speech of Mr. O'Connell, as taken in short-hand by that gentleman. He said—"I am not speaking disparagingly of the Queen. I distinguish emphatically her acts from the acts of her ministers. I heard William IV. pronounce a violent philippic against me; for kings condescend to scold me, and queens sometimes speak harshly of me; and five minutes after I heard the speech from the king's lips, I proclaimed it, because it was the minister's speech, base, brutal, and bloody. I have never retracted that sentence since the day I uttered it." Gentlemen, I do not dispute the soundness of the constitutional doctrine, that the minister of the sovereign is the person responsible for the acts of government. The theory of our constitution is, that the sovereign can do no wrong; and it would be disloyalty in that sense of the word to impute to the Queen personally, or to make the Queen responsible personally for anything done by the advice of her ministers. But I do not understand that degree of loyalty, or that species of loyalty, nor do I understand that description of constitutional doctrine, which says this, that what has been delivered in person by the sovereign, though by the advice of her ministers, is not the expression of her sentiments as entertained at the time; but that she has been playing the hypocrite, and pronouncing sentiments which she does not really profess and entertain. "The present speech is an excess of stupidity and insolence combined. It is the speech of ministers, not of the Queen; and I hope that will be infused into every Irish mind. The Tories have her in their power, and chose to make her deliver the speech which they dictated. She could not help it. If she had turned them out of power, their parliamentary majority would have sent them back triumphant to compel her to say whatever they pleased to put into her lips. I wish they had been advised to allow the speech to be spoken by commission. I wish they had not carried the thraldom over her to the extent of making her speak those things herself." Well, gentlemen, he then goes on:—"Is there anything in the Queen speaking that speech to retard us in our career? Is there not something to stimulate us in our exertions?" Gentlemen, without saying that the whole body of the Irish people are disloyal, I must be allowed to question the pretensions of persons using this language to superior loyalty. Then comes the passage which Mr. Jackson swore that he heard Mr. O'Connell deliver, which they called upon the jury to discard, but which they have not called any witness to contradict—"For I am perfectly convinced that Ireland is so circumstanced, that if the union is not dissolved by legal and constitutional means, and, above all, if it do not take place in my life-time, the result will be a sanguinary struggle for perpetual separation; and God forbid I should say that would be unjustifiable means to be used against the perpetuity of the union." Is Mr. Jackson or not vindicated in point of accuracy in that passage upon which strong observations have been made? We had it indignantly denied that such language had been employed by Mr. O'Connell. We have not had any witness to contradict ours; and we have two witnesses concurring, the language not exactly the same, but each of them taking down substantially the same words. Mr. Jackson did not write short-hand, but that this sentiment was expressed by Mr. O'Connell, no human being, I think, can doubt. Of course, gentlemen, I need not again remind you that they undertook to produce witnesses to contradict this.

Mr. Fitzgibbon—That is as to the word "undesirable" only.

The Solicitor-General—"Unadvisable."

Mr. Fitzgibbon—"Unadvisable," or "undesirable."

The Solicitor-General—I am quite content with that.

Mr. Fitzgibbon—That was the only word that was intended to be questioned in his report, "undesirable," or "unadvisable."

The Lord Chief Justice—Read that sentence over again.

The Solicitor-General—"Ireland is so circumstanced, that if the union is not dissolved by legal and constitutional means, and, above all, if it does not take place in my life-time, the result will be a sanguinary struggle for perpetual separation, and God forbid I should say that would be unjusti-

fiable means to be used against the perpetuity of the union." And then he goes on:—"In despair of carrying repeal." Gentlemen, I think that is a tolerably good exposition by Mr. O'Connell himself, of his conception of the actual state of the people of this country, in consequence of his organisation, when he delivered that speech on the 29th of August last. Well, gentlemen, we come now to a meeting of the 4th of September, at the association, deposed to by Mr. Jackson, at which Mr. Ray, Mr. O'Connell, Mr. Steele, and Mr. John O'Connell were present. Mr. Ray, as Mr. Jackson swears, on that occasion recommended—"That the vendors of ballads should circulate 'the Spirit of the Nation,' and abandon the trash they had spread among the people." The speech delivered by Mr. O'Connell on that occasion was taken by Mr. Ross, and I must call your attention to some passages in that speech, as appearing from his notes:—"'I want no revolution; or if any, only a return to former times; such a revolution as 1782 or 1829—a bloodless, stainless revolution—a political change for the better." Now mark what follows:—"But who can tell me that we have not sufficient resources remaining, even if our present plans should be defeated?" Hear what the resources are:—"The people of Ireland might increase the potato culture, and leave the entire harvest of Ireland uncut." A suggestion of that kind needs no commentary from me. "What would be the remedy for that? Who will tell me that the repealers of every class might not totally give up the consumption of exciseable articles?" You see how the resources are gradually developed—"I throw out these things merely to show that if the diabolical attempt to create bloodshed should succeed"—that is to say, should the military be successful, and should blood be shed, should that attempt be successful"—"still the people would not be deprived of their resources, and the means of vindicating their cause. But of course I do not suggest them. I now come to our present position. We have at present in preparation two separate and distinct plans. The first is, to arrange the constituency in such a manner, that if the Queen be pleased in six weeks to issue writs calling a new parliament in Ireland, she might be able at once to direct them to the proper constituencies. The scheme of the Irish parliament will very soon be circulated in print. I have received several communications on the subject, some excessively silly. For example, one person discovers that my plan of representation is not in arithmetical proportion. He is an arithmetical blockhead. I do not pretend to arithmetical equality. I take the reform bill as the basis in round numbers. The association would be ready to consider any cases in which it could be shown that wrong had been done. Mallow is a case in which there is a mistake. It is put down for one member; my own opinion is that Mallow should get two members, and one should be taken from Cork. There are eleven members for Cork, with a rural population of seven hundred and eighty thousand—nearly as great as that of Wales, which returns twenty-eight members. I wish to work out this plan in all its details, before I form the council of three hundred. What I am now doing, and the preservative society, are totally separate, distinct, and unconnected—and though one will follow the other, they are not cause and effect—they are separate and distinct parts of my plan. They are placed chronologically one after the other. Counsellor Doheny has offered to take on himself the arrangement of Tipperary. I shall move that he be requested to act as chief repeal warden for Tipperary, temporarily. We will get into no legal difficulty—we will violate no law. There shall be no opportunity for prosecution—no indictment. I will take care that we shall be in the letter, and certainly in the spirit, of every act, no matter how comprehensive it may be in its details. The repeal wardens will be in the nature of returning officers, and the Queen may even direct writs to them by that designation. That is what I want. I do not want representation, or anything like it. The repeal wardens will have no representative or delegated authority. They are appointed for the ascertainment of a particular fact." He then goes on to the preservative society, and he proceeds thus:—"Chief Justice Pennefather, in giving judgment, used these remarkable sentiments—'The entire intent of the act of parliament is in favour of the landlord to enforce his rights; the law never had the interest of the tenant in contemplation at all.'" This is holding out the authority of this high court for this position, "that the law never had the interest of the tenant in contemplation at all." He says:—"Those were the words of a Tory chief justice, and they state the truth. The law does everything for the landlord, and nothing for the tenant." Now, it was a most monstrous perversion of the law and of the fact, to make that statement before the people assembled at that meeting. For I have been referred to the case in which Lord Chief Justice Pennefather delivered the judgment alluded to. Your lordships will find it reported in the 5th volume of Law and Equity Reports, page 317; it is the case of Delap *v.* Leonard; the question turned on one of the ejectment statutes, and it was, whether in the particular case there should be a right of entry at common law. Referring to that particular act his lordships says:—"There are a great variety of statutes regulating the law of ejectment in this country; and although, no doubt, all are to be considered as one code, yet, I am far from thinking the whole are to be considered as incorporated in the first statutes passed on the subject. On the contrary, there has been shown by the legislature an anxious desire to give an easier remedy to the landlord for the recovery of his rent, and to prevent frauds being committed by the tenants." Then he goes into the particular acts in question, and says:—"I look upon the legislation upon this subject as a progressive code, having the benefit of the landlord in view, and giving in each successive act additional remedies to the landlord, that is, a remedy to recover the land when a year's rent is due; and this, whether the instruments under which the tenant holds, contained a clause of re-entry or not. It was never in the contemplation of the legislature that this statute should not be part of a system of progressive legislation." But his lordship never meant there to lay down this, that the law in Ireland generally had not in contemplation the tenant at all, but only the interests of the landlord. Mr. O'Connell says those were the words of the Lord Chief Justice, and they state the truth, that the law does everything for the landlord, and nothing for the tenant. In that case the decision was for the tenant.* I thought it right, gentlemen, this having been publicly read in court, that the public should be disabused of the notion that this high court had laid down such a proposition as that stated by Mr. O'Connell. The law in that case was ruled in favour of the tenant, and gave him the benefit of the objection. Mr. O'Connell then says he is ready to consult the landlords, and advises them to hasten to join him, or it might be worse for them if they delayed. Gentlemen, I stated to you that the evidence would furnish abundant proof of the intention of addressing the army in these publications, with a view either to create disaffection amongst them, or else to persuade the people of this country that in the event of the army being called upon, it

* But not upon the law, as referred to by the learned Chief Justice.

would not act against them. See how clearly this is demonstrated by the document to which I am about to direct your attention. This publication appears in the *Pilot*, of the 6th of September; it is entitled "The Irish in the English Army." In this we have again explained the meaning of "The Morality of War," and "The Duty of a Soldier." This publication has not been commented on, or alluded to, by any of the counsel on the other side. It has, like the rest, been passed over in total silence.

Mr. Whiteside—Do not say that; do not say "The Morality of War" was passed over.

The Solicitor-General—I say this article was passed over in total silence: "The Irish in the English Army—Mr. O'Callaghan's Letters." You will recollect, gentlemen, in the early part of my statement I called your attention to a letter by Mr. O'Callaghan, explanatory of the devices on the members' card. "He silenced the *Standard*, by analysing the army, and showing that above forty-one thousand Paddies served in that force." These forty-one thousand Paddies in the army, are those whom Mr. Power, Mr. Barrett, and Mr. Duffy, have thought it their duty to instruct in their military duties. Gentlemen of the jury, there is no name signed to this article. It does not purport to be a letter of a correspondent; it purports to be an original article in the newspaper. I think, gentlemen, after that I need not trouble you any further on that part of this case, which relates to the object of either seducing the army, or inducing the people of the country to believe, that the Irish soldiers, consisting of forty-one thousand in number, would never act against them. Gentlemen, at the meeting of the 4th of September, Mr. O'Connell announced his intention of attending at Loughrea, which he did accordingly on the 10th of September. Mr. Ross has given us a part of his speech, in which he says, alluding to the Queen's speech—"They had but one arrow in the quiver—but one stone unflung—but one trick untried, and out they brought the Queen. All Europe was to be astonished by the splendour of her speech against Ireland—oh! what a trick it was! It was worse than a scolding match between two fisherwomen in Billingsgate. The fisherwoman gives her colleague the power of reply; and if she calls her by ugly names, she is obliged to wait to hear them retorted; but the government had all the scolding on one side. It was an unfair advantage that Judy took of us." I suppose by that was meant the government. I believe Mr. O'Connell was right in saying it did not apply to the Queen. I do not mean to say of him that he personally imputed anything to the Queen. "When they talked of beating us, we were ready with our shillelaghs. If they will give us fair play here at scolding, I am ready for them. I remember one phrase of that villain, Castlereagh, he talked of a man having his throat cut behind his back. That is what the ministers have done in the scolding match. Instead of giving me fair play, and hearing me in reply, they have cut my throat behind my back. Who is afraid of the Queen's speech? ('No one.') No—but we have cause to rejoice in it. Our enemies would not use such a rotten weapon if they had better. How many hundred thousands did I see to-day to contradict their expectations? The meeting of to-day was one of the most magnificent and numerous that I have seen. My heart throbbed with delight, and I every now and then exclaimed to myself, this is an answer to the Queen's speech. I read an article in the *Times* newspaper, which is very angry with me for not taking its advice. It said, 'Does not Mr. O'Connell know that the greater part of the multitudes, who attend on him, would be very glad to shrink from danger into security?' I tell the *Times* newspaper that the reason I call these meetings is, that the people shall not be tempted, not to shrink from, but to go too far; that I call these meetings to revive hope, and to keep it between the people and despair, that would soon drive them on hostile bayonets; that so far from shrinking from danger, do not hundreds call out to me, 'Sir, when will you let us at them?'" Here is Mr. O'Connell at Loughrea, admitting that he is called on by hundreds frequently, with the question, "Sir, when will you let us at them?" and this is responded to, according to the report, by cheers. He then says—"These mighty meetings are the safety valve, through which the boiling courage of the soul vents itself into the tranquillity of success." Mr. O'Connell talks of the safety valve; who created the necessity for it? who got up the steam? He takes merit for calling these meetings, and keeping them peaceable, as a safety valve to prevent the agitation, of which he himself is the cause. He says—"Other meetings will take place at Connemara; this day week at Lismore; on the 8th of October on the mound at Clontarf erected over the conquered Danes." The scenes selected for those meetings were to be, as I have already observed, places signalized by some event in the Irish history, calculated to keep alive hostility in the minds of the Irish against their fellow-subjects. He then announced—"I am arranging to have my parliamentary plan complete, in case of any accident that might arise." I do not myself profess to understand that; but, gentlemen, recollect this, that Mr. O'Connell addressed you on his own behalf for a day, that he was the person who used this language, that he never adverted to any of these passages which I have been recalling to your recollection, and never condescended to explain to you, or to the public, what he meant to convey by these passages, in these speeches, to the multitudinous thousands of the people around him. He declaimed at great length on the mischiefs of the union, and went into a long statistical detail, comparing the state of Ireland before and after that measure, which had nothing whatever to do, as my friend, Mr. Henn, justly observed, with the merits of the case. To that he chose to confine himself, and made a repeal speech, but he never did pretend to qualify or explain any one single sentence in any of those harangues which he has been proved to have delivered. You have, to be sure, plenty of references to his speeches prior to the year 1843. Now he goes on—"Who can calculate how soon we may have a parliament?" He then uses an expression which may furnish something like an inkling of what was in his mind:—"Let England be involved in any awkward predicament with one state of Europe—let any country on the face of the earth attack her, and in twenty-four hours we shall have our own parliament." Gentlemen, up to this time something like an appearance of constitutional proceeding was preserved. These multitudinous meetings, though really called for the purposes which we charge, were masked, or justified, or excused, under the pretext that there was an intention to petition parliament, and that this was a mode of collecting the voice of the people of Ireland in favour of the repeal of the union. But I now come to an era in the history of this association, at which I think the disguise was thrown off altogether. On the 13th of September, a meeting took place at the association, at which Mr. O'Connell expresses himself to this effect—alluding to an address which had been prepared, and which it was afterwards moved should be circulated both in Ireland, in England, and in the Colonies. He says—"I will read the address, and move that it be printed on a broad sheet, and posted in the large towns of the empire." [He then read the address, and moved its adoption.] In other words, this is saying, "No matter what we petition for, no matter what we say we want, no matter how willing the legislature may be to comply with our wishes—if they give us all we want, even that will not do; it may detach from my

ranks some unwilling repealers, but it will not separate from me the great body of these Irish people, who will never again trust the English, because they never confided in them but they were betrayed." This, I repeat, is throwing off the mask. Even the pretext of pursuing the repeal of the union in a legal and constitutional way, through the medium of parliament, is abandoned. We have here a distinct announcement to the world, that this is no longer the object, and that nothing but independence will suffice.

Mr. Justice Crampton—What were you reading from?

The Solicitor-General—From Mr. O'Connell's speech, from Mr. Ross's notes on the 13th of September. Gentlemen, this document is headed "Loyal national repeal association. To the inhabitants of the countries subject to the British crown." Here is the go-by given to parliament altogether; here is an address to all the subjects of her Majesty—of the British crown—all over the world. "Fellow-subjects—The people of Ireland would anxiously desire your sympathy and support. But long and painful experience has taught them not to expect either the one nor the other. There is no truth more undeniable than this, that England has inflicted more grievous calamities upon Ireland than any country on the face of the earth besides has done upon any other." Attend to what follows—"In the history of mankind there is nothing to be compared with the atrocity of the crimes which England has perpetrated on the Irish people, nor as yet has the spirit which created and animated such crimes been much mitigated, if mitigated at all from its original virulence." Then follows a long detail of what you have repeatedly heard, during this trial, of those grievances about the representation, about the union, about absenteeism, and other such matters; and then, gentlemen, there is this passage to which I must particularly refer—"Eighthly—Deep-rooted and increasing discontent pervades the entire nation. Feelings of estrangement are rapidly supplanting those affections which kindness and justice could have placed at the command of government. Despairing of redress from the legislature, the people of Ireland, confining themselves to legal and constitutional means, now rely upon their own strength and resolution for the attainment of those rights which they have sought from the British parliament in vain. They know full well that they can obtain adequate redress from a domestic legislature alone. Ninthly—The voice of the civilised world lays to the charge of the English government the guilt of having produced this exasperation of national feeling." There is a black catalogue of grievances against England, and then there is a distinct announcement that they mean to rely on themselves for the accomplishment of the object. "Fellow-subjects! our case is before you and before the world. Grievances, such as the Irish people endure, no other country has ever suffered. Insults, such as are offered to us, were never inflicted on any other. There is one consolation: it is admitted by all, and is as clear as the noon-day sun, that unless we redress ourselves, we can have no succour from any other quarter; but we suffice for ourselves and our country—we suffice for the repeal. We expect nothing from England or Englishmen—from Scotland or Scotchmen. In each of those countries the benevolent few are overpowered by the anti-national antipathy to Ireland, and the virulent bigotry against the Catholic religion of the overwhelming majority of both England and Scotland. The present parliament has been packed, with the aid of the most flagitious bribery, to oppress and crush the Irish nation. From them there is neither redress, nor even hope. But, Irishmen, we suffice for ourselves. Stand together—continue together—in peaceful conduct—in loyal attachment to the throne—in constitutional exertion, and in none other. Stand together and persevere, and Ireland shall have her parliament again. Such are the words we address to our fellow-subjects all over the globe. Signed, by order, DANIEL O'CONNELL." Gentlemen, I come next to a meeting at Clifden, on the 17th of September. I will read Mr. O'Connell's speech from Mr. Ross's note—"He was," he said, "equally delighted with his friend Mr. Dillon Browne, with the perfect order and steadiness with which the mountain cavalry"—this is the first time we have got the word "cavalry" in these harangues—"had filed to the rear on that day at the bidding of his friend Tom Steele; little business the cavalry of England would have in following them over the mountains." Now, what was the meaning of that? You, the people of Connemara, are in a country where it would be impossible for military to act against you—they could not follow you into the mountains. "Had they not," he then asked, "ready arms to assist him if it became necessary; but it would not be necessary, as the government knew they had as well as he. Therefore if the government were wise, they would come into terms with him; and the only way to do that would be to give them a repeal of the union." If they were wise, they would come to terms with them. I think, gentlemen, that is pretty "minacious," as one of the counsel on the other side expressed it.

Mr. Sheil—I said you were minacious.

The Solicitor-General—Yes, it was your expression applied to me. At the banquet at Clifden Mr. O'Connell said, that "he was about to establish arbitration courts, and added that he would take all power out of the hands of government as regarded the courts of law." I heard it thrown out, amongst other things, that the object was merely to prevent the people going to petty sessions' courts, and to substitute the arbitrators for the dismissed magistrates. But here Mr. O'Connell expressly tells the people in so many words, that he hopes by the machinery of these arbitration courts to "take all power out of the hands of the government, as regarded the courts of law. Their enemies had threatened them, but he would then say to them, let them come on, if they dare, and attack us." The note here says—("The cheers here were vociferous in the extreme.") Now here is Mr. O'Connell's exposition of "coming again on the day he asked." "If it were necessary for me to call out your force in battle, I am sure there is not a man of you who would not come again on the day I asked him (cheers—'We will.')—I know it, and I will tell you why it is unnecessary—because your enemies know it as well as I do." He then says—"I have more cavalry than at any former meeting. Handy hacks they are too. Dillon Browne spoke of the English heavy cavalry following them through the mountains; I believe they would be going away from them rather than following them." He says—"I have demonstrated that I have more men, more men of a fighting age—why should I not use that word?—ready to stand by their country, than ever evinced that determination before. I say to England, we will use no violence, we will make no attack, we will reserve our force for defence, but attack us if you dare. What is the answer? We do not intend to attack you, and you need not set us at defiance. My reply is the schoolboy's, thank you for nothing says the gallipot. But then they say, how can you carry repeal? If you take a single additional step, we will go to law with you. My answer is, that I am an old lawyer, and the proverb says you can't catch old birds with chaff, and they are not able to beat an old lawyer with chaff at all events. I set your chaff at defiance, and will take the next step in spite of you." Such were the peaceful, legal, and constitutional means, by which this consum-

mation was to be achieved. The three hundred gentlemen, who, perhaps, but that these proceedings had been arrested or stopped, might have been now assembled, were to enter into negotiations with the British minister, and transmit to him an intimation, that if he did not at once accede to the demands of the loyal national repeal association, by repealing the union, the harvest would be suffered to rot on the ground, the state should be paralysed, the physical power of the country called out, and if any attempt was made to put them down, they would use that physical force for the purpose of resisting any such attempt. "It is avowed that proud England dare not assume an attitude of menace towards any state in the world, however insignificant—(cheers). The English government can no longer threaten. Alas! it cannot exert itself in necessary defence. It is weak, because it has withered the strong arm of Irish affection. You saw how the cavalry fell in and took their station, five by five, at the word of command of Tom Steele. No aide-de-camp of the lord lieutenant was ever obeyed so cheerfully as he was." Gentlemen, I think that is tolerably significant of an appeal to physical force—sufficiently free from ambiguity or difficulty in its meaning. The next meeting that took place, gentlemen, was at Mullaghmast, which was a very important one. In the interval, between the meeting of Clifden, the importance of which I have not overrated, and that at Mullaghmast, there appeared a publication in the *Pilot* of the 25th of September. The question at issue between us and the traversers, you will recollect, is this: they say, they never meant to do anything but to make a demonstration of moral force, and national will. "No," say we, "you did mean to make a demonstration of physical force." Have I, so far as I have gone, supported our allegation, and negatived theirs? Just at the time that the avowal is made by Mr. O'Connell at Clifden, of the military organization of the people, appears the publication, to which I have alluded, in the *Pilot*, called "The Army, the People, and the Government." It is published on the 25th of September, 1843, in Mr. Barrett's paper. After stating that the army is the people's army, because they are paid by the people, and because their ranks are supplied from the people, the article goes on—"A system precisely similar to this"—that is, the present system of promotion in the army—"prevailed in France, previous to what is called the revolution—that is, a change by which the people were enabled to divide the land amongst each other like brothers." That is Mr. Barrett's definition of a revolution. Well, gentlemen, he then says—"Prior to the French revolution, no man, however brave or well-conducted, could procure any rank above the hopeless position of a private or sergeant—except he belonged to the dronish and unproductive classes, calling themselves nobles. How long this state of things is likely to continue in these countries we do not know." The allusion to these sergeants being promoted to be commissioned officers, was made at former meetings. "The Liberator has said, 'he who commits a crime gives strength to the enemy;' and, we believe, it is quite sufficient reason for the Irish not to commit a crime, when we tell them that enemy is England." That is the secret motive of the maxim, "He who commits a crime gives strength to the enemy." That is the exposition of the precept, for the morality of which so much credit is taken. You see, gentlemen, the regularly concerted system and plan to represent that there was in the army a number of Irishmen, who might, by their own countrymen, be calculated on as neutral, and, at the same time, to weaken the allegiance of the army itself, or, at least, that portion of it which consisted of Irishmen. Gentlemen, in the same paper appeared another article, the tendency of which is quite unequivocal and plain. It points, as it appears to me, most distinctly to something like a military movement, for it refers to the death of General Jackson, a report of which had recently before arrived. Commenting on that fact, it makes certain allusions to the then state of things in Ireland, to which I shall presently refer, and which, in my judgment, admit of but one interpretation. After stating the rumour, Mr. Barrett says—"Who was Jackson? Was he an American or a Saxon?" We never hear the word "Englishman;" it is always "Saxon." "No: he was one of the fiery-eyed Celts." He then gives a particular account of New Orleans, and the defeat of the British troops, in the sally headed by General Jackson on that occasion, and he says the English were driven back to their ships on the coast. He then goes on—"Before we proceed to deal with the latter branch of the subject, we cannot help remarking again, by way of warning to those who threaten us with aggression, that Jackson was only a lawyer. O'Connell is one too. The former surprised the British by attacking them twice in the night. So might the latter were he driven to it—especially as darkness equalises undisciplined with disciplined men—throwing the advantage, if any, in favour of the former—the pike being, from the distinctive peculiarity of its shape, the weapon best adapted for night." I suppose it will be said that "the pike" is necessary for the purpose of making a demonstration of the moral feeling of the country. He then alludes to the age of General Jackson, and compares it with that of Mr. O'Connell. The upshot of the whole article is this, that there is a leader ready, who, like General Jackson, might successfully repel the attacks of British invasion.

The Lord Chief Justice—Hand that up to me.

The Solicitor-General—Yes, my lord, the two articles are there. We now come, gentlemen, to the meeting at Mullaghmast—certainly a very important one in the history of these proceedings. This meeting was advertised by hand-bills or placards, printed, observe, at the expense of the association. This Mullaghmast meeting was intended to be a gathering of the Leinster people, and a demonstration by them in favour of repeal. The placard is entitled—"Leinster for repeal—Men of Leinster to Mullaghmast—The province will declare for repeal on the Rath of Mullaghmast, on Sunday, the 1st of October." It is perfectly clear from this document, that this meeting was convened or got up by the leaders of the association, and that it was intended to be what is called a demonstration of the province in favour of repeal. Gentlemen, a person of the name of Healy was examined as a witness, and he proved that he attended that meeting, and that papers were circulated and sold for a penny, of which he got one. This he produced, and I think it is necessary for me to request your attention to it. You recollect, gentlemen, what a struggle was made to exclude this piece of evidence, and very fairly and properly made, by the counsel for the traversers. Coupling what appears in it with the professed object of the association, you will have no doubt that the feeling that was intended to be excited in the minds of the multitudes assembled on that occasion, was what we charge—a feeling of bitter hostility against their fellow-subjects in England. I shall have occasion, before I have done with this meeting, to show, out of the mouth of Mr. O'Connell himself, that that was the object. Gentlemen, this statement purports to be—"The full and true account of the dreadful slaughter and murder." [Upon this paper, a portion of which will be found in our report of the evidence for the prosecution, he proceeded at great length to comment.] This was to prepare the minds of the people before

the proceedings began; to imbue them with a proper spirit when they assembled at the place, which was the scene of this horrible massacre. This was sold by thousands. "We allude to these particulars about the dates, because Corry and others have fallen into the same error with regard to it as Leland, and because we are anxious to show Irishmen of every class that the antipathy exhibited by England to Ireland is more a national than a religious one—fully as much treachery, fully as much cruelty, fully as much barbarity having been practised by Catholic England, in proportion to her ability, towards Catholic Ireland, as there has in subsequent years been perpetrated by Protestant England. Teutones and Celts, the races of the two countries, are different; like acids, they will not amalgamate, nor cannot meet without one neutralising the other. For this reason, as well as numberless others, it is necessary that the parliament of the two countries should be separate, and the inhabitants of each be brought as little into collision with the other as possible." Does that mean, that if there were separate legislatures, all connection was to cease between the two countries? Or what does it mean? What is the meaning of this language thus circulated? Gentlemen, I am afraid I shall not be able to close to-day what I have to offer upon the proceedings at Mullaghmast. I have dwelt at much greater length on this part of the case than I had intended. But, although I have avoided anything like unnecessary repetition, I fear it will be impossible to conclude to-day what I have yet to say as to this meeting. I shall therefore respectfully request of the court an adjournment until the morning.

The Lord Chief Justice—At what hour do you think you will close your address to-morrow?

The Solicitor-General—It is probable, my lord, that two or three hours will be sufficient for what I have yet to say.

The court adjourned to the usual time next day.

TWENTY-THIRD DAY.

FRIDAY, FEBRUARY 9.

The court sat at ten o'clock, and the jury being in attendance,

THE SOLICITOR-GENERAL RESUMED.

Gentlemen, a person of the name of Healey was examined as a witness, and proved some particulars with respect to this meeting at Mullaghmast, to which I must invite your attention. His conception as to the number is, that they were not short of one hundred thousand persons. He says "that he observed several inscriptions," and amongst others, he describes two:—one "Mullaghmast and its martyrs—a voice from the grave." That inscription was also in the banquet room, where the dinner took place—as I understood the witness—immediately behind the chairman who presided. There was also an inscription—

> "No Saxon butchery shall give blood gouts for a repast;
> The dog is roused, and treachery expelled from Mullaghmast."

He then, gentlemen, describes some other particulars, in which this meeting corresponded with those which preceded it; and with respect to which, therefore, I need not detain you. I shall proceed at once to the speeches, which you will recollect have been deposed to by Mr. Hughes. Gentlemen, I regretted to find the epithets of "informer" and "government spy" applied to that gentleman. Mr. Hughes came here openly in the capacity of a person employed by the government to report what took place. He introduced himself in that character to the meeting; he was admitted, known to be a person so employed; and to apply to a gentleman, so circumstanced, the epithet of "spy" or "informer," appears to me to be an extremely improper application of those terms.

Mr. Justice Crampton—Mr. Ross; not Mr. Hughes, I think.

Mr Fitzgibbon—It was Mr. Ross; I do not think any person applied it to Mr. Hughes.

The Solicitor-General—I certainly am very much mistaken if Mr. Hughes was not so designated, for I put it down distinctly at the time. I, therefore, am myself perfectly confident that those terms were applied to Mr. Hughes. If it be now intended to withdraw them, of course, I have no objection. With respect to Mr. Ross, he also, gentlemen, is a short-hand reporter, of character, I must say, unimpeached, and his evidence is uncontradicted. Both these gentlemen have deposed to what took place at this meeting. I thought it necessary to say so much with respect to them; though I must do Mr. O'Connell the justice to say, that when he came to address you, he fully and candidly admitted the respectability of Mr. Hughes's character. Gentlemen, in the early part of the day Mr O'Connell addressed the multitude assembled, and after cautioning them not to give the enemy a hold by the commission of any crime, he proceeds to advert to what had taken place. "At Tara," says he, "I protested against the union; to-day I repeat the protest at Mullaghmast. Take it from me that the union is void. I admit that it has the force of law, because it is supported by the policeman's truncheon, the soldier's bayonet, and the horseman's sword; because it is supported by the courts of law, and those who have power to adjudicate. But I say solemnly it is not supported by constitutional right." After some observations, not material, he proceeds:—"I have physical force enough about me to-day to achieve anything, but you know full well it is not my plan. I won't risk one of you—I could not afford to lose any of you." He then adverts to the speech at the closing of the session of parliament. "I chose it" (that is, Mullaghmast) "for an obvious reason. We are upon the precise spot in which English treachery—aye, and false Irish treachery too, consummated a massacre unequalled in the history of the crimes of the world, until the massacre of the Mamelukes by Mehemet Ali. It was necessary to have Turks to commit a crime in order to be equal to the crime of the English—no other people but Turks were wicked enough except the English." Gentlemen, one of the charges here is, that there was a combination amongst these persons to excite feelings of hostility and ill-will against their English fellow-subjects. What is this? Suppose there was no other document in evidence, is not that charge as distinctly proved, as if the parties came forward here and pleaded guilty to the indictment? Then, gentlemen, he says—"There shall be no bargain, no compromise, nothing but the repeal and a parliament of our own. I have seven-eighths of the population of Ireland enrolling themselves as associates (cries of 'More power to you'). I do not want more power. I have power enough. All I ask of you is to allow me to use it. I will go on quietly and slowly." Then, gentlemen, he comes to another branch of this scheme:—"The arbitrators are beginning to sit; the people are submitting their differences to men chosen by themselves. You will see by the newspapers that Dr. Gray, and my son, and other gentlemen, held a petty sessions of their own in the room of magistrates who have been unjustly deprived. I shall go on with that plan until I have all disputes decided by judges appointed by the people themselves." What now becomes of the flimsy pretext and allegation, that all that was intended here was to prevent parties going before ma-

gistrates at petty sessions, to put an end to the profanation of taking oaths—to diminish litigation and ill-will—and all that? Is there not here a direct assumption, on the part of Mr. O'Connell, of the administration of the justice of the country? As much as to say—I am now about, for the first time, to appoint and establish a judicial system which will at length insure the administration of real justice in Ireland. He then says—"Oh! my friends, listen to the man of peace, who will not expose you to your enemies. In 1798 there were brave men at the head of the people at large; there were some valiant men, but there were many traitors who left the people exposed to the swords of the enemy." The enemy!—that is, of those who put that rebellion down. "On the Curragh of Kildare you confided your military power to your relations; they were basely betrayed and trampled under foot; it was ill-organised; a premature, a foolish, and an absurd insurrection." Such is the way in which this loyal subject speaks of the rebellion of 1798—that it was a "premature, foolish, and absurd insurrection." "But you have a leader now, who will never allow you to be led astray." What is the meaning of "led astray?" This—your present leader will never allow you to break out too soon; never allow you to frustrate that by premature impatience, which can only be successful by a regular course of organisation and preparation. "The Scotch philosopher, and the French philosopher, has confirmed it, that number one in the human race is, blessed be heaven! the Irish. In moral virtue, in religious perseverance, in glorious temperance—have you any teetotallers there?—(cries of 'Yes.') Yes; it is teetotalism that is repealing the union. I could not afford to bring you together, I would not dare to do it, if I had not had teetotallers for my police." Is not this the strongest expression of Mr. O'Connell's own conviction of the natural tendency of these meetings, and of the difficulty of restraining them from actual violence? Gentlemen, so much for Mr. O'Connell's speech at the meeting itself. There was a dinner, or banquet, at this Rath of Mullaghmast, in a pavilion erected for the purpose. How the expense of these several things was defrayed, does not appear, but you can probably draw some sort of inference. At the dinner, I find from Mr. Hughes's evidence, that there were present Mr. O'Connell, Mr. John O'Connell, Mr. Ray, Mr. Steele, Mr. Barrett, and Dr. Gray. Mr. John O'Connell presided at the dinner, and he introduced the toast of the Queen's health with these words:—"I do not, because I cannot anticipate that in any phase of circumstances the toast I have now to give will be received otherwise than well by Irishmen—it is the health of the Queen. Whatever may happen, her throne in Ireland is secure. Her ministers may fix her throne amidst bloody fields, and blazing cities, and slaughtered corpses; let them take care that the ruddiest stream flowing might not be their own blood, and the brightest and fiercest flame might not be from the strongholds from which they now insult the Irish people." Meaning, I suppose, London. Gentlemen, that is the manner in which the loyal toast of the Queen's health was introduced by Mr. John O'Connell. Some letters were read, apologising for the absence of certain gentlemen from this meeting; and, amongst the rest, one from Mr. Thomas Ffrench was read, containing this passage: "Menaces have been tried with signal discomfiture. Overtures of peace will doubtless be now experimented—promises of conciliation and pledges as to the removal of grievances. Can these be now accepted? I answer, never, never!" The next speaker, gentlemen, appears to have been Mr. Barrett; and in a speech delivered by that gentlemen on this occasion, you will find the same admission and confession on his part, as to the motives of calling these meetings and attending them, as had been previously avowed by Mr. O'Connell. He adverts to the massacre, and says:—"A set of chieftains may not always be inveigled by the government; the times may alter, but the spirit of England is the same, whether it is manifested in the breaking of the solemn pledge of hospitality" (that is, by the massacre,) "or the solemn pledge of political justice." He was followed by Mr. O'Connell; and Mr. O'Connell also takes up the speech delivered by her Majesty at the prorogation of the session; and observe the way in which he treats that speech. He affects, as usual, to distinguish between her Majesty and her ministers, and he says that the Duke of Wellington having declared for war, he had replied in a tone of firm defiance, and the threat of war vanished; and the threat of war having been given up—"they then," he says, "brought out the Queen against us; dear lady, I have the greatest respect for her; but I know the words were not her's; dear lady, I have the greatest respect for her." Now observe this passage:—"Instead of lapsing into indifference, I confess the apprehension I had was, that the people would be too impatient. I was afraid that they had not yet confidence in their leader. (Cheers, and cries of 'We have.') How my heart thanks you for that shout! It is a reply to my apprehensions. I did apprehend—it came over me occasionally, it was like the incubus of a sickly dream, and disordered every faculty of my mind—I was afraid that somewhere there would have been an outburst to gratify the enemy, that would delight Sir Henry Hardinge, and would give employment for those who eat the biscuit and drink the brandy in his barracks. Oh! do you tell me now—you need not—was not the determination expressed for every man to abide his hour, to wait his time, to take no other steps but those which the counsel of wise men, and the sanction of the anointed priests of God should offer to him as the mode of obtaining the liberty of his country?" Now comes a reference to the administration of the law:—"The administration of the law we want to get out of the hands of the enemy." If Mr. O'Connell were to come forward, and plead guilty to that part of the charge, he really could not more fully confess so much of the indictment than he has done in this passage. "I want to show the nations of Europe that we are capable of administering our judicial business ourselves; that we do not want the Saxon and the stranger; and above all, we do not want bigoted men to serve us or to do our business." Again he comes to Mullaghmast, and he actually circulates himself the very matter which was contained in that document which I read yesterday, and against which a strenuous struggle was made to exclude it from the evidence. What does it signify who printed the document that was circulated amongst the mob at Mullaghmast? What signifies it whether the printer was paid out of the funds of the association? What signifies it whether it was Mr. O'Connell, or Mr. Ray, or any of the traversers, who caused that paper to be printed; or some other person entertaining the same designs? Have I not, from Mr. O'Connell's own lips, the same sentiments, expressed in language, if possible, stronger and more exciting? For what purpose? For the purpose of creating in the minds of the immense multitude assembled there, the most bitter and unextinguishable hostility against their fellow-subjects in England, by raking up the earlier passages of history, (whether true or fabulous is indifferent,) and by telling them in express terms, as he has done, that the very same spirit which animated the Saxons of that day actually exists at this moment, and is the feeling entertained towards the people of this country by the great body of the English people. Gentlemen, we

find that Dr. Gray also addressed a speech to the people assembled at the dinner, from which I shall beg to extract a passage or two. He was called upon to return thanks for some toast, "The Press," or "The People;" I am not certain which. He adverts to the case of the arbitrators, and he says:—"He is proud to stand up to return thanks, not on behalf of this class, or of that class, but on behalf of the judges appointed by the people—for the first time the people's judges." Now is this calculated to bring the administration of justice into contempt or not? What is the meaning of it? "Our enemies say, the judges appointed by the people will be powerless. I tell you they will not be powerless; their powers are far more extensive than the powers my Lord Chancellor Sugden can confer; nay, more, their powers are more extensive than those possessed by the chairman, or by an assistant barrister; the repeal arbitrators appointed by the people can go to any extent. Magistrates are confined to a very few pounds in civil cases. The chairman of a county is confined to 20*l.* in civil cases, all they can adjudicate upon is 20*l.*; and the repeal arbitrators, appointed by the people, can adjudicate in cases of 20*l.* without costing the suitor one single penny." Then he says, they have a criminal jurisdiction, if criminals could be found. Gentlemen, so terminate the proceedings at Mullaghmast, upon the 1st of October; and I must say, they appear to me to be sufficiently characteristic of the objects of the parties engaged. Remember that Mr. O'Connell, at one of the meetings which I detailed yesterday, announced that in pursuance of the new plan which had been adopted, of calling together large masses of persons, at particular spots, calculated to keep up in their minds a feeling of ill-will, which he, and those concerned with him, were anxious to perpetuate, there was to be a meeting at Clontarf, upon the 8th of October. On the 30th of September, there appeared in the *Nation* newspaper, the connection of which with this association you already know, an announcement or a programme, if I may so express myself, of the manner in which the persons going to that meeting were to be arrayed. You will remember that at Clifden, and at other later meetings, the undisguised phrases used are "military organisation," "cavalry and infantry," and so on. On this day there appeared the advertisement:—"Repeal Cavalry—Clontarf Meeting." Gentlemen, the announcement in one of the public newspapers of such a formidable demonstration, excited, or was calculated to excite, considerable apprehension. You will have no doubt by and by, when I read a passage or two from the speech of Mr. O'Connell, that the announcement to which I have adverted, was the production of the committee, who had been considering the mode in which this military demonstration should be made. Either from the existence of such an apprehension, as I have mentioned, or from some other cause, which I do not pretend to know, Mr. O'Connell, between the Saturday when that advertisement appeared, and the next day of meeting of the association, began to reflect that he was going a little too far; that it was not, at the present moment, quite prudent to hold up, in such very undisguised terms, the object of this meeting. He found he had been travelling a little too fast; and that the caution which he had so strongly recommended to others, he had not fully observed himself. Mark, then, what took place at the meeting of the association, on the 2d of October, which was the Monday after, that is, the day following the meeting at Mullaghmast. Mr. O'Connell, in the course of the discussion which took place upon that day, and which was of the usual character, says:—"I wish to say, I saw with great surprise, in some of the newspapers on Saturday, a paragraph headed 'Repeal Cavalry—Clontarf Meeting.'" It was thought necessary to draw back; and, accordingly, Mr. O'Connell expresses his unfeigned surprise that such a thing should have appeared at all. He goes on:—"I think it was a very good quiz, but it ought not to have been printed, and I need not inform the repeal association not to pay the least attention to it. We were considering——" Now, attend to this:—"We were considering it was quite likely that horsemen would be at the great meeting at Clontarf." Now, you will recollect, that the advertisement on Saturday, among other things, contained this paragraph:—"The committee will make the necessary arrangements to prevent delay or confusion at the turnpike gates." Who are "the committee?"* "We who were considering that it was likely there might be confusion. But it was wrong to print that." Accordingly, gentlemen, another advertisement appears, which substitutes the word "groups" for "troops;" and then it is advertised in the Tuesday morning papers, with those alterations—the self-same document, except so far as it is thus altered, as had appeared on the Saturday:—"The committee will meet at the Corn Exchange each day during the ensuing week, from four to five o'clock." Dated Corn Exchange, 30th September, 1843." Credit has been taken actually on the part of Mr. O'Connell, in the course of this trial, for compliance with the desire of certain persons in Dublin, that they should be allowed, at least, the privilege of attending divine worship on the Sunday unmolested, and because the hour was altered to accommodate the prejudices (I suppose) of that class of persons, credit is taken for this, that the hour is altered from twelve to two, in order that the people of Dublin might have the opportunity of attending at their several places of divine worship. What does this demonstrate? It demonstrates that this movement was regularly assuming a military character. Gentlemen, upon the day on which that fraudulent alteration—I may call it so—that apparent alteration took place in the advertisement, the association met; and there was a speech delivered upon that occasion by one of the traversers; I mean, gentlemen, the Rev. Mr. Tierney. The association met on the 3d of October; there were several letters read, and amongst them one from the town commissioners of Loughrea. A number of persons are named in that letter, which transmitted some money, and concludes with this passage—that certain persons had remitted their subscriptions:—"One would pay in a few days, and two or three who were recusants, it was determined to expel from the body, with all convenient despatch, when the proper opportunity occurred." And then there is this remark by Mr. O'Connell:—"They are quite right to turn out those who will not become repealers." Here, gentlemen, is another of the means of coercion which appear to have been resorted to, for the purpose of obtaining recruits for this agitation. Mr. Steele then made a speech, which I need not advert to, because Mr. Steele's connection with Mr. O'Connell is acknowledged by himself, and, therefore, I need not advert to it. Then is read a report from the arbitration committee, which speaks of "Our selection of arbitrators." It puts an end to the pretext that the arbitrators were to be the voluntary appointees of the parties litigating. Then, on the report of the committee as to these arbitration courts being read, it is moved that it should be adopted, and it is accordingly carried that it should be inserted on the minutes, and Mr. O'Connell then says—"I believe I shall live to see the day when the hall of the Four Courts will be very empty." So much, gentlemen, for confining this to the petty sessions' courts: "when the hall of the Four Courts will be very empty." That seemed to produce some

* The committee were a body named in the public prints.

feeling of merriment amongst my brethren at the bar, but you can guess how it was understood by the people to whom it was addressed.' Suffice it to say, however, that it shows abundantly an intention to overturn and subvert the regular tribunals of the country, and substitute in their room the arbitration courts. Then comes the speech of the Reverend Mr. Tierney. Mr. Tierney was present at a meeting on the 15th of August, at Clontibret, the same day on which the Tara demonstration took place. You will recollect the conversation deposed to by M'Cann, the police officer, which is now undisputed. He has sworn it, and there is no kind of answer or denial. His character was assailed most unwarrantably, but I think I have sufficiently vindicated it yesterday. We find Mr. Tierney then, at the association on the 3d of October, using this language; he adverts to the progress of repeal, and he asks—"Wherefore do the people who surround Mr. O'Connell wherever he goes, numberless as the waves of the ocean, assemble? You come here to enable him to make your own Ireland—the land of your birth—the land of the happy and the free. And let me ask you, are you all prepared to do so? (cries of 'Yes, yes.') If you are, give him deeds as well as words. I can answer for the county I have the honour to belong to, Monaghan; and for the parish that I have also the honour to be the priest of, that there we are determined to give our hands as well as our hearts." He then, gentlemen, proceeds to give an account of Hugh, Earl of Tyrone, and a battle in which he was concerned, which he calls one of the "bright spots" in the history of Ireland; and he says—"In the name of the county I am from, and particularly of my own parish, Clontibret, where a hundred fights were fought, permit me to hand you, in the name of that parish, in the name of that people, the children of the men that fought the battle of victory, unassisted from any other locality, but being of the north, and of that country alone—permit me in their names, and in my own, to have the honour of handing to you ninety-two pounds." Gentlemen of the jury, I am far from saying that we should have been warranted in including in this indictment any person who merely attended a meeting, or two or three meetings, called together by the people whom we are indicting; far from it. It is really a gross perversion to attribute to us any such intention; we are not prosecuting the people that attended the meetings. Some might have attended from mere curiosity, some from very innocent motives; we are not prosecuting merely for any such conduct. The persons indicted are those who called these meetings together for illegal purposes. Mr. Tierney's attending the meeting at Clontibret, or at Dublin, would not perhaps of itself have justified us in including him in this indictment. But, gentlemen, when in addition to his appearing at Clontibret, we found this language used by him, in which he himself answers for the state of things in his own parish, and in his own county of Monaghan, and that they were there determined to give Mr. O'Connell "their hands as well as their hearts," we thought it incumbent upon us to include Mr. Tierney, as a party in this confederacy. We thought these facts furnished abundant evidence to prove, that in the views of these parties who promoted the meetings originally, this gentleman fully participated. It is for you to say, gentlemen—I have already said, the case of each gentleman here is perfectly separate and disctinct—you must be satisfied, of course, that each and every one of these traversers, or such as you are disposed to find guilty, really did entertain the objects and intentions we attribute to them. If you can reconcile it to your understanding of the evidence, that Mr. Tierney might have attended this meeting or that meeting innocently, you will of course act accordingly. But you will weigh in your minds what was the meaning of the Spanish movement—the pronouncement in Spain; what was Mr. Tierney's own admission of his conception as to the state of feeling in the army as a class: you will take all these circumstances into consideration. I do not mean at all to press unduly on that reverend gentleman, or any other gentleman in charge; my duty is to draw your attention to the evidence against each, leaving you to draw the proper inference from it. I do regret that we felt it our duty, that a gentleman of his sacred profession should be included in this proceeding, and another now no more, Mr. Tyrrell; whose speech I shall not trouble you with; but it is of the same character with Mr. Tierney's, and therefore called on us, as we conceived, to include him in the indictment. Mr. Tyrrell's case you will of course not have to consider now; and you will confine your view of the evidence as applying to Mr. Tierney, to the two meetings of the 15th of August and the 3d of October. These are the only two meetings in which we bring Mr. Tierney into personal contact with the other persons whom we charge in this indictment. Gentlemen, the object of calling this meeting at Clontibret, as well as all the others, was to revive in the minds of the people of this country the recollection of former times, in which there had been battles fought, victories gained, or massacres perpetrated; and this for the purpose of keeping up that feeling of hostility, which it was the anxious desire of these parties to perpetuate. The meeting at Clontarf having been announced, means were taken to predispose the public mind for the object and purpose for which it was to be held. Accordingly, Mr. Barrett, on the 6th of October, which was two days before the meeting was to take place, inserts in his journal, the *Pilot*, an article called "The Battle of Clontarf." Mr. Barrett, in a subsequent part of the same paper, gives an historical account of the battle; and then he concludes—"All that could be required of them, if they were attacked, would be to imitate the conduct of their ancestors, the Dal-Cassians, who never entered a field without being resolved 'to conquer or die.'" He then goes on to give an account of an engagement, in which these Dal-Cassians were concerned, and were engaged; and concludes thus—"May the Irish people of the present day, should they be driven to it, imitate the conduct of the brave Tipperary men, or former Dal-Cassians." This, gentlemen, was for the purpose of seasoning and preparing the minds of the masses of the people for Clontarf. It is matter of notoriety that that meeting did not take place, in consequence of the nature of the advertisement announcing it, and the apprehension entertained of a disturbance of the public peace; it was prohibited by the proclamation of the lord lieutenant and privy council. Gentlemen, a good deal has been said, particularly by Mr. Moore, with respect to the policy of this interference. Upon that subject, I am sure you will agree with me, that we are not here to decide. It is one of the very many topics which have been introduced into this case, without any proper concern or connection with it, and which ought to have no influence upon your verdict. If, gentlemen of the jury, that meeting was improperly dispersed, there are modes of having anything that was done on that occasion questioned. If any individual who chose to attend that meeting were disposed to question the legality of that interruption, or of the means by which that meeting was stopped, he might have brought the subject to a legal investigation. He had a simple course to pursue; he might have gone to the place; if he were interrupted in going there, he might have tried the validity of such an interruption, and the question of the legality of that meeting might in that way have arisen. But it is not for us here to decide on the propriety of the policy, which dictated the in-

terruption of that meeting. Gentlemen, if that interposition on the part of the executive had not taken place, what do you suppose might have been the position of things at present? You will recollect, that Mr. O'Connell, at the meetings that had taken place shortly before that time, had announced his intention of having assembled, either at the end of the last, or the beginning of the present year, three hundred persons, each with a certain sum of money—in the character, in fact, of legislators, or at all events, of negotiators with the British parliament. They were to hold their sittings here. This he would do in spite of the convention act, or any other act. In short, gentlemen of the jury, this would have been, as far as one can at present judge, a sort of consummation of the plans he then had in contemplation; it would have added legislation to all the other functions, which had been usurped by himself, or by his associates. However, the stopping of the Clontarf meeting appears to have arrested the progress of these proceedings. How they might otherwise have terminated—how far Mr. O'Connell might have involved himself—how far he might have been implicated in point of law, it is not for me now to say; perhaps it may be as well for him that it did not go so far. Gentlemen, the traversers' counsel read, as part of their case, certain passages from a speech of Mr. O'Connell's, which was delivered by him at a meeting of the association on the 9th of October, in Calvert's theatre. At that meeting, it appears, a certain person of the name of Hanley, of Manchester, was presented to the notice of the association, and he delivered an address from the repealers at Manchester, in answer to which Mr. O'Connell made some observations, which were thought to be material to his defence by his counsel, and were accordingly read. Gentlemen, in that address, the Manchester repeal body pay a very high compliment to the exertions of Mr. O'Connell in the cause of repeal. Gentlemen of the jury, that address from the Manchester repealers appears to have been agreed to, before the intimation had arrived that the meetings were stopped. On the 7th of October, the proclamation issued immediately before the meeting at Clontarf, and the issuing of that proclamation announced to Mr. O'Connell the determination of the government that these proceedings should not take place. Then was issue joined with Mr. O'Connell upon the grand question as to the legality of the meetings that had taken place, and of the proceedings to which he and the other traversers had been privy. Month after month, meeting after meeting, he had been telling the people assembled about him, that he would carry them safely through, that they were violating no law, that he would defy the Attorney-General, that he dared the government to attack them; but when the attack (if I may so call it) is made, when it is announced, by that proclamation, that it is the intention of government not to suffer this to go on, observe the way in which he answers this address, which echoed the sentiments that he had previously expressed, in ascribing to the people of England the tyranny, oppression, and misgovernment, which had always distinguished what is called "Saxon rule and despotism." Observe now the difference in the language of Mr. O'Connell, when the challenge that he throws out is thus accepted; observe the contrast between that and the former language which I have detailed to you. This address appears to have been signed by several persons, who represented the different wards in Manchester: Mr. O'Connell says he feels deeply grateful, and so on; but, gentlemen, he then proceeds—"If there be language of a stronger nature contained in this address—" There was language of a strong nature; not strong, compared with what Mr. O'Connell himself had previously used, not half so strong, but there was strong language in it, indicating the sentiments of the people who signed that address, as to the tyranny of Saxon oppression; but after the 8th of October, when it had been announced to him that he was not to be suffered to go on, he thus says—"If there be language of a stronger nature contained in this address, I am only to tell you that the period has now come when caution and coolness are the virtues of patriots and steady men." No doubt, gentlemen, the period had come; but if the language, and if the conduct which Mr. O'Connell had been heretofore pursuing, had been such as not to amount to any violation of the law, such as he was not afraid to disavow, why did not he persevere in it? Why did he find out, on the 9th of October, that the period had now come, when caution and coolness were the first of virtues? Gentlemen, he then goes on to state his determination to agitate for the repeal of the union, as he has done upon many other occasions; and then he adverts to the manner in which the proclamation had been issued; and he takes the proclamation to pieces, not in a very respectful way. It was read here; however, I shall not repeat it. Gentlemen, I believe that I have now gone through what I may call the evidence on the part of the crown, directly bearing upon the several parts of this indictment. I think that you can have no doubt of these points: that all the persons now upon trial, some more, some less, were embarked in one common purpose, not secretly and in the dark concocting what is vulgarly called, in common parlance, a conspiracy, but publicly adopting the means, for the purpose of carrying into complete effect and execution that agreement, which in point of law is a conspiracy, and which can only be reached legally, through the medium of an indictment for conspiracy. It is that kind of combination which can only be reached through the medium of conspiracy; that is the only legal mode of prosecuting the offence. I think you must be also satisfied of this: that one of the means by which the object was to be effected, was the instilling into the minds of the people of this country, feelings of the bitterest hostility and ill-will against their fellow-subjects: that another of the objects was to create, amongst the minds of the people here, disaffection and discontent against the established order of things, the government and constitution of this country as it now stands: that another object was to tamper with the army, to endeavour, as far as they could, to create in the minds of the soldiers in the army, an indisposition to act and do their duty, should the occasion arrive when, from either the full preparation of the parties, or from any other cause, any accident, foreign war, or any other, any thing like outbreak might take place: fourthly, that one of their objects was, to disparage the administration of justice in this country, by inducing the people to believe, that up to this time it had been confided to the hands of aliens, enemies, strangers, persons who had no other object but to oppress the people: lastly, that they had this design—to endeavour to collect together, in large masses, the physical force of this country, (not the moral force,) in different parts of it, for the purpose of creating in the minds of the people so assembled, in the first place, this impression, that they might be called upon, and were to hold themselves in readiness to be called upon, at a certain time, of which their leader would give them notice; and, secondly, at all events, and what more particularly bears upon this indictment, for the purpose of creating an impression in England and in this country, that there was a physical force ready organised and arranged, to such an extent, and so completely finished, that it would be idle and vain to attempt to dare to refuse the repeal of the union. That is one of the objects that are charged in the indictment. But the case for a prosecution may be met and encountered

by evidence upon the other side. But, gentlemen of the jury, did you ever meet with an instance, in the course of your experience as jurors, (if you have any such experience,) in which a charge has been left so utterly unanswered as the present, so far as relates to proof—so totally passed by? What was the evidence adduced to rebut this immense mass, which I have consumed nearly two days in recalling to your recollection? Mr. Conway of the *Evening Post*, was produced, to prove that in 1810 there was a meeting of the citizens of Dublin, convened by the sheriffs, to petition for a repeal of the union. Mr. Conway was suffered to go down without any cross-examination on our part; in truth he had nothing to prove in the case. Then, gentlemen, was called a most respectable member of the Society of Friends, Mr. Perry, who proved the rules of the Quakers' society, prohibiting the members of that body from going to law. But what relation or analogy is there between this practice of the Quakers, and the usurpation of the judicial functions of this country, by the appointment of judges by an irresponsible body, the loyal national repeal association of Ireland? Gentlemen, there was then evidence given as to references to the Ouzel Galley. A gentleman was called for the purpose of showing that disputes of merchants are frequently referred to a society called the Ouzel Galley, and that the arbitrators receive certain fees. A person of the name of Morgan was then called, for the purpose of taking the sting out of that part of the evidence for the crown, which related, you will recollect, to the arch at Tullamore; and certainly, gentlemen, I think that they would have been better without that witness than with him. Gentlemen, they then read several resolutions and several speeches of Mr. O'Connell; with regard to which I have only this to observe. Did you take the dates of those several speeches? You will find that they go on, from the beginning of 1841 to about the end of 1842, or the commencement of 1843; and then, gentlemen, comes the tender point. Beyond that, it is not considered safe to go. Recollect that the new repeal card issued early in 1843—recollect those rules of repeal wardens in 1843—recollect the dates of the several documents, and of the several proceedings which took place in 1843; and you will at once see, that it was impossible to go with Mr. O'Connell's speeches, or to go with his acts, or the acts of any of these traversers, farther than the commencement of the year 1843.

Mr. Whiteside—I beg your pardon. I think it right to correct my learned friend. It would not be right in us to read over again what had been read by the crown in 1843. We read our own evidence.

The Solicitor-General—Yes. It was your evidence in answer to ours. The jury heard all that. I am now upon the evidence given by you, in addition to that read by you whilst our evidence was going on. In the progress of our proofs, the defendants read Mr. O'Connell's repeated addresses and exhortations not to violate the law. Let them have the full benefit of that. Gentlemen of the jury, what further? Not a single petition is presented to the house of commons, or the other house of parliament, from the commencement of last session to its close; not one. I say, gentlemen of the jury, that the absence of a single petition to parliament, during the whole of the last session, speaks trumpet-tongued against the flimsy allegation now urged—that this was all done in the exercise of a constitutional right, and for the mere purpose of taking the sense of parliament as to the propriety of a repeal of the union. It does not appear that the principal traverser himself went to parliament, presented any petition, or adopted any measure to raise the question in any constitutional way. Nay, more, it does not appear that a single petition was signed. Now, gentlemen, Mr. O'Connell himself has made a very long statement to you, and I must say that I never, in my life, heard one so little applicable to the question which he was called upon to defend. Mr. Henn had very properly observed, that you were not impannelled in that box to try whether the union ought to be repealed or not; he said repeatedly, and most properly, and so did the other counsel—(were I, as counsel for the crown, to go into that topic, I should at once be stopped, and most properly, by the counsel for the traversers)—you are not to try that. So Mr. Henn says, and I perfectly agree with him; yet from the commencement to the end of Mr. O'Connell's address, that appeared to me to be the only question to which he applied himself. Gentlemen of the jury, when the great mass of evidence that you have heard is brought in array against Mr. O'Connell, is it not to be expected, ought you not to expect, that he would give you either a denial, or an explanation, of the language used by him on these several occasions? Has he done so? What does that prove? That this agitation was carried on, not for the purpose of effecting the object of the repeal of the union by any such means, but that it was attempted to do it by coercion, by intimidation, by the demonstration of those large bodies of persons, by the various means we have specified in this indictment. That was the object; because no man knew better than Mr. O'Connell, that he could not achieve it in any legal or constitutional way. Gentlemen, Mr. O'Connell has also adverted to other parts of his public life, in which he claims merit for having assisted in the assertion of the law. He says he assisted in putting down a combination of workmen at a particular part of his life at great personal hazard to himself. It may be so; I am ready to admit it is so; and, gentlemen, *si sic omnia*, he would not have been now an object of prosecution. So with respect to his conduct to Sir Abraham Bradley King, which showed that he was not actuated by anything like religious or political animosity towards that gentleman. He was, on that occasion, aided by Mr. Lefroy; but I must say that ample use has been made of that topic of defence in the course of this trial. As to Mr. O'Connell's merits in this transaction, or his conduct upon other occasions, I need not tell you they have no bearing whatsoever upon this case. Can they afford any explanation, or defence, of his connection with this combination, or any redemption of his pledge, to prove that his proceedings have been legal? I ask you, gentlemen, on what ground, put forward by Mr. O'Connell himself, could you say that he was innocent of the present charge? Gentlemen, I think you will find, when you compare the several portions of this evidence together, that there did exist, beyond all doubt, a plan between the traversers, or some of them—it will be for you to say how many—by these reiterated assertions as to the manner in which this country is governed by the imperial parliament, to create in the minds of the people of Ireland, what we call "dissatisfaction, disaffection, and discontent against the government and constitution of the realm, as by law established." I think you will also find, from the uniform abuse of "the Saxons," from the holding them up in the light of oppressors, tyrants, invaders, strangers, enemies, raking up the ashes of forgotten feuds, massacres, victories, the holding meetings upon spots memorable, either for the occurrence of transactions of that sort, or for battles in which the Irish were arrayed against the English—from the inflaming the naturally high feelings of the unfortunate people of this country at these meetings—from all these various means, that there existed also a settled plan to inflame their passions, and their animosities against their fellow-subjects, and the people of England in particular. Gentlemen, I think you will also have no doubt from the publications in the *Nation*, in the

Pilot, the speeches of Mr. O'Connell, the allusions to the military, the hopes and inducements held out to the sergeants, that part of the plan was to tamper with, or to neutralise, the army—to have it understood by the people of this country, that if it should be necessary to resort to any military force to preserve the law, or to prevent outbreak, they might safely calculate upon the neutrality of their countrymen, if not their coming round to join their ranks. I think you will also find, from the holding those multitudinous meetings—that all this places beyond the shadow of doubt, the intention of these parties, that these meetings should present a display and demonstration of physical force, which would have the effect of overawing all opposition to the carrying this measure, which Mr. O'Connell had pledged himself, at all hazards, to his three millions of repealers, at a shilling each, to carry *per fas aut nefas*. That is my construction of it. I will not say he originally contemplated it—but he was driven to make those exhibitions of physical force. I am willing to allow that he is not proved to have intended to bring his followers into the field. That would be high treason, and we are not indicting him for that offence. If, however, he did not mean that these people should actually turn out in open rebellion, it is, at least, perfectly plain that he did intend by the demonstration of those masses, to create an impression in England, and amongst the peaceable people of this country, that there was a force at hand, ready to be resorted to when the proper occasion should arrive, sufficiently great to overwhelm all opposition, and that if the government did not think fit to adopt what he sometimes called "their wisest course," to yield at once and give him this measure of repeal, so as to enable him to redeem his pledge to those persons who were associated with him, that force would be resorted to. Gentlemen, when you consider also the time when the selection of these arbitrators was determined upon; when you recollect that the dismissal of the magistrates by my Lord Chancellor was the reason and the occasion why this was thought of; when you recollect that those arbitrators are appointed by the association; when you recollect the forms of the proceedings which have been adopted—when you recollect the constitution of the courts; when you recollect that the magistrates dismissed are the persons selected to adjudicate between the different classes of the people, who are connected with the association; when you consider all this, you can have no doubt whatever, in my opinion, that there was also a settled plan to disparage the regular tribunals of this country, and substitute in their place the tribunals appointed by the association. Here are all the functions, not only of the legislature, not only of the bench, but also of the executive, usurped and assumed by this knot of persons. Gentlemen of the jury, it must be a strange state of things in our law, if all that can be legal. Have you a doubt that all these functions have been usurped and exercised by the persons who are connected with this movement? Do you believe that Mr. O'Connell is one? Do you believe that Mr. Steele has joined him? Do you think Mr. Duffy has joined? Do you think Mr. Barrett has joined? Do you think Mr. Ray has joined? Do you think that Dr. Gray has joined? Why, gentlemen, each of these persons has taken upon him, if I may so say, his particular department. We have the minister of justice, Dr. Gray; we have a chancellor of the exchequer, we have a prime minister, we have a lord chancellor—a dictator, some one suggests to me; but really, gentlemen, it is perfectly and literally true, that there is scarcely a public department in the state whose functions are not usurped, and scarcely a public officer whose duties are not assumed, by some one or more of these traversers. Now, gentlemen of the jury, you will always bear in mind, and it is a fact which can scarcely be too often repeated, or too much dwelt on, that not one of the reporters of these newspapers has been produced as a witness to you. Three of the traversers are proprietors of public newspapers; recollect that they have persons in their employment whose exclusive business it is to attend at these meetings, and to watch these proceedings, and that not one single individual of all that body is produced to contradict a single witness called on the part of the crown. Am I wrong, therefore, in saying that this is an uncontradicted case? Gentlemen, Mr. Sheil has drawn a very strong and pathetic picture of the state of distress in this country. I am sorry to say, it is to a great extent true. No doubt, gentlemen, very great distress does exist; and I believe no one can hesitate to ascribe it to the poverty of this country. Whether Mr. Sheil considers that the proceedings which have been carried on by this body, are calculated to remedy that evil or not, I really cannot say; I suppose he does, or else he would not have introduced that topic. But, gentlemen of the jury, what do you suppose might have been the state of this country in that respect, if for the last fifteen years, after the passing of the Catholic Relief Bill, we had been suffered to reap the benefits of a measure so calculated as that was to heal the differences which distracted and divided us? Is it possible that our country can be improved, is it possible that wealth can flow to it, is it possible that capital can be embarked here, is it possible that "Saxons" and "strangers," who are said to "pollute our soil with their accursed foot," can be induced to embark their property in the improvement of the resources of this country? Is it possible that persons can have the courage to venture amongst us, when they have read such speeches as I have, in the course of my address to you, been obliged to collect for your consideration? I think the state of this country may, to a certain degree, be ascribed to the existence of that very agitation, of which one of the traversers has admitted himself to be the sole original author. I repeat here, what I had once or twice occasion to do in the course of my address to you, to prevent all misconception upon this subject, that I do not call upon you to find a verdict here, because of the consequences of that verdict, or from a feeling that it may be expedient, either with regard to the peace of the country, or otherwise, that there should be a verdict against these traversers. No, nor do I call upon you, gentlemen of the jury, to find a verdict for the crown, because the result of such a verdict may be to prevent the introduction of any coercive measures. My observations with respect to coercive measures was addressed in answer to some made by the other side, that it was an unreasonable thing to resort to this mode of proceeding when parliament was open. I do not call upon you for your verdict upon any such ground; but I most confidently anticipate it at your hands, upon those grounds which ought to influence all juries in all cases—namely, the law and the facts of the case. Gentlemen of the jury, have you the slightest doubt that that concert and agreement existed in this case in the year 1843? Have you the slightest doubt that there was an object here to terrify into the granting of this measure; that there was an object to neutralise the army, if possible; that there was an object to disparage the administration of justice; that there was an object to create ill-will against the people of England; that there was an object to excite discontent and disaffection; and that all these were so many means tending to a common end, in which common end, and in the use of which common means, each and every one of the traversers at the bar was more or less engaged? Gentlemen of the jury, this is compared to the movement in 1782,

when the Irish volunteers stood forth and made the celebrated declaration which has been so often referred to. Gentlemen, I arraign this as one of the many fallacies and deceptions, that have been systematically practised on the people of this country by the leaders of this association. The state of things now is not what it was in 1782; far otherwise: and no man knows that better than Mr. O'Connell himself. In 1782 what was the state of things? An act of parliament was passed in England, in the reign of George the First, Ireland having then her own parliament, and that English act of parliament enacted, that it was competent to the English legislature, in which the Irish people had no representatives—not a member—to make laws binding Ireland. Accordingly from that period of the sixth of George the First, down to 1782, that statute was acquiesced in. It was contrary, no doubt, to constitutional principle; to be sure it was. What is constitutional principle? That there ought not to be government without representation; the people ought not to be governed by a body, in the selection of whom, or part of whom, they have not a voice. It was contrary to all principles of justice, that the Irish people should be liable to be legislated for by the English houses of parliament, when they had not a right to return one member to the English house of commons, which was thus to rule them. Accordingly, in 1782, there was a demonstration and a declaration, which has been made the foundation of the observations here on this repeal card, "That no power on earth has, or ought to have, a right to bind the people of Ireland, except the king, lords, and commons of Ireland." In 1782 that was a constitutional and legal declaration, because there then existed a king, lords, and commons of Ireland. But to use that language in 1843, or 1844, when the Irish people have voices in the English legislature, is absurd in reasoning and illegal in principle. It is contrary to every principle, legal or constitutional; it is seditious to hold such a doctrine at this day. I say, to lay down that doctrine in 1843 is unconstitutional, illegal, and seditious. Gentlemen of the jury, I thought it right to disabuse your minds from this notion, if any such impression has been made, that the parties engaged in this movement are doing no more than following the precedent set by some of the greatest men that have adorned this country. You will see at once, the wide distinction between the two cases; and I think you can have no doubt, that the great men, whose names have been thus, I may say, profaned, never would have sanctioned a movement of this kind, which is neither more nor less than persuading the people of this country, that they are governed by persons who have no right to legislate for them, by strangers, by foreigners, by Saxons, by people who, from their earliest times, have had no other object in view but the conquest of their country, and keeping them in subjugation. The distinguished men to whom I have alluded, would have been the last persons to countenance anything of such a nature as this agitation. Gentlemen of the jury, I have to thank you for the very great attention which you have paid to me in the course of this protracted case. There are many topics suggested by it, on which I might dilate; but I have been reminded by the counsel on the other side, and I fully accede to their view of the case, that it does not belong to me, in my function of public prosecutor, to go into them. But, gentlemen, this I must say, my learned friends and I, my colleagues who are with me, have endeavoured to bring this case forward before a jury, in the usual mode of administering justice by the common law, and upon the only charge, and in the only way by which the offence, which we say exists, is legally cognizable. I think, gentlemen, I may claim credit for our having conducted the case temperately and fairly. I hope I may also say, that there never was in the history of our jurisprudence a trial in which a more wide latitude was allowed to the persons on trial. Not a single topic has been objected to; not a single declaration of any of the parties, not a single act at any period of his life has been excluded; not a single legal objection has been started by us to the reception of any evidence which the defendants' counsel thought might bear upon the case. Some of the most distinguished men at our bar have been selected for the defence; they have been heard at great length; they have put forward the cases of their respective clients with the most consummate ability. Every advantage in that respect has been afforded to the traversers; and, with all those advantages, gentlemen, what has been the case which has been presented to you on their behalf? Are you at this moment, any one of you, able to understand what the object of the several traversers was, if it was not what we say it was? Has any one of them, has the counsel of any one of them shown, or even asserted, what his real object was? Has any one of them suggested any legal, any constitutional, any peaceable mode, by which the object which they say they had in view could be arrived at? Not one. Has any attempt been shown to resort to any legal or constitutional mode of effecting it? Not one. Has any witness been called to contradict the facts proved against them? Not one. A case more wholly devoid of defence, it is impossible, I think, to imagine. Then, gentlemen of the jury, what remains? What remains but this, that you should ask yourselves, is not the case of some common plan clearly developed, clearly shown? Are not the traversers more or less engaged in that common plan? Is it a lawful one? Has it been shown to us to be lawful? Has it been asserted to be lawful? Has even the principal traverser, who all along said it was lawful, shown it to be so? I think, gentlemen of the jury, you can have no doubt in saying, that on the contrary, it has been clearly shown to be unlawful. The only remaining consideration is, how far the persons upon trial have embarked in this illegal design. Gentlemen, with respect to the principal traverser, I think it is unnecessary to make any further observations. With regard to those who assisted him, by the publications in the newspapers, I presume not the slightest doubt will be entertained. With regard to Mr. Steele, the *fides Achates*, who has himself avowed here the sentiments I read from his speech, and who has identified himself with Mr. O'Connell, I should presume there can be no doubt. Then, gentlemen, there remains Mr. Tierney, who, on two occasions, did certainly in his language, and by the communications which he appears himself to have admitted he had with Dublin, identified himself with the objects of the several conspirators, for so I must now call them. And with regard to Mr. Ray, gentlemen, he is clearly a member of the association; he is the person who appears to have conducted the finance department. It was said that something would be shown with regard to the application of the funds of that body; I do not know whether that was intended to be a pledge, but I would merely make this remark, that not an explanation has been given on the part of these traversers, either of the application of these funds, or of the real object which the parties had in view. How could that be testified? By resolutions in their books; by communications with their officers; by accounts of the application of their money; by officers or persons produced, who would be able to say, "we are acquainted with the details of this machinery, and will tell you what the object is." Gentlemen of the jury, I will not at present say what might have been the consequences to the persons connected with this movement, if three hun-

dred persons had assembled in the month of January, or February, and had taken upon them the functions, either of representatives, or delegates, of the people, of different counties and places in Ireland, or erected themselves into a body for the purpose of opening what is called a negotiation with the British minister. What "negotiation" means I do not understand; my learned friend, Mr. Sheil, says, that the agitator must sometimes be a diplomatist, and that in order to get what is practicable, it is sometimes a prudent thing to ask for what is unattainable. This was Mr. Sheil's language in a part of his speech; whether "negotiation" means that or not, it is not for me to say; but if it does mean, as it may mean, a threat and denunciation to the British minister, that things were now come to that pass, that he must not think any longer of refusing the repeal of the union, then, gentlemen, the conspiracy was complete, which we charge to have progressed to a certain extent—that conspiracy being to accomplish its object by intimidation. Gentlemen of the jury, I hope I have satisfied you, that in point of law, so far as the law is for you, there is a conspiracy in this case, in the legal signification of the word. Not a secret combination, to be proved by any person who has been a party to it—otherwise we must resort to common informers and spies; but a community of purpose, and illegal purpose, which is enough to constitute the crime of conspiracy in point of law. And that was the only mode, observe, of dealing with this case; because, gentlemen, it would not have done to have convicted Mr. Duffy of the publication of a libel, or Mr. Barrett of the publication of a libel, or even Mr. O'Connell for the uttering of a seditious speech. That would not have done; the great question which we want to have tried is, the legality of these proceedings, and of this body. The only mode by which that could be done, is by bringing the leaders of it in one mass or focus, and by charging those leaders with having violated the law. That is the meaning of conspiracy; that is the mode we have manfully and boldly adopted. We have not gone to the inferior agents, and put into prison this person or that person, who had acted a subordinate part; nor have we prosecuted the unfortunate people who were collected together by the machinery of repeal wardens, for attending illegal meetings. No; we have at once joined issue with Mr. O'Connell, and we have said—"We will take the opinion of a court of law, we will take the opinion of a jury, whether what you say is or is not true, that all these proceedings are consistent with the law." This is the course we have adopted; and, therefore, we are not to be taunted with having adopted the contrivance of prosecuting for conspiracy, or with having brought the actions of one man to bear upon another. No; but having demonstrated each of these persons to have pursued a particular line of conduct, for which line of conduct he must be answerable, if the result of that conduct be to show, not only that he may have in the particular instance violated the law, as for instance in the publication of a libel, but also to show that he has identified himself with a body, with a combination, with a movement that is illegal, we do not visit that man with the guilt of another, but we visit on him the legal and inevitable consequences of his own act, and fasten upon him the responsibility consequent upon his own guilt. Gentlemen of the jury, I have now brought to a close the observations which it has occurred to me to make on the evidence in this case. I have not the slightest doubt, gentlemen, that as we have so far discharged our duty, and I trust in a manner temperate and fair to the traversers, and have allowed them the indulgence they have had in this trial—as we have done our duty to the best of our ability in that way, so I have no doubt that you will fearlessly and impartially discharge yours. I call upon you for your verdict; not, gentlemen, because this country is in a state of disturbance, not because that verdict may tend one way or other to act upon the state of the country, not because it may be attended with this or that consequence either to the public or to individuals, not because it may be productive of this or that effect with regard to legislative enactment; no, but that verdict I call upon you to give which the law, the justice, the uncontradicted and unexplained evidence in this case demand.

The Solicitor-General having concluded, the Lord Chief Justice proceeded to charge the jury.

THE CHARGE OF THE LORD CHIEF JUSTICE.

Gentlemen of the jury, it now falls to me to make such observations as occur to me, to be submitted to your consideration upon the manifold circumstances of this very important case; and I am happy to say, gentlemen of the jury, that on conference with my learned brethren of the bench, there is a concurrence of mutual opinion existing between us upon the subject matter which I shall have to lay before you. Gentlemen, it has been, and is, most highly satisfactory to the court, most creditable to you, the unvaried and constant attention which you have paid throughout, from beginning to end, to the circumstances of this strange and important case. I say strange, only in respect to its duration; because for myself I do not feel that it is a case, in which there exists any great difficulty in the law, and upon the facts of which so intelligent a jury as I have now the honour of addressing will finally have to pronounce their verdict. Gentlemen, you have heard during this long trial a great deal of eloquence—brilliant eloquence; you have heard somewhat also of declamation; you have heard great oratorical powers, and powers of reasoning; you have heard a great deal of what may be deemed poetic; and I do not mean to say but that you have also heard a great deal of what might be justly termed prosaic. Gentlemen, you have heard observations made to you, which, I cannot help saying generally, bordered upon the very verge of propriety. But what is more material, you have heard a great deal, which it would be very difficult indeed to prove was properly relevant to the subject which you are to consider. Gentlemen, there are many questions made both of law and of fact. On the latter subject you are the constitutional judges to determine and to come to a just conclusion—that is, upon the facts. The law of the case you will take from the court, the judges of which are constitutionally entrusted with the administration of that law, bound to administer it under the most solemn sanctions, and independent alike both of the crown and of the people. We, the judges, therefore, sit here in this court of Queen's Bench, under the same obligation that the Queen holds her crown, to administer justice with mercy according to the laws of the land. Gentlemen, there are, as you know, eight traversers now upon their trial: Mr. Daniel O'Connell, Mr. John O'Connell, Mr. Thomas Steele, Mr. Thomas Matthew Ray, Mr. Charles Gavan Duffy, the Reverend Thomas Tierney, Mr. John (or Doctor) Gray, and Mr. Richard Barrett. Those are, gentlemen, the several traversers upon their trial; and here is an abstract of the indictment, upon which they are charged, and to which they have respectively pleaded "not guilty." They are indicted for conspiring to raise and create discontent and dissatisfaction amongst the Queen's subjects. The particulars, gentlemen, of the alleged objects of this conspiracy it is very material for you to keep in mind; perhaps you may find, in coming to your verdict, the necessity of distinguishing with regard to the several traversers, or some

of them, in respect of the nature of the conspiracy which is charged against one and all of them. The first, then, is for conspiring to raise and create discontent and dissatisfaction——

Mr. Justice Crampton—Disaffection.

The Lord Chief Justice—Disaffection amongst the Queen's subjects, and to excite them to hatred and unlawful opposition to the government and constitution of the realm. The second charge is, conspiring to stir up jealousies amongst the Queen's subjects, and to promote ill-will to other subjects of the Queen, especially with regard to Ireland against England. The third is, to excite disaffection in the army. The fourth is, to collect unlawful assemblies in large numbers in Ireland, in order to obtain changes in the laws and constitution, by intimidation and the demonstration of force. The fifth is, to bring the courts of justice established by law into disrepute, and with the intention to induce the subjects of her Majesty to submit their disputes to other tribunals, and to induce the Queen's subjects to withdraw the settlement of their disputes from the tribunals by law established, and to resort to other modes of adjudication. Now the latter is rather a repetition of the previous part of this fifth charge of conspiracy, and we may say the last alleged object is to bring the courts of justice established by law into disrepute, and with the intention to induce the subjects to submit their disputes to other tribunals. Now, gentlemen, what I have stated to you is contained in an indictment consisting of eleven counts; the first count, containing all the several charges of conspiracy that I have enumerated to you, accompanied with divers and singular overt acts, or means by which those objects were to be carried into effect. Those overt acts are not part of the conspiracy, but they are inserted in the indictment as a statement of the evidence by which the charge of conspiracy is to be supported. Those overt acts are introduced into the indictment for the purpose, and the laudable purpose, of giving the parties who are accused of the conspiracy notice of the particular facts, by which the crown intend to support their charge of the conspiracy in question. Now, these overt acts are in evidence; and the question is not so much as to the existence of the particular overt acts laid, as the conspiracy of which they are stated as the evidence. But it is not the effect of the evidence, but the alleged result, that you will have to decide; and you will have to say, not whether the overt acts took place, but whether the parties accused are guilty of the conspiracy. Now you see, gentlemen, it is very important in the outset, you should take and store in your minds a very clear and distinct idea of the particulars of the alleged conspiracy. It is, as I have stated to you, or it may be said to be, consisting of five parts: First, to excite—I will go over them again, as it is necessary that those matters should be kept most specially distinct in your minds. The first is, to create discontent and disaffection amongst the Queen's subjects, and to excite them to hatred and unlawful opposition to the government and constitution of the country. Secondly, to stir up jealousies amongst the Queen's subjects, and to promote ill-will from one class of the subjects against another, especially of Ireland against England. The third is, to excite disaffection in the army. The fourth, to collect unlawful assemblies in large numbers in Ireland, in order to obtain changes in the laws and constitution by intimidation and demonstration of physical force. The last, to bring the courts of justice established by law into disrepute, and with the intent to induce the subjects of the realm to submit their disputes to other tribunals. Now, gentlemen, it is a conceded fact in this case, that the indictment upon which the traversers are brought to trial, and to which they have pleaded, consists only of an offence of one nature; that is to say, it may have different branches, as I have already stated this indictment has, but still upon the whole it is an indictment for conspiracy, and nothing else. There is no indictment against any of the traversers for libel; there is no indictment against any of the traversers for sedition, nor for any other unconnected, separate, and distinct breach of the law. They are all—one and all—indicted for the crime of conspiracy, of which no individual can by law be convicted, unless it be proved to the satisfaction of a jury that he has been acting in the illegal charge stated against him in concert with some other person. A single person, an individual, *per se*, cannot of himself, without joining somebody else in concert, commit the crime of conspiracy. He may be guilty of a numerous class of offences individually, as men daily are; but for the conviction of one or more persons for a conspiracy, the law requires that the jury should be satisfied and convinced that there was concert between two or more, either for the purpose of doing an illegal act, or else for the purpose of doing or causing to be done an act legal in itself, but to be brought about by illegal means. Now, gentlemen, I take that to be the definition of conspiracy, which according to law I cannot only safely, but which I am bound to put to you. Gentlemen, you perceive in that definition I do not include, as a component part of that crime of conspiracy, either the existence of treachery, as was insisted on by Mr. Fitzgibbon on the first day of his address to you, nor the existence of secrecy, which was insisted upon on the second day that he addressed you, and which was afterwards reiterated and repeated by Mr. O'Connell, the traverser, when he stated his case to you, as he had a right to do, in his own defence. Gentlemen, in my opinion, and in the opinion of the court, it is a mistake in law to say, that in order to establish conspiracy it is necessary for the crown or for the prosecutor to prove the existence either of treachery or of secrecy in order to complete his charge. Gentlemen of the jury, I do not mean to say, but rather the contrary, that very often both treachery and secrecy concur in the existence of various conspiracies; they are cognate to such an offence; but I deny altogether, that it is the law of this country that the existence of one or other of such ingredients should be proved in order to constitute the crime of conspiracy. Gentlemen of the jury, by a sort of common intention—I do not very well know how to designate it—a sort of disagreeable name, and a disagreeable idea, has connected itself with the term conspiracy. Perhaps it may be found in Johnson's Dictionary, from which Mr. O'Connell took it; perhaps it may be found in some common or ordinary book, from whence Mr. Fitzgibbon derived his notion of treachery. I say, gentlemen, that in common parlance something of a disreputable idea, bordering upon infamous, as was alleged by the traversers and their counsel, has been attached to the term conspiracy; from whence you were very much called upon to beware, and ponder, before you found the traversers, or any of them, guilty of an infamous crime. Now, though infamy may, and often does connect itself with the charge of conspiracy, yet, gentlemen, I am bound to say, that does not at all fall within the legal definition of it. A conspiracy may exist, and men may be guilty of a conspiracy, without having been guilty of the vice or crime of treachery, and without those deeds of darkness, which Mr. Sheil insisted were necessary, and formed a constituent part of the crime of conspiracy. Secrecy is very often involved in it; but my opinion is, and so I put it to you, it is not a necessary ingredient in the charge of conspiracy. Nay, more, if it were necessary, I should say this farther, that there are crimes,

of which the present—(and I do not mean to say this, anticipating one way or the other—God forbid—what conclusion you may come to upon the subject,)—but if secrecy were a necessary ingredient in the crime of conspiracy, the present charge might have been carried on from beginning to its final consummation, and the parties never stopped in their progress, or charged with the crime of conspiracy. I put it rather now by way of example, than as bearing upon the present case; and I desire that in what I have said, there may be rejected from your minds all feeling as if I were giving anything like an opinion, or anything bordering upon an opinion, with regard to the facts of this case, which will be for your final decision. But I was putting it by way of exemplification. Secrecy might not be and would not be necessary. If the parties conspired, that is, agreed together, in common ends, to overawe the parliament of the country, to cause alarm and terror amongst her Majesty's subjects, or the collecting together in the open day large bodies of the people, the more numerous, the more public, the more likely to accomplish the end of the party—that calling together, forming part of the crime with which he is charged, his object being all along to create terror, and intimidation, and overawing, this would be brought about more by public demonstration than by secrecy or concealment. Now, gentlemen, therefore, I put that as an instance to you, to show the fallacy of those who have insisted and required, that as a necessary ingredient in the charge of conspiracy there should be established to the satisfaction of the jury the existence of secrecy. A great many authorities were cited by Mr. Fitzgibbon in his argument, both upon the first day, when he insisted upon the existence of treachery, and on the second day, when he insisted also, or perhaps in the alternative, upon the existence of secrecy. I have looked into those authorities, and I am bound to say that they do not support the proposition for which he brought them forward; and I would say farther, that I am somewhat surprised at the statement which he made with regard to some of the cases to which he referred, as if they contained any ground for the introduction of any such proposition. I have looked carefully through them all, and without troubling you with a recapitulation of those several cases, I have to say that, in my judgment, and in the opinion of the court, there is not one of them which supports the proposition for which they were cited, that in order to substantiate the charge of conspiracy either treachery or secrecy is necessary. The definition of conspiracy I have already stated to you, as we hold the law to be the mutual concert and design of two or more to bring about an end illegal in itself, or an end abstractedly legal in itself, but to be brought about by illegal means. That is a conspiracy. That you see, will include within it, wherever they exist, the charge of treachery, or the charge of secrecy, but they are not confined to them, and those are not a necessary or essential ingredients in the existence of conspiracy. But Mr. Fitzgibbon insisted, that the definition which I have given of conspiracy has been found fault with or overruled, in a case to which he referred, by Lord Denman, the Chief Justice of the Queen's Bench in England—the person who is alleged to have first introduced the definition of conspiracy, such as I now lay it down to you. Now I beg leave to say to Mr. Fitzgibbon, that it does not appear that Lord Denman ever did any such thing; and, moreover, that the rule or definition which Lord Denman gave in one case, he afterwards followed, and has been the rule and definition adopted and followed not only by Lord Denman, but by a variety of successive judges in the different courts of England, giving judicially their judgment upon the subject. Mr. Fitzgibbon said, that Lord Denman, in the case in which he had laid down that rule, was not acting judicially, and he said that what he did say was either an *obiter dictum*, or an *ipse dixit*. Those are the terms he made use of: *obiter dictum*, that is, inconsiderately—not necessary to be determined on that particular point; or *ipse dixit*—the personal opinion of Lord Denman, not supported by any body else. That is the plain meaning of these words. Now it so happens that in the case to which he referred, the case in which the rule was originally mentioned by Lord Denman, which is in 1st Adolphus and Ellis, page 715, he not only did not lay down that rule extra-judicially, as an *obiter dictum*, nor singly and unsupported by other judges, but he stated that rule judicially—it was the very foundation of his judgment, and given in the most deliberate manner; and so far from being unsupported by the opinion of other judges, the other judges then in the Court of Queen's Bench all concurred with Lord Denman, not only in the judgment that he gave, but also in repeating that rule which he had laid down, and adopted it as the foundation of their judgments. So far with regard to the statement of its being an *ipse dixit*. But it is not only so; but the same circumstances happened in several other cases, in which it became necessary to consider the law of conspiracy, and judicial opinions were pronounced from the Bench severally and *seriatim*, given by each individual judge, in which they one and all concurred in the correctness of the rule, and pronounced their judgments in the respective cases according to that common opinion—not an *ipse dixit*. The same rule was laid down, I believe, before Lord Denman's time, by the late Lord Chief Justice of this country, in the case of the Queen *v.* Forbes; and he also, and the Court of Queen's Bench in this country also, adopted the same rule in the precise same terms. And moreover, that same rule, in the very self-same terms, has been made use of and adopted by the courts of law in England up to the last volume of Carrington and Payne, the ninth volume, which I believe is the last of those reporters' numbers for the Queen's Bench in England. The only imputation (and here is the mistake into which Mr. Fitzgibbon fell) that ever was cast by Lord Denman upon that rule, was this. The rule was cited to him in the progress of an argument, by Mr. Carrington, I think, a gentleman of the English bar, and he stated the rule to be as I have stated it to you—a conspiracy is either an agreement of two or more persons in a design to do, or procure to be done, an unlawful act, or a lawful act by unlawful means; "I," says Lord Denman, "I doubt the correctness of that antithesis." That is the whole of what Lord Denman said, which is brought forward and cited in this court, as giving Lord Denman's judgment against all the concurrent judgments both of himself and all the other English judges before whom the question came: "I doubt the correctness of that antithesis." Every body knows Lord Denman to be a most learned scholar, an accurate scholar; and what he meant by that was—as a grammarian, I think an exception might be taken to that antithesis. And so it might, but it does not in the slightest degree alter the law upon the subject; it leaves the law precisely as it found it; and therefore it is that all judges in England before whom the question has ever since come, (and the question has occurred very often,) which the gentlemen knew, they have reiterated and re-stated the existence of the same rule, and have acted upon it accordingly. Mr. Fitzgibbon the first day, with a great deal of seriousness, perhaps I might say solemnity, announced the law not to be as I have stated it to you; and he found fault with his friend Mr. Moore, who is for another traverser in the same interest with him, for having admitted the law as the Attorney-General had stated it, from whom he had

taken that definition; and he said with an earnestness to excite your attention, that that was not the law, for that by the law as it existed so long ago as the reign of Edward the First, nothing could be a conspiracy but within a certain definition set out in an old act of parliament at that time, from whence it could be inferred that nothing was conspiracy except an unlawful association of men bound together by oath or other illegal obligation, for the purpose of imposing a false accusation against another man, or something of the same kind. And he referred to a passage in Hawkins, as stating that to be the law of the country. Now, if that were the law of conspiracy, it would not have supported Mr. Fitzgibbon. What he was then insisting upon, was the existence of treachery; there would not necessarily have been treachery, in the rule as he so stated it, as laid down by Hawkins, and taken from the old act of parliament in the reign of Edward the First. That was stated by him from 1st Hawkins, page 444; but he forgot to add to that, that in two pages after, page 446, Mr. Curwood, a gentleman at the bar, who published the last edition of Hawkins (from which Mr. Fitzgibbon had taken his quotation), stated thus: "Modern cases," says Mr. Curwood, "have certainly stretched the doctrine of conspiracy far beyond the old rule of law," (this is the book to which Mr. Fitzgibbon referred,) "in the opinion of Lord Ellenborough it ought not to be pushed farther;" which was an observation made by him, when a case was brought before him, of an accusation of conspiracy against two or more persons for attempting to wire hares in a gentleman's preserve; that is carrying the law too far, and accordingly Lord Ellenborough said that is too much. Mr. Curwood says (here is the way in which he explains the law)—"lately the offence was considered to consist in a combination to impose a false crime upon any person, or in other words, to convict an innocent person by perversion of the law and by perjury;" but, gentlemen, he states, very properly, that the ancient law has long since been extended far beyond the cases to which it was then confined, namely, in the reign of Edward the First. I need not go further—there is a multiplicity of cases, in which that extension of the rule of law has been established; acted on by courts of justice, by the unanimous opinions of judges, and never questioned, in order to establish from whence the rule as now laid down is deduced, namely, in the general way in which I began by stating it, and from which I think that it is by no means necessary, that treachery or secrecy should, one or either of them, form an ingredient to the crime of conspiracy, as the law now looks upon it, although they may be included in it. Now, I believe, gentlemen, I have I hope told you to take the law from the court; and having thus stated explicitly what the law of conspiracy is not, and what it is, I forbear troubling you again with cases upon the subject, upon which I and the rest of my brethren with me have come to the satisfactory conclusion which I have stated, and the terms in which I have announced the law of conspiracy. Now, gentlemen of the jury, having thus stated to you what it is the traversers are accused of, I think it would be right for me also to lay down a few other rules with regard to conspiracy, that you may hereafter see their proper bearing upon this case. Gentlemen, in order to convict the traversers, or any of them, of the charge of conspiracy, it is necessary that you should be satisfied, (I do not mean that you should have ground to surmise, but that you should have such evidence before you as to convince your consciences,) that they, or some of them, did respectively and in common, combine or agree to do an unlawful act; whether that act be unlawful in itself in its original design, or whether it became so by the unlawful means by which it was agreed that it should be brought about. That is one observation. Another observation is this: that to constitute the crime of conspiracy, it is not necessary that the unlawful thing agreed mutually to be done should be effected. The crime of conspiracy is complete, though in point of fact the criminal end was never attained. Another point I would lay down would be this: that if you be satisfied that an unlawful agreement has taken place, of the nature that I have stated, either to do an act unlawful in itself, or to cause that to be done by unlawful means, though the act itself *per se* should not be criminal—if you be once satisfied that such an agreement, a criminal agreement, has taken place, from thenceforward the acts of each one associating in this conspiracy, are reciprocally evidence against the other of them, if conducive to the same criminal end, though it be not proved that each and all of the several conspirators had either participated in each individual act, or although it be not proved that each and every of the several parties charged with the conspiracy have been guilty of the perpetration of any particular act, in furtherance of the common illegal end. I will go farther, gentlemen, and lay down another rule for you. "It is not necessary," and I am now using the language of a very eminent English judge in one of the late trials, a trial that took place in the year 1837, in giving his charge to the jury:—"It is not necessary that it should be proved that the several parties charged with the common conspiracy met to concoct this scheme; nor is it necessary that they should have originated it. The very fact of the meeting to effect the common illegal agreement, it is not necessary should be absolutely proved to you; it is enough for you to say whether from the acts that have been proved, you are satisfied that these defendants were acting in concert in this matter. If you are satisfied that there was a concert between them," that is, an illegal concert, "I am bound to say, that being convinced of the conspiracy, it is not necessary that you should find both the traversers doing each particular act, as after the fact of a conspiracy is once established in your minds, whatever is either said or done by either of the defendants in pursuance of the common design, is both in law and in common sense to be considered as the act of both." I may lay down another rule, which you will also bear in mind, as bearing perhaps more particularly upon the instance of the Rev. Mr. Tierney than of any body else. "It is not necessary that it should be proved that these defendants met to concoct this scheme, nor is it necessary that they should have originated it." It is said that Mr. Tierney did not join the association until the 3d of October; "if a conspiracy be already formed, and a person joins it afterwards, he is equally guilty." Certainly, gentlemen of the jury, he is equally guilty, if he adopts the already formed conspiracy, as it then stood. I do not think it necessary, though I do not by any means impugn the doctrine of Judge Coleridge, in the general way in which he laid down that proposition; but if you have to decide the question whether or not Mr. Tierney, who does not appear to have joined the association until the 3d of October, is or is not to be visited with the previous acts of that association, it will be for you to say—and I would put this to you upon that subject—did he adopt the previous acts when he joined the association? You will recollect this, that in almost all the charges of crime, with which the several traversers are here upon their trial, which is imputed to them, were for the most part committed before the 2d of October, 1843, when he joined; and though the general way in which Judge Coleridge lays down the proposition which I have stated to you, would, as a matter of course, involve a party in the previous guilt, though not joining the association until a late time, yet I think that in reference to Mr.

Tierney I should put this question to you—if you are satisfied that he did then join them, did he at that time adopt the association as it stood, with all its acts and criminality (if such existed) as it then did exist? I perhaps anticipate, but I thought I might as well here make that observation with regard to Mr. Tierney, because I found, that in reading the judgment of Judge Coleridge, in this case of the Queen *v.* Murphy, I was obliged to introduce that passage which I have detailed, and it appeared to me to be the fit opportunity of stating what I might call a qualification. I do not mean to quarrel with what Judge Coleridge has said, but that in this case I should prefer leaving it to you to consider and pronounce whether or not the qualification applies to Mr. Tierney or not. Now, gentlemen of the jury, I will come to the question of the traversers at large; and I hope you have taken down those observations with regard to the law of conspiracy, which I have endeavoured distinctly to detail to you. It is very fitting that the law should be distinctly understood, and not be the subject of any doubt or apprehension when it comes to be applied. Gentlemen, before I go into the observations upon this particular case, I should like to read to you certain observations, which I would adopt as my own, in a case to which the court was referred by Mr. Sheil in his able statement in behalf of the traversers. He referred us to the case of the King *v.* Kirwan, which was tried in the Court of Queen's Bench in Ireland, and the able speech (as he pronounced it to be) of the late Mr. Peter Burrowes, who was counsel for the traversers, their leading counsel; Mr. O'Connell appears to have been counsel with him. Of Mr. Burrowes, I concur fully in the statement that has been made with regard to that very eminent man; he was an able and a most constitutional lawyer, and I believe I may venture to say of him without going out of my way, that there was no man who ever appeared before the public to whom popular rights were dearer, or who more effectively exerted himself on behalf of the people at large. If he had a failing, it certainly was not an aristocratical bias against the popular rights; therefore what fell from him upon the occasion when he made that speech, to which Mr. Sheil referred, is very worthy of consideration, and is not altogether inapplicable to the present case. In page 203 of his address to the jury he says thus:—"It is very evident that to assume such a right," that is, a right to represent the people, or any portion of them, "would be to encroach upon the exclusive privileges of the house of commons, and no man can doubt but that to assume the character or exercise the functions of any department in the state, legislative, executive, or judicial, is and always was a high misdemeanour." I subscribe to that proposition. In page 205 of the same address he goes on thus:—"Gentlemen of the jury, we are surfeited with visionary notions and republican declamations; we have lost our relish for the old, I hope not obsolete principles of liberty, so cherished by our ancestors. From the abuse of things of the highest worth, we begin to forget their value. This, gentlemen, is a most dangerous state, and a most permanent evil; every important invasion of a right has been founded upon an abuse of that right, and has succeeded through the apathy created by such abuse. Let us never fall into this vulgar error. Let us give to the government and the people their legitimate rights, and not suffer either to transgress. Few are the rights reserved to the people, or which can be reserved under a stable constitution; the legislature *must* be sovereign. To ascribe to it actual omnipotence, is nonsense and impiety; but to ascribe to it relative omnipotence, is rational. No power can question or resist its acts while it exists. But consistent with this acknowledged supremacy are the reserved popular right of a free press and an unshackled right of petitioning. They are the great pedestals of our free and balanced constitution. Impair either, and it totters; withdraw either, and it falls and crushes the people and their liberties. Do I say that these privileges are incapable of abuse, and should not be contracted in their exercise by law? No; but I say that each should be exercised without previous restraint. Let every man publish at his peril—let no man dare exercise any previous control over him; but if he publishes a public or private libel, let the law punish him. In the same way, suffer nothing to impede the presenting a petition; but if under the pretext of petitioning men should assemble and violate the law, vindicate the violated law." Those, gentlemen, are the sound and constitutional principles, that were thus announced by that eminent man and constitutional lawyer. He is no more now, gentlemen of the jury—he has left these sentiments behind him; and Mr. Sheil (I thank him for it,) has referred me to this speech in his very able address, no doubt as having his assent to the law as there enunciated by that distinguished man. Now, gentlemen, what is the law, the violation of which we are called upon to bring into judgment against the traversers—I anticipate nothing against any body here yet—the law as it exists, the law as it has existed for the last forty-three years, the law as her gracious Majesty has, by her coronation oath, bound herself and sworn to maintain it. Gentlemen, I will read you the coronation oath, or at least the commencement of it, as given in Judge Blackstone's Commentaries, page 244:—"The archbishop or bishop shall say, 'Will you solemnly promise and swear to govern the people of this kingdom of England, and the dominions thereto belonging, according to the statutes in parliament agreed on, and the laws and customs of the same?' The King or Queen shall say, 'I solemnly promise to do so.'" That is the coronation oath. Now, with regard to this country and its connection with Great Britain, there are statutes which she has sworn by her coronation oath to abide by, administer and preserve? We have heard, gentlemen, a monstrous deal of assertion on the subject; we have heard a monstrous deal of declamation; we have heard a monstrous deal of complaints of grievances; we have heard a great deal of what the law ought to be; and they call upon you to say if such a law ought to continue, as if you had any power of making a decision upon the subject at all; the law of this realm, as it stands by the act of union, until that act be repealed, is the only law that you can take into your consideration upon this subject. That is the law which the Queen, by her coronation oath, has sworn to preserve; and it is idle to say, that in violation of that law, the Queen, as she thinks proper, may depart from that law altogether, call a parliament of her own in Ireland, of her own motion, in concert with the people, and set up a new law and a new constitution for this country, in direct violation of the law of the union, which I am now going to state to you. In the fortieth year of George the Third, the act of union between Great Britain and Ireland passed:—"Whereas in pursuance of his Majesty's most gracious recommendation to the two houses of parliament in Great Britain and Ireland respectively, to consider of such measures as might best tend to strengthen and consolidate the connection between the two kingdoms, the two houses of parliament of Great Britain, and the two houses of parliament of Ireland, have severally agreed and resolved—That in order to promote and secure the essential interests of Great Britain and Ireland, and to consolidate the strength, power, and resources of the British empire, it will be advisable to concur in such measures as may best tend to unite the two kingdoms of Great

Britain and Ireland into one kingdom in such manner and on such terms and conditions as may be established by the acts of the respective parliaments of Great Britain and Ireland." There is a recital of a national compact for the future union of the two countries of Great Britain and Ireland sanctioned by their respective legislatures, in the same solemn way in which the act of union between Great Britain and Scotland had been transacted and accomplished one hundred years before:—"Article first—'That it be the first article of the union of the kingdoms of Great Britain and Ireland that the said kingdom of Great Britain and Ireland shall, upon the first day of January, which shall be in the year of our Lord 1801, and for ever after, be united into one kingdom, by the name of 'The United Kingdom of Great Britain and Ireland.'" By that article, from the passing of the act of union, the kingdom of Great Britain ceased to exist, the kingdom of Ireland ceased to exist, and instead of those two, there was formed one united kingdom under the style and title of "the United Kingdom of Great Britain and Ireland." Not one king thenceforth having two kingdoms under his dominion, but from thenceforth one king having one kingdom designated as in that article; and the idea of saying that the Queen of Ireland may be treated or dealt with as the Queen of a separate kingdom is absurd, is seditious. Until the law be altered by the proper authority—(which I do not say but it may)—but while the law remains as it is up to this time, as it has been during the whole of the year 1843, and the preceding years that have intervened since the enactment of the act of Union, there is one sovereign over one kingdom, incapable alone of treating with any class of his subjects except the legislature, with regard to a new constitution, or new laws with respect to any part of the united kingdom. And I say, moreover, whatever subject would take upon himself to inculcate—to proclaim amongst the subjects of this part of the united kingdom, that he or any body else, abstracted from the legislature, had a power either separately by himself, or jointly with any portion of the inhabitants of this part of the united kingdom, of treating with the Queen for the abrogation of the existing law, and to put in its place a new law, such as we have heard suggested, is guilty of an offence, is guilty of the crime of sedition; and that if her Majesty was please to condescend to treat and negotiate with him separately from her parliament, and to adopt his suggestions, she has not the power to do it without violating her coronation oath. Now, gentlemen, see what the other articles of the act of union are—"That it be the second article of union that the succession to the imperial crown of the said united kingdom, and of the dominions thereunto belonging, shall continue limited and settled in the same manner as the succession to the imperial crown of the said kingdoms of Great Britain and Ireland now stands limited and settled according to the existing laws, and to the terms of union between England and Scotland." Scotland, as well as England, was a party to the act of union with Ireland. Article the third is—"That it be the third article of union that the said united kingdom be represented in one and the same parliament, to be styled 'The parliament of the United Kingdom of Great Britain and Ireland.'" Gentlemen, the judges of our courts are bound to administer the law, as they find the law constructed by its proper authorities. We are bound to preserve the law, to administer justice according to those laws; and we have no power, if we had the disposition, to take upon ourselves—nor have you, gentlemen of the jury, to take upon yourselves—the power of altering those laws, which have been passed as such, by the king, lords and commons of the country as by law established. It would be introductory of the wildest anarchy and confusion, if any man, or set of men, abstracted from the parliament, were permitted to say, "we do not like this law as it has been passed by the legislature: we think it was not properly passed: we think there were reasons that ought to have prevailed against it, and therefore we are not bound in conscience longer to obey it." Any man who inculcates publicly that doctrine is guilty of sedition. It is not, gentlemen, for us, or for you, or for any set of men, or any set of individuals abstracted from parliament, to take that power and responsibility upon themselves. The law permits it to nobody excepting the lawful legislature of the country, which consists of the queen, lords, and commons, as settled by the terms of the act of union. Then, gentlemen, the fourth article of the act goes on to regulate the number of lords spiritual and temporal, and representatives in the house of commons, who shall thenceforward be returned and sit in those respective houses, so many for Ireland, so many for England, and so many for Scotland, it is provided for—it is an essential article of agreement upon the basis of which these three great countries, England, Scotland, and Ireland, agree to dissolve themselves as separate countries, and from thenceforward sink into and become one empire, under the denomination of Great Britain and Ireland. I need not go further through the other articles which regulate other matters which are thenceforward to subsist between the contracting parties. And those articles being recited, the eighth article goes on thus:—"And whereas the said articles having by address of the respective houses of parliament in Great Britain and Ireland been humbly laid before his Majesty, his Majesty has been graciously pleased to approve the same, and to recommend to his two houses of parliament in Great Britain and Ireland to consider such measures as may be necessary for giving effect to the said articles. In order, therefore, to give full effect and validity to the same, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the said foregoing recited articles, each and every one of them, according to the true import and tenor thereof, be ratified, confirmed, and approved, and be and they are hereby declared to be the articles of the union of Great Britain"—which includes Scotland—"and Ireland; and the same shall be in force, and have effect for ever from the first day of January, which shall be in the year of our Lord 1801, provided that before that period an act shall have been passed by the parliament of Great Britain for carrying into effect in the like manner the said foregoing recited articles." Which act was forthwith carried into effect by the king, lords, and commons of both countries. There is, gentlemen, the law pronounced, ratified, and carried into final effect by the king, lords, and commons of both countries, and that is to be for ever the law of this land, which her Majesty the Queen has by her coronation oath sworn to preserve; and let no man presume to attempt to effect an alteration in this law by illegitimate or violent means, by threats of violence or other such shifts to be resorted to. But, gentlemen, let me not be misunderstood. There is a way in which grievances, if they exist, are to be redressed and set to rights. Recollect the doctrine of that constitutional lawyer Mr. Burrowes, that "the omnipotence of the legislature must be acknowledged in any well-regulated state." Mr. Sheil required me, when I would charge you in this case, to advert to the doctrine of Baron Alderson in his charge to the grand jury, in the case of the Queen *v.* Vincent, in 9th Carrington and Payne's Reports, page 43. Now this, gentlemen, is what he requires me to refer to. I acquiesce both in his re-

quest and in the law on the subject as laid down by the eminent judge by whom this charge to the grand jury was delivered. "There is one case in the calendar as to which it is desirable that I should address you. In that case four persons are charged with having, 'on the 19th of April, at Newport, unlawfully met, with divers other persons, calling themselves Chartists, unlawfully intending to disturb the peace of this realm, and to excite discontent, disaffection, and hatred to the government and constitution of the country.'" That is very like the object alleged to be the illegal object of the traversers in the charge of conspiracy upon which they are now standing their trial. "This charge," says Baron Alderson, "is a misdemeanour of a serious nature, if satisfactorily proved; and it will be for you to say upon the evidence, whether these persons have outstepped the line of their duty, and instead of confining themselves to the temperate and proper representation of such grievances, which they either endure, or think they endure, have constituted themselves into that which, in point of law, is an unlawful assembly of the people. To ascertain what is an unlawful assembly, it is well that we should see what our best lawyers have laid down with respect to unlawful assemblies. Mr. Sergeant Hawkins, one of the best authorities on this subject, says, that 'any meeting whatsover of great numbers of people, with such circumstances of terror as cannot but endanger the public peace, and raise fears and jealousies among the king's subjects, seems properly to be called an unlawful assembly; as where great numbers complaining of a common grievance meet together, armed in a warlike manner, in order to consult together concerning the most proper means for the recovery of their interests, for no one can foresee what may be the event of such an assembly. So in Mr. Hunt's case, which was tried at York, and afterwards came before the Court of Queen's Bench, Mr. Justice Bayley (than whom no man was more learned in the laws, or more enlightened in his views,) says, 'if the persons who assemble together say—we will have what we want whether it be according to law or not, a meeting for such a purpose, however it may be masked, if it be really for a purpose of that kind, is illegal. If a meeting from its general appearance, and from all the accompanying circumstances, is calculated to excite terror, alarm, and consternation, it is generally criminal and unlawful.' These are, as I take it, the clear principles of law." Then he goes on to define the difference between an unlawful assembly and a riot, with which I need not trouble you. "You will investigate the circumstances under which the assembly took place—whether the individuals who presided and were present, were so by previous concert, or accidentally having met—and if they met by previous concert, you will inquire whether they have met at unseasonable hours of the night—if they have met under circumstances of violence and danger—if they have been armed with offensive weapons or used violent language—if they have proposed to set the different classes of society at variance the one with the other, and to put to death any part of her Majesty's subjects; if any, all, or most of these things should appear before you, there will, I think, be little difficulty in saying that an assembly of such persons under such circumstances, for such purposes, and using such language is a dangerous one, which cannot be tolerated in a country governed by laws; and it is but doing unto others as you would they should do unto you, to repress meetings of that description; because what right have any persons to do that which produces terror, inconvenience, and dismay among their fellow subjects?" Would there be any difference if these fellow subjects happened to be the legislature of the country?—"which produces terror and dismay among their fellow subjects." This is what Mr. Sheil wanted particularly, but it is impossible to read it without reading the whole, and you cannot complain of my reading the whole. "Let me not, however, be misunderstood. There is no doubt that the people of this country have a perfect right to meet for the purpose of stating what are, or even what they consider to be, their grievances. That right they always have had, and I trust always will have." And so do I. "But in order to transmit that right unimpaired to posterity"—You recollect the way in which Mr. Burrowes states that many of our valuable rights and privileges were lost by the abuse of them—"But in order to transmit that right unimpaired to posterity, it is necessary that it should be regulated by law and restrained by reason. Therefore let them meet, if they will, in open day, peaceably and quietly, and they will do wisely when they do so under the sanction of those who are the constituted authorities of the country." Who does that represent? "To meet under irresponsible presidency is a dangerous thing; nevertheless if, when they do meet under that irresponsible presidency, they conduct themselves with peace, tranquillity and order, they will perhaps lose their time, but nothing else. They will not put other people into alarm, terror, and consternation." Though it happens to be the king's government. "They will probably in the end come to the conclusion that they have acted foolishly; but the constitution of this country does not (God be thanked) punish persons, who meaning to do that which is right in a peaceable and orderly manner, are only in error in the views which they have taken on some subject of political interest." Now there is not one word of that charge in which I do not fully concur, and to which I am not fully satisfied to subscribe upon any and every occasion. Now, gentlemen, mind what the same judge in a few pages afterwards in the same case says, when he comes to charge the jury who were trying Vincent on the bill of indictment that was found by the grand jury on that charge which he had previously delivered, and which I have read to you. And first as to charging the traversers with an unlawful conspiracy: "The indictment also contains charges of conspiracy, which is a crime"—now this is one of the latest cases we have—"which is a crime which consists either in a combination or agreement by persons to do some illegal act, or a combination and agreement to effect a legal purpose by illegal means. The purpose that the defendants had in view as stated by the prosecutors, was to excite disaffection and discontent, but the defendants say that their purpose was by reasonable arguments and proper petitions to obtain the five points mentioned by their learned counsel. If that were so, I think it is by no means illegal to petition on those points." To petition. "The duration of parliaments and the extent of the elective franchise have undergone more than one change by the authority of parliament itself." That is the legal tribunal. "With respect to the voting by ballot, persons whose opinions are entitled to the highest respect are found to differ. There can be no illegality in petitioning that members of parliament should be paid for their services by their constituents; indeed they were so paid in ancient times, and they were not required to have a property qualification till the reign of queen Anne, and are not required to have any in order to represent any part of Scotland or the English universities." Now mind what follows: this judge has been laying down this constitutional law, for which he is so deservedly held in high estimation by Mr. Sheil and every other lawyer—"If, however, the defendants say that they will effect these changes by physical force, that is an offence against the law of the country. No civilized society can exist if changes are to be effected in the law by physical force. And if eminent persons have done as the learned counsel has stated,

and their conduct were to come before us in a court of justice, we should (however painful it would be to be placed in such a situation) act towards them also exactly as we ought now to act towards the present defendants." Now, gentlemen of the jury, there is the constitutional law laid down by this very eminent constitutional lawyer, Baron Alderson. No man is more highly respected in the profession, and no man is more eminent in a court of justice.

Mr. Whiteside—I believe they were acquitted of the conspiracy there, my lord.

The Lord Chief Justice—Yes, they were acquitted of the conspiracy, and found guilty of attending unlawful assemblies. That is another part of what Baron Alderson said. I fully concur with Baron Alderson in both parts, both in his charge to the grand jury, and in his charge to the petty jury; and in that I have the full and entire approbation and concurrence of my learned brethren (and you must take that also into your consideration) to be the law. Gentlemen of the jury, let me not be misunderstood—as Baron Alderson was misunderstood. If a man has a grievance—if any set of men have a grievance, or if they think, or fancy they have a grievance, it is no crime for a man to have the grievance, or to think he has it; it is no crime to make a mistake with regard to his political position in respect of that alleged grievance. He has a right also to communicate freely his sentiments upon that subject to his fellows, similarly circumstanced or otherwise. He has a right to make that communication not merely to his friends or fellows but to strangers—he has a right to make those communications and those complaints wherever he goes, if he thinks fit. Even if he should attend a public meeting, however large that meeting may be, though in that respect it may happen indeed to be dangerous in respect to the consequences that may follow from it, but the mere fact of its being a public meeting is no reason why a man who has a grievance, or thinks he has, should not attend that meeting, make a statement of what he conceives he has to complain of, and so upon the principle of free discussion endeavour to get, by peaceable means, as many allies and advocates in support of his alleged grievance as he can procure. That, gentlemen, is the law, and that is the liberality of the law, as stated by Mr. Baron Alderson, which he said "God forbid" the country should ever be without, and which I say too. But, gentlemen, in order to disseminate the knowledge of those grievances, he must take care not to infringe upon the rights and liberties of others; and he is the more bound to be careful as to the effect of what he does, if the assemblies which he attends are congregated in such multitudes as to excite terror and alarm, either amongst the neighbouring people, or amongst those who are bound to watch over, and preserve the peace and constitution of the country. If he goes with arms it is the more likely that the law will be infringed, but if he goes without arms—which has been the cause always here—it does not follow, therefore, that that meeting has been lawful. I do not mean to say, but the contrary, that the mere attending of the meeting, however large the numbers may be, if no breach of the peace be committed, nor tendency to a breach of the peace, at the time, or immediately ensuing the meeting—I do not mean to say that his attending such a meeting under such circumstances will be necessarily unlawful. I do not mean to say that it would be necessarily lawful. But I shall explain that by and by; but there is nothing in the mere fact of the assemblage of the people that renders that an illegal act. But in order to make the meeting unlawful it would not be necessary, though in fact the peace was not broken, that therefore the parties should not be guilty of the offence of exciting and creating terror and alarm amongst her Majesty's subjects. The meeting may, though the parties went to it unarmed, have been attended with demonstrations of physical force, that would reasonably have excited fear, terror, or alarm amongst the peaceable subjects of her Majesty in the neighbourhood, whether there was cause for it or not, beyond the enormous mass and multitude of persons assembled; and if persons were alarmed and terrified by that mass and multitude so assembling, why, then, the terror so caused would have shown that it had been an illegal assembly, for which the parties so assembling would be answerable. But it is not necessary that that should be the state of things, in order to make that an unlawful assembly. Suppose the parties all went to that great meeting in ever such great multitudes—suppose they went without arms, and conducted themselves with great propriety and regularity—suppose no breach of the peace was committed, or tendency to a breach of the peace was committed, all those facts might concur toward the establishment of the innocence of that meeting, and yet, gentlemen of the jury, that meeting might have been an illegal assembly; and any party that went to it, and attended to it might be made answerable. Suppose that the object of collecting those hundreds and thousands of persons was, not for the purpose of committing a breach of the peace—suppose they had an ulterior and more remote object—suppose it was not for the purpose of terrifying the neighbours by what was done, or intended to be done, by the persons assembling at that meeting—but suppose that the parties who collected that multitude together did so for the purpose of making a demonstration of immense force and physical power, guided and actuated by the will and command of the person who had caused that multitude to assemble, for no purpose of a present breach of the peace, but for the purpose of making an exhibition to those with whom he had to do, to those who were the legal legislators of the country; and that his object in calling all those people together—his object in assembling, dispersing, recalling them—suppose his object was to do that with the greatest possible notoriety—suppose he did it in the open day, where all the world could see and hear him, and that he had as his object to overawe the legislature, who are likely to have to consider certain political subjects in which he had his own views and his own interests—for the purpose of deterring the legislature and the government of the country from a free and cool deliberate judgment on the subject—if that were his object in causing and procuring that demonstration, then, gentlemen, I say that that is an illegal object in him, and in all who concurred to make such a demonstration, and agreed with him in the procuring of such means. Now I have not gone the length to say I suppose any of the traversers have been proved to be guilty, but I am merely telling to you, and explaining as I go along, what I take to be the clear and incontestible law on this subject. I admit to the full extent the principle of full and free discussion, cool and deliberate consideration. I do even admit of warm arguments in support of political views. It may be not only admissible, but quite necessary and right for the information of all those who may have to deal with the subject in question—to enable them to come to a right conclusion as to the course in which they should advise her Majesty to act with regard to the political subject in question. But I should be glad to know, are the parliament of the country, or the Queen's ministers, or those who are entrusted, necessarily entrusted, with the management of state affairs—are they the only persons in the country who are not to have the benefit of free discussion and the benefit of fair, cool, and impartial deliberation? Are they, instead of free discussion, to throw those away, and to be influenced and led astray by the intimidations of fear, or the demonstration of

physical power and force? If they think proper in their judgments to come to a different opinion upon this or that political subject, are they the only persons who are not to have the advantage of free and full discussion? Are they to be told, here are hundreds of thousands of fighting men—they are all peaceable—there is no breach of the law—they coalesce with no illegal bodies—they are warned and advised to keep out of illegal societies—they have been guilty of no breach of the law—they have not appeared in arms, but they are the finest physical peasantry in the world, they stand number one in the class of nations; and you may differ from me if you like, but take care; the first step you make, those masses that are now dissolving at my command "like snow under my feet," will reassemble at my call, and then what will be the step that you will take? Take care of that. Is that the way in which the country is to be suffered to remain? Gentlemen, if you come to be of opinion that that was the object of the persons who collected those multitudinous meetings, that their object was not what they professed, to consider of grievances, to talk over and discuss them, to lay a petition before that parliament, the legality of whose existence they are denying—if you believe that that was not their object, but on the contrary that it was for the purpose of procuring intimidation and overawing the counsels of the legislature and the government of the state, then I am of opinion, gentlemen, that in that latter case, and with that latter object, their object was unlawful, and if more than one have concurred to procure it by unlawful means, they are guilty of the act of conspiracy. I have already said, gentlemen of the jury, that the doing of such a thing by one is not enough to constitute a conspiracy—there must be a concurrence of two or more in the same criminal design. Before we go to the consideration of the particular case of each, I will make some further observations which seem to me to apply to the case of all. The traversers one and all say that they are repealers, that is to say, that they are persons who conscientiously entertain the view that the object of repeal is best suited to the interests of the country, and say, that for that, and on that account they have grievances. I will not now enter into the allegations which have been put forward, and with which this court was occupied for several days, as to the ground and manner in which the act of union was carried. It is forty-three years ago since the king, lords, and commons, of the two countries passed that act of parliament. And by their common concurrence the act of union has continued in force, and is in force, up to this hour. Very many acts of parliament have been passed within the last forty-three years by the united parliament. In those acts of parliament the members who were returned for Ireland, the members who were returned for Scotland, the members who were returned for England, all had their share. They all voted, or had an opportunity of voting, and of speaking, and the privilege of free discussion to the utmost extent of the word. Very many most important acts of parliament have been passed which ought to have been passed according to the deliberative judgment of the united parliament—not one kingdom taking on itself to judge or act for another—not one part of the kingdom taking on itself to judge or act for the other, but the entire parliament, with its concurrent legislature, and under the sanction, and with the concurrence and approbation of the king or queen of the country, making those decisions of the monarch of the two countries, giving their decision on those political subjects, which so received the concurrence of parliament and the royal assent. I need not say amongst those—it has been referred to over and over again—was the act of Catholic emancipation. And no emancipated, as it is called, Roman Catholic of Ireland is entitled, or would be entitled to the position in which he now stands to exercise those rights which he deservedly enjoys, if it were not for that act of parliament which was passed, conferring those rights on those persons who are now alleged to be, as they would be, if the act of union he void, utterly incapable of passing an act of parliament. The reform act was passed in the same way; and a variety of other acts more or less conversant with popular rights. And observe this, that in the reform acts for England and for Scotland, the Irish members sent from this country, under the act of union, to give their votes and their voices, concurred in or might have altered the act of parliament sheets. If the proposition be true, that has been so often contended for, that the act of union is a nullity, and if Mr. O'Connell was right in proclaiming that principle to hundreds of thousands assembled at Mullaghmast and elsewhere, the result would be that Mr. O'Connell himself could never justifiably have sat in the English parliament, nor could any emancipated Roman Catholic have become entitled, as a free citizen, to the rights and privileges which he ought to enjoy as such. Now, gentlemen of the jury, the traversers are all accused of forwarding—whether by means legal or illegal will be the question for you—the repeal of that act of parliament, the act of union; which, if the last proposition I have stated to you be correct, would render it perfectly useless for these persons, or any of them, to take the present step, or anything like it. If the act be void, where is the necessity, or where the power, for repealing a nullity? The two things are inconsistent; and the repeal of the union in the eyes of reason and common sense, pre-supposes the existence of the act of union. We have no right to discuss the merits of this question. We must take, as I have already stated to you, the act of union as in full force; and even if you had the power (which you clearly have not) of interfering with it directly or indirectly, it would be very difficult indeed for me to tell you how a man ought to exercise that power in justice, reason and common sense. Gentlemen, a great many years ago Mr. O'Connell appears to have entertained a strongly grounded opinion against perhaps the validity, but certainly the propriety, of the act of union. In the year 1799, before the act of union was passed, he has given in evidence that he attended a meeting in Dublin, regularly constituted and regularly assembled, at which he made a speech, and declared his sentiments in public. That was the principle of free discussion, and nobody prevented his doing so; every body perhaps did not agree with him, but that was no matter. He had the right, and he exercised the right of delivering his sentiments at a crowded meeting in public day, open to all the world. But what has that to say to the question whether he was guilty or not of what took place in 1843, something more than forty-three years after he had made that speech which was perfectly legal? In 1810 he attended another meeting; ten years after the act of union was in operation. That meeting was a meeting regularly convened; not by irresponsible authority, not great masses of persons assembling under no control, but a meeting convened by the high sheriff or sheriffs of the city of Dublin, at which there was a full attendance of a great number of most respectable gentlemen, or perhaps persons of high rank within the city of Dublin. Every freeman and freeholder was invited to attend for the purpose of free discussion, and to give his deliberate opinion as to what should be done as to the revision or repeal of the union, or the contrary. Mr. O'Connell attended there; Mr. O'Connell did what he had a perfect right to do—delivered his sentiments in public, without concealment or control; as far as he confined himself to free discus-

sion, without giving any undue offence to any body —he had a right so to deliver himself. Now what has that to say to the events of 1843? I confess it is the first time I ever knew of a man, (or set of men,) accused of a specific crime or crimes in the year 1843, seeking to justify themselves from that charge, by proof of what he or they respectively did forty or thirty or fourteen years back. And that because a man's experience in the way of political writing at one time, may be given in evidence to show his intentions as to certain expressions or acts done by him twelve years afterwards, as in the case of Horne Tooke; then is it to be inferred from that, that a similar course of proceeding is to be adopted in this case? Now there is this wide difference between the two classes. Horne Tooke was accused of very questionable matter, both as to what he wrote and as to what he did, and he was permitted to give a construction to that questionable matter, on the principle of continuity of purpose, and to give a colour (perhaps the true colour) to the matter for which he was then tried, by the evidence of his previous opinions and acts, though they had taken place and been expressed several years before. The circumstances were similar; the existence and character of the assemblages was similar, and they were perfectly admissable in that case which was then tried by the proper colour, which gave a character to the position in which Horne Tooke stood; they were properly admitted in that case. Can that be said of the present case? Two speeches made at public assemblies, convened by the sheriffs for the city of Dublin in the one case, and I believe the lord mayor in the other—public speeches made, resolutions passed, petitions forwarded to the crown, and presented by the city representatives—what analogy has that to the case in which Mr. Daniel O'Connell is represented on all hands to have stood in 1843? Were these meetings convened by magistrates? I dont mean to say there were not magistrates present. Were they convened magisterially? Was any of them convened magisterially? Not one, that I am aware of. Were any of them convened by orders and directions of the national repeal association? We have Mr. O'Connell's answer to that, stating the number of monster meetings which he had caused to be convened for his own purposes. The cases therefore are in their existing circumstances quite different. But supposing that were not so: after all, what is the meaning of those words "continuity of purpose?" I have no objection to its going to the jury on that; it must go to the jury, and you shall have the full benefit of it. Now in the year 1843 there had subsisted for a considerable time, as much at least as three years before, an association in the city of Dublin, which was called the national repeal association. Sir Colman O'Loghlen was desirous that I should take notice, that in a short time, I believe a few months after the formation of the repeal association, an improvement was made upon its name by the introduction of the word "Loyal," and that from thenceforward it bore, and has borne, the name—the loyal national repeal association (I do not know whether I put the words right); whether that be or not of any importance is for you to judge. I do not wish to keep the facts from you, but to submit them to you, and to submit them all to you; that is to say, that no portion of the facts shall be kept from you. It is now "The Loyal National Repeal Association;" *stet nominis umbra* whether you think there is much difference in that or not, it is for you to say. At that association Mr. O'Connell obtained and possessed unquestionably a power, I would say—but I believe he has said so himself—bordering upon absolute. During the existence of that association, meetings were held in a particular part of Dublin, where speeches were made from time to time; addresses to the people of Ireland were promulgated from the rooms of that association, addressed to them by Mr. O'Connell, and you will say whether or not he does not take upon himself, in all those addresses, the character of leader of the people, as he often in other places designated himself. These have been given in evidence on the part of the traversers, and they are properly submitted to you, as they have been deeply dwelt upon by them, in order to show that from the beginning to the end there was an inculcation of loyalty to the Queen, and a determination to support her prerogatives; that there were from time to time warnings, and threatenings, and advice, and direction, nay I believe even commands, to the members of that association, and to the people of Ireland, to abstain from crime, to join no Chartists, no physical-force men, no secret societies; that whoever committed a crime added power to the enemy; and throughout all those addresses and resolutions which have been so given in evidence, from the year 1840, when that association was instituted, until the beginning of the year 1843, there was a continuation and a repetition of the same inculcations to the same effect as I have stated generally to you. A great many of these have been given in evidence. I am not aware, that substantially I have omitted anything favourable to the traversers, as to the contents of those several addresses or resolutions; I believe I have stated all fairly and fully, and therefore I do not think it necessary to call your attention to any detail upon that subject; the more particularly as it is admitted by the Solicitor-General, that for that period, from 1840 to the beginning of the year 1843, he brings no accusation against Mr. O'Connell, or the members of that association, or any of them. He makes no charge; without knowing or not whether there may be guilt, or whether there be not, his position is—I do not inquire into that; up to 1843 the charge of the crown imputing crime does not commence. Now, gentlemen of the jury, the crime imputed commences in 1843. Mr. O'Connell and the traversers say generally, that they had an acknowledged purpose in this association to procure a repeal of the union in such a way as they say the law and the constitution would warrant. Mr. Solicitor-General says—Up to 1843 I do not deny the proposition that you advance; the act of the union is what you consider to be a grievance of a grave kind, and you have a right by freedom of discussion, by petitions to the crown, by petitions to parliament, by every other fair and constitutional way, to endeavour to relieve yourselves from this grievance, or supposed grievances, and thereby and so to procure a repeal of the union. At the other side they require no more; and what they profess and state they were doing was, to follow those means which the law allowed, and thereby to procure their object, the repeal of the union. In 1843, or the beginning of that year, the crown says a great change took place in the affairs of the repeal association, and Mr. O'Connell at their head; and from thenceforth, whatever may have been their antecedent proceedings, of which I will say nothing, from thenceforth the means by which they attempted to effect the repeal of the union, if that was their object, became illegal. Now, gentlemen, it lies upon the crown to maintain that proposition; it lies upon the crown to maintain it, and support it on evidence to your satisfaction, that from some time in 1843, the precise time or day or place that that change took place is immaterial, such a conspiracy as has been charged in the indictment existed. Mr. O'Connell said he was deprived of the means of proving an *alibi*—it is not necessary; he has had notice of the facts imputed to him by a bill of particulars, and overt acts are on the face of the indictment; but without proving a direct time or place in which an agreement was concocted between two or more of the traversers,

it is for the jury to say, are they satisfied upon the facts laid before them, that though the actual time of the conspiracy is not proved, yet that they are satisfied that such a conspiracy as is imputed must have taken place, from the facts that are admitted, or proved to have taken place, coming from one or more different parties charged with this conspiracy, for the furtherance of the common design. The onus of that lies upon the crown; and, gentlemen, you must be satisfied that the guilt which is so imputed, has been proved; that is, that satisfactory evidence be given to you of the existence of the alleged conspiracy, the alleged compact, the alleged agreement and common design between the several traversers, or some of them; and if you are not satisfied by them, I am bound to say, gentlemen, if that is not made out to your minds, so as to leave it above and beyond reasonable doubt upon the subject, it will be your duty not to convict upon presumption; you are to convict only upon proof, either direct or inferential, of the nature I have stated to you. The onus is on the crown; and that is another reason why I pass over without more particular detail the evidence given on behalf of the traversers. Now, gentlemen of the jury, the nature of the proof given by the crown is this; it will be for you to say, are you satisfied or are you not, with the way in which the crown has proved its case.

The court here retired for a few minutes, and having resumed,

The Chief Justice continued—Gentlemen of the jury, the crown say, and I think there is evidence to support the statement, that some time in the beginning of 1843, a material alteration took place in the system and regulations of the association, the repeal association. It had before that time become a very great body—I mean in point of numbers; I believe also, very considerable sums of money had been sent in the way of contributions, both from various parts of this country, from Great Britain, from America, perhaps something from France: but I am not sure of that, and I will leave it out. It had had communications previously, as extending and ramifying in various directions, and through various districts of the country. But in 1843 proceedings were adopted, for the purpose of rendering this communication and that system more extensive and more efficacious. A plan was adopted for a new method of the admission of persons desirous to become members of that association. Classes were created, into which members were to be distributed, and under the name of which they were to be known. Those classes were three: the general class, who are called associates; every person who subscribed a certain small sum of money, amounting to only one shilling a year, was capable of becoming an associate upon obtaining a card of the society. Every person who paid one pound a year, was to be entitled to admission as a member, and enrolled, obtaining a different kind of card: the second class were called members. The third class were called volunteers, and they who subscribed ten pounds, or procured subscriptions to that amount from others, were entitled to be admitted as volunteers; and one and all of those persons were to be by a certain form admitted into the society, and enrolled in its books. Now here was certainly a very strange, I was going to say, formidable mode of organisation, which was adopted by the society in the year 1843. I think Mr. O'Connell has said at more than one meeting, that in one way or other he had three-fourths of the male population of the country enrolled as members of that society; and a little computation, taking it at the lowest sum of a shilling a year, would show you what large funds the society must thereby have become possessed of. I do not absolutely say that that is illegal; but when a society is intended to extend all over the country, and does ramify itself in that way, collecting from each person a sum of money, of the application of which they know nothing, but collecting from each a sum of money to be laid out for the objects and purposes of the society, whatever they may be, such a system appears to me to involve a dangerous state of things. About the same time effective resolutions were proposed and adopted, with regard to the appointment of the officers of this society. I am speaking now having regard to what cannot be passed over in this case, the question of organisation. There were appointed what they called repeal inspectors; what they were, gentlemen of the jury, we have no particular knowledge of, nor am I aware of anything that gives us an insight into the nature or the duties of that particular class of officers called repeal inspectors; but there is evidence that such officers did exist, and that they were spread over the country; that is to say, they were scattered through various districts of the country. But the main-spring by which the machinery was conducted, by which this immense association was to have its energies employed and directed, were what were called repeal wardens. But, gentlemen of the jury, the repeal wardens were, at least on their present system, appointed in the year 1843, something about the time when the arrangement was adopted for the admission by cards of the several members of the society. You will see, gentlemen of the jury, whether or not there was discipline in the way in which that was conducted. The appointment of the repeal wardens—the plan of their instructions—the duties that were prescribed to them, were all acts of the association—committees were appointed to report on them, reports adopted and acted on by the creation of a system of repeal wardens extending all over Ireland; their duties were confined to particular districts, communicating with the interior, receiving their instructions from the association itself, and making regular reports and communications of every thing that occurred to the association. That itself and the assistance of repeal inspectors, I would have said, amounted to something like a very well regulated police. I, gentlemen, do not call them police; I call them only as the association called them—repeal wardens, the persons who are described by Mr. O'Connell in his speech at the Kilkenny meeting last August, if I do not mistake, as persons very competent to be at the head of the people, in the same way that officers or sergeants might be over privates in the army. Now there was not a part of Ireland in which that system was not introduced. The intention was that it should extend over the entire. The duty of the repeal wardens so appointed was this, amongst others—to take care that there should not be within their respective districts a single adult male, a single person I mean, who should not become a member of the association, by being invited to join and pay his subscription, which, although individually small, altogether amounted to a great sum. There was another duty imposed upon them. I have here before me the instructions for the appointment of repeal wardens; I am stating substantially the document to you, and I am speaking under the correction perfectly of the gentlemen at the other side, and they will see whether I do not state correctly the several documents as I go along; and I shall be very much obliged to them, if they find in any particular I fall short, or mistake, or misstate the documents that occur, to interrupt me. First, it was their duty to take care that every person became a member of the association; they had besides a duty imposed on them, that every person in their respective districts should be furnished with newspapers. Now, gentlemen, there were in connection with the association three gentlemen, who are all of them at present amongst the traversers at the bar, who were

respectively proprietors of or engaged in certain newspapers in the city of Dublin; I need not say one way or other as to the tendency of their contents. The repeal wardens were to take care, that within their respective districts a certain number of associates, that is, of the members of the association, should be provided, not with newspapers generally, of whatever class they might think necessary to inform themselves in point of politics, not the *Evening Mail*, or a paper of that kind, but they were to take care that they were furnished with papers, and two of those papers were named, the *Freeman's Journal*, of which Dr. Gray is the proprietor, and the *Pilot*, of which Mr. Barrett is the proprietor. These were the papers named; and if a certain number thought fit to choose another paper, and give directions for that purpose, that they should be furnished accordingly; that is, another paper of the same side of politics.

Mr. Fitzgibbon—My lord, with reference to Dr. Gray, the indictment charges the distribution of the *Morning Freeman*. It was the *Weekly Freeman* that was sent according to the rule of the association, and there is no evidence that he is the proprietor of the weekly paper at all.

The Lord Chief Justice—Certainly.

Mr. Fitzgibbon—The indictment charges the distribution of the *Morning Freeman*, and, my lord, it was the *Evening Freeman* that was mentioned in the rules of the association, and the *Weekly Freeman*, which is quite a different paper.

The Lord Chief Justice—I don't think it signifies. I was stating that the papers recommended to be furnished were all of that particular class.

Mr. Sergeant Warren—Mr. Vernon, my lord, distinctly proved that Dr. Gray was proprietor, both of the *Morning* and *Weekly Freeman*.

Mr. Fitzgibbon—There is no evidence whatever of the politics of the *Weekly Freeman*.

The Lord Chief Justice—I did not say the *Weekly* one; it was the *Freeman* and the *Pilot* were expressly mentioned; Mr. Barrett is the proprietor of the *Pilot*, and if there was a choice given, it was a choice within a certain circle. Now, gentlemen of the jury, you will consider what the effect of these papers was, circulated all over Ireland. The people of the country, the poor people who had subscribed their shilling a year, which amounts to about a farthing a week—these people were to be enlightened by the dissemination of these papers, and by reading, or having them read to them; and for that purpose the instructions that I have here in print before me gave directions, that if not very inconvenient, small places and rooms, in the way of reading rooms, should be selected in each district, where members of the society might assemble, for the purpose no doubt of being indoctrinated in the system and objects of the society—the diffusion of useful knowledge—all that is done in direct communication with, and in constant communication with the society itself—the governing principle which actuated the entire, being in Dublin—the constant residence, as I may say, of the association. Now when you come to think of what the indictment is, these are matters that ought not to be kept, or permitted to go, out of your view, but ought to be kept constantly before you. Recollect what is complained of by the crown—a conspiracy by means of intimidation, and by the demonstration of physical force, to procure changes in the laws and government, and to overawe the legislature of the country. It is for your consideration, gentlemen, to say, is any thing done towards that end by an organization of the entire people of the country, or three-fourths of them, in constant communication with head-quarters, acting under their orders, embarked with them in a common cause, by the advance of their little means, to be applied by irresponsible persons, in a way of which they know nothing but this, that it is to go to the national association. Well, the nature of the card under which the people were admitted, which they preserved as the sign or token of their being members of the association, has been so minutely detailed to you, and as you will have an opportunity of seeing before you in your jury box those cards, I do not think it is necessary to occupy your's, or the public time, by much observation upon them. They were of three kinds: the common one, or the associate's; the green one, the member's; the other one, which is a fancy piece rather, the volunteer's. And then, for fear the members should not understand fully the particular nature of their cards, an explanation of them is given, which was written by a gentleman of the name—I do not think his name appears here, but he is called in this, "The author of the Green Book." Now, you will understand by and by, gentlemen, if you, do not already, the bearings and tendency of that Green Book; you will have to consider it in connection with the charge imputed to the traversers, of an endeavour to corrupt the army, or to render them disaffected; he is the person who gave that printed explanation. [Mr. Justice Crampton here made some communication to the Lord Chief Justice.] My brother corrects me most properly, by saying that the Green Book is not a book to which I ought to have alluded; but certain letters upon the subject of the army, or relating to the army, and addressed to the army, were written by the author of the Green Book—and therefore, it comes pretty nearly to the same thing, the author of the letters to the army being the same person as the author of the Green Book, and he is the person who, for the association, gives this explanation, particularly of this card, which is called the member's card, the green card. Now, gentlemen of the jury, this is contained in a letter to the secretary of the loyal national repeal association, "Explanation of the new card for members, by the author of the Green Book. Printed for circulation by order of the committee of the association, the 11th of April, 1843." It is printed by their direction; and there is at the bottom of it this statement; it is directed to "T. M. Ray, Esq., the secretary." "This letter, the reading of which elicited the repeated acclamations of the meeting, was enrolled upon the minutes of the association, on the motion of Mr. O'Connell." This is the act, to all intents and purposes, of the association itself, with the various inuendoes and other observations that appear on the face of it. Now it is very long, gentlemen of the jury, and I do not wish to go through a detail of it, because you will have an opportunity of having the instrument sent up to you, and you will see its bearing, and see whether it supports, or the contrary, the explanations and observations that have been made upon it by the Solicitor-General; I think also by the Attorney-General, but I allude, particularly to the Solicitor-General, because he has more recently addressed you, and by his observations must be clearer within your recollection. It is, however, necessary for me just to mention this; you will see from its general nature that it is a statement and an enumeration of many circumstances.

Mr. Moore—Your lordship will excuse me for one moment. I understood your lordship to say, that you would not read some of these documents at full length, or so much as your lordship otherwise might, as they were to go to the jury. I hope your lordships will not consider, in making that observation, that the counsel for the traversers are consenting to the documents going to the jury.

The Lord Chief Justice—Very well; if you think proper to object, of course they shall not.

Mr. Moore—We do not wish to preclude our-

selves from adopting any course which we may think right at the conclusion of the charge; but I merely mention it in order that your lordships should not think we might be consenting to it. It might be afterwards open to the observation that we did not object to it.

The Lord Chief Justice—You are quite right, Mr. Moore, in saying so. Then, gentlemen, I have no right to assume that these documents are to be laid before you, that is, are to go into your box; that makes it the more necessary for me to make a few observations on them, and in general my intention is not to go into minuteness of detail, but to give you generally a correct notion of what the documents are, and to leave the subject then to your consideration. If I mistake or misstate the general object, the gentlemen of course will correct me. Now, gentlemen, this was the general object of this member's card. Upon the face of it is inserted in green colours an enumeration of the powers, population, and ability of Ireland to have a parliament of her own; and it concludes with a sort of chorus—"And yet she has no parliament." Now whether she should have a parliament or not, does not depend upon Mr. O'Connell and the association. He may, and no doubt does, in common with very many who are of the same opinion with him, think conscientiously that she ought to have one; I do not dispute at all his entertaining that opinion, he and they have a perfect right to entertain it; I do not mean to say that he and they are right, and I am wrong, if I differ from them on that subject. That is not the question; you have nothing to do with whether they are to have a parliament or not; you are not to give it—it is to be done by the regular constitution of this kingdom, this united kingdom, the king, lords, and commons, of this kingdom; and to disseminate upon the face of these cards, that from their strength and consequence they ought to have a parliament and have not—that is taking upon himself, or taking upon the association themselves, to disseminate through every part of the country a statement of matter, upon which they, the members of the association, have no right to make a decision. They may have an opinion, they may circulate their opinion, they may endeavour to support it; they have a right to state what they call their grievances; and if they can enlist popular opinion in their favour by fair means, by legitimate means, they are perfectly entitled to do so; but upon the other hand, it is to be considered, when they are enrolling the whole country under stated officers, repeal wardens and repeal inspectors, and these cards are given and circulated, to be placed by those officers in the hands of the persons whom they get together as conscripts; why, gentlemen of the jury, it is for you to consider with what intention that is done. Is it with the intention of free discussion, and expressing their candid, deliberate opinion, or is it with the intention of banding the persons among whom these cards are distributed, and these newspapers are circulated—banding them in favour of a particular form of political views, entertained either by Mr. O'Connell, or by the members of that association? And is that intention to be furthered with the view of promoting free political discussion, or is it intended to be promoted by the enrolling of additional members to be confederated in one general object, the nature and particulars of which they do not know, to which they subscribe, and the manner in which their subscriptions are to be applied they do not know? Is it, or is it not, gentlemen of the jury, of that latter description? Or is it, or is it not, with a view of promoting free discussion and fair inquiry? Gentlemen, I could not finish to-night all the observations I have to make; and therefore I must defer them to the morning.

TWENTY-FOURTH DAY.

SATURDAY, FEBRUARY 10.

The court sat at ten o'clock, the jury being, as usual, called over.

The Lord Chief Justice—Before I resume this case with the gentlemen of the jury, I would wish to say a word with regard to some expressions that fell from me yesterday relative to Mr. Fitzgibbon. It has been occurring to me since, that perhaps I may have expressed myself in a way that might have appeared somewhat harsh with regard to him personally. In what I did say I was obliged and called upon to express my opinion very explicitly with regard to the law of conspiracy, as we, the court, entertain it, different from the way in which Mr. Fitzgibbon had laid it down. I was called upon so to express the opinion of the court, but in the expressions that I made use of I certainly never did intend in the slightest degree to say anything at all disrespectful of Mr. Fitzgibbon personally; on the contrary, before I go on with the case, I take the opportunity of saying, that for Mr. Fitzgibbon himself, his public and private character, I entertain a very great esteem, if he will give me leave to say so, and as to his talents, his industry, and his acquirements, I hold them in very great respect. Now, having said so much, I have disburthened my conscience of having made use of anything like an unguarded expression with respect to Mr. Fitzgibbon; and now, gentlemen, we will go on with the case. Gentlemen, yesterday evening I concluded by making some observations with regard to the state of organisation, the appointment of officers, and soforth, which it was proved had taken place in the year 1843, in respect of the association, and I took the liberty of calling your attention to those matters, inasmuch as it appeared to me that they had a very considerable bearing upon one or more of the questions to be submitted to you on the trial of this indictment. In addition to what I said yesterday as a further instance of the power and weight of this association, and of its formidable character, with respect to those who did not belong to it, besides the income derived from the different persons who had become or might become members or associates of it, I would call your attention further to the circumstance of the large sums of money which were contributed from various places both abroad and at home, swelling to a great magnitude the funds, or the exchequer, as I believe Mr. Duffy calls it, of this association. It is in proof, gentlemen of the jury, that from day to day, from sitting to sitting, large funds were handed in from different places in both England, Scotland, and several parts of Ireland, and very large sums from different parts of America; not only the part of America under the British sway and dominion, which might be thought to have some particular interest in what is going on here, but also from different parts of the United States which, with regard to Great Britain and Ireland, are foreign countries. Now those sums were handed in and contributed in large and increasing amounts; you have for that the incontrovertible evidence of Mr. O'Connell himself, and the different members, and the proceedings of the association as they have been laid before you. And when Mr. O'Connell is speaking of the forces he has at his command, and of those who are acting under his control, which he does on more than one occasion, he takes the opportunity of recording the increasing amount of funds which he was receiving, or the association was receiving, from the sympathy and support of America; and he says, in one instance, he was going to Dublin the next day, and he would hand into the association a sum of upwards of 1,100*l.* which he had received from America for the purpose. The asso-

ciation thus organised, thus disciplined, thus provided with funds, with numbers unexampled, in Mr. O'Connell's hands for the working out of that which he professes to be the end and object of the association. He and the other traversers, by their counsel, make the case that this is all legitimate, and that inasmuch as they have a right to complain of the existence of the union as a grievance, they have a right by all legal means to get rid of the existence of that grievance; and so far the Attorney-General concurs with them. And the question merely between them is, whether the means resorted to in the furtherance of the objects of the traversers be or be not legal means, or, whether, in pursuing their object in the manner which they have adopted, they have not agreed and concurred to transgress the law in the manner in which the Attorney-General accuses them in the present indictment. Now, as far as I know the legal means would be by addresses to the Queen, or to the parliament, as by law established. There might be more; they might, by the introduction of free and fair discussion, give weight to and extend the opinions entertained by the traversers with regard to the question of the union. But to do that there must be no intimidation; that is inconsistent with free discussion. There must be no demonstration of physical force for the purpose of overawing or intimidating her Majesty's ministers, or those who have the direction of public affairs; and still less have they a right to take the law into their own hands, and by their own act make an alteration in the constitution and laws of the country different from that which exists under the existing law as passed by the sovereign and legislature of the country at the time. Now, having called your attention to the state of power, and organisation, and discipline to which they had carried that association, and its connections, see what their acts are in furtherance of what they call their legal intentions of carrying out their object. The next instrument that I call your attention to, is an instrument that was laid before the association on the 22d of August, 1843, and it is called "A plan for the renewed action of the Irish parliament." Now, I have already very explicitly told you that as long as the act of union remained unaltered by the proper authority, the Queen was bound by her coronation oath to support it, and no set of persons in this country had a right, either by their demonstration of numbers, or power, or otherwise, to attempt to make an alteration in that law except through the medium of the legitimate authority—the sovereign and parliament of the country. Here is the association plan for making a new law and a new constitution in that part of the united kingdom called Ireland. "A plan for the renewed action of the Irish parliament. First—the Irish people recognise, acknowledge, and maintain, and will continually uphold and preserve upon the throne of Ireland her Majesty Queen Victoria, whom God protect—Queen by undoubted right, and by hereditary descent, of Ireland, and her heirs and successors for ever." From the time of passing the act of union, and now up to this day, she ceased to be Queen of Ireland. The king at that time, and his successors since, ceased to be distinct kings or queens of Ireland; by the effect of the act of union Ireland was swallowed up in the united kingdom, and the previously separate king or sovereign was not sovereign, or king, or queen, of Ireland—but king or queen of the united kingdom of Great Britain and Ireland. This proposal, therefore, is a plan for an entire alteration in the constitution and law of this country as by law established, and it is to propose in lieu of it a plan to place her Majesty, the undoubted Queen of the united kingdom, in a separate situation of Queen of Ireland, which she could not then again become without the consent and concurrence of the legislature of the united kingdom, together with the sanction of the throne to the act of parliament. Then it goes on to say—[Here the Chief Justice read the first, second, and third heads of the document to which he was referring.] Now, gentlemen, you will have to say, is that the language of petition, either to the legislature of the country as now by law established, or is it the language of petition to the Queen of the united kingdom as by law established; or is it the language of petition at all? Or is it not rather a demand? From the tone and the language used—is it in the nature of a petition, or is it in the nature of a demand which the people insist on as their right, this demand coming from that association, which at that time included, or was composed of, as Mr. O'Connell has stated elsewhere, something near three quarters of the entire population of Ireland; banded together by means of this association, and embarked in this association for a common purpose, in which each person, without distinctly knowing what it was, had committed and bound himself, by advancing more or less his money in its support. [His lordship then read the fourth head of the paper, commencing "the plan for the restoration of the Irish parliament." He next referred to the schedule of the different places to return members to the Irish parliament, showing their relative population, and the number of members to be assigned to each, and proceeds with the sixth, seventh, eighth, and ninth heads, concluding thus:] "The foregoing plan to be carried into effect according to recognised law and strict constitutional principle." What that may be is not defined, nor do I see how such a plan as that essentially in opposition to, and in violation of, the coronation oath and of the act of union as at present existing, could be carried into effect according to "recognised law and strict constitutional principle." It is utterly impossible to do it in the existing state of things. There is a way in which the union may be altered if the legislative wisdom of the country, together with the crown, should think fit to adopt it; that is, if the parliament of the united kingdom, with the concurrence and sanction of the crown, think proper to pass a new act of parliament, either repealing the union, or modifying it as it at present stands with regard to the connection between Ireland and Great Britain; that is the legitimate mode of doing it; but as long as the law stands as at present, there is the Queen's coronation oath to be violated, if it be attempted to be done, and there is the violation of the statute of 40 Geo. III., which they expressly endeavour thus to defeat and do away with. Now, there is no attempt made for petition to the crown; there is no suggestion for petitioning the united legislature; nothing of that kind is attempted; but it is the demand of the people of Ireland, their demand, organised and disciplined as they were at that time, which they require to have carried into effect according to their wishes and desires, by whom or how I do not know, nor does the plan specify. However, gentlemen of the jury, that plan was laid before the association; it does not appear that that plan was rejected. And then what were the association doing in the mean time while this authoritative demand on behalf of the people of Ireland was thus put upon the records of the association? Why, gentlemen, they were engaged in—I submit to you what its true character is—leaving it to you whether it was a continuance of the same sort of system, or whether it was, as they allege it to be, a peaceable mode of obtaining public opinion, and introducing or spreading free discussion upon political subjects. They thought proper to have meetings held in different parts of Ireland. Now, those meetings are called by Mr.

O'Connell "Monster Meetings;" * and though it is not admitted here that he or the association called more than a few of those monster meetings, yet you will see, gentlemen of the jury, by the repeated declarations of Mr. O'Connell himself, that he or we, that is, he or the association, did call those monster meetings; and you will have to say whether or not this is another way, and a more public way, of demonstrating the existing physical force and powerful strength of the Irish nation, banded together by the ties of the association for effecting their object by such means as the Attorney-General has alluded to. I am not about to go through a detail of all the meetings that took place in the different parts of Ireland; they have been stated to you by the Attorney, and by the Solicitor-General, and with regard to the existence, and the actual taking place, of those great assemblies and monster meetings, there is no difference between the crown and the traversers. That such meetings were assembled, were brought together, and that they did take place under the circumstances that have been described, it would seem that both parties are agreed. I do not lay much stress upon the fact of there being bands of music. There were bands of music in almost every instance, perhaps in every instance, and those bands of music were in very great numbers—thirty or forty different bands of music at a single meeting. There were flags, and there were banners, and there were inscriptions. But, gentlemen of the jury, I do not lay much stress upon that; even though in some cases a violence of expression might appear upon some of those devices, they go but a little way to establish the crime imputed, that is, in the main case to attempt by intimidation and the demonstration of physical power to overawe the councils of the nation. Those bands are a little thing in consideration of the case, and are not of great weight. They may in some measure relate to the question of organization and discipline, something contributary more or less to the existence of physical force, but the striking feature in the meetings is, the immense masses in which the people were collected, and the nature and the audience of the speeches that were made for the assembled multitudes upon those occasions. Generally those speeches were made by Mr. Daniel O'Connell, but he was not alone or singular in being the person who addressed the multitudes. There are other persons also included now amongst the traversers, who availed themselves of the opportunity of displaying themselves and making their sentiments known to the assembled multitudes. You will say, gentlemen of the jury, from the nature of those speeches, were they acting in pursuance or promotion of a common design, and that a criminal one; it will be for you to judge. From a few of the speeches I shall take the liberty of selecting some passages for your consideration. The first of those is the one of the 15th of May, at Mullingar; that was attended by Mr. O'Connell and by Mr. Barrett; I believe also by another traverser, but I am not sure of that, therefore do not take it down; I may have misconceived, but at all events by those two gentlemen I have named to you. Now that assembly was composed of multitudes of persons amounting to hundreds of thousands, brought together from various quarters, preceded by bands and banners; and to them Mr. Barrett in the way, I suppose, of free discussion upon the subject of the repeal of the union, and the spreading of free, popular, peaceable opinion, thought proper to make this speech. After some observations which I need not repeat—"With such a cause, with such a leader, the people and clergy on our side, who will despair?" There was then renewed cheering. Now you will observe, gentlemen, I am reading this from the *Pilot* paper of the 15th of May. This is Mr. Barrett's own paper. He cannot disarm whatever there may be of guilt, or criminality, or violence, in the speech so made, upon the representation, or assertion that it came out unpremeditately, on the occasion of the moment; that it was a hot effusion, for which perhaps he might be guilty of a breach of decorum or good manners, but the thing should be passed over because it was unpremeditated. He not only spoke the speech at Mullingar, but I take for granted that he wrote that speech down, and certainly after he came to Dublin he had it printed and published and circulated in his own paper, the *Freeman*.

The Attorney-General—The *Pilot*.

The Lord Chief Justice—This is not a chance speech, a sudden effusion which a man may let out and afterwards be sorry for; no, it is the premeditated speech of this gentleman, first spoken in presence of hundreds of thousands of people, or at least a great multitude, and afterwards deliberately put into print, printed by himself, by his own authority, and then issued to the public and circulated abroad. But to proceed with the extract of the speech. Mr. Barrett continued to observe—"If Ireland has missed former opportunities of regeneration, that is only a warning not to miss others. The moment has arrived. Let us seize on the present, and take care that this neglected moment may not become the regretted past of a future day (cheers). Irishmen, proceed then in the mighty work before you (renewed cheers). Persevere, and you triumph; hesitate, and you fail—to recede were ruin (cheers)." Then there is another passage in the same speech, which will show you what was intended. "They have proved already, that Ireland is of one mind, and that mind repeal (cheers). Can they unrepeal us by silencing us? We may be silent, but all the time it will be the silence of the old woman's cow (laughter). We shall be the devil for thinking. Yes, the silence of gunpowder, smooth on the surface, only indicating the depth of the waters beneath." Is that free or fair discussion, or the introduction of free opinion? "We will crouch, but it will be the crouch of the tiger, ready to take the sure, but terrible spring, and clutch our independence." For the dissemination of these views and these sentiments, Mr. Barrett attended that meeting, made that public display and exhibition, and afterwards took the further measure of disseminating the effect of his views, as far as his paper was circulated. That was on the 15th of May; and you see how simultaneously those operations in the association, and those meetings, and all those proceedings went on. The next I shall read to you is the *Pilot* of the 31st of May—another paper also of Mr. Barrett's. He gives you in this paper the speech of Mr. O'Connell at the great meeting at Longford, which was held on the 28th of May, 1843. You recollect, gentlemen, I dare say, a good deal that was stated at that meeting by Mr. O'Connell with respect to an English nobleman, a Roman Catholic nobleman, Lord Beaumont. Now there was unquestionably a great deal of personal abuse by Mr. O'Connell of Lord Beaumont, and very possibly (from Mr. O'Connell having complained of it), improper and heated language had taken place in England on the part of Lord Beaumont, when he was speaking of Mr. O'Connell. I am not intending to trouble you by going into particulars of those disputes between those two individuals, be that as it may; but I introduce this for the purpose of showing you what it was that Mr. O'Connell threw out at this meeting, with regard to what might take place in England, if opposition were made to his plans, or those of the association, acting as they were in the assembling and collecting of those multitudes. [Here his lord-

* The Right Hon. Sir James Graham has, we believe, the merit of having originated this name.

ship read an extract of the speech at Longford, in reference to Lord Beaumont, and in which reference is made to the story of Ellen O'Moore.] You recellect, one or more of the counts in this indictment accused the traversers of endeavouring to excite hatred and discontent amongst her Majesty's subjects, particularly the Irish people against the English. There is the first instance that I have read to you—a defined and specified instance—which must go directly, if at all, and if believed, in support of that charge. It is for you to say, gentlemen of the jury, whether you think that is a part of free discussion; whether you think that is a fair and legitimate mode of bringing to bear the weight of popular opinion in favour of a change of political questions; or is it, as laid in the indictment, a part of a system, in which two or more combined, for the purpose of raising hatred and disaffection and discontent amongst one class of her Majesty's subjects against another? What was the ruin of Ireland contemplated in this speech? Something existing in the imagination of Mr. O'Connell, who framed and fabricated this story for the purpose of having its effect. No such story as this kind ever existed; but it was a supposition, a kind of novel invented by Mr. O'Connell on the occasion:* and for what purpose? To have free discussion upon the subject of the union? or to have the passions of one part of the country excited against another, and deeds of violence provoked by the introduction of an unfounded false story of that nature? He said—"No, one blaze of powerful fire would reach through her vast extent, and in the destruction of England, would vindicate the country of the maddened and persecuted Irishman who would have reached her shores (cheers)." That is the way in which a story of that nature is received by the multitudes of Longford. Is that a singular instance of the means that were resorted to at those great monster meetings, for the purpose of producing and procuring those ends, which the persons had in view who caused them to assemble? Now I am going to read another passage; you will judge whether it be or be not of a piece with what you have heard before. On the 14th of June, 1843, there is the *Freeman's Journal* (this is Dr. Gray's paper), and the paper I have in my hand was read in the progress of the trial by Mr. Fitzgibbon, as counsel for Dr. Gray. Dr. Gray, in his paper of the 14th of June, has thought proper to publish a speech of Mr. O'Connell's, as given at a dinner at Mallow, which had taken place about two days before. [Here his lordship read a short extract from the speech of Mr. O'Connell at the dinner after the Mallow meeting.] Now, the word "enemy" occurs very often in many of the speeches made by Mr. O'Connell, either in the presence of the other traversers or otherwise; made also by other persons amongst the traversers in their respective speeches. Whether it be the word "enemy," or whether it be the contemptuous word "Saxon," it will be for you to say to whom is that designation attached? Can it have a meaning of any other description than that of English? That is for you to say. "I think I perceive a fixed disposition on the part of some of our Saxon traducers to put us to the test." Now it is true, as I before observed, that not only at the association, but also I believe without exception at all those public meetings, there was the most industrious inculcation not to violate the law. "He who commits a crime, gives strength to the enemy;" that is the maxim, that is the motto; and it will be for you to consider whether, upon the whole of the conduct, and demeanour, and speaking of the parties upon these occasions, they had in view actually peaceful behaviour, or whether those warnings and that advice were given for a particular purpose, to prevent the violation of the law, to restrain all violence, to abstain from all resistance to the law, until the time should arrive when they would be prepared to make such use of their existing force as circumstances might then suggest. "But, gentlemen, as long as they leave us a rag of the constitution we will stand on it (tremendous cheering). We will violate no law—we will assail no enemy, but you are much mistaken if you think others will not assail you (a voice, 'We are ready to meet them')." This is the state of temper which those meetings exhibited. "To be sure you are (cheers). Do you think I suppose you to be cowards or fools? (loud cheers). I am speaking of our being assailed (hear)." [Here his lordship read a very lengthened extract from the speech upon which he was commenting, referring to the circumstance noticed by Mr. O'Connell, that Cromwell had sent 80,000 Irishmen to labour as slaves in the West Indies, where they all perished within twelve years, and to the massacre of the Wexford ladies. His lordship observed]—This is all peaceable discussion, I suppose? If that be a true statement, I cannot tell; it is certainly not very conciliatory as between Ireland and England. "Yes, Peel and Wellington," the speech went on to say, "may be second Cromwells (loud hisses). They may get his blunted truncheon, and they may, O! sacred heaven——" The paper which I am now reading from was read by Mr. Fitzgibbon.

Mr. Fitzgibbon—Allow me to correct a mistake into which your lordship has fallen on a matter of fact—I did not call for or read that paper.

Chief Justice—I would not assert it but that I took it in my own handwriting at the time. This was read by you, Mr. Fitzgibbon.

Mr. Fitzgibbon—I think your lordship is under a mistake: the crown called for the paper of the 14th June, and that is the paper here read from.

Chief Justice—This paper I took from you at the time, and you read that, and then you stopped.

Mr. Fitzgibbon—Your lordship is under a mistake. My learned friends all agree with me that I did not call for a single *Freeman* for 1843.

Chief Justice—I may mistake; but it is very strange the contrary appears in my handwriting.

Mr. Close—I took a note with considerable care during the progress of the case for the crown. Mr. Vernon was called upon to read from the *Pilot* of the 14th June an account of that meeting at Mallow, and he read an account of that meeting, the procession, and the speech at the meeting; and in a subsequent part of the same *Pilot* the speech of Mr. O'Connell, at what is called the banquet. There was then read from that paper the fact of a speech having been made by Mr. Roche, the member for the county.

Chief Justice—I may be as every one is liable to be; but I took it down in my own handwriting at the time, and thus I have it.

Mr. Fitzgibbon—I would have observed on it had I read it.

Chief Justice—No matter by whom it was read—the paper was proved, and I will go on with it.

Mr. Fitzgibbon—I don't dispute that it was in evidence, but I did not call for it.

Chief Justice—It was proved by the crown, gentlemen, instead of by Mr. Fitzgibbon; but it makes very little difference. What is the meaning of introducing a statement of that nature, which, if it ever existed, or if there be a word of truth in it,*

* If his lordship's reading in ballad lore had been but one-hundredth part as extensive as in law it has confessedly been, he would not have made the *invention* of this tale a portion of the evidence against the traversers.

* Men talk of misrepresentation; but who shall speak in terms appropriate of a Chief Justice casting doubt—to influence a jury—upon history written by the men who perpetrated the massacre, or at all events by those who were concerned to depict them as generous enemies, not exterminating assassins?

took place two hundred years ago? For what purpose is that introduced? Is that, gentlemen, ask yourselves, for the purpose of free discussion upon a political question, or is it for the purpose of exciting by those details, whether true or false, the animosity or hatred of the Irish against the English? "I am not at all imaginative when I talk of this, but yet I assert that there would be no danger of the women now; for the men of Ireland would die to the last in their defence. (Here the whole company rose and cheered for several minutes.) We were a paltry remnant then—we are nine millions now." That is not the only place, or the only occasion, where the assembled multitudes were treated with stories of such horrors and such profanations committed by the English against the Irish. Amongst other very remarkable meetings which were held under the auspices of Mr. O'Connell, and those who go with him, was a great meeting which was held at Tara, in the county of Meath, on the 15th of August last—a place of particular veneration. It is a spot *religione sacer*, and selected upon that account, and the history connected with it. Captain Despard, who attended that meeting, a stipendiary magistrate, supposed the number of persons assembled there to have been three hundred thousand. At the association, Mr. O'Connell, and those in the interest of the association, described it as infinitely greater, amounting, according to some, to a million persons; according to others, and I believe Mr. O'Connell himself, to a million and a half. The people so assembled were addressed by Mr. O'Connell and others; and, gentlemen, there was a dinner, as there had been at other of the monster meetings—*Epotaque flumina Medo prandente*—and the conviviality of the evening was enlivened by a speech of Mr. O'Connell's. Gentlemen of the jury, there is the same horrible story of the most astonishing barbarity and cruelty, repeated again, after a considerable interval of time, in another place, to another assembly; and thousands and hundreds of thousands are again excited by the same detail of British cruelty, British barbarity, committed two hundred years ago, with an intimation that such scenes might occur again. "From that day, when the barbarian Saxon delighted his assassin soldiers by the slow process of individual murder, until the three hundred females were, one after the other, stabbed and massacred. Even Tara hill is stained with modern blood, and the bones are not mouldered yet of the individuals who were massacred in hundreds upon it." What that alludes to I cannot tell.* "If such another force were brought from England now—if it were announced to the people that some paltry Orangemen were armed, and that foreign soldiers were brought over to butcher, to slaughter, to dishonour; oh! tell the people that, and see whether they have melted away like the snow (hear, hear, and tremendous cheers)." Gentlemen of the jury, it appears to have been his constant practice at most, if not all of those meetings, to invite the assembled people to obey his call, to be ready and assemble again whenever he might think proper to call for them. They would be found to come together again, inspired, no doubt, by the tales of horror and cruelty and barbarity which he had detailed as having taken place by the ruffian soldiers of Great Britain, and of which he more than intimated that there was a great probability of a recurrence; and the Tara meeting is one of the occasions in which he intimated to the assembled people, that he did not think they would be found to have melted away like snow, if an English army came again to this country—they would collect again. Is this threat and intimidation, or is it free discussion? Is it seeking to procure a change in the law and constitution by intimidation, and the show of physical force, or is it free and fair discussion, such as might properly be adopted and resorted to by all or any persons who have political rights to advance? It is for you to consider what is the meaning and object of those speeches? What is the meaning of those displays, those statements of physical force—"nine millions of people joined with us?" That is what he signifies in express terms; what is the meaning of it? It is for you to say, gentlemen of the jury, whether it is an answer to that portion of the charge or statement, that no breach of the peace has been committed at any one of those meetings. It is quite true, and Mr. O'Connell, in his address to you, took great credit to himself for there not having been even an accident, such was the organisation and discipline of this immense body of persons. But, however, gentlemen, I do not wish to anticipate that; I will mention it again when I come to another part of the case. I have now detailed to you the facts of a similar nature, detailed and stated by Mr. O'Connell on the occasion of three several monster meetings. I now go to another. Amongst other places to which he went to hold a monster meeting, or to assist in it, was Clifden, in Connemara; a meeting which took place on the 17th of September. There were many meetings on or about the same time, but I do not think it necessary to go through them, and I pass over, without comment, the meetings at Donnybrook and Loughrea. The notes of the Clifden meeting were supplied by Mr. Ross, who attended there on behalf of the crown, and took, what he swears to be, an accurate note of what occurred. There was, as usual, a great assemblage. There was a numerous body of persons on horseback, who, you will find, are denominated by Mr. O'Connell as "mounted cavalry," of which at the time, Mr. Steele, the traverser, appears to have taken the command, for the purpose of forming them into regular order. There were speeches made in the morning. There was a dinner, at which Dr. Gray attended, and made a speech; it was not a very long one, but it contained amongst others, this statement:—"When I go back to Dublin I shall tell them, that the people of Clifden are determined to part with life before they will desert the cause of repeal; that they respect their country and themselves, and will stand boldly by their colours. Let no tyrannical landlords or agents cause you to flinch. Where is the man who dare come forward and say he will eject you because you are repealers? Oh! you are too strong for that now. Rely on your friend, and be not, by any artifice or trick, drawn from the position you have taken. Let peace and order be your motto, and you will finally triumph." Mr. O'Connell also made a speech. And observe, gentlemen, although it is somewhat prolix and tedious, the particulars of this speech, it has a bearing upon many parts of this alleged conspiracy; if I do not mistake, it has a bearing on every part of it, but you will have to consider it all for the purposes of your verdict. "This proves to demonstration"—(says Mr. O'Connell)—"that Ireland can be, as it shall be, a nation. I may be asked why not then rush to the conclusion at once—that having physical power surrounding me during the last six months infinitely greater than any conqueror ever had—the master of thirty legions had not more physical power at his command than I have had during the last five or six months. It may be asked, why do I not use it? My reply is—yes, I will use it, but not abuse it. Its abuse would be in illegal and criminal exertion; its use in mild, legal, and moral

* Such is the knowledge of our history which our foremost functionaries possess! What a happy illustration of the miserable condition of a country without nationality! The most prominent members of its executive do not deem it necessary to know some of the most recent facts in its history.

combination. I have given England and Europe a proof of how much physical power may be concentrated with perfect safety to life and property, and even without tendency to insult and injury. I have gained that step, and I defy the British ministry to take it from me. I have demonstrated that I have more men, more men of a fighting age—why should I not use that word?—ready to stand by their country, than ever evinced that determination before." Has that a bearing, gentlemen, on the question whether these speeches were made to these assembled multitudes for the purpose of intimidation, for the purpose of overawing the legislature, for the purpose of letting the ministers hear of—not his arguments, his peaceable arguments on behalf of free discussion, but his statements of the power he held in his hands? "I say to England, we will use no violence, we will make no attack, we will reserve our force for defence, but attack us if you dare—(cheers)." The speech went on to speak of the arbitration courts. "We will appoint arbitrators for everything the people may choose." We will appoint arbitrators. "And I trust before I am twelve months older to take half the business out of the superior courts. This is laying the basis of a judicial system." What is the law upon the subject? Whoever interferes with the Queen's prorogative, judicial or otherwise, is guilty of an high misdemeanour. "I defy all the crown lawyers to find a flaw in the plan." It is not necessary for me to discuss the law with Mr. O'Connell; but that is not the way I put the law to you. Now here is a further proof of what he and his multitudes are doing, independent of the crown, independent of the legislature. "He had made arrangements to find out what parts of Ireland should be entitled to return members of parliament, and having ascertained that, he would next have distinct repeal wardens who should be called returning officers, ready to act. The result would be, that three hundred gentlemen, from the several cities and counties of Ireland, would assemble in Dublin, and they would have the frame-work of an Irish parliament complete. The mere form of attaching a bit of wax to a piece of parchment being all that would be required to render it all that they wanted." He and the Queen, I suppose, going in concert together for the violation of her coronation oath. "Thus he was prepared to play the game to the last with the English government. Thus he hoped to checkmate them, but in doing so it might be necessary for him to go slowly." He kept quiet in the mean time—"And if so, neither the scoffs of an enemy, nor the taunts of a pretended friend, would induce him to go faster (hear, hear). Without going into the convention act, or any other act, he said they would have, as he had stated, three hundred gentlemen meeting together in Dublin to discuss the state and prospects of Ireland, and that society might easily send a deputation from their body to the English premier to represent to him the position of the country, the necessity of according to the just demands of the Irish people, and the extraordinary resources and power which they would hold in their hands (hear, hear). Why did not the English minister know that it was in their power even to let the harvest rot upon the field with the exception of the poor man's share of it? To stop the supplies on which the government depended, and to make the whole machinery of the state stand still (hear, hear). He had suffered those observations to escape from him, but he need not speak his mind further. He would only repeat that they would checkmate the government of England (loud and continued cheers). England could no longer bully the nations of the world; she felt her own weakness, and dared not, as she used to do, insult her neighbours. Far from bullying or offering insult she dare not even take the position to which she is entitled (cries of hear, hear). England is weak, and it is because she has not the strong arm of Ireland to rely on that she is weak (cheers). They were now come to a period when there could be no compromise. They should have repeal and nothing but repeal (vehement and prolonged applause)." How was this to be done? By a temporary loan of Aladdin's lamp, which by accident those gentlemen were to come into possession of. Now here is another part of this meeting for full, and free, and fair discussion. "For the present year my monster meetings are nearly over. There will not be above seven or eight more of them; but before I have done with them, the demonstration of moral combination, and of the mighty giant power of the people of Ireland, will be complete. Their discipline will be complete. Why, you saw how the cavalry fell in and took their station, five by five, at the word of command of Tom Steele." That is at that meeting at Clifden. "No aide-de-camp of the lord lieutenant was ever obeyed so cheerfully as he was. The people of Ireland are moral, religious, and disciplined. Their universal voice is shouting around me. I have with me nine-tenths of the nation, and that portion which is opposed to me is in a state of delusion from which they will soon be roused. I believe I shall have nine-tenths of Ulster with me. I know I have three-fourths already. How delighted I am with the additional testimony Connemara has afforded me of the confidence of the people." This is the language used by those gentlemen at that assembled meeting at Connemara. It is for you to say, gentlemen, is that the language of calm and reasonable discussion? Or, is it the show of defiance and boldness of a man exulting in "the giant power of the Irish people," who he said were under his control, at his beck? And if an individual is thus to proclaim the power he has over those countless multitudes, in order that it may be exhibited to the English ministry, as he says himself, is it to intimidate, or is it to discuss fairly a particular question? Gentlemen, there is another meeting, at Mullaghmast, at which I have not yet quite arrived; and I wish to call your attention, as we pass along, to the evidence given by Mr. Jackson, respecting the meeting of the association, on the 29th of August, 1843. And you will see (and you are to judge of all these things) whether this be consistent with, and in continuation of, the same sort of threat and intimidation that had taken place before. Mr. Jackson gives this evidence of what was stated by Mr. O'Connell at the association on the 29th of August. "And now he had again his bill of indictment against that miscreant ministry, where the people of Ireland were accused of being disaffected. He admitted they were disaffected, and the country was now dissatisfied, and if the union were not dissolved, he much feared that a sanguinary war would hereafter lead to perpetual separation." Is that a threat? or is it fair discussion? So far there is no difference, or imputation on the correctness of Mr. Jackson. Mr. O'Connell says that Mr. Jackson had made a mistake of a word in the next sentence, and put in one word for another. I therefore will not read it, because it is better that nothing of a questionable nature should go before you in the way of evidence, nothing disputed. Now, gentlemen, I come to another very important meeting, and with that I mean to close what I have to say on the subject of these meetings. There was a great meeting at Mullaghmast, which took place on the 1st of October last. Gentlemen, this meeting took place sometime after the delivery of the Queen's speech, on the close of parliament. That speech is not in evidence before you, further than this, that the fact of it is adverted to by the traversers in some of their speeches, but further than that you are not to take into your consideration what were the words delivered by her Majesty on

that occasion. Her Majesty's speech, proroguing parliament, was delivered, I believe, on the 24th of August. Some short time after that it was determined by the association that another great monster meeting should be holden in the county of Kildare, at a place called Mullaghmast. This meeting was most particularly and expressly got up under the immediate direction of Mr. O'Connell and the association. The printer for the association, Mr Browne, has been produced, and examined as a witness before you; and he has deposed, amongst other things, that at his printing office, under the immediate direction of Mr. Ray, the secretary for the association, he (Mr. Browne) printed a number, amounting to somewhere about two thousand, of what is called the yellow placard, calling upon the people of the province of Leinster to attend that meeting. Here is a copy of the yellow placard, and nobody can doubt, who has heard the evidence in this case, but that this meeting at Mullaghmast was one of a most deliberate character. "Leinster for repeal. Men of Leinster, to Mullaghmast. The province will declare for repeal." They will declare for it; not they will petition for it. "They will declare for repeal on the Rath of Mullaghmast, on Sunday, the 1st of October; the corporations of the province will attend; after the meeting the Liberator will be entertained at a banquet on the Rath. The line of procession will go through Kilcullen, Colvertstown, and the long avenue to Mullaghmast. The bands and horsemen to muster at Kilcullen." There is something of military diction in that. "Once more, men of Leinster, remember Mullaghmast. Dated 21st September, 1843. Browne, printer, 36, Nassau-street." That is not equivocal. There did assemble there thousands upon thousands, equal in point of numbers to the vast tide of persons that assembled in and upon the hill of Tara—overwhelming multitudes. They came there, as the placard announces, attended by bands, and the cavalry mustered, I presume, at the place appointed. They began to assemble at an early hour in the morning, because millions or thousands upon thousands cannot be brought together in a moment; and it took a long time to bring together such an extraordinary demonstration of physical force. Recollect the character of those forces given by Mr. O'Connell at the Clifden meeting a few weeks before. They came attended by bands and banners, a great number of which had inscriptions upon them. Early in the morning there was circulated, at Mullaghmast, a particular publication having a direct reference to the subject, for it called upon the people to remember Mullaghmast. Now you will observe, gentlemen of the jury, that this paper is proved to have been circulated to the amount of thousands, at least two thousand, about the Rath, or wherever it was the meeting was assembled. It is in proof that the multitudes who came from Dublin, many of them, hundreds of them, came with wands, and repeal tickets stuck in their hats, with a designation marked "O'Connell's police;" and you have heard a great deal of the power and efficacy of that police in the preservation of peace and good order; that is to say, that peace which consists in the absence of riot or disturbance, but how far it consists in the absence of what is criminal is another question. These papers, giving a description of Mullaghmast, were in circulation to the number of at least two thousand. However, it is said that that paper was not printed by Mr. Browne, the printer of the association, and therefore it was not to be taken as one of those badges circulated for the purpose of the meeting. How did it happen that in no one instance did those celebrated police of Mr. O'Connell's attempt to stop the vending or the circulation of it? A circulation of two thousand copies could not have taken place without the knowledge of this police. Was there a hand lifted up to prevent the distribution of this infamous publication? Gentlemen, let us see whether there is anything in this statement so very inconsistent with the scenes of cruelty and bloodshed that had been described by Mr. O'Connell himself at Tara, at Mallow, and elsewhere. And afterwards let us see whether there be any inconsistency in the statements made in it, and those made in the speeches delivered at Mullaghmast, by Mr. O'Connell, Mr. Barrett, and others of the traversers. [Here his lordship read the contents of the paper proved in the course of the trial to have been sold at the price of a halfpenny each, at the meeting on Mullaghmast. It was headed: "The full and true account of the dreadful slaughter and murder at Mullaghmast."] That is the conciliatory, argumentative, peaceable, and tranquil way in which the people assembling at this meeting were prepared for it. I say no attempt was made by any of Mr. O'Connell's police to prevent the circulation of this paper. Now, gentlemen, so far were they from putting down, or attempting to put down, the circulation of that story, and that horrible statement, you will find that in the speeches made by Mr. O'Connell, one in the morning to the assembled multitudes, and the other at the dinner, or banquet, the very same story, not exactly perhaps in the same words, but in substance and in spirit altogether the same, was repeated and delivered by him. What object had he in that? What object had they who attended him on that occasion, and took part in his deliberations, some of whom repeated, in language of their own, the same story and the same sentiments? The history of what took place at Mullaghmast is given by an unimpeached witness, Mr. Bond Hughes. Inscribed on the banners were the following—"The man who commits a crime gives strength to the enemy." That is a favourite motto. "Ireland must be a nation." "Repeal." "A country of nine millions of inhabitants is too great to be dragged at the tail of any nation." Is that argument or is it threat? Men, with inscriptions on white paper round their hats with "O'Connell's Police," did duty in keeping order on and about the platform. Then he speaks of several other things which I need not state. Mr. O'Connell, upon the platform, says—[Here his lordship read a large portion of Mr. O'Connell's speech on taking the chair at Mullaghmast, in which he adverted to her Majesty's speech from the throne at the conclusion of the session of parliament.] Whatever that (her Majesty's speech) was, we have it not before us in evidence, but it is plain from the context, that it was a speech disapproving of the steps that were then being taken, and had been taken, by the repealers of this country. Because it was presumed that that speech had been delivered by the Queen, or composed by the ministers, Mr. O'Connell states he called together this enormous meeting at Mullaghmast. "I was convinced that their unanimous determination to obtain liberty was sufficiently signified by the many meetings that already took place; but when the Queen's ministers' speech came out, I saw it was necessary to do something more; accordingly I called a meeting at Loughrea, a monster meeting; we called another meeting at Clifden, a monster meeting; we called another meeting at Lismore, a monster meeting; and here we are now upon the Rath of Mullaghmast (cheers). At Mullaghmast, I chose it for an obvious reason." And this is the deliberate reason assigned by him for his preference—"We are upon the precise spot in which English treachery, aye, and false Irish treachery too, consummated a massacre unequalled in the crimes of the history of the world, until the massacre of the Mamelukes by Mehemet Ali. But don't think it was a question at Mullaghmast between the Catholics and the Protestants, it was no such

thing; the murdered people were Catholics, to be sure, but there were a great number of the murderers also Catholics; because there were traitors then to Ireland, and there are some Catholics of the same kind existing now; but we have now this advantage, we have many honest Protestants joining us, in hand and in heart, for old Ireland and liberty." Is that, or is that not, in unison with the printed paper circulated over the Rath of Mullaghmast in the morning which I read? "Oh! my friends, I will keep you clear of all treachery; there shall be no bargain, no compromise, nothing but the repeal and a parliament of our own in College-green. I have swelled the multitude of repealers, till they are identified with the entire population of the soil, or nearly so." Is that, or is it not, a display and a boast of physical force? "I have seven-eighths of the population of Ireland enrolling themselves as associates (cries of 'More power to you'). I don't want more power; I have power enough. All I ask of you is, to allow me to use it. I will go on quietly and slowly." Then he turns to another subject—"I am arranging the plan of a new Irish house of commons. It is a theory; but it is a theory that may be realized in three weeks" How was that to be accomplished? What machinery was to be resorted to to bring about the establishment of a new house of commons for Ireland in three weeks? Was that to be done by physical force, or was it to be done otherwise? "The arbitrators are beginning to sit; the people are submitting their differences to men chosen by themselves. You will see by the newspapers, that Dr. Gray and my son, and other gentlemen, held a petty session of their own. It cost the people nothing. We will have chosen men of our own, in the room of magistrates whom they have unjustly deprived." That is the reason that he gives for the establishment of arbitration courts; not with any view of preventing the practice of administering oaths, not with any view of assimilating themselves to the peaceable practice of the Quakers; not with any view to assimilate themselves to the established practice of the Ouzel Galley in Dublin, which acts under process derived from the superior courts; but the object was to put into these arbitration courts the magistrates who were dismissed by the government for attending repeal meetings. "I shall go on with this plan." Now at Connemara he said, that "in laying this plan for the establishment of arbitration courts, he was laying the foundation of a new judicial system for courts of justice." "I shall go on with this plan until I have all disputes decided by judges appointed by the people themselves. I wish to live long enough to see justice realized in Ireland, and liberty proclaimed throughout the land." Is that, or is it not, in other words, saying that justice is not administered by the courts of law now in Ireland? Is it, or is it not, a declaration made for the purpose of bringing into disrepute the courts of law existing in Ireland, and the administration of justice in them? "It will take me"—take me—"some time to arrange the state of the new Irish house of commons—that plan which will be submitted one day to her Majesty. Let the English have England, let the Scotch have Scotland, but we must have Ireland for the Irish. I won't be content until I see not a single man in any office, from the lowest constable to the lord chancellor, but Irishmen. This is our land, and we must have it. We will be obedient to the Queen, joined to England by the golden link of the crown, but we must have our own parliament, our own bench, our own magistrates, and we will make some of the shoneens now upon it leave it." What he means by that word I do not know. "In 1798 there were some brave men at the head of the people at large; there were some valiant men, but there were many traitors who left the people exposed to the swords of the enemy. On the Curragh of *Kildare you confided* your military power to your relations; they were basely betrayed and trampled under foot; it was ill organized, a premature, a foolish, and an absurd insurrection; but you have a leader now who never will allow you to be led astray." I need not, gentlemen, go further with that speech. At the conclusion of the morning meeting a resolution was passed to the following effect, and you will see whether or not its language is in unison with the sentiments openly expressed and inculcated by Mr. O'Connell, in the minds and feelings of those assembled thousands:—"Resolved—That this meeting hereby declares its devoted loyalty to the person and throne of her gracious Majesty Queen Victoria, Queen of Ireland"—Queen of Ireland—"and its determination to uphold and maintain inviolate all the prerogatives of the crown, as guaranteed by the constitution." And that was carried unanimously. The next resolution is—"That we the clergy, gentry, freeholders, burgesses, and other inhabitants of the province of Leinster, in public meeting assembled, declare and pronounce, in the presence of our country, before Europe and America, and in the sight of heaven, that no power on earth ought of right to make laws to bind this kingdom, save the Queen, lords, and commons of Ireland; and here, standing on the graves of the martyred dead, we solemnly pledge ourselves to use every constitutional exertion to free this our native land from the tyranny of being legislated for by others than her own inhabitants." That is the end of the morning meeting.

The court here retired for a short time. When their lordships again resumed their places,

The Chief Justice continued—Now, gentlemen of the jury, the next transaction at that meeting at Mullaghmast, to which I call your attention, is a speech of Mr. Barrett, who is accused as a conspirator in the present indictment. Mr. Barrett spoke after the dinner:—"This was a most magnificent meeting, and an honour to the country. It was a meeting that will be recorded in history, and recorded as one of those events which have influenced that great success of national independence which is now all but consummated." Influenced, gentlemen, by the monster meetings. "I confess that I sometimes feel that it was almost a blessing, that Ireland has gone through these forty-three years' ordeal, when it has produced such national virtue; when it has consummated an important state secret, peaceful pressure from without." There might be two meanings to that, gentlemen. Recollect he begins by saying that these great meetings are the means by which, it may be said in history, these ends were accomplished. "It has been said, that as we visited the Hill of Tara to recal the virtues and glorious days of Irishmen, in order to awaken the sentiments by which we may be restored to independence, so we visit the Rath of Mullaghmast to-day, to recollect the treachery by which Ireland was betrayed, and to prevent, as one of these letters said, the credulity which would again expose this oppressed country to Saxon turpitude. The English, to be sure, say that there never was any massacre at Mullaghmast. The wretch of Glencore was called the good William; and the profligate harridan, Queen Elizabeth, the people called good Queen Bess; and even in our own times, Castlereagh said, in the face of England, that he never heard of flogging of people in Ireland, while their ears were tingling with the groans of the dying, and the shrieks of the tormented; when Sir Henry Hardinge could say there was no torture in Affghan, no burning of live people, no cruelty or outrage in the English army; when he could say, that we were all receiving letters in private of the most horrible cruelties; why, do you think they will persuade you that there was no massacre at Mullaghmast? In fact the same

exact trick cannot always be played twice. A set of chieftains may not always be inveigled by the government; the times may alter, but the spirit of England is the same, whether it is manifested in the breaking of the solemn pledge of hospitality, or the solemn pledge of political justice." That, gentlemen, was Mr. Barrett's part in the drama so carried on at Mullaghmast. Mr. Daniel O'Connell made a speech also at the dinner or banquet at Mullaghmast. You are to judge whether it is different from the tone and manner of his previous address to the assembled multitudes. "Gentlemen, this was and is to me a most delightful day—a day full of consolation, because beaming with hope—a day full of delight, because contradictory of the anticipations of our enemies. Oh! how glad I am that we determined to meet at Mullaghmast! They declared that the people would become indifferent, and that in apathy and in silence our efforts for the regeneration of Ireland would terminate. Mullaghmast is my answer." That is, the assembly he had collected there. "At first you remember, they threatened us with war. Peel was valiant for his hour, and the Duke of Wellington, of course, who was caught napping at Waterloo one fine morning—the Duke of Wellington declared there was nothing for it but war; we replied in a tone of firm defiance, and the threat of war vanished, as they say the exertions for repeal would vanish. Every man is as convinced as I am of two things; first, that repeal can be obtained; secondly, that the only way to attain it is, the peaceful uprising of the masses, and swelling above all the pitiful, and paltry, and minor difficulties that are in the way." The peaceful uprising of the masses! "I am certain of it, my mind rests at ease, I can sleep to-night tranquilly, and perhaps dream of Ireland; I will awake thinking of the next step in the progress of her freedom, and those steps are not difficult. The administration of the law"—that is, in the courts of justice; now mind this, gentlemen, it relates to one of the objects of the imputed conspiracy—"the administration of the law we want to get out of the hands of the enemy; the arbitration courts are working well, and there are already judges selected by themselves. It is not by accident"—(and here he recurs to the same defamatory matter again)—"it is not by accident, that to-night we are on the Rath of Mullaghmast; it was deliberate design. Where my voice is sounding, and you are quiet hearers attentively listening, there was once raised the yell of despair, the groans of approaching death, the agony of inflicted wounds on the perishing and the unarmed; in this very spot they fell beneath the swords of the Saxon, who used them securely and delightfully, in grinding their victims to death. Here the Saxon raised a shout of victory over his unarmed prey; upon this very spot three hundred able men perished, who, confiding in Saxon promises, came to a conference of the Queen's subjects, and in the merriment of the banquet they were slaughtered." Is not that the very story that was circulated round the Rath of Mullaghmast in the morning? "Oh! Saxon cruelty! how it does delight my heart to think you dare not attempt such a feat again!" Not that you would not, but that you dare not. "Oh! England, England! thy crimes have filled the cup of bitterness, and the hour of the vengeance of God, I much fear, cannot be far from you." Supposing there were any truth in this story, it is two hundred and fifty years ago. "At all events, suffering Ireland, you will have your days of glory. I defy Saxon ingenuity and falsehood to show me any treaty the Irish violated, to show me any one compact they ever broke, to show any one faith they plighted they did not redeem. Oh! my glorious countrymen, endowed with every virtue, the contrast between you and your oppressors is to me the subject of exultation. In every thing you have proved your virtue and generosity; in everything they have proved their cruelty and their treachery." Now, gentlemen of the jury, ask yourselves is that free discussion? Is that the language of fair investigation and inquiry; or is it excitement of the most extraordinary kind, produced by the repetition of stories, for the truth of which the person who narrated them could not vouch? Was this a fair sample of legitimate discussion, or was it evidence of hatred mingled with the gall of bitterness? Recollect, that was the second speech at which he had introduced that subject on that same day; recollect, that he had chosen and nominated this place of meeting, for the purpose of bringing before the assembled multitudes the recollection of the alleged atrocities, barbarities, and cruelties of England against Ireland; he chose that to be the place, where he would bring together, and make a display of a greater number of men than had ever been assembled at any of the monster meetings, with the exception perhaps of that of Tara, at which he appears to have stated there were assembled at least a million and a half of persons. What object had he in that? What object had those who accompanied him, who partook of the banquet which was celebrated under such circumstances? What object had they in going there and making speeches to the like tendency, and with the like effect? Were they conspirators, or were they not? Were they, or were they not, joined and confederated in one and the same common design? What their design was is somewhat evidenced by what occurred at another place—at the repeal meeting at Tullamore, the evidence of which has been detailed before you upon oath by an apparently trust-worthy person, at least a person without impeachment, by name John Ulick M'Namara. I am not going to detain you long with this; but there is a curious passage in his account of this meeting. After having given a detail generally about the masses, about the banners, and about the arch, which was afterwards taken down by Mr. Steele, and to which I do not now further allude, it appears that the meeting was held, and Mr. O'Connell joined it. He said, that "The Rev. Mr. Nolan, of Dunkerin, moved the adoption of a petition to parliament, praying for a repeal of that fatal measure, the union." That is quite regular, and quite proper; but was such a petition prepared or signed by any body, or ever presented to parliament? Of that you have no evidence. However a design may be masked, it is the duty of the jury to see what the real character of it was But there is a part which struck me as very curious. "The Rev. Mr. Kearney: I hold in my hand a resolution for the adoption of this great and important meeting"—(Mr. O'Connell was present at the time of making this speech)—"pledging them to perseverance in the agitation that has been set on foot by the Liberator of the country, and has continued so long to the great credit of the nation. As no political good was ever achieved by depressing the people, so no public grievance was ever redressed but through the exertion, determination, and perseverance of the people.

'Freedom's battle once begun,
Though baffled oft, is ever won.'

Repeal will be won, and I doubt not at no very distant day. Peel has admitted the evils of Ireland, and that he has no remedy; he must give up to somebody. The Whigs, who boast of having conferred so much on Ireland, and boast more of what they would confer were it not for the opposition of the Tories, would of course come in." That is, if the present administration went out. "They imagine, that by a course of liberal government in Ireland they could put a stop to the repeal agitation—by giving up the church temporalities; that by en-

larging the franchise and increasing the constituency in Ireland, they hope to detach us from the great and paramount consideration of this question. They might concede all these, and even more. Most likely they would tempt the Liberator with fine promises, in addition to some good acts; but he was too wise for them—he was never yet over-reached by an English government—he has always been the watchful, wary, and undeceived advocate of his country's wrongs, and we may safely leave him to take everything that they give; but as soon as he gets all, never was the steam of repeal up till then." That is the character of Mr. O'Connell given by his friend, the Rev. Mr. Kearney, who appears to have introduced him with those sentiments, and that description in the way of eulogy. "Allow me then, not to take up your time any longer, to read the resolution." Now did Mr. O'Connell deny that, when he came to speak? Did he dissent or differ from that? Did he say that would be professing one thing, and acting upon another; that that would be base and disingenuous; that he rejected and repudiated it? Nothing of the sort. Here is what he said about it; this is from Mr. O'Connell's speech. "When I addressed former meetings, I told them to join me, and all would soon be right; but now I tell you that it is all right, the nail is in the hole—(a voice, 'drive it home')—aye, drive it home, and I will clench it on the other side. I am quite ready to respect the vested rights of persons at present in possession, but though I am content, I see from what fell from my friend Mr. Robinson, that it is not safe for the parsons to delay in joining with us to have an adjustment of church property. We will take anything we get now, but if they delay, we will take the whole; we will have egg, shell, and all." And he concludes that speech thus:—"I claim the highest meed of praise for Irishmen. Oh! little the Saxon knows that gentleness of manners that arises under religious enthusiasm, that forbearance that springs from the religious principle deeply impressed upon your hearts from your earliest infancy. But it is that very religious forbearance that makes you kind to each other, and that enables your women to come into the greatest throngs without being injured, and certain of not being insulted. But if it should be necessary for you to remain in the field till blood shall flow, general never stood by such soldiers; I have the bravest and most moral people in the world to deal with. But you must combine, there must be no treachery among you, and it is treachery to vote for any one but a repealer. I have heard of some parish in this county where some repealers voted for a Tory; however, we will say no more about it at present, but now I give command, never to vote for any Tory, nor for any one else but a repealer. Let every one join with me in the call for repeal, and the shout"—not the free discussion—"will reverberate to England; the Saxon will be aroused from his slumber, the echo will be borne on the wild waves, and the union shall be—must be repealed." Gentlemen, the next speech made by one of these gentlemen who are accused of this conspiracy at that meeting at Mullaghmast, was by Mr. Ray. It has been said to you by the counsel of Mr. Ray, that he was only a servant of the association, a hired servant, and acted in the earning of his wages. If it were so, gentlemen of the jury, if that were all that Mr. Ray ever did, why, I would say he is just as guilty as if he were not the secretary of the association at all. His receiving wages from that association, if he does, no more entitles him to commit a crime, than if he held no situation of the kind. It might as well be said (I do not know whether any of you are old enough to remember the transaction), that Scotch Andrew could not have been guilty of the murder of Mr. M'Donnell, because he was in the service of his master Mr. Fitzgerald, and acted under his orders; yet Scotch Andrew was tried, convicted, and executed for the offence. But here Mr. Ray was not confining himself to his office and situation of secretary. "Mr. Ray—Who would have thought a twelvemonth ago that our repeal association would be now in its present towering career? No one could have supposed it except one the master-mind that designed it. Where is the ministry that would dare coerce us? and what are the objects of the repeal association?" This is at Mullaghmast, gentlemen, and it was a servant who delivered this speech; it is the third of the speeches I am referring to. "To give to the people employment, to give them food, to give them raiment, to give them comfort; to give Ireland a name and fame, and to teach her people that she is a country worth living for. The career of the association at present is yet but short, but short as the period has been, it has done much for the people; there is no desire which it will not speedily accomplish, already it has brought to the door of the poor man that inestimable luxury, cheap justice." Now this is in reference to the arbitration courts; here is another of the objects of the alleged common design. "Arbitration courts have been established for the first time, and the poor man can taste of that jewel beyond all praise, and dissolve it in the bitter cup that has been filled to the brim; he has cheap justice at his door, which neutralises or mitigates his bitter draught. But now, my friends, standing upon this rath," (here again making an allusion to the same dreadful massacre,) "which must be a perpetual monument of British perfidy, in the dread presence of those martyred spirits, we have assembled this day to record, that although as Christian men we may forgive those atrocities, that we never will hereafter be guilty of a treason to ourselves, or our country, in confiding for one moment in the British." There are three persons whose speeches I have read; Mr. John O'Connell also spoke at the dinner—there were four of the alleged conspirators present. Dr. Gray was the fifth, who also spoke at the meeting; and Dr. Gray spoke with reference to his peculiar part of—this which appears to be a general system—the setting up of courts of their own, appointed by the people and not by the crown. Dr. Gray:—"I have often felt proud on many occasions when I was warmly received by my fellow-countrymen, for I knew I had no right whatever to a warm reception; they saw that there was great sincerity in the common cause, but on no occasion did I ever feel more pride than I do now—proud not only at my name being connected with the arbitrators of Ireland; proud not only of the reception you have given me, and of that toast; but proud that in this assembly of Irishmen I stand up to return thanks, not on behalf of this class or of that class, but on behalf of the judges appointed by the people; for the first time, the people's judges. For a long time past they were in the habit of being ruled, and governed, and trampled upon by aliens and enemies"—Does that mean the existing courts, through which justice has been administered by the Queen's judges?—"by enemies who, though living among us, were not our friends, but our foes, who lived among us till they found out that which gave them an opportunity for the exercise of their petty malicious tyranny. But now we have persons as our judges, men selected among ourselves, appointed by ourselves, deriving their authority, not from any patent appointment"—in the way in which the Queen's judges are appointed—"not from any constituted assembly, but deriving it directly and solely from ourselves." There, gentlemen, I close my reading and observations upon the day of Mullaghmast: a most important meeting, exhibiting more than any perhaps that has taken place, to you who are bound to decide in this case according to your sound judgment, and according to

the truth, what were the real intentions of the several parties that are accused before you of having entered into this alleged conspiracy and common design. The general objects of that meeting have been brought before your minds, as furnishing more or less evidence of this general design, entertained and inculcated by the principal speakers upon that occasion; evidence of exciting discontent, hatred, and animosity in the people of Ireland against the people of England for by-gone scenes and offences, the truth of which cannot be ascertained, but which, if ever they did exist, were (to say the least of it,) now gratuitously brought before the public mind, and the consideration of this assembled multitude. Now there was present, who took an active part in that meeting, Mr. O'Connell senior, who made two speeches—Mr. O'Connell senior, who was the person who gave his orders for the procuring of that assembly—Mr. O'Connell senior, who selected that place because it was the scene of that former alleged bloody massacre, perpetrated two hundred and fifty years ago by the English of that day against the Irish of that time, to revive and to bring to light again, the feelings which must have dwelt in the hearts and minds of those at that time connected with the sufferers in that tragedy. You recollect how he has described it, how he has painted the scenes of misery and wretchedness, which must have seized upon and overwhelmed the feelings of every person who was connected with those who perished. It was not for nothing, he said, he brought them to that place, and he makes that speech, standing (as he says,) upon the spot where the tragedy was committed—where every thing that Ireland at that time ought to have held dear was sacrificed to the cruelty and treachery of the government of the country at that time. It was to revive and to recal the feelings that he described as existing in the hearts of those relatives, and to infuse the same into the breasts of those, of the present day, who were listening to the eloquent way in which he pourtrayed those horrible scenes. What is the accusation founded upon it? The accusation is for endeavouring to excite and to raise discontent and disaffection in one part of her Majesty's subjects against the other, especially the Irish against the English. Does this, or does it not support that charge? That is for you to say. They say that all this takes place for the purpose of promoting free discussion, and fair and candid inquiry as to the prudence of repealing the union. But is that the only ground on which this transaction bears upon the present case? That assembly, so met, consisted of as many men, as many persons, as were assembled upon the hill of Tara—the greatest monster meeting that up to that time had ever taken place in Ireland; were those thousands to have their feelings excited, and were the British ministry to be told—were the British parliament to be told, that those hundreds of thousands of people, organised and disciplined, excited in the manner that you have heard stated by the parties themselves, existed in the country in such a state of misery, that the moment Mr. O'Connell thought proper to stamp his foot, or to raise his hand, those multitudes would reassemble, no matter what his command might be? Now, gentlemen, does that go to support their allegation that this is free discussion; or does it go to support, or is it evidence to support, the imputation alleged by the crown, that this was a collection of those masses and multitudes of persons for the purpose of intimidation, and for the purpose of overawing the legislature of the country? I am bound to put both these respective views before you; it is for you to decide. There is yet another charge, that of exciting discontent and disaffection against the law and constitution of the country. What was that law, and that constitution, as by law established? The law of the union, which is the law of the land, and no other, at this day. And upon that occasion it was proclaimed by Mr. O'Connell to the hundreds of thousands that were listening to him, that the union was a nullity, that it was absolutely void. Was this for the purpose (and it is for you to say) of exciting discontent and disaffection amongst the subjects of this country against the law and institutions of the country? Another branch of this charge of conspiracy is the depreciating the courts of justice, as established by law, and the constitution of the realm, in this country; bringing them into contempt, and inducing the subjects of the realm to withdraw the adjustment of their disputes and differences from the courts appointed under the Queen's authority, and inducing the subjects of the country to go to other tribunals for the adjustment of those differences. Is there any evidence, in the transactions at Mullaghmast, given you, in support of that charge of the alleged conspiracy? Have you, or have you not, Dr. Gray coming forward, and making his statement in the presence of those assembled masses, that the time was come when they were to be relieved from the manner in which their affairs had been conducted in those courts, over which presided the Saxon, or the stranger, or those who, being settled here, had taken the advantage of petty opportunities to put into execution their plans of tyranny and oppression? Have you, or have you not, Mr. O'Connell adverting to the same system? He had, at the meeting at Clifden, proclaimed the same subject, and he had stated there that the institution of these arbitration courts was the foundation of his judicial system; you find him again recurring to the same subject, recommending in the same way, at this meeting at Mullaghmast, the appointment of those arbitration courts, and the placing therein the magistrates who had been dismissed by the chancellor for their attendance upon the repeal meetings. There you have three individuals, and you have Mr. Ray, moreover, adding his mite in recommendation of that common cause. You have therefore four, and you have Mr. John O'Connell a fifth, who likewise made a speech at that meeting, concurred in the general objects of that meeting, and appears to have been himself one of the first arbitrators who took upon himself to act under that appointment at Blackrock, concurring thereby fully in that establishment of the arbitration courts, appointed under the authority of the association. Now, gentlemen, I have thus pointed out to you distinctly the bearing that the Mullaghmast meeting has upon almost all the objects of this accusation; I have also pointed out to you the particular persons of the accused upon whom it bears. Hitherto I have said nothing of the Reverend Mr. Tierney, who does not appear to have attended or participated in that association, in its meetings, nor in this Mullaghmast meeting; nor, as I understand, is there evidence that he became a member of the association until the 3d of October following, which was the day but one after the meeting at Mullaghmast. It is true that he had a little pet meeting of his own, in his own parish of Clontibret, on the 15th of August, the very same day on which the great meeting was held upon the hill of Tara. Now with regard to the meeting at Clontibret, on the 15th of August, that appears to have gone off with more decorum and propriety than attended any of the meetings that I have referred to. At Clontibret there were magistrates of the county as such in attendance, there were police in attendance. And I do not think the meeting of Clontibret has been much pressed against the Reverend Mr. Tierney. I concur in that view, the more particularly as some little uncertainty appears to exist with regard to the parol evidence given by Mr. M'Cann, the police constable, who was examined as to what took place between him and Mr. Tierney, on the 15th of June,

two months before that meeting. I do not mean to impute anything to Mr. M'Cann, but it did appear that Mr. M'Cann, in the discharge of his duty as constable, with reference to what might take place between him and Mr. Tierney, did certainly at first conceive that he ought to have kept a diary or journal, and that he did at one time write a journal of what took place, but that journal is not forthcoming; and, therefore, gentlemen of the jury, I think there is a blot upon that man's testimony, and I should be unwilling to call your attention, under the circumstances, to his evidence against the traverser. I am confining myself now to the meeting at Clontibret. There is no question as to what passed afterwards with regard to Mr. Tierney; and I am the more disposed to take that course with respect to Mr. Tierney, at Clontibret, because he appears to be a gentleman who had conducted himself in the country with the propriety and correctness, which one hopes, and which one might expect, to meet with from a gentleman of his cloth. The policeman was the only person who was examined, and he admitted, upon his cross-examination, the general high estimation in which Mr. Tierney was personally held, and he added, that in the discharge of his duty as policeman, he had more than once received assistance from him. That is creditable to him. But now, gentlemen, suppose we impute nothing to him for the transaction of the 15th of August. What, then, took place on the 3d of October?—and this is worth your consideration. Mr. Tierney attended at the repeal association, on Monday, the 3d of October; that was the day but one after that great meeting at Mullaghmast, at which those resolutions were entered into to which I have called your attention. Whether Mr. Tierney knew, or did not know, of the existence, or particulars, or nature of those proceedings, I do not exclude from your consideration; he certainly might have known them, and the fact was so recent, and the place so near, that it will be for you to say whether he could have avoided knowing them—not near where he lives, but near where he was on the Monday following, in the city of Dublin; it was the very day afterwards, or the day but one I think, Mr. Tierney came to a meeting of the association, and Mr. Tierney then and there made a speech; it will be for you to say, and to judge, of the character and nature of that speech. He is charged with conspiracy, and you will take it into your consideration, how far or otherwise the objects of that speech fall in with and partake of the general nature of the common design. The Reverend Mr. Tierney—"It is an old story, but it is not the less valuable on that account, that a thing once well begun is more than half finished. Repeal has had a noble beginning this year, but I ask, why do the countless multitudes assemble?" That was in reference to what had taken place a few days ago. "You come here to enable the Liberator to make your own Ireland, the land of your birth, the land of the happy and the free. And, let me ask you, are you all prepared to do so? (Cries of 'Yes, yes.') If you are, give him deeds as well as words. I can answer for the county I have the honour to belong to, Monaghan, and for the parish that I have also the honour of being the priest of, that there we are determined to give our hands as well as our hearts. Oh! there was a time when the people of the north, aye, and the men of Monaghan, were found to be the first to resist and the last to bend to the proud Saxon." Does Mr. Tierney fall into the common parlance of calling the English "the proud Saxon?" Does he adopt that phrase so familiar in the annals of this association? "There was a time when they did not shun the battle field: there was a time when they were found to be the first to resist and the last to bend. Bear me witness, ye different streams of the Blackwater; bear me witness, the very parish that I have the honour to come from, Clontibret; bear me witness, Benburb, and the battle of the Yellow Ford, in my neighbourhood." It is rather a remarkable thing, gentlemen of the jury, and not to be overlooked altogether in this case, that the green card, the member's card, is illustrated by those two names—Benburb, and the battle of the Yellow Ford—giving the Irish character and the Irish name for it; which is explained by the letter of Mr. O'Callaghan, adopted by the association. "These are bright spots in the history of my locality; and as I am talking of by-gone times, permit me to bring to your recollection a few facts connected with the history of my country." Facts in unison with the massacre of Mullaghmast; facts of cruelty and treachery perpetrated by Englishmen upon Irishmen in the manner which he details; facts of by-gone times to which he refers in order to bring them before the hearers of the present day, and those members of the association who were the possessors of the green card. Now, listen to those statements, and see for what purpose the reverend gentleman introduced them:—"In the year 1587"—(you can easily tell how many years ago that is)—"Hugh O'Neill was created earl of Tyrone." He was then created by the sovereign of Great Britain, Queen Elizabeth. "He was then in the 50th year of his age; he was one of the bravest generals that ever commanded an Irish army. In the year 1588 Sir William Fitzwilliam was Lord Deputy of Ireland"—that is the same as Lord Lieutenant—"he was a bloody and inhuman monster; a foul murderer and a robber. I shall mention to you a robbery and murder he committed in my county. He had Red Hugh Macmahon, chieftain of Monaghan, arrested upon a false charge and brought to Dublin, he was, however, acquitted, and the Deputy engaged to have him conducted in safety to his own home. On his arrival there he was seized by the English soldiers under the command of Sir Henry Bagnall." Had this reverend gentleman any common design in communicating these particulars of exciting discontent and hatred between the Irish, upon whom these murders and robberies were said to have been committed, and the English, which had long been forgotten, but which were revived by the Rev. Mr. Tierney? "On his arrival there he was seized by the English soldiers under the command of Sir Henry Bagnall; he was executed at his own door; his head was struck off and sent to the castle of Dublin, and his lands and his estates were divided between the same Sir Henry Bagnall, a Captain Ansley, and others of his English murderers." There is then a tissue of stories relating to the battle of Benburb, the battle of the Yellow Ford, and others, in which this reverend gentleman states that the Irish were victorious, and that the English were defeated with great slaughter. What did he introduce these topics for? Was it for the purpose of showing that in former times the Irish were brave, and that they were (as he prefaces his statement by saying) "the first to resist and the last to yield?" or were these facts of English perfidy and English cruelty, of Irish victory and English failure, brought forward for the purpose of promoting Christian charity and peace after the lapse of a period of between two and three hundred years? It is for you to say; and I leave this, gentlemen, most particularly to your consideration, and only record against him the evidence, and I do not refer to the evidence of M'Cann, except so far as that was in his favour, but to the speech that the Rev. Mr. Tierney made upon the occasion alluded to. He concludes the statement of those facts thus:—"I have said, you are always successful when you are united." Successful in the field. "Now, you are united, nothing can blight your success, nothing can prevent you, save either your own timidity, your own treachery,

or your own wavering. Mr. chairman, in the name of the county I am from, and particularly of my own parish, Clontibret, where a hundred fights were fought, permit me to hand you, in the name of that parish, in the name of that people, the children of the men that fought the battle of victory unassisted from any other locality, but being of the north, and of that county alone, permit me in their names, and in my own, to have the honour of handing to you ninety-two pounds." For this Mr. O'Connell pays the compliment of a speech. "I think this very highly respectable clergyman deserves the warmest thanks of the association, and the sentiments he has uttered, full of manliness, of truth, of beauty, and of patriotism." Recollect what they were—a history of those murders and those cruelties. "He has spoken of the faults we might commit, one only he has omitted, and that is in over-impatience, over-impetuosity; we go slow but sure. I never heard a speech with more pleasure. I am sure nothing could delight us more than this contribution from the neighbourhood of Benburb. It is a very good place to originate anything useful to Ireland. I move that the thanks of the association be respectfully given to the Rev. Mr. Tierney, for his communication and eloquent discourse, by acclamation." And the proposition was carried accordingly. He then entered the association as a member; he was received with acclamation, and that which he had been detailing to them was adopted by them, and received with unbounded applause. Did he, or did he not, then adopt the objects and views of that association with Mr. O'Connell and the other members now accused with him? Was or was not his speech then delivered, a speech for the purpose of making a public communication of the treachery, and cruelty, and barbarity of England, between two and three hundred years ago? Is that, or is it not, in unison with the speeches made by Mr. O'Connell himself, giving the detail of the murders and massacres of Mullaghmast? Is it or is it not in unison, and tending to the same end, with the detail of the murders committed by the same persons, but detailed in the language of Mr. Barrett? Is it or is it not with a community of purpose, in furtherance of the same end and design as the story told of the three hundred Wexford ladies who were murdered in the Bull Ring of Wexford—the story that was detailed to hundreds of thousands at the meeting of Tara, the greatest meeting but one they ever had, or repeated at the meeting at Mallow, the same facts, though expressed perhaps in different language? Do you see here anything of community of purpose or design? It is for you, gentlemen, to say, whether under those circumstances, you think the Rev. Mr. Tierney is a participator in this common design, and whether he has embraced that association, and undertaken to carry out the same designs by the same means. Now, gentlemen, I have gone through all the traversers with the exception of Mr. Duffy. I shall have a little more to say upon Mr. Barrett hereafter, but in this statement of what took place at Mullaghmast, and at the association meeting two days afterwards, I have more or less in my observations included and touched upon all the traversers, Mr. Duffy excepted. It is not denied that Mr. Duffy was a member of the association; it is proved, indeed, by various documents, and not attempted to be denied that Mr. Duffy was the proprietor of the *Nation* newspaper, and that that was one of the papers which, more or less, was in connection with the association. He is accused of having entered into that common conspiracy so often detailed to you; and though he is not proved to have attended any of those great meetings, yet there are documents brought in evidence against him, for the purpose of showing the part he was taking in, what is alleged to be, the common plan of these alleged conspirators. Mr. Duffy, in his newspaper of the 29th of April, 1843, (for you will observe that all these acts of alleged criminality, one and all, bear date or begin somewhere about the commencement of the year 1843,) has this article—"Something is coming," it is entitled. "In 1829 the organisation and resolve of our peasantry, the din of American armament, (for the field pieces of an Irish artillery rumbled through Philadelphia,) the muttered resolve of the Irish soldiery not to coerce their country, and the menace of France that she would not leave Ireland single-handed in the fray, carried Catholic emancipation." That is the way he begins. "We do not bid the people crouch in cowardly woe—we summon them forth to strain every nerve, to abandon present comfort, to make any sacrifice for liberty, provided they see clearly for what they came forth, and how they are to succeed. But we never will urge them out with us on the troubled waters unless we are sure of ship and crew, and foresee how we shall weather the gale." These are his reasons for delay. "Ireland has the means of a present and partial, and of an ultimate and complete success in her own hands, if she go wisely, and therefore sternly, coolly, and vigorously to work—not peaceably. Let no man believe that they have undertaken a holiday mumming in meeting England's remorseless and subtle despotism." With reference to the charge of conspiracy you will ask yourselves—is that of a character with what I have been reading to you before or not? "Let us have no bragging or foolhardiness. There has been too much of this at all times in Ireland. If we were all that we are apt to call ourselves, how comes it that millions of our population often want a second meal? And why have we failed to loosen or smash England's cruel and wasting gripe of us? No! no! the Irish have great genius and courage, but they require to educate and steady themselves into that foresight and perseverance, which win campaigns as well as battles, in politics or war. What, then, is wanting? Exertion, coolness, patience, and courage." What is "courage" wanted for? Is it for the furtherance of repeal? In the same paper of the 29th of April, 1843, there is another article, which is entitled "Our Nationality." "The county of Tipperary is on its peaceful parade; there prevailed among the people there a sense of indifference—a disinclination to work until the great task was set before them. Besides this, they wished to work together, and for so high an enterprise they felt that until now the time was not come. Their present earnestness demonstrates that they but waited for the auspicious hour to strike a decisive blow, and take a becoming stand for the fortunes of their country. Their purpose is a noble one, and if we interpret them aright their plans must be successful. There are to be two meetings, one in each riding. Nothing is meant for show. The two meetings will come off on the 23d and 25th of May." What prevented them there is no evidence. "And if we be not misinformed, these days will form a meaning era in the struggle for native liberty. Twenty thousand Tipperary men, who would as soon, if called on, pay their blood as their subscriptions, would not form a bad national guard for Ireland." Is that in the same spirit, or with a tendency to promote the same ends? Now, gentlemen, here is another—the 12th of August, 1843, from the *Nation*. "We ask those who still hesitate to remember what has been done in a year. The repeal rent was fifty or a hundred pounds a week—it is now, on an average, fifteen hundred. The enrolled repealers were scarcely a couple of hundred thousands—they are now running towards two millions. It had then half-a-dozen Protestant members

—it has now thousands—from the wealthiest of the gentry to the most stern of the democracy. The entire Catholic hierarchy and priesthood have given it open support or tacit assent. There is no one worth naming in Ireland actively hostile to it. The meetings have been held, and no single event has occurred to furnish the worst minister with an excuse for preventing their repetition. The stopping of them might hazard public peace—not on the instant, for the people know their policy too well for that; but such oppression might ultimately produce war. The continuance of them has caused no offence—the repetition of them prevents crime, by giving the people hope from a higher source than parish law and surer justice than revenge. No power dare interfere with those meetings now. If the repeal organisation, by general, provincial, and baronial inspectors, by wardens and collectors, by volunteers, members, and associates,"—that is the whole machinery of the association—" have any efficiency in it, it will now have a fair trial. A far inferior machinery, though checked and hampered, carried emancipation. The present organisation will be extended to every parish in Ireland, and perfected in every parish. The whole nation will be arrayed under that system. When Grattan walked into the commons in his volunteer uniform, and proposed liberty, he had less power at his back than O'Connell will then have, or indeed has now. He had the armed and clothed, but untrained volunteers, and he succeeded. He had none of the machinery of a government in his hands, and his thousands in bright array had no elements of success but courage and arms. We are better off now—we will before another year be infinitely stronger. We have an organisation well understood by the people, and applicable to any national exigency; we have an indestructible tie binding the highest and lowest for a common end; we have many even of the accessories of national pomp—our bands for instance; we have education, temperance, and patient resolve; we will, when our system is finished, have the form as well as the bulk of a nation—who, then, will dare to question our independence?" Is that evidence of a conspiracy or not? " The organisation must not only be carried everywhere, but it must be revised everywhere. If the repeal wardens of any district do not see that the organisation, division, and training of all the repealers in their district is perfect—if they are not sure that the people are qualified, by simplicity and completeness of organisation, by self-denying obedience, by knowledge of all a citizen's duties, by courage and habitual order, to take their place among the men of a free nation—these wardens have not finished their duty—that district is not ready for liberty." Do you think, gentlemen, or do you not, that upon these documents Mr. Duffy was a party to the general confederacy, while other documents and other speeches afforded evidence to implicate the other traversers? There is another document still of Mr. Duffy's, to which I shall also refer, as being of a piece in its tone and sentiments with that already stated to you, but going perhaps a little bolder, and a little farther in what it professes: " The crisis is upon us." This is dated the 26th of August. " Our union with England was not merely an unjust and iniquitous, but an illegal and invalid act." Is that, or not, in unison with the sentiments of Mr. O'Connell, when he made the proclamation to the thousands assembled—" the union is void!" " The natural rights of the people were trampled down;" and then he goes on—" A greater than Saurin has at length given forth the irrevocable voice—resistance to the union has become a duty. The case between the people and her leaders stands thus: In a season of apparent apathy to the high and holy impulses of nationality—when cicatrization seemed superinduced by Whig palliatives, and the wound inflicted on our Irish pride and honour no longer gaped and bled—O'Connell tore asunder the bandages, and revealed to Ireland the exact seat and true character of her social and political disease. He cast to the winds the soothing system, and aroused his countrymen from the delirious repose produced by dependence on the sympathies of foreign faction. The memories of the past, blending glorious traditions of remote days"—(I wonder was this the traditions of Tara, or the traditions of Benburb and the Yellow Ford?)—" with recollections of modern '82 were appealed to; the necessities of the present time were bared to view in their appalling reality, the hopes of the future were invoked, until by every varied argument addressed to their judgment and their feelings—their own firesides—the tombs of their fathers—the cradles of their children—he so wrought upon the millions, that they answered his invitation to come forth from bondage with the unanimity of one man. The Rubicon has been crossed by the promulgation of a plan for the reconstruction of an Irish legislature." This they take into their own hands, without the advice or co-operation of king, lords, and commons, as by law established. " For weal or for woe—for ages of bondage or centuries of independence—we stand committed. Forward and prompt action is sure of its reward in speedy and glorious triumph—the criminal abandonment of opportunity is equally certain to be avenged in the perpetuation of misrule. In the making or marring of our own fortunes, we involve to an incalculable extent the hopes of the whole human family. We purposely postpone critical details of the plan submitted under the sanction of O'Connell's name, and with the authority of the association—contenting ourselves to admire, and inviting our countrymen to admire with us, the symmetry of the temple of freedom raised for their reception."

Mr. Whiteside—A sentence, my lord, intervenes—" We have gloried in the irresistible efficacy of a new element in polititl warfare, which we boast to have invented, and by whose employment we have already won many outposts."

The Lord Chief Justice—Where is that?

Mr. Whiteside—In the article, my lord; a sentence or two before that.

The Lord Chief Justice—I do not see it, Mr. Whiteside.

Mr. Whiteside—It is just after the words " human family;" and then is the statement of what the writer means: " We have gloried in the irresistible efficacy of a new element in political warfare"—political warfare—" which we boast to have invented; and by whose employment we have already won many outposts."

The Lord Chief Justice—Well—you read it.

Mr. Whiteside—That is all, my lord.

The Lord Chief Justice—" The portals stand open—the genius of '82 has consecrated the edifice—there may be a bench removed with advantage, or an alteration of internal arrangement with convenience; but the exigency of the hour is to secure the possession, and appropriate the structure to the sacred uses of self-legislation." Well, I do not think I need go any farther. It was read by the Solicitor-General. I do not think it varies or alters the nature of the impression to be derived from what I have already read, including that added by Mr. Whiteside so very properly. Now, gentlemen, having read those four publications of Mr. Duffy, I have one or two to read from Mr. Barrett; and you will judge whether or not they have a bearing to implicate Mr. Barrett still more than he has already been, by speeches in the charges against him, in the charge of alleged conspiracy, for the purposes which are stated in the indictment, or any of them. This one has some reference to the army. It is dated the 6th

of September, and it is entitled—"The Irish in the English army." They are all publications of the same thing—of a concurrent nature, following directly after those immense meetings which took place from time to time all over the country, at all of which Mr. O'Connell was, and at many of which several of the other parties were present. "The Irish in the English army—Mr. O'Callaghan's letters." Mind, gentlemen, that Mr. O'Callaghan is the author of "The Green Book," and the gentleman who was selected to give the explanation, to all persons interested, of the green card, or the member's card of the association. [Here his lordship read from the *Pilot* the article referred to. The concluding words were as follows:—] "Government may command the people to be massacred, for not submitting to injustice—since this fresh 'moral lesson' has been pronounced for 'all whom it may concern,' it is difficult to perceive, even independent of the circumstance of so many of the military being known repealers, how the great mass of our army can be reckoned on, to uphold, at the expense of their own, as well as the people's cause, the supremacy of an oligarchy, whose generosity, gratitude, and tenderness to the soldiery for so doing, consist of promotion to commissions only for the rich, the mangling lash to the bleeding back, and such merciless drillings, as have caused poor private M'Manus to drop down dead, and private George Jubee (a soldier of acknowledged good character) to send, in desperation, a bullet through Adjutant Robertson Mackay's body! Aye, there's the rub, as Mr. O'Callaghan so forcibly observes." The gentleman who was thanked by the association for his ingenuity and knowledge and research in giving an explanation of the green card—"his able and universally accessible publication"—which is twenty-four close pages of letter-press for a penny, "and from which the above extract is taken, is one of the best hand-grenades that could be directed against the abuses of such a system. It should be circulated in every direction." Another class of Mr. Barrett's opinions connected with the subject matter of this imputed conspiracy. There is a further publication, which is of the same tendency, published by Mr. Barrett on the 25th of September, and it is called—"The army, the people, and the government." It is a long publication; I do not think it necessary to give you the trouble of hearing me read it; you have heard it read already, and it is very much upon the same topics as that one contained in the *Pilot* of the 6th of September, called "The Irish in the English army," which I have just read to you. There is another publication, that was also read to you, and dwelt upon at much length by the officers for the crown, also connected with the subject matter of the army; I mean the letter published in the *Freeman* which bears the name, and was published under the signature of the Rev. Richard Power.

Mr. Sheil—The *Pilot*, my lord.

The Lord Chief Justice—The *Pilot*, which is Mr. Barrett's paper—published by Mr. Barrett in his paper, and bears the signature of the Rev. Mr. Power, parish priest of Kilrossenty, in the county of Waterford, who it was said would have been produced here to-day. On his non-production no comment has been offered by the officer of the crown, nor do I make any. [Here Mr. Justice Burton made some observation to his lordship, after which he resumed.] Gentlemen, that long letter of morality, or divinity, or whatever it may be, bears the signature of the Rev. Mr. Power, and contains full directions as to what might be or ought to be the duties of a soldier. There are three several publications by Mr. Barrett, one and all connected with the same subject—the army—upon the duties of a soldier, leaving it in the breast of every private soldier to determine whether it is his duty or not, when called on by his superior officer, to obey his commands. That is "the morality of war," as stated by the Rev Mr. Power, and published by Mr. Barrett. And it is for you to consider whether or not these publications with reference to the army, were or were not published by this alleged conspirator with the view of neutralizing the Queen's army, in case they should happen to be called upon in aid and assistance of the government, in the repressing and keeping down whatever tumultuary uprisings might take place, growing out perhaps of those public demonstrations. I need not tell you, gentlemen of the jury, that an attempt so to interfere with the soldiery, to tamper with them, is a very high offence in law. There are acts of parliament which have been referred to, passed from time to time to prohibit and prevent, under severe penalties, the daring attempt of any person or persons who should presume to do so; and although no evidence is given here, that any of those publications did ever come to the hands of the soldiers, yet I take leave to say to you, that if you be satisfied that the traversers here, or any of them, did agree and combine together for the purpose of tampering with the military, that though, in point of fact, that object was never carried into execution, if you be satisfied that such a conspiracy was entered into by those individuals, the crime is complete. The crime does not consist in the success, but in the existence of a criminal intention, in which two or more combine for the common design. The paper reaching the hands of a soldier would be an overt act of the parties who acted on that criminal concert; but the crime would not consist in the paper being delivered to the hands of the soldier, but in the criminal conspiracy which the parties had entered into for the purpose of effectuating that crime, whether it was completed, or whether it was not. Therefore with regard to the charge of a criminal conspiracy thus to interfere with the soldiers, it will be for you to say whether a conspiracy has been entered into by the persons at present charged with that crime, or by any, and which of them—whether there was an agreement or common design entered into with that object, is the criminal charge you will have to decide. Now I think from what I have stated to you, you must all see that there is evidence before you which will include in the charge of conspiracy all the several traversers who are on their trial, if you believe the fact of the existence of a common criminal design, with the intent of effectuating the common criminal intents which are stated upon the face of the indictment; and it will not be necessary for you to come to an opinion that one and all should be guilty of one and all of the crimes and the criminal intentions set out on the face of the indictment. You all know that in point of fact there are five of these criminal intentions, for the effectuating of which the criminal conspiracy is alleged by this indictment to have been entered into by the traversers. It is not necessary that all should be implicated in the same criminal end; one may be guilty and convicted, or two may be guilty and convicted, of the criminal intention of conspiracy with regard to the army; one or more may be guilty of conspiring with a criminal intention of intending to excite one portion of her Majesty's subjects against the other, and rendering them discontented with the constitution and laws of the country as they exist; another set, or one and all, may be guilty of the criminal intent of combining for the purpose of collecting large bodies of men in different parts of Ireland, for the purpose thereby of intimidating and overawing the legislature and government of the country; another set may be guilty of a criminal conspiracy to bring into disrepute the courts of justice as by law established under her Majesty, and inducing the subjects of this country to have their disputes referred for decision

to other tribunals than those courts. Now, it may be, gentlemen of the jury, that one and all of these several charges of criminality may, in your apprehension, have been brought home in evidence against the several traversers, one and all of them, or against such of them as you may be of opinion the common criminal design is proved against; bearing, however, in mind, that no conspiracy is proved into which more than one does not enter. Before, however, I put the case finally to you, I have another document yet to read, which I think is of too much importance to be omitted; and I have something to say in conclusion with regard to the particular charge in the indictment as to the erection of the arbitration courts, with a view to disparage and to bring into disrepute the established tribunals of the country. The document to which I refer was issued by the association on the 13th of September, 1843. It professes to be "An address from the loyal national repeal association of Ireland to the inhabitants of the countries subject to the British crown." It is not an address to the crown. It is not an address to the commons—it is not a petition of any kind; but it is an address by this body, the constitution and nature of which you are acquainted with, "to the inhabitants of the countries subject to the British crown." It begins—"Fellow-subjects—The people of Ireland would anxiously desire your sympathy and support. But long and painful experience has taught them not to expect either the one or the other. Confident however, in their own exertions, they content themselves with laying before you a simple statement of some of the grievances under which their country labours—yet have no other hope, as far as you are concerned, than that of vindicating themselves in the eyes of all rational and just men amongst you for the magnitude of the struggle they are now making in the cause of their country. There is no truth more undeniable than this, that England has inflicted more grievous calamities upon Ireland than any country on the face of the earth besides has done upon any other." Is this a publication, gentlemen, with a view or intention of inflaming the people of Ireland, and exciting discontent and hatred against the people of England, or is it done with any other design? "In the history of mankind there is nothing to be compared with the atrocity of the crimes which England has perpetrated on the Irish people, nor as yet has the spirit which created and animated such crimes been much mitigated, if mitigated at all from its original virulence. The consummation of such crimes, up to the close of the last century, is to be found in the atrocious manner in which the legislative union between both countries was effected." It then goes on with a recapitulation of what you before heard, of what they state to be their grievances, as resulting out of the act of union, and the manner in which they alledged that act of parliament was carried. And it proceeds thus:—"Seventhly—An anti-Catholic and anti-Irish spirit governs the distribution of official situations, and has been most painfully exhibited in the great majority of official appointments made by the present ministry." Now mind the disparagement it throws on the courts of justice. "Eighthly—Deep-rooted and increasing discontent pervades the entire nation. Feelings of estrangement are rapidly supplanting those affections which kindness and justice could have placed at the command of government. Despairing of redress from the legislature, the people of Ireland, confining themselves to legal and constitutional means"—what they mean by that I do not know—"now rely upon their own strength and resolution for the attainment of those rights which they have sought from the British parliament in vain. They know full well that they can obtain adequate redress from a domestic legislature alone." "Such, fellow-subjects, are the loud and distinct complaints of the people of Ireland. We have applied in vain to the legislature for redress: our complaints are unheeded, our remonstrances unavailing. The poor boon of inquiry conceded to the advocate of the Negro and the Hill Cooly, has been denied to the moral, the temperate, the religious, the brave Irish nation." Whether that is true or not, gentlemen of the jury, is not a question here. "The black catalogue of grievances which we have thus detailed, instead of being mitigated by hope, or softened by a kind or conciliatory deportment, is aggravated and embittered by recent events. The present ministry, instead of giving us redress, insult us with an arms' bill—an insult which they would not have dared to offer to Scotland, to England, or even Wales. They have further insulted us by what they are pleased to call an amendment of the poor law bill—an amendment which increases the despotic power of the ruthless poor law commissioners, gives them the appointment of valuators, and takes away the electoral franchise from the poorer classes, without giving them any real relief. Lastly, to crown all, they conclude the session with a speech, which they cause the Queen to pronounce—of course, the ministers' speech—full of sound and fury—giving us for all relief and redress—for all conciliation and kindness—the absurdity of ministerial assertion, and the insolence of half-whipt ministerial anger." Now attend to this conclusion—"Fellow-subjects! our case is before you and before the world. Grievances, such as the Irish people endure, no other country has ever suffered. Insults such as are offered to us, were never inflicted on any other. There is one consolation: it is admitted by all, and is as clear as the noon-day sun, that unless we redress ourselves, we can have no succour from any other quarter; but we suffice for ourselves and our country." What follows is put in large capital letters—"WE SUFFICE FOR THE REPEAL." "We expect nothing from England or Englishmen—from Scotland or Scotchmen. In each of those countries the benevolent few are overpowered by the anti-national antipathy to Ireland, and the virulent bigotry against the Catholic religion of the overwhelming majority of both England and Scotland. The present parliament has been packed with the aid of the most flagitious bribery to oppress and crush the Irish nation. From them there is neither redress or even hope. "But, Irishmen,"—in italics—"*we suffice for ourselves.* Stand together—continue together—in peaceful conduct—in loyal attachment to the throne—in constitutional exertion, and in none other." Is that to say, give us a new constitution and a new state of laws, such as we the people of Ireland demand; and if you do not think proper to do it, "we suffice for ourselves?" Is that evidence of intimidation, or is it not? "Stand together and persevere, and Ireland shall have her parliament again." Is that command, or is it a petition? "Such are the words we address to our fellow-subjects all over the globe. Signed by order—Daniel O'Connell, Chairman of the Committee."—The committee appointed by the association to whom this report was made. "Corn Exchange-rooms, 13th September, 1843." This was ordered to be printed on a broad sheet, and circulated in the colonies, and every where in the British dominions, and it was adopted and carried unanimously by the association. Now, I suppose from what has been said by Mr. Moore, the gentlemen will not allow this to go to your room; I have therefore read it in more detail than I should otherwise have done, and thereby have trespassed at great length on your time. I am sorry for it, but I have considered it necessary for the due consideration of this subject. Gentlemen, there is one subject in particular, which requires a little more de-

tail; I mean the arbitration courts. You will observe, gentlemen of the jury, that the charge is not simply for combining together to erect and constitute these arbitration courts, but the main and principal part of the charge is this—combining together for the purpose of bringing into disrepute and discredit the existing courts of justice in the country, as by law established. There was a great deal of argument, and a good deal I think of unnecessary statement with regard to the subject of arbitration. It was said with a great deal of vehemence, and sincerity, I have no doubt, that the termination of suits by arbitration was not only no crime, but laudable as a religious and a moral duty; and it was said to be the universal practice of the Society of Friends or Quakers, who, it was stated, and most deservedly, were amongst the most moral and properly conducted subjects that belong to the British crown. By the rule of the Society of Friends, any member who had a dispute with another person, was bound, in the first instance, to endeavour to have that question decided by arbitration, before he was at liberty to take proceedings at law; and, moreover, that rule of the society was enforced by another, by which any member of the Society of Friends, who should decline to terminate his suit by arbitration before he went to law, was to be expelled, or "read out of meeting," as it is called by the society. A further instance was referred to, as showing another body of people of high consideration in the country, who were in the constant habit of referring their disputes to arbitration, and who had existing, in the city of Dublin, a committee of mercantile men, consisting of forty of the principal merchants, called the Ouzel Galley Club, for the purpose of determining, by arbitration, the several disputes and differences between any persons who should think proper to submit to their decision. That is all correct, and in that way a great variety of mercantile questions in the city of Dublin are constantly referred to the arbitration and final decision of the members of the Ouzel Galley Club. But the system of arbitration adopted by the Ouzel Galley Club is not analagous to what is now proposed; because the Ouzel Galley Club, though it does take upon itself to decide the disputes and differences of those who think proper to refer to the decision of its members, is based, in the first instance, on a writ issuing out of the superior courts, and it derives therefore its judicical authority in fact from thence; it was so stated by Mr. Cosgrave—or else the submission to arbitration is made a rule of the court; in either case it remains subordinate to the superior courts. But, gentlemen, it is stated further, that this decision of disputes by arbitration is desirable upon a conscientious and religious principle, viz:—The putting a stop to the administering of oaths, which, before the law substituting a declaration for an oath, did exist to an extent very much to be regretted, particularly in cases in which the revenue was concerned. Those are all very plausible arguments to be brought forward now, and those are plausible examples to be set up as being the precedents, and the foundation upon which the present arbitration courts were established by the association. Now, gentlemen, if the association had acted really a *bona fide* part; if any of those reasons, which are now put forward during this trial for the purpose of giving countenance to the establishment of these courts, were *bona fide*, there might be something in it; but it will be for you to decide whether or not any such intention existed in the minds of the persons by whom those arbitration courts were erected, or whether they were set up for an entirely different purpose, with something of a factious view of opposing the government, in the course they had taken, by dismissing from the commission of the peace the magistrates who had attended several repeal meetings. Gentlemen, I have already stated the speeches of Dr. Gray, who seems to have been, in a great measure, with Mr. O'Connell, the author of this system; and see whether in any of their statements they made the slightest allusion with regard to the setting up of the arbitration courts, to the abolition or diminution of oaths, or any such purpose. On the contrary, is there not evidence, which you have heard read to you, from which you have the materials, if you think right, to infer a very different reason for the establishment of those arbitration courts; to wit, in order to enable Mr. O'Connell and the association to put down the existing courts of justice in the country, and to substitute in lieu of them, courts, to be called courts of arbitration, to which the people might, if they thought proper, submit their differences, and which were to be, as Mr. O'Connell said, "the foundation of a system of justice and judicature in the country." Gentlemen, recollect in that address which I have just read from the association, one of the grievances which is proclaimed to the world at large, as far as the British subjects are concerned, is, that persons have been appointed to the bench hostile, or not having a feeling with the people of the country, and therefore they are dissatisfied with those courts as they exist, and the mode in which the administration of justice is dispensed in them. Now, if people combine in order to put down the existing courts of justice as derived from the appointment of the Queen, and to set them at nought, and to disparage and defame them, and thereby to induce the subjects of the kingdom to withdraw from their cognisance the administration of justice, if that be their object, and further to carry that out, to establish courts of arbitration, to be appointed in lieu of the Queen's courts, then, gentlemen of the jury, such an association or confederacy for such a purpose, and with such an intent, is a violation of the law—and any infringement on the Queen's prerogative, in that respect, has always been considered a high misdemeanour. The subject, gentlemen, is treated briefly and clearly by Judge Blackstone, in his celebrated Commentaries on the Law of England; and in his first volume, page 277, he thus states, in respect of it—"Another capacity in which the king is considered in domestic affairs, is as the fountain of justice and general conservator of the peace of the kingdom. By the fountain of justice the law does not mean the author or original, but only the distributor. Justice is not derived from the king, as from his free gift, but he is the steward of the public, to dispense it to whom it is due. He is not the spring, but the reservoir, from whence right and equity are conducted, by a thousand channels, to every individual. The original power of judicature, by the fundamental principles of society, is lodged in the society at large; but as it would be impracticable to render complete justice to every individual, by the people in their collective capacity, therefore every nation has committed that power to certain select magistrates, who, with more ease and expedition, can hear and determine complaints; and in England this authority has immemorially been exercised by the king, or his substitutes. He, therefore, has alone the right of erecting courts of judicature; for though the constitution of the kingdom hath intrusted him with the whole executive power of the laws, it is impossible, as well as improper, that he should personally carry into execution this great and extensive trust; it is consequently necessary that courts should be erected to assist him in executing this power; and equally necessary, that if erected, they should be erected by his authority. And hence it is, that all jurisdictions of courts are either mediately or immediately derived from the crown; their proceedings run generally in the king's name; they pass under his seal, and are

executed by his officers." Such is the common law of this country; and it is therefore an infringement and a violation of that law, if two or more persons presume and take upon them to enter into a common design to detract from the respect due to the Queen's courts of justice, and the way in which the law is administered in those courts. If any person has a grievance with regard to the manner in which his cause is treated in any of the King or Queen's courts, he has his remedy. The law is open to him, and there is a tribunal of *dernier resort*, vested for the most part in the house of lords. But to combine for the purpose of denying the power of the crown to erect those courts, or to detract from the character or the mode of administration of justice in those courts, is a direct offence of a very high nature, and a direct infringement of that privilege of the crown that has subsisted at all times, as I have read to you, in the kingdom of Great Britain and its dependencies. Therefore, it is something to be considered, what has taken place, and the manner in which these arbitration courts, and the principle of arbitration was carried out. I hold in my hand a report of the arbitration committee, presented to the association, and dated the 21st of August, 1843. It was brought forward again in the repeal association on Wednesday, the 23rd of August, 1843, and was adopted, being moved by Dr. Gray, and seconded by Mr. O'Hea, and carried unanimously. You will find in this report a statement of the system that had been proposed by Dr. Gray, submitted to the association, and by them carried into one of its laws. It is a report of a new system of judicature to be erected, not for any particular case, not for any particular district, but to be recommended and intended to be adopted for the entire kingdom, so that in every part the courts erected under this recommendation, which are the association courts, are intended to be in substitution of the Queen's courts, which are not considered by Mr. O'Connell as longer dispensing justice to the subjects of the kingdom. And recollect, gentlemen, the offence contained in the indictment with regard to these courts, is not an attempt to estab ish arbitration courts, though perhaps that might (I do not say whether it would or would not) be an offence, or anything criminal, for parties to conspire to do so; but the offence charged is—which I take to be clearly criminal—a combination to bring into disparagement and disrepute the courts of judicature as existing by law in the country, to bring them into contempt and disregard amongst the subjects of her Majesty, and to induce them to go to other tribunals for the purpose of terminating their disputes. That the parties did take measures to that effect, I have already stated to you, by the reading in most unequivocal language the charges against the existing courts as contained in that general address from the association, which was printed on a broad sheet, and circulated throughout the country. I have read to you, in addition to that, the statement made by Mr. O'Connell at the great meeting at Connemara after the dinner, as to the erection of these arbitration courts; thereby, as he says himself, laying the foundation of new courts in which justice may be looked for and administered. To the same effect was the speech delivered by Dr. Gray at Mullaghmast. To the same effect was the statement made by Mr. O'Connell in his speeches at Mullaghmast. And here we have a paper adopted by the association, being the report of the arbitration committee, dated in August, 1843; its adoption was moved by Dr. Gray, and seconded by Mr. O'Hea, and carried unanimously. And here are the reasons for the recommendation of the adoption of this new system of arbitration courts. "Your committee are of opinion, that, inasmuch as many of the magistrates who possess popular confidence have been deprived of the commission of the peace, because of their attachment to the cause of legislative independence, no unnecessary time should be lost in carrying into practice the principle of the arbitration as already approved of by the unanimous vote of the association. In order, therefore, to secure the perfect and harmonious working of such a system, your committee recommend that a standing committee be immediately formed to arrange the necessary details, to prepare the necessary forms, and superintend the practical working of the system after it shall have been put in operation. Being further of opinion that the system of arbitration should be universally applied as the circumstances of each locality will admit, your committee recommend, that for that purpose the several counties be appointed into districts." It is intended to be a general system. Then it speaks of the persons to whom a preference should be given in the appointment of arbitrators. "Your committee suggest, that the dismissed magistrates, and such repeal justices as have resigned, be in the first instance recommended as arbitrators in their respective districts, and that a dismissed magistrate, or one who has resigned, if present, be in all cases chosen as the chairman of the court of arbitrators." Not on account of his legal knowledge, local or other information, or property, but as a matter of course, either because he has been dismissed as a magistrate for attending repeal meetings, or because he has thought proper to resign; therefore, for no other reason, that person is to be appointed chairman of the district. Now that is the only reason assigned on the face of this report, for the necessity or advisability of the substitution of these courts. It is not based on the principle of religion, charity, or benevolence; and the matter recommended was, that without loss of time the persons who had been dismissed from office, or resigned their office as magistrates, for the reason assigned, should be at once placed in these arbitration courts, and at their head. Is that a reason, gentlemen, why the parties in question were, upon several occasions, in several places, and with the utmost publicity, to dispense with and decry the courts of justice, that her Majesty, under her letters patent, has thought proper to provide, in the execution of her undoubted prerogative, as courts of law for the benefit and protection of her subjects? Her judges in those courts have the great advantage, that they are by law independent both of the crown and of the subject. They are placed here to administer the laws of the land, they have been all duly educated for the discharge of those duties, to which it is to be presumed they are competent, and for the discharge of which her Majesty, by her letters patent, has thought proper to appoint them. The administration of the law is, in the (it is to be hoped) partial view that Mr. O'Connell takes of it, to be withdrawn from them who are such unworthy administrators f it, and it is to be placed in the hands of persons who, for aught that appears, never received any education on any subject connected with the laws of the land. I do not, however, draw a comparison; it is not for me to do so; the law has already done it for me; they are the judges whom the Queen has thought proper to place upon the benches of her superior courts, in execution of her duties to the subject, and in the exercise of her undoubted prerogative. People, if they choose, if they think it for their advantage, may of course refer their disputes to arbitration; and in very many cases I am persuaded they could not adopt a wiser course, or a better plan for having their cases properly decided, and for having them decided at a great saving of expense. But, gentlemen, was that the reason that those arbitration courts were appointed? Composed of individuals

not known to the party, not chosen by the party, but chosen by the association, who think proper to assume to themselves the right and power which belongs alone to the Queen's prerogative. If you think that those aspersions on courts of justice were cast by the traversers, or any or either of them, with a view of bringing those courts, and the administration of justice in them, into contempt and disrepute, and to withdraw the confidence which the subjects otherwise would have in them—if the traversers, or any, or either of them, have conspired for the purpose of raising that feeling towards those courts, and if they have done so with a common design, then, gentlemen, I have to tell you, that that is a high misdemeanour, is highly illegal, and if they conspired to do so, those who have so conspired, that is, agreed to bring it about by combination, are guilty of the crime of conspiracy imputed to them in that respect. There are four other grounds of accusation, which are contained in the present indictment. I will put to you in writing again, what I did before with regard to them. They are indicted, the eight traversers—and you are to pronounce, by your deliberate conscientious verdict, whether they, or any, and which of them, did conspire and agree to raise and create discontent and disaffection amongst the Queen's subjects, and hatred and unlawful opposition to the government and constitution. Secondly, whether they conspired and agreed, or any, and which of them, to stir up jealousies amongst the Queen's subjects, and to promote ill-will to other of her subjects, especially the Irish against the English. Thirdly, whether they conspired and agreed, or any, and which of them, to excite disaffection in the army. Fourthly, whether they conspired and agreed to collect unlawful assemblies in large numbers in Ireland, in order to obtain changes in the laws and constitution, by intimidation and demonstration of physical force. And lastly, whether they, or any, and which of them conspired and agreed to bring the courts of judicature established by law into disrepute, with intent to induce the subjects of the crown to submit their disputes to other tribunals. If you are of opinion, that the traversers, or any of them conspired and agreed to do, or cause to be done, the said several matters, or any of them, then you are to find such traversers or traverser guilty of the fact of conspiracy so laid. I have put the questions to you in the language of the indictment. It lies upon the crown to establish—they have undertaken to do so—that the traversers, or some of them, are guilty of a conspiracy, such as I have already stated to you—a conspiracy consisting of five branches, any one of which being brought home, to your satisfaction, to the traversers or traverser, in the way imputed, will maintain and establish the charge which the crown has undertaken to prove. But, gentlemen of the jury, you are never to lose sight of this fact; criminality or crime is a thing that must be proved, and is not to be merely surmised. Every person, by the law of this country, is entitled to have the benefit of being deemed innocent, until he is proved guilty. The traversers have one and all of them made the defence, that their designs were not criminal; that they had grievances, that they had a right to complain of those grievances, that they had a right to lay them before the public, though it happened in so doing they attended multitudinous meetings. If you should be of opinion, that such were the designs and objects of the traversers, and that they had no such criminal intent as imputed, and did not resort to any criminal means for the furtherance of those objects, if that should be your opinion, you would be bound to acquit the traversers, or any such as you should conceive to stand in that innocent situation. That is to say, you would be bound to acquit them, so far as their case consisted merely of intention. But if, on the other hand, you should be of opinion that those were not the real objects of the persons charged as traversers, whatever their apparent designs might be, and however they might be masked, that they had in fact, and in truth, the criminal intentions which are attributed to them by the crown; and if you be satisfied further, that the traversers, or some of them, in furtherance of those designs, acted with a common criminal object, and in common criminal concert, then in such case you will be bound, conscientiously, to find them guilty of the conspiracy which you shall be satisfied is so proved against them, and in which they shall appear to have been participators. Now, gentlemen of the jury, a great deal has been addressed to you in various ways and on various grounds, which I do not intend to recapitulate. You have been pressed by arguments appealing to your feelings, I would say appealing sometimes to your apprehensions; you have been addressed by gentlemen of the greatest ability, I believe in greater number than persons accused of crime ever had before the opportunity of having heard on their behalf. Every topic that could be suggested by ingenuity and reasoning has been made use of. But, gentlemen, it has been thrown out to you that there were other grounds besides the evidence that has been laid before you, which you might legitimately and properly take into your consideration, in coming to your conclusion upon the verdict that you should give. In answer to that, gentlemen, I have only to state, you are by law considered to be indifferent between the parties, indifferent as you stand unsworn, indifferent after you are sworn, biassed and swayed by nothing but the oath which you have taken, which is to give a verdict according to the evidence. That is your oath; to enable you to do that, I must say I never saw a jury who, during a long and painful trial, extending over more than three weeks, have paid such undeviating attention to the case and evidence that has been laid before them as you had, and to the several gentlemen that have addressed you on either side. I feel confident, therefore, that in the conclusion which you shall draw, you will give a verdict founded upon the evidence, conformable to the dictates of your reason and of your conscience; and I do trust, that the Lord, who rules over all, will enlighten and direct you. I have nothing more to say.

THE ISSUE WAS HANDED UP TO THE JURY PRECISELY AT HALF-PAST FIVE O'CLOCK.

The Foreman said—My lord, the jury are very much fatigued, and they wish to know if it was necessary they should go into the case to-night?

Chief Justice—I am sorry to tell you that after the charge has been delivered, it will not be possible to allow you to separate. You may retire to your chamber, but I am sorry to say we have not the power of giving you the liberty you have hitherto enjoyed of going to your own homes. You must remain in court in the custody of the sheriff, and you cannot be allowed to have any communication with any other person. The chamber is the only place that I am aware at present you can occupy. I do not mean in what I now say in any way to influence the judgment of those whom I now address; but I may observe that I have known instances in which a jury were not allowed to separate, but were allowed to remain together in the custody of the sheriff, and to have such accommodation as they might require during the time that elapsed before they gave their verdict. It is not a matter in which the court can give any direction; but if done at all, it can only be done by consent; and unless it is done by consent, I am not aware that the court is at liberty to give any other answer to your question.

Judge Crampton—The high sheriff has prepared a

room in the most comfortable manner—the grand jury room, and no doubt every necessary refreshment will be supplied.

Mr. Henn—My lords, we submit that there is no evidence in this case of any act having been done to support this charge within the county of the city of Dublin, and that we are, therefore, entitled to your lordship's direction for an acquittal, as the venue is not properly laid.

Chief Justice—What do you call the meetings of the association, and the speeches made there?

Mr. Henn—There is no evidence to show that they were in the county of the city of Dublin; but we only require a note of the objection to be taken.

Judge Crampton—Well, as the Chief Justice is very much fatigued, I'll take a note of your objection.

Solicitor-General—Is there not evidence of Browne, the printer, of Nassau-street, having printed their publications?

Their lordships then retired, Judge Burton having intimated that they were only going to the chamber, but not leaving the court.

When the jury had retired, and the judges, with the exception of Mr. Justice Perrin,

Mr. Moore, on the part of the traversers, said that he was quite satisfied that the entire of the documents should be given to the jury; but he had been instructed that marks and scores had been made under particular parts of those read by the crown, which he did not think should go before the jury. Moreover, he understood that the officer of the court had in his hands very many of the documents on that side, while he had very few indeed of the documents on the side of the traversers. The documents for the defence were lodged with the officer when proved, and they (traversers' counsel) never saw them again.

Judge Perrin—It was the duty of the officer to have taken care of all the documents on all sides.

The Attorney-General—We took care of our own documents, and they are every one of them forthcoming: more could not have been expected from us.

The Clerk of the Crown said that of eleven documents which had been given in evidence for the defence, he had given back nine to the agents for the traversers, and he never saw them again.

Mr. Ford—I gave you back all the documents, most assuredly.

Mr. Henn—None of the newspapers we gave in evidence are forthcoming at all.

Mr. Justice Perrin—Oh, yes, but they will be forthcoming. Mr. Vernon has got some of the newspapers; a messenger has gone for him, and he will be here presently.

Mr. Justice Perrin, after the confusion caused by the non-production of the documents had in some degree subsided, addressed the foreman of the jury, and said—The cause of the delay is that some papers that ought to be before you, as they were given in evidence, are not forthcoming. They have been sent for, and I suppose will be here in a few minutes.

Mr. Brewster—I rather think it will be found that all the documents are in court.

After a few minutes more were occupied in an attempt to regulate and assort the documents,

Mr. Henn addressed Mr. Justice Perrin, and said—I object to any papers going to the jury unless we see them first.

The foreman then retired; and, at half-past seven,

Mr. Justice Crampton came into court unrobed, and, addressing the persons in court, which was still crowded to excess, said—Gentlemen, you may retire home to take your dinners, as the court is adjourned till a quarter to nine.

Five bailiffs were then sworn in the usual form to prevent communication with the jury until that hour. Few of those in court took advantage of the suggestion to go home.

Counsel for the traversers requested the Clerk of the Crown to hand up to the jury the documents read on behalf of the defendants.

Mr. Bourne, in reply to Mr. Henn, said there were several documents and newspapers read that he did not mark.

The Attorney-General said that all documents were now in court, and he wished to know if they were to go to the jury?

Mr. Moore said he had already stated that it was the wish and consent of the traversers that all the documents should go to the jury, provided there was not on the face of any of those documents any mark that might prove prejudicial to the case of the traversers; and in that case it would not be right to consent to it.

Judge Crampton—Certainly, Mr. Moore.

Mr. Moore proceeded to say he understood that some of the papers given in evidence on the part of the crown, containing the evidence on which they relied, had some of those passages marked, and the passages on which the traversers relied were not marked. If those papers went to the jury, the consequence would be, that the jury's attention would be directed to that which was prejudicial to the traversers, but there would be nothing to direct the jury to that which was favourable to the traversers.

Judge Crampton—What you say is quite reasonable, Mr. Moore; and as there is a difficulty about the matter, let the high sheriff inform the jury that they cannot have the documents. Some of the jury have required refreshment, and I have ordered them some of a temperate character (loud laughter).* I mean to sit here for three or four hours, and if the jury do not agree, I will swear bailiffs on the room. His lordship then retired.

Sir C. O'Loghlen—Will your lordship swear in bailiffs?

Judge Crampton—Oh! yes, and I may as well say nine o'clock.

The Clerk of the Crown then swore three constables to take the custody of the jury.

Quarter to Nine.

At this period the court was crowded to excess. The Attorney-General and the Solicitor-General, arrayed in their bar costume, occupied their respective seats.

Sergeant Warren, Mr. Brewster, Q.C., Mr. Holmes, Mr. Smyly, and Mr. Napier appeared seated on the crown side in undress.

Mr. Sheil, Q.C., with Moore, Q.C., (leading counsel for the traversers,) Mr. Whiteside, Q.C., Mr. Fitzgibbon, Q.C., Mr. Monaghan, Q.C., and Mr. O'Hea, sat without their robes at the opposite side of the court. With them appeared Messrs. Close, Clements, O'Hagan, Macarthy, Perrin and Moriarty, in bar costume.

Judge Crampton entered, and took his seat on the bench, not wearing his judicial robes.

Judge Crampton—Mr. Sheriff, call the jury.

Two policemen who occupied positions in the jury-box, proceeded to the jury-room, and three minutes having elapsed,

Judge Crampton—Have the jury been called?

High Sheriff—My lord, they have been sent for; but I will myself go to the jury-room.

Judge Crampton—Just tell them to come to the box.

The High Sheriff proceeded to the jury-room; and after the lapse of five minutes, the foreman made his appearance in the box, and addressing the bench, said—My lord, we are not quite ready yet.

Judge Crampton—Oh, very well, gentlemen; I will wait for you; but let me know when you are ready.

This merriment has reference to the learned justice's known abhorrence of intoxicating drinks. He has been a "teetotaller" for many years.

The foreman, apparently much agitated, immediately withdrew.

The sensation in court at this moment was indescribable, it being evident from the tone and manner, no less than from the words of the foreman, that the jury had determined to convict.

At the end of five minutes, the foreman not having returned,

Judge Crampton, addressing the sheriff, said—I will go to chamber for a while. Should the jury come into court, have me called.

Mr. Hatchell, Q.C. and Mr. Henn, Q C, here came into court without wig or gown, and took their places with the other counsel for the traversers.

His lordship then retired to chamber.

An interval of nearly an hour now occurred. During this period a suspense of the most intense character pervaded the crowded court. The Attorney and Solicitor-General were observed momentarily to pull out their watches, and anxiously to compare time with Mr. Brewster and the other prosecuting counsel by whom they were surrounded.

Quarter to Eleven.

Judge Crampton again came into court, and directed the jury to be called.

The High Sheriff proceeded to the jury-room, and in a few minutes

The foreman appeared and inquired of his lordship if they were to give their verdict under each count?

Court—Yes.

Foreman—And are we obliged to give our verdict on every count?

Court—Yes.

Foreman—Whether we are agreed or not agreed?

Court—Yes.

Mr. Henn—Oh, my lord, it is necessary that the jury should agree upon each count.

Judge Crampton (to the foreman)—Don't misunderstand me. If you are agreed upon each count, or on all the counts, you have only to say "not guilty," or "guilty," according to your verdict. If you only agree on some of the counts, you state those on which you have agreed, and the traversers with respect to whom you agree.

Foreman—Then we are only to state those on which we are agreed, and take no notice of the others.

Judge Crampton—There must be a finding on the others.

Mr. Hatchell—If they don't agree, they can state that to the court.

The foreman again retired.

Judge Crampton—Mr. Attorney and Mr. Moore, I am disposed to think that if the jury were agreed on certain counts, and could not agree on certain other counts, that I would be at liberty to receive their verdict so stated. I wish you to consider that.

Mr. Moore—My lord, will it not be time enough to consider that question when it arises? I think it better to wait till the verdict is brought in.

The jury came into court after an hour's absence.

Clerk of the Crown—Gentlemen, answer to your names.

Attorney-General—Call the traversers.

Clerk of the Crown—After I shall have called the jury.

The jurors having here severally answered to their names,

Clerk of the Crown—Crier, call Daniel O'Connell.

Crier—Daniel O'Connell.

Mr. Ford—Mr. O'Connell will be sent for my lord; he will be here in a few moments if necessary.

Judge Crampton—If they appear by attorney we cannot ask their appearance.

Attorney-General—I think the course to adopt is to call the traversers upon their recognizances, and they ought to appear.

Clerk of the Crown—Daniel O'Connell, come and appear as you are bound to do, or forfeit your recognizance.

Clerk of the Crown—John O'Connell, come and appear as you are bound to do, or forfeit your recognizance.

Clerk of the Crown—Thomas Steele.

Mr. Steele—Here.

Clerk of the Crown—Thomas Mathew Ray.

Mr. Ray—Here.

Clerk of the Crown—Charles Gavan Duffy, come and appear as you are bound to do, or forfeit your recognizance.

Clerk of the Crown—John Gray.

Dr. Gray—Here.

Mr. Gartlan explained that Mr. Duffy was absent, because it was a pre-arranged matter that he would not be expected to appear.

The Attorney-General said he considered it proper that it should be done, but that it was a mere matter of form.

Clerk of the Crown—Richard Barrett, come and appear as you are bound to, or forfeit your recognizance.

Clerk of the Crown—Rev. Thomas Tierney, come and appear as you are bound to do, or forfeit your recognizance.

The foreman here handed the issue to the Clerk of the Crown, who proceeded to say—gentlemen, you say nothing on the *first* count—none on the *second*: but, gentlemen, on the *third* count you say, Daniel O'Connell, Richard Barrett, and Charles Gavan Duffy are GUILTY—nothing with respect to the others.

Judge Crampton—There is no finding on that count against the others.

Clerk of the Crown—No.

Judge Crampton—Then, the finding is imperfect.

The foreman said the first count was too comprehensive.

Clerk of the Crown—Gentlemen, you say that on the *fourth* count Daniel O'Connell, John O'Connell, Thomas Mathew Ray, John Gray, Thomas Steele, Charles Gavan Duffy, and Richard Barrett, are GUILTY.

Foreman—Yes.

Judge Crampton—Is that all?

Clerk of the Crown—Mr. Tierney is not included in that count. On the *fifth* count, Daniel O'Connell, John O'Connell, Thomas M. Ray, John Gray, Thomas Steele, C. Gavan Duffy, Richard Barrett, and Rev. Thomas Tierney, are GUILTY. No finding on the *sixth* count. On the *seventh* count, Daniel O'Connell, John O'Connell, Thomas M. Ray, John Gray, Thomas Steele, Richard Barrett, and C. Gavan Duffy, GUILTY. No finding in this count with regard to the Rev. Thomas Tierney. There is no finding on the *eighth* or *ninth* count, but on the *tenth* count the jury have found that Daniel O'Connell, John O'Connell, Thomas M. Ray, John Gray, Thomas Steele, Charles Gavan Duffy, and Richard Barrett, are GUILTY. On the *eleventh* count there is no finding, but merely the foreman's signature for self and fellow-jurors.

[After the Clerk of the Crown had read the finding of guilty on some of the counts, and before he had gotten through the reading of the entire, the news of an adverse verdict had reached the hall, which was densely crowded, and immediately a loud cry of disapprobation was raised, which, being re-echoed from the crowds who surrounded the court, rendered the proceedings within perfectly inaudible for some minutes. The Clerk of the Crown, after a short space, continued to read—but again and again the manifestations were repeated.]

Mr. Justice Crampton—you must take your verdict back, gentlemen, for in the present state it is imperfect. In those counts, in respect of which you came to a conclusion as to the guilt or innocence of

the traversers, it is your duty to return a verdict of guilty or not guilty, and if you cannot come to an agreement on any count or counts, you ought to say so in your verdict.

The Foreman—My lord, we thought the first count too comprehensive—that it included everything.

Judge Crampton—The first count does embrace all, and the other counts only take the first count into pieces. You had better retire for a few moments and arrange your verdict.

Mr. Floyd (one of the jurors)—Would the verdict be correct if we put not guilty in the first and second counts?

Mr. Justice Crampton—You should return a verdict of guilty on such parts of the first count as are identical with the other counts in respect of which you have returned a verdict of guilty, and you should return a verdict of not guilty on such portions of the first count as are identical with the other counts in respect of which you consider that the traversers are not guilty.

Mr. Moore—If the jury think the traversers are not guilty on the first count, they have a right to pronounce their opinion on it.

Mr. Justice Crampton—Of course they may.

Mr. Moore—And that is the question they are asking your lordship.

Mr. Justice Crampton—The jury do not mean to find a contradictory verdict; they do not mean by a single finding on the first count to contradict their finding on the other counts. Gentlemen, I think you understand that in reference to all these counts as to which you are agreed, that some of the defendants are guilty and some not. You ought to name those who are guilty, and those who are not. It is your duty to find guilty or not guilty on every count in respect of which you are agreed, and if there are parts of the first count on which you cannot agree, that fact ought to be mentioned also. With respect to the first count, if I understand you rightly, there are parts of that count on which you have agreed, and parts on which you have not agreed.

Mr. Floyd (a juror)—No, my lord; we are agreed on the first and second counts.

Several Jurors—Oh no, no.

Mr. Floyd—The jury has no difference of opinion; the only thing on which we have any difficulty is the exact terms in which the verdict ought to be framed.

The jury again retired.

The Attorney General—We wish your lordship should inform the jury that they are not bound to find on the entire of the counts, and explain that the first count embraces several branches of the conspiracy, which is split up afterwards into the others.

Mr. Moore—We don't mean to offer any arguments upon the point; but on the part of the traversers we mean to object to the direction which we understood your lordship to have given the jury: that if they should disagree upon some of the counts, they should express that disagreement. We respectfully submit that such a verdict could not be received.

Court—But the jury say there is no disagreement.

Mr. Henn—We also object to what the Attorney-General says, that it is not necessary that they should find a verdict on all the counts, but they are at liberty to find a verdict on any one of the charges, and give no finding upon the others.

Court—The jury handed in their verdict, containing a finding upon certain counts, and it remained for the court to see whether that is a verdict that can be received at all.

The Attorney-General—Perhaps your lordship is not aware that you must adjourn the court, as it is very close upon twelve o'clock now, and the verdict cannot be received, and it may be right now to adjourn to Monday morning. It wants but a few minutes of twelve o'clock.

Court—It has not struck twelve yet. I should wish to be quite satisfied that the verdict can't be received after twelve o'clock. I have received verdicts at two and three o'clock in the morning in capital cases, and I believe, upon one occasion, on a Sunday morning. Let the jury be called into court at once.

The jury immediately entered their box.

Court—Have you now arranged your verdict?

Foreman—Not yet, my lord (great laughter).

Court—This laughing and noise is extremely indecorous, and I must exercise the authority of the court if I find any person committing a breach of order again.

The jury again retired.

Mr. Henn—It's now past twelve o'clock.

Mr. Hatchell—'Tis five minutes after twelve.

Court—By what time is that?

Mr. Hatchell—By the post-office.

Court—The post-office is not always correct time. At all events it will be past twelve before the verdict can be brought in now.

The Attorney-General—I can't possibly consent to the jury being allowed to separate now. I think there must be an adjournment till Monday morning.

Court—I want to know whether you contend that the verdict is not receivable now.

Attorney-General—Under the circumstances, I think the jury should not be allowed to separate at this hour.

Court—That is a different question, I want to know whether you mean to say that the verdict is receivable.

Attorney-General—I don't go that length, nor do I think it necessary; but in a case of this magnitude and importance, I cannot agree to have the jury discharged now.

Court—I only want to have it done according to law; certainly great inconvenience may arise from keeping the jury shut up during the night, and all to-morrow, and the whole of to-morrow night, and if there is not an absolute necessity for it, it should not be resorted to. What do you say, Mr. Moore?

Mr. Moore—I say nothing, my lord.

Court—Very well, you don't commit yourself much by that (laughter). What do you say, Mr. Henn?

Mr. Henn—My lord, we don't consent to any arrangement; we have nothing to say to it.

Court—I see that I can't get any information or assistance from either side,

Attorney-General—It happens to be a singular case, and a question might be raised as to whether your lordship may have jurisdiction to do any act at this hour. Under those circumstances I don't think I would be justified if I did not state that I am of opinion the court ought to adjourn until Monday morning.

Court—I shall certainly not discharge the jury against the will of the counsel for the crown and the traversers.

Mr. Moore—We are not expressing any opinion whatever on the subject, my lord.

Court—I know you are not actually doing so, but then you don't consent to it.

Mr. Sheil—We are not entering into the question at all; the Attorney-General has taken his course, and we have nothing to say to it.

Court—Then, all I can do is to have the jury made as comfortable as possible, and I shall adjourn the court to eight o'clock on Monday morning. I suppose that is the best arrangement I can make.

Mr. Henn—Eight o'clock, my lord!

Court—Suppose we say nine. Call out the jury.

Mr. Monahan—My lord, on the part of one of the traversers, I beg to object to it, as it is now after twelve o'clock on Saturday night; and I respectfully

submit that your lordship has no power to do any judicial act now.

Court—I have not my note-book here, but I shall remember your objection, Mr. Monahan, though I don't think it likely that you'll hear anything more of it.

Mr. Floyd, one of the jurors, here came into the box and said, "My lord, are we wanted?"

Court—You are.

Mr. Floyd—We were sent for twice before, and we were not wanted.

Court—Well, you have been sent for now for the third time, and you are wanted (laughter).

All the jury then came into the box.

Court—Gentlemen, I have a very unpleasant communication to make to you. The hour of twelve o'clock having now arrived, I am informed by the learned counsel for the crown that my jurisdiction to receive your verdict is at an end for this night, and until Monday morning. I am very much distressed at it; but it has resulted from that circumstance, and you must now remain in your jury-room, and give me your verdict on Monday morning, until which time the court must be adjourned. This is a fatality arising out of the hour of twelve having arrived without the verdict being ready; and you will now retire to your chamber, where I have instructed the sheriff to provide you with every accommodation. Indeed, he requires no instruction, for he is most anxious to do all he can to make you comfortable. There will be sleeping accommodation provided for you, and every other accommodation you may require, and the high sheriff will, to-morrow, at a proper hour, accompany you to divine service, and accompany you back, but you cannot separate out of his custody. You will remain in your room up to the period to attend divine service—if you choose to attend it—and on Monday morning I, or some of the other judges of this court, will be ready to receive your verdict. I am extremely sorry to be obliged to announce this to you, but there is no alternative.

Mr. Monahan—I submit to your lordship that you have now no power to adjourn, or to do any other official act at this hour.

His Lordship received the objection, and then adjourned the court to nine o'clock on Monday morning.

[During the time the jury were in deliberation, immense crowds of persons were assembled outside the court, who alternately cheered and hissed as different rumours reached their ears. However, when the real result was communicated to them, they separated in comparative quiet, but muttering anything save benedictions on the jury.]

TWENTY-FIFTH DAY.

MONDAY, FEBRUARY 12.

The most intense excitement prevailed this morning to ascertain the final issue of the trial, or to know whether any change of opinion had haply taken place in the minds of the jury from the time they were locked up on Saturday night. Long before the hour to which the court stood adjourned, namely, nine o'clock, dense masses of people had assembled in front of the courts, and the line of quays leading to them were thronged with anxious inquirers awaiting the intelligence which all so eagerly anticipated.

Mr. O'Connell and the other traversers arrived a few minutes before nine, and were most loudly and enthusiastically cheered by the people in the hall, as well as in the approaches to the court. The hon. gentleman was accompanied by Mr. Smith O'Brien, Mr. John Maher, and several other gentlemen, and took his seat at the table. All the crown counsel were punctual in their attendance, and the court presented a most animated appearance, being thronged to excess in every part. Mr. Studdert, police-magistrate, was in attendance, and a very strong body of police were stationed in the yard, hall, and at every avenue leading to the court; but their attendance was decidedly unnecessary, as the peace, order, and perfect tranquillity which characterised the vast assembly required no interference on the part of any officials, although it was intimated that the high sheriff had a requisition prepared to the Commander of the Forces for military, and, if he should think it necessary, to have recourse to their aid.

A few minutes after nine o'clock the Chief Justice, Judge Burton, and Judge Crampton, took their seats upon the bench.

Mr. Justice Crampton stated that he wished to inform his learned brethren, the Chief Justice and Mr. Justice Burton, of what occurred upon Saturday evening in their absence—to tell them of the jury's having come out, and to state what passed between them and the court. They retired (their lordships were aware) and remained away for a considerable time in their room, after which he (Judge Crampton) had an intimation, through the sheriff, from them, that they would not be ready with their verdict for an hour; accordingly he adjourned the court for an hour and a half, until nine o'clock, at which time he returned, and found that still they were not prepared to meet him. He remained for a considerable period in chamber, and sent once or twice to know if they were ready to come into court with their verdict, but he heard that they were not; however, shortly after eleven o'clock, he called them out, when they came with a verdict in their hands, which they handed in, but which he (Judge Crampton) considered informal, and such as he could not receive. They seemed manifestly perplexed about the form of the issue, for the first or second counts they did not seem to understand, although they mentioned that they were entirely agreed amongst themselves as to the verdict they should give. Their difficulty was only as to a matter of form, which he endeavoured to explain, but he feared he failed to convey himself sufficiently. They again retired, and after some time the Attorney-General said he thought that he (Judge Crampton) should not receive a verdict after twelve o'clock, as it was then Sunday morning; and no consent having been given by the counsel for the traversers (if such a consent could operate), he thought it right to adjourn the court until that morning, having previously ordered the jury every accommodation which it was in his power to have provided under the circumstances. These were the facts of what occurred; but he should mention that while the jury were out, he drew up in a more specific form the issue on which they were to find their verdict. Now he understood that there was but one issue in the first count sent to the jury, which in point of form was regular enough, but in point of fact it was not sufficient, as there were five distinct issues embodied in that count, so that, according to the view which they had taken of the case, they could not find upon it at all—therefore it was necessary to divide it into five distinct branches; accordingly he occupied himself in framing those issues, and with the consent of the court, he would state what he considered to be the proper and specific form. As he had stated—in the first count there were five issues:—The first, whether the defendants or any, or which of them, did conspire to create discontent and disaffection amongst the subjects of her Majesty in this realm, and to excite hatred and contempt of the government of the country. The second stated that the defendants conspired to create hatred and jealousies amongst each other, and amongst the different classes of her Majesty's subjects, especially amongst the Irish to-

wards the English people. The third was for a conspiracy to create discontent and disaffection in the army. The fourth, to procure divers subjects of her Majesty unlawfully and seditiously to assemble together at different places for the purpose of obtaining, by intimidation, or by the exhibition of great physical force, changes to be made in the constitution, government, and laws of the realm; and the fifth, for conspiring to bring into hatred and disrepute the courts of justice in Ireland, with intent to induce those subjects to withdraw the adjustment of their disputes to other tribunals. Now, he considered that the jury should say which if any of the defendants were guilty, and which not guilty, of those distinct charges in the first count. Then, with respect to the second, it was precisely the same, only that it did not state the overt acts, as they should give the same finding on it as on the first. In the third count there were also five issues, which were substantially the same, although there were some slight technical differences not at all material, which could not affect the finding. In the fourth count there were four issues——

Attorney-General (reading from a paper, and apparently following his lordship)—Only three issues, my lord.

Mr. Justice Crampton (looking again to his paper)—Oh, you are right, Mr. Attorney. In the fourth count there are only three issues, which are the same as those in the first, with the exception of charges two and three. The fifth contained only three, and was also the same as the first, except in the first and second charges. The sixth only contained one charge, the same as number four in the first count. Then the seventh count was the same, only that it introduced the words "unlawfully and seditiously." The eighth, ninth, and tenth counts, proved the same with some technical differences; and the eleventh was in a distinct form, and called on the jurors to say, whether the defendants, or any of them, collected large numbers of persons to assemble to intimidate the government, in order to compel them to make certain changes in the constitution of the house of parliament. Now, he (Judge Crampton) thought that the jury would have no difficulty if the issues were sent up to them in the form which he had read, instead of the general form with which they had been furnished; and he would suggest that they should be called out, in order that they might get the proper directions to say which of the defendants were guilty, and which not guilty of the several specific charges.

The Chief Justice directed the sheriff to have the jury called into court, and

Judge Crampton proceeded to mention that an objection had been taken upon Saturday evening, in the absence of the other members of the court, by Mr. Henn, to the effect that no evidence was given of the acts and proceedings laid in the indictment having taken place within the county of the city of Dublin, which he submitted should have been proved in order to sustain it. Mr. Monahan also made an objection, which he would mention, namely, that inasmuch as it was then (when he made the objection) Sunday morning, that the court had no further power to proceed with the case, or do any judicial act, and that therefore the trial should lapse until the first day of Easter Term.

The Deputy Clerk of the Crown then called over the traversers, all of whom answered to their names, and then proceeded to call the names of the jury, who had just entered the court. When they had all appeared,

Judge Crampton informed them that he was directed by the court to read the different findings, to guide them as to the mode in which they should sign the issue paper sent up to them. The learned judge then read over the specified charges in the different counts which he had previously read, and handed them to the foreman of the jury, who stated that he believed that he and his fellow-jurors had themselves done what his lordship had suggested.

The jury then at half-past nine o'clock again retired to their room, and after an absence of a quarter of an hour again came into court.

The foreman said that they had not had room enough left on the issue-paper to insert their finding immediately between each count, but they had written it on the last page with references. His fellow jurors had requested him to ask whether they were to receive compensation for their time.

The Deputy Clerk of the Crown—Please to hand down the issue.

The foreman then handed down the issue-paper.

Mr. Moore, Q. C., said that before the verdict was read, he wished it to appear on their lordships' notes that they (the counsel for the traversers) conceived there was a mistrial, by reason of a misnomer of one of the jury, who, when called on, answered as John Jason Rigby, but who appeared on the pannel as John Rigby. They contended that, under these circumstances, there was a mistrial by reason of the misnomer.

The Attorney-General said that the juror had been sworn as John Rigby, the name which appeared on the pannel, of which particular notice had been taken at the time by the counsel for the crown.

The Deputy Clerk of the Crown then proceeded to read

THE VERDICT.

The following is a copy of the several issues sent up to the jury, and the finding in each:—

Gentlemen—Your issue is to try and inquire whether Daniel O'Connell, John O'Connell, Thomas Steele, Thomas Mathew Ray, Charles Gavan Duffy, John Gray, Richard Barrett, and the Rev. Thomas Tierney, or any or which of them, be guilty of any, or which, of the following offences of which they stand indicted, or not.

1st and 2nd Counts—For unlawfully and seditiously conspiring to raise and create discontent and disaffection amongst the Queen's subjects, and to excite such subjects to hatred and discontent of, and to unlawful and seditious opposition to, the government and constitution, and to stir up jealousies, hatred, and ill-will, between different classes of her Majesty's subjects, and especially to promote amongst her Majesty's subjects in other parts of the united kingdom, especially in England, and to create discontent and disaffection amongst divers of her Majesty's subjects serving in the army, and to cause and aid in causing divers subjects unlawfully and seditiously to meet and assemble together in large numbers, at various times, and at different places within Ireland, for the unlawful and seditious purpose of obtaining by means of the intimidation to be thereby caused, and by means of the exhibition and demonstration of great physical force at such meetings, changes and alterations in the government, laws, and constitution, as by law established, and to bring into hatred and disrepute the courts by law established in Ireland for the administration of justice, and to diminish the confidence of her Majesty's subjects in the administration of the law therein, with the intent to induce them to withdraw the adjudication of their differences with, and their claims upon, each other, from the cognisance of the courts of law, and subject them to the judgment and determination of the tribunals to be constituted and contrived for the purpose.

GUILTY—Daniel O'Connell, Richard Barrett, and Charles Gavan Duffy, omitting the words [unlawfully and seditiously] before the words [to meet and assemble].

NOT GUILTY—Daniel O'Connell, Richard Bar-

rett, and Charles Gavan Duffy, as to the words [unlawfully and seditiously] before the words [to meet and assemble].

GUILTY—John O'Connell, Thomas Steele, Thomas Mathew Ray, John Gray, omitting the words [unlawfully and seditiously] before the words [to meet and assemble], and omitting the words [and to excite discontent and disaffection amongst divers of her Majesty's subjects serving in the army].

NOT GUILTY—John O'Connell, Thomas Steele, Thomas M. Ray, and John Gray, as to the words [unlawfully and seditiously] before the words [to meet and assemble], and not guilty as to the words [to excite discontent and disaffection amongst divers of her Majesty's subjects serving in the army].

GUILTY—The Rev. Thomas Tierney, from the commencement so far and including the words [especially in England], and not guilty of the remainder of the first and second counts.

3rd Count—For unlawfully and seditiously conspiring to raise and create discontent and disaffection amongst the Queen's subjects, and to excite such subjects to hatred and contempt of, and to unlawful and seditious opposition to, the government and constitution, and to stir up jealousies, hatred, and ill-will between different classes of her Majesty's subjects in Ireland, feelings of ill-will and hostility amongst divers of her Majesty's subjects in other parts of the united kingdom, especially in England, and to excite discontent and disaffection amongst divers of her Majesty's subjects serving in the army, and to cause and to aid in causing divers subjects to meet and assemble together in large numbers at various times and at different places within Ireland for the unlawful and seditious purpose of obliging, by means of the intimidation to be thereby caused, and by means of the exhibition and demonstration of great physical force at such meetings, changes and alterations in the government, laws, and constitution, as by law established; and to bring into hatred and disrepute the courts by law established in Ireland for the administration of justice, and to diminish the confidence of her Majesty's subjects in the administration of the law therein, with intent to induce her Majesty's subjects to withdraw the adjudication of their differences with, and claims upon each other, from the cognisance of the courts of law, and subject the same to the judgment and determination of other tribunals to be constituted and contrived for that purpose.

GUILTY—Daniel O'Connell, Richard Barrett, Charles Gavan Duffy, John O'Connell.

GUILTY—John O'Connell, Thomas Steele, Thomas Mathew Ray, and John Gray, omitting the words [and to excite discontent and disaffection amongst divers of her Majesty's subjects serving in the army].

NOT GUILTY—John O'Connell, Thomas Steele, Thomas M. Ray, and John Gray, as to the words [and to excite discontent and disaffection amongst divers of her Majesty's subjects serving in the army].

GUILTY—The Rev. Thomas Tierney, from the commencement so far, and including the words [especially in England].

NOT GUILTY—The Rev. Thomas Tierney, as to remainder of this count.

4th Count—Conspiring to raise and create discontent and disaffection amongst the Queen's subjects, and to excite such subjects to hatred and contempt of, and to unlawful and seditious opposition to, the government and constitution, and also to stir up jealousy, hatred, and ill-will between the different classes of said subjects, and especially to promote amongst the subjects of Ireland feelings of ill-will and hostility towards the subjects in other parts of the united kingdom, and especially in England, and to cause, and aid in causing, divers subjects to meet and assemble in large numbers at various times and different places in Ireland for the unlawful and seditious purpose of obtaining by the means of the intimidation to be thereby caused, and by means of the exhibition and demonstration of great physical force at such meetings, changes in the government and constitution as by law established.

GUILTY—Daniel O'Connell, John O'Connell, T. M. Ray, Thomas Steele, John Gray, C. G. Duffy, and Richard Barrett.

GUILTY—Rev. Thomas Tierney from the commencement, and so far as including the words [especially in England].

NOT GUILTY—Rev. Thomas Tierney of the remainder of this count.

5th Count—For unlawfully conspiring to raise and create discontent and disaffection amongst the subjects, and to excite the subjects to hatred and contempt of, and unlawful and seditious opposition to, the government and constitution, and also to stir up jealousies, hatred, and ill-will between different classes of the subjects, and especially feelings of hostility and ill-will against her Majesty's subjects in England.

GUILTY—Daniel O'Connell, John O'Connell, T. M. Ray, Thomas Steele, John Gray, Charles Gavan Duffy, Richard Barrett, Reverend Thomas Tierney.

6th Count—For unlawfully conspiring to cause and aid in causing divers subjects to meet and assemble in large numbers at various times, and at different places in Ireland, for the unlawful and seditious purpose of obtaining by the exhibition of great physical force at great meetings, changes and alterations in the government, laws, and constitution, as by law established.

GUILTY—Daniel O'Connell, John O'Connell, T. M. Ray, Richard Barrett, Thomas Steele, John Gray, C. Gavan Duffy.

NOT GUILTY—Rev. Thomas Tierney.

7th Count—For unlawfully conspiring to cause, and aid in causing divers subjects of the Queen to meet in large numbers at various times and at different places in Ireland, for the unlawful and seditious purpose of obtaining, by means of the intimidation to be thereby caused, and by means of the exhibition of great physical force at such meetings, changes and alterations in the government, laws, and constitution of this realm as by law established, and especially, by the means aforesaid to bring about and accomplish a dissolution of the legislative union now subsisting between Great Britain and Ireland.

GUILTY—D. O'Connell, J. O'Connell, T. M. Ray, Richard Barrett, Thomas Steele, John Gray, C. Gavan Duffy.

NOT GUILTY—Rev. Thomas Tierney.

8th Count—For unlawfully conspiring to bring into hatred and disrepute the tribunals by law established in Ireland for the administration of justice, and to diminish the confidence of her Majesty's subjects in Ireland in the administration of the law therein, with intent to induce the subjects to withdraw the adjudication of their differences with, and claims upon each other, from the cognisance of the tribunals by law established, and to submit the same to the judgment and determination of other tribunals to be constituted and contrived for that purpose.

GUILTY—D. O'Connell, J. O'Connell, John Gray, Thomas Steele, T. M. Ray, C. G. Duffy, Richard Barrett.

NOT GUILTY—The Rev. Thomas Tierney.

9th—For unlawfully conspiring to bring into hatred and disrepute the tribunals by law established in Ireland for the administration of justice, to diminish the confidence of her Majesty's subjects in Ireland in the administration of the laws therein, and to assume and usurp the prerogative of the

crown in the establishment of courts for the administration of the law.

GUILTY—D. O'Connell, J. O'Connell, T. M. Ray, Thomas Steele, C. G. Duffy, Richard Barrett.

NOT GUILTY—Rev. Thomas Tierney.

10th Count—For unlawfully conspiring to bring into hatred and disrepute the tribunals by law established in Ireland, for the administration of justice, and to diminish the confidence of her Majesty's subjects in Ireland, in the administration of the law therein.

GUILTY—D. O'Connell, J. O'Connell, John Gray, T. M. Ray, Richard Barrett, C. G. Duffy, Thomas Steele.

NOT GUILTY—Rev. Thomas Tierney.

11th Count—For unlawfully conspiring to raise and procure large numbers of persons to meet together in divers places at divers times in Ireland, and by means of unlawful, seditious, and inflammatory speeches and addresses, to be made and delivered at the said several places on the said several times, and also, by means of the publishing, and causing to be published, to and amongst her Majesty's subjects, divers unlawful, malicious, and seditious writings and compositions to intimidate the lords spiritual and temporal, and the commons of the parliament of the united kingdom, and thereby to effect and bring about the changes and alterations in the law and constitution of this realm as by law established.

GUILTY—D. O'Connell, J. O'Connell, T. M. Ray, John Gray, Thomas Steele, Richard Barrett, C. G. Duffy.

NOT GUILTY—Rev. Thomas Tierney.

Signed by the foreman,
for self and fellow-jurors.

The reading of the verdict having been concluded,

The Chief Justice, addressing the counsel on both sides, said he supposed there was nothing further to detain the jury.

The Attorney-General replied that there was not.

The Lord Chief Justice, turning to the jury, said, that after the very laudable pains and attention which they had paid to the case, from the beginning to the end, when he considered the great inconvenience which their loss of time and absence from their pursuits must have caused them—he was sorry it was not in the power of the court to order them compensation. The act of parliament did not warrant them to do so, nor was there any law made, he believed, to meet the necessities of such an extraordinary case as that had been. The duty of a juryman was one imposed on every member of society—each must perform it in his turn, when called on; and he trusted that all jurors so called on would follow the example set by the gentlemen whom he addressed, in paying such strict attention to what was brought under their consideration. It was, indeed, highly creditable and laudable, and he was sorry that his saying so was all he could do for them. He repeated, he had no power to order them compensation, and could do no more than thank them for their attendance, and dismiss them.

The jury were then discharged, and were sent to their respective homes in covered cars.

Mr. Moore asked if there was any objection to furnish the traversers with a copy of the finding?

Mr. Justice Crampton could see no objection. He supposed they would not require a copy for each of the traversers?

Mr. Moore—Certainly not, my lord, one will be sufficient.

The court then adjourned to the first day of next term (the 15th April).

THE END.

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